

AMERUS GROUP CO/IA
Form 4
July 06, 2005

FORM 4

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

OMB APPROVAL

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STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

(Print or Type Responses)

1. Name and Address of Reporting Person *
GAFFNEY THOMAS F

(Last) (First) (Middle)

699 WALNUT STREET, SUITE 2000

(Street)

DES MOINES, IA 50309

(City) (State) (Zip)

2. Issuer Name and Ticker or Trading Symbol
AMERUS GROUP CO/IA [AMH]

3. Date of Earliest Transaction (Month/Day/Year)
07/01/2005

4. If Amendment, Date Original Filed(Month/Day/Year)

5. Relationship of Reporting Person(s) to Issuer

(Check all applicable)

Director 10% Owner
 Officer (give title below) Other (specify below)

6. Individual or Joint/Group Filing(Check Applicable Line)

Form filed by One Reporting Person
 Form filed by More than One Reporting Person

Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)	5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Ownership (Instr. 4)
			Code	V Amount (A) or (D) Price			
Common Stock	07/01/2005	07/01/2005	A	450 A \$ 0	13,804	D	
Common Stock					461	I	By Spouse
Common Stock					885	I	Cory Associates LLC
Common Stock					9,442	I	Donna L. Gaffney Trust

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Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

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SEC 1474
(9-02)

Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned
(e.g., puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)	5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)	6. Date Exercisable and Expiration Date (Month/Day/Year)	7. Title and Amount of Underlying Securities (Instr. 3 and 4)	8. Price of Derivative Security (Instr. 5)	9. Number of Derivative Securities Owned Following Reporting Transaction (Instr. 6)
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Reporting Owners

Reporting Owner Name / Address	Relationships			
	Director	10% Owner	Officer	Other
GAFFNEY THOMAS F 699 WALNUT STREET SUITE 2000 DES MOINES, IA 50309	X			

Signatures

/s/ Jeananne M. Celander, attorney-in-fact for Mr. Gaffney 07/06/2005

__Signature of Reporting Person Date

Explanation of Responses:

* If the form is filed by more than one reporting person, see Instruction 4(b)(v).

** Intentional misstatements or omissions of facts constitute Federal Criminal Violations. See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, see Instruction 6 for procedure. Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number. gin-bottom: 0px; padding-bottom: pt; text-indent: 0px; padding-left: 0px; padding-right: 0px; margin-right: 0px;">Decrease of 10%

\$
0.61

	\$
	19,584
	\$
	10,179
Increase of 30%	\$
	0.88
	\$
	28,288
	\$
	1,475
Decrease of 30%	\$
	0.48
	\$
	15,232
	\$
	14,531
Increase of 50%	\$
	1.02
	\$
	32,640
	\$
	(2,877
)
Decrease of 50%	\$
	0.34
	\$
	10,880
	\$
	18,883

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The number of shares of common stock Edge will issue to PDS stockholders, for purposes of this unaudited pro forma condensed combined financial information, is calculated pursuant to the terms of the Merger Agreement based on Edge common stock outstanding as of September 30, 2018, as follows:

Treasury Stock Method Shares of Edge Common Stock outstanding as of September 30, 2018	32,000,273
Divided by the assumed percentage of Edge ownership of combined company	30%
Estimated adjusted total shares of common stock of combined company	106,667,577
Multiplied by the assumed percentage of PDS Biotechnology ownership of combined company	70%
Estimated shares of Edge common stock issued to PDS Biotechnology upon closing of transaction	74,667,304

The excess of the estimated fair values of net assets acquired over the acquisition consideration paid will be recorded as a bargain purchase gain in the condensed combined statement of operations. The bargain purchase gain has not been reflected in the unaudited pro forma condensed combined statements of operations as it is directly attributable to the transaction and will not have a continuing impact on the operating results of the combined company.

The allocation of the total preliminary estimated purchase price to the acquired assets and assumed liabilities of Edge, based on the estimated fair values as of September 30, 2018, is as follows (in thousands):

Cash, cash equivalents and marketable securities	\$ 36,815
Prepaid expense and other assets	858
Intangible assets-IPR&D	1,000
Accounts payable, accrued expenses, other liabilities	(8,910)
Net assets acquired	29,763
Less: estimated purchase price	21,760
Bargain purchase gain	\$ 8,003

The application of the acquisition method of accounting is dependent upon certain valuations and other studies that have yet to be completed. The purchase price allocation will remain preliminary until PDS management determines the fair values of assets acquired and liabilities assumed. The final determination of the purchase price allocation is anticipated to be completed as soon as practicable after completion of the transaction and will be based on the fair values of the assets acquired and liabilities assumed as of the transaction closing date. The final amounts allocated to assets acquired and liabilities assumed could differ significantly from the amounts presented in the unaudited pro forma condensed combined financial statements for the reasons described in Note 1.

Note 3 — Pro forma adjustments

The pro forma adjustments are based on PDS's preliminary estimates and assumptions that are subject to change. The estimated issuance of shares is based upon a preliminary exchange ratio that will be subject to change as well. These unaudited pro forma condensed combined financial statements do not include a pro forma adjustment for a Permitted Bridge Financing or post-measurement date financing of up to an aggregate of \$6.0M or any net cash adjustments for either party.

The unaudited pro forma condensed combined financial information does not give effect to the proposed reverse stock split of Edge common stock described in the Reverse Stock Split Proposal.

The following adjustments have been reflected in the unaudited pro forma condensed combined financial information:

- (a) Represents the payment of severance to an executive upon closing of the transaction.

- (b) To reflect the estimated fair value Edge's intangible assets acquired for in-process research and development related to EG-1962.
To reflect the accrued liabilities that are assumed by PDS of approximately \$2.2 million in severance and change in control obligations for Edge employees and for estimated transaction costs directly attributable to
- (c) the closing of the transaction of approximately \$3.0 million that have been incurred but not yet paid. Note that the \$3.0 million in transaction costs includes the following costs incurred by

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Edge: \$2.3 million for investment banking services and \$0.7 million in legal and other expenses. These pro forma adjustments are not reflected in the unaudited pro forma condensed combined statements of operations as these amounts are not expected to have a continuing effect on the operating results of the combined company.

- (d) To reclassify applicable ongoing restructuring expenses into general and administrative expense going forward and to eliminate the costs previously incurred by the Company relating to the transaction.
- (e) Represents the elimination of the historical equity of Edge, and recording the preliminary estimated purchase price and the bargain purchase gain summarized as follows:

Elimination of Edge historical equity	(29,763.20)
Estimated purchase price	21,760.00
Bargain purchase gain	8,003.2

- (f) Reflects the increase in the weighted average shares in connection with the issuance of common shares to finance the transaction. The table presents these pro forma share adjustments as follows:

	Nine months ended September 30, 2018	For the Year Ended December 31, 2017
Weighted average shares outstanding	31,198,804	30,393,952
Issuance of additional shares to finance the transaction	74,667,304	74,667,304
Pro forma combined weighted average shares outstanding	105,866,108	105,061,256

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DESCRIPTION OF EDGE CAPITAL STOCK

Edge's certificate of incorporation authorizes Edge to issue up to 80,000,000 shares of capital stock, of which 75,000,000 are designated as common stock with a par value of \$0.00033 per share, and 5,000,000 of which are designated as preferred stock with a par value of \$0.00033 per share.

As of December 31, 2018, there were outstanding:

- 31,449,989 shares of common stock;
- zero shares of preferred stock;
- 5,841,019 shares of common stock underlying outstanding options, with a weighted average exercise price of \$7.11 per share issued prior to June 2018;
- 1,202,806 shares of common stock underlying outstanding options, with a weighted average exercise price of \$1.10 per share issued in June 2018; and
- 509,962 shares of common stock underlying outstanding restricted stock units, with a weighted average grant price of \$0.85 per share.

The reverse stock split of Edge common stock described in the Reverse Stock Split Proposal, if approved the affirmative vote of holders of a majority of the Edge common stock outstanding on the record date for the Edge special meeting, is expected to occur immediately prior to the merger and prior to issuance of shares of Edge common stock to PDS. As a result, the issuance of shares of common stock to PDS is not expected to exceed Edge's authorized shares of common stock.

The following description of Edge's capital stock is not complete and is subject to and qualified in its entirety by Edge's eighth amended and restated certificate of incorporation, filed as an exhibit on Edge's Current Report on Form 8-K filed with the SEC on October 6, 2015, and second amended and restated bylaws, publicly filed as an exhibit to Edge's Current Report on Form 8-K filed with the SEC on October 6, 2018, and by the relevant provisions of the DGCL.

Common Stock

Voting

Each holder of common stock shall be entitled to one vote on all matters submitted to a vote of the stockholders.

Dividends

Subject to preferences that may be applicable to any outstanding preferred stock, holders of Edge common stock shall be entitled to receive ratably any dividends that may be declared by the board of directors out of funds legally available for that purpose. Edge has never paid cash dividends and has no present intention to pay cash dividends.

Liquidation

In the event of Edge's liquidation, dissolution or winding up, holders of Edge common stock shall be entitled to share ratably in all assets remaining after payment of Edge's liabilities and the liquidation preference of any outstanding preferred stock.

No Preemptive or Similar Rights

Edge's common stock shall not be subject to preemptive rights, conversion, redemption or sinking fund provisions.

Fully Paid and Nonassessable

All of Edge s outstanding shares of common stock are fully paid and nonassessable.

Preferred Stock

The Edge Board has the authority, without further action by the stockholders and subject to the limitations prescribed by Delaware law, to issue up to 5,000,000 shares of preferred stock in one or more series, to establish

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from time to time the number of shares to be included in each such series and to fix the designation, powers, preferences and rights of the shares of each series and any qualifications, limitations or restrictions thereon and to increase or decrease the number of shares of any such series, but not below the number of shares of such series then outstanding.

The Edge Board may authorize the issuance of preferred stock with voting or conversion rights that could adversely affect the voting power or other rights of the holders of the common stock. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions and other corporate purposes, could, among other things, have the effect of delaying, deferring or preventing a change in Edge's control that may otherwise benefit holders of Edge common stock and may adversely affect the market price of the common stock and the voting and other rights of the holders of common stock. As of December 31, 2018, there were no shares of preferred stock outstanding and Edge has no current plans to issue any shares of preferred stock.

Stock Options

As of December 31, 2018, there were 5,841,019 shares of common stock issuable upon the exercise of outstanding stock options granted prior to June 2018, at a weighted-average exercise price of \$7.11 per share. In June 2018, there were 1,202,806 shares of common stock issuable upon the exercise of outstanding stock options at a weighted-average exercise price of \$1.10 per share. Upon the closing of the merger and/or the termination of optionholders' employment in connection therewith, all unvested stock options will accelerate and vest in full and will remain outstanding in accordance with their terms.

Restricted Stock Unit Awards

As of December 31, 2018, there were 509,962 shares of common stock issuable upon the exercise of outstanding restricted stock units, at a weighted-average grant price of \$0.85 per share. Upon the closing of the merger and/or the termination of the holders' employment in connection therewith, all unvested restricted stock unit awards will accelerate and vest in full and will be settled within five days after the effective date of the merger.

Warrants

As of December 31, 2018, there were 78,596 warrants to purchase shares of common stock outstanding at a price of \$6.36 expiring on August 24, 2024.

Anti-Takeover Effects of Provisions of Edge Charter Documents and Delaware Law

Delaware Anti-Takeover Law

Edge is subject to Section 203 of the DGCL, or Section 203. Section 203 generally prohibits a public Delaware corporation from engaging in a business combination with an interested stockholder for a period of three years after the date of the transaction in which the person became an interested stockholder, unless:

- prior to the date of the transaction, the board of directors of the corporation approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder; the interested stockholder owned at least 85% of the voting stock of the corporation outstanding upon consummation of the transaction, excluding for purposes of determining the number of shares outstanding (1)
- shares owned by persons who are directors and also officers and (2) shares owned by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

- on or subsequent to the consummation of the transaction, the business combination is approved by the board and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least $66 \frac{2}{3} \%$ of the outstanding voting stock which is not owned by the interested stockholder.

Section 203 defines a business combination to include:

- any merger or consolidation involving the corporation and the interested stockholder;

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- any sale, transfer, pledge or other disposition involving the interested stockholder of 10% or more of the assets of the corporation;
- subject to exceptions, any transaction involving the corporation that has the effect of increasing the proportionate share of the stock of any class or series of the corporation beneficially owned by the interested stockholder;
- subject to exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder; and
- the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation.

In general, Section 203 defines an interested stockholder as any entity or person beneficially owning 15% or more of the outstanding voting stock of the corporation and any entity or person affiliated with or controlling or controlled by the entity or person.

Certificate of Incorporation and Bylaws

Provisions of Edge's certificate of incorporation and bylaws may delay or discourage transactions involving an actual or potential change in Edge's control or change in Edge's management, including transactions in which stockholders might otherwise receive a premium for their shares or transactions that Edge's stockholders might otherwise deem to be in their best interests. Therefore, these provisions could adversely affect the price of Edge common stock. Among other things, Edge's certificate of incorporation and bylaws:

- permit the Edge Board to issue up to 5,000,000 shares of preferred stock, with any rights, preferences and privileges as they may designate (including the right to approve an acquisition or other change in Edge's control);
- provide that the authorized number of directors may be changed only by resolution adopted by a majority of the board of directors;
- provide that all vacancies, including newly created directorships, may, except as otherwise required by law or subject to the rights of holders of preferred stock as designated from time to time, be filled by the affirmative vote of a majority of directors then in office, even if less than a quorum;
- divide the Edge Board into three classes;
- require that any action to be taken by Edge's stockholders must be effected at a duly called annual or special meeting of stockholders and not be taken by written consent;
- provide that stockholders seeking to present proposals before a meeting of stockholders or to nominate candidates for election as directors at a meeting of stockholders must provide advance notice, and also specify requirements as to the form and content of a stockholder's notice;
- not provide for cumulative voting rights, thereby allowing the holders of a majority of the shares of common stock entitled to vote in any election of directors to elect all of the directors standing for election; and
- provide that special meetings of Edge's stockholders may be called only by the board of directors.

Nasdaq Global Market Listing

Edge common stock is currently listed on the Nasdaq Global Select Market under the symbol EDGE.

Transfer Agent and Registrar

The transfer agent and registrar for Edge common stock is Computershare Trust Company, N.A. The transfer agent and registrar's address is 250 Royall Street, Canton, MA 02021.

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Both Edge and PDS are incorporated under the laws of the State of Delaware and, accordingly, the rights of the stockholders of each of Edge and PDS are currently, and will continue to be, governed by the DGCL. If the merger is completed, PDS stockholders will become stockholders of Edge, and their rights will be governed by the DGCL, the certificate of incorporation and bylaws of Edge.

The table below summarizes the material differences between the current rights of PDS stockholders under the PDS certificate of incorporation and PDS bylaws and the rights of Edge stockholders under the Edge certificate of incorporation and Edge bylaws, as applicable. Other than with respect to the reverse split and a change in its name, the current provisions of the Edge certificate of incorporation and Edge bylaws will remain unchanged immediately following the merger and will reflect the rights of stockholders of the combined company.

While Edge and PDS believe that the summary table covers the material differences between the rights of the respective Edge and PDS stockholders prior to the merger and the rights of the stockholders of the combined company following the merger, these summary tables may not contain all of the information that is important to you. You should carefully read this entire proxy statement/prospectus/information statement and the other documents referred to in this proxy statement/prospectus/information statement for a more complete understanding of the differences between being a stockholder of Edge or PDS before the merger and being a stockholder of the combined company after the merger. Edge has filed copies of its current certificate of incorporation and bylaws as Exhibits 3.1 and 3.2, respectively, to the registration statement of which this proxy statement/prospectus/information statement forms a part and will send copies of the documents referred to in this proxy statement/prospectus/information statement to you upon your request. PDS will also send copies of its organizational documents referred to in this proxy statement/prospectus/information statement to you upon your request. See the section titled "Where You Can Find More Information" in this proxy statement/prospectus/information statement.

PDS Rights Versus Edge Rights

Provision	PDS	Edge
Number of Directors	The bylaws of PDS currently provide that the PDS Board shall consist of one or more members and that the number of directors may be changed from time to time by resolutions of a majority of the total number of authorized directors on the PDS Board.	The certificate of incorporation of Edge provides that the Edge Board shall consist of at least three and not more than ten directors, with the exact number of directors to be fixed from time to time by the majority of directors.
Classification of Directors	Neither the certificate of incorporation nor the bylaws of PDS provide that the PDS Board will be divided into classes. Each director will hold office until the next annual meeting of stockholders or until such director's earlier resignation, removal from office, death or incapacity.	The certificate of incorporation of Edge provides that the Edge Board shall be divided into three classes. Each director will hold office until the next annual meeting of stockholders at which his or her class stands for election or until such director's earlier resignation, removal from office, death or incapacity.
Stockholder Nominations and	Neither the certificate of incorporation nor the bylaws of PDS provide for procedures with	The bylaws of Edge provide that in order for a stockholder to make a director

Proposals

respect to stockholder proposals or director nominations.

nomination or propose business at (a) an annual meeting of stockholders, the stockholder must give written notice to Edge's secretary no later than the close of business 60 days, and no earlier than 90 days, from the first anniversary of the prior year's

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Provision	PDS	Edge
		<p>annual meeting, except that if the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary, written notice must be given no later than the close of business 60 days before such annual meeting or 10 days after the public announcement of the date of such meeting, whichever is later); and (b) a special meeting of stockholders, the stockholder must give written notice to Edge's secretary no earlier than the close of business 90 days prior to such special meeting and no earlier than the 60 days prior to such special meeting or 10 days following the day after the public announcement of the date of such special meeting, whichever is later.</p>
Quorum	<p>The bylaws of PDS provide that one-third of the capital stock issued and outstanding and entitled to vote at a meeting of stockholders will constitute a quorum.</p>	<p>The bylaws of Edge provide that a majority of the capital stock issued and outstanding and entitled to vote at a meeting of stockholders will constitute a quorum, except as otherwise provided by statute or by the certificate of incorporation.</p>
Removal of Directors	<p>Neither the certificate of incorporation nor the bylaws of PDS provide for procedures with respect to removal of directors.</p>	<p>Under the bylaws of Edge, a director may be removed at any time with cause by the vote of the holders of at least a majority of the shares issued and outstanding and entitled to vote in the election of directors.</p>
Special Meeting of the Stockholders	<p>The bylaws of PDS provide that a special meeting of stockholders may be called by the PDS Board, or a committee that has been designated such power and authority or by any stockholder that owns at least 10% of the issued and outstanding shares of PDS common stock.</p>	<p>The bylaws of Edge provide that a special meeting of stockholders may be called by the Edge Board pursuant to a resolution adopted by a majority of the Edge Board.</p>
Stockholder Agreements	<p>The PDS stockholder support agreements provide that the officers, directors and certain stockholders of PDS (solely in their capacity as stockholders of PDS) agree to vote all of their shares of PDS common stock in favor of the adoption of the Merger Agreement and thereby</p>	<p>The Edge stockholder support agreements provide that the officers and directors of Edge (solely in their capacity as stockholders of Edge) agree to vote all of their shares of Edge capital stock in favor of the issuance of the shares of Edge</p>

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Provision	PDS	Edge
	<p>PDS's Stockholder Agreement, dated as of December 15, 2014, or the PDS Stockholder Agreement, provides for:</p> <ul style="list-style-type: none"> • the election of five directors, with certain groups of stockholders having the right to designate the directors; • the right of PDS and the stockholders party thereto to offer to purchase the shares of a stockholder that wishes to sell its shares; • the right of the stockholders party thereto to participate, on a pro-rata basis, in any new equity financings conducted by PDS; and • the requirement of each stockholder party thereto to vote in favor of a sale of PDS if approved by the PDS Board and a majority of the then-outstanding shares of capital stock of PDS. <p>The PDS Stockholder Agreement will terminate upon the closing of the merger.</p>	
Stockholder Action by Written Consent	<p>The bylaws of PDS provide that any action required or permitted to be taken at any annual or special meeting of stockholders may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, is signed by the holders of outstanding stock of PDS having not less than the number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote on such action were present and voted.</p>	<p>The bylaws of Edge prohibit stockholder action by written consent.</p>
Approval of Certain Transactions	<p>The certificate of incorporation of PDS provides that stockholder approval is required for transactions involving (a) under certain circumstances, the issuance of PDS common stock in connection with the acquisition of the stock or assets of another company, (b) the</p>	<p>Other than as provided for under the DGCL or under the rules of Nasdaq, neither the certificate of incorporation nor the bylaws of Edge expressly provide for stockholder approval of similar transactions.</p>

issuance of securities that will or could result in a change of control of PDS, or (c) the issuance of certain equity compensation.

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Provision	PDS	Edge
Forum Selection	Neither the certificate of incorporation nor bylaws of PDS include a forum selection provision.	The certificate of incorporation designates that the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for any derivate action, any claim asserting a breach of fiduciary duties, any claim against Edge arising pursuant to any provision of the DGCL, the certificate of incorporation or bylaws or any action asserting a claim against Edge governed by the internal affairs doctrine.
Amendments to Certificate of Incorporation or Bylaws	The certificate of incorporation of PDS may be amended by the affirmative vote of the holders of at least a majority of the voting power of the then-outstanding shares of capital stock of PDS. The bylaws of PDS may also be amended by stockholders at a duly called meeting or by written consent.	The certificate of incorporation and the bylaws of Edge may be amended in any manner provided by law, provided that the affirmative vote of the holders of at least two-thirds of the voting power of the then-outstanding shares of capital stock of Edge entitled to vote generally at an election of directors is required for stockholders to amend the bylaws, and to amend certain specified provisions of the certificate of incorporation concerning the Edge Board, limitations on the liability of directors and the amendment provision of the certificate of incorporation.

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Except where specifically noted, the following information and all other information contained in this proxy statement/prospectus/information statement do not give effect to the proposed reverse stock split described in the Reverse Stock Split Proposal.

The following table sets forth information with respect to the beneficial ownership of Edge common stock as of December 31, 2018, by:

- each person, entity or group known to Edge to beneficially own more than 5% of its common stock;
- each of Edge's named executive officers;
- each of Edge's directors; and
- all of Edge's executive officers and directors as a group.

The percentage of shares beneficially owned is based on 31,449,989 shares of Edge common stock outstanding as of December 31, 2018. Beneficial ownership is determined according to the rules of the SEC and generally means that a person has beneficial ownership of a security if he, she or it possesses sole or shared voting or investment power of that security, including options that are exercisable within 60 days of December 31, 2018. Shares of Edge common stock issuable pursuant to stock options and RSUs are deemed outstanding for computing the percentage of the person holding such options and the percentage of any group of which the person is a member but are not deemed outstanding for computing the percentage of any other person. Except as indicated by the footnotes below, Edge believes, based on the information furnished to it, that the persons named in the table below have sole voting and investment power with respect to all shares of common stock shown that they beneficially own, subject to community property laws where applicable. The information does not necessarily indicate beneficial ownership for any other purpose, including for purposes of Section 13(d) and 13(g) of the Securities Act. The information set forth below is based upon information supplied by officers, directors and principal stockholders and Schedules 13D and 13G, if any, filed with the SEC, which information may not be accurate as of December 31, 2018.

Unless otherwise indicated, the address of each beneficial owner listed in the table below is c/o Edge Therapeutics, Inc., 300 Connell Drive, Suite 4000, Berkeley Heights, New Jersey 07922.

Name of Beneficial Owner	Beneficial Ownership	
	Shares	%
<i>Greater than 5% Stockholders:</i>		
Sofinnova Venture Partners IX, L.P. ⁽¹⁾	2,852,711	9.07
Entities affiliated with New Leaf Ventures III, L.P. ⁽²⁾	2,379,668	7.57
<i>Named Executive Officers and Directors:</i>		
Sol Barer, Ph.D. ⁽³⁾	1,318,911	4.19
Isaac Blech ⁽⁴⁾	798,950	2.54
Brian Leuthner ⁽⁵⁾	1,622,719	5.16
Rosemary Crane ⁽⁶⁾	9,900	0.03
James Loughlin ⁽⁷⁾	115,564	0.37
R. Loch Macdonald, M.D., Ph.D. ⁽⁸⁾	1,165,194	3.70
Liam Ratcliffe, M.D., Ph.D. ⁽²⁾	2,379,668	7.57
Robert Spiegel, M.D., FACP ⁽⁹⁾	129,329	0.41
W. Bradford Middlekauff ⁽¹⁰⁾	145,406	0.46

Explanation of Responses:

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Andrew Saik ⁽¹¹⁾	79,172	0.25
All current executive officers and directors as a group 10 persons)	7,764,816	24.69
* Less than 1%		

Represents shares held directly by Sofinnova Venture Partners IX, L.P., or SVP IX. Dr. James Healy, a former director of Edge together with Dr. Michael F. Powell and Dr. Anand Mehra, are the managing members of (1) Sofinnova Management IX, L.L.C., the general partner of SVP IX, and as such, may be deemed to share voting and investment power with respect to such shares. Dr. Healy disclaims beneficial ownership. The mailing address of SVP IX is c/o Sofinnova Ventures, Inc., 3000 Sand Hill Road, Bldg. 4, Suite 250, Menlo Park, CA 94025.

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- New Leaf Venture Associates III, L.P., or NLVA-III LP, is the general partner of NLV-III and New Leaf BPO Associates I, L.P., or BPOA-I LP, is the general partner of New Leaf Biopharma Opportunities I, L.P., or BPO-I. New Leaf Venture Management III, L.L.C., or NLVM-III LLC, is the General Partner of both NLVA-III LP and BPOA-I LP. Ronald M. Hunt, Vijay K. Lathi, and Liam Ratcliffe are individual members of NLVM-III LLC, or
- (2) collectively, the Individual Members. NLVA-III LP, BPOA-I LP and NLVM-III LLC disclaim beneficial ownership of such shares, except to the extent of their pecuniary interest therein. As one of three individual members, each of the Individual Members disclaims beneficial ownership over the shares, and in all events disclaims pecuniary interest except to the extent of his economic interest. The mailing address of the beneficial owner is Times Square Tower, 7 Times Square, Suite 3502, New York, NY 10036.
- Includes 658,075 shares owned of record by Meryl Barer, Dr. Barer’s wife, all of which she may be deemed to
- (3) have beneficial ownership of, and 660,836 shares for Dr. Barer subject to stock options that are currently exercisable within 60 days of December 31, 2018.
- (4) Represents shares that are subject to outstanding options held by Mr. Blech that are currently exercisable with 60 days of December 31, 2018.
- Includes 162,000 shares owned of record by Cristina Leuthner, Mr. Leuthner’s wife, 78,730 shares held directly by Mr. Leuthner and 223,622 shares held in trust for the Leuthner children, to which Mr. Leuthner disclaims
- (5) beneficial ownership, and 1,158,367 shares subject to outstanding options held by Mr. Leuthner that are currently exercisable with 60 days of December 31, 2018.
- (6) Represents shares that are subject to outstanding options held by Ms. Crane that are currently exercisable within 60 days of December 31, 2018.
- (7) Includes 25,625 shares held directly by Mr. Loughlin and 89,939 shares subject to outstanding options held by Mr. Loughlin that are exercisable within 60 days of December 31, 2018.
- (8) Includes 577,730 shares held directly by Dr. Macdonald and 587,464 shares subject to outstanding options held by Dr. Macdonald that are currently exercisable with 60 days of December 31, 2018.
- (9) Includes 38,661 shares held directly by Dr. Spiegel and 90,668 shares subject to outstanding options held by Dr. Spiegel that are exercisable within 60 days of December 31, 2018.
- (10) Includes 10,000 shares held directly by Mr. Middlekauff and 135,409 shares subject to outstanding options held by Mr. Middlekauff that are exercisable within 60 days of December 31, 2018.
- (11) Represents shares that are subject to outstanding options held by Mr. Saik that are currently exercisable within 60 days of December 31, 2018.

TABLE OF CONTENTS**PRINCIPAL STOCKHOLDERS OF PDS**

The following table sets forth information with respect to the beneficial ownership of PDS common stock as of December 31, 2018 by:

- each person, entity or group of persons known by PDS to beneficially own more than 5% of its common stock;
- each of PDS's named executive officers;
- each of PDS's directors; and
- all of PDS's executive officers and directors as a group.

The percentage of shares beneficially owned is based on 10,475,741 shares of PDS common stock outstanding as of December 31, 2018. Beneficial ownership is determined according to the rules of the SEC and generally means that a person has beneficial ownership of a security if he, she or it possesses sole or shared voting or investment power of that security, including options that are exercisable within 60 days of December 31, 2018. Shares of PDS common stock issuable pursuant to stock options are deemed outstanding for computing the percentage of the person holding such options and the percentage of any group of which the person is a member but are not deemed outstanding for computing the percentage of any other person. Except as indicated by the footnotes below, PDS believes, based on the information furnished to it, that the persons named in the table below have sole voting and investment power with respect to all shares of PDS common stock shown that they beneficially own, subject to community property laws where applicable. The information does not necessarily indicate beneficial ownership for any other purpose, including for purposes of Section 13(d) and 13(g) of the Securities Act.

Unless otherwise indicated, the address of each beneficial owner listed in the table below is c/o PDS Biotechnology Corporation, 303B College Road East, Princeton, NJ 08540.

Name of Beneficial Owner	Beneficial Ownership	
	Shares	%
<i>Greater than 5% Stockholders:</i>		
Asklepios Capital LLC ⁽¹⁾	1,854,761	17.71
NetScientific plc ⁽²⁾	1,675,878	15.98
Indian 21st Century Fund, L.P.	1,175,904	11.23
<i>Named Executive Officers and Directors:</i>		
Frank Bedu-Addo ⁽³⁾	2,955,597	25.64
Sir Richard Sykes ⁽⁴⁾	266,610	2.53
DeLyle W. Bloomquist ⁽¹⁾	2,300,675	21.96
Gregory Freitag ⁽⁵⁾	59,842	0.57
Ian Postlethwaite	34,390	0.33
Gregory L. Conn ⁽⁶⁾	437,287	4.14
Michael King ⁽⁷⁾	162,275	1.53
All current executive officers and directors as a group (7 persons) ⁽⁸⁾	6,216,676	45.16

(1) Mr. Bloomquist is a partner of Asklepios Capital LLC. The business address of Asklepios Capital LLC is 10244 E. Windrunner Dr., Scottsdale, Arizona 85255.

(2) Includes 11,764 shares of PDS's common stock issuable pursuant to purchase warrants exercisable within 60 days of December 31, 2018. Sir Richard Sykes is the Chairman of NetScientific plc, or NetScientific. Additionally, Mr. Postlethwaite is the Chief Financial Officer and Secretary of NetScientific. Each of Sir Richard Sykes and Mr.

Postlethwaite disclaim beneficial ownership of the shares of PDS's common stock held by NetScientific. The business address of NetScientific is 6 Bevis Marks, 1st Floor, Bury Court, London EC3A 7BA.

- (3) Includes 1,053,367 shares of PDS's common stock issuable pursuant to stock options exercisable within 60 days of December 31, 2018.
- (4) Includes 81,160 shares of PDS's common stock issuable pursuant to stock options exercisable within 60 days of December 31, 2018.
- (5) Includes 54,106 shares of PDS's common stock issuable pursuant to stock options exercisable within 60 days of December 31, 2018.
- (6) Includes 83,070 shares of PDS's common stock issuable pursuant to stock options exercisable within 60 days of December 31, 2018.
- (7) Includes 162,275 shares of PDS's common stock issuable pursuant to stock options exercisable within 60 days of December 31, 2018.
- (8) Includes (i) the following directors: Dr. Bedu-Addo, Sir Richard Sykes, and Messrs. Bloomquist, Freitag, and Postlethwaite, (ii) the following executive officers: Dr. Conn and Mr. King. Consists of 3,288,739 shares of PDS common stock issuable pursuant to stock option exercisable within 60 days of December 31, 2018.

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PRINCIPAL STOCKHOLDERS OF THE COMBINED COMPANY

Except where specifically noted, the following information and all other information contained in this proxy statement/prospectus/information statement do not give effect to the reverse stock split described in the Reverse Stock Split Proposal.

Except where specifically noted, the following information and all other information contained in this proxy statement/prospectus/information statement do not give effect to the reverse stock split described in the Reverse Stock Split Proposal.

The following table sets forth information with respect to the beneficial ownership of the combined company's common stock immediately after the closing of the merger, assuming the closing of the merger occurs on March 15, 2019 by:

- each person, or group of affiliated persons, expected by Edge and PDS to become the beneficial owner of more than 5% of the outstanding common stock of the combined company;
- each executive officer and director of the combined company; and
- all of the combined company's executive officers and directors as a group.

Beneficial ownership is determined according to the rules of the SEC and generally means that a person has beneficial ownership of a security if he, she or it possesses sole or shared voting or investment power of that security, including options that are exercisable within 60 days of March 15, 2019. Shares of common stock issuable pursuant to stock options are deemed outstanding for computing the percentage of the person holding such options and the percentage of any group of which the person is a member but are not deemed outstanding for computing the percentage of any other person. Except as indicated by the footnotes below, the combined company believes, based on the information furnished to it, that the persons named in the table below have sole voting and investment power with respect to all shares of common stock shown that they beneficially own, subject to community property laws where applicable. The information does not necessarily indicate beneficial ownership for any other purpose, including for purposes of Section 13(d) and 13(g) of the Securities Act.

The percentage of shares beneficially owned is based on 100,527,112 shares of common stock of the combined company expected to be outstanding upon the closing of the merger, excluding the effect of the reverse stock split, if approved, adjusted as required by the rules promulgated by the SEC to determine beneficial ownership. Neither Edge nor PDS know of any arrangements, including any pledge by any person of securities of the combined company.

Immediately after the closing of the merger, based on the exchange ratio, Edge stockholders, warrant holders and option holders will own approximately 31.9% of the fully-diluted common stock of the combined companies with PDS stockholders and option holders holding approximately 68.1% of the fully-diluted common stock of the combined company. The following table and the related notes assume that, at the Effective Time, each share of PDS common stock will convert into the right to receive approximately 6.5366 shares of Edge common stock. The estimated exchange ratio calculation used herein is based upon Edge's and PDS's capitalization immediately prior to the date of this proxy statement/prospectus/information statement, and will be adjusted to account for the issuance of any additional shares of Edge and PDS common stock prior to the closing of the merger. See "The Merger Agreement—Merger Consideration" for more information regarding the exchange ratio.

Except as indicated in footnotes to this table, Edge and PDS believe that the stockholders named in this table have sole voting and investment power with respect to all shares of common stock of the combined company shown as beneficially owned by them, based on information provided to Edge and PDS by such stockholders and subject to community property laws where applicable.

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Unless otherwise indicated, the address of each beneficial owner listed in the table below is c/o Edge Therapeutics, Inc., 300 Connell Drive, Suite 4000, Berkeley Heights, New Jersey 07922.

Name of Beneficial Owner	Beneficial Ownership	
	Shares	%
<i>Greater than 5% Stockholders:</i>		
Askelpios Capital LLC ⁽¹⁾	12,123,830	12.06 %
NetScientific plc ⁽²⁾	10,954,544	10.89 %
Indian 21 st Century Fund, L.P.	7,686,414	7.65 %
<i>Named Executive Officers and Directors:</i>		
Frank Bedu-Addo ⁽³⁾	22,916,221	20.64 %
Sir Richard Sykes ⁽⁴⁾	266,610	1.72 %
DeLyle W. Bloomquist ⁽¹⁾⁽⁵⁾	15,263,385	13.52 %
Gregory Freitag ⁽⁶⁾	615,956	0.09 %
James Loughlin ⁽⁷⁾	125,564	0.12 %
Robert Spiegel M.D., Ph.D. ⁽⁸⁾	139,329	0.14 %
Andrew Saik ⁽⁹⁾	172,591	0.17 %
W. Bradford Middlekauff ⁽¹⁰⁾	204,859	0.20 %
Lauren Wood, M.D.	—	—
All current executive officers and directors as a group (10 persons)	39,704,515	36.2
(1) Mr. Bloomquist is a partner of Asklepios Capital LLC. The business address of Asklepios Capital LLC is 10244 E. Windrunner Dr., Scottsdale, Arizona 85255. Includes 76,916 shares subject to an outstanding warrant exercisable within 60 days of March 15, 2019.		
(2) Richard Sykes is the Chairman of NetScientific plc, or NetScientific. Sir Richard Sykes disclaims beneficial ownership of the shares of the combined company's common stock held by NetScientific. The business address of NetScientific is 6 Bevis Marks, 1st Floor, Bury Court, London EC3A 7BA.		
(3) Includes 10,482,104 shares subject to outstanding options exercisable within 60 days of March 15, 2019.		
(4) Includes 530,510 shares subject to outstanding options exercisable within 60 days of March 15, 2019.		
(5) Includes 224,793 shares subject to outstanding options exercisable within 60 days of March 15, 2019.		
(6) Includes 578,462 shares subject to outstanding options exercisable within 60 days of March 15, 2019.		
(7) Includes 25,625 shares held directly by Mr. Loughlin, 10,000 shares underlying Edge RSUs and 89,939 shares subject to outstanding options held by Mr. Loughlin that are exercisable within 60 days of March 15, 2019.		
(8) Includes 38,661 shares held directly by Dr. Spiegel, 10,000 shares underlying Edge RSUs and 90,668 shares subject to outstanding options held by Dr. Spiegel that are exercisable within 60 days of March 15, 2019.		
(9) Represents 82,999 shares underlying Edge RSUs and 89,592 shares subject to outstanding options held by Mr. Saik that are exercisable within 60 days of March 15, 2019.		
(10) Represents 10,000 shares held by Mr. Middlekauff directly, 49,766 shares underlying Edge RSUs and 145,093 shares subject to outstanding options held by Mr. Middlekauff exercisable within 60 days of March 15, 2019.		

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LEGAL MATTERS

Dechert LLP, New York, New York, will pass upon the validity of the Edge common stock offered by this proxy statement/prospectus/information statement. The material U.S. federal income tax consequences of the merger will be passed upon for Edge by Dechert LLP and for PDS by DLA Piper LLP (US).

EXPERTS

The financial statements of Edge Therapeutics, Inc. as of December 31, 2017 and 2016, and for each of the years in the three-year period ended December 31, 2017, have been included herein and in the registration statement in reliance upon the report of KPMG LLP, independent registered public accounting firm, appearing elsewhere herein, and upon the authority of said firm as experts in accounting and auditing.

The financial statements of PDS Biotechnology Corporation as of December 31, 2017 and 2016, and for each of the years in the two-year period ended December 31, 2017, have been included in this proxy statement/prospectus/information statement in reliance on the report of Haynie & Company, independent auditors, appearing elsewhere herein, and upon authority of such firm as experts in accounting and auditing. The audit report covering the December 31, 2017 consolidated financial statements contains an explanatory paragraph that states that PDS's recurring losses from operations and has debt obligations that raise substantial doubt about the entity's ability to continue as a going concern. The financial statements do not include any adjustments that might result from the outcome of that uncertainty.

WHERE YOU CAN FIND MORE INFORMATION

Edge files annual, quarterly and special reports, proxy statements and other information with the SEC. Edge's SEC filings are available to the public from commercial document retrieval services and on the website maintained by the SEC at <http://www.sec.gov>. Reports, proxy statements and other information concerning Edge also may be inspected at the offices of the National Association of Securities Dealers, Inc., Listing Section, 1735 K Street, Washington, D.C. 20006.

As of the date of this proxy statement/prospectus/information statement, Edge has filed a registration statement on Form S-4 to register with the SEC the Edge common stock that Edge will issue to PDS stockholders in the merger. This proxy statement/prospectus/information statement is a part of that registration statement and constitutes a prospectus of Edge, as well as a proxy statement of Edge for its special meeting and an information statement for the purpose of PDS for its written consent.

Edge has supplied all information contained in this proxy statement/prospectus/information statement relating to Edge and PDS has supplied all information contained in this proxy statement/prospectus/information statement relating to PDS.

If you would like to request documents from Edge or PDS, please send a request in writing or by telephone to either Edge or PDS at the following addresses:

Edge Therapeutics, Inc.
300 Connell Drive, Suite 4000
Berkeley Heights, NJ 07922
Telephone: (800) 208-3343
Attn: Corporate Secretary

PDS Biotechnology Corporation
303B College Road East
Princeton, NJ 08540
Telephone: (609) 423-1540
Attn: Chief Executive Officer

Edgar Filing: AMERUS GROUP CO/IA - Form 4

If you are an Edge stockholder and would like additional copies, without charge, of this proxy statement/prospectus/information statement or if you have questions about the merger, including the procedures for voting your shares, you should contact Edge's proxy solicitor:

D.F. King & Co., Inc.
(800) 967-5074 (toll free)
(212) 269-5550 (collect)

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OTHER MATTERS

Stockholder Proposals to Be Presented at the Next Annual Meeting of Edge

Pursuant to Rule 14a-8 of the Exchange Act, some stockholder proposals may be eligible for inclusion in the proxy statement for Edge's next annual meeting of the stockholders. For a proposal of a stockholder to be considered for inclusion in next year's proxy statement, it must be submitted in writing, with the proof of stock ownership in accordance with Rule 14a-8 and received by the Secretary of Edge a reasonable time before Edge begins to print and send proxy materials.

Under Edge's bylaws, if a stockholder wants to submit a proposal for the next annual meeting of stockholders under Rule 14a-8, or wants to nominate candidates for election as directors at an annual meeting of stockholders, the stockholder must provide timely notice of his or her intention in writing. To be timely, a stockholder's notice must be delivered to the Secretary, at Edge's principal executive offices, not less than 60 days nor earlier than 90 days prior to the first anniversary of the preceding year's annual meeting. However, in the event that the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, notice by the stockholder must be so delivered not earlier than the close of business on the 90th day prior to such annual meeting and not later than the close of business on the later of the 60th day prior to such annual meeting or the 10th day following the day on which public announcement of the date of such meeting is first made by Edge. Edge's bylaws also specify requirements as to the form and content of a stockholder's notice. Edge will not entertain any proposals or nominations that do not meet these requirements.

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PDS BIOTECHNOLOGY CORPORATION

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Report of Independent Registered Public Accounting Firm

To the Stockholders and Board of Directors
Edge Therapeutics, Inc.:

Opinion on the Financial Statements

We have audited the accompanying balance sheets of Edge Therapeutics, Inc. (the Company) as of December 31, 2017 and 2016, and the related statements of operations and comprehensive loss, convertible preferred stock and changes in stockholders' equity (deficit), and cash flows for each of the years in the three-year period ended 2017 and the related notes (collectively, the financial statements). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2017 and 2016, and the results of its operations and its cash flows for each of the years in the three-year period ended December 31, 2017, in conformity with U.S. generally accepted accounting principles.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits, we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ KPMG LLP

We have served as the Company's auditor since 2014.

Short Hills, New Jersey
March 1, 2018

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TABLE OF CONTENTS**EDGE THERAPEUTICS, INC.****Balance Sheets**

	December 31, 2017	December 31, 2016
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 88,067,647	\$ 106,398,919
Prepaid expenses and other current assets	986,680	954,581
Total current assets	89,054,327	107,353,500
Property and equipment, net	3,423,880	3,418,077
Other assets	142,870	142,870
Total assets	\$ 92,621,077	\$ 110,914,447
LIABILITIES AND STOCKHOLDERS' EQUITY		
LIABILITIES		
Current liabilities:		
Accounts payable	\$ 4,369,133	\$ 3,471,032
Accrued expenses	5,422,205	3,213,715
Short term debt	3,075,421	—
Total current liabilities	12,866,759	6,684,747
Noncurrent liability:		
Long term debt	17,382,907	14,953,143
STOCKHOLDERS' EQUITY		
Preferred stock, 5,000,000 shares authorized at December 31, 2017 and 2016, zero outstanding	—	—
Common stock, \$0.00033 par value, 75,000,000 shares authorized at December 31, 2017 and December 31, 2016, 30,869,205 shares and 28,918,516 shares issued and outstanding at December 31, 2017 and December 31, 2016, respectively	10,400	9,756
Additional paid-in capital	214,309,370	190,341,769
Accumulated deficit	(151,948,359)	(101,074,968)
Total stockholders' equity	62,371,411	89,276,557
Total liabilities and stockholders' equity	\$ 92,621,077	\$ 110,914,447

See accompanying notes to the financial statements.

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TABLE OF CONTENTS**EDGE THERAPEUTICS, INC.****Statements of Operations and Comprehensive Loss**

	Year Ended December 31,		
	2017	2016	2015
Operating expenses:			
Research and development expenses	\$ 34,311,650	\$ 24,825,379	\$ 17,839,951
General and administrative expenses	17,654,970	14,686,767	8,658,867
Total operating expenses	51,966,620	39,512,146	26,498,818
Loss from operations	(51,966,620)	(39,512,146)	(26,498,818)
Other income (expense):			
Warrant remeasurement	—	—	(1,879,823)
Other expense	—	(163,463)	—
Interest income	700,903	212,299	9,084
Interest expense	(2,180,143)	(1,203,674)	(816,494)
Loss before income taxes	(53,445,860)	(40,666,984)	(29,186,051)
Benefit for income taxes	2,586,057	1,845,986	1,107,405
Net loss and comprehensive loss	(50,859,803)	(38,820,998)	(28,078,646)
Cumulative dividend on Series C, C-1 and C-2 convertible preferred stock	—	—	(4,356,408)
Net loss attributable to common stockholders	\$ (50,859,803)	\$ (38,820,998)	\$ (32,435,054)
Loss per share attributable to common stockholders basic and diluted	\$ (1.67)	\$ (1.34)	\$ (4.01)
Weighted average common shares outstanding basic and diluted	30,393,952	28,864,216	8,087,924

See accompanying notes to the financial statements.

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	Convertible Preferred Stock		Common Stock		Additional Paid-in Capital	Deficit Accumulated	Total
	Shares Issued	Amount	Shares Issued	Amount			
Balance - January 1, 2015	11,895,755	\$ 36,788,409	1,688,475	\$ 770	\$ 1,984,399	\$ (29,818,916)	\$ (27,833,747)
Issuance of Series C-2 Preferred Stock, net of issuance costs of \$3,782,650	12,043,006	52,217,328	—	—	—	—	—
Other	—	2,130	—	—	—	—	—
Dividend Series C Preferred Stock	—	1,101,926	—	—	—	(1,101,926)	(1,101,926)
Dividend Series C-1 Preferred Stock	—	1,008,346	—	—	—	(1,008,346)	(1,008,346)
Dividend Series C-2 Preferred Stock	—	2,246,136	—	—	—	(2,246,136)	(2,246,136)
Conversion of Preferred Stock to Common Stock upon initial public offering	(23,938,761)	(93,364,275)	18,566,856	6,127	93,358,148	—	93,364,275
Initial public offering of common stock, net of issuance costs	—	—	8,412,423	2,776	82,752,836	—	82,755,612
Conversion of Preferred Stock Warrant to Common Stock Warrant	—	—	—	—	3,726,043	—	3,726,043
Issuance of common stock from exercise of stock options	—	—	4,753	1	1,093	—	1,094
Issuance of common stock	—	—	138,338	46	(46)	—	—

from exercise of warrants							
Stock based compensation expense	—	—	—	—	2,899,304	—	2,899,304
Net loss	—	—	—	—	—	(28,078,646)	(28,078,646)
Balance - December 31, 2015	—	—	28,810,845	9,720	184,721,777	(62,253,970)	122,477,527
Stock based compensation expense	—	—	—	—	5,305,070	—	5,305,070
Issuance of common stock from exercise of stock options	—	—	63,639	21	293,967	—	293,988
Issuance of common stock from exercise of warrants	—	—	44,032	15	20,955	—	20,970
Net loss	—	—	—	—	—	(38,820,998)	(38,820,998)
Balance - December 31, 2016	—	—	28,918,516	9,756	190,341,769	(101,074,968)	89,276,557
Stock based compensation expense	—	—	—	—	6,182,841	—	6,182,841
Issuance of common stock, net of issuance costs	—	—	1,800,000	594	17,382,349	—	17,382,943
Issuance of common stock from exercise of stock options	—	—	35,366	12	118,176	—	118,188
Issuance of common stock from exercise of warrants	—	—	94,200	31	53,118	—	53,149
Issuance of common stock from 401K match	—	—	21,123	7	217,529	—	217,536

Cumulative-effect of new share-based compensation guidance	—	—	—	—	13,588	(13,588)	—
Net loss	—	—	—	—	—	(50,859,803)	(50,859,803)
Balance - December 31, 2017	—\$	—	30,869,205	\$ 10,400	\$ 214,309,370	\$ (151,948,359)	\$ 62,371,411

See accompanying notes to the financial statements.

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TABLE OF CONTENTS**EDGE THERAPEUTICS, INC.****Statements of Cash Flows**

	Year Ended December 31,		
	2017	2016	2015
Cash flows from operating activities:			
Net loss	\$ (50,859,803)	\$ (38,820,998)	\$ (28,078,646)
Adjustments to reconcile net loss to net cash used in operating activities:			
Stock-based compensation expense	6,182,841	5,305,070	2,899,304
Stock-based 401K company common match	217,536	—	—
Warrant remeasurement	—	—	1,879,823
Depreciation expense	182,918	100,117	53,116
Loss on disposal of fixed assets	—	102,788	—
Amortization of debt discount	32,869	75,214	104,311
Amortization of debt issuance costs	108,407	90,800	94,648
Non-cash interest expense	363,909	175,909	38,521
Changes in assets and liabilities:			
Prepaid expenses and other assets	(32,099)	38,794	(814,156)
Accounts payable	898,101	1,420,556	(71,751)
Accrued expenses	2,208,490	(676,918)	2,142,187
Net cash used in operating activities	(40,696,831)	(32,188,668)	(21,752,643)
Cash flows from investing activities:			
Purchases of property and equipment	(188,721)	(686,705)	(1,305,086)
Net cash used in investing activities	(188,721)	(686,705)	(1,305,086)
Cash flows from financing activities:			
Proceeds from issuance of debt	5,000,000	11,022,286	3,000,000
Proceeds from exercise of stock options	118,188	293,988	1,094
Proceeds from exercise of warrants	53,149	20,970	—
Payments for issuance costs	—	(544,773)	(1,402,845)
Payments for debt issuance costs	—	(219,042)	—
Repayment of debt	—	(1,488,558)	(533,729)
Proceeds from issuance of common stock, net of underwriting costs	17,382,943	—	86,059,087
Proceeds from issuance of preferred stock, net of issuance costs	—	—	52,394,571

Explanation of Responses:

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Net cash provided by financing activities	22,554,280	9,084,871	139,518,178
Net (decrease) increase in cash	(18,331,272)	(23,790,502)	116,460,449
Cash and cash equivalents at beginning of period	106,398,919	130,189,421	13,728,972
Cash and cash equivalents at end of period	\$ 88,067,647	\$ 106,398,919	\$ 130,189,421

See accompanying notes to the financial statements.

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	Year Ended December 31,		
	2017	2016	2015
Supplemental disclosure of cash flow information:			
Cash paid for:			
Interest	\$ 1,635,562	\$ 790,402	\$ 559,175
Supplemental cash flow information:			
Conversion of Preferred Stock to Common Stock	\$ —	\$ —	\$ 93,364,275
Conversion of Preferred Stock Warrants to Common Stock Warrants	\$ —	\$ —	\$ 3,726,043
Deferred issuance costs included in accrued expenses and accounts payable	\$ —	\$ —	\$ 549,178
Non-cash financing costs	\$ —	\$ —	\$ 175,114
Accrued capital expenditures included in accrued expenses and accounts payable	\$ —	\$ 167,285	\$ 71,040

See accompanying notes to the financial statements.

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Edge Therapeutics, Inc.

Notes to Financial Statements

Note 1 - Nature of operations:

Edge Therapeutics, Inc. (the Company) is a clinical-stage biotechnology company that discovers, develops and seeks to commercialize novel, hospital-based therapies capable of transforming treatment paradigms in the management of acute, life-threatening neurological and other conditions. The Company's initial product candidates target rare, acute, life-threatening neurological and other conditions for which the Company believes the approved existing therapies, if any, are inadequate. The Company's product candidates utilize its proprietary, programmable, biodegradable polymer-based development platform (the Precisa Platform), a novel delivery mechanism that seeks to enable targeted and sustained drug exposure and avoid the dose-limiting side effects associated with the current standards of care.

From the Company's inception, it has devoted substantially all of its efforts to business planning, engaging regulatory, manufacturing and other technical consultants, acquiring operating assets, planning and executing clinical trials and raising capital. The Company's future operations are highly dependent on a combination of factors, including (i) the success of its research and development, (ii) the development of competitive therapies by other biotechnology and pharmaceutical companies, and, ultimately, (iii) regulatory approval and market acceptance of the Company's proposed future products.

Note 2 - Summary of Significant Accounting Policies

(A) Use of estimates:

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

(B) Significant risks and uncertainties:

The Company's operations are subject to a number of factors that may affect its operating results and financial condition. Such factors include, but are not limited to: the results of clinical testing and trial activities of the Company's product candidates, the Company's ability to obtain regulatory approval to market its products, the Company's intellectual property, competition from products manufactured and sold or being developed by other companies, the price of, and demand for, Company products if approved for sale, the Company's ability to negotiate favorable licensing or other manufacturing and marketing agreements for its products, and the Company's ability to raise capital.

The Company currently has no commercially approved products and there can be no assurance that the Company's research and development programs will be successfully commercialized. Developing and commercializing a product requires significant time and capital and is subject to regulatory review and approval as well as competition from other biotechnology and pharmaceutical companies. The Company operates in an environment of rapid change and is dependent upon the continued services of its employees and consultants and obtaining and protecting its intellectual property.

(C) Cash equivalents and concentration of cash balance:

The Company considers all highly liquid securities with a maturity weighted average of less than three months to be cash equivalents. The Company's cash and cash equivalents in bank deposit accounts, at times, may exceed federally insured limits.

Explanation of Responses:

(D) Property and equipment:

Property and equipment is recorded at cost. Depreciation is recorded for property and equipment using the straight-line method over the estimated useful lives of three to five years. Leasehold improvements are amortized over the shorter of the estimated useful life or term of the underlying lease. The Company reviews the recoverability of all long-lived assets, including the related useful lives, whenever events or changes in circumstances indicate that the carrying amount of a long-lived asset might not be recoverable.

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Costs incurred in connection with research and development activities are expensed as incurred. These costs include licensing fees to use certain technology in the Company's research and development projects as well as fees paid to consultants and various entities that perform certain research and testing on behalf of the Company.

Costs for certain development activities, such as clinical trials, are recognized based on an evaluation of the progress to completion of specific tasks using data, such as patient enrollment, clinical site activations or information provided by vendors on their actual costs incurred. Payments for these activities are based on the terms of the individual arrangements, which may differ from the pattern of costs incurred.

(F) Patent costs:

The Company expenses patent costs as incurred and classifies such costs as general and administrative expenses in the accompanying statements of operations and comprehensive loss.

(G) Stock-based compensation:

The Company measures employee stock-based awards at grant-date fair value and recognizes employee compensation expense on a straight-line basis over the vesting period of the award.

Determining the appropriate fair value of stock-based awards requires the input of subjective assumptions, including, for stock options, the expected life of the option, and expected stock price volatility. The Company uses the Black-Scholes option pricing model to value its stock option awards. The assumptions used in calculating the fair value of stock-based awards represent management's best estimates and involve inherent uncertainties and the application of management's judgment. As a result, if factors change and management uses different assumptions, stock-based compensation expense could be materially different for future awards.

The expected life of stock options was estimated using the simplified method, as the Company has limited historical information to develop reasonable expectations about future exercise patterns and employment duration for its stock options grants. The simplified method is based on the average of the vesting tranches and the contractual life of each grant. For stock price volatility, the Company uses comparable public companies as a basis for its expected volatility to calculate the fair value of options grants. The risk-free interest rate is based on U.S. Treasury notes with a term approximating the expected life of the option.

(H) Net loss per common share:

Basic and diluted net loss per common share is determined by dividing net loss attributable to common stockholders by the weighted average common shares outstanding during the period. For all periods presented, the common shares underlying the preferred stock, common stock options and warrants have been excluded from the calculation because their effect would be anti-dilutive. Therefore, the weighted average shares outstanding used to calculate both basic and diluted loss per common share are the same.

The following potentially dilutive securities have been excluded from the computations of diluted weighted average shares outstanding as they would be anti-dilutive:

	As of December 31,		
	2017	2016	2015
Stock options to purchase Common Stock	6,462,795	5,316,511	4,302,267
Warrants to purchase Common Stock	374,653	541,415	600,184
Total	6,837,448	5,857,926	4,902,451

(I) Income taxes:

Explanation of Responses:

The Company provides for deferred income taxes under the asset and liability method, which requires deferred tax assets and liabilities to be recognized for the future tax consequences attributable to net operating loss carryforwards and for differences between the financial statement carrying amounts and the respective tax bases of assets and liabilities. Deferred tax assets are reduced if necessary by a valuation allowance if it is more likely than not that some portion or all of the deferred tax assets will not be realized.

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(J) Fair value of financial instruments:

Financial Accounting Standards Board (FASB) guidance specifies a hierarchy of valuation techniques based on whether the inputs to those valuation techniques are observable or unobservable. Observable inputs reflect market data obtained from independent sources, while unobservable inputs reflect market assumptions. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurement) and the lowest priority to unobservable inputs (Level 3 measurement).

The three levels of the fair value hierarchy are as follows:

- Level 1 — Unadjusted quoted prices in active markets for identical assets or liabilities that the reporting entity has the ability to access at the measurement date. Level 1 primarily consists of financial instruments whose value is based on quoted market prices such as exchange-traded instruments and listed equities.
- Level 2 — Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly (e.g., quoted prices of similar assets or liabilities in active markets, or quoted prices for identical or similar assets or liabilities in markets that are not active). Level 2 includes financial instruments that are valued using models or other valuation methodologies.
- Level 3 — Unobservable inputs for the asset or liability. Financial instruments are considered Level 3 when their fair values are determined using pricing models, discounted cash flows or similar techniques and at least one significant model assumption or input is unobservable.

(K) Subsequent events:

Subsequent events have been evaluated through the date these financial statements were issued.

(L) New accounting standards:

In February 2016, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) No. 2016-02, Leases (Topic 842). The new standard requires organizations that lease assets—referred to as lessees—to recognize on the balance sheet the assets and liabilities for the rights and obligations created by those leases (see Note 9). This standard is effective for annual reporting periods beginning after December 15, 2018, and interim periods within those fiscal years. Early adoption is permitted. The Company is evaluating the impact of adoption.

In March 2016, the FASB issued ASU No. 2016-09 which simplifies several aspects of the accounting for share-based payment transactions, including the income tax consequences, classification of awards as either equity or liabilities, and classification on the statement of cash flows. Public companies will be required to adopt this standard in annual reporting periods beginning after December 15, 2016, and interim periods within those annual periods. The Company adopted this ASU on January 1, 2017.

The impact of adopting ASU 2016-09 resulted in the following:

- The Company recognized \$84,786 of tax benefit along with a full valuation allowance as of the adoption date related to the historical excess tax benefits from historical option exercises related to employee equity award activity.
- The Company elected to recognize forfeitures as they occur. The cumulative effect adjustment as a result of the adoption of this amendment on a modified retrospective basis was not material.

There were no other material impacts to our consolidated financial statements as a result of adopting this updated standard.

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TABLE OF CONTENTS**Note 3 - Fair Value of Financial Instruments****Fair Value Measurements at Reporting Date Using**

	Total	Quoted Prices in Active Markets (Level 1)	Quoted Prices in Inactive Markets (Level 2)	Significant Unobservable Inputs (Level 3)
As of December 31, 2017:				
Cash and cash equivalents	\$ 88,067,647	\$ 88,067,647	\$ —	\$ —
As of December 31, 2016:				
Cash and cash equivalents	\$ 106,398,919	\$ 106,398,919	\$ —	\$ —

There were no transfers between Levels 1, 2, or 3 during 2017 or 2016.

Note 4 - Property and Equipment

Property and equipment is summarized as follows:

	December 31,	
	2017	2016
Furniture and equipment	\$ 564,596	\$ 456,515
Leasehold Improvements	438,996	358,356
Construction in Process	2,725,569	2,725,569
	3,729,161	3,540,440
Less accumulated depreciation	(305,281)	(122,363)
Property and equipment, net	\$ 3,423,880	\$ 3,418,077

Note 5 - Accrued Expenses

Accrued expenses and other liabilities consist of the following:

	December 31,	
	2017	2016
Accrued research and development costs	\$ 2,857,025	\$ 654,795
Accrued professional fees	267,646	366,394
Accrued compensation	1,886,638	1,866,255
Accrued other	385,896	319,434
Deferred rent	25,000	6,837
Total	\$ 5,422,205	\$ 3,213,715

Note 6 - Convertible Preferred Stock

Immediately prior to the closing of the IPO on October 6, 2015, all of the outstanding shares of convertible preferred stock, including shares received for accrued dividends, automatically converted into 18,566,856 shares of common stock at the applicable conversion ratio then in effect. There were no shares of preferred stock outstanding as of

December 31, 2017 and 2016.

Dividends

The holders of the Series C, Series C-1 and Series C-2 Convertible Preferred Stock were entitled to receive, when, as and if declared by the board, cumulative dividends at the rate of 8% of the original purchase price per annum. The Series C, Series C-1 and Series C-2 dividends accrued from the date of issuance and were payable semi-annually on January 1 and July 1 in cash or common stock at the Company's option. In accordance with accounting literature, Series C, Series C-1 and Series C-2 dividends since the date of issuance have been accrued in conjunction with the conversion of the Preferred Stock into Common.

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The other series of Convertible Preferred Stock had no dividend requirement.

Stock Warrants

In connection with certain of our preferred stock sales and debt issuances we issued warrants to the placement agent and lender, for preferred stock. The warrants were recorded as liabilities with changes in fair value being recorded in the statement of operations and are calculated utilizing the Black-Scholes option pricing model. At the closing of the IPO date on October 6, 2015 these warrants become exercisable for shares of our common stock. These warrants were exercisable for 600,184 shares of common stock at exercise prices ranging from \$5.79 to \$12.10 and expire at various dates through 2020. During 2017 and 2016, 166,762 and 58,769 warrants were exercised resulting in the issuance of 94,200 and 44,032 shares of common stock, respectively. As of December 31, 2017, 374,653 warrants were exercisable.

Note 7 - Stock Options

The Company has three equity compensation plans: the 2010 Equity Incentive Plan, the 2012 Equity Incentive Plan and the 2014 Equity Incentive Plan (the **Plans**). Originally, the Company was able to grant up to 548,206 and 1,096,411 shares of Common Stock as both incentive stock options (**ISOs**) and nonqualified stock options (**NQs**) under the 2010 Equity Incentive Plan and the 2012 Equity Incentive Plan, respectively. In 2013, the Company's stockholders approved an increase to 1,279,146 shares authorized for issuance under the 2010 Equity Incentive Plan. In 2014, the Board of Directors of the Company (the **Board**) approved an increase to 1,350,412 shares authorized for issuance under the 2010 Equity Incentive Plan.

In 2014, the Company's stockholders approved the 2014 Equity Incentive Plan pursuant to which the Company may grant up to 1,827,351 shares as both ISOs and NQs, subject to increases as hereafter described (the **Plan Limit**). However, on January 1, 2015 and each January 1 thereafter prior to the termination of the 2014 Equity Incentive Plan, pursuant to the terms of the 2014 Equity Incentive Plan, the Plan Limit was and shall be increased by the lesser of (x) 4% of the number of shares of Common Stock outstanding as of the immediately preceding December 31 and (y) such lesser number as the Board of Directors may determine in its discretion. On January 1, 2016 the Plan Limit was increased to 3,047,323 shares. As of January 1, 2017, the Plan Limit increased to 4,204,063.

Pursuant to the terms of the Plans, ISOs have a term of ten years from the date of grant or such shorter term as may be provided in the option agreement. Unless specified otherwise in an individual option agreement, ISOs generally vest over a four year term and NQs generally vest over a three or four year term. Unless terminated by the Board, the Plans shall continue to remain effective for a term of ten years or until such time as no further awards may be granted and all awards granted under the Plans are no longer outstanding.

The Company issued the following non-qualified options to purchase shares of common stock to its newly appointed executives. The awards were granted outside of the Company's 2014 Equity Incentive Plan and vests over four years with 25% vesting one year following the date of hire, and the remaining 75% vesting in 36 equal monthly installments thereafter, subject to continued service to the Company through each vesting date and subject to acceleration or forfeiture upon the occurrence of certain events as set forth in the applicable option agreement and employment agreement. The grant awards were made pursuant to the NASDAQ inducement grant exception as a material component of employment compensation.

Issue Date	25% Vesting Date	Executive	Number of Options
November 16, 2015	October 30, 2016	SVP, General Counsel and Secretary	80,000

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November 1, 2016	October 17, 2017	Chief Operating Officer	150,000
March 1, 2017	February 28, 2018	SVP, Regulatory Affairs	80,000
November 1, 2017	October 31, 2018	Chief Financial Officer	200,000

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The Company's stock-based compensation expense was recognized in operating expense as follows:

	Year Ended December 31,		
	2017	2016	2015
Stock-Based Compensation			
Research and development	\$ 2,687,975	\$ 2,177,643	\$ 1,129,556
General and administrative	3,494,866	3,127,427	1,769,748
Total	\$ 6,182,841	\$ 5,305,070	\$ 2,899,304

The fair value of options and warrants granted during the years ended December 31, 2017, 2016 and 2015 was estimated using the Black-Scholes option valuation model utilizing the following assumptions:

	Year Ended December 31,					
	2017		2016		2015	
	Weighted		Weighted		Weighted	
	Average		Average		Average	
Volatility	88.87	%	77.20	%	79.80	%
Risk-Free Interest Rate	1.88	%	1.39	%	1.74	%
Expected Term in Years	6.00		6.02		6.05	
Dividend Rate	0.00	%	0.00	%	0.00	%
Fair Value of Option on Grant Date	\$ 6.93		\$ 5.39		\$ 5.42	

The following table summarizes the number of options outstanding and the weighted average exercise price:

	Number of	Weighted	Weighted	Aggregate
	Shares	Average	Average	Intrinsic
		Exercise	Remaining	Value
		Price	Contractual	
			Life in Years	
Options outstanding at January 1, 2015	2,445,711	3.13		
Granted	1,902,609	7.87		
Exercised	(4,753)	0.23		
Forfeited	(30,640)	7.98		
Expirations	(10,660)	8.28		
Options outstanding at December 31, 2015	4,302,267	\$ 5.19	8.14	\$ 31,659,550
Vested and expected to vest at December 31, 2015	4,213,091	\$ 5.14	8.12	\$ 31,202,132
Exercisable at December 31, 2015	1,857,077	\$ 2.83	7.05	\$ 17,952,965
Options outstanding at December 31, 2015	4,302,267	\$ 5.19		
Granted	1,211,400	8.09		
Exercised	(63,639)	4.62		
Forfeited	(133,517)	5.79		
Options outstanding at December 31, 2016	5,316,511	\$ 5.84	7.60	\$ 35,599,646

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Vested and expected to vest at December 31, 2016	5,235,931	\$ 5.80	7.58	\$ 35,246,927
Exercisable at December 31, 2016	3,027,112	\$ 4.41	6.76	\$ 24,559,384
Options outstanding at December 31, 2016	5,316,511	\$ 5.84		
Granted	1,365,400	9.39		
Exercised	(35,366)	3.34		
Forfeited	(183,750)	9.46		
Options outstanding at December 31, 2017	6,462,795	\$ 6.50	7.13	\$ 20,467,335
Vested and expected to vest at December 31, 2017	6,462,795	\$ 6.50	7.13	\$ 20,467,335
Exercisable at December 31, 2017	4,066,066	\$ 5.14	6.21	\$ 18,100,589

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At December 31, 2017 there was approximately \$12,968,689 of unamortized stock compensation expense, which is expected to be recognized over a remaining average vesting period of 2.48 years.

Note 8 - Income Taxes

A reconciliation of the statutory U.S. federal income tax rate to the Company's effective tax rate is as follows:

	Year Ended December 31,		
	2017	2016	2015
Federal statutory rate	34.0 %	34.0 %	34.0 %
State taxes	1.1 %	1.2 %	2.9 %
Change in Statutory Rate	(25.6)%	—	—
Permanent differences	(11.0)%	(10.6)%	(5.8)%
Research and development	21.2 %	16.0 %	14.3 %
State taxes/ sale of NOL	4.8 %	4.5 %	3.8 %
Valuation allowance	(19.7)%	(40.6)%	(45.8)%
Other	—	—	0.4 %
Effective tax rate	4.8 %	4.5 %	3.8 %

The tax effects of temporary differences that gave rise to significant portions of the deferred tax assets were as follows:

	December 31,	
	2017	2016
Federal net operating losses	\$ 21,312,121	\$ 23,644,647
State net operating losses	2,268,249	1,554,730
Stock options	1,608,750	1,419,494
Federal tax credit	24,060,243	12,709,438
State tax credits	384,740	353,684
Amortization	612,878	69,529
Accrued expense	7,027	2,731
Other	30,999	18,042
<i>Total gross deferred tax assets</i>	50,285,007	39,772,295
Less valuation allowance	(50,285,007)	(39,772,295)
<i>Net deferred tax assets</i>	\$ —	\$ —

In assessing the realizability of the net deferred tax assets, the Company considers all relevant positive and negative evidence to determine whether it is more likely than not that some portion or all of the deferred income tax assets will not be realized. The realization of the gross deferred tax assets is dependent on several factors, including the generation of sufficient taxable income prior to the expiration of the net operating loss carryforwards. There was a full valuation allowance against the net deferred tax assets as of December 31, 2017 and December 31, 2016.

At December 31, 2017, the Company had federal net operating loss (NOL) carryforwards of approximately \$101.5 million which expire between 2029 and 2037. At December 31, 2017, the Company had federal research and development credits carryforwards of approximately \$1.9 million and an orphan drug credit carryover of

approximately \$22.1 million. The Company may be subject to the net operating loss utilization provisions of Section 382 of the Internal Revenue Code. The effect of an ownership change would be the imposition of an annual limitation on the use of NOL carryforwards attributable to periods before the change. The amount of the annual limitation depends upon the value of the Company immediately before the change, changes to the Company's capital during a specified period prior to the change, and the federal published interest rate. Although we have not completed an analysis under Section 382 of the Code, it is likely that the utilization of the NOLs will be limited.

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At December 31, 2017, the Company had approximately \$31.9 million of State of New Jersey NOL s which expire between 2030 and 2037. At December 31, 2017, the Company had approximately \$0.4 million of the State of New Jersey research development credits carryforwards. The State of New Jersey has enacted legislation permitting certain corporations located in New Jersey to sell state tax loss carryforwards and state research and development credits, or net loss carryforwards. In 2017, the Company sold \$26,097,607 of State of New Jersey NOL s and \$424,466 of State of New Jersey R&D Credits for \$2,586,057. In 2016, the Company sold \$19,196,765 of State of New Jersey NOL s and \$257,222 of State of New Jersey R&D Credits for \$1,845,986.

Entities are also required to evaluate, measure, recognize and disclose any uncertain income tax provisions taken on their income tax returns. The Company has analyzed its tax positions and has concluded that as of December 31, 2017, there were no uncertain positions. The Company s U.S. federal and state net operating losses have occurred since its inception in 2009 and as such, tax years subject to potential tax examination could apply from that date because the utilization of net operating losses from prior years opens the relevant year to audit by the IRS and/or state taxing authorities. In September 2017, the IRS concluded auditing the Company s 2015 tax year resulting in a no change letter. Interest and penalties, if any, as they relate to income taxes assessed, are included in the income tax provision. The Company did not have any unrecognized tax benefits and has not accrued any interest or penalties through 2017.

On December 22, 2017, H.R. 1 (also, known as the Tax Cuts and Jobs Act (the Act)) was signed into law. Among its numerous changes to the Internal Revenue Code, the Act reduces U.S. federal corporate tax rate to 21%. As a result, the Company believes that the most significant impact on its consolidated financial statements will be reduction of approximately \$13.6 million for the deferred tax assets related to net operating losses and other assets. Such reduction is offset by changes to the Company s valuation allowance. The Company is also in the process of considering the impact under the Act of the disallowance of certain incentive based compensation tax deductibility under Internal Revenue Code Section 162(m). If an adjustment to the deferred tax asset is required, the impact will be offset by a corresponding adjustment to the valuation allowance.

Note 9 - Commitments and Contingencies

Evonik

The Company entered into an agreement with SurModics Pharmaceuticals, Inc. (SurModics) in October 2010 for the exclusive worldwide licensing of certain technology, patent rights and know-how rights related to the production of EG-1962, the Company s lead product candidate (the Evonik Agreement). This agreement was later transferred to Evonik Industries AG (Evonik) when it purchased substantially all the assets of SurModics.

Pursuant to the Evonik Agreement, in exchange for the license, the Company agreed to make milestone payments totaling up to \$14.75 million upon the achievement of certain development, regulatory and sales milestones detailed in the Evonik Agreement. The Company paid \$0.25 million upon execution of the Evonik Agreement. In August 2016, the Company paid a milestone of \$1.0 million after the first patient in the Phase 3 clinical trial of EG-1962 was dosed. In addition, the Evonik Agreement calls for the Company to pay royalties on sales of certain products based on a mid-single digit percentage of net sales. The Evonik Agreement provides for the reduction of royalties in certain limited circumstances.

The term of the Evonik Agreement will continue until the expiration of the Company s obligation to pay royalties to Evonik. Either party may terminate the Evonik Agreement due to material breach by the other party. Evonik may terminate the Evonik Agreement or convert it to a non-exclusive license, in either case upon giving the Company written notice, if the Company fails to use commercially reasonable efforts to hit certain specified development, regulatory and commercial milestones.

Oakwood Amended and Restated Master Formulation Development Agreement

In June 2017, the Company entered into an Amended and Restated Master Formulation Development Agreement (the Restated Development Agreement) with Oakwood Laboratories, L.L.C. (Oakwood), pursuant to which Oakwood will continue to provide the Company with certain drug formulation development and non-commercial manufacturing services for EG-1962, in accordance with project plans to be entered into from time to time. Oakwood is currently performing process engineering, optimization and other scale up activities for the Company and is currently the sole manufacturer of EG-1962 used in Edge s ongoing NEWTON 2 Phase 3 pivotal trial for EG-1962.

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Under the Restated Development Agreement, we agreed to pay Oakwood to perform services under agreed upon project plans and to pay Oakwood up to an aggregate of \$4.5 million. In July 2017, we paid \$1.5 million of such aggregate amount in connection with entering into the Restated Development Agreement. Of the remaining \$3.0 million of such aggregate amount, \$0.5 million is payable no later than April 1, 2018 and \$2.5 million is payable no later than April 1, 2019. These remaining payments may be accelerated if: (i) we achieve various regulatory milestones, (ii) we close an equity or similar financing in excess of a predetermined amount, or (iii) there is an early termination, under certain circumstances, of the Restated Development Agreement or the Supply Agreement with Oakwood.

As additional consideration for performance under the Restated Development Agreement and the Supply Agreement (as defined below), the Company agreed to pay Oakwood a royalty, during the Royalty Term, in an amount equal to a low single digit percentage of net sales of EG-1962, regardless of the manufacturer or supplier thereof. The Royalty Term is the period commencing upon the commercial launch of EG-1962 by the Company and continuing until twelve (12) years following such launch.

The term of the Restated Development Agreement continues until the expiration or termination of the Supply Agreement, unless earlier terminated (the Term). The Company has the right to terminate project plans upon the occurrence of various circumstances described in the Restated Development Agreement. In the event that the Company terminates the most recent project plan prior to completion (including due to the Company's decision to discontinue the development or commercialization of EG-1962), the Company must pay to Oakwood a termination fee. Either party has the right to terminate the Restated Development Agreement upon sixty (60) days written notice for failure by the other party to cure a material breach during the applicable cure period. The Company can terminate the Restated Development Agreement immediately upon notice to Oakwood if Oakwood's annual financial audit report required to be provided to the Company contains any going concern or similar qualification or if Oakwood fails to maintain a pre-determined working capital ratio. Either party may also terminate the Restated Development Agreement immediately in the event of certain failures with regard to validation of the manufacturing process and other specified regulatory failures.

Oakwood Manufacturing and Supply Agreement

Concurrent with its entry into the Restated Development Agreement, on June 30, 2017, the Company entered into a Manufacturing and Supply Agreement with Oakwood (the Supply Agreement), pursuant to which Oakwood will manufacture and supply, and the Company will purchase from Oakwood, EG-1962 in commercial quantities following the commercial launch of the product.

Pursuant to the Supply Agreement, the price per unit of EG-1962 to be purchased by the Company is based on the expected commercially usable units per batch. In addition, the Company has agreed to pay Oakwood milestone payments that could total up to an aggregate of \$2.25 million upon the achievement of certain development and regulatory milestones.

The Company will have no minimum order requirement under the Supply Agreement until the third (3rd) year following commercial launch of EG-1962. Beginning in the third year following commercial launch and continuing until the fifth year following commercial launch, the Company will be required to (x) order, at a minimum, the greater of (a) five (5) batches and (b) fifty percent (50%) of the aggregate vials of EG-1962 purchased by the Company from all sources in such year (such greater amount being the Minimum Order Commitment) or (y) pay a catch-up price to Oakwood based on the amount of EG-1962 actually ordered by the Company during the applicable time period.

The term of the Supply Agreement will continue (unless earlier terminated) until three (3) years following commercial launch of EG-1962. Thereafter, the Supply Agreement will automatically renew for additional two (2)-year periods

unless Edge provides notice of non-renewal at least twelve (12) months prior to the end of the then-current term. The Supply Agreement will also terminate automatically upon the termination of the Restated Development Agreement for any reason. Following the first anniversary of the commercial launch of EG-1962, either party may terminate upon two (2) years written notice. Further, either party may terminate the Supply Agreement upon a material breach by the other party that fails to be cured in the applicable cure period.

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The Company may terminate the Supply Agreement immediately upon notice to Oakwood in the event that (a) any regulatory authority requires or causes the withdrawal of EG-1962 from the market or (b) the Company ceases to develop or commercialize EG-1962; provided, that in the latter case of termination prior to completion of the most recent project plan attached to the Restated Development Agreement, the Company must pay to Oakwood a termination fee.

Employment Agreements

The Company has entered into employment agreements with each of its executive officers. The agreements generally provide for, among other things, salary, bonus and severance payments. The employment agreements provide for between 12 months and 18 months of severance benefits to be paid to an executive (as well as certain potential bonus, COBRA and equity award benefits), subject to the effectiveness of a general release of claims, if the executive terminates his or her employment for good reason or if the Company terminates the executive's employment without cause. The continued provision of severance benefits is conditioned on each executive's compliance with the terms of the Company's confidentiality and invention and assignment agreement as well as his or her release of claims.

Leases

Effective December 13, 2013, the Company entered into a 63 month lease for approximately 8,000 square feet of office space in Berkeley Heights, New Jersey. On February 18, 2016, the Company entered into a new 63 month lease for approximately 20,410 square feet of office space within the same office complex in Berkeley Heights, New Jersey. The terms of the new lease were structured so that the termination date of the December 13, 2013 lease coincided with the commencement date of the new lease on August 13, 2016. As a result of the lease termination, the Company wrote off \$67,118 of leasehold improvements.

Rent expense is recognized on a straight line basis where there are escalating payments, and was approximately \$602,925, \$344,341 and \$207,541 for the years ended December 31, 2017, 2016 and 2015, respectively.

The following is a schedule by years of future minimum rental payments required under operating leases that have initial or remaining non-cancelable lease terms in excess of one year as of December 31, 2017:

Year Ended December 31,

2018	\$ 602,461
2019	604,541
2020	603,371
2021	530,385
2022 and after	—
Total minimum payments required	\$ 2,340,758

Note 10 - Debt

On August 28, 2014, the Company entered into a loan and security agreement with Hercules Technology Growth Capital, Inc. (the "Original Loan Agreement"). The Original Loan Agreement provided funding for an aggregate principal amount of up to \$10,000,000 in three separate term loans. The first term loan was funded on August 28, 2014 in the amount of \$3,000,000. The second term loan of \$3,000,000 was funded on January 29, 2015. Both the first and second term loans were due to mature on March 1, 2018. The Company elected not to draw the third term loan of \$4.0 million, the availability of which expired on June 30, 2015. Initially, the loan bore interest at a rate per annum equal to the greater of (i) 10.45% or (ii) the sum of (a) 10.45% plus (b) the prime rate (as reported in *The Wall Street*

Journal) minus 4.50%. On April 6, 2015, the base rate on the loan was lowered to the greater of (i) 9.95% or (ii) the sum of (a) 9.95% plus (b) the prime rate (as reported in *The Wall Street Journal*) minus 4.50. The Company was required to make interest-only payments on the loan through September 2015.

Commencing in October 2015, the term loans began amortizing in equal monthly installments of principal and interest over 30 months. On the maturity date or the date the loan otherwise became due and payable, the Company was also required to make a payment equal to 1.5% of the total amounts funded under the Original Loan Agreement.

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On August 1, 2016, the Company entered into an Amended and Restated Loan and Security Agreement (the Amended Loan Agreement) with Hercules Capital, Inc., formerly known as Hercules Technology Growth Capital, Inc. Pursuant to the Amended Loan Agreement, the Company may borrow up to \$20,000,000. At closing, the Company borrowed \$15,000,000 of the amount available for draw under the Amended Loan Agreement (and received proceeds net of the amount then outstanding under the Original Loan Agreement, fees and expenses). On May 23, 2017, the Company elected to draw down the second tranche of \$5 million. Amounts drawn under the Amended Loan Agreement bear interest at a rate per annum equal to the greater of either (i) the sum of (a) 9.15%, plus (b) the prime rate as reported in The Wall Street Journal minus 4.50% or (ii) 9.15%. The effective interest rate on the loan as of December 31, 2017 was 9.15%. The Amended Loan Agreement requires interest-only payments until March 1, 2018, and on that date the Company will begin to repay the principal balance of the loan in 24 equal monthly payments of principal and interest through the scheduled maturity date of February 3, 2020. In January 2018, the Company satisfied a certain condition as described in the Amended Loan Agreement to extend the period of interest-only payments to September 1, 2018 and the maturity date was extended to August 3, 2020. The interest-only payment period may be extended for an additional six months at the lender's discretion.

Pursuant to the Amended Loan Agreement, in March 2018, the Company must make a payment of \$90,000, which is equal to 1.5% of the total amounts funded under the Original Loan Agreement. On the maturity date or the date the loan otherwise becomes due and payable, under the Amended Loan Agreement the Company must also make a payment of \$900,000, which is equal to 4.5% of the total amounts available under the Amended Loan Agreement. In addition, if the Company prepays the term loan (i) during the first year following the initial closing, the Company must pay a prepayment charge equal to 2% of the amount being prepaid, (ii) during the second year following the closing, the Company must pay a prepayment charge equal to 1% of the amount being prepaid, and (iii) after the second year following the closing, the Company must pay a prepayment charge equal to 0.5% of the amount being prepaid.

The loan is secured by substantially all of the Company's assets, other than intellectual property, which is the subject of a negative pledge. Under the Amended Loan Agreement, the Company is subject to certain customary covenants that limit or restrict the Company's ability to, among other things, incur additional indebtedness, investments, distributions, transfer assets, make acquisitions, grant any security interests, pay cash dividends, repurchase its Common Stock, make loans, or enter into certain transactions without prior consent. The Amended Loan Agreement contains several events of default, including, among others, payment defaults, breaches of covenants or representations, material impairment in the perfection of Hercules' security interest or in the collateral and events related to bankruptcy or insolvency. Upon an event of default, Hercules may declare all outstanding obligations immediately due and payable (along with a prepayment charge), a default rate of an additional 5.0% may be applied to the outstanding loan balances, and Hercules may take such further actions as set forth in the Amended Loan Agreement, including collecting or taking such other action with respect to the collateral pledged in connection with the Amended Loan Agreement.

Future principal payments on the note as of December 31, 2017 were as follows:

Year Ended December 31,	(000's)
2018	\$ 3,075
2019	9,822
2020	7,103
	\$ 20,000

The estimated fair value of the debt (categorized as a Level 2 liability for fair value measurement purposes) is determined using current market factors and the ability of the Company to obtain debt at comparable terms to those that are currently in place. The Company believes the estimated fair value at December 31, 2017 approximates the

carrying amount.

Note 11 - Retirement Plan

The Company has a 401(k) defined contribution plan for the benefit for all employees and permits voluntary contributions by employees subject to IRS-imposed limitations. The 401K employer contribution for the 2017, 2016 and 2015 plan years were \$258,383, \$16,979 and \$15,253 respectively.

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TABLE OF CONTENTS**Note 12 - Selected Quarterly Financial Data (Unaudited)**

The following table summarizes unaudited quarterly financial data for the years ended December 31, 2017 and 2016 (in thousands, except per share data).

	2017				
	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Total
Total operating expenses	\$ 11,791	\$ 13,149	\$ 10,903	\$ 16,124	\$ 51,967
Loss from operations	\$ (11,791)	\$ (13,149)	\$ (10,903)	\$ (16,124)	\$ (51,967)
Net loss and comprehensive loss	\$ (12,170)	\$ (13,504)	\$ (11,281)	\$ (13,905)	\$ (50,860)
Net loss attributable to common stockholders	\$ (12,170)	\$ (13,504)	\$ (11,281)	\$ (13,905)	\$ (50,860)
Loss per share attributable to common stockholders basic and diluted	\$ (0.42)	\$ (0.44)	\$ (0.37)	\$ (0.45)	\$ (1.67)
	2016				
	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Total
Total operating expenses	\$ 9,032	\$ 9,264	\$ 10,277	\$ 10,939	\$ 39,512
Loss from operations	\$ (9,032)	\$ (9,264)	\$ (10,277)	\$ (10,939)	\$ (39,512)
Net loss and comprehensive loss	\$ (9,170)	\$ (9,376)	\$ (10,759)	\$ (9,516)	\$ (38,821)
Net loss attributable to common stockholders	\$ (9,170)	\$ (9,376)	\$ (10,759)	\$ (9,516)	\$ (38,821)
Loss per share attributable to common stockholders basic and diluted	\$ (0.32)	\$ (0.33)	\$ (0.37)	\$ (0.33)	\$ (1.34)

Basic and diluted net loss per share amounts included in the above table were computed independently for each of the quarters presented. Accordingly, the sum of the quarterly basic and diluted net loss per share amounts may not agree to the total for the year.

TABLE OF CONTENTS**EDGE THERAPEUTICS, INC.****Condensed Balance Sheets**

	September 30, 2018	December 31, 2017
	(unaudited)	
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 36,814,899	\$ 88,067,647
Prepaid expenses and other current assets	247,182	986,680
Total current assets	37,062,081	89,054,327
Property and equipment, net	468,170	3,423,880
Other assets	142,870	142,870
Total assets	\$ 37,673,121	\$ 92,621,077
LIABILITIES AND STOCKHOLDERS' EQUITY		
LIABILITIES		
Current liabilities:		
Accounts payable	\$ 590,694	\$ 4,369,133
Accrued expenses	917,871	5,422,205
Restructuring reserve	5,179,722	—
Short term debt	—	3,075,421
Total current liabilities	6,688,287	12,866,759
Noncurrent liability:		
Long term debt	—	17,382,907
STOCKHOLDERS' EQUITY		
Preferred stock, 5,000,000 shares authorized at September 30, 2018 and December 31, 2017, 0 outstanding	—	—
Common stock, \$0.00033 par value, 75,000,000 shares authorized at September 30, 2018 and December 31, 2017, 31,328,128 shares and 30,869,205 shares issued and outstanding at September 30, 2018 and December 31, 2017, respectively	10,551	10,400
Additional paid-in capital	220,705,548	214,309,370
Accumulated deficit	(189,731,265)	(151,948,359)
Total stockholders' equity	30,984,834	62,371,411

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Total liabilities and stockholders' equity	\$ 37,673,121	\$ 92,621,077
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See accompanying notes to the condensed financial statements.

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TABLE OF CONTENTS**EDGE THERAPEUTICS, INC.****Condensed Statements of Operations and Comprehensive Loss
(Unaudited)**

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2018	2017	2018	2017
Operating expenses:				
Research and development expenses	\$ 317,684	\$ 6,913,171	\$ 15,583,565	\$ 23,477,971
General and administrative expenses	3,286,891	3,990,283	11,303,446	12,365,509
Restructuring expenses	847,852	—	7,494,094	—
Impairment charges	—	—	2,672,581	—
Total operating expenses	4,452,427	10,903,454	37,053,686	35,843,480
Loss from operations	(4,452,427)	(10,903,454)	(37,053,686)	(35,843,480)
Other income (expense):				
Interest income	187,256	214,064	696,035	479,297
Interest expense	—	(592,089)	(1,425,255)	(1,591,998)
Net loss and comprehensive loss	(4,265,171)	(11,281,479)	(37,782,906)	(36,956,181)
Loss per share basic and diluted	\$ (0.14)	\$ (0.37)	\$ (1.21)	\$ (1.23)
Weighted average common shares outstanding basic and diluted	31,328,128	30,852,514	31,198,804	30,091,640

See accompanying notes to the condensed financial statements.

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TABLE OF CONTENTS**EDGE THERAPEUTICS, INC.****Condensed Statements of Cash Flows
(Unaudited)**

	Nine Months Ended September 30,	
	2018	2017
Cash flows from operating activities:		
Net loss	\$ (37,782,906)	\$ (36,956,181)
Adjustments to reconcile net loss to net cash used in operating activities:		
Stock-based compensation expense	5,551,573	4,637,142
Stock-based 401K company common match	123,561	170,620
Depreciation expense	133,130	134,569
Impairment of machinery and equipment	2,672,581	—
Amortization of debt discount	1,039	28,871
Amortization of debt issuance costs	125,355	81,306
Non-cash interest expense	405,278	274,530
Changes in assets and liabilities:		
Prepaid expenses and other assets	889,497	627,848
Accounts payable	(3,778,439)	(524,145)
Accrued expenses	(4,504,334)	68,683
Restructuring reserve	5,179,722	—
Net cash used in operating activities	(30,983,943)	(31,456,757)
Cash flows from investing activities:		
Purchases of property and equipment	—	(160,751)
Net cash used in investing activities	—	(160,751)
Cash flows from financing activities:		
Proceeds from issuance of debt	—	5,000,000
Proceeds from exercise of stock options	721,195	91,982
Proceeds from exercise of warrants	—	50,922
Payments for debt back-end fees	(990,000)	—
Repayment of debt	(20,000,000)	—
Proceeds from issuance of common stock, net of issuance costs	—	17,382,943
Net cash (used in) provided by financing activities	(20,268,805)	22,525,847

Net decrease in cash	(51,252,748)	(9,091,661)
Cash and cash equivalents at beginning of period	88,067,647	106,398,919
Cash and cash equivalents at end of period	\$ 36,814,899	\$ 97,307,258
Supplemental disclosure of cash flow information:		
Cash paid for:		
Interest	\$ 1,051,167	\$ 1,172,979
Supplemental cash flow information:		
Accrued capital expenditures included in accrued expenses and accounts payable	\$ —	\$ 18,084

See accompanying notes to the condensed financial statements.

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TABLE OF CONTENTS**Edge Therapeutics, Inc.****Notes to Condensed Financial Statements
(Unaudited)****Note 1 - Nature of Operations**

Edge Therapeutics, Inc. (the Company) is a clinical-stage biotechnology company that seeks to discover, develop and commercialize novel therapies capable of transforming treatment paradigms in the management of medical conditions. On March 28, 2018, the Company announced that a pre-specified interim analysis performed on data from the Day 90 visit of the first 210 subjects randomized and treated in the Phase 3 multi-center, randomized, double-blind, placebo-controlled NEWTON 2 study of EG-1962 in adults with aneurysmal subarachnoid hemorrhage demonstrated a low probability of achieving a statistically significant difference compared to the standard of care in the study's primary endpoint, if the study were to be fully enrolled. The independent Data Monitoring Committee (DMC) for the NEWTON 2 study recommended that the study be stopped based on this demonstration. The DMC also reported that there were no safety concerns attributed to EG-1962.

Based on the DMC recommendation, the Company decided to discontinue the NEWTON 2 study and took steps to notify health authorities and clinical investigators participating in the study.

On April 30, 2018, the Company announced that it is exploring strategic alternatives, which may include, without limitation, an acquisition of another company, acquisitions or in-licensing of products or product candidates, technologies or other assets, the sale of all or substantially all of the assets of the Company, a sale of stock, a strategic merger or other business combination transaction or other transaction between the Company and a third party. The Company has retained Piper Jaffray & Co. to serve as the financial advisor to its Board of Directors in the process. The Company does not have a defined timeline for the exploration of strategic alternatives and there can be no assurance that the process will result in any strategic alternative being announced or consummated. The Company does not intend to discuss or disclose further developments during this process unless and until its Board of Directors has approved a specific action or otherwise determined that further disclosure is appropriate. The Company has reduced the scope of its operations, including the size of its workforce, in order to preserve its cash resources.

In the second quarter of 2018, the Company recorded an initial restructuring charge of \$6.3 million. The components of the restructuring charge included expenses of \$4.0 million for severance benefits and \$2.3 million for financial advisor fees, as well as ongoing legal fees expensed as incurred, and accrued retention compensation related to the restructuring of the organization.

The restructuring activity during 2018 is as follows:

Restructuring reserve at December 31, 2017	\$	—
Initial restructuring charge		6,276,563
Incurred legal fees		334,212
Retention compensation		618,349
Restructuring expenses to date ⁽¹⁾		7,229,124
Payment of legal fees		(191,976)
Payment of retention compensation		(56,925)
Payment of severance benefits		(1,800,501)

Explanation of Responses:

Restructuring reserve as of September 30, 2018 \$ 5,179,722

(1) Excludes non-cash stock based retention compensation of \$264,970 expensed to date through restructuring expenses.

From the Company's inception, it has devoted substantially all of its efforts to business planning, engaging regulatory, manufacturing and other technical consultants, acquiring operating assets, planning and executing clinical trials and raising capital. The Company's future operations are highly dependent on the success of its strategic alternatives review and any transactions and operations resulting from that process.

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Note 2 - Summary of Significant Accounting Policies

(A) Unaudited interim financial statements:

The interim balance sheet at September 30, 2018, the statements of operations and comprehensive loss for the three and nine months ended September 30, 2018 and 2017, and cash flows for the nine months ended September 30, 2018 and 2017 are unaudited. The accompanying unaudited condensed financial statements have been prepared in accordance with U.S. generally accepted accounting principles (U.S. GAAP), and following the requirements of the Securities and Exchange Commission (SEC) for interim reporting. As permitted under those rules, certain footnotes or other financial information that are normally required by U.S. GAAP can be condensed or omitted. These condensed financial statements have been prepared on the same basis as the Company s annual financial statements and, in the opinion of management, reflect all adjustments, consisting only of normal recurring adjustments that are necessary for a fair statement of its financial information. The results of operations for the nine months ended September 30, 2018 are not necessarily indicative of the results to be expected for the year ending December 31, 2018 or for any other future annual or interim period. The balance sheet as of December 31, 2017 included herein was derived from the audited condensed financial statements as of that date. These condensed financial statements should be read in conjunction with the Company s audited financial statements and notes thereto included in the Company s Form 10-K for the year ended December 31, 2017.

(B) Use of estimates:

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

(C) Significant risks and uncertainties:

The Company s operations are subject to a number of factors that may affect its operating results and financial condition. Such factors include, but are not limited to: the Company s review of strategic alternatives, the Company s ability to preserve its cash resources, the Company s ability to add product candidates to its pipeline, the Company s intellectual property, competition from products manufactured and sold or being developed by other companies, the price of, and demand for, Company products if approved for sale, the Company s ability to negotiate favorable licensing or other manufacturing and marketing agreements for its products, and the Company s ability to raise capital.

The Company currently has no commercially approved products and has ceased all research and development activities related to EG-1962 and suspended research for its other product candidates. As such, there can be no assurance that the Company s future research and development programs will be successfully commercialized. Developing and commercializing a product requires significant time and capital and is subject to regulatory review and approval as well as competition from other biotechnology and pharmaceutical companies. The Company operates in an environment of rapid change and is dependent upon the continued services of its employees and consultants and obtaining and protecting its intellectual property.

(D) Cash equivalents and concentration of cash balance:

The Company considers all highly liquid securities with a maturity weighted average of less than three months to be cash equivalents. The Company s cash and cash equivalents in bank deposit accounts, at times, may exceed federally insured limits.

(E) Research and development:

Costs incurred in connection with research and development activities are expensed as incurred. These costs include licensing fees to use certain technology in the Company s research and development projects as well as fees paid to consultants and various entities that perform certain research and testing on behalf of the Company.

Costs for certain development activities, such as clinical trials, are recognized based on an evaluation of the progress to completion of specific tasks using data, such as patient enrollment, clinical site activations or information provided by vendors on their actual costs incurred. Payments for these activities are based on the terms of the individual arrangements, which may differ from the pattern of costs incurred.

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Following the DMC's recommendation that the NEWTON 2 Trial for EG-1962 be stopped, the Company decided to discontinue the NEWTON 2 study and took steps to notify health authorities and clinical investigators participating in the study. The Company has ceased all further research and development activities for EG-1962 and suspended research for its other product candidates and implemented operating cost reductions and organizational restructurings while it seeks a strategic alternative, including a reduction in the Company's workforce, to preserve its cash resources and better align the organization with its current operating plan. The estimated costs associated with the study discontinuance have been accrued as of September 30, 2018.

(F) Patent costs:

The Company expenses patent costs as incurred and classifies such costs as general and administrative expenses in the accompanying statements of operations and comprehensive loss. In light of the Company's cessation of all further research and development activities for EG-1962 and suspension of research for its other product candidates, the Company has substantially scaled back its patent prosecution activities.

(G) Stock-based compensation:

The Company measures employee stock-based awards at grant-date fair value and recognizes employee compensation expense on a straight-line basis over the vesting period of the award.

Determining the appropriate fair value of stock-based awards requires the input of subjective assumptions, including, for stock options, the expected life of the option, and expected stock price volatility. The Company uses the Black-Scholes option pricing model to value its stock option awards. The assumptions used in calculating the fair value of stock-based awards represent management's best estimates and involve inherent uncertainties and the application of management's judgment. As a result, if factors change and management uses different assumptions, stock-based compensation expense could be materially different for future awards.

The expected life of stock options was estimated using the simplified method, as the Company has limited historical information to develop reasonable expectations about future exercise patterns and employment duration for its stock options grants. The simplified method is based on the average of the vesting tranches and the contractual life of each grant. For stock price volatility, the Company uses comparable public companies as a basis for its expected volatility to calculate the fair value of options grants. The risk-free interest rate is based on U.S. Treasury notes with a term approximating the expected life of the option.

(H) Net loss per common share:

Basic and diluted net loss per common share is determined by dividing net loss attributable to common stockholders by the weighted average common shares outstanding during the period. For all periods presented, the common shares underlying the preferred stock, common stock options and warrants have been excluded from the calculation because their effect would be anti-dilutive. Therefore, the weighted average shares outstanding used to calculate both basic and diluted loss per common share are the same.

The following potentially dilutive securities have been excluded from the computations of diluted weighted average shares outstanding as they would be anti-dilutive:

	As of September 30,	
	2018	2017
Stock options to purchase Common Stock	7,149,374	6,387,495
Unvested Restricted Stock Units	601,394	—
Warrants to purchase Common Stock	78,596	376,682

Total	7,829,364	6,764,177
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(I) Accounting standards not yet adopted:

In February 2016, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) No. 2016-02, Leases (Topic 842). The new standard requires organizations that lease assets—referred to as lessees —to recognize on the balance sheet the assets and liabilities for the rights and obligations created by those leases (see Note 9). This standard is effective for annual reporting periods beginning

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after December 15, 2018, and interim periods within those fiscal years. Early adoption is permitted. The standard requires a modified retroactive approach, but use of certain practical expedients is permitted as per ASU 2018-11. The Company expects to use the package of practical expedients that allows it to not reassess: (1) whether any expired or existing contracts are or contain leases, (2) lease classification for any expired or existing leases, and (3) initial direct costs for any expired or existing leases. The Company additionally expects to use the practical expedient that allows it to treat the lease and non-lease components of its leases as a single component. The Company expects to adopt ASU 2016-2 in the first quarter of 2019 and is in the process of evaluating the impact of adoption on its consolidated financial statements.

(J) Accounting standards adopted:

In March 2016, the FASB issued ASU No. 2016-09 which simplifies several aspects of the accounting for share-based payment transactions, including the income tax consequences, classification of awards as either equity or liabilities, and classification on the statement of cash flows. Public companies were required to adopt this standard in annual reporting periods beginning after December 15, 2016, and interim periods within those annual periods. The Company adopted this ASU on January 1, 2017.

The impact of adopting ASU 2016-09 resulted in the following:

- The Company recognized \$84,786 of tax benefit along with a full valuation allowance as of the adoption date related to the historical excess tax benefits from historical option exercises related to employee equity award activity.
- The Company elected to recognize forfeitures as they occur. The cumulative effect adjustment as a result of the adoption of this amendment on a modified retrospective basis was not material.

There were no other material impacts to the Company's condensed financial statements as a result of adopting this updated standard.

Note 3 - Fair Value of Financial Instruments

There were no transfers among Levels 1, 2, or 3 during 2018 or 2017.

Fair Value Measurements at Reporting Date Using

	Total	Quoted Prices in Active Markets (Level 1)	Quoted Prices in Inactive Markets (Level 2)	Significant Unobservable Inputs (Level 3)
As of September 30, 2018: (unaudited)				
Cash and cash equivalents	\$ 36,814,899	\$ 36,814,899	\$ —	\$ —
As of December 31, 2017:				
Cash and cash equivalents	\$ 88,067,647	\$ 88,067,647	\$ —	\$ —

Note 4 - Property and Equipment

In March 2018, following the recommendation of the Data Monitoring Committee, the Company made the decision to close down the EG-1962 NEWTON 2 study. The Company believes that it would be highly unlikely that the Company would be able to use the manufacturing equipment associated with EG-1962 for future use. As a result, the Company has taken an equipment impairment charge of \$2,672,581. The write-down would bring down the value of

the equipment to the Company's best estimate of its future value based on a range of estimates from a third-party seller. The equipment is being classified as Other Current Assets on the condensed balance sheet.

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TABLE OF CONTENTS**Note 5 - Accrued Expenses**

Accrued expenses and other liabilities consist of the following:

	As of September 30, 2018	As of December 31, 2017
Accrued research and development costs ⁽¹⁾	\$ 224,786	\$ 2,857,025
Accrued professional fees	404,940	267,646
Accrued compensation	41,605	1,886,638
Accrued other	214,615	385,896
Deferred rent	31,925	25,000
Total	\$ 917,871	\$ 5,422,205

(1) Balance as of September 30, 2018 represents estimated close down NEWTON 2 trial costs.

Note 6 - Stock-Based Compensation

The Company has three equity compensation plans: the 2010 Equity Incentive Plan, the 2012 Equity Incentive Plan and the 2014 Equity Incentive Plan (the Plans). Originally, the Company was able to grant up to 548,206 and 1,096,411 shares of Common Stock as both incentive stock options (ISOs) and nonqualified stock options (NQs) under the 2010 Equity Incentive Plan and the 2012 Equity Incentive Plan, respectively. In 2013, the Company's stockholders approved an increase to 1,279,146 shares authorized for issuance under the 2010 Equity Incentive Plan. In 2014, the Board of Directors of the Company (the Board) approved an increase to 1,350,412 shares authorized for issuance under the 2010 Equity Incentive Plan.

In 2014, the Company's stockholders approved the 2014 Equity Incentive Plan pursuant to which the Company may grant up to 1,827,351 shares as ISOs, NQs and restricted stock units (RSUs), subject to increases as hereafter described (the Plan Limit). In addition, on January 1, 2015 and each January 1 thereafter prior to the termination of the 2014 Equity Incentive Plan, pursuant to the terms of the 2014 Equity Incentive Plan, the Plan Limit was and shall be increased by the lesser of (x) 4% of the number of shares of Common Stock outstanding as of the immediately preceding December 31 and (y) such lesser number as the Board of Directors may determine in its discretion. On January 1, 2016, 2017 and 2018 the Plan Limit was increased to 3,047,323 shares, 4,204,063 shares and 5,438,831 shares, respectively.

Pursuant to the terms of the Plans, ISOs have a term of ten years from the date of grant or such shorter term as may be provided in the option agreement. Unless specified otherwise in an individual option agreement, ISOs generally vest over a four year term and NQs generally vest over a one, three or four year term. Unless terminated by the Board, the Plans shall continue to remain effective for a term of ten years or until such time as no further awards may be granted and all awards granted under the Plans are no longer outstanding.

The Company issued the following non-qualified options to purchase shares of common stock to its newly appointed executives who are still employed by the Company. The awards were granted outside of the Company's 2014 Equity Incentive Plan and vest over four years with 25% vesting one year following the date of hire, and the remaining 75% vesting in 36 equal monthly installments thereafter, subject to continued service to the Company through each vesting date and subject to acceleration or forfeiture upon the occurrence of certain events as set forth in the applicable option agreement and employment agreement. The grant awards were made pursuant to the NASDAQ inducement grant exception as a material component of employment compensation.

Issue Date	25% Vesting Date	Executive	Number of Options
November 16, 2015	October 30, 2016	SVP, General Counsel and Secretary	80,000
March 1, 2017	February 28, 2018	SVP, Regulatory Affairs	80,000
November 1, 2017	October 31, 2018	Chief Financial Officer	200,000

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The Company's stock-based compensation expense related to stock options and RSUs was recognized in operating expense as follows:

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2018	2017	2018	2017
	(unaudited)		(unaudited)	
Stock-Based Compensation				
Research and development	\$ 612,218	\$ 702,284	\$ 2,041,070	\$ 2,090,076
General and administrative	1,029,980	868,630	3,245,533	2,547,066
Retention Compensation	264,970	—	264,970	—
Total	\$ 1,907,168	\$ 1,570,914	\$ 5,551,573	\$ 4,637,142

The fair value of options granted during the nine months ended September 30, 2018 and the three and nine months ended September 30, 2017 was estimated using the Black-Scholes option valuation model utilizing the following assumptions. There were no options granted during the three months ended September 30, 2018.

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2018	2017	2018	2017
	Weighted Average		Weighted Average	
	(unaudited)		(unaudited)	
Volatility	0.00 %	86.98 %	89.06 %	88.82 %
Risk-Free Interest Rate	0.00 %	1.83 %	2.31 %	1.89 %
Expected Term in Years	—	6.03	4.24	5.99
Dividend Rate	0.00 %	0.00 %	0.00 %	0.00 %
Fair Value of Option on Grant Date	\$ —	\$ 7.22	\$ 5.54	\$ 6.76

The following table summarizes the number of options outstanding and the weighted average exercise price:

	Number of Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life in Years	Aggregate Intrinsic Value
Options outstanding at December 31, 2017	6,462,795	\$ 6.50		
Granted	2,322,906	7.52		
Exercised	(198,300)	3.64		
Forfeited	(1,438,027)	10.13		
Options outstanding at September 30, 2018	7,149,374	\$ 6.18	6.13	\$ 42,723
Vested and expected to vest at September 30, 2018	7,149,374	\$ 6.18	6.13	\$ 42,723
Exercisable at September 30, 2018	4,120,549	\$ 5.54	5.73	\$ 42,723

At September 30, 2018 there was approximately \$13,294,326 of unamortized stock option compensation expense, which is expected to be recognized over a remaining average vesting period of 2.64 years.

The Company may grant RSUs to eligible employees, including its executives, and non-employee directors.

RSUs represent a right to receive one share of the Company's common stock, upon the completion of a specific period of continued service or achievement of a certain milestone. RSU awards are valued at the market price of the Company's common stock on the date of grant. The Company recognizes noncash compensation expense for the fair values of these RSU awards on a straight-line basis over the requisite service period of these awards.

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The following table summarizes the number of RSUs outstanding and the weighted average grant price:

	Number of RSUs	Weighted Average Grant Price
RSUs outstanding at December 31, 2017	—	\$ —
Granted	601,394	0.85
Released	—	—
Forfeited	—	—
RSUs outstanding at September 30, 2018	601,394	\$ 0.85

At September 30, 2018, there was approximately \$444,667 of unamortized RSU compensation expense, which is expected to be recognized over a remaining average vesting period of 0.87 years.

Note 7 - Income Taxes

In assessing the realizability of the net deferred tax assets, the Company considers all relevant positive and negative evidence to determine whether it is more likely than not that some portion or all of the deferred income tax assets will not be realized. The realization of the gross deferred tax assets is dependent on several factors, including the generation of sufficient taxable income prior to the expiration of the net operating loss carryforwards. There was a full valuation allowance against the net deferred tax assets as of September 30, 2018 and December 31, 2017.

At December 31, 2017, the Company had federal net operating loss (NOL) carryforwards of approximately \$101.5 million which expire between 2029 and 2037. At December 31, 2017, the Company had federal research and development credits carryforwards of approximately \$1.9 million and an orphan drug credit carryover of approximately \$22.1 million. The Company may be subject to the net operating loss utilization provisions of Section 382 of the Internal Revenue Code. The effect of an ownership change would be the imposition of an annual limitation on the use of NOL carryforwards attributable to periods before the change. The amount of the annual limitation depends upon the value of the Company immediately before the change, changes to the Company's capital during a specified period prior to the change, and the federal published interest rate. Although the Company has not completed an analysis under Section 382 of the Code, it is likely that the utilization of the NOLs will be limited.

At December 31, 2017, the Company had approximately \$31.9 million of State of New Jersey NOLs which expire between 2030 and 2037. At December 31, 2017, the Company had approximately \$0.4 million of the State of New Jersey research development credits carryforwards. The State of New Jersey has enacted legislation permitting certain corporations located in New Jersey to sell state tax loss carryforwards and state research and development credits, or net loss carryforwards. The Technology Business Tax Certificate Transfer Program enables qualified, unprofitable NJ-based technology or biotechnology companies with fewer than 225 US employees (including parent company and all subsidiaries) to sell a percentage of New Jersey NOLs and research and development (R&D) tax credits to unrelated profitable corporations. In 2017, the Company sold \$26,097,607 of State of New Jersey NOLs and \$424,466 of State of New Jersey R&D Credits for \$2,586,057. In 2016, the Company sold \$19,196,765 of State of New Jersey NOLs and \$257,222 of State of New Jersey R&D Credits for \$1,845,986.

Entities are also required to evaluate, measure, recognize and disclose any uncertain income tax provisions taken on their income tax returns. The Company has analyzed its tax positions and has concluded that as of December 31, 2017, there were no uncertain positions. The Company's U.S. federal and state net operating losses have occurred since its inception in 2009 and as such, tax years subject to potential tax examination could apply from that date because the utilization of net operating losses from prior years opens the relevant year to audit by the IRS and/or state taxing

authorities. In September 2017, the IRS concluded auditing the Company's 2015 tax year resulting in a no change letter. Interest and penalties, if any, as they relate to income taxes assessed, are included in the income tax provision. The Company did not have any unrecognized tax benefits and has not accrued any interest or penalties for the nine months ended September 30, 2018 and 2017.

On December 22, 2017, H.R. 1 (also, known as the Tax Cuts and Jobs Act (the Act)) was signed into law. Among its numerous changes to the Internal Revenue Code, the Act reduces U.S. federal corporate tax rate to 21%. As a result, the most significant impact on its condensed financial statements was the reduction of

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approximately \$13.6 million for the deferred tax assets related to net operating losses and other assets. Such reduction is offset by changes to the Company's valuation allowance. The Company is also in the process of considering the impact under the Act of the disallowance of certain incentive based compensation tax deductibility under Internal Revenue Code Section 162(m). If an adjustment to the deferred tax asset is required, the impact will be offset by a corresponding adjustment to the valuation allowance.

On July 1, 2018, the New Jersey governor signed into law a bill which included significant changes to the New Jersey taxation of corporations. Chiefly, this legislation imposes a 2.5% surtax on taxpayers with allocated net income over \$1 million for 2018 and 2019, and a 1.5% surtax for taxpayers with allocated net income over \$1 million for 2020 and 2021. In addition, the state is changing its filing requirements from separate entity reporting to combined reporting on a water's edge basis. Further, there are changes to the state's computation of its dividend received deduction and application of IRC section 163(j). The Company has considered these changes and does not believe this change in law will have a material impact on its tax provision going forward, due to the full valuation allowance, significant New Jersey NOLs and current year losses.

Note 8 - Commitments and Contingencies

Evonik

The Company entered into an agreement with SurModics Pharmaceuticals, Inc. (SurModics) in October 2010 for the exclusive worldwide licensing of certain technology, patent rights and know-how rights related to the production of EG-1962, (the Evonik Agreement). This agreement was later transferred to Evonik Industries AG (Evonik) when it purchased substantially all the assets of SurModics.

Pursuant to the Evonik Agreement, in exchange for the license, the Company agreed to make milestone payments totaling up to \$14.75 million upon the achievement of certain development, regulatory and sales milestones detailed in the Evonik Agreement. The Company paid \$0.25 million upon execution of the Evonik Agreement. In August 2016, the Company paid a milestone of \$1.0 million after the first patient in the Phase 3 clinical trial of EG-1962 was dosed. In addition, the Evonik Agreement calls for the Company to pay royalties on sales of certain products based on a mid-single digit percentage of net sales. The Evonik Agreement provides for the reduction of royalties in certain limited circumstances.

The term of the Evonik Agreement will continue until the expiration of the Company's obligation to pay royalties to Evonik. Either party may terminate the Evonik Agreement due to material breach by the other party. Evonik may terminate the Evonik Agreement or convert it to a non-exclusive license, in either case upon giving the Company written notice, if the Company fails to use commercially reasonable efforts to hit certain specified development, regulatory and commercial milestones.

Following the discontinuation of the NEWTON 2 trial for EG-1962, the Company has ceased all research and development efforts related to EG-1962 and suspended efforts on its other product candidates as it pursues strategic alternatives. As such, unless the Company resumes such development activities, it is unlikely that the Company will have any additional milestone or royalty obligations to Evonik in the future.

Oakwood Amended and Restated Master Formulation Development Agreement

In June 2017, the Company entered into an Amended and Restated Master Formulation Development Agreement (the Restated Development Agreement) with Oakwood Laboratories, L.L.C. (Oakwood), pursuant to which Oakwood agreed to continue to provide the Company with certain drug formulation development and non-commercial manufacturing services for EG-1962, in accordance with project plans that may be entered into from time to time.

Under the Restated Development Agreement, the Company agreed to pay Oakwood to perform services under agreed upon project plans and to pay Oakwood up to an aggregate of \$4.5 million. In July 2017 and April 2018, the Company paid \$1.5 million and \$0.5 million, respectively, of such aggregate amount in connection with entering into the Restated Development Agreement. The remaining \$2.5 million was payable no later than April 1, 2019. The remaining payment was discounted to \$2.375 million and paid pursuant to an accelerated payment agreement entered into in August 2018. As of September 30, 2018, there are no remaining payments under the Restated Development Agreement.

As additional consideration for performance under the Restated Development Agreement and the Supply Agreement (as defined below), the Company agreed to pay Oakwood a royalty, during the Royalty Term, in an

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amount equal to a low single digit percentage of net sales of EG-1962, regardless of the manufacturer or supplier thereof. The Royalty Term is the period commencing upon the commercial launch of EG-1962 by the Company and continuing until twelve (12) years following such launch.

The term of the Restated Development Agreement continues until the expiration or termination of the Supply Agreement, unless earlier terminated (the Term). The Company has the right to terminate project plans upon the occurrence of various circumstances described in the Restated Development Agreement. In the event that the Company terminates the most recent project plan prior to completion (which would include the Company's decision to discontinue the development or commercialization of EG-1962), the Company must pay to Oakwood a termination fee for work completed, which has been accrued as of September 30, 2018.

Oakwood Manufacturing and Supply Agreement

Concurrent with its entry into the Restated Development Agreement, on June 30, 2017, the Company entered into a Manufacturing and Supply Agreement with Oakwood (the Supply Agreement), pursuant to which Oakwood agreed to manufacture and supply, and the Company agreed to purchase from Oakwood, EG-1962 in commercial quantities following the commercial launch of the product.

Pursuant to the Supply Agreement, the Company agreed to pay Oakwood milestone payments that could total up to an aggregate of \$2.25 million upon the achievement of certain development and regulatory milestones.

The term of the Supply Agreement will terminate automatically upon the termination of the Restated Development Agreement for any reason. Additionally, either party may terminate the Supply Agreement upon a material breach by the other party that fails to be cured in the applicable cure period.

Following the discontinuation of the NEWTON 2 trial for EG-1962, the Company has ceased all research and development efforts related to EG-1962 and suspended efforts on its other product candidates. As such, the Company may terminate the Supply Agreement immediately upon notice to Oakwood (which will also result in the automatic termination of the Restated Development Agreement); provided, that if it chooses to do so prior to completion of the most recent project plan attached to the Restated Development Agreement, the Company must pay to Oakwood a termination fee. While certain of the Company's milestone payments to Oakwood will remain outstanding (including the termination fee in the event the Restated Development Agreement is terminated), unless the Company resumes such development activities, it is unlikely that the Company will be required to pay additional milestone or royalty payments to Oakwood in the future pursuant to the Restated Development Agreement or the Supply Agreement.

Class Action Civil Litigation

On April 23, 2018, a purported securities class action complaint was filed against the Company, Brian Leuthner (the Company's President and Chief Executive Officer) and Andrew Saik (the Company's Chief Financial Officer) in the United States District Court for the District of New Jersey, captioned *Sanfilippo v. Edge Therapeutics, Inc.*, Case No. 2:18-cv-8236. The complaint alleges that the Company, Mr. Leuthner and Mr. Saik violated Section 10(b) of the Securities Exchange Act of 1934 by making false and misleading statements concerning the Company's business, operations and prospects by failing to disclose that EG-1962 would likely fail a futility analysis. The complaint is brought on behalf of all purchasers of the Company's common stock between December 27, 2017 and March 27, 2018, and seeks unspecified damages. None of the Company, Mr. Leuthner, or Mr. Saik has been served with the complaint and their time to respond has not yet expired. Various individuals have moved to be appointed lead plaintiff to act on behalf of the putative class. After the court appoints that party (or parties), it is expected that the lead plaintiff will file an amended complaint. The Company and its executives intend to defend themselves vigorously in the action. There can be no guarantee as to the outcome or timing of any resolution.

Employment Matters

The Company has entered into employment agreements with each of its executive officers. The agreements generally provide for, among other things, salary, bonus and severance payments. The employment agreements generally provide for between 12 months and 18 months of severance benefits to be paid to an executive (as well as certain potential bonus, COBRA and equity award benefits), subject to the effectiveness of a general release of claims, if the executive terminates his or her employment for good reason or if the Company terminates the

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executive's employment without cause. Such severance payments may be provided for as long as 24 months in connection with a termination following a change of control. The continued provision of severance benefits is conditioned on each executive's compliance with the terms of the Company's confidentiality and invention and assignment agreement as well as his or her release of claims.

On April 30, 2018, the Company initiated a corporate realignment to focus its efforts and resources on its ongoing operations and future plans that include a reduction in its workforce. This realignment was initiated following the Company's recent announcement that it is discontinuing the Phase 3 NEWTON 2 study, based on the recommendation of an independent Data Monitoring Committee (the DMC) that the Company stop its Phase 3 NEWTON 2 study. The DMC recommendation was based on its conclusion that the study had a low probability of meeting its primary endpoint.

During the second and third quarters, the Company reduced its workforce from 37 employees to 14 employees. The Company anticipates a further reduction of its workforce as the Company completes NEWTON 2 closedown activities and completes the analysis of the related NEWTON 2 data. In addition, the Company anticipates completing the payment of certain employee severance and benefits and certain retention compensation, as approved by the Compensation Committee of the Board of Directors, by the fourth quarter of fiscal year 2019.

Leases

Effective December 13, 2013, the Company entered into a 63 month lease for approximately 8,000 square feet of office space in Berkeley Heights, New Jersey. On February 18, 2016, the Company entered into a new 63 month lease for approximately 20,410 square feet of office space within the same office complex in Berkeley Heights, New Jersey. The terms of the new lease were structured so that the termination date of the December 13, 2013 lease coincided with the commencement date of the new lease on August 13, 2016. As a result of the lease termination, the Company wrote off \$67,118 of leasehold improvements.

Rent expense is recognized on a straight line basis where there are escalating payments, and was approximately \$148,284 and \$152,026 for the three months ended September 30, 2018 and 2017, respectively and \$450,053 and \$450,700 for the nine months ended September 30, 2018 and 2017, respectively.

The following is a schedule by years of future minimum rental payments required under operating leases that have initial or remaining non-cancelable lease terms in excess of one year as of September 30, 2018:

Year ended December 31,

2018 (remaining)	\$ 151,572
2019	604,541
2020	603,371
2021	530,385
2022 and after	—
Total minimum payments required	\$ 1,889,869

Note 9 - Debt

On August 1, 2016, the Company entered into an Amended and Restated Loan and Security Agreement (the Amended Loan Agreement) with Hercules Capital, Inc., formerly known as Hercules Technology Growth Capital, Inc. (Hercules). Pursuant to the Amended Loan Agreement, the Company was able to borrow up to \$20,000,000. At closing, the Company borrowed \$15,000,000 of the amount available for draw under the Amended Loan Agreement

(and received proceeds net of the amount then outstanding under the Original Loan Agreement, fees and expenses). On May 23, 2017, the Company elected to draw down the second tranche of \$5 million. Pursuant to the Amended Loan Agreement, in March 2018, the Company made a payment of \$90,000, which is equal to 1.5% of the total amounts funded under the Original Loan Agreement.

In June 2018, the Company agreed with Hercules Capital, Inc. to pay off its entire outstanding debt under the Amended Loan Agreement. The payment consisted of \$20.0 million for the principal amount, an additional \$0.9 million in back-end fees and \$0.1 million in accrued and unpaid interest.

As of September 30, 2018, the Company has no outstanding debt.

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Note 10 - Retirement Plan

The Company has a 401(k) defined contribution plan for the benefit for all employees and permits voluntary contributions by employees subject to IRS-imposed limitations. The 401K employer contributions were \$21,605 and \$46,916 for the three months ended September 30, 2018 and 2017, respectively and \$152,154 and \$217,536 for the nine months ended September 30, 2018 and 2017, respectively.

Note 11 - Subsequent Events

Subsequent events have been evaluated through the date these financial statements were issued.

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and
Stockholders of PDS Biotechnology Corporation

Opinion on the Financial Statements

We have audited the accompanying balance sheets of PDS Biotechnology Corporation (the Company) as of December 31, 2017 and 2016, and the related statements of income, stockholders' equity, and cash flows for each of the years in the two-year period ended December 31, 2017, and the related notes (collectively referred to as the financial statements). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2017 and 2016, and the results of its operations and its cash flows for each of the years in the two-year period ended December 31, 2017, in conformity with accounting principles generally accepted in the United States of America.

Going Concern Matter

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the financial statements, the Company has negative cash flows from operations, negative working capital, and does not currently have revenue generating operations. This raises substantial doubt about the Company's ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 1 to the financial statements. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits, we are required to obtain an understanding of internal control over financial reporting, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

Haynie & Company
Salt Lake City, Utah
October 1, 2018

We have served as the Company's auditor since 2018.

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Balance Sheets**

	December 31,	
	2017	2016
Assets		
Current assets:		
Cash and cash equivalents	\$ 175,884	\$ 1,956,965
Prepaid expenses and other receivables	54,802	144,479
Total current assets	230,686	2,101,444
Property and equipment, net	51,821	73,061
Intangible assets, net	46,805	51,918
Other assets	11,452	18,052
	110,078	143,031
Total assets	\$ 340,764	\$ 2,244,475
Liabilities and Stockholders' Equity (Deficit)		
Current Liabilities:		
Capital lease obligation	\$ 14,319	\$ 13,261
Accounts payable	624,124	397,314
Accrued expenses	272,169	288,203
Payroll taxes	8,436	8,436
Total current liabilities	919,048	707,214
Convertible promissory notes payable	30,000	—
Capital lease obligation, net of current portion	1,244	15,563
	31,244	15,563
Total liabilities	950,292	722,777
Commitments and contingencies (note 11)		
Stockholders' equity (deficit):		
Preferred stock; \$0.00001 par value; 5,534,647 shares authorized; and 0 and 0 shares issued and outstanding at December 31, 2017 and 2016, respectively	—	—
Common stock; \$0.00001 par value; 22,138,587 shares authorized; 9,354,808 and 9,238,520 shares issued and outstanding at December 31, 2017 and 2016, respectively	94	92
Additional paid-in capital	17,492,996	16,201,036
Accumulated deficit	(18,102,618)	(14,679,430)
Total stockholders' equity (deficit)	(609,528)	1,521,698
Total liabilities, and stockholders' equity (deficit)	\$ 340,764	\$ 2,244,475

See accompanying notes to financial statements

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TABLE OF CONTENTS**PDS Biotechnology Corporation**
Statements of Operations

	Years Ended December 31,	
	2017	2016
Revenues	\$ —	\$ —
Operating expenses:		
Research and development	2,007,308	2,328,536
General and administrative	1,384,266	1,844,685
Depreciation and amortization	28,688	44,597
Total operating expenses	3,420,262	4,217,818
Loss from operations	(3,420,262)	(4,217,818)
Other income (expense):		
Interest expense	(1,495)	(257,290)
Other	(1,431)	(2,360)
	(2,926)	(259,650)
Net (loss)	\$ (3,423,188)	\$ (4,477,468)
Net (loss) per common share:		
Basic and diluted	\$ (0.37)	\$ (0.54)
Weighted average number of shares outstanding		
Basic and diluted	9,329,526	8,363,131

See accompanying notes to financial statements

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TABLE OF CONTENTS**PDS Biotechnology Corporation**
Statements of Stockholders' Equity (Deficit)

	Common Stock		Additional paid-in capital	Accumulated deficit	Total stockholders' equity (deficit)
	Shares	Amount			
Balance at January 1, 2016	8,270,274	\$ 83	\$ 10,136,088	\$ (10,201,962)	\$ (65,791)
Capitalized offering costs	—	—	(245,410)	—	(245,410)
Stock based compensation	—	—	389,296	—	389,296
Issuance of warrants	—	—	38,160	—	38,160
Issuance of common stock for cash	569,802	6	2,742,426	—	2,742,432
Issuance of common stock for conversion of debt	398,444	3	3,140,476	—	3,140,479
Net loss	—	—	—	(4,477,468)	(4,477,468)
Balance at December 31, 2016	9,238,520	92	16,201,036	(14,679,430)	1,521,698
Capitalized offering costs	—	—	(78,686)	—	(78,686)
Stock based compensation	—	—	262,248	—	262,248
Issuance of common stock for cash	106,489	2	1,014,998	—	1,015,000
Issuance of common stock for consulting fees	9,799	—	93,400	—	93,400
Net loss	—	—	—	(3,423,188)	(3,423,188)
Balance at December 31, 2017	9,354,808	\$ 94	\$ 17,492,996	\$ (18,102,618)	\$ (609,528)

See accompanying notes to financial statements

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TABLE OF CONTENTS**PDS Biotechnology Corporation**
Statements of Cash Flows

	Years Ended December 31,	
	2017	2016
Cash flows from operating activities:		
Net loss	\$ (3,423,188)	\$ (4,477,468)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	28,688	44,597
Stock-based compensation expense	355,648	389,296
Accretion of discount on convertible promissory notes	—	141,479
Accrued Interest on Convertible Debt	—	122,944
Changes in operating assets and liabilities:		
Deferred offering costs	—	130,476
Prepaid expenses and other receivables	89,677	(128,248)
Other assets	6,600	(1,252)
Accounts payable	226,810	(20,294)
Accrued expenses	(16,034)	41,301
Payroll taxes	—	(3,316)
Net cash used in operating activities	(2,731,799)	(3,760,485)
Cash flows from investing activities:		
Purchases of property and equipment	(2,335)	(2,553)
Net cash used in investing activities	(2,335)	(2,553)
Cash flows from financing activities:		
Proceeds from issuance of common stock	1,015,000	2,742,432
Issuance costs	(78,686)	(245,410)
Proceeds from issuance of convertible promissory notes	30,000	1,402,535
Repayments of capital lease obligation	(13,261)	(11,292)
Net cash provided by financing activities	953,053	3,888,265
Net increase (decrease) in cash and cash equivalents	(1,781,081)	125,227
Cash and cash equivalents at beginning of year	1,956,965	1,831,738
Cash and cash equivalents at end of year	\$ 175,884	\$ 1,956,965
Supplemental disclosures of cash flow information:		
Conversion of promissory notes payable and related accrued interest	\$ —	\$ 3,017,532
Capital lease obligation	\$ 40,116	\$ —
Warrants related to convertible promissory notes	\$ —	\$ 38,160
Cash paid for interest	\$ 2,552	\$ 3,544
Cash paid for income taxes	\$ 500	\$ 1,000

See accompanying notes to financial statements

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PDS BIOTECHNOLOGY CORPORATION

**Notes to Financial Statements
December 31, 2017 and 2016**

(1) Nature of Business and Liquidity

Organization

PDS Biotechnology Corporation (the Company) is a biopharmaceutical company developing novel cancer immunotherapies and vaccines for infectious diseases. The Company was incorporated on December 6, 2005 under the laws of the State of Delaware. The Company's operations are located in North Brunswick, New Jersey.

Business Condition

The financial statements have been prepared on a going concern basis which assumes the realization of assets and liabilities in the normal course of business. The Company has incurred losses and negative cash flows from operations since inception and had an accumulated deficit of \$18.1 million as of December 31, 2017. The Company anticipates incurring additional losses until such time, if ever, that it can generate significant revenues from its product candidates currently in development. The Company's primary source of liquidity to date has been the issuance of debt and equity securities. Management believes that the cash and cash equivalents as of December 31, 2017 are sufficient to fund operations through the third quarter of 2018. Substantial additional financing will be needed by the Company to fund its operations and to commercially develop its product candidates. There is no assurance that such financing will be available when needed or on acceptable terms. In view of these matters, the Company's ability to continue as a going concern is dependent upon the Company's ability to expand operations and to achieve a level of profitability. The financial statements of the Company do not include any adjustments relating to the recoverability and classification of recorded assets, or the amounts and classifications of liabilities that might be necessary should the Company be unable to continue as a going concern.

Management is currently evaluating different strategies to obtain the required funding of future operations. These strategies may include, but are not limited to: additional funding from current or new investors, borrowings of debt, and/or an initial public offering (IPO) of the Company's common stock. There can be no assurance that these future funding efforts will be successful.

Risks and Uncertainties

The Company is subject to those risks associated with any specialty pharmaceutical company that has substantial expenditures for research and development. There can be no assurance that the Company's research and development projects will be successful, that products developed will obtain necessary regulatory approval, or that any approved product will be commercially viable. In addition the Company operates in an environment of rapid technological change, and is largely dependent on the services of its employees and consultants.

Basis of Presentation

The Company has prepared the accompanying financial statements in conformity with U.S. GAAP.

(2) Summary of Significant Accounting Policies

Use of Estimates

Explanation of Responses:

The preparation of financial statements in conformity with U.S. generally accepted accounting principles (GAAP) requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Fair Value of Financial Instruments

The carrying amounts of the Company's financial instruments, including cash equivalents, accounts payable, and accrued expenses approximate fair value given their short-term nature.

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TABLE OF CONTENTS***Cash and Cash Equivalents***

The Company considers all highly liquid investments that have original maturities of three months or less when acquired to be cash equivalents. As of December 31, 2017 and 2016, the Company invested a portion of its cash balances in money market funds, which has been included as cash equivalents on the balance sheets.

Prepaid Expenses

Prepaid expenses consist of the following:

	December 31,	
	2017	2016
Insurance	\$ 5,901	\$ 5,986
Service agreements	40,000	120,000
Other receivables	3,901	13,493
Annual royalty fee	5,000	5,000
	\$ 54,802	\$ 144,479

Property and Equipment

Property and equipment is recorded at cost and is depreciated on a straight-line basis over their estimated useful lives. The Company estimates a life of three years for computer equipment, five years for lab equipment and seven years for lab furniture. When property and equipment are sold or otherwise disposed of, the cost and related accumulated depreciation are removed from the accounts and the resulting gain or loss is included in operating expenses. Repairs and maintenance costs are expensed as incurred.

Impairment of Long-Lived Assets

The Company assesses the recoverability of its long-lived assets, which include property and equipment, whenever significant events or changes in circumstances indicate impairment may have occurred. If indicators of impairment exist, projected future undiscounted cash flows associated with the asset are compared to its carrying amount to determine whether the asset's value is recoverable. Any resulting impairment is recorded as a reduction in the carrying value of the related asset in excess of fair value and a charge to operating results. For the years ended December 31, 2017 and 2016, the Company determined that there was no impairment of its long-lived assets.

Deferred Offering Costs

The Company capitalizes certain legal, professional, accounting, travel and other third party fees that are directly associated with in-process equity financings as deferred offering costs until such financings are consummated. After consummation of the equity financing, these costs are recorded in shareholders' equity (deficit) as a reduction to the carrying value of the shares issued. If an offering is not successful, deferred offering costs are expensed to general and administrative expenses.

Intangible Assets

The Company capitalizes the patent license fees paid to third parties. Patent license fees are amortized on a straight-line basis over the remaining life of the patent license.

The Company capitalizes the professional fees incurred in relation to issuance of debt instruments, as deferred financing fees. Deferred financing fees are amortized on a straight-line over the remaining life of the related debt instrument.

Research and Development Costs

Research and development costs are expensed as incurred. Research and development costs include salaries, share-based compensation and benefits of employees, third-party license fees and other operational costs related to the Company's research and development activities, including allocated facility-related expenses and external costs of outside vendors engaged to conduct preclinical studies and other research and development activities.

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Stock-Based Compensation

The Company measures and recognizes share-based compensation expense, for both employee and director option awards, based on the grant date fair value of the awards. The Company recognizes share-based compensation expense, net of estimated forfeitures, on a straight-line basis over the requisite service period of the awards, which is generally the vesting period.

The Company determines the fair value of share-based awards granted to non-employees as either the fair value of the consideration received or the fair value of the equity instruments issued, whichever is more reliably measurable. All issuances of equity instruments issued to non-employees as consideration for goods or services received by the Company are accounted for based on the fair value of the equity instruments issued. These awards are recorded in expense and additional paid-in capital in shareholders' (deficit) equity over the applicable service periods based on the fair value of the options at the end of each period.

The Company classifies share-based compensation expense in its statements of operations in the same manner in which the award recipient's payroll costs are classified or in which the award recipients' service payments are classified.

The Company estimates the fair value of employee and director share options as of the date of grant using the Black-Scholes option pricing model. The Company historically has been a private company and lacks company-specific historical and implied volatility information. Therefore, it estimates its expected share price volatility based on the historical volatility of a publicly traded set of peer companies and expects to continue to do so until such time as it has adequate historical data regarding the volatility of its own traded share price. The expected term of the Company's share options has been determined utilizing the simplified method for awards that qualify as plain-vanilla options. The risk-free interest rate is determined by reference to the yield curve of a zero-coupon U.S. Treasury bond on the date of grant of the award for time periods approximately equal to the expected term of the award. Expected dividend yield is based on the fact that the Company has never paid cash dividends on ordinary shares and does not expect to pay any cash dividends in the foreseeable future.

The Company also estimates the fair value of consultant and non-employee share options using the Black-Scholes option pricing model reflecting the same assumptions as applied to employee and director options in each of the reporting periods, other than the expected life, which is assumed to be the remaining contractual life of the options.

Per Share Information

Basic earnings (loss) per share are calculated using the weighted average number of common shares outstanding for the period presented. Diluted earnings per share includes the addition of potentially dilutive securities as of December 31, 2017 and 2016. As the Company reported net losses, the effect is anti-dilutive and were excluded from the diluted earnings (loss) calculation. There were 155,181 and 155,181, warrants outstanding as of December 31, 2017 and 2016, respectively which are considered dilutive but are not included in the calculation because they are anti-dilutive.

Common Stock Warrants

The Company measures and recognizes warrants, for non-employees for the value of goods or services received or in conjunction with the issuance of a debt or equity financing issuance based on the grant date fair value of the warrant.

The Company determines the fair value of warrants granted to non-employees or investors as either the fair value of the consideration received or the fair value of the debt or equity instruments issued, whichever is more reliably measurable. All issuances of debt and equity instruments issued to investors or non-employees as consideration for

goods or services received by the Company are accounted for based on the fair value of the debt and equity instruments issued. These awards can be recorded as either an expense or liability depending on the nature of the warrant.

Generally, if a warrant cannot be settled in cash by the holder or a stock settled transaction, the warrant is considered an equity transaction to the Company and has an offsetting debit to additional paid-in capital in shareholders (deficit) equity based on the fair value of the warrant at the issuance date.

The Company estimates the fair value of warrants as of the date of grant using the Black-Scholes option pricing model as described in Stock-Based Compensation in the previous section.

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Revenue Recognition

License Agreement

Revenue associated with licensing agreements primarily consists of non-refundable upfront license fees, nonrefundable annual license fees and milestone payments. Non-refundable upfront license fees received under license agreements, whereby continued performance or future obligations are considered inconsequential to the relevant license technology, are recognized as revenue upon delivery of the technology. If a licensing agreement has multiple elements, The Company analyzes each element of its licensing agreements and considers a variety of factors in determining the appropriate method of revenue recognition of each element. The Company has no license agreement revenue for the years ended December 31, 2017 and 2016.

In June 2012, the Company signed an Enantiomer licensing agreement with Merck KGaA (Merck). The agreement gives Merck & its affiliates an exclusive (even to the Company), worldwide, royalty-bearing right and license to research, develop, manufacture, have manufactured, import, export, use and commercialize the Merck Products in the Territory.

In partial consideration of the rights and licenses granted to Merck by the Company, Merck paid the Company a one-time up-front non-refundable fee of \$1,800,000 payable in two installments. The first installment of \$1,200,000 was paid in September 2012 and the second installment of \$600,000 was paid in July 2013. Because the Company does not have any other additional responsibilities, the revenue was recognized in 2012.

In addition to the license agreement, the Company has an opportunity to earn an additional \$22 million, \$11 million per Antigenic Sequence, based on achieving certain milestones related to human trials and commercial sales throughout the world in certain countries, as defined. The Company also has an opportunity to earn an additional \$34 million, \$17 million per Antigenic Sequence, if certain milestones based on worldwide net sales of Merck products with the Antigenic Sequence, as defined, are met.

Product Revenue

The Company has had no product revenue to date.

Grant Revenue

The Company periodically enters into grant agreements with both federal agencies and Pharmaceutical companies related to both research and result analysis. Grant revenues received in advanced are deferred until related expenditures are incurred. Grant revenues earned during 2017 and 2016, respectively were \$0 and \$0.

Current Income Taxes

The Company assesses its current income tax expense based upon the taxes due in each operating tax jurisdiction, which are comprised of the United States and the States of Indiana and New Jersey. All of the Company's revenue and operating expenses occurring within these tax jurisdictions.

Payments of advance taxes and income taxes payable in the same tax jurisdictions are offset.

Deferred Income Taxes

Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial information carrying amounts of assets and liabilities and their respective tax basis, operating loss carry forwards and tax credits. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. Valuation allowances are recorded to reduce deferred tax assets when it is more likely than not that a tax benefit will not be realized. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in the Statements of Operations in the period of change.

The Company accounts for uncertainty in income taxes recognized in the financial statements by applying a two-step process to determine the amount of tax benefit to be recognized. First, the tax position must be evaluated to determine the likelihood that it will be sustained upon external examination by the taxing authorities. If the tax position is deemed more-likely-than-not to be sustained, the tax position is then assessed to determine the amount of benefit to recognize in the financial statements.

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The amount of the benefit that may be recognized is the largest amount that has a greater than 50% likelihood of being realized upon ultimate settlement. The provision for income taxes includes the effects of any resulting tax reserves, or unrecognized tax benefits, that are considered appropriate as well as the related net interest and penalties.

The Company recognizes interest and penalties related to uncertain tax positions in income tax provision.

Concentrations of Credit Risk

The Company does not have a customer concentration risk, as its only current source of revenue occurred in 2012 and that was from the continuation of an existing government grant and a one-off contract with a pharmaceutical company. The Company does not expect to have recurring revenue for several years but may have periodic grants, research projects and licensing fee revenue.

Financial instruments that potentially expose the Company to concentrations of credit risk consist principally of cash and cash equivalents. The Company principally utilized national/regional banks to maintain its operating cash accounts. At certain times, such balances may be in excess of Federal Deposit Insurance Corporation (FDIC) insurance limits.

In the normal course of its operations, the Company enters into contracts and agreements that contain indemnifications. The Company's maximum exposure under these agreements is unknown as this would involve future claims that may be made against the Company that have not occurred. The Company expects the risk of loss to be remote.

Recently Adopted Accounting Pronouncements

In November 2015, the FASB issued ASU 2015-17, *Income Taxes (Topic 740): Balance Sheet Classification of Deferred Taxes*. This ASU simplifies the presentation of deferred income taxes by eliminating the requirement for entities to separate deferred tax liabilities and assets into current and noncurrent amounts in classified balance sheets. Instead, it requires deferred tax assets and liabilities be classified as noncurrent in the balance sheet. ASU 2015-17 is effective for financial statements issued for annual periods beginning after December 15, 2017. Early adoption is permitted, and this ASU may be applied either prospectively to all deferred tax liabilities and assets or retrospectively to all periods presented.] The adoption of this standard is not expected to have a material impact on the Company's financial statements. Upon adoption of this standard on a retrospective basis, all deferred income tax assets and liabilities will be presented as noncurrent.

In February 2016, the FASB issued ASU 2016-02, *Leases (Topic 842)*. The guidance in this ASU supersedes the leasing guidance in Topic 840, *Leases*. Under the new guidance, lessees are required to recognize lease assets and lease liabilities on the balance sheet for all leases with terms longer than 12 months.

Leases will be classified as either finance or operating, with classification affecting the pattern of expense recognition in the income statement. The new standard is effective for fiscal years beginning after December 15, 2019, including interim periods within those fiscal years. A modified retrospective transition approach is required for lessees for capital and operating leases existing at, or entered into after, the beginning of the earliest comparative period presented in the financial statements, with certain practical expedients available. We are currently evaluating the impact of our pending adoption of the new standard on our consolidated financial statements. The Company currently expects that upon adoption of ASU 2016-02, right-of-use assets and lease liabilities will be recognized in the balance sheet in amounts that will be material.

In March 2016, the FASB issued ASU 2016-09, *Compensation—Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting*. The ASU is intended to simplify various aspects of accounting for share-based compensation arrangements, including the income tax consequences, classification of awards as either equity or liabilities, and classification on the statement of cash flows. For example, the new guidance requires all excess tax benefits and tax deficiencies related to share-based payments to be recognized in income tax expense, and for those excess tax benefits to be recognized regardless of whether it reduces current taxes payable. The ASU also allows an entity-wide accounting policy election to either estimate the number of awards that are expected to vest or account for forfeitures as they occur. ASU 2016-09 will be effective for the Company beginning on January 1, 2018. Different methods of adoption are required for the various amendments and early adoption is permitted, but all of the amendments must be adopted in the same period. The Company is currently evaluating the impact of the adoption of this guidance on its consolidated financial condition, results of

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operations and cash flows. The Company has not completed its assessment of the potential impact of adopting the provisions of ASU 2016-09 on its financial statements. The adoption is not expected to have a material impact on the consolidated financial statements.

In May 2017, the FASB issued ASU 2017-09, *Compensation—Stock Compensation (Topic 718): Scope of Modification Accounting*, to provide guidance about which changes to the terms or conditions of a share-based payment award require an entity to apply modification accounting in ASC 718. The amendments in the ASU are effective for fiscal years beginning after December 15, 2017, and should be applied prospectively to an award modified on or after the adoption date. The adoption of ASU 2017-09 is not expected to have a material impact on the financial statements.

Other accounting standards that have been issued or proposed by the FASB or other standards-setting bodies that do not require adoption until a future date are not expected to have a material impact on the Company's consolidated financial statements upon adoption.

(3) Property and Equipment

Property and equipment consisted of the following:

	Estimated useful life (in years)	December 31,	
		2017	2016
Lab equipment	5	\$ 135,369	\$ 135,369
Lab furniture	7	1,343	1,343
Computer equipment	3	16,963	14,628
Total cost		153,675	151,340
Less accumulated depreciation		(101,854)	(78,279)
Property and equipment, net		\$ 51,821	\$ 73,061

Depreciation expense was \$23,575 and \$22,065, respectively, for the years ended December 31, 2017 and 2016.

(4) Intangible Assets

Intangible assets consisted of the following:

	Estimated Life (in Months)	December 31,	
		2017	2016
Patent license fees #1	111	15,000	15,000
Patent license fees #2	201	15,000	15,000
Patent license fees #1 - Amendment	107	15,000	15,000
Patent license fees #2 - Amendment	197	15,000	15,000
		60,000	60,000
Less accumulated amortization		(13,195)	(8,082)
Intangible assets, net		\$ 46,805	\$ 51,918
Future amortization expense as of December 31, 2018			

Year Ending December 31,	Amount
2018	\$ 5,113
2019	5,113
2020	5,113
2021	5,113
2022	5,113
Thereafter	21,240
	\$ 46,805

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Amortization expense was \$5,113 and \$22,532, for the years ending December 31, 2017 and 2016, respectively.

(5) Convertible Promissory Notes

In October 2015, the Company commenced a debt financing of up to \$12,000,000. In November the Company received \$1,525,000 from investors in exchange for convertible promissory notes (2015 issuances). The 2015 issuances bear interest at 5.00% per annum. The 2015 issuances have no defined payment terms and matured on December 31, 2016, unless one of the following occurs prior to the maturity date, as defined in the agreement.

1. If the 2015 issuances are outstanding at the time of a Qualified Financing, defined as financing in excess of \$40M, then the outstanding principal amount of the 2015 issuances and any accrued but unpaid interest thereon shall convert automatically into the number of shares of the class and series of capital stock issued to the investor(s) at the initial closing of such Qualified Financing, equal to the quotient obtained by dividing the outstanding principal amount of the 2015 issuances and any accrued but unpaid interest thereon, by the product of (1) 0.85 times (2) the Qualified Financing price per share.
2. If the 2015 issuances remain outstanding at the time of consummation of a Change of Control (as defined prior to the Maturity Date, then the outstanding principal amount of the 2015 issuances and any accrued but unpaid interest thereon shall automatically convert (as of immediately prior to, but contingent upon the occurrence of, such Change of Control) into such number of shares of Common Stock, equal to the quotient obtained by dividing the outstanding principal amount of the 2015 issuances and any accrued but unpaid interest thereon, by the product of (I) 0.90 times (2) the Change of Control Price Per Share. Notwithstanding the above, an equity financing, reincorporation and other restructuring transaction (including a transaction the result of which is that the Maker becomes a wholly-owned subsidiary of another entity) consummated for the purpose of changing the Maker's state of incorporation, or otherwise facilitating a Qualified Financing, shall not be deemed a Change of Control transaction.
3. If the 2015 issuances remain outstanding on the Maturity Date (12/31/16), then the outstanding principal amount of the 2015 issuances and any accrued but unpaid interest thereon shall automatically convert into the number of shares of Common Stock equal to the quotient obtained by dividing the outstanding principal amount of the 2015 issuances and any accrued but unpaid interest thereon by the product of (1) 0.80 times (2) the Maturity Date Price Per Share.

In conjunction with the 2015 issuances, the Company provided 10% warrant coverage based on principal invested. The warrants were determined using a fair value of \$152,500. This resulted in the issuance of 80,157 warrants issued at \$1.90 per warrant (85% of the fair value per share of \$2.24). Using the Black-Scholes model for the warrants described further in Note 9, resulted in a fair value of \$125,824, which is required to be bifurcated from the amount of proceeds received \$1,525,000 on a pro-rata basis. This resulted in an \$116,234 value for the warrants and the recording of a promissory note discount of the same amount. The promissory note discount of \$116,234 is accreted against the 2015 issuances and amortized on a straight-line basis through the maturity date of December 31, 2016, resulting in an amortization period of 13.5 months. For the years ended December 31, 2017 and 2016 accretion on the 2015 issuances was \$0 and \$103,319, respectively, which is included with interest expenses in the statement of operations.

In May 2016 the Company received \$500,000 from an investor in exchange for convertible promissory notes (2016 issuances #1). The 2016 issuances #1 bear interest at 5.00% per annum. The 2016 issuances #1 has no defined payment terms and matures on December 31, 2016, unless one of the following occurs prior to the maturity date, as defined in the agreement.

1. If the 2016 issuances #1 is outstanding at the time of a Qualified Financing, defined as financing in excess of \$40M, then the outstanding principal amount of the 2016 issuances #1 and any accrued but unpaid interest thereon shall convert automatically into the number of shares of the class and series of capital stock issued to

the investor(s) at the initial closing of such Qualified Financing, equal to the quotient obtained by dividing the outstanding principal amount of the 2016 issuances #1 and any accrued but unpaid interest thereon, by the product of (1) 0.80 times (2) the Qualified Financing price per share.

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- If the 2016 issuances #1 remains outstanding at the time of consummation of a Change of Control (as defined prior to the Maturity Date, then the outstanding principal amount of the 2016 issuances #1 and any accrued but unpaid interest thereon shall automatically convert (as of immediately prior to, but contingent upon the occurrence of, such Change of Control) into such number of shares of Common Stock, equal to the quotient obtained by dividing the outstanding principal amount of the 2016 issuances #1 and any accrued but unpaid interest thereon, by the product of (1) 0.80 times (2) the Change of Control Price Per Share.
- 2.

Notwithstanding the above, an equity financing, reincorporation or other restructuring transaction (including a transaction, the result of which is that the Maker becomes a wholly-owned subsidiary of another entity) consummated for the purpose of changing the Maker's state of incorporation, or otherwise facilitating a Qualified Financing, shall not be deemed a Change of Control transaction.

- If the 2016 issuances #1 remains outstanding on the Maturity Date (12/31/16), then the outstanding principal amount of the 2016 issuances #1 and any accrued but unpaid interest thereon shall automatically convert into
3. the number of shares of Common Stock equal to the quotient obtained by dividing the outstanding principal amount of the 2016 issuances #1 and any accrued but unpaid interest thereon by the product of (1) 0.80 times (2) the Maturity Date Price Per Share.

In conjunction with the 2016 issuances #1, the Company provided 10% warrant coverage based on principal invested. The warrants were determined using a fair value of \$50,000. This resulted in the issuance of 26,281 warrants issued at \$1.90 per warrant (85% of the fair value per share of 2.24). Using the Black-Scholes model for the warrants described further in Note 9, resulted in a fair value of \$41,313, which is required to be bifurcated from the amount of proceeds received \$500,000 on a pro-rata basis. This resulted in an \$38,160 value for the warrants and the recording of a promissory note discount of the same amount. The promissory note discount of \$38,160 was accreted against the 2016 issuances #1 and amortized on a straight-line basis through the maturity date of December 31, 2016, resulting in an amortization period of 7.7 months. For the years ended December 31, 2017 and 2016 accretion on the 2016 issuances #1 was \$0 and \$38,160, respectively, which is included with interest expenses in the statement of operations.

In July 2016, the Company converted \$90,000 of consulting fees owed to certain board members/investors (Board Member #1, #2 and #3), described in Note 13 below (2016 issuances #2) to convertible promissory notes. The 2016 issuances #2 bear interest at 5.00% per annum. The 2016 issuances #2 have no defined payment terms and mature on December 31, 2016, unless one of the following occurs prior to the maturity date, as defined in the agreement.

- If the 2016 issuances #2 are outstanding at the time of a Qualified Financing, defined as financing in excess of \$40M, the then outstanding principal amount of the 2016 issuances #2 and any accrued but unpaid interest thereon shall convert automatically into the number of shares of the class and series of capital stock issued to the investor(s) at the initial closing of such Qualified Financing, equal to the quotient obtained by dividing the outstanding principal amount of the 2016 issuances #2 and any accrued but unpaid interest thereon, by the product of (1) 0.80 times (2) the Qualified Financing price per share.
- 1.
- If the 2016 issuances #2 remain outstanding at the time of consummation of a Change of Control (as defined prior to the Maturity Date, the then outstanding principal amount of the 2016 issuances #2 and any accrued but unpaid interest thereon shall automatically convert) as of immediately prior to, but contingent upon the occurrence of, such Change of Control) into such number of shares of Common Stock, equal to the quotient obtained by dividing the outstanding principal amount of the 2016 issuances #2 and any accrued but unpaid interest thereon, by the product of (1) 0.80 times (2) the Change of Control Price Per Share.
- 2.

Notwithstanding the above, an equity financing, reincorporation or other restructuring transaction (including a transaction, the result of which is that the Maker becomes a wholly-owned subsidiary of another entity) consummated for the purpose of changing the Maker's state of incorporation, or otherwise facilitating a Qualified Financing, shall not be deemed a Change of Control transaction.

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If the 2016 issuances #2 remain outstanding on the Maturity Date (12/31/16), the then outstanding principal amount of the 2016 issuances #2 and any accrued but unpaid interest thereon shall automatically convert into

3. the number of shares of Common Stock equal to the quotient obtained by dividing the outstanding principal amount of the 2016 issuances #2 & #3 and any accrued but unpaid interest thereon by the product of (1) 0.80 times (2) the Maturity Date Price Per Share.

In July 2016, the Company commenced a debt financing of up to \$1,000,000. In July & August 2016 the Company received \$902,535 from investors in exchange for convertible promissory notes (2016 issuances #3). The 2016 issuances #3 have no defined payment terms and mature on December 31, 2016, unless one of the following occurs prior to the maturity date, as defined in the agreement.

If the 2016 issuances #3 are outstanding at the time of a Qualified Financing, defined as financing in excess of \$40M, the then outstanding principal amount of the 2016 issuances #2 & #3 and any accrued but unpaid interest thereon shall convert automatically into the number of shares of the class and series of capital stock issued to the investor(s) at the initial closing of such Qualified Financing, equal to the quotient obtained by dividing the outstanding principal amount of the 2016 issuances #3 and any accrued but unpaid interest thereon, by the product of (1) 0.90 times (2) the Qualified Financing price per share.

1. If the 2016 issuances #3 remain outstanding at the time of consummation of a Change of Control (as defined prior to the Maturity Date, the then outstanding principal amount of the 2016 issuances #3 and any accrued but unpaid interest thereon shall automatically convert) as of immediately prior to, but contingent upon the occurrence of, such Change of Control) into such number of shares of Common Stock, equal to the quotient obtained by dividing the outstanding principal amount of the 2016 issuances #3 and any accrued but unpaid interest thereon, by the product of (1) 0.90 times (2) the Change of Control Price Per Share.

Notwithstanding the above, an equity financing, reincorporation or other restructuring transaction (including a transaction, the result of which is that the Maker becomes a wholly-owned subsidiary of a another entity) consummated for the purpose of changing the Maker s state of incorporation, or otherwise facilitating a Qualified Financing, shall not be deemed a Change of Control transaction.

If the 2016 issuances #3 remain outstanding on the Maturity Date (December 31, 2016), the then outstanding principal amount of the 2016 issuances #3 and any accrued but unpaid interest thereon shall automatically

3. convert into the number of shares of Common Stock equal to the quotient obtained by dividing the outstanding principal amount of the 2016 issuances and any accrued but unpaid interest thereon by the product of (1) 0.90 times (2) the Maturity Date Price Per Share.

The term Maturity Date Price Per Share shall mean the higher of (a) the fair market value of a share of Common Stock as of the Maturity Date (as determined in good faith by the Board of Directors of the Maker) and (b) the price of a share of Common Stock calculated as follows: \$100,000,000 divided by the number of outstanding shares of Common Stock, all on a fully-diluted and as converted basis.

In November 2017 the Company received \$30,000 from an investor in exchange for a convertible promissory note (2017 issuances). The 2017 issuances bear interest at 7.50% per annum. The 2017 issuances have no defined payment terms and mature on December 1, 2020, unless one of the following occurs prior to the maturity date, as defined in the agreement.

Automatic QF Conversion. In the event the Company issues and sells shares (in a sale or series of sales) of its Equity Securities on or before the Maturity Date in an equity financing in which cumulative gross proceeds including the aggregate outstanding principal balance and all accrued and unpaid interest on the

1. Notes equal or exceed \$5M (the Qualified financing) then the outstanding principal balance of the Note and all unpaid interest (Conversion Amount) shall be converted into such Equity Securities at the Conversion Price. The Conversion price shall be the lesser of a) the price per share paid by the purchasers of such Equity Securities in such Qualified Financing, and (b) \$2.11 per share.

2. MD Conversion. In the event that a Qualified Financing has not closed on or prior to the Maturity Date, all outstanding principal and interest of the Note will convert at a conversion price equal to \$2.11 per share.

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A summary of convertible promissory notes outstanding is listed below

	2017	2016
Convertible promissory note holder #1, net, December 31,	\$ 30,000	\$ —

(6) Capital Lease Obligation

In February 2016, the Company leased lab equipment with a value of \$40,116 from an unrelated third party. Based on the terms of the lease, it met the criteria to be capitalized. The capital lease obligation is payable over 36 months beginning in February 2016, with a final payment due in January 2019. The implicit interest rate on the capital lease obligation is 7.70%. In conjunction with the recording of the capital lease obligation, property and equipment was recorded in the same amount, to be amortized over a 60 months on a straight-line basis.

Years ending December 31,	Amount
2018	\$ 15,020
2019	1,251
Total minimum lease payments	16,271
Less amounts representing interest	(708)
Present value of net minimum lease payments	15,563
Less current maturities	(14,319)
Long-term capital lease obligations	\$ 1,244

Amortization expense recorded for the years ended December 31, 2017 and 2016 were \$8,023 and \$7,355, respectively.

(7) Accrued Expenses

Accrued expenses consisted of the following:

	December 31,	
	2017	2016
Consulting	\$ 100,500	\$ 83,329
Expense Reimbursement	—	1,869
General Research	21,016	22,504
Interest	247	—
Other	44,176	74,176
Payroll	57,292	—
Professional	40,938	98,325
Rent	8,000	8,000
	\$ 272,169	\$ 288,203

(8) Warrants

In May 2016, in conjunction with the issuance of \$500,000 of Convertible Promissory Notes, the Company provided common stock warrant coverage based on 10% of the amount invested in the equity financing round. The value of the warrants was \$50,000 and was converted to warrants at 85% of the current exercise price. As a result, the Company issued 11,764 warrants to the investor. These warrants were valued in the same manner as those described in Note 5,

resulting in the bifurcation of \$38,160 from the debt of \$500,000.

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The assumptions used in the Black-Scholes option pricing model to determine the fair value of warrants granted to vendors and investors during the period were as follows:

	Years Ended December 31,	
	2017	2016
Risk-free interest rate	N/A	1.20 %
Expected term (in years)	N/A	5.00
Expected volatility	N/A	86.4 %
Expected dividend yield	—	—
Exercise price	\$ —	\$ 8.42
Fair value of ordinary share	\$ —	\$ 7.93

A summary of warrant activity is listed below:

	Warrants
Balance as of January 1, 2016	512,311
Granted	11,764
Exercised	(368,894)
Balance as of December 31, 2016	155,181
Granted	—
Exercised	—
Balance as of December 31, 2017	155,181
(9) Stockholders' Equity (Deficit)	

Common Stock Transactions

In August 2016, the Company increased the number of authorized shares of common stock to 13,283,154. In January 2018, the Company increased the number of authorized shares of common stock to 22,138,587.

In August 2016, the Company issued a Private Placement Memorandum (PPM) (August 2016 PPM) to raise \$10,000,000 by offering 1,049,222 shares of common stock at \$9.53 per share. The Company issued 155,794 shares of common stock to investors at the \$9.53 share price in conjunction with the August 2016 PPM, resulting in gross equity financing of \$1,485,000. After subtracting out cumulative offering costs of \$190,305, the Company received net proceeds of \$1,294,695. In December 2016, the Company issued a PPM (December 2016 PPM) to raise \$7,000,000 by offering 734,450 shares of common stock at \$9.53 per share. The Company issued 45,114 shares of common stock to investors at \$9.53 per share in conjunction with the December 2016 PPM, resulting in gross equity financing of \$430,000. After subtracting out cumulative financing costs of \$55,105, the Company received net proceeds of \$374,895. In January 2018, as described in Note 15, the Board of Directors approved the reduction in the price per common share listed in both the August 2016 PPM and December 2016 PPM from \$9.53 to \$5.00 per share. As a result, the Company issued an additional 140,215 and 40,601 shares of common stock, respectively, for the August 2016 PPM and December 2016 PPM investors.

The conversion of debt to equity upon maturity of debt on December 31, 2016 associated with promissory notes issued during 2015 and 2016, as described in Note 5 above, resulted in the Company issuing 211,267 and 187,177 shares of common stock to investors, respectively, from 2015 and 2016 promissory note issuances and related accrued interest. The promissory notes were converted at share prices of \$7.62 and a range from \$7.62 - \$8.58, respectively,

for the 2015 and 2016 promissory note issuances. As a result, \$3,140,479 of promissory notes and related accrued interest were transferred from debt to equity. In January 2018, as described in Note 15, the Board of Directors approved the reduction in the price per common share listed in both the August 2016 PPM and December 2016 PPM from \$2.11 to \$1.11 per share. As a result since the convertible promissory notes were originally converted at \$9.53 per share, these investors received the same reduction to \$5.00 per share. As a result, the Company issued an additional 190,140 and 168,458 shares of common stock, respectively, for the convertible promissory note issued in 2015 and 2016, respectively.

Throughout 2017, the Company issued 106,489 shares of common stock to investors at \$9.53 per share, in conjunction with the existing December 2016 PPM described previously, resulting in gross equity financing of \$1,015,000. After subtracting out cumulative offering costs of \$78,686, the Company received net proceeds of

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\$936,314. In September 2017, the Company signed a consulting agreement with a related third consultant, in which, in lieu of cash payment of \$93,400, the related third party consultant elected to receive shares at the current fair value of \$9.53 per common shares, resulting in the issuance of 9,799 common shares. In January 2018, as described in Note 15, the Board of Directors approved the reduction in the price per common share listed in both the August 2016 PPM and December 2016 PPM from \$9.53 to \$5.00 per share. As a result, the Company issued an additional 95,837 and 8,819 shares of common stock, respectively, for the 2017 December 2016 PPM investors and

A summary of equity transactions is as follows:

	2017	2016
Cash received	\$ 1,015,000	\$ 2,742,432
Conversion of convertible promissory notes	—	3,140,479
Gross proceeds	1,015,000	5,882,911
Offering costs	(78,686)	(245,410)
Net Proceeds	\$ 936,314	\$ 5,637,501
Services rendered	\$ 93,400	\$ —
Shares issued	525,303	4,373,696

Preferred Stock Transactions

In January 2018, the Company increased the number of authorized shares to 27,673,234, which included 22,138,587 shares of common stock described previously in footnote and 5,534,647 shares of preferred shares. There were no preferred shares issued through June 30, 2018.

(10) Stock Option Plan***Adoption of Stock Option Plan***

On January 22, 2009, the Company's board of directors adopted the PDS Biotechnology 2009 Stock Option Plan (the 2009 Plan), the 2009 Plan is effective November 1, 2008 and reserved 815,054 shares for issuance under the this plan. In addition, the 2009 Plan limited the number of shares issued to an employee/director to 442,772 per year. The 2009 Plan was approved by the Company's shareholders in October 2009. On March 12, 2012, the Company's board and shareholders amended the plan (Amendment #1) to increase the number of common shares issuable under the 2009 Plan to 1,479,212 ordinary shares. In addition, the 2009 Plan increased the number of shares that can be issued to an employee/director to 885,544 per year. On December 15, 2014, the Company's board and shareholders amended the plan (Amendment #2) to increase the number of common shares issuable under the 2009 Plan to 1,713,217 ordinary shares. The 2009 Plan authorizes the board of directors or a committee of the board to grant incentive share options, non-qualified share options, or NQSOs, to eligible employees, outside directors and consultants of the Company. As of December 31, 2017 and 2016, respectively, 136,529 and 24,862 common shares remained available for future grants.

During the years ended December 31, 2017 and 2016, respectively, the Company granted options to purchase 0 and 166,128 common shares, respectively, to employees and outside directors. The Company recorded share-based compensation expense of \$262,248 and \$389,295, respectively, for the years ended December 31, 2017 and 2016. Options generally vest over a period of one to five years, and options that lapse or are forfeited are available to be granted again. The contractual life of all options is ten years. The expiration dates of the outstanding options range from 2019 to 2026. The Company measures and records the value of options granted to non-employees over the period of time services are provided and, as such, unvested portions are subject to re-measurement at subsequent

reporting periods.

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Unrecognized share based compensation charges as of December 31, 2017, are expected to be recognized as follows:

Years Ending December 31,	Amount
2018	\$ 8,905
2019	2,520
2020	622
2021	—
2022	—
	\$ 12,047

The assumptions used in the Black-Scholes option pricing model to determine the fair value of share options granted to employees during the period were as follows:

	Years Ended December 31,	
	2017	2016
Risk-free interest rate	N/A	1.59 %
Expected term (in years)	N/A	6.25
Expected volatility	N/A	85.3 %
Expected dividend yield	—	—
Exercise price	\$ —	\$ 9.91
Fair value of ordinary share	\$ —	\$ 8.98

The following table summarizes the stock option activity:

	Options	Weighted Average Exercise Price	Weighted Average Remaining Life (In Years)	Aggregate Intrinsic Value
Balance as of January 1, 2016	1,523,919	2.03	6.82	\$ 223,764
Granted	166,128	2.24		
Forfeited	(4,082)	2.24		
Balance as of December 31, 2016	1,685,965	2.09	6.14	222,697
Granted	—	—		
Forfeited	(111,667)	2.24		
Balance as of December 31, 2017	1,574,298	\$ 2.10	4.93	\$ 222,697
Options exercisable, December 31, 2017	1,560,229	\$ 2.10	4.91	\$ 222,697

As of December 31, 2017, the unrecognized compensation cost related to outstanding options was \$12,047 and is expected to be recognized as expense over a weighted-average period of approximately 2.25 years.

Share-based compensation is allocated to employees based on their respective departments. All Board of Directors compensation is charged to general and administrative compensation.

Share-based compensation expense was classified in the statements of operations as follows:

Years Ended December 31,

Explanation of Responses:

	2017	2016
Research and development	\$ 60,966	\$ 83,787
General and administrative	201,282	305,509
Total share-based compensation	\$ 262,248	\$ 389,296

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As of December 31, 2017 and 2016, the Company has approximately \$16,319,000 and \$13,229,000 of federal net operating loss carryforwards and \$439,000 and \$357,000 of federal research tax credit carry-forwards as of December 31, 2017 and 2016, respectively. As of December 31, 2017 and 2016, the Company has approximately \$16,247,000 and \$13,157,000 of state net operating loss carryforwards. The federal and state net operating loss carry-forwards and the federal research tax credit carry-forwards begin to expire in 2028 and 2037, respectively.

The Tax Reform Act of 1986 (the Act) provides for limitation on the use of net operating loss and research and development tax credit carryforwards following certain ownership changes (as defined by the Act) that could limit the Company's ability to utilize these carryforwards. The Company may have experienced various ownership changes, as defined by the Act, as a result of past financings. Accordingly, the Company's ability to utilize the aforementioned carryforwards may be limited. Additionally, U.S. tax laws limit the time during which these carryforwards may be applied against future taxes; therefore, the Company has determined it is more likely than not that these net operating losses will not be realized.

The components of the net deferred income tax asset as of December 31, 2017, 2016 are as follows:

	Years Ended December 31,	
	2017	2016
Deferred tax assets:		
Net operating loss carry-forwards	\$ 4,392,017	\$ 5,279,272
Research and development credit carry-forwards	92,146	121,245
Fixed assets	(1,221)	(3,331)
Intangible assets	2,208	3,228
Deferred rent	—	—
Accrued expenses	40,972	22,543
Gross deferred tax assets	4,526,122	5,422,957
Less valuation allowance	(4,526,122)	(5,422,957)
Net deferred tax asset	\$ —	\$ —

In assessing the realizability of deferred tax assets, the Company considers whether it is more-likely-than-not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which the temporary differences representing net future deductible amounts become deductible. After consideration of all the evidence, both positive and negative, the Company has recorded a full valuation allowance against its net deferred tax assets as of December 31, 2017 and 2016, respectively, because the Company has determined that it is more likely than not that these assets will not be fully realized due to historic net operating losses incurred. The valuation allowance increased (decreased) by approximately (\$897,000) and \$1,630,000 during the years ended December 31, 2017 and 2016, respectively, due primarily to the generation of net operating loss carryforwards during 2017 and 2016. For the year ended December 31, 2017 only, the decline in the valuation is a result of the change in Federal Statutory Rate from 34.00% to 21.00%.

The Company does not have unrecognized tax benefits as of December 31, 2017 and 2016, respectively. The Company recognizes interest and penalties accrued on any unrecognized tax benefits as a component of income tax expense.

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A reconciliation of income tax expense (benefit) at the statutory federal income tax rate and income taxes as reflected in the financial statements is as follows:

	Years Ended December 31,			
	2017		2016	
Federal income tax benefit at statutory rate	21.00	%	34.00	%
State income tax, net of federal benefit	5.49	%	5.46	%
Permanent differences	-1.61	%	-3.05	%
Research and development credit benefit	-0.84	%	0.84	%
Change on tax rate	-50.01	%	0.00	%
Change in valuation allowance	25.97	%	-37.25	%
Effective income tax rate	0.00	%	0.00	%

The Company files income tax returns in the U.S. federal jurisdiction and various state jurisdictions. The Company's 2016 to 2017 tax years remain open and subject to examination. The Company's tax returns are subject to examination by the relevant tax authority until expiration of the applicable statute of limitations, which is generally three years after the filing of the tax return. It is difficult to predict the final timing and resolution of any particular uncertain tax position. Based on the Company's assessment of many factors, including past experience and complex judgments about future events, the Company does not currently anticipate significant changes in its uncertain tax positions over the next 12 months.

(12) Commitments and Contingencies***Operating Leases***

The Company leases its corporate offices and laboratory facilities in North Brunswick, New Jersey under several non-cancellable operating leases with an unrelated third party, which expired on June 2016. The Company elected to extend the leases for an additional two-year period through June 2018. Beginning in July 2018, the Company is lease on a month to month basis through September 2018. The Company is in the process of obtaining a new facility lease.

The company recorded rent expense of \$88,258 and \$101,675 for the years ended December 31, 2017 and 2016, respectively.

Employment Agreements

The Company has entered into an employment contract with one of its officers that provide for severance and continuation of benefits in the event of termination of employment either by the Company without cause or by the employee for good reason, both as defined in the agreements. The agreement covers twelve months of salary and benefits. In addition, in the event of termination of employment following a change in control, as defined in the employment contracts, either by the Company without cause or by the employee for good reason, any unvested portion of the employee's stock options become immediately vested.

Retainer/Advisory and Finders Fee Agreements

The Company entered into a consultant agreement with related party consultant (Related Party Consultant #1) described in Note 13, beginning in May 2016. Under the terms of the arrangement the Company will pay a 4.00% Finders Fee of the aggregate gross proceeds received by the Company in any offering of Company securities from investors first introduced to the Company by related party consultant. The agreement was modified in September 2017

and the Finders Fee owed was converted to common stock at \$9.53 per share. The agreement terminates in September 2021.

The Company entered into a 12 month agreement with a consultant (Consultant #1) beginning November 2017. Under the terms of the arrangement the Company will pay a monthly advisory fee of \$5,000 to Consultant #1. In addition, the Company will pay a 4.00% Finders Fee of the aggregate gross proceeds received by the Company in any offering of Company securities from investors first introduced to the Company to Consultant #1. The agreement terminates November 2018.

The Company entered into a 12 month agreement with a consultant (Consultant #2) beginning November 2017. Under the terms of the arrangement the Company will pay a monthly consulting fee of \$25,000 to

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Consultant #2 on the successful completion by the Company of not less than \$1,000,000 in new equity funding during the term of the agreement. The Company also granted Consultant #2 a 5 year cashless option to purchase 0.5% of the Company's then outstanding common stock at a price equal to the price at which the Company conducts its next private offering of common stock and an additional five year cashless option to purchase 0.5% of the Company's then outstanding common stock at a price equal to the price at which the Company conducts its public offering of common stock, provided that such offering occurs within one year of the effective date. The agreement terminates October 2018.

The Company entered into a consultant agreement with related party consultant (Related Party Consultant #2) described in Note 13, beginning on December 22, 2017. Under the terms of the arrangement the Company will pay a monthly consulting fee of \$75,000. The agreement terminates June 2018.

Litigation

Liabilities for loss contingencies arising from claims, assessments, litigation, fines, penalties, and other sources are recorded when it is probable that a liability has been incurred and the amount can be reasonably estimated. The Company believes no matters will have a material impact to the Company's financial position or results of operations.

(13) Related Party Transactions

In December 2014, in conjunction with the offering described in Note 5, a board member/investor (Board Member #1) signed a consulting agreement with the Company for a \$30,000 per year effective January 1, 2015. For the years ended December 31, 2017 and 2016, the Company incurred consulting fees of \$30,000 and \$30,000. Consulting fees outstanding to Board Member #1 at December 31, 2017 and 2016 were \$45,000 and \$15,000, respectively and are included in Accrued Expenses on the balance sheet. In July 2016, Board Member #1 converted balances outstanding of \$45,000 into convertible promissory notes, as described in Note 5, 2016, issuances #2. The promissory notes plus related accrued interest totaling \$46,042 were converted into equity in December 2016, as described in Note 9, resulting in the issuance of 6,038 shares of common stock at a price of \$7.62 per share. In September 2016, Board Member #1 exercised 27,921 warrants at a price of \$2.24 per share, resulting in the receipt of \$62,485 by the Company. In January 2018, as described in Note 15, the Board of Directors approved the reduction in the price per common share listed in both the August 2016 PPM and December 2016 PPM from \$9.53 to \$5.00 per share. As a result, the Company issued an additional 5,434 shares of common stock for the promissory note issued in 2016.

In December 2014, in conjunction with the offering described in Note 5, a board member/investor (Board Member #2) signed a consulting agreement with the Company for a \$15,000 per year effective January 1, 2015. For the years ended December 31, 2017 and 2016, the Company incurred consulting fees of \$15,000 and \$15,000. Consulting fees outstanding to Board Member #2 at December 31, 2017 and 2016 were \$22,500 and \$7,500, respectively and are included in Accrued Expenses on the balance sheet. In November 2015, the Company received \$1,000,000 from the Board Member #2 in exchange for a convertible promissory note, as described in Note 5, 2015 issuances. The promissory notes plus related accrued interest totaling \$1,056,301 were converted into equity in December 2016, as described in Note 9, resulting in the issuance of 138,536 shares of common stock at a price of \$7.62 per share. In July 2016, a Limited Liability Company in which Board Member #2, is a partial owner exercised 12,844 warrants at a price of \$2.24 per share, resulting in the receipt of \$28,748 by the Company. In July 2016, the Board Member #2 converted balances outstanding of \$22,500 into convertible promissory notes, as described in Note 5, 2016, issuances #2. The promissory notes plus related accrued interest totaling \$23,020 were converted into equity in December 2016, as described in Note 9, resulting in the issuance of 3,019 shares of common stock at a price of \$7.62 per share. In December 2016, as described in Note 9, Board Member #2 purchased 26,230 shares of common stock in conjunction with a stock offering at a price of \$9.53 per share, resulting in the receipt of \$250,000 by the Company. In August 2016, the Company received \$218,767 from Board Member #2 in exchange for a convertible promissory note, as

described in Note 5, 2016, issuances #3. The promissory notes plus related accrued interest totaling \$223,442 were converted into equity in December 2016, as described in Note 9, resulting in the issuance of 26,048 shares of common stock at a price of \$8.58 per share. In January 2018, as described in Note 14, the Board of Directors approved the reduction in the price per common share listed in both the August 2016 PPM and December 2016 PPM from \$9.53 to \$5.00 per share. As a result, the Company issued an additional 23,607, 124,682, 2,717 and 23,444 shares of common stock, respectively for the December 2016 PPM, the November 2015 convertible promissory note, the August 2016 convertible promissory note, and the Board compensation convertible promissory note, respectively.

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In December 2014, in conjunction with the offering described in Note 5, a board member/investor (Board Member #3) signed a consulting agreement with the Company for a \$15,000 per year effective January 1, 2015. For the years ended December 31, 2017 and 2016, the Company incurred consulting fees of \$15,000 and \$15,000. Consulting fees outstanding to the Board Member #3 at December 31, 2017 and 2016 were \$22,500 and \$7,500, respectively and are included in Accrued Expenses on the balance sheet. In July 2016, Board Member #3 converted balances outstanding of \$22,500 into convertible promissory notes, as described in Note 5, 2016, issuances #2. The promissory notes plus related accrued interest totaling \$23,020 were converted into equity in December 2016, as described in Note 9, resulting in the issuance of 3,019 shares of common stock at a price of \$7.63 per share. In January 2018, as described in Note 14, the Board of Directors approved the reduction in the price per common share listed in both the August 2016 PPM and December 2016 PPM from \$9.53 to \$5.00 per share. As a result, the Company issued an additional 2,717 shares of common stock for the promissory note issued in 2016.

In July 2016, the Company signed a consulting agreement with a related party (Related Party Consultant #1) to assist in raising capital. In addition, the consultant is entitled to a Finders Fee of 4.00% of capital raised from its investors. In August 2016 the Company received \$200,000 from Related Party Consultant #1 in exchange for a convertible promissory note, as described in Note 5, 2016 issuances #3. The promissory notes plus related accrued interest totaling \$204,110 were converted into equity in December 2016, as described in Note 9, resulting in the issuance of 23,794 shares of common stock at a price of \$8.58 per share. Finders Fees of \$93,400 and \$0, were earned, respectively for December 31, 2017 and 2016. As described in Note 9, in lieu of cash payment, Related Party Consultant #1 elected to receive shares at the current fair value of \$9.53 per common shares, resulting in the issuance of 9,799 common shares of the Company. In January 2018, as described in Note 14, the Board of Directors approved the reduction in the price per common share listed in both the August 2016 PPM and December 2016 PPM from \$9.53 to \$5.00 per share. As a result, the Company issued an additional 21,415 and 8,819 shares of common stock, respectively, for the promissory note issued in 2016 and the Finders Fee earned in 2017.

In December 2017, the Company signed a consulting agreement with a related party (Related Party Consultant #2) to provide marketing services. Under the terms of the arrangement, the Company will pay a monthly consulting fee of 15,000 shares of common stock, which is equal to \$75,000 based on the January 2018 PPM price of \$5.00 per share. As of December 31, 2017 and 2016, no consulting fees were earned.

(14) Subsequent Events

In preparing the financial statements as of and for the year ended December 31, 2017, we evaluated subsequent events for recognition and measurement purposes through October 1, 2018, the date that the independent auditors report was originally issued and the audited annual financial statements were available for issuance. After the original issuance of the financial statements and through October 1, 2018, we have evaluated subsequent events or transactions that have occurred that may require disclosure in the accompanying financial statements. Except as described below, the Company has concluded that no other events or transactions have occurred that require disclosure in the accompanying consolidated financial statements.

In January 2018, the board of directors approved a 1:4.517 reverse stock split on common shares. In addition, the Company increased the number of authorized shares to 27,673,234. Common shares were increased to 22,138,587 and preferred shares of 5,534,647 were added.

In January 2018, the Company issued a PPM (January 2016 PPM) to raise \$4,000,000 by offering 800,000 shares of common stock at \$5.00 per share. The Company has issued 230,000 shares of common stock and received \$1,150,000 in gross proceeds through October 1, 2018.

In February 2018, the Company revised its 2016 PPM and reduced the price per share to those investors participating in the August 2016 PPM, December 2016 PPM, converting convertible promissory notes to equity on December 31, 2016, transaction with Related Party #1 and the private sale of shares of the Company President to outside investors, from \$2.11 to \$1.11, resulting in the issuance of an additional 659,011 shares of common stock.

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In February 2018, the Company has entered into a 6 month agreement with a consultant (Consultant #3). Under the terms of the arrangement the Company will pay a monthly retainer of \$7,000 to Consultant #3. In addition, if the Company retains a first financing, Consultant #3 will receive a one-time \$15,000 bonus, and increase the retainer to \$8,000 per month. Following the Company's IPO, the monthly retainer would increase to \$10,000 per month. The agreement has been renewed.

In March 2018, in conjunction with the sale of 200,000 shares of common stock to an investor, described previously in this note, the Company has given an investor the following incentives: The right to purchase an additional 200,000 shares of common stock can be purchased at 0.80 times the fair market value of a common share (as determined in good faith by the Board of Directors of the Company); The right to purchase an additional 200,000 shares of common stock at 150% of the Qualified Financing price per share, if such events occurs. These purchase options are considered warrants. The current market value at the date of the transaction was the January 2018 PPM price of \$5.00 per common share. The fair value of the first set of warrants using the Black-Scholes Model was \$520,000 and was converted at the exercise price of \$4.00, which was 80% of the current market value of \$5.00. These warrants were valued in the same manner as those described in Note 5, resulting in the bifurcation of \$342,105 from the equity investment of \$1,000,000. These warrants are equity warrants because they are associated with an equity investment. The fair value of the second set of warrants has not been determined because a Qualified Financing has not occurred through October 1, 2018. The Company also gave the investor the right to receive additional common stock shares due to dilution, as defined in the agreement;

In March 2018, as part of an agreement with Related Party Consultant #1, described previously in Note 13, in conjunction with the raising of \$1,100,000, the Company has recorded a liability to pay the related party consultant for Finders Fees earned of \$44,000 or 4.00% of the funds raised.

In March 2018, as part of an agreement with a Consultant #2 described previously in Note 13, in conjunction with the raising of \$1,000,000, the Company began paying a consulting fee of \$25,000 per month to Consultant #2.

In March 2018, the Company signed a deferment arrangement with the law firm described in Note 13 to address the Company's outstanding liability of \$527,123 (the Fee Amount) at December 31, 2017. Under the terms of the agreement, the law firm agreed to issue a credit of 20% of the outstanding balance or \$105,424, if the Company repays the Fee Amount within fifteen months, which is May 2019.

In conjunction with the deferment arrangement described above, the Company shall issue to law firm on the closing of a \$2,000,000 Qualified Financing, a warrant, in a form to be mutually agreed by the parties, to purchase an amount of common stock of the Company issued in such Qualified Financing equal to 1.00% of the outstanding securities of the Company as of the date of issuance of the warrant (including, but not limited to any issued options and warrants). The term of the warrant shall be 10 years from the issuance date and an exercise price equal to the lesser of \$5.00, such price subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to shares of the Company, or the price per share at which one share of the Company's stock is sold in the Qualified Financing.

In addition, upon the occurrence of the next equity financing transaction in which the Company receives gross proceeds of \$2,000,000 Qualified Financing, the Company shall commence payment of the Fee Amount in equal installments over the 12 month period immediately following such Qualified Financing, provided, however, that if the Company receives more than \$5,000,000 in gross proceeds from the next Qualified Financing then the Company shall pay the remaining balance on the Fee Amount within 30 days.

In the event there is a change in control of the Company other than pursuant to a bonafide financing, the Company shall immediately pay the remaining balance on Fee Amount any outstanding amounts owed other than the Fee

Amount and shall pay the law firm an amount equal to one percent of the net from such transaction.

In June 2018, the Company signed an agreement with a consultant (Related Party Consultant #3). Under the arrangement, the Related Party Consultant #3 will be paid in common stock at \$5.00 per share in lieu of cash of \$2,115 per week. The consultant will become a full-time employee if the Company is able to complete a successful Corporate Financing. In addition, upon employment, the consultant will be entitled to a base salary and options, as defined.

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In July 2018, the Board of Directors granted 95,300 common stock options to 5 non-employees at the current offering price per the January 2018 PPM of \$5.00 per share. As of the issuance date, 38,775 of the options granted vested immediately and the remaining 56,525 options vest either monthly or annually through April 2021.

In July 2018, the agreement with Related Party Consultant #2, described in Note 13 was modified to reduce the cumulative liability from 90,000 common shares or \$450,000 for the six months ending June 30, 2018 and reflect a one-time payment of 45,000 shares of common stock at \$5.00 per share, in lieu of cash which equates to \$225,000. The amendment also includes an opportunity for the consultant to be compensated with up to an additional 45,000 shares of the Company's common stock upon the achievement of certain future milestones and deliverables as defined with no current expiration date.

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PDS Biotechnology Corporation
Balance Sheets
(Unaudited)

	September 30, 2018	December 31, 2017
Assets		
Current assets:		
Cash and cash equivalents	\$ 142,669	\$ 175,884
Prepaid expenses and other receivables	20,438	54,802
Total current assets	163,107	230,686
Equipment, net	34,240	51,821
Intangible assets, net	42,970	46,805
Other assets	11,452	11,452
	88,662	110,078
Total assets	\$ 251,769	\$ 340,764
Liabilities and Stockholders' (Deficit)		
Current Liabilities:		
Capital lease obligation	\$ 4,927	\$ 14,319
Accounts payable	868,430	624,124
Accrued expenses	418,731	272,169
Payroll taxes	8,436	8,436
Total current liabilities	1,300,524	919,048
Long-Term Liabilities:		
Convertible Promissory Note Payable	30,000	30,000
Capital lease obligation, net of current	—	1,244
Total long-term liabilities	30,000	31,244
Total liabilities	1,330,524	950,292
Commitments and contingencies (note 10)		
Stockholders' (deficit):		
Preferred stock; \$0.00001 par value; 5,534,647 shares authorized; and 0 and 0 shares issued and outstanding at September 30, 2018 and December 31, 2017, respectively	—	—
Common stock; \$0.00001 par value; 22,138,587 shares authorized; 10,332,495 and 9,354,808 shares issued and outstanding at September 30, 2018 and December 31, 2017, respectively	103	94
Additional paid-in capital	19,040,692	17,492,996
Accumulated deficit	(20,119,550)	(18,102,618)
Total stockholders' (deficit)	(1,078,755)	(609,528)
Total liabilities, and stockholders' (deficit)	\$ 251,769	\$ 340,764

See accompanying notes to unaudited condensed financial statements

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PDS Biotechnology Corporation
Statements of Operations
(Unaudited)

	Nine Months Ended		Three Months Ended	
	September 30, 2018	September 30, 2017	September 30, 2018	September 30, 2017
Revenues	\$ —	\$ —	\$ —	\$ —
Operating expenses:				
Research and development	563,812	1,852,564	194,068	398,421
General and administrative	1,428,113	1,066,617	509,083	366,666
Depreciation and amortization	21,415	21,459	7,119	7,230
Total operating expenses	2,013,340	2,940,640	710,270	772,317
Loss from operations	(2,013,340)	(2,940,640)	(710,270)	(772,317)
Other income (expense):				
Interest expense, net	(2,691)	(716)	(939)	(482)
Other	(901)	(1,431)	—	—
	(3,592)	(2,147)	(939)	(482)
Net loss	\$ (2,016,932)	\$ (2,942,787)	\$ (711,208)	\$ (772,799)
Net (loss) per common share:				
Basic and diluted	\$ (0.20)	\$ (0.32)	\$ (0.08)	\$ (0.08)
Weighted average number of shares outstanding				
Basic and diluted	9,972,670	9,300,214	10,258,238	9,339,779

See accompanying notes to unaudited condensed financial statements

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PDS Biotechnology Corporation
Statements of Stockholders' Deficit
(Unaudited)

	Common Stock		Additional paid-in capital	Accumulated deficit	Total stockholders' equity (deficit)
	Shares	Amount			
Balance at January 1, 2018	9,354,808	\$ 94	\$ 17,492,996	\$ (18,102,618)	\$ (609,528)
Capitalized offering costs	—	—	(46,000)	—	(46,000)
Stock based compensation	—	—	49,336	—	49,336
Issuance of common stock for cash	923,887	9	933,255	—	933,264
Issuance of common stock for consulting fees	53,800	1	268,999		269,000
Issuance of warrants			342,105		342,105
Net loss	—	—	—	(2,016,932)	(2,016,932)
Balance at September 30, 2018	10,332,495	103	19,040,692	(20,119,550)	(1,078,755)

See accompanying notes to unaudited condensed financial statements

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PDS Biotechnology Corporation
Statements of Cash Flows
(Unaudited)

	Nine Months Ended	
	September 30, 2018	September 30, 2017
Cash flows from operating activities:		
Net loss	\$ (2,016,932)	\$ (2,942,787)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	21,415	21,459
Stock-based compensation expense	49,336	202,248
Stock-based consulting fees	268,999	93,400
Changes in operating assets and liabilities:		
Prepaid expenses and other receivables	34,366	84,833
Accounts payable	244,305	163,602
Accrued expenses	146,562	(14,358)
Net cash used in operating activities	(1,251,949)	(2,391,603)
Cash flows from investing activities:		
Purchases of property and equipment	—	(2,335)
Net cash used in investing activities	—	(2,335)
Cash flows from financing activities		
Proceeds from issuance of common stock	1,275,370	1,015,000
Issuance costs	(46,000)	(78,685)
Repayments of capital lease obligation	(10,636)	(9,850)
Net cash provided by financing activities	1,218,734	926,465
Net decrease in cash and cash equivalents	(33,215)	(1,467,473)
Cash and cash equivalents at beginning of year	175,884	1,956,965
Cash and cash equivalents at end of nine months	\$ 142,669	\$ 489,492
Supplemental disclosures of cash flow information:		
Deferred offering costs included in accounts payable and accrued expenses	\$ 2,000	\$ —
Cash paid for interest	\$ 1,022	\$ 1,741
Cash paid for income taxes	\$ 400	\$ 500

See accompanying notes to unaudited condensed financial statements

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PDS BIOTECHNOLOGY CORPORATION

Notes to Financial Statements

September 30, 2018

(Unaudited)

(1) Nature of Business and Liquidity

Organization

PDS Biotechnology Corporation (the Company) is a biopharmaceutical company developing novel cancer immunotherapies and vaccines for infectious diseases. The Company was incorporated on December 6, 2005 under the laws of the State of Delaware. The Company's operations are located in North Brunswick, New Jersey.

Business Condition

The financial statements have been prepared on a going concern basis which assumes the realization of assets and liabilities in the normal course of business. The Company has incurred losses and negative cash flows from operations since inception and had an accumulated deficit of \$20,119,550 as of September 30, 2018. The Company anticipates incurring additional losses until such time, if ever, that it can generate significant revenues from its product candidates currently in development. The Company's primary source of liquidity to date has been the issuance of debt and equity securities. Management believes that the cash and cash equivalents as of September 30, 2018 are sufficient to fund operations through the fourth quarter of 2018. Substantial additional financing will be needed by the Company to fund its operations and to commercially develop its product candidates. There is no assurance that such financing will be available when needed or on acceptable terms. In view of these matters, there is substantial doubt that the Company will be able to continue as a going concern. The Company's ability to continue as a going concern is dependent upon the Company's ability to expand operations and to achieve a level of profitability. The financial statements of the Company do not include any adjustments relating to the recoverability and classification of recorded assets, or the amounts and classifications of liabilities that might be necessary should the Company be unable to continue as a going concern.

Management is currently evaluating different strategies to obtain the required funding of future operations. These strategies may include, but are not limited to: additional funding from current or new investors, borrowings of debt, and/or an initial public offering (IPO) of the Company's common stock. In November 2018, the Company announced it had entered into a merger agreement with Edge Therapeutics. The merger is expected to create a combined company with sufficient cash to fund operations into 2020, as described in Note 12. There can be no assurance that these future funding efforts will be successful.

Risks and Uncertainties

The Company is subject to those risks associated with any specialty pharmaceutical company that has substantial expenditures for research and development. There can be no assurance that the Company's research and development projects will be successful, that products developed will obtain necessary regulatory approval, or that any approved product will be commercially viable. In addition, the Company operates in an environment of rapid technological change, and is largely dependent on the services of its employees and consultants.

Basis of Presentation

The Company has prepared the accompanying unaudited interim condensed financial statements in conformity with U.S. GAAP. Certain footnotes and other financial information that are normally required by U.S. GAAP can be

condensed or omitted. These condensed financial statements have been prepared on the same basis as the Company's annual financial statements and, in the opinion of management, reflect all adjustments, consisting only of normal recurring adjustments that are necessary for a fair statement of its financials information. The balance sheet as of December 31, 2017 included herein was derived from the audited financial statements as of that date. These condensed financial statements and notes should be read in conjunction with the Company's audited financial statements for the year ended December 31, 2017.

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TABLE OF CONTENTS**(2) Summary of Significant Accounting Policies***Use of Estimates*

The preparation of financial statements in conformity with U.S. generally accepted accounting principles (GAAP) requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Prepaid Expenses

Prepaid expenses consist of the following at September 30, 2018 and December 31, 2017:

	September 30, 2018	December 31, 2017
Insurance	\$ 4,188	\$ 5,901
Service agreements	15,000	40,000
Other receivables	—	3,901
Annual royalty fee	1,250	5,000
	\$ 20,438	\$ 54,802

Impairment of Long-Lived Assets

The Company assesses the recoverability of its long-lived assets, which include property and equipment, whenever significant events or changes in circumstances indicate impairment may have occurred. If indicators of impairment exist, projected future undiscounted cash flows associated with the asset are compared to its carrying amount to determine whether the asset's value is recoverable. Any resulting impairment is recorded as a reduction in the carrying value of the related asset in excess of fair value and a charge to operating results. For the nine months ended September 30, 2018 and for the year ended December 31, 2017, the Company determined that there was \$0 and \$0, respectively, impairment of its long-lived assets.

Per Share Information

Basic earnings (loss) per share are calculated using the weighted average number of common shares outstanding for the period presented. Diluted earnings per share includes the addition of potentially dilutive securities as of September 30, 2018 and 2017. As the Company reported net losses, the effect is anti-dilutive and were excluded from the diluted earnings (loss) calculation. There were 331,656 and 155,181 warrants outstanding as of September 30, 2018 and 2017, respectively, which are considered common stock equivalents but are not included in the calculation because they are anti-dilutive.

(3) Property and Equipment

Property and equipment consisted of the following:

	Estimated useful life (in years)	September 30, 2018	December 31, 2017
Lab equipment	5	\$ 86,911	\$ 135,369
Lab furniture	7	1,343	1,343

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Computer equipment	3	13,545	16,963
Total cost		101,799	153,675
Less accumulated depreciation		(67,559)	(101,854)
Property and equipment, net		\$ 34,240	\$ 51,821

Depreciation expense was \$17,581 and \$17,624, respectively, for the nine months ended September 30, 2018 and 2017 and \$5,841 and \$5,952, respectively, for the three months ended September 30, 2018 and 2017. For the nine months ended September 30, 2018 and 2017, the Company determined that there was \$0 and \$0, respectively, impairment of its property and equipment.

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In November 2017 the Company received \$30,000 from an investor in exchange for a convertible promissory note (2017 issuances). The 2017 issuances bears interest at 7.50% per annum. The 2017 issuances have no defined payment terms and matures on December 1, 2020, unless one of the following occurs prior to the maturity date, as defined in the agreement.

Automatic QF Conversion. In the event the Company issues and sells shares (in a sale or series of sales) of its Equity Securities on or before the Maturity Date in an equity financing in which cumulative gross proceeds including the aggregate outstanding principal balance and all accrued and unpaid interest on the

1. Notes) equal or exceed \$5M (the Qualified financing) then the outstanding principal balance of the Note and all unpaid interest (Conversion Amount), shall be converted into such Equity Securities at the Conversion Price. The Conversion price shall be the lesser of a) the price per share paid by the purchasers of such Equity Securities in such Qualified Financing, and (b) \$2.11 per share.
2. MD Conversion. In the event that a Qualified Financing has not closed on or prior to the Maturity Date, all outstanding principal and interest of the Note will convert at a conversion price equal to \$2.11 per share.

A summary of convertible promissory notes outstanding is listed below

	September 30, 2018	December 31, 2017
Convertible promissory note holder #1 , net	\$ 30,000	\$ 30,000

(5) Capital Lease Obligation

In February 2016, the Company leased lab equipment with a value of \$40,116 from an unrelated third party. Based on the terms of the lease, it met the criteria to be capitalized. The capital lease obligation is payable over 36 months beginning in February 2016, with a final payment due in January 2019. The implicit interest rate on the capital lease obligation is 7.70%. In conjunction with the recording of the capital lease obligation, a property and equipment was recorded in the same amount, to be amortized over a 60 months on a straight-line basis.

September 30,	Amount
2018	\$ 3,755
2019	1,251
Total minimum lease payments	5,006
Less amounts representing interest	(79)
Present value of net minimum lease payments	4,927
Current capital lease obligations	\$ 4,927

Amortization expense recorded for the nine months ended September 30, 2018 and 2017 was \$6,017 and \$6,017, respectively, and \$2,006 and \$2,006 for the three months ended September 30, 2018 and 2017, respectively. The Company has subsequently decided to buyout the capital lease and the final payment was made in October 2018.

(6) Accrued Expenses

Accrued expenses consisted of the following:

	September 30, 2018	December 31, 2017
Consulting	\$ 199,800	\$ 100,500
General Research	34,825	21,016
Interest	1,929	247

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Other	44,177	44,176
Payroll	—	57,292
Professional	130,000	40,938
Rent	8,000	8,000
	\$ 418,731	\$ 272,169

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TABLE OF CONTENTS**(7) Warrants**

In March 2018, in conjunction with sale of 200,000 shares of common stock to an investor, described in Note 8, the Company has given an investor the following incentives: The right to purchase an additional 200,000 shares of common stock which can be purchased at 0.80 times the fair market value of a common share (as determined in good faith by the Board of Directors of the Company); The right to purchase an additional 200,000 shares of common stock at 150% of the Qualified Financing price per share, if such events occurs. The current market value at the date of the transaction was the January 2018 PPM price of \$5.00 per common share. These purchase options are considered warrants. The fair value of the first set of warrants using the Black-Scholes Model was \$520,000 and was converted at the exercise price of \$4.00, which was 80% of the current market value of \$5.00. These warrants were valued using the Black-Scholes model described herein, resulting in the bifurcation of \$342,105 from the equity investment of \$1,000,000. The fair value of the second set of warrants has not been determined because a Qualified Financing has not occurred through September 30, 2018.

The assumptions used in the Black-Scholes option pricing model to determine the fair value of warrants granted to vendors and investors during the period were as follows:

	September 30, 2018	December 31, 2017
Risk-free interest rate	2.89 %	N/A
Expected term (in years)	2.00	N/A
Expected volatility	82.9 %	N/A
Expected dividend yield	—	—
Exercise price	\$ 4.00	\$ —
Fair value of ordinary share	\$ 5.00	\$ —

A summary of warrant activity is listed below:

	Warrants
Balance as of January 1, 2017	155,181
Granted	—
Exercised	—
Balance as of December 31, 2017	155,181
Granted	200,000
Exercised	(23,525)
Balance as of September 30, 2018	331,656

(8) Stockholders' Deficit***Common Stock Transactions***

In January 2018, the Company increased the number of authorized shares of common stock to 22,138,587.

In January 2018, the Board of Directors approved the reduction in the price per common share listed in both the August 2016 PPM and December 2018 PPM from \$9.53 to \$5.00 per share. As a result, the Company issued an additional 140,215 and 40,601 shares of common stock, respectively, for the August 2016 PPM and December 2016 PPM investors.

In addition, since the convertible promissory notes issued during 2015 and 2016 were originally converted at \$9.53 per share upon maturity on December 31, 2016, these investors received the same reduction to \$5.00 per share. As a result, the Company issued an additional 190,140 and 168,458 shares of common stock, respectively, for the convertible promissory notes issued in 2015 and 2016, respectively.

In addition, the Company issued an additional 95,837 and 8,819 shares of common stock for the 2017 December 2016 PPM investors and a related party consultant, respectively. The Company further issued an additional 14,941 shares of common stock to three shareholders which resulted from a private stock sale in 2017.

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In January 2018, the Company issued a PPM (January 2018 PPM) to raise \$4,000,000 by offering 800,000 shares of common stock at \$5.00 per share. The Company has issued 230,000 shares of common stock and received \$1,150,000 in gross proceeds through September 30, 2018. After subtracting out cumulative financing costs of \$46,000, the Company received net proceeds of \$1,104,000.

In March 2018, in conjunction with the sale of common stock, the Company has given an investor the following incentives. The right to receive additional common stock shares due to dilution, as defined in the agreement. The right to purchase an additional 200,000 shares of common stock can be purchased at 0.80 times the fair market value of a common share (as determined in good faith by the Board of Directors of the Company). An additional 200,000 shares of common stock can be purchased at 150% of the Qualified Financing price per share.

A summary of equity transactions is as follows:

	September 30, 2018	December 31, 2017
Cash received	\$ 1,275,370	\$ 1,015,000
Offering costs	(46,000)	(78,686)
Net Proceeds	\$ 1,229,370	\$ 936,314
Services rendered	\$ 271,000	\$ 93,400
Shares issued	977,687	116,288

Preferred Stock Transactions

In January 2018, the Company increased the number of authorized shares to 27,673,234, which included 22,138,587 shares of common stock described previously in this footnote and 5,534,647 shares of preferred shares. There were no preferred shares issued through September 30, 2018.

(9) Stock Option Plan***Adoption of Stock Option Plan***

On January 22, 2009, the Company's board of directors adopted the PDS Biotechnology 2009 Stock Option Plan (the 2009 Plan), the 2009 Plan is effective November 1, 2008 and reserved 815,054 shares for issuance under the plan. In addition, the 2009 Plan limited the number of shares issued to an employee/director to 442,772 per year. The 2009 Plan was approved by the Company's shareholders in October 2009. On March 12, 2012, the Company's board and shareholders amended the plan (Amendment #1) to increase the number of common shares issuable under the 2009 Plan to 1,479,212 ordinary shares. In addition, the 2009 Plan increased the number of shares that can be issued to an employee/director to 885,544 per year. On December 15, 2014, the Company's board and shareholders amended the plan (Amendment #2) to increase the number of common shares issuable under the 2009 Plan to 1,713,217 ordinary shares. The 2009 Plan authorizes the board of directors or a committee of the board to grant incentive share options, non-qualified share options, or NQSOs, to eligible employees, outside directors and consultants of the Company. As of September 30, 2018, and December 31, 2017, 56,126 and 136,529, respectively common shares remained available for future grants.

During the nine months ended September 30, 2018, the Company granted options to purchase common shares to employees and outside directors. The Company recorded share-based compensation expense of \$49,336 and \$202,248 for the nine months ended September 30, 2018 and 2017, respectively, and \$41,691 and \$60,667 for the three months ended September 30, 2018 and 2017, respectively. Options generally vest over a period of one to five years, and options that lapse or are forfeited are available to be granted again. The contractual life of all options is ten years. The

expiration dates of the outstanding options range from 2019 to 2028. The Company measures and records the value of options granted to non-employees over the period of time services are provided and, as such, unvested portions are subject to re-measurement at subsequent reporting periods.

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Unrecognized share-based compensation charges as of September 30, 2018, are expected to be recognized as follows:

September 30,	Amount
2019	\$ 143,158
2020	94,837
2021	13,667
2022	—
2023	—
Thereafter	—
	\$ 251,662

The assumptions used in the Black-Scholes option pricing model to determine the fair value of share options granted to employees during the period were as follows:

	Nine Months Ended September 30, 2018		Twelve Months Ended December 31, 2017
Risk-free interest rate	2.75	%	N/A
Expected term (in years)	6.25		N/A
Expected volatility	83.6	%	N/A
Expected dividend yield	—		—
Exercise price	\$ 5.00		\$ —
Fair value of ordinary share	\$ 4.21		\$ —

The following table summarizes the stock option activity:

	Options	Weighted Average Exercise Price	Weighted Average Remaining Life (In Years)	Aggregate Intrinsic Value
Balance as of January 1, 2017	1,685,965	\$ 2.09	6.14	\$ 222,697
Granted	—	—	—	—
Forfeited	(111,667)	2.24	—	—
Balance as of December 31, 2017	1,574,298	2.10	4.93	222,697
Granted	95,300	5.00	—	—
Forfeited	(3,542)	2.24	—	—
Exercised	(11,351)	2.24	—	—
Balance as of September 30, 2018	1,654,705	2.26	4.48	4,529,500
Options exercisable, September 30, 2018	1,603,261	\$ 2.17	4.31	\$ 4,529,501

As of September 30, 2018, the unrecognized compensation cost related to outstanding options was \$251,662 and is expected to be recognized as expense over a weighted-average period of approximately 1.84 years.

Share-based compensation is allocated to employees based on their respective departments. All Board of Directors compensation is charged to general and administrative compensation.

Share-based compensation expense was classified in the statements of operations as follows:

	Nine Months Ended September 30, 2018	Nine Months Ended September 30, 2017	Three Months Ended September 30, 2018	Three Months Ended September 30, 2017
Research and development	\$ 24,801	\$ 51,309	\$ 21,582	\$ 10,354
General and administrative	24,535	150,939	20,109	50,313
Total share-based compensation	\$ 49,336	\$ 202,248	\$ 41,691	\$ 60,667

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(10) Commitments and Contingencies

Operating Leases

The Company leases its corporate offices and laboratory facilities in North Brunswick, New Jersey under several non-cancellable operating leases with an unrelated third party, which expired on June 2016. The Company elected to extend the leases for an additional two-year period through June 2018. Beginning in July 2018, the Company leases on a month to month basis through October 2018. Beginning in October 2018, the Company rents a storage space with an unrelated third party. The Company leases this space on a month to month basis. In November 2018, the Company began leasing its corporate offices and laboratory facilities in Princeton, New Jersey under an operating lease with an unrelated third party. The Company leases this space on a month to month basis.

The company recorded rent expense of \$46,931 and \$71,615, respectively for the nine months ended September 30, 2018 and September 30, 2017.

Employment Agreements

The Company has entered into an employment contract with one of its officers that provides for severance and continuation of benefits in the event of termination of employment either by the Company without cause or by the employee for good reason, both as defined in the agreements. The agreement covers twenty-four months of salary and benefits. In addition, in the event of termination of employment following a change in control, as defined in the employment contracts, either by the Company without cause or by the employee for good reason, any unvested portion of the employee's stock options become immediately vested.

Retainer/Advisory and Finders Fee Agreements

The Company entered into a consultant agreement with related party consultant (Related Party Consultant #1) described in Note 11, beginning in May 2016. Under the terms of the arrangement the Company will pay a 4.00% Finders Fee of the aggregate gross proceeds received by the Company in any offering of Company securities from investors first introduced to the Company by related party consultant. The agreement was modified in September 2017 and the Finders Fee owed was converted to common stock at \$9.53 per share. In 2018, the Finders Fee earned through June 2018 was converted to 8,800 shares at \$5.00 per share. The additional Finders Fee earned through September 2018 is included as an accrued expense. The agreement terminates in September 2021.

The Company entered into a 12 month agreement with a consultant (Consultant #1) beginning November 2017. Under the terms of the arrangement the Company will pay a monthly advisory fee of \$5,000 to Consultant #1 for the first three months. In addition, the Company will pay a 4.00% Finders Fee of the aggregate gross proceeds received by the Company in any offering of Company securities from investors first introduced to the Company by Consultant #1. As of September 30, 2018, no introductions have been made. The agreement terminated November 2018.

The Company entered into a 12 month agreement with a consultant (Consultant #2) beginning November 2017. Under the terms of the arrangement the Company will pay a monthly consulting fee of \$25,000 to Consultant #2 on the successful completion by the Company of not less than \$1,000,000 in new equity funding during the term of the agreement. The Company will grant Consultant #2 a 5 year cashless option to purchase 0.5% of the Company's then outstanding common stock at a price equal to the price at which the Company conducts its next private offering of common stock and an additional five year cashless option to purchase 0.5% of the Company's then outstanding common stock at a price equal to the price at which the Company conducts its public offering of common stock, provided that such offering occurs within one year of the effective date. The agreement terminated October 2018.

The Company entered into a consultant agreement with related party consultant (Related Party Consultant #2) described in Note 11, beginning in December, 2017. Under the terms of the arrangement, the Company will pay a monthly consulting fee of 15,000 shares of common stock, which is equal to \$75,000 based on the January 2018 PPM price of \$5.00 per share. The agreement was amended in July 2018. Under the terms of the amendment, the Company made a one-time payment to related party consultant of 45,000 shares at \$5.00 per share in lieu of cash which equates to \$225,000. The amendment also includes an opportunity for the consultant to be compensated with up to an additional 45,000 shares of the Company's common stock upon the achievement of certain future milestones and deliverables as defined with no current expiration date.

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In February 2018, the Company entered into an agreement with a consultant (Consultant #3). Under the terms of the arrangement the Company will pay a monthly retainer of \$7,000 to Consultant #3. In addition, if the Company retains a first financing, Consultant #3 will receive a one-time \$15,000 bonus, and increase the retainer to \$8,000 per month. Following the Company's IPO, the monthly retainer would increase to \$10,000 per month. The agreement can terminate any time with thirty days written notice.

In March 2018, in conjunction with the sale of 200,000 shares of common stock to an investor, described previously in Note 8, the Company has given the investor the right to receive additional common stock shares due to dilution, as defined in the agreement.

In June 2018, the Company entered into agreement with a consultant (Consultant #4). Under the terms of the arrangement the Company will pay a monthly retainer of \$10,000 to Consultant #4. In addition, the Company will pay a Transaction Fee equal to a percentage of the gross proceeds received by the Company in any offering of Company securities from investors first introduced to the Company by Consultant #4 based on a sliding scale in the agreement. As of September 30, 2018, no introductions have been made. The agreement was terminated in August 2018.

In September 2018, the Company entered into an employment agreement for the position of Chief Medical Officer. The employment is contingent upon the Company's notification of the closing, or imminent closing, of an impending corporate finance. The employee would receive a base salary of cash compensation plus an option grant of 190,466 shares of common stock upon approval by the Board of Directors.

In October 2018, the Company agreed to provide cash compensation to certain employees and service providers of the Company upon the earlier of a consummation of Change of Control or a Qualified Equity Financing. In addition, the Company agreed to grant stock options to employees and service providers immediately prior to the consummation of a Change of Control with an exercise price equal to the fair market value of a share of common stock on the date of grant.

Litigation

Liabilities for loss contingencies arising from claims, assessments, litigation, fines, penalties, and other sources are recorded when it is probable that a liability has been incurred and the amount can be reasonably estimated. The Company believes no matters will have a material impact to the Company's financial position or results of operations.

(11) Related Party Transactions

In March 2018, the Company signed a deferment arrangement with its law firm to address the Company's outstanding liability of \$527,123 (the Fee Amount) at December 31, 2017. Under the terms of the agreement, the law firm agreed to issue a credit of 20% of the outstanding balance or \$105,424, if the Company repays the Fee Amount within fifteen months, which is May 2019.

In conjunction with the deferment arrangement described above, the Company shall issue to law firm on the closing of a \$2,000,000 Qualified Financing, a warrant, in a form to be mutually agreed by the parties, to purchase an amount of common stock of the Company issued in such Qualified Financing equal to 1.00% of the outstanding securities of the Company as of the date of issuance of the warrant (including, but not limited to any issued options and warrants). The term of the warrant shall be 10 years from the issuance date and an exercise price equal to the lesser of \$5.00, such price subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to shares of the Company, or the price per share at which one share of the Company's stock is sold in the Qualified Financing.

In addition, upon the occurrence of the next equity financing transaction in which the Company receives gross proceeds of \$2,000,000 Qualified Financing, the Company shall commence payment of the Fee Amount in equal installments over the 12 month period immediately following such Qualified Financing, provided, however, that if the Company receives more than \$5,000,000 in gross proceeds from the next Qualified Financing then the Company shall pay the remaining balance on the Fee Amount within 30 days.

In the event there is a change in control of the Company other than pursuant to a bonafide financing, the Company shall immediately pay the remaining balance on Fee Amount any outstanding amounts owed other than the Fee Amount and shall pay the law firm an amount equal to one percent of the net from such transaction.

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In December 2014, a board member/investor (Board Member #1) signed a consulting agreement with the Company for a \$30,000 per year effective January 1, 2015. For the nine months ended September 30, 2018, the Company incurred consulting fees of \$22,500. Consulting fees outstanding to Board Member #1 at September 30, 2018 are \$67,500 and are included in Accrued Expenses on the balance sheet. In January 2018, the Board of Directors approved the reduction in the price per common share listed in both the August 2016 PPM and December 2016 PPM from \$9.53 to \$5.00 per share. As a result, the Company issued an additional 5,434 shares of common stock for the Board compensation convertible promissory note issued to Board Member #1 in 2016.

In December 2014, a board member/investor (Board Member #2) signed a consulting agreement with the Company for a \$15,000 per year effective January 1, 2015. For the nine months ending September 30, 2018, the Company incurred consulting fees of \$11,250. Consulting fees outstanding to Board Member #2 at were \$33,750 and are included in Accrued Expenses on the balance sheet. In January 2018, the Board of Directors approved the reduction in the price per common share listed in both the August 2016 PPM and December 2016 PPM from \$9.53 to \$5.00 per share. As a result, the Company issued an additional 23,607, 124,682, 23,444, and 2,717 shares of common stock, respectively to Board Member #2 for the December 2016 PPM, the November 2015 convertible promissory note, the August 2016 convertible promissory note and the Board compensation convertible promissory note, respectively. In July 2018, Board Member #2 exercised 15,362 warrants at a price of \$4.25 per share, resulting in the receipt of \$65,277 by the Company. In August 2018, Board Member #2 exercised 8,163 warrants at a price of \$4.25 per share, resulting in the receipt of \$34,686 by the Company. In September 2018, Board Member #2 exercised 11,351 stock options at a price of \$2.24 per share, resulting in the receipt of \$25,406 by the Company. In October 2018, Board Member #2 exercised 42,755 stock options at a price of \$2.24 per share, resulting in the receipt of \$95,693 by the Company.

In December 2014, a board member/investor (Board Member #3) signed a consulting agreement with the Company for a \$15,000 per year effective January 1, 2015. For the nine months ended September 30, 2018, the Company incurred consulting fees of \$11,250. Consulting fees outstanding to the Board Member #3 at September 30, 2018 were \$33,750, and are included in Accrued Expenses on the balance sheet. In January 2018, the Board of Directors approved the reduction in the price per common share listed in both the August 2016 PPM and December 2016 PPM from \$9.53 to \$5.00 per share. As a result, the Company issued an additional 2,717 shares of common stock for the Board compensation convertible promissory note issued to Board Member #3 in 2016.

In July 2016, the Company signed a consulting agreement with a related party (Related Party Consultant #1) to assist in raising capital. In addition, the consultant is entitled to a Finders Fee of 4.00% of capital raised from its investors. In January 2018, the Board of Directors approved the reduction in the price per common share listed in both the August 2016 PPM and December 2016 PPM from \$9.53 to \$5.00 per share. As a result, the Company issued an additional 21,415 and 8,819 shares of common stock, respectively, for the promissory note issued in 2016 and the Finders Fee earned in 2017. In the nine months ended September 30, 2018, as part of an agreement with Related Party Consultant #1, in conjunction with the raising of \$1,150,000, the Company has recorded a liability to pay the related party consultant for Finders Fees earned of \$46,000 or 4.00% of the funds raised. In June 2018, Related Party Consultant #1 elected to be paid in common stock at \$5.00 per share resulting in the issuance of 8,800 common shares. The remaining \$2,000 is recorded as an accrued expense as of September 30, 2018. The Company issued the remaining 400 common shares to Related Party Consultant #1 in November 2018.

In December 2017, the Company signed a consulting agreement with a related party (Related Party Consultant #2) to provide marketing services. The Related Party Consultant #2 was entitled to a monthly consulting fee of \$75,000. The agreement was amended in July 2018 and the consulting fee was reduced to \$225,000 due to failure of Related Party Consultant #2 to produce new investors for the Company based on its marketing efforts. In lieu of the cash payment of \$225,000, under the terms of the amendment, Related Party Consultant #2 elected to receive shares of common stock at the current fair value of \$5.00 per common share, resulting in the issuance of 45,000 common shares of the

Company.

In June 2018, the Company signed an agreement with a consultant (Related Party Consultant #3). Under the arrangement, the Related Party Consultant #3 will be paid in common stock at \$5.00 per share in lieu of cash of \$2,115 per week. The consultant will become a full-time employee if the Company is able to complete a

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successful Corporate Financing. In addition, upon employment, the consultant will be entitled to a base salary and options, as defined. As of September 30, 2018, \$42,300 of consulting expense has been accrued. The engagement was terminated November 2018 and it was agreed that no compensation was due.

(12) Subsequent Events

In preparing the financial statements as of and for the nine months ended September 30, 2018, we evaluated subsequent events for recognition and measurement purposes through December 5, 2018, the date that the financial statements were available for issuance. After the original issuance of the financial statements and through December 5, 2018, we have evaluated subsequent events or transactions that have occurred that may require disclosure in the accompanying financial statements. Except as described below, the Company has concluded that no other events or transactions have occurred that require disclosure in the accompanying interim financial statements.

In October 2018, the Board of Directors agreed to amend all outstanding options to purchase common stock granted under the 2009 Stock Option Plan and the 2018 Stock Incentive Plan. The amendment states that vesting of all outstanding options will accelerate immediately prior the earlier of (i) the holder's termination without cause, (ii) the consummation of a change of Control and (iii) a Qualified Equity Financing. In the event that the service relationship or employment of an option holder is terminated without cause or voluntarily terminates the service relationship, vested portions of all Company options outstanding may be exercised at any time prior to the expiration date of such options.

In October 2018, the Board of Directors agreed to provide cash compensation totaling \$475,000 to certain employees and service providers of the Company upon the earlier of a consummation of Change of Control or a Qualified Equity Financing. In addition, the Board of Directors agreed to grant 894,132 stock options to employees and service providers of the Company immediately prior to the consummation of a Change of Control with an exercise price equal to the fair market value of a share of common stock on the date of grant.

In October 2018, the Board of Directors granted a total 137,560 shares of common stock to four Board Members at \$5.00 per share of common stock in lieu of cash compensation for the previous two years.

In October 2018, the Company agreed to an early buyout of its lab equipment lease described in Note 5 above. The final payment was made in November 2018 and title of the lab equipment has been transferred to the Company.

In October 2018, Board Member #2 exercised 42,755 stock options at a price of \$2.24 per share, resulting in the receipt of \$95,693 by the Company.

In October 2018, a previous employee exercised 5,313 stock options at a price of \$2.24 per share, resulting in the receipt of \$11,891 by the Company.

In October 2018, the Company entered into a rental agreement for storage space in North Brunswick, New Jersey with an unrelated third party. The Company leases this space on a month to month basis.

In November 2018, the Company began leasing its corporate offices and laboratory facilities in Princeton, New Jersey under an operating lease with an unrelated third party. The Company leases this space on a month to month basis.

In November 2018, the Board of Directors approved an option grant of 52,593 stock options to Consultant #2 per the November 2017 consulting agreement, as described in Note 10, for services deemed rendered. The Consulting agreement was terminated October 2018.

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In November 2018, the consulting agreement with Related Party Consultant #3 as described in Note 11 was terminated and it was agreed that no compensation was due.

In November 2018, the Board of Directors, Related Party Consultant #1 received their remaining 400 shares of common stock at \$5.00 per share in lieu of cash compensation per the July 2016 consulting agreement.

In November 2018, the Board of Directors approved an option grant of 68,779 stock options to service provider of the Company as compensation for general advising and non-legal services.

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In November 2018, the Board of Directors approved the reduction in the conversion price for that certain outstanding Convertible Promissory Note dated November 2017, as described in Note 4, from \$2.11 to \$1.11. This investor will now receive the same price reduction per share as the Board had previously approved for the August 2016 PPM and December 2016 PPM.

In November 2018, the Board of Directors approved the issuance of a warrant to its law firm as satisfaction of the deferment arrangement described in Note 11. As no triggering event has occurred to date, the Company approved the issuance of a warrant of 138,838 shares based on equity raised to date plus estimated future equity issuances.

In November 2018, the Board of Directors approved an amendment to the 2009 Stock Option Plan. The amendment adds a cashless exercise feature to all outstanding options issued under the 2009 Plan.

On November 26, 2018, the Company announced it had entered into a merger agreement with Edge Therapeutics. The merger would create a publicly traded company developing novel products for treating early and late state cancers. The merger is expected to create a combined company with sufficient cash to fund operations into 2020. The merger is structured as a stock-for-stock transaction whereby all of the Company's shares of common stock and securities convertible into or exercisable for common stock will convert into Edge's common stock and securities convertible into or exercisable for Edge common stock. Under the exchange ratio formula of the merger agreement, immediately following the merger, the former PDS security holders will own approximately 70% of the combined company. The transaction has been approved by the Board of Directors of both companies and is expected to close in the first quarter of 2019. Upon the closing of the transaction, the merged company will operate under the PDS Biotechnology Corporation name, and the combined company's common stock is expected to continue to trade on NASDAQ under a new ticker symbol.

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Annex A-I

EXECUTION VERSION

**AGREEMENT AND PLAN OF MERGER
AND REORGANIZATION**

among:

EDGE THERAPEUTICS, INC.,
a Delaware corporation;

ECHOS MERGER SUB, INC.,
a Delaware corporation; and

PDS BIOTECHNOLOGY CORPORATION
a Delaware corporation

Dated as of November 23, 2018

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AGREEMENT AND PLAN OF MERGER AND REORGANIZATION

THIS AGREEMENT AND PLAN OF MERGER AND REORGANIZATION (this *Agreement*) is made and entered into as of November 23, 2018, by and among **Edge Therapeutics, Inc.**, a Delaware corporation (*Parent*), **ECHOS MERGER SUB, INC.**, a Delaware corporation and wholly owned subsidiary of Parent (*Merger Sub*), and **PDS Biotechnology Corporation**, a Delaware corporation (the *Company*). Certain capitalized terms used in this Agreement are defined in **Exhibit A**.

RECITALS

- A. Parent and the Company intend to effect a merger of Merger Sub with and into the Company (the *Merger*) in accordance with this Agreement and the DGCL. Upon consummation of the Merger, Merger Sub will cease to exist and the Company will become a wholly owned subsidiary of Parent.
- B. The Parties intend that the Merger qualify as a reorganization within the meaning of Section 368(a) of the Code and the Treasury Regulations promulgated thereunder, and by executing this Agreement, the Parties intend to adopt a plan of reorganization within the meaning of Treasury Regulations Sections 1.368-2(g) and 1.368-3.
- C. The Parent Board has (i) determined that the Contemplated Transactions are fair to, advisable and in the best interests of Parent and its stockholders, (ii) approved and declared advisable this Agreement and the Contemplated Transactions, including the issuance of shares of Parent Common Stock to the stockholders of the Company pursuant to the terms of this Agreement and (iii) determined to recommend, upon the terms and subject to the conditions set forth in this Agreement, that the stockholders of Parent vote to approve the issuance of shares of Parent Common Stock to the stockholders of the Company pursuant to the terms of this Agreement.
- D. The Merger Sub Board has (i) determined that the Contemplated Transactions are fair to, advisable, and in the best interests of Merger Sub and its sole stockholder, (ii) approved and declared advisable this Agreement and the Contemplated Transactions and (iii) determined to recommend, upon the terms and subject to the conditions set forth in this Agreement, that the stockholder of Merger Sub vote to adopt this Agreement and thereby approve the Contemplated Transactions.
- E. The Company Board has (i) determined that the Contemplated Transactions are fair to, advisable and in the best interests of the Company and its stockholders, (ii) approved and declared advisable this Agreement and the Contemplated Transactions and (iii) determined to recommend, upon the terms and subject to the conditions set forth in this Agreement, that the stockholders of the Company vote to adopt this Agreement and thereby approve the Contemplated Transactions.
- F. Concurrently with the execution and delivery of this Agreement and as a condition and inducement to Parent's willingness to enter into this Agreement, the officers, directors and stockholders of the Company listed on Section A of the Company Disclosure Schedule (solely in their capacity as stockholders of the Company) are executing support agreements in favor of Parent in substantially the form attached hereto as **Exhibit B-1** (the *Company Stockholder Support Agreement*), pursuant to which such Persons have, subject to the terms and conditions set forth therein, agreed to vote all of their shares of Company Capital Stock in favor of the adoption of this Agreement and thereby approve the Contemplated Transactions and against any competing proposals.
- G. Concurrently with the execution and delivery of this Agreement and as a condition and inducement to the Company's willingness to enter into this Agreement, the officers and directors of the Company listed on Section A of the Parent Disclosure Schedule (solely in their capacity as stockholders of Parent) are executing support agreements in favor of the Company in substantially the form attached hereto as **Exhibit B-2** (the *Parent Stockholder Support*

Agreement), pursuant to which such Persons have, subject to the terms and conditions set forth therein, agreed to vote all of their shares of Parent Common Stock in favor of the issuance of shares of Parent Common Stock to the stockholders of the Company pursuant to the terms of this Agreement and the other Parent Stockholder Matters and against any competing proposals.

H. It is expected that within three Business Days after the Registration Statement is declared effective under the Securities Act, the holders of shares of Company Capital Stock sufficient to adopt and approve this Agreement and the Merger as required under the DGCL and the Company's certificate of incorporation and

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bylaws will execute and deliver an action by written consent adopting this Agreement in a form reasonably acceptable to Parent, in order to obtain the Required Company Stockholder Vote (each, a Company Stockholder Written Consent and collectively, the *Company Stockholder Written Consents*).

AGREEMENT

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

Section 1. DESCRIPTION OF TRANSACTION

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

1.2. **Effects of the Merger.** The Merger shall have the effects set forth in this Agreement and in the applicable provisions of the DGCL. As a result of the Merger, the Company will become a wholly owned subsidiary of Parent.

1.3. **Closing; Effective Time.** Unless this Agreement is earlier terminated pursuant to the provisions of Section 9.1, and subject to the satisfaction or waiver of the conditions set forth in Sections 6, 7 and 8, the consummation of the Merger (the *Closing*) shall take place remotely as promptly as practicable (but in no event later than the second Business Day following the satisfaction or waiver of the last to be satisfied or waived of the conditions set forth in Sections 6, 7 and 8, other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of each of such conditions), or at such other time, date and place as Parent and the Company may mutually agree in writing. The date on which the Closing actually takes place is referred to as the Closing Date. At the Closing, the Parties shall cause the Merger to be consummated by executing and filing with the Secretary of State of the State of Delaware a certificate of merger with respect to the Merger, satisfying the applicable requirements of the DGCL and in a form reasonably acceptable to Parent and the Company (the *Certificate of Merger*). The Merger shall become effective at the time of the filing of such Certificate of Merger with the Secretary of State of the State of Delaware or at such later time as may be specified in such Certificate of Merger with the consent of Parent and the Company (the time as of which the Merger becomes effective being referred to as the *Effective Time*).

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

(a) the certificate of incorporation of the Surviving Corporation shall be amended and restated in its entirety to read identically to the certificate of incorporation of Merger Sub as in effect immediately prior to the Effective Time, until thereafter amended as provided by the DGCL and such certificate of incorporation;

(b) the certificate of incorporation of Parent shall be identical to the certificate of incorporation of Parent immediately prior to the Effective Time, until thereafter amended as provided by the DGCL and such certificate of incorporation *provided, however*, that at the Effective Time, Parent shall file one or more amendments to its Certificate of Incorporation (but only to the extent that the Required Parent Stockholder Reverse Split Vote or other required approval of the holders of Parent Common Stock has been obtained) to (i) effect the Reverse Split, (ii) to change the name of Parent to PDS Biotechnology Corporation and (iii) make such other changes as are mutually agreeable to Parent and the Company;

(c) the bylaws of the Surviving Corporation shall be amended and restated in their entirety to read identically to the bylaws of Merger Sub as in effect immediately prior to the Effective Time, until thereafter amended as provided by the DGCL and such bylaws;

(d) the directors and officers of Parent, each to hold office in accordance with the certificate of incorporation and bylaws of Parent, shall be as set forth in Section 5.14; and

(e) the directors and officers of the Surviving Corporation, each to hold office in accordance with the certificate of incorporation and bylaws of the Surviving Corporation, shall be the directors and officers of Parent as set forth in Section 5.14, after giving effect to the provisions of Section 5.14, or such other persons as shall be mutually agreed upon by Parent and the Company.

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1.5. Conversion of Shares.

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

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

(ii) subject to Section 1.5(c), each share of Company Capital Stock outstanding immediately prior to the Effective Time (excluding shares to be canceled pursuant to Section 1.5(a)(i) and excluding Dissenting Shares) shall be automatically converted solely into the right to receive a number of shares of Parent Common Stock equal to the Exchange Ratio (the *Merger Consideration*).

(b) If any shares of Company Capital Stock outstanding immediately prior to the Effective Time are unvested or are subject to a repurchase option or a risk of forfeiture under any applicable restricted stock purchase agreement or other similar agreement with the Company, then the shares of Parent Common Stock issued in exchange for such shares of Company Capital Stock will to the same extent be unvested and subject to the same repurchase option or risk of forfeiture, and such shares of Parent Common Stock shall accordingly be marked with appropriate legends. The Company shall take all actions that may be necessary to ensure that, from and after the Effective Time, Parent is entitled to exercise any such repurchase option or other right set forth in any such restricted stock purchase agreement or other agreement in accordance with its terms.

(c) No fractional shares of Parent Common Stock shall be issued in connection with the Merger, and no certificates or scrip for any such fractional shares shall be issued. Any holder of Company Capital Stock who would otherwise be entitled to receive a fraction of a share of Parent Common Stock (after aggregating all fractional shares of Parent Common Stock issuable to such holder) shall, in lieu of such fraction of a share and upon surrender by such holder of a letter of transmittal in accordance with Section 1.7 and any accompanying documents as required therein, be paid in cash the dollar amount (rounded to the nearest whole cent), without interest, determined by multiplying such fraction by the Parent Closing Price.

(d) All Company Options outstanding immediately prior to the Effective Time shall be treated in accordance with Section 5.5.

(e) All Company Warrants outstanding immediately prior to the Effective Time that are not exercised prior to the Effective Time shall be assumed by Parent; *provided, however*, that from and after the Effective Time, (i) such Company Warrants shall be exercisable into that number of shares of Parent Common Stock equal to (A) the Exchange Ratio multiplied by (B) the number of shares of Company Common Stock into which such Company Warrant is exercisable as of immediately prior to the Effective Time, (ii) the per share exercise price for the Parent Common Stock issuable upon exercise of each Company Warrant assumed by Parent shall be determined by dividing (A) the per share exercise price of Company Common Stock subject to such Company Warrant, as in effect immediately prior to the Effective Time, by (B) the Exchange Ratio and rounding the resulting exercise price up to the nearest whole cent and (iii) except as otherwise provided in such Company Warrant, the term, exercisability, vesting schedule and other provisions of such Company Warrant shall otherwise remain unchanged.

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

common stock of the Surviving Corporation.

(g) If, between the date of this Agreement and the Effective Time, the outstanding shares of Company Capital Stock or Parent Common Stock shall have been changed into, or exchanged for, a different number of shares or a different class, by reason of any stock dividend, subdivision, reclassification, recapitalization, split (including the Reverse Split), combination or exchange of shares or other like change, the Exchange Ratio shall, to the extent necessary, be equitably adjusted to reflect such change to the extent necessary to provide the holders of Company Capital Stock and Parent Common Stock with the same economic effect as contemplated by this Agreement prior to such stock dividend, subdivision, reclassification, recapitalization,

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split, combination or exchange of shares or other like change; *provided, however*, that nothing herein will be construed to permit the Company or Parent to take any action with respect to Company Capital Stock or Parent Common Stock, respectively, that is prohibited or not expressly permitted by the terms of this Agreement.

1.6. **Closing of the Company's Transfer Books.** At the Effective Time: (a) all shares of Company Capital Stock outstanding immediately prior to the Effective Time shall be treated in accordance with Section 1.5(a), and all holders of certificates representing shares of Company Capital Stock that were outstanding immediately prior to the Effective Time shall cease to have any rights as stockholders of the Company; and (b) the stock transfer books of the Company shall be closed with respect to all shares of Company Capital Stock outstanding immediately prior to the Effective Time. No further transfer of any such shares of Company Capital Stock shall be made on such stock transfer books after the Effective Time. If, after the Effective Time, a valid certificate previously representing any shares of Company Capital Stock outstanding immediately prior to the Effective Time (a *Company Stock Certificate*) is presented to the Exchange Agent or to the Surviving Corporation, such Company Stock Certificate shall be canceled and shall be exchanged as provided in Sections 1.5 and 1.7.

1.7. **Surrender of Certificates.**

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

(b) Promptly after the Effective Time, the Parties shall cause the Exchange Agent to mail to the Persons who were record holders of shares of Company Capital Stock that were converted into the right to receive the Merger Consideration: (i) a letter of transmittal in customary form and containing such provisions as Parent may reasonably specify (including a provision confirming that delivery of Company Stock Certificates shall be effected, and risk of loss and title to Company Stock Certificates shall pass, only upon proper delivery of such Company Stock Certificates to the Exchange Agent); and (ii) instructions for effecting the surrender of Company Stock Certificates in exchange for shares of Parent Common Stock. Upon surrender of a Company Stock Certificate to the Exchange Agent for exchange, together with a duly executed letter of transmittal and such other documents as may be reasonably required by the Exchange Agent or Parent: (A) the holder of such Company Stock Certificate shall be entitled to receive in exchange therefor a certificate or certificates or book-entry shares representing the Merger Consideration (in a number of whole shares of Parent Common Stock) that such holder has the right to receive pursuant to the provisions of Section 1.5(a) (and cash in lieu of any fractional share of Parent Common Stock pursuant to the provisions of Section 1.5(c)); and (B) the Company Stock Certificate so surrendered shall be canceled. Until surrendered as contemplated by this Section 1.7(b), each Company Stock Certificate shall be deemed, from and after the Effective Time, to represent only the right to receive a certificate or certificates or book-entry shares of Parent Common Stock representing the Merger Consideration (and cash in lieu of any fractional share of Parent Common Stock). If any Company Stock Certificate shall have been lost, stolen or destroyed, Parent may, in its discretion and as a condition precedent to the delivery of any shares of Parent Common Stock, require the owner of such lost, stolen or destroyed Company Stock Certificate to provide an applicable affidavit with respect to such Company Stock Certificate and agree to indemnify Parent against any claim suffered by Parent related to the lost, stolen or destroyed Company Stock Certificate or any Parent Common Stock issued in exchange therefor as Parent may reasonably request. In the event of a transfer of ownership of a Company Stock Certificate that is not registered in the transfer records of the Company, payment of the Merger Consideration may be made to a Person other than the Person in whose name such Company Stock Certificate so surrendered is registered if such Company Stock Certificate shall be properly endorsed or otherwise be

in proper form for transfer and the Person requesting such payment shall pay any transfer or other Taxes required by reason of the transfer or establish to the reasonable

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satisfaction of Parent that such Taxes have been paid or are not applicable. The Merger Consideration and any dividends or other distributions as are payable pursuant to Section 1.7(c) shall be deemed to have been in full satisfaction of all rights pertaining to Company Capital Stock formerly represented by such Company Stock Certificates.

(c) No dividends or other distributions declared or made with respect to Parent Common Stock with a record date on or after the Effective Time shall be paid to the holder of any unsurrendered Company Stock Certificate with respect to the shares of Parent Common Stock that such holder has the right to receive in the Merger until such holder surrenders such Company Stock Certificate or provides an affidavit of loss or destruction in lieu thereof in accordance with this Section 1.7 (at which time (or, if later, on the applicable payment date) such holder shall be entitled, subject to the effect of applicable abandoned property, escheat or similar Laws, to receive all such dividends and distributions, without interest).

(d) Any portion of the Exchange Fund that remains undistributed to holders of Company Stock Certificates as of the date that is one year after the Closing Date shall be delivered to Parent upon demand, and any holders of Company Stock Certificates who have not theretofore surrendered their Company Stock Certificates in accordance with this Section 1.7 shall thereafter look only to Parent for satisfaction of their claims for Parent Common Stock, cash in lieu of fractional shares of Parent Common Stock and any dividends or distributions with respect to shares of Parent Common Stock.

(e) Each of the Exchange Agent, Parent and the Surviving Corporation shall be entitled to deduct and withhold from any consideration deliverable pursuant to this Agreement to any holder of any Company Stock Certificate such amounts as are required to be deducted or withheld from such consideration under the Code or under any other applicable Law. To the extent such amounts are so deducted or withheld, and remitted to the appropriate taxing authority, such amounts shall be treated for all purposes under this Agreement as having been paid to the Person to whom such amounts would otherwise have been paid.

(f) No party to this Agreement shall be liable to any holder of any Company Stock Certificate or to any other Person with respect to any shares of Parent Common Stock (or dividends or distributions with respect thereto) or for any cash amounts delivered to any public official pursuant to any applicable abandoned property Law, escheat Law or similar Law.

1.8. **Appraisal Rights.**

(a) Notwithstanding any provision of this Agreement to the contrary, shares of Company Capital Stock that are outstanding immediately prior to the Effective Time and which are held by stockholders who have exercised and perfected appraisal rights for such shares of Company Capital Stock in accordance with the DGCL (collectively, the *Dissenting Shares*) shall not be converted into or represent the right to receive the Merger Consideration described in Section 1.5 attributable to such Dissenting Shares. Such stockholders shall be entitled to receive payment of the appraised value of such shares of Company Capital Stock held by them in accordance with the DGCL, unless and until such stockholders fail to perfect or effectively withdraw or otherwise lose their appraisal rights under the DGCL. All Dissenting Shares held by stockholders who shall have failed to perfect or shall have effectively withdrawn or lost their right to appraisal of such shares of Company Capital Stock under the DGCL (whether occurring before, at or after the Effective Time) shall thereupon be deemed to be converted into and to have become exchangeable for, as of the Effective Time, the right to receive the Merger Consideration, without interest, attributable to such Dissenting Shares upon their surrender in the manner provided in Sections 1.5 and 1.7.

(b) The Company shall give Parent prompt written notice of any demands by dissenting stockholders received by the Company, withdrawals of such demands and any other instruments served on the Company and any material

correspondence received by the Company in connection with such demands, and Parent shall have the right to direct all negotiations and proceedings with respect to such demands; *provided* that the Company shall have the right to participate in such negotiations and proceedings. The Company shall not, except with Parent's prior written consent, voluntarily make any payment with respect to, or settle or offer to settle, any such demands, or approve any withdrawal of any such demands or agree to do any of the foregoing.

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1.9. **Pro-Forma Capitalization.** The anticipated pro-forma capitalization of the Company immediately prior to the Effective Time (assuming the Effective Time occurs on February 28, 2019 and excluding any Permitted Bridge Financing) is set forth in Section 1.9 of the Company Disclosure Schedule. The pro-forma capitalization of Parent immediately following the Effective Time (assuming the Effective Time occurs on February 28, 2019) is set forth in Section 1.9 of the Parent Disclosure Schedule.

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

Section 2. REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Subject to Section 10.13(i), except as set forth in the written disclosure schedule delivered by the Company to Parent (the *Company Disclosure Schedule*), the Company represents and warrants to Parent and Merger Sub as follows:

2.1. **Due Organization; Subsidiaries.**

(a) The Company is a corporation or duly incorporated or otherwise organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization and has all necessary power and authority: (i) to conduct its business in the manner in which its business is currently being conducted; and (ii) to own or lease and use its property and assets in the manner in which its property and assets are currently owned or leased and used, except in the case of the foregoing (i) and (ii), where the failure to have such power or authority would not reasonably be expected to be material to the Company, or prevent or materially delay the ability of the Company to consummate the Contemplated Transactions.

(b) The Company is duly licensed and qualified to do business, and is in good standing (to the extent applicable in such jurisdiction), under the Laws of all jurisdictions where the nature of its business requires such licensing or qualification other than in jurisdictions where the failure to be so qualified individually or in the aggregate would not be reasonably expected to have a Company Material Adverse Effect.

(c) The Company has no Subsidiaries, nor does the Company own any capital stock of, or any equity, ownership or profit sharing interest of any nature in, or controls directly or indirectly, any other Entity. The Company is not, nor has it otherwise been, directly or indirectly, a party to, member of or participant in any partnership, joint venture or similar business entity. The Company has not agreed, nor is it obligated to make, nor is it bound by any Contract under which it may become obligated to make, any future investment in or capital contribution to any other Entity. The Company has not, at any time, been a general partner of, or has otherwise been liable for any of the debts or other obligations of, any general partnership, limited partnership or other Entity.

2.2. **Organizational Documents.** The Company has delivered to Parent accurate and complete copies of the Organizational Documents of the Company. The Company is not in material breach or violation of its Organizational Documents.

2.3. **Authority; Binding Nature of Agreement.** The Company has all necessary corporate power and authority to enter into and to perform its obligations under this Agreement and to consummate the Contemplated Transactions. The Company Board has (i) determined that the Contemplated Transactions are fair to, advisable and in the best interests of the Company and its stockholders, (ii) approved and declared advisable this Agreement and the Contemplated Transactions and (iii) determined to recommend, upon the terms and subject to the conditions set forth

in this Agreement, that the stockholders of the Company vote to adopt this Agreement and thereby approve the Contemplated Transactions. This Agreement has been duly executed and delivered by the Company and assuming the due authorization, execution and delivery by Parent and Merger Sub, constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to the Enforceability Exceptions. Prior to the execution of the Company Stockholder Support Agreements, the Company Board approved the Company Stockholder Support Agreements and the transactions contemplated thereby.

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2.4. **Vote Required.** The affirmative vote (or written consent) of the holders of a majority of the shares of Company Common Stock outstanding on the record date for the Company Stockholder Written Consent and entitled to vote thereon (the Required Company Stockholder Vote), is the only vote (or written consent) of the holders of any class or series of Company Capital Stock necessary to adopt and approve this Agreement and approve the Contemplated Transactions.

2.5. **Non-Contravention; Consents.** Subject to obtaining the Required Company Stockholder Vote, the filing of the Certificate of Merger required by the DGCL and obtaining the Consents set forth on Section 2.5 of the Company Disclosure Schedule, neither (x) the execution, delivery or performance of this Agreement by the Company, nor (y) the consummation of the Contemplated Transactions, will directly or indirectly (with or without notice or lapse of time):

- (a) contravene, conflict with or result in a violation of any of the provisions of the Company's Organizational Documents;
- (b) contravene, conflict with or result in a violation of, or give any Governmental Body or, to the Knowledge of the Company, other Person the right to challenge the Contemplated Transactions or to exercise any remedy or obtain any relief under, any Law or any order, writ, injunction, judgment or decree to which the Company, or any of the assets owned or used by the Company, is subject, except as would not reasonably be expected to be material to the Company or its business;
- (c) contravene, conflict with or result in a violation of any of the terms or requirements of, or give any Governmental Body the right to revoke, withdraw, suspend, cancel, terminate or modify, any Governmental Authorization that is held by the Company, or require any notice to or Consent by any Governmental Body, except as would not reasonably be expected to be material to the Company or its business;
- (d) contravene, conflict with or result in a violation or breach of, or result in a default or require any notice or Consent under, any provision of any Company Material Contract, or give any Person the right to: (i) declare a default or exercise any remedy under any Company Material Contract; (ii) any material payment, rebate, chargeback, penalty or change in delivery schedule under any Company Material Contract; (iii) accelerate the maturity or performance of any Company Material Contract; or (iv) cancel, terminate or modify any term of any Company Material Contract, except in each case as would not reasonably be expected to be material to the Company or its business; or
- (e) result in the imposition or creation of any Encumbrance upon or with respect to any asset owned or used by the Company (except for Permitted Encumbrances).

The Company Board has taken and will take all actions necessary to ensure that the restrictions applicable to business combinations contained in Section 203 of the DGCL are, and will be, inapplicable to the execution, delivery and performance of this Agreement and the Company Stockholder Support Agreements and to the consummation of the Contemplated Transactions. No other state takeover statute or similar Law applies or purports to apply to the Merger, this Agreement, the Company Stockholder Support Agreements or any of the Contemplated Transactions. The Company is not included within a person (as defined in 16 C.F.R. §801.1(a)(1)) that has one hundred and sixty eight million, eight hundred thousand dollars (\$168,800,000) or more of total assets or annual net sales, in each case as determined in accordance with 16 C.F.R. §801.11.

2.6. **Capitalization.**

- (a) The authorized Company Capital Stock as of the date of this Agreement consists of (i) 100,000,000 shares of Company Common Stock, par value \$0.00001 per share, of which 10,518,521 shares have been issued and are

outstanding as of the date of this Agreement, and (ii) 25,000,000 shares of preferred stock, par value \$0.00001 per share (the ***Company Preferred Stock***), none of which are issued or outstanding as of the date of this Agreement. The Company does not hold any shares of its capital stock in its treasury.

(b) All of the outstanding shares of Company Common Stock have been duly authorized and validly issued, and are fully paid and nonassessable. Except as set forth in the Investor Agreements, none of the outstanding shares of Company Common Stock is entitled or subject to any preemptive right, right of

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participation, right of maintenance or any similar right and none of the outstanding shares of Company Common Stock is subject to any right of first refusal in favor of the Company. Except as contemplated herein and in the Investor Agreements, there is no Company Contract relating to the voting or registration of, or restricting any Person from purchasing, selling, pledging or otherwise disposing of (or granting any option or similar right with respect to), any shares of Company Common Stock or Company Preferred Stock. The Company is not under any obligation, nor is it bound by any Contract pursuant to which it may become obligated, to repurchase, redeem or otherwise acquire any outstanding shares of Company Common Stock or other securities. Section 2.6(b) of the Company Disclosure Schedule accurately and completely lists all repurchase rights held by the Company with respect to shares of Company Common Stock (including shares issued pursuant to the exercise of stock options) and specifies which of those repurchase rights are currently exercisable.

(c) Except for the Company Stock Plans, the Company does not have any stock option plan or any other plan, program, agreement or arrangement providing for any equity-based compensation for any Person. As of the date of this Agreement, the Company has reserved 3,421,650 shares of Company Common Stock for issuance under the Company Stock Plans, of which 5,313 shares have been issued and are currently outstanding, 1,259,066 shares have been reserved for issuance upon exercise of Company Options granted under the Company Stock Plans, and, after giving effect to the expiration of the Company 2009 Stock Option Plan, 1,710,825 shares of Company Common Stock remain available for future issuance pursuant to the Company Stock Plans.

(d) Section 2.6(d) of the Company Disclosure Schedule sets forth the following information with respect to each Company Option outstanding as of the date of this Agreement: (i) the name of the optionee; (ii) the number of shares of Company Common Stock subject to such Company Option at the time of grant; (iii) the number of shares of Company Common Stock subject to such Company Option as of the date of this Agreement; (iv) the exercise price of such Company Option; (v) the date on which such Company Option was granted; (vi) the applicable vesting schedule, including the number of vested and unvested shares as of the date of this Agreement and any acceleration provisions; (vii) the date on which such Company Option expires; and (viii) whether such Company Option is intended to constitute an incentive stock option (as defined in the Code) or a non-qualified stock option. The Company has made available to Parent an accurate and complete copy of the Company Stock Plans and all stock option agreements evidencing outstanding options granted thereunder.

(e) Except for the Company Options or as set forth on Section 2.6(e) of the Company Disclosure Schedule, there is no: (i) outstanding subscription, option, call, warrant or right (whether or not currently exercisable) to acquire any shares of the capital stock or other securities of the Company; or (ii) outstanding security, instrument or obligation that is or may become convertible into or exchangeable for any shares of the capital stock or other securities of the Company. There are no outstanding or authorized stock appreciation, phantom stock, profit participation or other similar rights with respect to the Company.

(f) All outstanding shares of Company Common Stock, Company Options, Company Warrants and other securities of the Company have been issued and granted in material compliance with (i) all applicable securities Laws and other applicable Law, and (ii) all requirements set forth in applicable Contracts.

2.7. Financial Statements.

(a) Concurrently with the execution hereof, the Company has provided to Parent true and complete copies of (i) the Company's audited balance sheets at December 31, 2017 and 2016, together with related audited statements of income, stockholders' equity and cash flows, and notes thereto, of the Company for the fiscal years then ended and (ii) the Company Unaudited Interim Balance Sheet, together with the unaudited statements of income, stockholders' equity and cash flows of the Company for the period reflected in the Company Unaudited Interim Balance Sheet (collectively, the *Company Financials*). The Company Financials were prepared in accordance with GAAP (except as

may be indicated in the notes to such financial statements and except that the unaudited financial statements may not contain footnotes and are subject to normal and recurring year-end adjustments, none of which are material) and fairly present, in all material respects, the financial position and operating results of the Company as of the dates and for the periods indicated therein.

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(b) The Company maintains accurate books and records reflecting their assets and liabilities and maintains a system of internal accounting controls designed to provide reasonable assurance that: (i) transactions are executed in accordance with management's general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of the financial statements of the Company and to maintain accountability of the Company's assets; (iii) access to the Company's assets is permitted only in accordance with management's general or specific authorization; (iv) the recorded accountability for the Company's assets is compared with the existing assets at regular intervals and appropriate action is taken with respect to any differences; and (v) accounts, notes and other receivables and inventory are recorded accurately, and proper and adequate procedures are implemented to effect the collection thereof on a current and timely basis. The Company maintains internal control over financial reporting that provides reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes.

(c) Section 2.7(c) of the Company Disclosure Schedule lists, and the Company has delivered to Parent accurate and complete copies of the documentation creating or governing, all securitization transactions and off-balance sheet arrangements (as defined in Item 303(c) of Regulation S-K under the Exchange Act) effected by the Company since January 1, 2016.

(d) Since January 1, 2016, there have been no formal internal investigations regarding financial reporting or accounting policies and practices discussed with, reviewed by or initiated at the direction of the chief executive officer, chief financial officer or general counsel of the Company, the Company Board or any committee thereof. Since January 1, 2016, neither the Company nor its independent auditors have identified (i) any significant deficiency or material weakness in the design or operation of the system of internal accounting controls utilized by the Company, (ii) any fraud, whether or not material, that involves the Company, the Company's management or other employees who have a role in the preparation of financial statements or the internal accounting controls utilized by the Company or (iii) any claim or allegation regarding any of the foregoing.

2.8. **Absence of Changes.** Except as set forth on Section 2.8 of the Company Disclosure Schedule, between the date of the Company Unaudited Interim Balance Sheet and the date of this Agreement, the Company has conducted its business only in the Ordinary Course of Business (except for the execution and performance of this Agreement and the discussions, negotiations and transactions related thereto) and there has not been any (a) Company Material Adverse Effect or (b) action, event or occurrence that would have required the consent of Parent pursuant to Section 4.2(b) had such action, event or occurrence taken place after the execution and delivery of this Agreement.

2.9. **Absence of Undisclosed Liabilities.** As of the date of this Agreement, the Company does not have any liability, indebtedness, obligation or expense of any kind, whether accrued, absolute, contingent, matured or unmatured (each a ***Liability***), individually or in the aggregate, of a type required to be recorded or reflected on a balance sheet or disclosed in the footnotes thereto under GAAP except for: (a) Liabilities disclosed, reflected or reserved against in the Company Unaudited Interim Balance Sheet; (b) Liabilities that have been incurred by the Company since the date of the Company Unaudited Interim Balance Sheet in the Ordinary Course of Business; (c) Liabilities incurred in connection with the Contemplated Transactions; (d) Liabilities which would not, individually or in the aggregate, reasonably be expected to be material to the Company, and (e) Liabilities listed in Section 2.9 of the Company Disclosure Schedule.

2.10. **Title to Assets.** The Company owns, and has good and valid title to, or, in the case of leased properties and assets, valid leasehold interests in, all tangible properties or tangible assets and equipment used or held for use in its business or operations or purported to be owned by it, including: (a) all tangible assets reflected on the Company Unaudited Interim Balance Sheet; and (b) all other tangible assets reflected in the books and records of the Company as being owned by the Company. All of such assets are owned or, in the case of leased assets, leased by the Company free and clear of any Encumbrances, other than Permitted Encumbrances.

2.11. **Real Property; Leasehold.** The Company does not own nor has it ever owned any real property. The Company has made available to Parent (a) an accurate and complete list of all real properties with respect to which the Company directly or indirectly holds a valid leasehold interest as well as any other real estate that is in the possession of or leased by the Company, and (b) copies of all leases under which any such real property is

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possessed (the *Company Real Estate Leases*), each of which is in full force and effect (assuming the due execution by the counterparty thereto), with no existing material default thereunder. The Company's use and operation of each such leased property conforms to all applicable Laws in all material respects, and the Company has exclusive possession of each such leased property and has not granted any occupancy rights to tenants or licensees with respect to such leased property. In addition, each such leased property is free and clear of all Encumbrances other than Permitted Encumbrances. The Company has not received written notice from its landlords or any Governmental Body that: (i) relates to violations of building, zoning, safety or fire ordinances or regulations; (ii) claims any defect or deficiency with respect to any of such properties; or (iii) requests the performance of any repairs, alterations or other work to such properties.

2.12. Intellectual Property.

(a) The Company owns, or has the legal and valid right to use, as currently being used by the Company, all Company Owned IP Rights and Company Licensed IP Rights, and with respect to Company Owned IP Rights, has the right to bring actions for the infringement (including actions for both damages and injunctive relief) of such Company Owned IP Rights, in each case except for any failure to own, have such rights to use, or have such rights to bring actions for infringement that would not reasonably be expected to be material to the Company or its business.

(b) Section 2.12(b) of the Company Disclosure Schedule sets forth an accurate, true and complete listing of all (i) Company Registered IP, and, specifying as to each such item, as applicable, the owner(s) of record (and, in the case of domain names, the registrar), the beneficial owner(s) (if different from the owner(s) of record), jurisdiction of application and/or registration, the application and/or registration number, the date of application and/or registration, and the status of application and/or registration, and (ii) material unregistered Trademarks included in the Company Owned IP Rights. Each item of Company Registered IP is and at all times has been filed and maintained in compliance in all material respects with all applicable Law and all filings, payments, and other actions required to be made or taken to maintain such item of Company Registered IP in full force and effect have been made by the applicable deadline, except for any failure to perform any of the foregoing, individually or collectively, that would not reasonably be expected to be material to the Company or its business.

(c) Section 2.12(c) of the Company Disclosure Schedule accurately identifies (i) all Company Contracts pursuant to which Company Licensed IP Rights are licensed to the Company (other than (A) any non-customized software that (1) is so licensed solely in executable or object code form pursuant to a non-exclusive, internal use software license and other Intellectual Property non-exclusively licensed with such software and (2) is not incorporated into, or material to the development, manufacturing, or distribution of, any of the Company's products or services, (B) any Intellectual Property licensed ancillary to the purchase or use of services, equipment, reagents or other materials and (C) any immaterial confidential information provided under confidentiality agreements), and (ii) whether the license or licenses granted to the Company are exclusive or non-exclusive. For purposes of greater certainty, the term "license" in this Section 2.12(c) and in Section 2.12(d) includes any license, sublicense, covenant, non-assert, consent, release or waiver. Except as set forth in Section 2.12(c) of the Company Disclosure Schedule, there are no royalties, honoraria, fees or other payments payable by the Company or any Person for the purchase, license, sublicense or use of any Company Licensed IP Rights.

(d) Section 2.12(d) of the Company Disclosure Schedule accurately identifies all Company Contracts pursuant to which the Company has granted any license under, or any right (whether or not currently exercisable) or interest in, any Company Owned IP Rights or Company Exclusively Licensed IP Rights to any Person (other than any Company Owned IP Rights or Company Exclusively Licensed IP Rights non-exclusively licensed to suppliers or service providers for the sole purpose of enabling such suppliers or service providers to provide products and services for the Company's benefit).

(e) Except as set forth in Section 2.12(e) of the Company Disclosure Schedule, (i) the Company is not bound by, and no Company Owned IP Rights are subject to, any Company Contract containing any covenant or other provision, or any judicial, administrative or arbitral order, judgment, award, order, decree, injunction, settlement or stipulation, that affects the validity or enforceability of such Company Owned IP Rights or limits or restricts the ability of the Company to use, exploit, assert, enforce, sell, transfer or dispose of any such Company Owned IP Rights anywhere in the world, in each case, in a manner that

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would materially limit the business of the Company as currently conducted or planned to be conducted; and (ii) no Company Exclusively Licensed IP Rights are subject to any Company Contract containing any covenant or other provision, or, to the Actual Knowledge of the Company, any judicial, administrative or arbitral order, judgment, award, order, decree, injunction, settlement or stipulation that affects the validity or enforceability of such Company Exclusively Licensed IP Rights or limits or restricts the ability of the Company to use, exploit, assert, enforce, sell, transfer or dispose of any such Company Exclusively Licensed IP Rights anywhere in the world, in each case, in a manner that would materially limit the business of the Company as currently conducted or planned to be conducted.

(f) Except as identified in Section 2.12(f) of the Company Disclosure Schedule, the Company is the sole and unrestricted legal and beneficial owner of all right, title, and interest to and in Company Owned IP Rights, in each case, free and clear of any Encumbrances (other than Permitted Encumbrances).

(g) Each Person who is or was an employee or contractor of the Company and who is or was involved in the creation or development of any material Company Owned IP Rights has signed a valid, enforceable agreement containing a present-tense assignment of such Intellectual Property to the Company and confidentiality provisions protecting Proprietary Information and other confidential information of the Company.

(h) No current or former stockholder, officer, director, or employee of the Company has any claim, right (whether or not currently exercisable), or interest to or in any Company Owned IP Rights. To the Knowledge of the Company, no employee of the Company is (A) bound by or otherwise subject to any Contract restricting him or her from performing his or her duties for the Company or (B) in breach of any Contract with any former employer or other Person concerning Company Owned IP Rights or confidentiality provisions protecting Proprietary Information and other confidential information comprising Company Owned IP Rights.

(i) Except as identified in Section 2.12(i) of the Company Disclosure Schedule, no material Company Owned IP Rights or, to the Actual Knowledge of the Company, Company Exclusively Licensed IP Rights were developed, in whole or in part (A) pursuant to or in connection with the development of any professional, technical or industry standard, (B) under contract with or using the resources of any Governmental Body, academic institution or other entity that would subject any Company Owned IP Rights or, to the Actual Knowledge of the Company, Company Exclusively Licensed IP Rights to the rights of any Governmental Body, academic institution or other entity or (C) under any grants or other funding arrangements with third parties. To the extent that any Company Owned IP Rights or Company Exclusively Licensed IP Rights are disclosed in Section 2.12(i) of the Company Disclosure Schedule, Section 2.12(i) of the Company Disclosure Schedule identifies each Company Contract that relates to such Company Owned IP Rights or Company Exclusively Licensed IP Rights.

(j) The Company has taken all commercially reasonable and appropriate steps to protect and maintain the Company Owned IP Rights, including to preserve the confidentiality of all Proprietary Information that the Company holds, or purports to hold, as a material trade secret.

(k) Except as set forth in Section 2.12(k) of the Company Disclosure Schedule, the Company has not assigned, sold or otherwise transferred (other than standard licenses or rights to use granted to customers, suppliers or service providers in the Ordinary Course of Business) any of the Company Owned IP Rights to any third party, and there exists no obligation by the Company to assign, sell or otherwise transfer any of the Company Owned IP Rights to any third party.

(l) To the Knowledge of the Company, the Company Owned IP Rights are valid and enforceable and, to the Actual Knowledge of the Company, the Company Exclusively Licensed IP Rights are valid and enforceable.

(m) The manufacture, marketing, license, sale or intended use of any product or technology currently licensed or sold, in each case, to a third party or actively under development by the Company does not violate any license or agreement between the Company and any third party, and to the Company's Knowledge, the Company does not infringe, misappropriate, violate or conflict, nor, to the Company's Knowledge, has the Company in the last two (2) years infringed, misappropriated, violated, or conflicted with any Intellectual Property right of any third party, which infringement, misappropriation, violation or

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conflict would reasonably be expected to be material to the Company or its business. To the Knowledge of the Company with respect to Company Owned IP Rights, and to the Actual Knowledge of the Company in the case of the Company Exclusively Licensed IP Rights, no third party is infringing upon any Company Owned IP Rights or Company Exclusively Licensed IP Rights or violating any license or agreement between the Company and any third party. The Company has not sent any written communication to or asserted or threatened in writing any action or claim against any Person involving or relating to any Company IP Rights.

(n) There is no current or pending Legal Proceeding (including, opposition, interference, inter partes review, or other proceeding in any patent or other government office) contesting the validity, ownership or right to use, sell, license or disposal of any Company Owned IP Rights or, to the Actual Knowledge of the Company, Company Exclusively Licensed IP Rights, or any of the Company's products or technologies, nor has the Company received any written notice asserting that (i) any Company IP Rights, or the Company's right to use, sell, license or dispose of any Company IP Rights or products or technologies conflicts with, violates, infringes or misappropriates or will conflict with, violate, infringe or misappropriate the rights of any other Person or (ii) that a license under any other Person's Intellectual Property is or may be required.

(o) Except as set forth in the Contracts listed on Section 2.12(o) of the Company Disclosure Schedule and except for Company Contracts entered into in the Ordinary Course of Business, (i) the Company is not bound by any Contract to indemnify, defend, hold harmless, or reimburse any other Person with respect to any Intellectual Property infringement, misappropriation, or similar claim, in each case, that would reasonably be expected to be material to the Company or its business, and (ii) the Company has not assumed, or agreed to discharge or otherwise take responsibility for, any existing or potential liability of another Person for infringement, misappropriation, or violation of any Intellectual Property right, which assumption, agreement or responsibility is material and remains in force as of the date of this Agreement.

(p) There are no Contracts pursuant to which Company or any existing or future Affiliate of Company granted or is required to grant to any Person any rights under the Company IP Rights other than Company Owned IP Rights or Company Exclusively Licensed IP Rights as of the Closing Date.

2.13. Agreements, Contracts and Commitments.

(a) Section 2.13(a) of the Company Disclosure Schedule lists the following Company Contracts in effect as of the date of this Agreement other than any Company Benefit Plans (each, a **Company Material Contract** and collectively, the **Company Material Contracts**):

(i) each Company Contract relating to any agreement of indemnification or guaranty not entered into in the Ordinary Course of Business;

(ii) each Company Contract containing (A) any covenant limiting the freedom of the Company or the Surviving Corporation to engage in any line of business or compete with any Person, (B) any most-favored pricing arrangement, (C) any exclusivity provision, or (D) any non-solicitation provision;

(iii) each Company Contract relating to capital expenditures and requiring payments after the date of this Agreement in excess of \$100,000 pursuant to its express terms and not cancelable without penalty;

(iv) each Company Contract relating to the disposition or acquisition of material assets or any ownership interest in any Entity;

(v) each Company Contract relating to any mortgages, indentures, loans, notes or credit agreements, security agreements or other agreements or instruments relating to the borrowing of money or extension of credit or creating any material Encumbrances with respect to any assets of the Company or any loans or debt obligations with officers or directors of the Company;

(vi) each Company Contract requiring payment by or to the Company after the date of this Agreement in excess of \$100,000 per twelve (12) month period pursuant to its express terms relating to: (A) any distribution agreement (identifying any that contain exclusivity provisions); (B) any agreement involving provision of services or products with respect to any pre-clinical or clinical development activities of the Company; (C) any dealer, distributor, joint marketing, alliance, joint venture, cooperation, development or other agreement currently in force under which the Company has

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continuing obligations to develop or market any product, technology or service, or any agreement pursuant to which the Company has continuing obligations to develop any Intellectual Property that will not be owned, in whole or in part, by the Company; or (D) any Contract to license any third party to manufacture or produce any product, service or technology of the Company or any Contract to sell, distribute or commercialize any products or service of the Company, in each case, except for Company Contracts entered into in the Ordinary Course of Business;

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

(viii) each Company Contract with a labor union, labor organization, or similar Person;

(ix) each Company Real Estate Lease;

(x) each Company Contract with any Governmental Body;

(xi) each Company Contract required to be listed on Section 2.12 of the Company Disclosure Schedule;

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

(xiii) any other Company Contract that is not terminable at will (with no penalty or payment) by the Company and (A) which involves payment or receipt by the Company after the date of this Agreement under any such agreement, contract or commitment of more than \$25,000 in the aggregate for any twelve (12) month period, or obligations after the date of this Agreement in excess of \$25,000 in the aggregate for any twelve (12) month period, or (B) that is material to the business or operations of the Company, taken as a whole.

(b) The Company has delivered or made available to Parent accurate and complete copies of all Company Material Contracts, including all amendments thereto. Except as set forth in Section 2.13(b) of the Company Disclosure Schedule, there are no Company Material Contracts that are not in written form. Neither the Company nor to the Knowledge of the Company as of the date of this Agreement has any other party to a Company Material Contract, breached, violated or defaulted under, or received written notice that it breached, violated or defaulted under, any of the terms or conditions of any Company Material Contract in such manner as would permit any other party to cancel or terminate any such Company Material Contract, or would permit any other party to seek damages which would reasonably be expected to be material to the Company or its business. As to the Company, as of the date of this Agreement, each Company Material Contract is valid, binding, enforceable and in full force and effect, subject to the Enforceability Exceptions.

2.14. Compliance; Permits; Restrictions.

(a) The Company is, and since January 1, 2016 has been, in compliance in all material respects with all applicable Laws, including the Federal Food, Drug, and Cosmetic Act (*FDCA*), the Food and Drug Administration (*FDA*) regulations adopted thereunder, the Controlled Substance Act and any other similar Law administered or promulgated by the FDA, the European Medicines Evaluation Agency (*EMEA*) or other comparable Governmental Body responsible for regulation of the development, clinical testing, manufacturing, sale, marketing, distribution and importation or exportation of drug products (the FDA, EMEA and each such other comparable Governmental Body, a *Drug Regulatory Agency*), except for any noncompliance, either individually or in the aggregate, which would not be material to the Company. No investigation, claim, suit, proceeding, audit or other action by any Governmental Body is pending or, to the Knowledge of the Company, threatened in writing against the Company. There is no agreement, judgment, injunction, order or decree binding upon the Company which (i) has or would reasonably be expected to

have the effect of prohibiting or materially impairing any business practice of the Company, any acquisition of material property by the Company or the conduct of business by the Company as currently conducted, (ii) is reasonably likely to have an adverse effect on the Company's ability to comply with or perform any covenant or obligation under this Agreement, or (iii) is reasonably likely to have the effect of preventing, delaying, making illegal or otherwise interfering with the Contemplated Transactions.

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(b) The Company holds all required Governmental Authorizations which are material to the operation of the business of the Company as currently conducted (the *Company Permits*), Section 2.14(b) of the Company Disclosure Schedule identifies each Company Permit. The Company is in material compliance with the terms of the Company Permits. No Legal Proceeding is pending or, to the Knowledge of the Company, threatened, which seeks to revoke, limit, suspend, or materially modify any Company Permit. The rights and benefits of each Company Permit will be available to the Surviving Corporation immediately after the Effective Time on terms substantially similar to those enjoyed by the Company as of the date of this Agreement and immediately prior to the Effective Time.

(c) There are no proceedings pending or, to the Knowledge of the Company, threatened with respect to an alleged material violation by the Company of the FDCA, FDA regulations adopted thereunder, the Controlled Substance Act or any other similar Law administered or promulgated by any Drug Regulatory Agency.

(d) The Company holds all required Governmental Authorizations issuable by any Drug Regulatory Agency necessary or material to the conduct of the business of the Company as currently conducted, and, as applicable, the development, clinical testing, manufacturing, marketing, distribution and importation or exportation, as currently conducted, of any of its products or product candidates (collectively, the *Company Products*) (collectively, the *Company Regulatory Permits*) and no such Company Regulatory Permit has been (i) revoked, withdrawn, suspended, cancelled or terminated or (ii) modified in any adverse manner, other than immaterial adverse modifications. The Company is in compliance in all material respects with the Company Regulatory Permits and has not received any written notice or other written communication, or to the Knowledge of the Company, any other communication from any Drug Regulatory Agency regarding (A) any material violation of or failure to comply materially with any term or requirement of any Company Regulatory Permit or (B) any revocation, withdrawal, suspension, cancellation, termination or material modification of any Company Regulatory Permit. Except as set forth on Section 2.14(d) of the Company Disclosure Schedule, the Company has made available to Parent complete copies of the following (to the extent there are any): (x) copies of all investigational new drug applications (INDs) submitted to the FDA, and all supplements to and amendments of such INDs; new drug applications; adverse event reports; clinical study reports and material study data; inspection reports, notices of adverse findings, warning letters, filings and letters and other material written correspondence to and from any Drug Regulatory Agency; and (y) similar notices, letters, filings, correspondence and meeting minutes with any other Governmental Body. The Company has complied in all material respects with the ICH E9 Guidance for Industry: Statistical Principles for Clinical Trials in the management of the clinical data that have been presented by the Company. To the Company's Knowledge, there are no studies, tests or trials the results of which the Company believes reasonably call into question (i) the study, test or trial results of any Company Products, (ii) the efficacy or safety of any Company Products or (iii) any of the Company's filings with any Governmental Body.

(e) All clinical, pre-clinical and other studies and tests conducted by or on behalf of, or sponsored by, the Company, or in which the Company or its current products or product candidates, including the Company Products, have participated, were and, if still pending, are being conducted in all material respects in accordance with standard medical and scientific research procedures and in compliance in all material respects with the applicable regulations of any applicable Drug Regulatory Agency and other applicable Law, including 21 C.F.R. Parts 50, 54, 56, 58 and 312. No preclinical or clinical trial conducted by or on behalf of the Company has been terminated or suspended prior to completion for safety or non-compliance reasons. Since January 1, 2016, the Company has not received any notices, correspondence, or other communications from any Drug Regulatory Agency requiring, or to the Knowledge of the Company threatening to initiate, the termination or suspension of any clinical studies conducted by or on behalf of, or sponsored by, the Company or in which the Company or its current products or product candidates, including the Company Products, have participated.

(f) The Company is not the subject of any pending or, to the Knowledge of the Company, threatened investigation in respect of its business or products by the FDA pursuant to its Fraud, Untrue Statements of Material Facts, Bribery, and

Illegal Gratuities Final Policy set forth in 56 Fed. Reg. 46191 (September 10, 1991) and any amendments thereto. To the Knowledge of the Company, the Company has not committed any acts, made any statement, or failed to make any statement, in each case in respect of its

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business or products that would violate the FDA's Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities Final Policy, and any amendments thereto or any comparable applicable Law of any other Drug Regulatory Agency. Neither the Company nor, to the Knowledge of the Company, any of its officers, employees or agents has been convicted of any crime or engaged in any conduct that would result in a debarment or exclusion (i) under 21 U.S.C. Section 335a or (ii) any similar applicable Law. No debarment or exclusionary claims, actions, proceedings or investigations in respect of the Company's business or products are pending or, to the Knowledge of the Company, threatened against the Company or, to the Knowledge of the Company any of its officers, employees or agents.

(g) The Company has complied in all material respects with all Laws relating to patient, medical or individual health information, including the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations promulgated thereunder, all as amended from time to time (collectively **HIPAA**), including the standards for the privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and E, the standards for the protection of Electronic Protected Health Information set forth at 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subpart A and Subpart C, the standards for transactions and code sets used in electronic transactions at 45 C.F.R. Part 160, Subpart A and Part 162, and the standards for Breach Notification for Unsecured Protected Health Information at 45 C.F.R. Part 164, Subpart D, all as amended from time to time. The Company has entered into, where required, and are in compliance in all material respects with the terms of all Business Associate (as defined in HIPAA) agreements to which the Company is a party or otherwise bound. The Company has not received written notice from the Office for Civil Rights for the U.S. Department of Health and Human Services or any other Governmental Body of any allegation regarding its failure to comply with HIPAA or any other state law or regulation applicable to the protection of individually identifiable health information or personally identifiable information. To the Company's Knowledge, no successful Security Incident, Breach of Unsecured Protected Health Information or breach of personally identifiable information under applicable state or federal laws has occurred with respect to information maintained or transmitted to the Company or an agent or third party subject to a Business Associate Agreement with the Company. The Company is currently submitting, receiving and handling or is capable of submitting receiving and handling transactions in accordance in all material respects with the Standard Transaction Rule. All capitalized terms in this Section 2.14(g) not otherwise defined in this Agreement shall have the meanings set forth under HIPAA.

2.15. Legal Proceedings; Orders.

(a) As of the date of this Agreement, there is no pending Legal Proceeding and, to the Knowledge of the Company, no Person has threatened in writing to commence any Legal Proceeding: (i) that involves (A) the Company, (B) to the Company's Knowledge, any Company Associate (in his or her capacity as such) or (C) any of the material assets owned or used by the Company; or (ii) that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, the Contemplated Transactions.

(b) Except as set forth in Section 2.15(b) of the Company Disclosure Schedule, since January 1, 2016, no Legal Proceeding has been pending against the Company that resulted in material liability to the Company.

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

2.16. Tax Matters.

(a) The Company has timely filed all income Tax Returns and other material Tax Returns that they were required to file under applicable Law. All such Tax Returns are correct and complete in all material respects and have been

prepared in compliance with all applicable Law. No claim has ever been made by any Governmental Body in any jurisdiction where the Company does not file a particular Tax Return or pay a particular Tax that the Company is subject to taxation by that jurisdiction.

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(b) All income and other material Taxes due and owing by the Company on or before the date hereof (whether or not shown on any Tax Return) have been fully paid. Since the date of the Company Unaudited Interim Balance Sheet, the Company has not incurred any material Liability for Taxes outside the Ordinary Course of Business.

(c) All Taxes that the Company is or was required by Law to withhold or collect have been duly and timely withheld or collected in all material respects on behalf of its respective employees, independent contractors, stockholders, or other third parties and, have been timely paid to the proper Governmental Body or other Person or properly set aside in accounts for this purpose.

(d) There are no Encumbrances for material Taxes (other than Taxes not yet due and payable) upon any of the assets of the Company.

(e) No deficiencies for income or other material Taxes with respect to the Company have been claimed, proposed or assessed by any Governmental Body in writing. There are no pending or ongoing, and to the Knowledge of the Company, threatened audits, assessments or other actions for or relating to any liability in respect of a material amount of Taxes of the Company. Neither the Company nor any of its predecessors has waived any statute of limitations in respect of any income or other material Taxes or agreed to any extension of time with respect to any income or other material Tax assessment or deficiency.

(f) The Company has not been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code.

(g) The Company is not party to any Tax allocation agreement, Tax sharing agreement, Tax indemnity agreement, or similar agreement or arrangement, other than customary commercial contracts entered into in the Ordinary Course of Business the principal subject matter of which is not Taxes.

(h) The Company will not be required to include any material item of income in, or exclude any material item of deduction from, taxable income for any Tax period (or portion thereof) ending after the Closing Date as a result of any: (i) change in method of accounting for Tax purposes; (ii) use of an improper method of accounting for a Tax period ending on or prior to the Closing Date; (iii) closing agreement as described in Section 7121 of the Code (or any similar provision of state, local or foreign Law) executed on or prior to the Closing Date; (iv) intercompany transaction or excess loss account described in Treasury Regulations under Section 1502 of the Code (or any similar provision of state, local or foreign Law); (v) installment sale or open transaction disposition made on or prior to the Closing Date; (vi) prepaid amount received or deferred revenue accrued on or prior to the Closing Date; or (vii) election under Section 108(i) of the Code (or any similar provision of state, local or foreign Law).

(i) The Company has never been a member of a consolidated, combined or unitary Tax group (other than such a group the common parent of which is the Company). The Company has no Liability for any material Taxes of any Person (other than the Company) under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local, or foreign Law), or as a transferee or successor.

(j) The Company has not distributed stock of another Person, or has had its stock distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Section 355 of the Code or Section 361 of the Code (or any similar provisions of state, local or foreign Law).

(k) The Company has never had a permanent establishment (within the meaning of an applicable Tax treaty) or otherwise has an office or fixed place of business in a jurisdiction outside of the United States.

(l) The Company has not participated in or been a party to a transaction that, as of the date of this Agreement, constitutes a listed transaction that is required to be reported to the IRS pursuant to Section 6011 of the Code and applicable Treasury Regulations thereunder.

(m) The Company has not taken any action or has Knowledge of any fact that would reasonably be expected to prevent the Merger from qualifying for the Intended Tax Treatment.

For purposes of this Section 2.16, each reference to the Company shall be deemed to include any Person that was liquidated into, merged with, or is otherwise a predecessor to, the Company.

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2.17. **Employee and Labor Matters; Benefit Plans.**

(a) Section 2.17(a) of the Company Disclosure Schedule is a list of all material Company Benefit Plans, including, without limitation, each Company Benefit Plan that provides for retirement, change in control, non-qualified deferred compensation, incentive compensation, severance or retiree medical or retiree life insurance benefits. **Company Benefit Plan** means each (i) employee benefit plan as defined in Section 3(3) of ERISA and (ii) other pension, retirement, deferred compensation, profit sharing, bonus, incentive, equity or equity-based, phantom equity, employment, consulting, severance, change-of-control, retention, health, life, disability, time off, holiday, welfare and fringe benefit plan, program, contract, or arrangement (whether written or unwritten), in any case, maintained, contributed to, or required to be contributed to, by the Company or any Company ERISA Affiliate for the benefit of any current or former employee, director, officer or consultant (that is a natural person) of the Company or under which the Company has any actual or contingent liability (including, without limitation, as to the result of it being treated as a single employer under Code Section 414 with any other person).

(b) As applicable with respect to each material Company Benefit Plan, the Company has made available to Parent, true and complete copies of (i) each material Company Benefit Plan, including all amendments thereto, and in the case of an unwritten material Company Benefit Plan, a written description thereof, (ii) all current trust documents, administrative services agreements and insurance and annuity contracts relating thereto, (iii) the current summary plan description and each summary of material modifications thereto, (iv) the most recently filed annual reports with any Governmental Body (e.g., Form 5500 and all schedules thereto), (v) the most recent IRS determination, opinion or advisory letter, (vi) the most recent summary annual reports, nondiscrimination testing reports, actuarial reports, financial statements and trustee reports, (vii) all records, notices and filings concerning IRS or Department of Labor or other Governmental Body audits or investigations or prohibited transactions within the meaning of Section 406 of ERISA or Section 4975 of the Code, in any case under this clause (vii), within the last three (3) years and (viii) all policies and procedures established to comply with the privacy and security rules of HIPAA.

(c) Each Company Benefit Plan has been maintained, operated and administered in compliance in all material respects with its terms and any related documents or agreements and the applicable provisions of ERISA, the Code and all other Laws.

(d) The Company Benefit Plans which are employee pension benefit plans within the meaning of Section 3(2) of ERISA and which are intended to meet the qualification requirements of Section 401(a) of the Code have each received a favorable determination, opinion or advisory letter from the IRS to the effect that such Company Benefit Plan is qualified under Section 401(a) of the Code, and nothing has occurred that would reasonably be expected to result in the loss of such qualification of such Company Benefit Plan.

(e) Neither the Company nor any Company ERISA Affiliate maintains, contributes to, is required to contribute to, or has any actual or contingent liability with respect to, (i) any employee pension benefit plan (within the meaning of Section 3(2) of ERISA) that is subject to Title IV or Section 302 of ERISA or Section 412 of the Code, (ii) any multiemployer plan (within the meaning of Section 3(37) of ERISA), (iii) any multiple employer plan (within the meaning of Section 413 of the Code) or (iv) any multiple employer welfare arrangement (within the meaning of Section 3(40) of ERISA).

(f) There are no pending audits or investigations by any Governmental Body involving any Company Benefit Plan, and no pending nor, to the Knowledge of the Company, threatened claims (except for individual claims for benefits payable in the normal operation of the Company Benefit Plans), suits or proceedings involving any Company Benefit Plan, in any case, except as would not be reasonably expected to result in material liability to the Company.

(g) No Company Benefit Plan provides death, medical, dental, vision or life insurance benefits beyond termination of service or retirement other than coverage mandated by Law and neither the Company nor any Company ERISA Affiliate has made a written or oral representation promising the same.

(h) Neither the execution of, nor the performance of the transactions contemplated by, this Agreement will either alone or in connection with any other event(s) (i) result in any payment becoming due to any current or former employee, director, officer, or consultant (who is a natural person) of the Company,

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(ii) increase any amount of compensation or benefits otherwise payable under any Company Benefit Plan, (iii) result in the acceleration of the time of payment, funding or vesting of any benefits under any Company Benefit Plan or (iv) require any contribution or payment to fund any obligation under any Company Benefit Plan.

(i) The exercise price of each Company Option was not less than the fair market value of one share of Company Common Stock as of the grant date of such Company Option.

(j) No current or former employee, officer, director or independent contractor of the Company has any gross up agreements or other assurance of reimbursement for any Taxes imposed under Code Section 409A or Code Section 4999.

(k) The Company does not maintain any Company Benefit Plan outside of the United States.

(l) The Company is not a party to, bound by, nor has a duty to bargain under any collective bargaining agreement or other Contract with a labor union, labor organization, or similar Person representing any of its employees, and there is no labor union, labor organization, or similar Person representing or, to the Knowledge of the Company, purporting to represent or seeking to represent any employees of the Company, including through the filing of a petition for representation election.

(m) The Company is, and since January 1, 2016 has been, in compliance in all material respects with all applicable Laws respecting labor, employment, employment practices, and terms and conditions of employment, including worker classification, tax withholding, prohibited discrimination and retaliation, equal employment opportunities, harassment, fair employment practices, meal and rest periods, immigration, employee safety and health, wages (including overtime wages), unemployment and workers' compensation, leaves of absence, and hours of work. Except as would not be reasonably likely to result in a material liability to the Company, with respect to employees of the Company, the Company since January 1, 2016: (i) has withheld and reported all amounts required by Law or by agreement to be withheld and reported with respect to wages, salaries and other payments, benefits, or compensation to employees, (ii) is not liable for any arrears of wages (including overtime wages), severance pay or any Taxes or any penalty for failure to comply with any of the foregoing, and (iii) is not liable for any payment to any trust or other fund governed by or maintained by or on behalf of any Governmental Body, with respect to unemployment compensation benefits, disability, social security or other benefits or obligations for employees (other than routine payments to be made in the Ordinary Course of Business). There are no Legal Proceedings pending or, to the Knowledge of the Company, threatened or reasonably anticipated against the Company with respect to, by, or on behalf of any employee, applicant for employment, consultant, employment agreement or Company Benefit Plan (other than routine claims for benefits).

(n) Except as would not be reasonably likely to result in a material liability to the Company, with respect to each individual who currently renders services to the Company, the Company has accurately classified each such individual as an employee, independent contractor, or otherwise under all applicable Laws and, for each individual classified as an employee, the Company has accurately classified him or her as overtime eligible or overtime ineligible under all applicable Laws. The Company does not have any material liability with respect to any misclassification of: (i) any Person as an independent contractor rather than as an employee, (ii) any employee leased from another employer, or (iii) any employee currently or formerly classified as exempt from overtime wages.

(o) There is not and has not been in the past three (3) years, nor is there or has there been in the past three (3) years any threat of, any strike, slowdown, work stoppage, lockout, union election petition, demand for recognition, or any similar activity or dispute, or, to the Knowledge of the Company, any union organizing activity, against the Company. No event has occurred, and no condition or circumstance exists, that might directly or indirectly be likely to give rise to or provide a basis for the commencement of any such strike, slowdown, work stoppage, lockout or any similar

activity or dispute.

(p) There is no Legal Proceeding, including any claim, unfair labor practice charge or complaint, labor dispute or grievance, pending or, to the Knowledge of the Company, threatened against the Company relating to labor, employment, employment practices, or terms and conditions of employment.

(q) As of the date hereof, no Key Employee of the Company has submitted his or her resignation or, to the Knowledge of the Company, intends to resign.

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2.18. **Environmental Matters.** The Company is and since January 1, 2016 has complied with all applicable Environmental Laws, which compliance includes the possession by the Company of all permits and other Governmental Authorizations required under applicable Environmental Laws and compliance with the terms and conditions thereof, except for any failure to be in such compliance that, either individually or in the aggregate, would not reasonably be expected to be material to the Company or its business. The Company has not received since January 1, 2016 (or prior to that time, which is pending and unresolved), any written notice or other communication (in writing or otherwise), whether from a Governmental Body or other Person, that alleges that the Company is not in compliance with or has liability pursuant to any Environmental Law. No current or (during the time a prior property was leased by the Company) prior property leased by the Company has had a release of or exposure to Hazardous Substances in material violation of or as would reasonably be expected to result in any material liability of the Company pursuant to Environmental Law. No consent, approval or Governmental Authorization of or registration or filing with any Governmental Body is required by Environmental Laws in connection with the execution and delivery of this Agreement or the Contemplated Transactions. Prior to the date hereof, the Company has provided or otherwise made available to Parent true and correct copies of all material environmental reports, assessments, studies and audits in the possession or control of the Company with respect to any property leased by the Company.

2.19. **Insurance.** The Company has delivered or made available to Parent accurate and complete copies of all material insurance policies and all material self-insurance programs and arrangements relating to the business, assets, liabilities and operations of the Company. Each of such insurance policies is in full force and effect and the Company is in compliance in all material respects with the terms thereof. Other than customary end of policy notifications from insurance carriers, since January 1, 2016, the Company has not received any notice or other communication regarding any actual or possible: (i) cancellation or invalidation of any insurance policy; or (ii) refusal or denial of any coverage, reservation of rights or rejection of any material claim under any insurance policy. The Company has provided timely written notice to the appropriate insurance carrier(s) of each Legal Proceeding that is currently pending against the Company for which the Company has insurance coverage, and no such carrier has issued a denial of coverage or a reservation of rights with respect to any such Legal Proceeding, or informed the Company of its intent to do so. This Section 2.19 does not apply to insurance under any Company Benefit Plan.

2.20. **No Brokers Fees.** Except as set forth on Section 2.20 of the Company Disclosure Schedule, no broker, finder or investment banker is entitled to any brokerage fee, finder's fee, opinion fee, success fee, transaction fee or other fee or commission in connection with the Contemplated Transactions based upon arrangements made by or on behalf of the Company.

2.21. **Disclosure.** The information supplied by the Company for inclusion in the Proxy Statement (including any of the Company Financials) will not, as of each of the date of the Proxy Statement and the date such information is prepared or presented, (i) contain any statement that is inaccurate or misleading with respect to any material facts, or (ii) omit to state any material fact necessary in order to make such information, in light of the circumstances under which such information will be provided, not false or misleading.

2.22. **Transactions with Affiliates.**

(a) Section 2.22(a) of the Company Disclosure Schedule describes any material transactions or relationships, since January 1, 2016, between, on one hand, the Company and, on the other hand, any (i) executive officer or director of the Company or any of such executive officer's or director's immediate family members, (ii) owner of more than five percent (5%) of the voting power of the outstanding Company Capital Stock or (iii) to the Knowledge of the Company, any related person (within the meaning of Item 404 of Regulation S-K under the Securities Act) of any such officer, director or owner (other than the Company) in the case of each of (i), (ii) or (iii) that is of the type that would be required to be disclosed under Item 404 of Regulation S-K under the Securities Act.

(b) Section 2.22(b) of the Company Disclosure Schedule lists each stockholders agreement, voting agreement, registration rights agreement, co-sale agreement or other similar Contract between the Company and any holders of Company Capital Stock, including any such Contract granting any Person investor rights, rights of first refusal, rights of first offer, registration rights, director designation rights or similar rights (collectively, the ***Investor Agreements***).

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2.23. **Anti-Bribery.** Neither the Company nor any of its directors, officers, employees or, to the Company's Knowledge, agents or any other Person acting on their behalf has directly or indirectly made any bribes, rebates, payoffs, influence payments, kickbacks, illegal payments, illegal political contributions, or other payments, in the form of cash, gifts, or otherwise, or taken any other action, in violation of the Foreign Corrupt Practices Act of 1977, the UK Bribery Act of 2010 or any other anti-bribery or anti-corruption Law (collectively, the **Anti-Bribery Laws**). To the Company's Knowledge, the Company is not and has not been the subject of any investigation or inquiry by any Governmental Body with respect to potential violations of Anti-Bribery Laws.

2.24. **Information Technology; Data Privacy.**

(a) The Company has taken commercially reasonable steps to ensure the continued operation of the material software and databases included in the Company Owned IP Rights, and all of its material computers and other information technology infrastructure and assets used in the business (collectively, the **IT Assets**), and to protect the security and confidentiality of its IT Assets and the material information and records stored on or accessed or transmitted using the IT Assets. The IT Assets of the Company operate and perform in all material respects as is necessary and sufficient for the conduct of the business of the Company as currently conducted by them. To the Company's Knowledge, the IT Assets are free from malicious code and do not contain any bugs, errors, vulnerabilities or problems that, in each case, would be expected to materially adversely affect the operation or use of any such IT Assets in the business of the Company. To the Company's Knowledge, there has not been in the past three (3) years any material (i) unauthorized intrusions or breach of the security of the IT Assets, (ii) malfunction of the IT Assets or (iii) accidental or unauthorized access to, loss or misuse of Personal Data maintained by the Company. The Company has implemented commercially reasonable backups and security measures to duplicate, store and protect its material information that is stored in electronic form or media.

(b) The Company and, to the Knowledge of the Company, each of the Company's Data Processors, is in compliance in all material respects with all applicable Data Privacy Requirements. To the Company's Knowledge, the Company is not under investigation by any Governmental Body for a material violation of applicable Laws relating to data privacy or security, nor has the Company received any written complaint or inquiry related to its data privacy or security practices. The Company and, to the Knowledge of the Company, each of the Company's Data Processors, has implemented and maintains commercially reasonable organizational, physical, administrative and technical measures substantially consistent with industry standards to protect the operation, confidentiality, integrity and security of all Personal Data or other sensitive business data against loss, theft, or unauthorized access, disclosure or use. To the Company's Knowledge, the Company has not experienced any security incident in which an unauthorized party accessed or acquired Personal Data or sensitive business data maintained by or on behalf of the Company.

2.25. **Disclaimer of Other Representations or Warranties.** Except as previously set forth in this Section 2 or in any certificate delivered by the Company to Parent and/or Merger Sub pursuant to this Agreement, the Company makes no representation or warranty, express or implied, at law or in equity, with respect to it or any of its assets, liabilities or operations, and any such other representations or warranties are hereby expressly disclaimed.

Section 3. REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Subject to Section 10.13(i), except (i) as set forth in the written disclosure schedule delivered by Parent to the Company (the **Parent Disclosure Schedule**) or (ii) with respect to each of the representations and warranties set forth in this Section 3 other than those set forth in Section 3.6, Section 3.8, Section 3.10, Section 3.11, Section 3.17, Section 3.26 and the Parent Fundamental Representations, as disclosed in the Parent SEC Documents filed with the SEC prior to the date hereof and publicly available on the SEC's Electronic Data Gathering Analysis and Retrieval system (but (A) without giving effect to any amendment thereof filed with, or furnished to the SEC on or after the date hereof and (B) excluding any disclosures contained under the heading **Risk Factors** and any disclosure of risks included in any forward-looking statements disclaimer or in any other section to the extent they are forward-looking statements or

cautionary, predictive or forward-looking in nature), Parent and Merger Sub represent and warrant to the Company as follows:

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3.1. **Due Organization; Subsidiaries.**

(a) Each of Parent and Merger Sub is a corporation duly incorporated, validly existing and in good standing under the Laws of the State of Delaware and has all necessary corporate power and authority (i) to conduct its business in the manner in which its business is currently being conducted and (ii) to own or lease and use its property and assets in the manner in which its property and assets are currently owned or leased and used, except in the case of the foregoing (i) and (ii), where the failure to have such power or authority would not reasonably be expected to be material to Parent, or prevent or materially delay the ability of Parent and Merger Sub to consummate the Contemplated Transactions. Since the date of its incorporation, Merger Sub has not engaged in any activities other than activities incident to its formation or in connection with or as contemplated by this Agreement.

(b) Parent is duly licensed and qualified to do business, and is in good standing (to the extent applicable in such jurisdiction), under the Laws of all jurisdictions where the nature of its business requires such licensing or qualification other than in jurisdictions where the failure to be so qualified individually or in the aggregate would not be reasonably expected to have a Parent Material Adverse Effect.

(c) Except for Merger Sub, Parent has no Subsidiaries, nor does Parent own any capital stock of, or any equity, ownership or profit sharing interest of any nature in, or controls directly or indirectly, any other Entity. Parent is not, nor has it otherwise been, directly or indirectly, a party to, member of or participant in any partnership, joint venture or similar business entity. Parent has not agreed, nor is it obligated to make, nor is it bound by any Contract under which it may become obligated to make, any future investment in or capital contribution to any other Entity. Parent has not, at any time, been a general partner of, or has otherwise been liable for any of the debts or other obligations of, any general partnership, limited partnership or other Entity.

3.2. **Organizational Documents.** Parent has made available to the Company accurate and complete copies of Parent's and Merger Sub's Organizational Documents. Neither Parent nor Merger Sub is in material breach or violation of its respective Organizational Documents.

3.3. **Authority; Binding Nature of Agreement.** Each of Parent and Merger Sub has all necessary corporate power and authority to enter into and to perform its obligations under this Agreement and to consummate the Contemplated Transactions. The Parent Board (at meetings duly called and held) has (other than Brian Leuthner, who recused himself) (a) determined that the Contemplated Transactions are fair to, advisable and in the best interests of Parent and its stockholders; (b) approved and declared advisable this Agreement and the Contemplated Transactions, including the issuance of shares of Parent Common Stock to the stockholders of the Company pursuant to the terms of this Agreement and the treatment of the Company Options pursuant to this Agreement; and (c) determined to recommend, upon the terms and subject to the conditions set forth in this Agreement, that the stockholders of Parent vote to approve this Agreement and the Contemplated Transactions, including the issuance of shares of Parent Common Stock to the stockholders of the Company pursuant to the terms of this Agreement. The Merger Sub Board (by unanimous written consent) has: (x) determined that the Contemplated Transactions are fair to, advisable, and in the best interests of Merger Sub and its sole stockholder; (y) deemed advisable and approved this Agreement and the Contemplated Transactions; and (z) determined to recommend, upon the terms and subject to the conditions set forth in this Agreement, that the stockholder of Merger Sub vote to adopt this Agreement and thereby approve the Contemplated Transactions. This Agreement has been duly executed and delivered by Parent and Merger Sub and, assuming the due authorization, execution and delivery by the Company, constitutes the legal, valid and binding obligation of Parent and Merger Sub, enforceable against each of Parent and Merger Sub in accordance with its terms, subject to the Enforceability Exceptions.

3.4. **Vote Required.** The affirmative vote of (i) a majority of the votes cast at the Parent Stockholders' Meeting is the only vote of the holders of any class or series of Parent's capital stock necessary to approve the issuance of the shares

of Parent Common Stock to the stockholders of the Company pursuant to the terms of this Agreement (the ***Required Parent Stockholder Merger Vote***) and (ii) a majority of the outstanding shares of Parent Common Stock is the only vote of the holders of any class or series of Parent s capital stock necessary to approve the Reverse Split (the ***Required Parent Stockholder Reverse Split Vote***, such vote, together with the Required Parent Stockholder Merger Vote, the ***Required Parent Stockholder Vote***).

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3.5. **Non-Contravention; Consents.** Subject to obtaining the Required Parent Stockholder Vote, the filing of the Certificate of Merger required by the DGCL, obtaining the Consents set forth on Section 3.5 of the Parent Disclosure Schedule, neither (x) the execution, delivery or performance of this Agreement by Parent or Merger Sub, nor (y) the consummation of the Contemplated Transactions, will directly or indirectly (with or without notice or lapse of time):

- (a) contravene, conflict with or result in a violation of any of the provisions of the Organizational Documents of Parent or Merger Sub;
- (b) contravene, conflict with or result in a violation of, or give any Governmental Body or other Person the right to challenge the Contemplated Transactions or to exercise any remedy or obtain any relief under, any Law or any order, writ, injunction, judgment or decree to which Parent or Merger Sub, or any of the assets owned or used by Parent or Merger Sub, is subject, except as would not reasonably be expected to be material to Parent or its business;
- (c) contravene, conflict with or result in a violation of any of the terms or requirements of, or give any Governmental Body the right to revoke, withdraw, suspend, cancel, terminate or modify, any Governmental Authorization that is held by Parent, or require any notice to or Consent by any Governmental Body, except as would not reasonably be expected to be material to Parent or its business;
- (d) contravene, conflict with or result in a violation or breach of, or result in a default or require any notice or Consent under, any provision of any Parent Material Contract, or give any Person the right to: (i) declare a default or exercise any remedy under any Parent Material Contract; (ii) any material payment, rebate, chargeback, penalty or change in delivery schedule under any Parent Material Contract; (iii) accelerate the maturity or performance of any Parent Material Contract; or (iv) cancel, terminate or modify any term of any Parent Material Contract, except in each case as would not reasonably be expected to be material to Parent or its business; or
- (e) result in the imposition or creation of any Encumbrance upon or with respect to any asset owned or used by Parent (except for Permitted Encumbrances).

The Parent Board and the Merger Sub Board have taken and will take all actions necessary to ensure that the restrictions applicable to business combinations contained in Section 203 of the DGCL are, and will be, inapplicable to the execution, delivery and performance of this Agreement and to the consummation of the Contemplated Transactions. No other state takeover statute or similar Law applies or purports to apply to the Merger, this Agreement or any of the other Contemplated Transactions. Parent is not included within a person (as defined in 16 C.F.R. § 801.1(a)(1)) that has one hundred and sixty eight million, eight hundred thousand dollars (\$168,800,000) or more of total assets or annual net sales, in each case as determined in accordance with 16 C.F.R. § 801.11.

3.6. **Capitalization.**

- (a) The authorized capital stock of Parent consists of (i) 75,000,000 shares of Parent Common Stock, par value \$0.00033 per share, of which 31,328,128 shares have been issued and are outstanding as of October 25, 2018 (the ***Capitalization Date***) and (ii) 5,000,000 shares of Preferred Stock, par value \$0.00033 per share, of which no shares have been issued and are outstanding as of the Capitalization Date. Parent does not hold any shares of its capital stock in its treasury.
- (b) All of the outstanding shares of Parent Common Stock have been duly authorized and validly issued, and are fully paid and nonassessable. None of the outstanding shares of Parent Common Stock is entitled or subject to any preemptive right, right of participation, right of maintenance or any similar right and none of the outstanding shares of Parent Common Stock is subject to any right of first refusal in favor of Parent. Except as contemplated herein or as set forth on Section 3.6(b) of the Parent Disclosure Schedule, there is no Parent Contract relating to the voting or

registration of, or restricting any Person from purchasing, selling, pledging or otherwise disposing of (or granting any option or similar right with respect to), any shares of Parent Common Stock. Except as set forth on Section 3.6(b) of the Parent Disclosure Schedule or any Parent Benefit Plan (excluding any Parent Benefit Plan or amendment or Board resolution with respect thereto adopted, approved or executed on or after October 1, 2018), Parent is not under any obligation, nor is it bound by any Contract pursuant to which it may become obligated, to repurchase, redeem or otherwise acquire any outstanding shares of Parent Common Stock or other securities.

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(c) Except for the Parent Stock Plans, and except as set forth on Section 3.6(c) of the Parent Disclosure Schedule, Parent does not have any stock option plan or any other plan, program, agreement or arrangement providing for any equity-based compensation for any Person. As of the date of this Agreement, 7,481,106 shares have been reserved for issuance upon exercise of Parent Options granted under the Parent Stock Plans that are outstanding as of the date of this Agreement, 601,394 shares have been reserved for issuance upon settlement of Parent RSUs granted under the Parent Stock Plans that are outstanding as of the date of this Agreement, and 333,190 shares remain available for future issuance pursuant to the Parent Stock Plans. Based on the assumptions set forth on Section 3.6(c) of the Parent Disclosure Schedule, not more than 13,824 shares (subject to equitable adjustment for stock splits and similar events) would be issued after the date of this Agreement under the Parent 401(k) Plan as matching contributions for the 2018 plan year.

(d) Section 3.6(d) of the Parent Disclosure Schedule sets forth the following information with respect to each Parent Option and Parent RSU outstanding as of the date of this Agreement: (i) the name of the holder; (ii) the number of shares of Parent Common Stock subject to such Parent Option as of the date of this Agreement; (iii) the exercise price of such Parent Option; (iv) the date on which such Parent Option or Parent RSU was granted; (v) the date on which such Parent Option or Parent RSU expires; and (vi) whether such Parent Option is intended to constitute an incentive stock option (as defined in the Code) or a non-qualified stock option.

(e) Except for the Parent Stock Plans, including the Parent Options and the Parent RSUs, and as otherwise set forth on Section 3.6(e) of the Parent Disclosure Schedule, there is no: (i) outstanding subscription, option, call, warrant or right (whether or not currently exercisable) to acquire any shares of the capital stock or other securities of Parent or any of its Subsidiaries; (ii) outstanding security, instrument or obligation that is or may become convertible into or exchangeable for any shares of the capital stock or other securities of Parent or any of its Subsidiaries; or (iii) condition or circumstance that is reasonably likely to give rise to or provide a basis for the assertion of a claim by any Person to the effect that such Person is entitled to acquire or receive any shares of capital stock or other securities of Parent or any of its Subsidiaries. There are no outstanding or authorized stock appreciation, phantom stock, or other similar rights with respect to Parent or any of its Subsidiaries.

(f) All outstanding shares of Parent Common Stock, Parent Options, Parent RSUs and other securities of Parent have been issued and granted in material compliance with (i) all applicable securities Laws and other applicable Law, and (ii) all requirements set forth in applicable Contracts.

3.7. SEC Filings; Financial Statements.

(a) Parent has delivered or made available to the Company accurate and complete copies of all registration statements, proxy statements, Certifications (as defined below) and other statements, reports, schedules, forms and other documents filed by Parent with the SEC since January 1, 2016 (the *Parent SEC Documents*), other than such documents that can be obtained on the SEC's website at www.sec.gov. All material statements, reports, schedules, forms and other documents required to have been filed by Parent or its officers with the SEC have been so filed on a timely basis. As of the time it was filed with the SEC (or, if amended or superseded by a filing prior to the date of this Agreement, then on the date of such filing), each of the Parent SEC Documents complied in all material respects with the applicable requirements of the Securities Act or the Exchange Act (as the case may be) and, as of the time they were filed, none of the Parent 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 certifications and statements required by (i) Rule 13a-14 under the Exchange Act and (ii) 18 U.S.C. §1350 (Section 906 of the Sarbanes-Oxley Act) relating to the Parent SEC Documents (collectively, the *Certifications*) are accurate and complete and comply as to form and content with all applicable Laws. As used in this Section 3.7, the term file and variations thereof shall be broadly construed to include any manner in which a document or information is furnished, supplied or otherwise made available to the

SEC.

(b) The financial statements (including any related notes) contained or incorporated by reference in the Parent SEC Documents: (i) complied as to form in all material respects with the published rules and regulations of the SEC applicable thereto; (ii) were prepared in accordance with GAAP (except as may be indicated in the notes to such financial statements or, in the case of unaudited financial statements, except as

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permitted by Form 10-Q of the SEC, and except that the unaudited financial statements may not contain footnotes and are subject to normal and recurring year-end adjustments) applied on a consistent basis unless otherwise noted therein throughout the periods indicated; and (iii) fairly present, in all material respects, the financial position of Parent as of the respective dates thereof and the results of operations and cash flows of Parent for the periods covered thereby. Other than as expressly disclosed in the Parent SEC Documents filed prior to the date hereof, there has been no material change in Parent's accounting methods or principles that would be required to be disclosed in Parent's financial statements in accordance with GAAP. The books of account and other financial records of Parent are true and complete in all material respects.

(c) Except as set forth on Section 3.7(c) of the Parent Disclosure Schedule, Parent is in compliance in all material respects with the applicable current listing and governance rules and regulations of NASDAQ.

(d) Parent maintains a system of internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) that is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP and to provide reasonable assurance (i) that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, (ii) that receipts and expenditures are made only in accordance with authorizations of management and the Parent Board and (iii) regarding prevention or timely detection of the unauthorized acquisition, use or disposition of Parent's assets that could have a material effect on Parent's financial statements. Parent has evaluated the effectiveness of Parent's internal control over financial reporting as of December 31, 2017, and, to the extent required by applicable Law, presented in any applicable Parent SEC Document that is a report on Form 10-K or Form 10-Q (or any amendment thereto) its conclusions about the effectiveness of the internal control over financial reporting as of the end of the period covered by such report or amendment based on such evaluation. Parent has disclosed, based on its most recent evaluation of internal control over financial reporting, to Parent's auditors and audit committee (and made available to the Company a summary of the significant aspects of such disclosure) (A) all significant deficiencies, if any, in the design or operation of internal control over financial reporting that are reasonably likely to adversely affect Parent's ability to record, process, summarize and report financial information and (B) any known fraud that involves management or other employees who have a significant role in Parent's internal control over financial reporting. Parent has not identified, based on its most recent evaluation of internal control over financial reporting, any material weaknesses in the design or operation of Parent's internal control over financial reporting.

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

3.8. **Absence of Undisclosed Liabilities.** As of the date hereof, Parent does not have any Liability, individually or in the aggregate, of a type required to be recorded or reflected on a balance sheet or disclosed in the footnotes thereto under GAAP except for: (a) Liabilities disclosed, reflected or reserved against in the Parent Balance Sheet; (b) Liabilities that have been incurred by Parent since the date of the Parent Balance Sheet in the Ordinary Course of Business; (c) Liabilities incurred in connection with the Contemplated Transactions; (d) Liabilities which would not, individually or in the aggregate, reasonably be expected to be material to the Parent; and (e) Liabilities described in Section 3.8 of the Parent Disclosure Schedule.

3.9. **Real Property; Leasehold.** Parent does not own, nor has it ever owned, any real property. Parent has made available to the Company (a) an accurate and complete list of all real properties with respect to which Parent directly or indirectly holds a valid leasehold interest as well as any other real estate that is in the possession of or leased by Parent, and (b) copies of all leases under which any such real property is possessed (the *Parent Real Estate Leases*),

each of which is in full force and effect, with no existing material default thereunder. Parent's use and operation of each such leased property conforms to all applicable Laws in all material respects, and Parent has exclusive possession of each such leased property and has not granted any occupancy rights to tenants or licensees with respect to such leased property. In addition, each such leased property is free and clear of all Encumbrances other than Permitted Encumbrances. Parent has not received

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written notice from its landlords or any Governmental Body that: (i) relates to violations of building, zoning, safety or fire ordinances or regulations; (ii) claims any defect or deficiency with respect to any of such properties; or (iii) requests the performance of any repairs, alterations or other work to such properties.

3.10. **Intellectual Property.**

(a) Section 3.10(a) of the Parent Disclosure Schedule accurately identifies each Parent Contract pursuant to which Parent has granted any license to any material Parent Owned IP Rights or Parent Exclusively Licensed IP Rights (other than any Parent Owned IP Rights or Parent Exclusively Licensed IP Rights that have been non-exclusively licensed to suppliers or service providers for the purpose of enabling such suppliers or service providers to provide services for Parent's benefit) (the ***Parent IP Agreements***). To the Knowledge of Parent, (i) the manufacture, marketing, license, sale or intended use of any product or technology currently licensed to a third party pursuant to the Parent IP Agreements, and (ii) the conduct of Parent's business as currently conducted and as has in the last two (2) years been conducted does not and has not infringed or misappropriated any Intellectual Property right of any third party, in each of case (i) and (ii) above, which infringement or misappropriation would reasonably be expected to be material to Parent or its business, and Parent has not, since January 1, 2016, received any written notice of any such infringement, misappropriation or similar claim.

(b) Section 3.10(b) of the Parent Disclosure Schedule accurately identifies (i) all Parent Contracts pursuant to which Parent Licensed IP Rights are licensed to Parent (other than (A) any non-customized software that (1) is so licensed solely in executable or object code form pursuant to a non-exclusive, internal use software license and other Intellectual Property nonexclusively licensed with such software and (2) is not incorporated into, or material to the development, manufacturing, or distribution of, any of Parent's products or services, (B) any Intellectual Property licensed ancillary to the purchase or use of services, equipment, reagents or other materials and (C) any immaterial confidential information provided under confidentiality agreements), and (ii) whether the license or licenses granted to Parent are exclusive or nonexclusive. For purposes of greater certainty, the term "license" in this Section 3.10(b) and in Section 3.10(a) includes any license, sublicense, covenant, non-assert, consent, release or waiver. Except as set forth in Section 3.10(b) of the Parent Disclosure Schedule, there are no royalties, honoraria, fees or other payments payable by Parent or any Person for the purchase, license, sublicense or use of any Parent IP Rights.

(c) To the Knowledge of Parent, with respect to Parent Owned IP Rights and to the Actual Knowledge of Parent with respect to Parent Exclusively Licensed IP Rights, no employee of Parent who is or was involved in the development of material Parent Owned IP Rights or Parent Exclusively Licensed IP Rights is or was (at the time of development) (i) bound by or otherwise subject to any Contract restricting him or her from performing his or her duties for Parent or (ii) in breach of any Contract with any former employer or other Person concerning Parent IP Rights purported to be owned by Parent or confidentiality provisions protecting Proprietary Information and other confidential information comprising Parent Owned IP Rights or Parent Exclusively Licensed IP Rights.

(d) Except as identified in Section 3.10(d) of the Parent Disclosure Schedule, no material Parent Owned IP Rights or, to the Actual Knowledge of Parent, Parent Exclusively Licensed IP Rights were developed, in whole or in part (i) pursuant to or in connection with the development of any professional, technical or industry standard, (ii) under contract with or using the resources of any Governmental Body, academic institution or other entity that would subject any Parent Owned IP Rights or Parent Exclusively Licensed IP Rights to the rights of any Governmental Body, academic institution or other entity or (iii) under any grants or other funding arrangements with third parties. To the extent that any Parent Owned IP Rights or Parent Exclusively Licensed IP Rights are disclosed in Section 3.10(d) of the Parent Disclosure Schedule, Section 3.10(d) of the Parent Disclosure Schedule identifies each Parent Contract that relates to such Parent Owned IP Rights or Parent Exclusively Licensed IP Rights.

(e) Except as set forth in the Contracts listed on Section 3.10(e) of the Parent Disclosure Schedule and except for Parent Contracts entered into in the Ordinary Course of Business, (i) Parent is not bound by any Contract to indemnify, defend, hold harmless, or reimburse any other Person with respect to any Intellectual Property infringement, misappropriation, or similar claim, in each case, that would reasonably be expected to be material to Parent or its business, and (ii) Parent has not assumed, or agreed to discharge or

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otherwise take responsibility for, any existing or potential liability of another Person for infringement, misappropriation, or violation of any Intellectual Property right, which assumption, agreement or responsibility is material and remains in force as of the date of this Agreement.

(f) There are no Contracts pursuant to which Parent or any existing or future Affiliate of Parent granted or is required to grant to any Person any rights under the Intellectual Property of Parent other than Intellectual Property owned or controlled by Parent as of the Closing Date.

(g) Section 3.10(g) of the Parent Disclosure Schedule sets forth, as of the date specified thereon, an accurate, true and complete listing of all Patents included in the Parent Registered IP, and, specifying as to each such item, as applicable, jurisdiction of application and/or registration, the application and/or registration number, the date of application and/or registration, and the status of application and/or registration. Except as otherwise indicated on Section 3.10(g) of the Parent Disclosure Schedule, Parent is the owner of record and beneficial owner of all Parent Registered IP. Each item of Parent Registered IP required to be listed on Section 3.10(g) of the Parent Disclosure Schedule is and at all times has been filed and maintained in compliance in all material respects with all applicable Law and all filings, payments, and other actions required to be made or taken to maintain such item of Parent Registered IP in full force and effect have been made by the applicable deadline, except for any failure to perform any of the foregoing, individually or collectively, that would not reasonably be expected to be material to Parent or its business. There are no (and as of the Closing there will be no) ongoing payment or other financial obligations to any third party with respect to any Parent Registered IP required to be listed on Section 3.10(g) of the Parent Disclosure Schedule that is jointly owned by Parent and any third party.

3.11. **Agreements, Contracts and Commitments.** Section 3.11 of the Parent Disclosure Schedule identifies each Parent Contract that is in effect as of the date of this Agreement (other than any Parent Benefit Plan) and is:

(a) a material contract as defined in Item 601(b)(10) of Regulation S-K as promulgated under the Securities Act;

(b) a Contract relating to any agreement of indemnification or guaranty not entered into in the Ordinary Course of Business;

(c) a Contract containing (A) any covenant limiting the freedom of Parent to engage in any line of business or compete with any Person, (B) any most-favored pricing arrangement, (C) any exclusivity provision, or (D) any non-solicitation provision;

(d) a Contract relating to capital expenditures and requiring payments after the date of this Agreement in excess of \$100,000 pursuant to its express terms and not cancelable without penalty;

(e) a Contract relating to the disposition or acquisition of material assets or any ownership interest in any Entity;

(f) a Contract relating to any mortgages, indentures, loans, notes or credit agreements, security agreements or other agreements or instruments relating to the borrowing of money or extension of credit or creating any material Encumbrances with respect to any assets of Parent or any loans or debt obligations with officers or directors of Parent;

(g) a Contract requiring payment by or to Parent after the date of this Agreement in excess of \$100,000 pursuant to its express terms relating to: (A) any distribution agreement (identifying any that contain exclusivity provisions); (B) any agreement involving provision of services or products with respect to any pre-clinical or clinical development activities of Parent; (C) any dealer, distributor, joint marketing, alliance, joint venture, cooperation, development or other agreement currently in force under which Parent has continuing obligations to develop or market any product, technology or service, or any agreement pursuant to which Parent has continuing obligations to develop any

Intellectual Property that will not be owned, in whole or in part, by Parent; or (D) any Contract to license any third party to manufacture or produce any product, service or technology of Parent or any Contract to sell, distribute or commercialize any products or service of Parent, in each case, except for Contracts entered into in the Ordinary Course of Business;

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- (h) a Contract with any Person, including any financial advisor, broker, finder, investment banker or other Person, providing advisory services to Parent in connection with the Contemplated Transactions;
- (i) a Contract with a labor union, labor organization, or similar Person;
- (j) a Parent Real Estate Lease;
- (k) a Contract with any Governmental Body;
- (l) a Parent IP Agreement or other Contract required to be disclosed on Section 3.10 of the Parent Disclosure Schedule;
- (m) a Contract containing any royalty, dividend or similar arrangement based on the revenues or profits of Parent; or
- (n) any other Contract that is not terminable at will (with no penalty or payment) by Parent and (A) which involves payment or receipt by Parent after the date of this Agreement under any such agreement, contract or commitment of more than \$100,000 in the aggregate, or obligations after the date of this Agreement in excess of \$100,000 in the aggregate, or (B) that is material to the business or operations of Parent.

Parent has delivered or made available to the Company accurate and complete copies of all Contracts to which Parent is a party or by which it is bound of the type described in the foregoing clauses (a)-(m) (any such Contract, a **Parent Material Contract**). There are no Parent Material Contracts that are not in written form. Parent has not nor, to Parent's Knowledge, as of the date of this Agreement, has any other party to a Parent Material Contract, breached, violated or defaulted under, or received written notice that it breached, violated or defaulted under, any of the terms or conditions of any Parent Material Contract in such manner as would permit any other party to cancel or terminate any such Parent Material Contract, or would permit any other party to seek damages which would reasonably be expected to be material to Parent or its business. As to Parent, as of the date of this Agreement, each Parent Material Contract is valid, binding, enforceable and in full force and effect, subject to the Enforceability Exceptions. No Person is renegotiating, or has a right pursuant to the terms of any Parent Material Contract to change, any material amount paid or payable to Parent under any Parent Material Contract or any other material term or provision of any Parent Material Contract.

3.12. Compliance; Permits.

(a) Parent is, and since January 1, 2016 has been, in compliance in all material respects with all applicable Laws, including the FDCA, the FDA regulations adopted thereunder, the Controlled Substance Act and any other similar Law administered or promulgated by any Drug Regulatory Agency, except for any noncompliance, either individually or in the aggregate, which would not be material to Parent. No investigation, claim, suit, proceeding, audit or other action by any Governmental Body is pending or, to the Knowledge of Parent, threatened in writing against Parent. There is no agreement, judgment, injunction, order or decree binding upon Parent which (i) has or would reasonably be expected to have the effect of prohibiting or materially impairing any business practice of Parent, any acquisition of material property by Parent or the conduct of business by Parent as currently conducted, (ii) is reasonably likely to have an adverse effect on Parent's ability to comply with or perform any covenant or obligation under this Agreement, or (iii) is reasonably likely to have the effect of preventing, delaying, making illegal or otherwise interfering with the Contemplated Transactions.

(b) Parent holds all required Governmental Authorizations which are material to the operation of the business of Parent as currently conducted (the **Parent Permits**). Section 3.12(b) of the Parent Disclosure Schedule identifies each Parent Permit. Parent is in material compliance with the terms of the Parent Permits. No Legal Proceeding is pending

or, to the Knowledge of Parent, threatened, which seeks to revoke, limit, suspend, or materially modify any Parent Permit.

(c) There are no proceedings pending or, to the Knowledge of Parent, threatened with respect to an alleged material violation by Parent of the FDCA, FDA regulations adopted thereunder, the Controlled Substance Act or any other similar Law administered or promulgated by any Drug Regulatory Agency.

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(d) Parent is not the subject of any pending or, to the Knowledge of Parent, threatened investigation in respect of its business or products by the FDA pursuant to its Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities Final Policy set forth in 56 Fed. Reg. 46191 (September 10, 1991) and any amendments thereto. To the Knowledge of Parent, Parent has not committed any acts, made any statement, or failed to make any statement, in each case in respect of its business or products that would violate the FDA's Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities Final Policy, and any amendments thereto or any comparable applicable Law of any other Drug Regulatory Agency. Neither Parent nor, to the Knowledge of Parent, any of its officers, employees or agents has been convicted of any crime or engaged in any conduct that would result in a debarment or exclusion (i) under 21 U.S.C. Section 335a or (ii) any similar applicable Law. No debarment or exclusionary claims, actions, proceedings or investigations in respect of Parent's business or products are pending or, to the Knowledge of Parent, threatened against Parent or, to the Knowledge of Parent any of its officers, employees or agents.

(e) Parent has complied in all material respects with all Laws relating to patient, medical or individual health information, including HIPAA, including the standards for the privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and E, the standards for the protection of Electronic Protected Health Information set forth at 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subpart A and Subpart C, the standards for transactions and code sets used in electronic transactions at 45 C.F.R. Part 160, Subpart A and Part 162, and the standards for Breach Notification for Unsecured Protected Health Information at 45 C.F.R. Part 164, Subpart D, all as amended from time to time. Parent has entered into, where required, and are in compliance in all material respects with the terms of all Business Associate (as defined in HIPAA) agreements to which Parent is a party or otherwise bound. Parent has created and maintained written policies and procedures to protect the privacy of all protected health information, provide training to all employees and agents as required under HIPAA, and has implemented security procedures, including physical, technical and administrative safeguards, to protect all personal information and Protected Health Information stored or transmitted in electronic form. Parent has not received written notice from the Office for Civil Rights for the U.S. Department of Health and Human Services or any other Governmental Body of any allegation regarding its failure to comply with HIPAA or any other state law or regulation applicable to the protection of individually identifiable health information or personally identifiable information. To Parent's Knowledge, no successful Security Incident, Breach of Unsecured Protected Health Information or breach of personally identifiable information under applicable state or federal laws has occurred with respect to information maintained or transmitted to Parent or an agent or third party subject to a Business Associate Agreement with Parent. Parent is currently submitting, receiving and handling or is capable of submitting receiving and handling transactions in accordance in all material respects with the Standard Transaction Rule. All capitalized terms in this Section 3.12(e) not otherwise defined in this Agreement shall have the meanings set forth under HIPAA.

3.13. Legal Proceedings; Orders.

(a) Except as set forth in Section 3.13(a) of the Parent Disclosure Schedule, as of the date of this Agreement, there is no material pending Legal Proceeding and, to the Knowledge of Parent, no Person has threatened in writing to commence any Legal Proceeding: (i) that involves (A) Parent, (B) to Parent's Knowledge, any current or former employee, independent contractor, officer or director of Parent (in his or her capacity as such) or (C) any of the material assets owned or used by Parent; or (ii) that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, the Contemplated Transactions.

(b) Except as set forth in Section 3.13(b) of the Parent Disclosure Schedule, since January 1, 2016, no Legal Proceeding has been pending against Parent that resulted in material liability to Parent.

(c) There is no order, writ, injunction, judgment or decree to which Parent, or any of the material assets owned or used by Parent, is subject. To the Knowledge of Parent, no officer or other Key Employee of Parent is subject to any order, writ, injunction, judgment or decree that prohibits such officer or employee from engaging in or continuing any

conduct, activity or practice relating to the business of Parent or to any material assets owned or used by Parent.

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3.14. **Tax Matters.**

(a) Parent has timely filed all income Tax Returns and other material Tax Returns that they were required to file under applicable Law. All such Tax Returns are correct and complete in all material respects and have been prepared in compliance with all applicable Law. No claim has ever been made by any Governmental Body in any jurisdiction where Parent does not file a particular Tax Return or pay a particular Tax that Parent is subject to taxation by that jurisdiction.

(b) All income and other material Taxes due and owing by Parent on or before the date hereof (whether or not shown on any Tax Return) have been fully paid. Since the Parent Balance Sheet Date, Parent has not incurred any material Liability for Taxes outside the Ordinary Course of Business.

(c) All Taxes that Parent is or was required by Law to withhold or collect have been duly and timely withheld or collected in all material respects on behalf of its respective employees, independent contractors, stockholders, or other third parties and, have been timely paid to the proper Governmental Body or other Person or properly set aside in accounts for this purpose.

(d) There are no Encumbrances for material Taxes (other than Taxes not yet due and payable) upon any of the assets of Parent.

(e) No deficiencies for income or other material Taxes with respect to Parent have been claimed, proposed or assessed by any Governmental Body in writing. There are no pending or ongoing, and to the Knowledge of Parent, threatened audits, assessments or other actions for or relating to any liability in respect of a material amount of Taxes of Parent. Neither Parent nor any of its predecessors has waived any statute of limitations in respect of any income or other material Taxes or agreed to any extension of time with respect to any income or other material Tax assessment or deficiency.

(f) Parent has not been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code.

(g) Parent is not a party to any Tax allocation agreement, Tax sharing agreement, Tax indemnity agreement, or similar agreement or arrangement, other than customary commercial contracts entered into in the Ordinary Course of Business the principal subject matter of which is not Taxes.

(h) Parent will not be required to include any material item of income in, or exclude any material item of deduction from, taxable income for any Tax period (or portion thereof) ending after the Closing Date as a result of any: (i) change in method of accounting for Tax purposes; (ii) use of an improper method of accounting for a Tax period ending on or prior to the Closing Date; (iii) closing agreement as described in Section 7121 of the Code (or any similar provision of state, local or foreign Law) executed on or prior to the Closing Date; (iv) intercompany transaction or excess loss account described in Treasury Regulations under Section 1502 of the Code (or any similar provision of state, local or foreign Law); (v) installment sale or open transaction disposition made on or prior to the Closing Date; (vi) prepaid amount received or deferred revenue accrued on or prior to the Closing Date; or (vii) election under Section 108(i) (or any similar provision of state, local or foreign Law).

(i) Parent has never been a member of a consolidated, combined or unitary Tax group (other than such a group the common parent of which is Parent). Parent has no Liability for any material Taxes of any Person (other than Parent) under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local, or foreign Law), or as a transferee or successor.

(j) Parent has not distributed stock of another Person, or had its stock distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Section 355 of the Code or Section 361 of the Code (or any similar provisions of state, local or foreign Law).

(k) Parent has never had a permanent establishment (within the meaning of an applicable Tax treaty) or otherwise has an office or fixed place of business in a jurisdiction outside of the United States.

(l) Parent has not participated in or been a party to a transaction that, as of the date of this Agreement, constitutes a listed transaction that is required to be reported to the IRS pursuant to Section 6011 of the Code and applicable Treasury Regulations thereunder.

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(m) Parent has not taken any action or knows of any fact that would reasonably be expected to prevent the Merger from qualifying for the Intended Tax Treatment.

For purposes of this Section 3.14, each reference to Parent shall be deemed to include any Person that was liquidated into, merged with, or is otherwise a predecessor to, Parent.

3.15. Employee and Labor Matters; Benefit Plans.

(a) Section 3.15(a) of the Parent Disclosure Schedule is a list of all material Parent Benefit Plans, including, without limitation, each Parent Benefit Plan that provides for retirement, change in control, non-qualified deferred compensation, incentive compensation, severance or retiree medical or retiree life insurance benefits. **Parent Benefit Plan** means each (i) employee benefit plan as defined in Section 3(3) of ERISA and (ii) other pension, retirement, deferred compensation, profit sharing, bonus, incentive, equity or equity-based, phantom equity, employment, consulting, severance, change-of-control, retention, health, life, disability, time off, holiday, welfare and fringe benefit plan, program, contract, or arrangement (whether written or unwritten), in any case, maintained, contributed to, or required to be contributed to, by Parent or any Parent ERISA Affiliate for the benefit of any current or former employee, director, officer or consultant (that is a natural person) of Parent or under which Parent has any actual or contingent liability (including, without limitation, as to the result of it being treated as a single employer under Code Section 414 with any other person).

(b) As applicable with respect to each material Parent Benefit Plan, Parent has made available to the Company, true and complete copies of (i) each material Parent Benefit Plan, including all amendments thereto, and in the case of an unwritten material Parent Benefit Plan, a written description thereof, (ii) all current trust documents, administrative services agreements and insurance and annuity contracts relating thereto, (iii) the current summary plan description and each summary of material modifications thereto, (iv) the most recently filed annual reports with any Governmental Body (e.g., Form 5500 and all schedules thereto), (v) the most recent IRS determination, opinion or advisory letter, (vi) the most recent summary annual reports, nondiscrimination testing reports, actuarial reports, financial statements and trustee reports, (vii) all records, notices and filings concerning IRS or Department of Labor or other Governmental Body audits or investigations or prohibited transactions within the meaning of Section 406 of ERISA or Section 4975 of the Code, in any case under this clause (vii), within the last three years and (viii) all policies and procedures established to comply with the privacy and security rules of HIPAA.

(c) Each Parent Benefit Plan has been maintained, operated and administered in compliance in all material respects with its terms and any related documents or agreements and the applicable provisions of ERISA, the Code and all other Laws.

(d) The Parent Benefit Plans which are employee pension benefit plans within the meaning of Section 3(2) of ERISA and which are intended to meet the qualification requirements of Section 401(a) of the Code have each received a favorable determination, opinion or advisory letter from the IRS to the effect that such Parent Benefit Plan is qualified under Section 401(a) of the Code, and nothing has occurred that would reasonably be expected to result in the loss of the qualification of such Parent Benefit Plan.

(e) Neither Parent nor any Parent ERISA Affiliate maintains, contributes to, is required to contribute to, or has any actual or contingent liability with respect to, (i) any employee pension benefit plan (within the meaning of Section 3(2) of ERISA) that is subject to Title IV or Section 302 of ERISA or Section 412 of the Code, (ii) any multiemployer plan (within the meaning of Section 3(37) of ERISA), (iii) any multiple employer plan (within the meaning of Section 413 of the Code) or (iv) any multiple employer welfare arrangement (within the meaning of Section 3(40) of ERISA).

(f) There are no pending audits or investigations by any Governmental Body involving any Parent Benefit Plan, and no pending nor, to the Knowledge of Parent, threatened claims (except for individual claims for benefits payable in the normal operation of the Parent Benefit Plans), suits or proceedings involving any Parent Benefit Plan, in any case, except as would not be reasonably expected to result in material liability to Parent.

(g) No Parent Benefit Plan provides death, medical, dental, vision or life insurance benefits beyond termination of service or retirement other than coverage mandated by Law and neither Parent nor any Parent ERISA Affiliate has made a written or oral representation promising the same.

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- (h) Neither the execution of, nor the performance of the transactions contemplated by, this Agreement will either alone or in connection with any other event(s) (i) result in any payment becoming due to any current or former employee, director, officer, or consultant (who is a natural person) of Parent, (ii) increase any amount of compensation or benefits otherwise payable under any Parent Benefit Plan, (iii) result in the acceleration of the time of payment, funding or vesting of any benefits under any Parent Benefit Plan or (iv) require any contribution or payment to fund any obligation under any Parent Benefit Plan.
- (i) The exercise price of each Parent Option is not, never has been and can never be less than the fair market value of one share of Parent Common Stock as of the grant date of such Parent Option.
- (j) No current or former employee, officer, director or independent contractor of Parent has any gross up agreements or other assurance of reimbursement for any Taxes imposed under Code Section 409A or Code Section 4999.
- (k) Parent does not maintain any Parent Benefit Plan outside of the United States.
- (l) Parent is not a party to, bound by, nor has a duty to bargain under any collective bargaining agreement or other Contract with a labor union, labor organization, or similar Person representing any of its employees, and there is no labor union, labor organization, or similar Person representing or, to the Knowledge of Parent, purporting to represent or seeking to represent any employees of Parent, including through the filing of a petition for representation election.
- (m) Parent is, and since January 1, 2016 has been, in compliance in all material respects with all applicable Laws respecting labor, employment, employment practices, and terms and conditions of employment, including worker classification, tax withholding, prohibited discrimination and retaliation, equal employment opportunities, harassment, fair employment practices, meal and rest periods, immigration, employee safety and health, wages (including overtime wages), unemployment and workers compensation, leaves of absence, and hours of work. Except as would not be reasonably likely to result in a material liability to Parent, with respect to employees of Parent, Parent, since January 1, 2016: (i) has withheld and reported all amounts required by Law or by agreement to be withheld and reported with respect to wages, salaries and other payments, benefits, or compensation to employees, (ii) is not liable for any arrears of wages (including overtime wages), severance pay or any Taxes or any penalty for failure to comply with any of the foregoing, and (iii) is not liable for any payment to any trust or other fund governed by or maintained by or on behalf of any Governmental Body, with respect to unemployment compensation benefits, disability, social security or other benefits or obligations for employees (other than routine payments to be made in the Ordinary Course of Business). There are no Legal Proceedings pending or, to the Knowledge of Parent, threatened or reasonably anticipated against Parent with respect to, by, or on behalf of any employee, applicant for employment, consultant, employment agreement or Parent Benefit Plan (other than routine claims for benefits).
- (n) Except as would not be reasonably likely to result in a material liability to Parent, with respect to each individual who currently renders services to Parent, Parent has accurately classified each such individual as an employee, independent contractor, or otherwise under all applicable Laws and, for each individual classified as an employee, Parent has accurately classified him or her as overtime eligible or overtime ineligible under all applicable Laws. Parent has no material liability with respect to any misclassification of: (i) any Person as an independent contractor rather than as an employee, (ii) any employee leased from another employer, or (iii) any employee currently or formerly classified as exempt from overtime wages.
- (o) There is not and has not been in the past three (3) years, nor is there or has there been in the past three (3) years any threat of, any strike, slowdown, work stoppage, lockout, union election petition, demand for recognition, or any similar activity or dispute, or, to the Knowledge of Parent, any union organizing activity, against Parent. No event has occurred, and no condition or circumstance exists, that might directly or indirectly be likely to give rise to or provide a basis for the commencement of any such strike, slowdown, work stoppage, lockout, or any similar activity or dispute.

(p) There is no Legal Proceeding, including any claim, unfair labor practice charge or complaint, labor dispute or grievance, pending or, to the Knowledge of Parent, threatened against Parent relating to labor, employment, employment practices, or terms and conditions of employment.

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(q) As of the date hereof, no Key Employee of Parent has submitted his or her resignation or, to the Knowledge of Parent, intends to resign.

3.16. **Environmental Matters.** Parent is and since January 1, 2016 has complied with all applicable Environmental Laws, which compliance includes the possession by Parent of all permits and other Governmental Authorizations required under applicable Environmental Laws and compliance with the terms and conditions thereof, except for any failure to be in such compliance that, either individually or in the aggregate, would not reasonably be expected to be material to Parent or its business. Parent has not received since January 1, 2016 (or prior to that time, which is pending and unresolved), any written notice or other communication (in writing or otherwise), whether from a Governmental Body or other Person, that alleges that Parent is not in compliance with or has liability pursuant to any Environmental Law. No current or (during the time a prior property was leased by Parent) prior property leased by Parent has had a release of or exposure to Hazardous Substances in material violation of or as would reasonably be expected to result in any material liability of Parent pursuant to Environmental Law. No consent, approval or Governmental Authorization of or registration or filing with any Governmental Body is required by Environmental Laws in connection with the execution and delivery of this Agreement or the consummation of Contemplated Transactions. Prior to the date hereof, Parent has provided or otherwise made available to the Company true and correct copies of all material environmental reports, assessments, studies and audits in the possession or control of Parent with respect to any property leased by Parent.

3.17. **Insurance.**

(a) Parent has delivered or made available to the Company accurate and complete copies of all material insurance policies and all material self-insurance programs and arrangements relating to the business, assets, liabilities and operations of Parent. Each of such insurance policies is in full force and effect and Parent is in compliance in all material respects with the terms thereof. Other than customary end of policy notifications from insurance carriers, since January 1, 2016, Parent has not received any notice or other communication regarding any actual or possible: (i) cancellation or invalidation of any insurance policy; or (ii) refusal or denial of any coverage, reservation of rights or rejection of any material claim under any insurance policy. Parent has provided timely written notice to the appropriate insurance carrier(s) of each Legal Proceeding that is currently pending against Parent for which Parent has insurance coverage, and no such carrier has issued a denial of coverage or a reservation of rights with respect to any such Legal Proceeding, or informed Parent of its intent to do so. This Section 3.17 does not apply to insurance under any Parent Benefit Plan.

(b) Section 3.17(b) of the Parent Disclosure Schedule accurately sets forth (i) the insurance policies providing coverage with respect to any Liabilities arising under the matters disclosed on Section 3.13 of the Parent Disclosure Schedule (the **Identified Claim**) and identifies the order of recovery against such policies, and (ii) the coverage amount, deductible and claim limits applicable to the Identified Claim. All material Liabilities of Parent arising with respect to or in connection with the Identified Claim are covered by such insurance policies, subject to the deductible set forth on Section 3.17(b) of the Parent Disclosure Schedule.

3.18. **Transactions with Affiliates.** Except as set forth in the Parent SEC Documents filed prior to the date of this Agreement, since January 1, 2016, no event has occurred that would be required to be reported by Parent pursuant to Item 404 of Regulation S-K.

3.19. **No Brokers Fees.** Except as set forth on Section 3.19 of the Parent Disclosure Schedule, no broker, finder or investment banker is entitled to any brokerage fee, finder's fee, opinion fee, success fee, transaction fee or other fee or commission in connection with the Contemplated Transactions based upon arrangements made by or on behalf of Parent.

3.20. **Valid Issuance.** The Parent Common Stock to be issued in the Merger will, when issued in accordance with the provisions of this Agreement, be validly issued, fully paid and nonassessable.

3.21. **Opinion of Financial Advisor.** The Parent Board has received an opinion of Piper Jaffray & Co. to the effect that, as of the date of such opinion and subject to the assumptions, qualifications, limitations and other matters set forth therein, the Merger Consideration to be paid by Parent is fair, from a financial point of view, to Parent.

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3.22. **Title to Assets.** Parent owns, and has good and valid title to, or, in the case of leased properties and assets, valid leasehold interests in, all tangible properties or tangible assets and equipment used or held for use in its business or operations or purported to be owned by it, including: (a) all assets reflected on the Parent Balance Sheet; and (b) all other assets reflected in the books and records of Parent as being owned Parent. All of such assets are owned or, in the case of leased assets, leased by Parent free and clear of any Encumbrances, other than Permitted Encumbrances.

3.23. **Absence of Changes.** Except as set forth on Section 3.22 of the Parent Disclosure Schedule or as disclosed in the Parent SEC Documents, between the date of the Parent Balance Sheet and the date of this Agreement, Parent has conducted its business only in the Ordinary Course of Business (except for the execution and performance of this Agreement and the discussions, negotiations and transactions related thereto) and there has not been any (a) Parent Material Adverse Effect or (b) action, event or occurrence that would have required the consent of the Company pursuant to Section 4.1(b) had such action, event or occurrence taken place after the execution and delivery of this Agreement.

3.24. **Anti-Bribery.** Neither Parent nor any of its directors, officers, employees or, to Parent's Knowledge, agents or any other Person acting on their behalf has directly or indirectly made any bribes, rebates, payoffs, influence payments, kickbacks, illegal payments, illegal political contributions, or other payments, in the form of cash, gifts, or otherwise, or taken any other action, in violation of any Anti-Bribery Laws. To Parent's Knowledge, Parent is not and has not been the subject of any investigation or inquiry by any Governmental Body with respect to potential violations of Anti-Bribery Laws.

3.25. **Information Technology; Data Privacy.**

(a) Parent has taken commercially reasonable steps to ensure the continued operation of the material software and databases included in the Parent Owned IP Rights, and all of its material computers and other information technology infrastructure and assets used in the business (collectively, the *Parent IT Assets*), and to protect the security and confidentiality of the Parent IT Assets and the material information and records stored on or accessed or transmitted using the Parent IT Assets. The Parent IT Assets operate and perform in all material respects as is necessary and sufficient for the conduct of the business of Parent as currently conducted by it. To Parent's Knowledge, the Parent IT Assets are free from malicious code and do not contain any bugs, errors, vulnerabilities or problems that, in each case, would be expected to materially adversely affect the operation or use of any such Parent IT Assets in the business of Parent. To Parent's Knowledge, there has not been in the past three (3) years any material (i) unauthorized intrusions or breach of the security of the Parent IT Assets, (ii) malfunction of the Parent IT Assets or (iii) accidental or unauthorized access to, loss or misuse of Personal Data maintained by Parent. Parent has implemented commercially reasonable backups and security measures to duplicate, store and protect its material information that is stored in electronic form or media.

(b) Parent and, to the Knowledge of Parent, each of Parent's Data Processors, is in compliance in all material respects with all applicable Data Privacy Requirements. To Parent's Knowledge, Parent is not under investigation by any Governmental Body for a material violation of applicable Laws relating to data privacy or security, nor has Parent received any written complaint or inquiry related to its data privacy or security practices. Parent and, to the Knowledge of Parent, each of Parent's Data Processors, has implemented and maintains commercially reasonable organizational, physical, administrative and technical measures substantially consistent with industry standards to protect the operation, confidentiality, integrity and security of all Personal Data or other sensitive business data against loss, theft, or unauthorized access, disclosure or use. To Parent's Knowledge, Parent has not experienced any security incident in which an unauthorized party accessed or acquired Personal Data or sensitive business data maintained by or on behalf of Parent.

3.26. **Contract Termination Fees; Severance.** Section 3.26 of the Parent Disclosure Schedule accurately sets forth (i) all fees, expenses or other amounts payable upon termination of any Parent Material Contract (the **Parent Contract Termination Payments**) and (ii) the dollar amount of all severance obligations payable to current and former employees of Parent (including the dollar amount of any ongoing benefits paid to or on behalf of such employees, but excluding any acceleration of any equity awards) (the **Parent Severance Payments**). Except as set forth on Sections 3.26(i) and (ii) of the Parent Disclosure Schedule, all Parent

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Material Contracts are terminable by Parent upon less than sixty (60) days' notice with no payment due thereunder except for amounts accrued for services provided in the Ordinary Course of Business under such Parent Material Contract and, with respect to amounts accrued as of the Closing, included in the Parent Net Cash calculation.

3.27. **Disclaimer of Other Representations or Warranties.** Except as previously set forth in this Section 3 or in any certificate delivered by Parent or Merger Sub to the Company pursuant to this Agreement, neither Parent nor Merger Sub makes any representation or warranty, express or implied, at law or in equity, with respect to it or any of its assets, liabilities or operations, and any such other representations or warranties are hereby expressly disclaimed.

Section 4. CERTAIN COVENANTS OF THE PARTIES

4.1. **Operation of Parent's Business.**

(a) Except as set forth on Section 4.1(a) of the Parent Disclosure Schedule, as expressly permitted by this Agreement, as required by applicable Law or unless the Company shall otherwise consent in writing (which consent shall not be unreasonably withheld, delayed or conditioned), during the period commencing on the date of this Agreement and continuing until the earlier to occur of the termination of this Agreement pursuant to Section 9 and the Effective Time (the ***Pre-Closing Period***): Parent shall conduct its business and operations in the Ordinary Course of Business and in compliance with all applicable Laws and the requirements of all Contracts that constitute Parent Material Contracts.

(b) Except (i) as expressly permitted by this Agreement, (ii) as set forth in Section 4.1(b) of the Parent Disclosure Schedule, (iii) as required by applicable Law or (iv) with the prior written consent of the Company (which consent shall not be unreasonably withheld, delayed or conditioned), at all times during the Pre-Closing Period, Parent shall not:

(i) declare, accrue, set aside or pay any dividend or make any other distribution in respect of any shares of its capital stock or repurchase, redeem or otherwise reacquire any shares of its capital stock or other securities (except in connection with the payment of the exercise price (but not for withholding Taxes except in respect of obligations that existed prior to October 1, 2018 or are set forth on Section 3.6(b) of the Parent Disclosure Schedule) incurred upon the exercise, settlement or vesting of any award granted under any Parent Stock Plans);

(ii) sell, issue, grant, pledge or otherwise dispose of or encumber or authorize any of the foregoing with respect to: (A) any capital stock or other security of Parent (except for Parent Common Stock issued upon the valid exercise or settlement of outstanding Parent Options or Parent RSUs); (B) any option, warrant or right to acquire any capital stock or any other security; or (C) any instrument convertible into or exchangeable for any capital stock or other security of Parent;

(iii) except to the extent required to give effect to anything in contemplation of the Closing, amend any of its Organizational Documents, or effect any stock split or reverse stock split;

(iv) effect or be a party to any merger, consolidation, share exchange, business combination, recapitalization, reclassification of shares or similar transaction except, for the avoidance of doubt, the Contemplated Transactions;

(v) form any Subsidiary or acquire any equity interest or other interest in any other Entity or enter into a joint venture with any other Entity;

(vi) (A) lend money to any Person (except for advancement of expenses to employees, directors or consultants in the Ordinary Course of Business), (B) incur or guarantee any indebtedness for borrowed money, (C) guarantee any debt securities of others, or (D) make any capital expenditure or commitment in excess of the budgeted capital expenditure and commitment amounts set forth in the Parent operating budget delivered to the Company concurrently with the

execution of this Agreement set forth on Section 4.1(b)(vi) of the Parent Disclosure Schedule (the *Parent Budget*);

(vii) (A) except to the extent required by applicable Law, adopt, terminate, establish or enter into any Parent Benefit Plan; (B) except to the extent required by applicable Law, cause or permit any Parent Benefit Plan to be amended; (C) increase the amount of the wages, salary, commissions, benefits

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or other compensation or remuneration payable to, any of its directors, officers or employees; (D) increase the severance or change of control benefits offered to any current or new employees, directors or consultants or (E) hire, terminate (other than for cause) or give notice of termination (other than for cause) to any (x) officer or (y) employee whose annual base salary is or is expected to be more than \$25,000 per year;

(viii) recognize any labor union, labor organization, or similar Person;

(ix) enter into any material transaction other than in the Ordinary Course of Business;

(x) acquire any material asset or sell, lease or otherwise irrevocably dispose of any of its assets or properties, or grant any Encumbrance with respect to such assets or properties, except in the Ordinary Course of Business;

(xi) make, change or revoke any Tax election, fail to pay any income or other material Tax as such Tax becomes due and payable, file any amendment making any material change to any Tax Return, settle or compromise any income or other material Tax liability, enter into any Tax allocation, sharing, indemnification or other similar agreement or arrangement, request or consent to any extension or waiver of any limitation period with respect to any claim or assessment for any income or other material Taxes (other than in connection with any extension of time to file any Tax Return), or adopt or change any accounting method in respect of Taxes;

(xii) except as contemplated by this Agreement, enter into, materially amend or terminate any Parent Material Contract, or any Contract that would be a Parent Material Contract if executed on or prior to the date hereof;

(xiii) except as otherwise set forth in the Parent Budget, make any expenditures, incur any Liabilities or discharge or satisfy any Liabilities, in each case, in amounts that exceed the aggregate amount of the Parent Budget by \$300,000;

(xiv) other than as required by Law or GAAP, take any action to change accounting policies or procedures;

(xv) initiate any Legal Proceeding other than (A) for the routine collection of bills, (B) in such cases where Parent in good faith determines that failure to commence suit would result in the material impairment of a valuable aspect of Parent's business, provided that Parent consults with the Company prior to the initiation of such Legal Proceeding or (C) for any claim related to or arising out of, or in respect of any breach of this Agreement;

(xvi) settle any Legal Proceeding; or

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

Nothing contained in this Agreement shall give the Company, directly or indirectly, the right to control or direct the operations of Parent prior to the Effective Time. Prior to the Effective Time, Parent shall exercise, consistent with the terms and conditions of this Agreement, complete unilateral control and supervision over its business operations.

4.2. Operation of the Company's Business.

(a) Except as set forth on Section 4.2(a) of the Company Disclosure Schedule, as expressly permitted by this Agreement, as required by applicable Law or unless Parent shall otherwise consent in writing (which consent shall not be unreasonably withheld, delayed or conditioned), during the Pre-Closing Period: the Company shall conduct its business and operations in the Ordinary Course of Business and in compliance with all applicable Laws and the requirements of all Contracts that constitute Company Material Contracts.

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(b) Except (i) as expressly permitted by this Agreement, (ii) as set forth in Section 4.2(b) of the Company Disclosure Schedule, (iii) as required by applicable Law or (iv) with the prior written consent of Parent (which consent shall not be unreasonably withheld, delayed or conditioned), at all times during the Pre-Closing Period, the Company shall not do any of the following:

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

(ii) other than as contemplated by a Permitted Bridge Financing or Permitted Post-Measurement Date Financing, sell, issue, grant, pledge or otherwise dispose of or encumber or authorize any of the foregoing with respect to: (A) any capital stock or other security of the Company (except for shares of outstanding Company Common Stock issued upon the valid exercise of outstanding Company Options or Company Warrants); (B) any option, warrant or right to acquire any capital stock or any other security; or (C) any instrument convertible into or exchangeable for any capital stock or other security of the Company;

(iii) except as required to give effect to anything in contemplation of the Closing, amend any of its Organizational Documents, or effect or be a party to any merger, consolidation, share exchange, business combination, recapitalization, reclassification of shares, stock split, reverse stock split or similar transaction except, for the avoidance of doubt, the Contemplated Transactions;

(iv) form any Subsidiary or acquire any equity interest or other interest in any other Entity or enter into a joint venture with any other Entity;

(v) (A) lend money to any Person (except for advancement of expenses to employees, directors or consultants in the Ordinary Course of Business), (B) incur or guarantee any indebtedness for borrowed money (other than a Permitted Bridge Financing or Permitted Post-Measurement Date Financing), (C) guarantee any debt securities of others, or (D) make any capital expenditure or commitment in excess of \$100,000;

(vi) (A) except to the extent required by applicable Law, adopt, terminate, establish or enter into any Company Benefit Plan; (B) except to the extent required by applicable Law, cause or permit any Company Benefit Plan to be amended in any material respect; (C) increase the amount of the wages, salary, commissions, benefits or other compensation or remuneration payable to, any of its directors, officers or employees, other than increases in base salary and annual cash bonus opportunities and payments made in the Ordinary Course of Business; (D) increase the severance or change of control benefits offered to any current or new employees, directors or consultants or (E) hire, terminate (other than for cause) or give notice of termination (other than for cause) to any (x) officer or (y) employee whose annual base salary is or is expected to be more than \$125,000 per year;

(vii) recognize any labor union, labor organization, or similar Person;

(viii) enter into any material transaction other than in the Ordinary Course of Business or as contemplated by a Permitted Bridge Financing or Permitted Post-Measurement Date Financing;

(ix) acquire any material asset or sell, lease or otherwise irrevocably dispose of any of its assets or properties, or grant any Encumbrance with respect to such assets or properties, except in the Ordinary Course of Business;

(x) sell, assign, transfer, license, sublicense or otherwise dispose of any material Company Owned IP Rights (other than pursuant to non-exclusive licenses in the Ordinary Course of Business);

(xi) make, change or revoke any material Tax election, fail to pay any income or other material Tax as such Tax becomes due and payable, file any amendment making any material change to any Tax Return, settle or compromise any income or other material Tax liability, enter into any Tax allocation, sharing, indemnification or other similar agreement or arrangement (other than customary commercial Contracts entered into in the Ordinary Course of Business the principal subject of which is not Taxes),

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request or consent to any extension or waiver of any limitation period with respect to any claim or assessment for any income or other material Taxes (other than in connection with any extension of time to file any Tax Return), or adopt or change any material accounting method in respect of Taxes;

(xii) other than as contemplated by a Permitted Bridge Financing or Permitted Post-Measurement Date Financing, or as otherwise contemplated by this Agreement, enter into, materially amend or terminate any Company Material Contract, or any Contract that would be a Company Material Contract if executed on or prior to the date hereof, except in the Ordinary Course of Business;

(xiii) other than as required by Law or GAAP, take any action to change accounting policies or procedures;

(xiv) initiate any Legal Proceeding other than (A) for the routine collection of bills, (B) in such cases where the Company in good faith determines that failure to commence suit would result in the material impairment of a valuable aspect of the Company's business, provided that the Company consults with Parent prior to the initiation of such Legal Proceeding or (C) for any claim related to or arising out of, or in respect of any breach of this Agreement;

(xv) settle any Legal Proceeding; or

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

(c) Nothing contained in this Agreement shall give Parent, directly or indirectly, the right to control or direct the operations of the Company prior to the Effective Time. Prior to the Effective Time, the Company shall exercise, consistent with the terms and conditions of this Agreement, complete unilateral control and supervision over its business operations.

4.3. **Access and Investigation.** Subject to the terms of the Confidentiality Agreement, which the Parties agree will continue in full force following the date of this Agreement, during the Pre-Closing Period, upon reasonable notice, Parent, on the one hand, and the Company, on the other hand, shall and shall use commercially reasonable efforts to cause such Party's Representatives to: (a) provide the other Party and such other Party's Representatives with reasonable access during normal business hours to such Party's Representatives, personnel, property and assets and to all existing books, records, Tax Returns, work papers and other documents and information relating to such Party and its Subsidiaries; (b) provide the other Party and such other Party's Representatives with such copies of the existing books, records, Tax Returns, work papers, product data, and other documents and information relating to such Party and its Subsidiaries, and with such additional financial, operating and other data and information regarding such Party and its Subsidiaries as the other Party may reasonably request; (c) permit the other Party's officers and other employees to meet, upon reasonable notice and during normal business hours, with the chief financial officer and other officers and managers of such Party responsible for such Party's financial statements and the internal controls of such Party to discuss such matters as the other Party may deem necessary or appropriate and; (d) make available to the other Party copies of unaudited financial statements, material operating and financial reports prepared for senior management or the board of directors of such Party, and any material notice, report or other document filed with or sent to or received from any Governmental Body in connection with the Contemplated Transactions. Any investigation conducted by either Parent or the Company pursuant to this Section 4.3 shall be conducted in such manner as not to interfere unreasonably with the conduct of the business of the other Party. Each of the Company and Parent shall provide the other Party with unaudited cash balances and a statement of accounts payable of such Party (on a consolidated basis) as of the end of each calendar month, or such longer period as each of the providing Party and receiving Party may agree to in writing.

Notwithstanding the foregoing, any Party may restrict the foregoing access to the extent that any Law applicable to such Party requires such Party to restrict or prohibit access to any such properties or information or as may be

necessary to preserve the attorney-client privilege under any circumstances in which such privilege may be jeopardized by such disclosure or access.

4.4. **Parent Non-Solicitation.**

(a) Parent agrees that, during the Pre-Closing Period, neither it nor any of its Subsidiaries shall, nor shall it or any of its Subsidiaries authorize any of its Representatives to, directly or indirectly: (i) solicit, initiate or knowingly encourage, induce or facilitate the communication, making, submission or

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announcement of any Acquisition Proposal or Acquisition Inquiry or take any action that could reasonably be expected to lead to an Acquisition Proposal or Acquisition Inquiry; (ii) furnish any non-public information regarding Parent or any of its Subsidiaries to any Person in connection with or in response to an Acquisition Proposal or Acquisition Inquiry; (iii) engage in discussions or negotiations with any Person with respect to any Acquisition Proposal or Acquisition Inquiry; (iv) approve, endorse or recommend any Acquisition Proposal (subject to Section 5.3); (v) execute or enter into any letter of intent or any Contract contemplating or otherwise relating to any Acquisition Transaction; or (vi) publicly propose to do any of the foregoing; *provided, however*, that, notwithstanding anything contained in this Section 4.4 and subject to compliance with this Section 4.4, prior to obtaining the Required Parent Stockholder Vote, Parent may furnish non-public information regarding Parent and its Subsidiaries to, and enter into discussions or negotiations with, any Person in response to a bona fide written Acquisition Proposal by such Person which the Parent Board determines in good faith, after consultation with Parent's outside financial advisors and outside legal counsel, constitutes, or is reasonably likely to result in, a Superior Offer (and is not withdrawn) if: (A) neither Parent nor any of its Representatives shall have breached this Section 4.4 in any material respect, (B) the Parent Board concludes in good faith based on the advice of outside legal counsel, that the failure to take such action is reasonably likely to be inconsistent with the fiduciary duties of the Parent Board under applicable Law; (C) Parent receives from such Person an executed confidentiality agreement containing provisions (including nondisclosure provisions, use restrictions, non-solicitation provisions and no hire provisions) at least as favorable to Parent as those contained in the Confidentiality Agreement; and (D) substantially contemporaneously with furnishing any such nonpublic information to such Person, Parent furnishes such nonpublic information to the Company (to the extent such information has not been previously furnished by Parent to the Company). Without limiting the generality of the foregoing, Parent acknowledges and agrees that, in the event any Representative of Parent (whether or not such Representative is purporting to act on behalf of Parent) takes any action that, if taken by Parent, would constitute a breach of this Section 4.4, the taking of such action by such Representative shall be deemed to constitute a breach of this Section 4.4 by Parent for purposes of this Agreement.

(b) If Parent or any Representative of Parent receives an Acquisition Proposal or Acquisition Inquiry at any time during the Pre-Closing Period, then Parent shall promptly (and in no event later than one Business Day after Parent becomes aware of such Acquisition Proposal or Acquisition Inquiry) advise the Company orally and in writing of such Acquisition Proposal or Acquisition Inquiry (including the identity of the Person making or submitting such Acquisition Proposal or Acquisition Inquiry, and the material terms thereof). Parent shall keep the Company reasonably informed with respect to the status and material terms of any such Acquisition Proposal or Acquisition Inquiry and any material modification or proposed material modification thereto.

(c) Parent shall immediately cease and cause to be terminated any existing discussions, negotiations and communications with any Person that relate to any Acquisition Proposal or Acquisition Inquiry as of the date of this Agreement and request the destruction or return of any nonpublic information of Parent or any of its Subsidiaries provided to such Person.

4.5. Company Non-Solicitation.

(a) The Company agrees that, during the Pre-Closing Period, the Company shall not, nor shall it authorize any of its Representatives to, directly or indirectly: (i) solicit, initiate or knowingly encourage, induce or facilitate the communication, making, submission or announcement of any Acquisition Proposal or Acquisition Inquiry or take any action that could reasonably be expected to lead to an Acquisition Proposal or Acquisition Inquiry; (ii) furnish any non-public information regarding the Company to any Person in connection with or in response to an Acquisition Proposal or Acquisition Inquiry; (iii) engage in discussions or negotiations with any Person with respect to any Acquisition Proposal or Acquisition Inquiry; (iv) approve, endorse or recommend any Acquisition Proposal; (v) execute or enter into any letter of intent or any Contract contemplating or otherwise relating to any Acquisition Transaction; or (vi) publicly propose to do any of the foregoing. Without limiting the generality of the foregoing, the

Company acknowledges and agrees that, in the event any Representative of the Company (whether or not such Representative is purporting to act on behalf of the Company) takes any action that, if taken by the Company, would constitute a breach of this Section 4.5, the taking of such action by such Representative shall be deemed to constitute a breach of this Section 4.5 by the Company for purposes of this Agreement.

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(b) If the Company or any Representative of the Company receives an Acquisition Proposal or Acquisition Inquiry at any time during the Pre-Closing Period, then the Company shall promptly (and in no event later than one Business Day after the Company becomes aware of such Acquisition Proposal or Acquisition Inquiry) advise Parent orally and in writing of such Acquisition Proposal or Acquisition Inquiry (including the identity of the Person making or submitting such Acquisition Proposal or Acquisition Inquiry, and the material terms thereof). The Company shall keep Parent reasonably informed with respect to the status and material terms of any such Acquisition Proposal or Acquisition Inquiry and any material modification or proposed material modification thereto.

(c) The Company shall immediately cease and cause to be terminated any existing discussions, negotiations and communications with any Person that relate to any Acquisition Proposal or Acquisition Inquiry as of the date of this Agreement and request the destruction or return of any nonpublic information of the Company or any of its Subsidiaries provided to such Person.

4.6. Notification of Certain Matters.

(a) During the Pre-Closing Period, the Company shall promptly notify Parent (and, if in writing, furnish copies of) if any of the following occurs: (i) any written notice or other written communication is received from any Person alleging that the Consent of such Person is or may be required in connection with any of the Contemplated Transactions; (ii) any Legal Proceeding against or involving or otherwise affecting the Company is commenced, or, to the Knowledge of the Company, threatened in writing against the Company or, to the Knowledge of the Company, any director, officer or Key Employee of the Company in such individual's capacity as such; (iii) the Company becomes aware of any inaccuracy in any representation or warranty made by it in this Agreement; or (iv) the failure of the Company to comply with any covenant or obligation of the Company; in the case of (iii) and (iv) that would reasonably be expected to make the timely satisfaction of any of the conditions set forth in Sections 6 and 7, as applicable, impossible or materially less likely. No notification given to Parent pursuant to this Section 4.6 shall change, limit or otherwise affect any of the representations, warranties, covenants or obligations of the Company contained in this Agreement or the Company Disclosure Schedule for purposes of Sections 6 and 7, as applicable.

(b) During the Pre-Closing Period, Parent shall promptly notify the Company (and, if in writing, furnish copies of) if any of the following occurs: (i) any written notice or other written communication is received from any Person alleging that the Consent of such Person is or may be required in connection with any of the Contemplated Transactions; (ii) any Legal Proceeding against or involving or otherwise affecting Parent or its Subsidiaries is commenced, or, to the Knowledge of Parent, threatened in writing against Parent or its Subsidiaries or, to the Knowledge of Parent, any director, officer or Key Employee of Parent or its Subsidiaries in such individual's capacity as such; (iii) Parent becomes aware of any inaccuracy in any representation or warranty made by it or Merger Sub in this Agreement; or (iv) the failure of Parent or Merger Sub to comply with any covenant or obligation of Parent or Merger Sub; in the case of (iii) and (iv) that would reasonably be expected to make the timely satisfaction of any of the conditions set forth in Sections 6 and 8, as applicable, impossible or materially less likely. No notification given to the Company pursuant to this Section 4.6 shall change, limit or otherwise affect any of the representations, warranties, covenants or obligations of Parent or any of its Subsidiaries contained in this Agreement or the Parent Disclosure Schedule for purposes of Sections 6 and 8, as applicable.

Section 5. ADDITIONAL AGREEMENTS OF THE PARTIES

5.1. Registration Statement; Proxy Statement.

(a) As promptly as practicable after the date of this Agreement, the Parties shall prepare, and Parent shall cause to be filed with the SEC, the Registration Statement, in which the Proxy Statement will be included as a prospectus. Parent covenants and agrees that the information provided by Parent for inclusion in the Proxy Statement, including any pro forma financial statements included therein (and the letter to stockholders, notice of meeting and form of proxy

included therewith) will, at the time that the Proxy Statement or any amendment or supplement thereto is filed with the SEC or is first mailed to the Stockholders, not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. Prior to the Registration Statement being declared effective,

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(1) Parent shall use its commercially reasonable efforts to execute and deliver to DLA Piper LLP (US) (*DLA*) and to Dechert LLP (*Dechert*) the applicable Tax Representation Letter referenced in Section 5.12(c); and (2) the Company shall use its commercially reasonable efforts to execute and deliver to DLA and to Dechert the applicable *Tax Representation Letter* referenced in Section 5.12(c). Following the delivery of the Tax Representation Letters pursuant to the preceding sentence, (x) Parent shall use its commercially reasonable efforts to cause Dechert to deliver to it a tax opinion satisfying the requirements of Item 601 of Regulation S-K under the Securities Act; and (y) the Company shall use its commercially reasonable efforts to cause DLA to deliver to it a tax opinion satisfying the requirements of Item 601 of Regulation S-K under the Securities Act. In rendering such opinions, each of such counsel shall be entitled to rely on the Tax Representation Letters referred to in this Section 5.1(a). The Company covenants and agrees that the information provided by the Company to Parent for inclusion in the Proxy Statement (including the Company Financials) will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make such information not misleading.

Notwithstanding the foregoing, Parent makes no covenant, representation or warranty with respect to statements made in the Proxy Statement (and the letter to stockholders, notice of meeting and form of proxy included therewith), if any, based on information provided by the Company or any of their Representatives specifically for inclusion therein. The Company and its legal counsel shall be given reasonable opportunity to review and comment on the Proxy Statement, including all amendments and supplements thereto, prior to the filing thereof with the SEC, and on the response to any comments of the SEC on the Proxy Statement, prior to the filing thereof with the SEC. Parent shall use commercially reasonable efforts to cause the Registration Statement and the Proxy Statement to comply with the applicable rules and regulations promulgated by the SEC, to respond promptly to any comments of the SEC or its staff and to have the Registration Statement declared effective under the Securities Act as promptly as practicable after it is filed with the SEC. Each of the Parties shall use commercially reasonable efforts to cause the Proxy Statement to be mailed to Parent's stockholders as promptly as practicable after the Registration Statement is declared effective under the Securities Act. Each Party shall promptly furnish to the other Party all information concerning such Party and such Party's Affiliates and such Party's stockholders that may be required or reasonably requested in connection with any action contemplated by this Section 5.1. If Parent, Merger Sub or the Company become aware of any event or information that, pursuant to the Securities Act or the Exchange Act, should be disclosed in an amendment or supplement to the Registration Statement or Proxy Statement, as the case may be, then such Party, as the case may be, shall promptly inform the other Parties thereof and shall cooperate with such other Parties in filing such amendment or supplement with the SEC and, if appropriate, in mailing such amendment or supplement to the Parent stockholders.

(b) The Company shall reasonably cooperate with Parent and provide, and require its Representatives to provide, Parent and its Representatives, with all true, correct and complete information regarding the Company that is required by Law to be included in the Registration Statement or reasonably requested by Parent to be included in the Registration Statement. Without limiting the foregoing, the Company will use commercially reasonable efforts to cause to be delivered to Parent a consent letter of the Company's independent accounting firm, dated no more than two Business Days before the date on which the Registration Statement becomes effective (and reasonably satisfactory in form and substance to Parent), that is customary in scope and substance for consent letters delivered by independent public accountants in connection with registration statements similar to the Registration Statement.

5.2. Company Information Statement; Stockholder Written Consent.

(a) Promptly after the Registration Statement shall have been declared effective under the Securities Act, and in any event no later than three Business Days thereafter, the Company shall prepare, with the reasonable cooperation of Parent, and cause to be mailed to its stockholders an information statement to solicit the approval by written consent from Company stockholders sufficient for the Required Company Stockholder Vote in lieu of a meeting pursuant to Section 228 of the DGCL, for purposes of (i) adopting and approving this Agreement and the Contemplated Transactions, (ii) acknowledging that the approval given thereby is irrevocable and that such stockholder is aware of its rights to demand appraisal for its shares pursuant to Section 262 of the DGCL, a true and correct copy of which

will be attached thereto, and that such stockholder has received and read a copy of Section 262 of the DGCL, and (iii) acknowledging that by its approval of the Merger it is not entitled to appraisal rights with respect to its shares in connection

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with the Merger and thereby waives any rights to receive payment of the fair value of its capital stock under the DGCL. Under no circumstances shall the Company assert that any other approval or consent is necessary by its stockholders to approve this Agreement.

(b) Reasonably promptly following receipt of the Required Company Stockholder Vote, the Company shall prepare and mail a notice (the *Stockholder Notice*) to every stockholder of the Company that did not execute the Company Stockholder Written Consent. The Stockholder Notice shall (i) be a statement to the effect that the Company Board determined that the Merger is advisable in accordance with Section 251(b) of the DGCL and in the best interests of the stockholders of the Company and approved and adopted this Agreement, the Merger and the other Contemplated Transactions, (ii) provide the stockholders of the Company to whom it is sent with notice of the actions taken in the Company Stockholder Written Consent, including the adoption and approval of this Agreement, the Merger and the other Contemplated Transactions in accordance with Section 228(e) of the DGCL and the certificate of incorporation and bylaws of the Company and (iii) include a description of the appraisal rights of the Company's stockholders available under the DGCL, along with such other information as is required thereunder and pursuant to applicable Law. All materials (including any amendments thereto) submitted to the stockholders of the Company in accordance with this Section 5.2(b) shall be subject to Parent's advance review and reasonable approval.

(c) The Company agrees that: (i) the Company Board shall recommend that the Company's stockholders vote to adopt and approve this Agreement and the Contemplated Transactions and shall use commercially reasonable efforts to solicit such approval within the time set forth in Section 5.2(a) (the recommendation of the Company Board that the Company's stockholders vote to adopt and approve this Agreement being referred to as the *Company Board Recommendation*); and (ii) the Company Board Recommendation shall not be withdrawn or modified (and the Company Board shall not publicly propose to withdraw or modify the Company Board Recommendation) in a manner adverse to Parent, and no resolution by the Company Board or any committee thereof to withdraw or modify the Company Board Recommendation in a manner adverse to Parent or to adopt, approve or recommend (or publicly propose to adopt, approve or recommend) any Acquisition Proposal shall be adopted or proposed.

(d) The Company's obligation to solicit the consent of its stockholders to sign the Company Stockholder Written Consent in accordance with Section 5.2(a) shall not be limited or otherwise affected by the commencement, disclosure, announcement or submission of any Superior Offer or other Acquisition Proposal.

5.3. Parent Stockholders Meeting.

(a) Promptly after the Registration Statement has been declared effective by the SEC under the Securities Act, Parent shall take all action necessary under applicable Law to call, give notice of and hold a meeting of the holders of Parent Common Stock to consider and vote to approve (i) the issuance of the shares of Parent Common Stock to the stockholders of the Company pursuant to the terms of this Agreement and (ii) the Reverse Split (the *Parent Stockholder Matters* and such meeting, the *Parent Stockholders Meeting*). The Parent Stockholders Meeting shall be held as promptly as practicable after the Registration Statement is declared effective under the Securities Act. Parent shall take reasonable measures to ensure that all proxies solicited in connection with the Parent Stockholders Meeting are solicited in compliance with all applicable Law. Notwithstanding anything to the contrary contained herein, if on the date of the Parent Stockholders Meeting, or a date preceding the date on which the Parent Stockholders Meeting is scheduled, Parent reasonably believes that (i) it will not receive proxies sufficient to obtain the Required Parent Stockholder Vote, whether or not a quorum would be present or (ii) it will not have sufficient shares of Parent Common Stock represented (whether in person or by proxy) to constitute a quorum necessary to conduct the business of the Parent Stockholders Meeting, Parent may postpone or adjourn, or make one or more successive postponements or adjournments of, the Parent Stockholders Meeting as long as the date of the Parent Stockholders Meeting is not postponed or adjourned more than an aggregate of 60 calendar days in connection with any postponements or adjournments.

(b) Parent agrees that, subject to Section 5.3(c): (i) the Parent Board shall recommend that the holders of Parent Common Stock vote to approve the Parent Stockholder Matters, (ii) the Proxy Statement shall include a statement to the effect that the Parent Board recommends that Parent's stockholders vote to

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approve the Parent Stockholder Matters (the recommendation of the Parent Board being referred to as the **Parent Board Recommendation**); and (iii) the Parent Board Recommendation shall not be withheld, amended, withdrawn or modified (and the Parent Board shall not publicly propose to withhold, amend, withdraw or modify the Parent Board Recommendation) in a manner adverse to the Company (the actions set forth in the foregoing clause (iii), collectively, a **Parent Board Adverse Recommendation Change**).

(c) Notwithstanding anything to the contrary contained in Section 5.3(b), and subject to compliance with Section 4.4 and Section 5.3, if at any time prior to the approval of Parent Stockholder Matters by the Required Parent Stockholder Vote, Parent receives a bona fide written Superior Offer from any Person that has not been withdrawn, the Parent Board may make a Parent Board Adverse Recommendation Change if, but only if, following the receipt of and on account of such Superior Offer, (i) the Parent Board determines in good faith, based on the advice of its outside legal counsel, that the failure to make a Parent Board Adverse Recommendation Change would be reasonably likely to be inconsistent with its fiduciary duties under applicable Law, (ii) Parent has, and has caused its financial advisors and outside legal counsel to, during the Parent Notice Period (as defined below), negotiate with the Company in good faith (if the Company so desires) to make such adjustments to the terms and conditions of this Agreement so that such Acquisition Proposal ceases to constitute a Superior Offer, and (iii) if after the Company shall have delivered to Parent a written offer to alter the terms or conditions of this Agreement during the Parent Notice Period, the Parent Board shall have determined in good faith, based on the advice of its outside legal counsel, that the failure to withhold, amend, withdraw or modify the Parent Board Recommendation would be reasonably likely to be inconsistent with its fiduciary duties under applicable Law (after taking into account such alterations of the terms and conditions of this Agreement); *provided* that the Company receives written notice from Parent confirming that the Parent Board has determined to change its recommendation at least four Business Days in advance of such Parent Board Adverse Recommendation Change, (the **Parent Notice Period**), which notice shall include written copies of any relevant proposed transaction agreements with any party making a potential Superior Offer. In the event of any material amendment to any Superior Offer, Parent shall be required to provide the Company with notice of such material amendment and the Parent Notice Period shall be extended, if applicable, to ensure that at least two Business Days remain in the Parent Notice Period following such notification during which the parties shall comply again with the requirements of this Section 5.3(c) and the Parent Board shall not make a Parent Board Adverse Recommendation Change prior to the end of such Parent Notice Period as so extended.

(d) Other than in connection with a bona fide written Superior Offer (which shall be subject to Section 5.3(c)), the Parent Board may make a Parent Board Adverse Recommendation Change in response to a Parent Change in Circumstance, if and only if: (A) the Parent Board determines in good faith, after consultation with the Company's outside legal counsel, that the failure to do so is reasonably likely to be inconsistent with its fiduciary duties under applicable Law; (B) the Company receives written notice from Parent confirming that the Parent Board has determined to change its recommendation at least four Business Days in advance of the Parent Board Adverse Recommendation Change (the **Parent Change in Circumstance Notice**); and (C) (1) Parent shall have specified the Parent Change in Circumstance in reasonable detail, (2) Parent shall have given the Company four Business Days after the Parent Change in Circumstance Notice to propose revisions to the terms of this Agreement or make another proposal so that such Parent Change in Circumstance would no longer necessitate a Parent Board Adverse Recommendation Change, and shall have negotiated in good faith with the Company (if the Company so desires) with respect to such proposed revisions or other proposal, if any, and (3) after considering the results of such negotiations and giving effect to the proposals made by the Company, if any, after consultation with outside legal counsel, the Parent Board shall have determined, in good faith, that the failure to make the Parent Board Adverse Recommendation Change in response to such Parent Change in Circumstance is reasonably likely to be inconsistent with its fiduciary duties under applicable Law.

(e) Nothing contained in this Agreement shall prohibit Parent or the Parent Board from (i) complying with Rules 14d-9 and 14e-2(a) promulgated under the Exchange Act, (ii) issuing a stop, look and listen communication or similar

communication of the type contemplated by Section 14d-9(f) under the Exchange Act or (iii) otherwise making any disclosure to the Parent stockholders; *provided however*, that in the case of the foregoing clause (iii) the Parent Board determines in good faith, after consultation with its outside legal counsel, that failure to make such disclosure would be reasonably likely to be inconsistent with applicable Law, including its fiduciary duties under applicable Law; *provided, further*, that any such

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disclosures (other than a stop, look and listen communication or similar communication of the type contemplated by Section 14d-9(f) under the Exchange Act) shall be deemed to be a change of the Parent Board Recommendation unless the Parent Board expressly publicly reaffirms the Parent Board Recommendation (i) in such communication or (ii) within three Business Days after being requested in writing to do so by the Company.

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

5.5. **Company Options.**

(a) At the Effective Time, each Company Option that is outstanding and unexercised immediately prior to the Effective Time under the Company Stock Plans shall be fully vested and converted into and become an option to purchase Parent Common Stock, and Parent shall assume the Company Stock Plans and each such Company Option in accordance with the terms (as in effect as of the date of this Agreement) of the Company Stock Plans and the terms of the stock option agreement by which each such Company Option is evidenced (but with changes to such documents as Parent in good faith determines are appropriate to reflect the substitution of the Company Options by Parent to purchase shares of Parent Common Stock). All rights with respect to Company Common Stock under Company Options assumed by Parent shall thereupon be converted into rights with respect to Parent Common Stock in accordance with this Section 5.5(a). Accordingly, from and after the Effective Time: (i) each Company Option assumed by Parent may be exercised solely for shares of Parent Common Stock; (ii) the number of shares of Parent Common Stock (as of immediately after the Effective Time) subject to each Company Option assumed by Parent shall be determined by multiplying (A) the number of shares of Company Common Stock that were subject to such Company Option, as in effect immediately prior to the Effective Time, by (B) the Exchange Ratio, and rounding the resulting number down to the nearest whole number of shares of Parent Common Stock; (iii) the per share exercise price (as of immediately after the Effective Time) for the Parent Common Stock issuable upon exercise of each Company Option assumed by Parent shall be determined by dividing (A) the per share exercise price of Company Common Stock subject to such Company Option, as in effect immediately prior to the Effective Time, by (B) the Exchange Ratio and rounding the resulting exercise price up to the nearest whole cent; and (iv) any restriction on the exercise of any Company Option assumed by Parent shall continue in full force and effect and the term, exercisability, vesting schedule and other provisions of such Company Option shall otherwise remain unchanged; *provided, however*, that: (A) Parent may amend the terms of the Company Options and the Company Stock Plans to reflect Parent's substitution of the Company Options with options to purchase Parent Common Stock (such as by making any change in control or similar definition relate to Parent and having any provision that provides for the adjustment of Company Options upon the occurrence of certain corporate events relate to corporate events that relate to Parent and/or Parent Common Stock); and (B) the Parent Board or a committee thereof shall succeed to the authority and responsibility of the Company Board or any committee thereof with respect to each Company Option assumed by Parent.

(b) Parent shall file with the SEC, promptly after the Effective Time, a registration statement on Form S-8 (or any successor form), if available for use by Parent, relating to the shares of Parent Common Stock issuable with respect to Company Options assumed by Parent in accordance with Section 5.5(a).

(c) Prior to the Effective Time, the Company shall take all actions that may be necessary (under the Company Stock Plans and otherwise) to effectuate the provisions of this Section 5.5 and to ensure that, from and after the Effective Time, holders of Company Options have no rights with respect thereto other than those specifically provided in this Section 5.5.

5.6. **Parent Options and Parent RSUs.** Prior to the Closing, the Parent Board shall have adopted appropriate resolutions and taken all other actions necessary and appropriate to provide that each outstanding and unexercised Parent Option, whether vested or unvested, and each outstanding and unvested Parent RSU, shall be accelerated in full effective as of immediately prior to the Effective Time, with each (i) unexercised Parent

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Option remaining outstanding immediately after the Effective Time in accordance with its terms and (ii) Parent RSU to be settled within five days after the Effective Time (with settlement to be one share of Parent Common Stock for each share of Parent Common Stock underlying such Parent RSU).

5.7. Employee Benefits.

(a) For purposes of vesting, eligibility to participate, and level of benefits under the benefit plans, programs, contracts or arrangements of Parent or any of its Subsidiaries (including, following the Closing, the Company) providing benefits to any Continuing Employee after the Closing (the *Post-Closing Plans*), each employee who continues to be employed by Parent, the Company or any of their respective Subsidiaries immediately following the Closing (*Continuing Employees*) shall be credited with his or her years of service with the Parent, the Company or any of their respective Subsidiaries and their respective predecessors; *provided* that the foregoing shall not apply to the extent that its application would result in a duplication of benefits. In addition, and without limiting the generality of the foregoing, for purposes of each Post-Closing Plan providing medical, dental, pharmaceutical and/or vision benefits to a Continuing Employee, Parent shall use commercially reasonable efforts to cause all pre-existing condition exclusions and actively-at-work requirements of such Post-Closing Plan to be waived for such Continuing Employee and his or her covered dependents to the extent such conditions would have been waived or satisfied under the employee benefit plan whose coverage is being replaced under the Post-Closing Plan, and Parent shall use commercially reasonable efforts to cause any eligible expenses incurred by a Continuing Employee and his or her covered dependents during the portion of such plan year in which coverage is replaced with coverage under such a Post-Closing Plan to be taken into account under such Post-Closing Plan with respect to the plan year in which participation in such Post-Closing Plan begins for purposes of satisfying all deductible, coinsurance and maximum out-of-pocket requirements applicable to such Continuing Employee and his or her covered dependents for such plan year as if such amounts had been paid in accordance with such Post-Closing Plan.

(b) Parent and the Company acknowledge and agree that all provisions contained in this Section 5.7 are included for the sole benefit of the respective parties to this Agreement and shall not create any right in any other Person, including any right to continued employment or service with Parent, the Company or any of their respective Affiliates. Without limiting the generality of the foregoing, nothing in this Section 5.7 shall be deemed to (i) establish or amend any Company Benefit Plan, Parent Benefit Plan or any other employee benefit plan, program or arrangement of any kind or (ii) limit the right of the Parent, the Company or any of their respective Affiliates to amend, merge or terminate any Company Benefit Plan or Parent Benefit Plan.

5.8. Indemnification of Officers and Directors.

(a) From the Effective Time through the sixth anniversary of the date on which the Effective Time occurs, each of Parent and the Surviving Corporation shall indemnify and hold harmless each person who is now, or has been at any time prior to the date hereof, or who becomes prior to the Effective Time, a director, officer, fiduciary or agent of Parent or the Company, respectively (the *D&O Indemnified Parties*), against all claims, losses, liabilities, damages, judgments, fines and reasonable fees, costs and expenses, including attorneys' fees and disbursements (collectively, *Costs*), incurred in connection with any claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative, arising out of or pertaining to the fact that the D&O Indemnified Party is or was a director, officer, fiduciary or agent of Parent or of the Company, whether asserted or claimed prior to, at or after the Effective Time, in each case, to the fullest extent permitted under applicable Law. Each D&O Indemnified Party will be entitled to advancement of expenses incurred in the defense of any such claim, action, suit, proceeding or investigation from each of Parent and the Surviving Corporation, jointly and severally, upon receipt by Parent or the Surviving Corporation from the D&O Indemnified Party of a request therefor; *provided* that any such person to whom expenses are advanced provides an undertaking to Parent, to the extent then required by the DGCL, to repay such advances if it is ultimately determined that such person is not entitled to indemnification.

(b) The provisions of the certificate of incorporation and bylaws of Parent with respect to indemnification, advancement of expenses and exculpation of present and former directors and officers of Parent that are presently set forth in the certificate of incorporation and bylaws of Parent shall not be

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amended, modified or repealed for a period of six years from the Effective Time in a manner that would adversely affect the rights thereunder of individuals who, at or prior to the Effective Time, were officers or directors of Parent. The certificate of incorporation and bylaws of the Surviving Corporation shall contain, and Parent shall cause the certificate of incorporation and bylaws of the Surviving Corporation to so contain, provisions no less favorable with respect to indemnification, advancement of expenses and exculpation of present and former directors and officers as those presently set forth in the certificate of incorporation and bylaws of Parent.

(c) From and after the Effective Time, (i) the Surviving Corporation shall fulfill and honor in all respects the obligations of the Company to its D&O Indemnified Parties as of immediately prior to the Closing pursuant to any indemnification provisions under the Company's Organizational Documents and pursuant to any indemnification agreements between the Company and such D&O Indemnified Parties, with respect to claims arising out of matters occurring at or prior to the Effective Time and (ii) Parent shall fulfill and honor in all respects the obligations of Parent to its D&O Indemnified Parties as of immediately prior to the Closing pursuant to any indemnification provisions under Parent's Organizational Documents and pursuant to any indemnification agreements between Parent and such D&O Indemnified Parties, with respect to claims arising out of matters occurring at or prior to the Effective Time.

(d) From and after the Effective Time, Parent shall maintain directors' and officers' liability insurance policies, with an effective date as of the Closing Date, on commercially available terms and conditions and with coverage limits customary for U.S. public companies similarly situated to Parent. In addition, each of Parent and the Company shall purchase, prior to the Effective Time, a six-year prepaid tail policy for the non-cancellable extension of the directors and officers' liability coverage of Parent's or the Company's, as applicable, existing directors' and officers' insurance policies for a claims reporting or discovery period of at least six years from and after the Effective Time with respect to any claim related to any period of time at or prior to the Effective Time.

(e) From and after the Effective Time, Parent shall pay all expenses, including reasonable attorneys' fees, that are incurred by the persons referred to in this Section 5.8 in connection with their successful enforcement of the rights provided to such persons in this Section 5.8.

(f) The provisions of this Section 5.8 are intended to be in addition to the rights otherwise available to the current and former officers and directors of Parent and the Company by Law, charter, statute, bylaw or agreement, and shall operate for the benefit of, and shall be enforceable by, each of the D&O Indemnified Parties, their heirs and their representatives.

(g) In the event Parent or the Surviving Corporation or any of their respective successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger, or (ii) transfers all or substantially all of its properties and assets to any Person, then, and in each such case, proper provision shall be made so that the successors and assigns of Parent or the Surviving Corporation, as the case may be, shall succeed to the obligations set forth in this Section 5.8. Parent shall cause the Surviving Corporation to perform all of the obligations of the Surviving Corporation under this Section 5.8.

5.9. Additional Agreements. The Parties shall use commercially reasonable efforts to cause to be taken all actions necessary to consummate the Contemplated Transactions. Without limiting the generality of the foregoing, each Party to this Agreement: (a) shall make all filings and other submissions (if any) and give all notices (if any) required to be made and given by such Party in connection with the Contemplated Transactions; (b) shall use commercially reasonable efforts to obtain each Consent (if any) reasonably required to be obtained (pursuant to any applicable Law or Contract, or otherwise) by such Party in connection with the Contemplated Transactions or for such Contract to remain in full force and effect; (c) shall use commercially reasonable efforts to lift any injunction prohibiting, or any other legal bar to, the Contemplated Transactions; and (d) shall use commercially reasonable efforts to satisfy the

conditions precedent to the consummation of this Agreement.

5.10. **Disclosure.** Without limiting any Party's obligations under the Confidentiality Agreement, no Party shall, and no Party shall permit any of its Subsidiaries or any Representative of such Party to, issue any press release or make any disclosure (to any customers of such Party, to the public or otherwise) regarding the Contemplated Transactions unless: (a) the other Party shall have approved such press release or disclosure in writing, such approval not to be unreasonably conditioned, withheld or delayed; or (b) such disclosure is

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requested by a Governmental Body or such Party shall have determined in good faith that such disclosure is required by applicable Law or by obligations pursuant to any listing agreement with or rules of any national securities exchange or interdealer quotation service and, to the extent practicable, before such press release or disclosure is issued or made, such Party shall have used commercially reasonable efforts to advise the other Party of, and consult with the other Party regarding, the text of such press release or disclosure; *provided, however*, that Parent may make any public statement in response to specific questions by the press, analysts, investors or those attending industry conferences or financial analyst conference calls, so long as any such statements are consistent with previous press releases, public disclosures or public statements made by the Company or Parent in compliance with this Section 5.10. Notwithstanding the foregoing, the initial press release regarding the Contemplated Transactions may be issued by Parent and such press release and the Current Report on Form 8-K to be filed by Parent in connection with the initial announcement of this Agreement and the Contemplated Transactions shall not be subject to this Section 5.10.

5.11. **Listing.** (a) Parent shall use its commercially reasonable efforts, to the extent required by the rules and regulations of NASDAQ, to prepare and submit to NASDAQ a notification form for the listing of the shares of Parent Common Stock to be issued in connection with the Contemplated Transactions, and to cause such shares to be approved for listing (subject to official notice of issuance); and (b) the Company shall use its commercially reasonable efforts, to the extent required by Nasdaq Marketplace Rule 5110, to file an initial listing application for the Parent Common Stock on NASDAQ (the *NASDAQ Listing Application*) and to cause such NASDAQ Listing Application to be conditionally approved prior to the Effective Time. The Parties will use commercially reasonable efforts to coordinate with respect to compliance with NASDAQ rules and regulations. The Company agrees to pay all NASDAQ fees associated with the NASDAQ Listing Application (the cost of which shall be a Company Transaction Expense). The Parties will cooperate with the other as reasonably requested by the other with respect to the NASDAQ Listing Application and promptly furnish all information concerning itself and its stockholders that may be required or reasonably requested in connection with any action contemplated by this Section 5.11.

5.12. **Tax Matters.**

(a) For United States federal income Tax purposes, (i) the Parties intend that the Merger qualify as a reorganization within the meaning of Section 368(a) of the Code (the *Intended Tax Treatment*), and (ii) this Agreement is intended to be, and is hereby adopted as, a plan of reorganization for purposes of Section 354 and 361 of the Code and Treasury Regulations Section 1.368-2(g) and 1.368-3(a), to which the Parent, Merger Sub and the Company are parties under Section 368(b) of the Code. The Parties shall treat and shall not take any tax reporting position inconsistent with the treatment of the Merger as a reorganization within the meaning of Section 368(a) of the Code for U.S. federal, state and other relevant Tax purposes, unless otherwise required pursuant to a determination within the meaning of Section 1313(a) of the Code.

(b) The Parties shall use their respective reasonable best efforts to cause the Merger to qualify, and will not take any action or cause any action to be taken which action would reasonably be expected to prevent the Merger from qualifying, for the Intended Tax Treatment.

(c) Parent shall use commercially reasonable efforts to deliver to Dechert and DLA a *Tax Representation Letter*, dated as of the Closing Date and signed by an officer of Parent, containing representations of Parent, and Merger Sub, and the Company shall use commercially reasonable efforts to deliver to Dechert and DLA a *Tax Representation Letter*, dated as of the Closing Date and signed by an officer of the Company, containing representations of the Company, in each case as shall be necessary or appropriate to enable DLA to render the opinion described in Section 5.12(e) of this Agreement and Dechert to render the opinion described in Section 5.12(d) of this Agreement.

(d) Parent shall use reasonable efforts to obtain an opinion of Dechert, to the effect that the Merger shall qualify for the Intended Tax Treatment, dated as of the Closing and also dated as of any earlier date as may be required by the

SEC in connection with the effectiveness of the Registration Statement. In rendering such opinion, Dechert may require and rely upon (and may incorporate by reference) reasonable and customary representations and covenants, including those contained in the Tax Representation Letters described in Section 5.12(c) of this Agreement.

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(e) The Company shall use commercially reasonable efforts to obtain an opinion of DLA to the effect that the Merger shall qualify for the Intended Tax Treatment dated as of the Closing and also dated as of any earlier date as may be required by the SEC in connection with the effectiveness of the Registration Statement. In rendering such opinion, DLA may require and rely upon (and may incorporate by reference) reasonable and customary representations and covenants, including the Tax Representation Letters described in Section 5.12(c) of this Agreement.

5.13. **Legends.** Parent shall be entitled to place appropriate legends on the book entries and/or certificates evidencing any shares of Parent Common Stock to be received in the Merger by equity holders of the Company who may be considered affiliates of Parent for purposes of Rules 144 and 145 under the Securities Act reflecting the restrictions set forth in Rules 144 and 145 and to issue appropriate stop transfer instructions to the transfer agent for Parent Common Stock.

5.14. **Directors and Officers.** The Parties shall use reasonable best efforts and take all necessary action so that immediately after the Effective Time, (a) the Parent Board is comprised of seven (7) members, with three (3) of such members designated by Parent and four (4) of such members designated by the Company, and (b) the Persons listed in Exhibit C under the heading Officers are elected or appointed, as applicable, to the positions of officers of Parent and the Surviving Corporation, as set forth therein, to serve in such positions effective as of the Effective Time until successors are duly appointed and qualified in accordance with applicable Law. If any Person listed in Exhibit C is unable or unwilling to serve as an officer of Parent or the Surviving Corporation, as set forth therein, as of the Effective Time, the Parties shall mutually agree upon a successor. The Persons listed in Exhibit C under the heading Board Designees – Parent shall be Parent’s designees pursuant to clause (a) of this Section 5.14 (which list may be changed by Parent at any time prior to the Closing by written notice to the Company to include different board designees who are reasonably acceptable to the Company) (the *Parent Designees*). The Persons listed in Exhibit C under the heading Board Designees – Company shall be the Company’s designees pursuant to clause (a) of this Section 5.14 (which list may be changed by the Company at any time prior to the Closing by written notice to Parent to include different board designees who are reasonably acceptable to Parent).

5.15. **Termination of Certain Agreements and Rights.** The Company shall cause any Investor Agreements to be terminated immediately prior to the Effective Time, without any liability being imposed on the part of Parent or the Surviving Corporation.

5.16. **Section 16 Matters.** Prior to the Effective Time, Parent and the Company shall take all such steps as may be required (to the extent permitted under applicable Laws) to cause any acquisitions of Parent Common Stock and any options to purchase Parent Common Stock in connection with the Contemplated Transactions, by each individual who is reasonably expected to become subject to the reporting requirements of Section 16(a) of the Exchange Act with respect to Parent, to be exempt under Rule 16b-3 promulgated under the Exchange Act. At least thirty (30) days prior to the Closing Date, the Company shall furnish the following information to Parent for each individual who, immediately after the Effective Time, will become subject to the reporting requirements of Section 16(a) of the Exchange Act with respect to Parent: (a) the number of shares of Company Capital Stock owned by such individual and expected to be exchanged for shares of Parent Common Stock pursuant to the Merger, and (b) the number of other derivative securities (if any) with respect to Company Capital Stock owned by such individual and expected to be converted into shares of Parent Common Stock or derivative securities with respect to Parent Common Stock in connection with the Merger.

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

5.18. **Allocation Certificate.**

(a) The Company will prepare and deliver to Parent at least ten Business Days prior to the Closing Date a certificate signed by the Chief Financial Officer of the Company in a form reasonably acceptable to Parent setting forth (as of immediately prior to the Effective Time) (a) each holder of Company Capital Stock, Company Options or Company Warrants, (b) such holder's name and address; (c) the number and type of Company Capital Stock held and/or underlying the Company Options or Company Warrants as of the Closing Date for each such holder, and (d) the number of shares of Parent Common Stock to be issued

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to such holder, or to underlie any Parent Option or Parent Warrant to be issued to such holder, pursuant to this Agreement in respect of the Company Capital Stock, Company Options or Company Warrants held by such holder as of immediately prior to the Effective Time (the *Allocation Certificate*); *provided* that the Company may update the Allocation Certificate by written notice to Parent at least two days prior to the Closing in the event that any holder of Company Options or Company Warrants exercises such Company Options or Company Warrants prior to the Effective Time.

(b) Parent will prepare and deliver to the Parent at least ten Business Days prior to the Closing Date a certificate signed by the Chief Financial Officer of Parent in a form reasonably acceptable to the Company setting forth (as of immediately prior to the Effective Time) (a) the number of outstanding shares of Parent Common Stock, and (b) each holder of Parent Options and such holder's name, address and number of shares of Parent Common Stock underlying the Parent Options for each such holder (the *Parent Outstanding Equity Certificate*); *provided* that Parent may update the Parent Outstanding Equity Certificate by written notice to the Company at least two days prior to the Closing in the event that any holder of Parent Options exercises such Parent Options prior to the Effective Time.

5.19. **Company Financial Statements.** To the extent not already provided to Parent as of the date of this Agreement, as promptly as reasonably practicable following the date hereof, the Company will furnish to Parent (i) audited financial statements for the fiscal years ended 2016 and 2017, for inclusion in the Proxy Statement and the Registration Statement (the *Company Audited Financial Statements*) and (ii) unaudited interim financial statements for each interim period completed prior to Closing that would be required to be included in the Registration Statement or any periodic report due prior to the Closing if the Company were subject to the periodic reporting requirements under the Securities Act or the Exchange Act (the *Company Interim Financial Statements*). Each of the Company Audited Financial Statements and the Company Interim Financial Statements will be suitable for inclusion in the Proxy Statement and the Registration Statement and prepared in accordance with GAAP as applied on a consistent basis during the periods involved (except in each case as described in the notes thereto) and on that basis will present fairly, in all material respects, the financial position and the results of operations, changes in stockholders' equity, and cash flows of the Company as of the dates of and for the periods referred to in the Company Audited Financial Statements or the Company Interim Financial Statements, as the case may be.

5.20. **Takeover Statutes.** If any Takeover Statute is or may become applicable to the Contemplated Transactions, each of the Company, the Company Board, Parent and the Parent Board, as applicable, shall grant such approvals and take such actions as are necessary so that the Contemplated Transactions may be consummated as promptly as practicable on the terms contemplated by this Agreement and otherwise act to eliminate or minimize the effects of such statute or regulation on the Contemplated Transactions.

5.21. **Stockholder Litigation.**

(a) Parent shall conduct and control the settlement and defense of any stockholder litigation against Parent or any of its directors relating to this Agreement or the Contemplated Transactions; *provided* that any settlement or other resolution of any such stockholder litigation agreed to by Parent after the Closing shall be approved in advance by a majority of the Parent Designees for so long as any Parent Designees are still members of the Parent Board. Without limiting the foregoing, prior to the Closing, Parent shall give the Company the opportunity to consult with Parent in connection with the defense and settlement of any such stockholder litigation, and Parent shall keep the Company reasonably apprised of any material developments in connection with any such stockholder litigation.

(b) The Company shall conduct and control the settlement and defense of any stockholder litigation against the Company or any of its directors relating to this Agreement or the Contemplated Transaction. Without limiting the foregoing, prior to the Closing, the Company shall give Parent the opportunity to consult with the Company in connection with the defense and settlement of any such stockholder litigation, and the Company shall keep Parent

reasonably apprised of any material developments in connection with any such stockholder litigation.

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(a) Section 5.22(a) of the Company Disclosure Schedule sets forth the Company's good faith estimate of Company Net Cash and the components thereof, calculated as if the Closing had occurred on February 28, 2019. The Parties agree that Company Net Cash, including for purposes of the Company Net Cash Schedule, will be calculated based on the same assumptions and methodologies used in preparing Section 5.22(a) of the Company Disclosure Schedule.

(b) On or prior to the Determination Date, the Company shall deliver the Company Net Cash Schedule to Parent. Upon the reasonable request of Parent, the Company shall make the work papers and back-up materials used or useful in preparing the Company Net Cash Schedule available to Parent. Within three calendar days after the Company delivers the Company Net Cash Schedule to Parent (the ***Company Net Cash Response Date***), subject to the terms and definitions of this Agreement, Parent will have the right to dispute any part of such Company Net Cash Schedule by delivering a written notice to that effect to the Company (a ***Parent Dispute Notice***). Any Parent Dispute Notice shall identify in reasonable detail the nature of any proposed revisions to the calculation of Company Net Cash set forth in the Company Net Cash Schedule. If on or prior to the Company Net Cash Response Date, (i) Parent notifies the Company in writing that it has no objections to the Company Net Cash Schedule or (ii) Parent fails to deliver a Parent Dispute Notice, then Company Net Cash as set forth in the Company Net Cash Schedule shall be deemed to have been finally determined for purposes of this Agreement and to represent the Company Net Cash at the Company Net Cash Measurement Date for purposes of this Agreement. If Parent delivers a Parent Dispute Notice on or prior to the Company Net Cash Response Date, then members of senior management of Parent and the Company shall promptly meet in person or telephonically at mutually agreed upon times and attempt in good faith to resolve the disputed item(s) and negotiate an agreed-upon determination of Company Net Cash, which agreed upon Company Net Cash amount shall be deemed to have been finally determined for purposes of this Agreement and to represent the Company Net Cash at the Company Net Cash Measurement Date for purposes of this Agreement.

(c) Section 5.22(c) of the Parent Disclosure Schedule sets forth Parent's good faith estimate of Parent Net Cash and the components thereof, calculated as if the Closing had occurred on February 28, 2019. The Parties agree that Parent Net Cash, including for purposes of the Parent Net Cash Schedule, will be calculated based on the same assumptions and methodologies used in preparing Section 5.22(c) of the Parent Disclosure Schedule.

(d) On or prior to the Determination Date, Parent shall deliver the Parent Net Cash Schedule to the Company. Upon the reasonable request of the Company, Parent shall make the work papers and back-up materials used or useful in preparing the Parent Net Cash Schedule available to the Company. Within three calendar days after Parent delivers the Parent Net Cash Schedule to the Company (the ***Parent Net Cash Response Date***), subject to the terms and definitions of this Agreement, the Company will have the right to dispute any part of such Parent Net Cash Schedule by delivering a written notice to that effect to Parent (a ***Company Dispute Notice***). Any Company Dispute Notice shall identify in reasonable detail the nature of any proposed revisions to the calculation of Parent Net Cash set forth in the Parent Net Cash Schedule. If on or prior to the Parent Net Cash Response Date, (i) the Company notifies Parent in writing that it has no objections to the Parent Net Cash Schedule or (ii) the Company fails to deliver a Company Dispute Notice, then Parent Net Cash as set forth in the Parent Net Cash Schedule shall be deemed to have been finally determined for purposes of this Agreement and to represent the Parent Net Cash at the Anticipated Closing Date for purposes of this Agreement. If the Company delivers a Company Dispute Notice on or prior to the Parent Net Cash Response Date, then members of senior management of Parent and the Company shall promptly meet in person or telephonically at mutually agreed upon times and attempt in good faith to resolve the disputed item(s) and negotiate an agreed-upon determination of Parent Net Cash, which agreed upon Parent Net Cash amount shall be deemed to have been finally determined for purposes of this Agreement and to represent the Parent Net Cash at the Anticipated Closing Date for purposes of this Agreement.

(e) If (i) Parent delivers a Parent Dispute Notice on or prior to the Company Net Cash Response Date and Parent and the Company are unable to negotiate an agreed-upon determination of Company Net Cash as of the Company Net Cash Measurement Date pursuant to Section 5.22(b) within three calendar days after delivery of the Parent Dispute Notice and/or (ii) the Company delivers a Company Dispute Notice on or

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prior to the Parent Net Cash Response Date and Parent and the Company are unable to negotiate an agreed-upon determination of Parent Net Cash as of the Anticipated Closing Date pursuant to Section 5.22(d) within three calendar days after delivery of the Company Dispute Notice, then, in either case, Ernst & Young LLP or another independent accounting firm of national standing mutually agreed upon by Parent and the Company (the *Accounting Firm*) shall be engaged to resolve any remaining disagreements as to the determination of Company Net Cash at the Company Net Cash Measurement Date and/or Parent Net Cash at the Anticipated Closing Date, as the case may be. Parent and the Company shall use commercially reasonable efforts to cause the Accounting Firm to make its determination within ten calendar days of accepting its engagement. Each of Parent and the Company shall be afforded the opportunity to present to the Accounting Firm any material related to the unresolved disputes and to discuss the issues with the Accounting Firm; *provided* that the other Party is provided with the opportunity to attend any such presentations or discussions. The Accounting Firm shall be bound by the assumptions and methodologies used in preparing Section 5.22(a) of the Company Disclosure Schedule (in the case of determining Company Net Cash) and/or Section 5.22(c) of the Parent Disclosure Schedule (in the case of determining Parent Net Cash), and the determination of the Accounting Firm shall be limited to the disagreements submitted to the Accounting Firm and shall be based solely on the Company Net Cash Schedule or the Parent Net Cash Schedule, as applicable, and the documentation and other papers submitted by Parent and the Company in support of its respective determination of Company Net Cash or Parent Net Cash, as applicable, and shall not be based on any independent review by the Accounting Firm. In determining the amount of Company Net Cash at the Company Net Cash Measurement Date and/or the Parent Net Cash at the Anticipated Closing Date, as applicable, the Accounting Firm shall be required to select either Parent's or the Company's determination of Company Net Cash at the Company Net Cash Measurement Date and/or the Parent Net Cash at the Anticipated Closing Date, as applicable, based on the Accounting Firm's determination of whichever such determination the Accounting Firm believes to be closer to the actual amount. Such determination by the Accounting Firm shall be final and binding for purposes of this Agreement on the Parties. The Parties shall delay the Closing until two Business Days after the resolution of the matters described in this Section 5.22(e). The fees and expenses of the Accounting Firm shall be borne by the Party whose determination of Company Net Cash or Parent Net Cash, as applicable, was not selected by the Accounting Firm; *provided* that if the Accounting Firm is engaged to make a final determination of both Company Net Cash and Parent Net Cash and each Party's determination is selected for one of the foregoing, the fees and expenses of the Accounting Firm shall be borne equally by Parent and the Company (it being understood and agreed that in all cases, the fees and expenses of the Accounting Firm shall reduce Company Net Cash and/or Parent Net Cash at the Company Net Cash Measurement Date or the Anticipated Closing Date, as applicable). If this Section 5.22(e) applies, upon resolution of the determination of Company Net Cash and/or Parent Net Cash, as applicable, in accordance with this Section 5.22(e), the Parties shall not be required to re-new such determination again even though the Closing Date may occur later than the Anticipated Closing Date, except that either Party may request a re-determination if the Closing Date is more than fifteen Business Days after the Anticipated Closing Date.

(f) Following the final determination of Company Net Cash in accordance with this Section 5.22, the Company Valuation shall be adjusted as follows: (x) if Company Net Cash is within the Company Collar Range, no adjustment to the Company Valuation shall be made; (y) if there is a Company Excess Amount, the Company Valuation shall be increased dollar-for-dollar by the Company Excess Amount; and (z) if there is a Company Deficiency Amount, the Company Valuation shall be decreased dollar-for-dollar by the Company Deficiency Amount.

(g) Following the final determination of Parent Net Cash in accordance with this Section 5.22, the Parent Valuation shall be adjusted as follows: (x) if Parent Net Cash is within the Parent Collar Range, no adjustment to the Parent Valuation shall be made; (y) if there is a Parent Excess Amount, the Parent Valuation shall be increased dollar-for-dollar by the Parent Excess Amount; and (z) if there is a Parent Deficiency Amount, the Parent Valuation shall be decreased dollar-for-dollar by the Parent Deficiency Amount.

5.23. **Reverse Split.** Parent shall submit to the holders of Parent Common Stock at the Parent Stockholders Meeting a proposal to approve and adopt an amendment to the Parent Certificate of Incorporation to authorize the Board of Directors of Parent to effect a reverse stock split of all outstanding shares of Parent

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Common Stock at a reverse stock split ratio of between 5 and 10 for 1 as mutually agreed to by Parent and the Company (the *Reverse Split*). Parent shall use commercially reasonable efforts, including engaging a proxy solicitor to solicit from its stockholders proxies in favor of the Reverse Split.

5.24. **Contract Confirmations.** To the extent requested by the Company, Parent shall use its commercially reasonable efforts to obtain written confirmations of any remaining amounts due and payable on or prior to the Anticipated Closing Date under the Contracts set forth on Section 5.24 of the Parent Disclosure Schedule if such Contracts were terminated by Parent and shall deliver such written confirmations to the Company.

Section 6. CONDITIONS PRECEDENT TO OBLIGATIONS OF EACH PARTY

The obligations of each Party to effect the Merger and otherwise consummate the Contemplated Transactions to be consummated at the Closing are subject to the satisfaction or, to the extent permitted by applicable Law, the written waiver by each of the Parties, at or prior to the Closing, of each of the following conditions:

6.1. **Effectiveness of Registration Statement.** The Registration Statement shall have become effective in accordance with the provisions of the Securities Act, and shall not be subject to any stop order or proceeding (or threatened proceeding by the SEC) seeking a stop order with respect to the Registration Statement that has not been withdrawn.

6.2. **No Restraints.** No temporary restraining order, preliminary or permanent injunction or other order preventing the consummation of the Contemplated Transactions shall have been issued by any court of competent jurisdiction or other Governmental Body of competent jurisdiction and remain in effect and there shall not be any Law which has the effect of making the consummation of the Contemplated Transactions illegal.

6.3. **Stockholder Approval.** (a) Parent shall have obtained the Required Parent Stockholder Vote and (b) the Company shall have obtained the Required Company Stockholder Vote.

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

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

7.1. **Accuracy of Representations.** The Company Fundamental Representations shall have been true and correct in all material respects as of the date of this Agreement and shall be true and correct in all material respects on and as of the Closing Date with the same force and effect as if made on and as of such date (except to the extent such representations and warranties are specifically made as of a particular date, in which case such representations and warranties shall be true and correct as of such date, and without giving effect to any references therein to any Company Material Adverse Effect or other materiality qualifications). The Company Capitalization Representations shall have been true and correct in all respects as of the date of this Agreement and shall be true and correct on and as of the Closing Date with the same force and effect as if made on and as of such date, except, in each case, (x) for such inaccuracies representing less than 0.50% of the Company Outstanding Shares in the aggregate or (y) for those representations and warranties which address matters only as of a particular date (which representations and warranties shall have been true and correct, subject to the qualifications as set forth in the preceding clause (x), as of such particular date). The representations and warranties of the Company contained in this Agreement (other than the Company Fundamental Representations and the Company Capitalization Representations) shall have been true and correct as of the date of this Agreement and shall be true and correct on and as of the Closing Date with the same force and effect as if made on the Closing Date except (a) in each case, or in the aggregate, where the failure to be true and correct would not reasonably be expected to have a Company Material Adverse Effect (without giving effect to any

references therein to any Company Material Adverse Effect or other materiality qualifications), or (b) for those representations and warranties which address matters only as of a particular date (which representations shall have been true and correct, subject to the qualifications as set forth in the preceding clause (a), as of such particular date) (it being understood that, for purposes of determining the accuracy of such representations and warranties, any update of or modification to the Company Disclosure Schedule made or purported to have been made after the date of this Agreement shall be disregarded).

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- 7.2. **Performance of Covenants.** The Company shall have performed or complied with in all material respects all agreements and covenants required to be performed or complied with by it under this Agreement at or prior to the Effective Time.
- 7.3. **Documents.** Parent shall have received the following documents, each of which shall be in full force and effect:
- (a) a certificate executed by the Chief Executive Officer or Chief Financial Officer of the Company certifying (i) that the conditions set forth in Sections 7.1, 7.2, 7.5 and 7.6 have been duly satisfied and (ii) that the information set forth in the Allocation Certificate delivered by the Company in accordance with Section 5.18(a) is true and accurate in all respects as of the Closing Date;
 - (b) a written resignation, in a form reasonably satisfactory to Parent, dated as of the Closing Date and effective as of the Closing, executed by each of the officers and directors of the Company listed in Section 7.3(b) of the Company Disclosure Schedule; and
 - (c) Company Representative Confirmation Letters from all attorneys, accountants, investment bankers and other professional advisors of the Company.
- 7.4. **FIRPTA Certificate.** Parent shall have received from the Company an executed notice to the IRS in accordance with the requirements of Treasury Regulation Section 1.897-2(h), dated as of the Closing Date, and in form and substance reasonably acceptable to Parent.
- 7.5. **No Company Material Adverse Effect.** Since the date of this Agreement, there shall not have occurred any Company Material Adverse Effect.
- 7.6. **Termination of Investor Agreements.** The Investor Agreements shall have been terminated, effective as of the Closing.
- 7.7. **Lock-Up Agreements.** Parent shall have received a copy of a lock-up agreement in substantially the form attached hereto as Exhibit D-1 (the *Lock-Up Agreement*) duly executed by each of the Company Lock-Up Signatories and each executive officer and director of the Company who is elected or appointed, as applicable, as an executive officer and director of Parent as of immediately following the Closing, each of which shall be in full force and effect as of the Closing.

Section 8. ADDITIONAL CONDITIONS PRECEDENT TO OBLIGATION OF THE COMPANY

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

- 8.1. **Accuracy of Representations.** Each of the Parent Fundamental Representations shall have been true and correct in all material respects as of the date of this Agreement and shall be true and correct in all material respects on and as of the Closing Date with the same force and effect as if made on and as of such date (except to the extent such representations and warranties are specifically made as of a particular date, in which case such representations and warranties shall be true and correct as of such date, and without giving effect to any reference therein to Parent Material Adverse Effect or other materiality qualifications). The Parent Capitalization Representations shall have been true and correct in all respects as of the date of this Agreement and shall be true and correct on and as of the Closing Date with the same force and effect as if made on and as of such date, except, in each case, (x) for such inaccuracies representing less than 0.50% of the Parent Outstanding Shares in the aggregate or (y) for those representations and warranties which address matters only as of a particular date (which representations and warranties shall have been

true and correct, subject to the qualifications as set forth in the preceding clause (x), as of such particular date). The representations and warranties of Parent and Merger Sub contained in this Agreement (other than the Parent Fundamental Representations and the Parent Capitalization Representations) shall have been true and correct as of the date of this Agreement and shall be true and correct on and as of the Closing Date with the same force and effect as if made on the Closing Date except (a) in each case, or in the aggregate, where the failure to be true and correct would not reasonably be expected to have a Parent Material Adverse Effect (without giving effect to any references therein to any Parent Material Adverse Effect or other materiality qualifications), or (b) for those representations and warranties which address matters only as of a particular date (which representations shall have been true and correct, subject to the qualifications as set forth in the preceding clause (a), as of such particular date) (it being understood that, for

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purposes of determining the accuracy of such representations and warranties, any update of or modification to the Parent Disclosure Schedule made or purported to have been made after the date of this Agreement shall be disregarded).

8.2. **Performance of Covenants.** Parent and Merger Sub shall have performed or complied with in all material respects all of their agreements and covenants required to be performed or complied with by each of them under this Agreement at or prior to the Effective Time.

8.3. **Documents.** The Company shall have received the following documents, each of which shall be in full force and effect:

(a) a certificate executed by the Chief Executive Officer or Chief Financial Officer of Parent confirming (i) that the conditions set forth in Sections 8.1, 8.2, and 8.4 have been duly satisfied; and (ii) that the information set forth in the Parent Outstanding Equity Certificate delivered by Parent in accordance with Section 5.18(b) is true and accurate in all respects as of the Closing Date;

(b) a written resignation, in a form reasonably satisfactory to the Company, dated as of the Closing Date and effective as of the Closing, executed by each of the non-executive directors of Parent who are not to continue as directors of Parent after the Closing pursuant to Section 5.14 hereof;

(c) evidence in a form reasonably acceptable to the Company, that the Parent Board has terminated, effective as of the Closing, each of the officers of Parent who are not to continue as officers of Parent after the Closing pursuant to Section 5.14 hereof from all positions held with Parent; and

(d) evidence in form and substance reasonably acceptable to the Company that Parent's assets shall have been released from all security interest thereon that are listed on Section 8.3(d) of the Parent Disclosure Schedule, and Parent shall have taken all steps necessary to terminate any UCC financing statements which have been filed with respect to such security interests; and

(e) Parent Representative Confirmation Letters from all attorneys, accountants, investment bankers and other professional advisors of Parent.

8.4. **No Parent Material Adverse Effect.** Since the date of this Agreement, there shall not have occurred any Parent Material Adverse Effect.

8.5. **Lock-Up Agreements.** The Company shall have received a copy of a lock-up agreement in substantially the form attached hereto as Exhibit D-2 (the *Parent Lock-Up Agreement*) duly executed by each Person set forth on Section A of the Parent Disclosure Schedule and each executive officer and director of Parent who is elected or appointed, as applicable, as an executive officer and director of Parent as of immediately following the Closing, each of which shall be in full force and effect as of the Closing.

Section 9. TERMINATION

9.1. **Termination.** This Agreement may be terminated prior to the Effective Time (whether before or after adoption of this Agreement by the Company's stockholders and whether before or after approval of the Parent Stockholder Matters by Parent's stockholders, unless otherwise specified below):

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

(b) by either Parent or the Company if the Contemplated Transactions shall not have been consummated by June 23, 2019 (subject to possible extension as provided in this Section 9.1(b), the **End Date**); *provided, however*, that (i) the right to terminate this Agreement under this Section 9.1(b) shall not be available to the Company, on the one hand, or to Parent, on the other hand, if such Party's action or failure to act has been a principal cause of the failure of the Contemplated Transactions to occur on or before the End Date and such action or failure to act constitutes a breach of this Agreement and (ii) in the event that a request for additional information has been made by any Governmental Body, or in the event that the SEC has not declared effective under the Securities Act the Registration Statement by the date which is sixty (60) days prior to the End Date, then either the Company or Parent shall be entitled to extend the End Date for an additional sixty (60) days by written notice to the other the Party;

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- (c) by either Parent or the Company if a court of competent jurisdiction or other Governmental Body shall have issued a final and nonappealable order, decree or ruling, or shall have taken any other action, having the effect of permanently restraining, enjoining or otherwise prohibiting the Contemplated Transactions;
- (d) by Parent if the Required Company Stockholder Vote shall not have been obtained within three Business Days of the Registration Statement becoming effective in accordance with the provisions of the Securities Act; *provided, however*, that once the Required Company Stockholder Vote has been obtained, Parent may not terminate this Agreement pursuant to this Section 9.1(d);
- (e) by either Parent or the Company if (i) the Parent Stockholders Meeting (including any adjournments and postponements thereof) shall have been held and (ii) the Parent Stockholder Matters shall not have been approved at the Parent Stockholders Meeting (or at any adjournment or postponement thereof) by the Required Parent Stockholder Vote; *provided, however*, that (i) the right to terminate this Agreement under this Section 9.1(e) shall not be available to the Company, on the one hand, or to Parent, on the other hand, if such Party's action or failure to act has been a principal cause of the failure of the Required Parent Stockholder Vote to be obtained at such meeting and such action or failure to act constitutes a breach of this Agreement, and (ii) Parent may not terminate this Agreement pursuant to this Section 9.1(e) until the date that is sixty-one (61) days after the date that the initial Parent Stockholders Meeting is held;
- (f) by the Company (at any time prior to the approval of the Parent Stockholder Matters by the Required Parent Stockholder Vote) if a Parent Triggering Event shall have occurred;
- (g) by the Company, upon a breach of any representation, warranty, covenant or agreement set forth in this Agreement by Parent or Merger Sub or if any representation or warranty of Parent or Merger Sub shall have become inaccurate, in either case, such that the conditions set forth in Section 8.1 or Section 8.2 would not be satisfied as of the time of such breach or as of the time such representation or warranty shall have become inaccurate; *provided* that the Company is not then in material breach of any representation, warranty, covenant or agreement under this Agreement; *provided, further*, that if such inaccuracy in Parent's or Merger Sub's representations and warranties or breach by Parent or Merger Sub is curable by the End Date by Parent or Merger Sub, then this Agreement shall not terminate pursuant to this Section 9.1(g) as a result of such particular breach or inaccuracy until the expiration of a 30-day period commencing upon delivery of written notice from the Company to Parent or Merger Sub of such breach or inaccuracy and its intention to terminate pursuant to this Section 9.1(g) (it being understood that this Agreement shall not terminate pursuant to this Section 9.1(g) as a result of such particular breach or inaccuracy if such breach by Parent or Merger Sub is cured prior to such termination becoming effective);
- (h) by Parent, upon a breach of any representation, warranty, covenant or agreement set forth in this Agreement by the Company or if any representation or warranty of the Company shall have become inaccurate, in either case, such that the conditions set forth in Section 7.1 or Section 7.2 would not be satisfied as of the time of such breach or as of the time such representation or warranty shall have become inaccurate; *provided* that Parent is not then in material breach of any representation, warranty, covenant or agreement under this Agreement; *provided, further*, that if such inaccuracy in the Company's representations and warranties or breach by the Company is curable by the End Date by the Company then this Agreement shall not terminate pursuant to this Section 9.1(h) as a result of such particular breach or inaccuracy until the expiration of a 30-day period commencing upon delivery of written notice from Parent to the Company of such breach or inaccuracy and its intention to terminate pursuant to this Section 9.1(h) (it being understood that this Agreement shall not terminate pursuant to this Section 9.1(h) as a result of such particular breach or inaccuracy if such breach by the Company is cured prior to such termination becoming effective);
- (i) by the Company, at any time, in the event that a Parent Material Adverse Effect shall have occurred;

(j) by Parent, at any time, in the event that a Company Material Adverse Effect shall have occurred; or

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(k) by Parent, at any time, if (i) Parent has received a Superior Offer, (ii) Parent has complied with its obligations under Section 5.3(c) in order to accept such Superior Offer, (iii) Parent concurrently terminates this Agreement and enters into a Permitted Alternative Agreement with respect to such Superior Offer and (iv) within two Business Days of such termination, Parent pays to the Company the amount contemplated by Section 9.3(c).

9.2. **Effect of Termination.** In the event of the termination of this Agreement as provided in Section 9.1, this Agreement shall be of no further force or effect; *provided, however*, that (a) this Section 9.2, Section 5.10, Section 9.3, Section 10 and the definitions of the defined terms in such Sections shall survive the termination of this Agreement and shall remain in full force and effect, and (b) the termination of this Agreement and the provisions of Section 9.3 shall not relieve any Party of any liability for fraud or for any willful or intentional breach of any representation, warranty, covenant, obligation or other provision contained in this Agreement.

9.3. **Expenses; Termination Fees.**

(a) Except as set forth in this Section 9.3, Section 5.8(d), and Section 5.11, all fees and expenses incurred in connection with this Agreement and the Contemplated Transactions shall be paid by the Party incurring such expenses, whether or not the Merger is consummated; *provided, however*, that Parent and the Company shall share equally all fees and expenses incurred in relation to the printing and filing with the SEC of the Registration Statement (including any financial statements and exhibits) and any amendments or supplements thereto and paid to a financial printer or the SEC (it being agreed that the cost of which is allocated to the Company pursuant to the foregoing shall be a Company Transaction Expense). It is understood and agreed that (i) all fees and expenses incurred or to be incurred by the Company in connection with the Contemplated Transactions and preparing, negotiating and entering into this Agreement and the performance of its obligations under this Agreement shall be paid by the Company in cash at or prior to the Closing (and shall be Company Transaction Expenses); and (ii) all fees and expenses incurred or to be incurred by Parent in connection with the Contemplated Transactions and preparing, negotiating and entering into this Agreement and the performance of its obligations under this Agreement shall be paid by Parent in cash at or prior to the Closing (and shall be Parent Transaction Expenses).

(b) If (i) this Agreement is terminated by the Company pursuant to Section 9.1(f), or (ii) (A) this Agreement is terminated by the Company or Parent pursuant to Section 9.1(e) or Section 9.1(g), (B) an Acquisition Proposal with respect to Parent shall have been publicly announced or disclosed or otherwise communicated to Parent or the Parent Board after the date of this Agreement but prior to the termination of this Agreement and (C) within twelve months after the date of such termination, Parent consummates a Subsequent Transaction, then Parent shall pay to the Company an amount equal to \$1,750,000 (the ***Company Termination Fee***) (I) in the case of a payment required by clause (i) above, within two Business Days of the date of termination of this Agreement, and (II) in the case of a payment required by clause (ii) above, on the date of consummation of such Subsequent Transaction.

(c) If this Agreement is terminated by Parent pursuant to Section 9.1(k), Parent shall pay to the Company within two Business Days of such termination the Company Termination Fee.

(d) Any Company Termination Fee due under this Section 9.3 shall be paid by wire transfer of same day funds. If Parent fails to pay when due any amount payable by it under this Section 9.3, then Parent shall (i) reimburse the Company for reasonable costs and expenses (including reasonable fees and disbursements of counsel) incurred by it in connection with the collection of such overdue amount and the enforcement by the Company of its rights under this Section 9.3, and (ii) pay to the Company interest on such overdue amount (for the period commencing as of the date such overdue amount was originally required to be paid and ending on the date such overdue amount is actually paid to the Company in full) at a rate per annum equal to the prime rate (as published in *The Wall Street Journal* or any successor thereto) in effect on the date such overdue amount was originally required to be paid.

(e) The Parties agree that, subject to Section 9.2, payment of the Company Termination Fee shall, in the circumstances in which it is owed in accordance with the terms of this Agreement, constitute the sole and exclusive remedy of the Company following the termination of this Agreement, it being understood that in no event shall Parent be required to pay the amounts payable pursuant to this Section 9.3 on more than one occasion and (ii) following payment of the Company Termination Fee (x) Parent shall have no further liability to the Company in connection with or arising out of this Agreement or the termination thereof, any

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breach of this Agreement by Parent giving rise to such termination, or the failure of the Contemplated Transactions to be consummated, (y) neither the Company nor any of its Affiliates shall be entitled to bring or maintain any other claim, action or proceeding against Parent or Merger Sub or seek to obtain any recovery, judgment or damages of any kind against such Parties (or any partner, member, stockholder, director, officer, employee, Subsidiary, Affiliate, agent or other Representative of such Parties) in connection with or arising out of this Agreement or the termination thereof, any breach by any such Parties giving rise to such termination or the failure of the Contemplated Transactions to be consummated and (z) the Company and its Affiliates shall be precluded from any other remedy against Parent, Merger Sub and their respective Affiliates, at law or in equity or otherwise, in connection with or arising out of this Agreement or the termination thereof, any breach by such Party giving rise to such termination or the failure of the Contemplated Transactions to be consummated. Each of the Parties acknowledges that (i) the agreements contained in this Section 9.3 are an integral part of the Contemplated Transactions, (ii) without these agreements, the Parties would not enter into this Agreement and (iii) any amount payable pursuant to this Section 9.3 is not a penalty, but rather is liquidated damages in a reasonable amount that will compensate the Company in the circumstances in which such amount is payable.

Section 10. MISCELLANEOUS PROVISIONS

10.1. **Non-Survival of Representations and Warranties.** The representations and warranties of the Company, Parent and Merger Sub contained in this Agreement or any certificate or instrument delivered pursuant to this Agreement shall terminate at the Effective Time, and only the covenants that by their terms survive the Effective Time and this Section 10 shall survive the Effective Time.

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

10.3. **Waiver.**

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

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

10.4. **Entire Agreement; Counterparts; Exchanges by Electronic Transmission.** This Agreement and the other agreements referred to in this Agreement constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, among or between any of the Parties with respect to the subject matter hereof and thereof; *provided, however*, that the Confidentiality Agreement shall not be superseded and shall remain in full force and effect in accordance with its terms. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The exchange of a fully executed Agreement (in counterparts or otherwise) by all Parties by electronic transmission in .PDF format shall be sufficient to bind the Parties to the terms and conditions of this Agreement.

10.5. **Applicable Law; Jurisdiction.** This Agreement shall be governed by, and construed in accordance with, the Laws of the State of Delaware, regardless of the Laws that might otherwise govern under applicable principles of conflicts of laws. In any action or proceeding between any of the Parties arising out of or relating to this Agreement or any of the Contemplated Transactions, each of the Parties: (a) irrevocably and

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unconditionally consents and submits to the exclusive jurisdiction and venue of the Court of Chancery of the State of Delaware or, to the extent such court does not have subject matter jurisdiction, the United States District Court for the District of Delaware or, to the extent that neither of the foregoing courts has jurisdiction, the Superior Court of the State of Delaware; (b) agrees that all claims in respect of such action or proceeding shall be heard and determined exclusively in accordance with clause (a) of this Section 10.5; (c) waives any objection to laying venue in any such action or proceeding in such courts; (d) waives any objection that such courts are an inconvenient forum or do not have jurisdiction over any Party; (e) agrees that service of process upon such Party in any such action or proceeding shall be effective if notice is given in accordance with Section 10.8 of this Agreement; and (f) irrevocably and unconditionally waives the right to trial by jury.

10.6. **Attorneys Fees.** In any action at law or suit in equity to enforce this Agreement or the rights of any of the Parties, the prevailing Party in such action or suit (as determined by a court of competent jurisdiction) shall be entitled to recover its reasonable out-of-pocket attorneys fees and all other reasonable costs and expenses incurred in such action or suit.

10.7. **Assignability.** This Agreement shall be binding upon, and shall be enforceable by and inure solely to the benefit of, the Parties and their respective successors and permitted assigns; *provided, however*, that neither this Agreement nor any of a Party's rights or obligations hereunder may be assigned or delegated by such Party without the prior written consent of the other Party, and any attempted assignment or delegation of this Agreement or any of such rights or obligations by such Party without the other Party's prior written consent shall be void and of no effect.

10.8. **Notices.** All notices and other communications hereunder shall be in writing and shall be deemed to have been duly delivered and received hereunder (a) one Business Day after being sent for next Business Day delivery, fees prepaid, via a reputable international overnight courier service, (b) upon delivery in the case of delivery by hand, or (c) on the date delivered in the place of delivery if sent by email or facsimile (with a written or electronic confirmation of delivery) prior to 6:00 p.m. New York City time, otherwise on the next succeeding Business Day, in each case to the intended recipient as set forth below:

if to Parent or Merger Sub:

Edge Therapeutics, Inc.
300 Connell Drive, Suite 4000
Berkeley Heights, NJ 07922
Attention: Brian Leuthner
Email: baleuthner@edgetherapeutics.com

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

Dechert LLP
1095 Avenue of the Americas
New York, NY 10036
Attention: David S. Rosenthal, Esq.
Facsimile: (212) 698-3599
Email: david.rosenthal@dechert.com

if to the Company:

PDS Biotechnology Corporation
675 US Highway One
North Brunswick, NJ 08902
Attention: Frank Bedu-Addo
Email: fbeduaddo@pdsbiotech.com

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

DLA Piper LLP (US)
One Liberty Place
1650 Market Street, Suite 4900
Attention: Fahd Riaz
Facsimile: (215) 606-2069
Email: fahd.riaz@dlapiper.com

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

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

10.11. **Other Remedies; Specific Performance.** Except as otherwise provided herein, any and all remedies herein expressly conferred upon a Party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such Party, and the exercise by a Party of any one remedy will not preclude the exercise of any other remedy. The Parties agree that irreparable damage for which monetary damages, even if available, would not be an adequate remedy, would occur in the event that any Party does not perform the provisions of this Agreement (including failing to take such actions as are required of it hereunder to consummate this Agreement) in accordance with its specified terms or otherwise breaches such provisions. Accordingly, the Parties acknowledge and agree that the Parties shall be entitled to an injunction, specific performance and other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, in addition to any other remedy to which they are entitled at law or in equity. Each of the Parties agrees that it will not oppose the granting of an injunction, specific performance or other equitable relief on the basis that any other Party has an adequate remedy at law or that any award of specific performance is not an appropriate remedy for any reason at law or in equity. Any Party seeking an injunction or injunctions to prevent breaches of this Agreement shall not be required to provide any bond or other security in connection with any such order or injunction.

10.12. **No Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to or shall confer upon any Person (other than the Parties and the D&O Indemnified Parties to the extent of their respective rights pursuant to Section 5.8) any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

10.13. **Construction.**

(a) References to cash, dollars or \$ are to U.S. dollars.

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

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- (c) The Parties have participated jointly in the negotiating and drafting of this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be applied in the construction or interpretation of this Agreement, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.
- (d) As used in this Agreement, the words include and including, and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words without limitation.
- (e) The use of the word or shall not be exclusive.
- (f) Except as otherwise indicated, all references in this Agreement to Sections, Exhibits and Schedules are intended to refer to Sections of this Agreement and Exhibits and Schedules to this Agreement, respectively.
- (g) Any reference to legislation or to any provision of any legislation shall include any modification, amendment, re-enactment thereof, any legislative provision substituted therefore and all rules, regulations, and statutory instruments issued or related to such legislations.
- (h) The bold-faced headings and table of contents contained in this Agreement are for convenience of reference only, shall not be deemed to be a part of this Agreement and shall not be referred to in connection with the construction or interpretation of this Agreement.
- (i) The Parties agree that each of the Company Disclosure Schedule and the Parent Disclosure Schedule shall be arranged in sections and subsections corresponding to the numbered and lettered sections and subsections contained in this Agreement. The disclosures in any section or subsection of the Company Disclosure Schedule or the Parent Disclosure Schedule shall qualify other sections and subsections in this Agreement to the extent it is reasonably apparent on its face from a reading of the disclosure that such disclosure is applicable to such other sections and subsections.
- (j) delivered or made available means, with respect to any documentation, that prior to 11:59 p.m. (New York City time) on the date that is two calendar days prior to the date of this Agreement (i) a copy of such material has been posted to and made available by a Party to the other Party and its Representatives in the electronic data room maintained by such disclosing Party or (ii) such material is disclosed in the Parent SEC Documents filed with the SEC and publicly made available on the SEC's Electronic Data Gathering Analysis and Retrieval system at least two days prior to the date of this Agreement.
- (k) Whenever the last day for the exercise of any privilege or the discharge of any duty hereunder shall fall upon a Saturday, Sunday, or any date on which banks in New York, New York are authorized or obligated by Law to be closed, the Party having such privilege or duty may exercise such privilege or discharge such duty on the next succeeding day which is a regular Business Day.

(Remainder of page intentionally left blank)

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

EDGE THERAPEUTICS, INC.

By: /s/ Brian A. Leuthner
Name: Brian A. Leuthner
Title: President and Chief Executive Officer

ECHOS MERGER SUB, INC.

By: /s/ Brian A. Leuthner
Name: Brian A. Leuthner
Title: President and Chief Executive Officer

[Signature Page to Agreement and Plan of Merger]

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

PDS BIOTECHNOLOGY CORPORATION

By: /s/ Frank Bedu-Addo

Name: Frank Bedu-Addo

Title: Chief Executive Officer

[Signature Page to Agreement and Plan of Merger]

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EXHIBIT A

CERTAIN DEFINITIONS

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

Acquisition Inquiry means, with respect to a Party, an inquiry, indication of interest or request for information (other than an inquiry, indication of interest or request for information made or submitted by the Company, on the one hand, or Parent, on the other hand, to the other Party) that would reasonably be expected to lead to an Acquisition Proposal.

Acquisition Proposal means, with respect to a Party, any offer or proposal, whether written or oral (other than an offer or proposal made or submitted by or on behalf of the Company or any of its Affiliates, on the one hand, or by or on behalf of Parent or any of its Affiliates, on the other hand, to the other Party) contemplating or otherwise relating to any Acquisition Transaction with such Party.

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

(i) any merger, consolidation, amalgamation, share exchange, business combination, issuance of securities, acquisition of securities, reorganization, recapitalization, tender offer, exchange offer or other similar transaction: (i) in which a Party is a constituent entity; (ii) in which a Person or group (as defined in the Exchange Act and the rules promulgated thereunder) of Persons directly or indirectly acquires beneficial or record ownership of securities representing more than 20% of the outstanding securities of any class of voting securities of a Party or any of its Subsidiaries; or (iii) in which a Party or any of its Subsidiaries issues securities representing more than 20% of the outstanding securities of any class of voting securities of such Party or any of its Subsidiaries; *provided* that in the case of the Company, a Permitted Bridge Financing or Permitted Post-Measurement Date Financing shall not be an Acquisition Transaction ; or

(ii) any sale, lease, exchange, transfer, license, acquisition or disposition of any business or businesses or assets that constitute or account for 20% or more of the consolidated book value or the fair market value of the assets of a Party and its Subsidiaries, taken as a whole.

Actual Knowledge of the Company means the actual knowledge of the individuals set forth on Schedule II (without any duty of inquiry).

Actual Knowledge of Parent means the actual knowledge of the individuals set forth on Schedule III (without any duty of inquiry).

Affiliate of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term control (including the terms controlled by and under common control with) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

Agreement means the Agreement and Plan of Merger and Reorganization to which this Exhibit A is attached, as it may be amended from time to time.

Anticipated Closing Date means the anticipated Closing Date (as mutually agreed in good faith by Parent and the Company).

Business Day means any day other than a Saturday, Sunday or other day on which banks in New York, New York are authorized or obligated by Law to be closed.

Cash and Cash Equivalents means all (a) cash and cash equivalents (excluding restricted cash, but including security deposits held by third parties), (b) marketable securities, and (c) receivables (to the extent determined to be collectible), in each case, determined in accordance with GAAP, consistently applied.

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

Company Associate means any current or former employee, independent contractor, officer or director of the Company.

Company Board means the board of directors of the Company.

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

Company Capitalization Representations means the representations and warranties of the Company set forth in Sections 2.6(a) and (c).

Company Collar Range means a range between (and inclusive of) negative \$1,400,000 and negative \$600,000.

Company Common Stock means the Common Stock, par value \$0.00001 per share, of the Company.

Company Contract means any Contract: (a) to which the Company is a party; (b) by which the Company or any Company Owned IP Rights or any other asset of the Company is or may become bound or under which the Company has, or may become subject to, any obligation; or (c) under which the Company has or may acquire any right or interest.

Company Deficiency Amount means the amount equal to the minimum amount of the Company Collar Range *minus* the absolute value of final Company Net Cash, as determined in accordance with Section 5.22, but only to the extent such final Company Net Cash is less than the minimum amount of the Company Collar Range. For the avoidance of doubt, Company Deficiency Amount may be a positive or negative number.

Company ERISA Affiliate means any corporation or trade or business (whether or not incorporated) which is treated with the Company or any of its Subsidiaries as a single employer within the meaning of Section 414 of the Code.

Company Excess Amount means the amount equal to the final Company Net Cash, as determined in accordance with Section 5.22, *minus* the maximum amount of the Company Collar Range, but only to the extent such final Company Net Cash is more than the maximum amount of the Company Collar Range.

Company Exclusively Licensed IP Rights means all Intellectual Property exclusively licensed to the Company that is used in the business of the Company as presently conducted.

Company Fundamental Representations means the representations and warranties of the Company set forth in (i) Sections 2.1(a) (Due Organization; Subsidiaries), 2.3 (Authority; Binding Nature of Agreement), 2.4 (Vote Required), and 2.20 (No Brokers Fees).

Company IP Rights means Company Licensed IP Rights and Company Owned IP Rights.

Company Licensed IP Rights means all Intellectual Property licensed to the Company that is used in the business of the Company as presently conducted.

Company Lock-Up Signatories means those Persons set forth on Section A of the Company Disclosure Schedule.

Company Material Adverse Effect means any Effect that, considered together with all other Effects that have occurred prior to the date of determination of the occurrence of a Company Material Adverse Effect, has or would reasonably be expected to have a material adverse effect on the business, condition (financial or otherwise), assets, liabilities or results of operations of the Company; *provided, however*, that Effects arising or resulting from the following shall not be taken into account in determining whether there has been a Company Material Adverse Effect: (a) general business or economic conditions affecting the industry in which the Company operates, (b) acts of war, armed hostilities or terrorism, (c) changes in financial, banking or securities markets; (d) the taking of any action required to be taken by this Agreement; (e) any change in, or any compliance with or action taken for the purpose of complying with, any Law or GAAP (or interpretations of any Law or GAAP), or (f) resulting from the announcement

of this Agreement or the pendency of the Contemplated Transactions; except in each case with respect to clauses (a) through (c), to the extent disproportionately affecting the Company relative to other similarly situated companies in the industries in which the Company operates.

Company Net Cash means (a) the sum of (without duplication) and as of the Company Net Cash Measurement Date, (i) the Company's Cash and Cash Equivalents and (ii) the Company's prepaid expenses referenced on Schedule 5.22(a), in each case, determined in a manner substantially consistent with the manner in which such items were determined for the Company Financials, *minus* (b) the sum of (without

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duplication) (i) the Company's accounts payable and accrued expenses (including accrued tax liabilities, but excluding accrued expenses which are Company Transaction Expenses) and the Company's other current liabilities payable in cash, in each case as of the Company Net Cash Measurement Date and determined in a manner substantially consistent with the manner in which such items were determined for the Company Financials, (ii) any Company Transaction Expenses, and (iii) any indebtedness for borrowed money of the Company as of the Company Net Cash Measurement Date, but excluding any indebtedness arising under a Permitted Bridge Financing that is converted into Company Capital Stock or Parent Common Stock in connection with the Closing; and (iii) to the extent not otherwise included as a Company Transaction Expenses or under clause (i), the amounts referenced in all Company Representative Confirmation Letters. For the avoidance of doubt, (A) Company Net Cash may be a positive or negative number and (B) neither cash proceeds received nor indebtedness incurred in a Permitted Post-Measurement Date Financing shall be included in the calculation of Company Net Cash.

Company Net Cash Measurement Date means the Anticipated Closing Date; provided that if (i) the Closing has not occurred on or prior to February 28, 2019, and (ii) as of February 28, 2019, the Company has received the Required Company Stockholder Vote and the conditions to Closing set forth in Section 7 have been satisfied as of such date (or would be satisfied if the Closing occurred on such date and other than those conditions to Closing that by their nature are to be satisfied at Closing), then the Company Net Cash Measurement Date shall be February 28, 2019.

Company Net Cash Schedule means a written schedule prepared in accordance with Section 5.22(a) and certified by the Chief Financial Officer of the Company, on behalf of the Company and not in his or her personal capacity, setting forth, in reasonable detail, the Company's good faith estimate of Company Net Cash as of the Company Net Cash Measurement Date.

Company Options means options or other rights to purchase shares of Company Common Stock issued by the Company (excluding, for clarity, the Company Warrants).

Company Owned IP Rights means all Intellectual Property owned or purported to be owned by the Company that is used in the business of the Company as presently conducted.

Company Registered IP means all Company Owned IP Rights that are registered, filed or issued under the authority of, with or by any Governmental Body, including all Patents, registered Copyrights, and registered Trademarks (including domain names) and all applications for any of the foregoing.

Company Representative Confirmation Letters means written confirmations, in a form reasonably satisfactory to Parent, from the attorneys, accountants, investment bankers and other professional advisors of the Company as to all amounts estimated in good faith owed by the Company with respect to services performed by them through the Closing (with respect to amounts constituting Company Transaction Expenses) and through the Company Net Cash Measurement Date with respect to any other amounts.

Company Stock Plans means collectively, the Company 2009 Stock Option Plan and the Company 2018 Stock Incentive Plan, in each case as amended.

Company Transaction Expenses means Transaction Expenses of the Company.

Company Unaudited Interim Balance Sheet means the unaudited balance sheet of the Company as of September 30, 2018 provided to Parent prior to the date of this Agreement.

Company Warrants means all warrants to purchase Company Common Stock.

Confidentiality Agreement means the Mutual Confidentiality Agreement, dated as of May 16, 2018, between the Company and Parent.

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

Contemplated Transactions means the Merger, the Reverse Split and the other transactions contemplated by this Agreement.

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Contract means, with respect to any Person, any agreement, contract, subcontract, lease (whether for real or personal property), mortgage, license, sublicense or other legally binding commitment or undertaking of any nature to which such Person is a party or by which such Person or any of its assets are bound or affected under applicable Law.

Data Privacy Requirement means all (a) Laws applicable to the protection or processing of Personal Data, including Laws relating to the collection, use, disclosure or retention of Personal Data and (b) contractual obligations relating to the collection, use, disclosure, retention, protection or processing of Personal Data. For the avoidance of doubt, the term Data Privacy Requirements include pronouncements or guidance by the Federal Trade Commission regarding data privacy requirements emanating from Section 5 of the Federal Trade Commission Act.

Data Processors means any third party service providers, software developers, outsourcers or other Persons which the applicable Person or its Subsidiary engages and allows access to Personal Data or information systems of such Person or its Subsidiaries (including all information and transactions stored or contained therein or transmitted thereby).

Determination Date means the date that is ten calendar days prior to the Anticipated Closing Date.

DGCL means the General Corporation Law of the State of Delaware.

Effect means any effect, change, event, circumstance, or development.

Encumbrance means any lien, pledge, hypothecation, charge, mortgage, security interest, lease, license, option, easement, reservation, servitude, adverse title, claim, infringement, interference, option, right of first refusal, preemptive right, community property interest or restriction or encumbrance of any nature (including any restriction on the voting of any security, any restriction on the transfer of any security or other asset, any restriction on the receipt of any income derived from any asset, any restriction on the use of any asset and any restriction on the possession, exercise or transfer of any other attribute of ownership of any asset).

Enforceability Exceptions means the (a) Laws of general application relating to bankruptcy, insolvency and the relief of debtors; and (b) rules of law governing specific performance, injunctive relief and other equitable remedies.

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

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

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

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

Exchange Ratio means, subject to Section 1.5(f), the following ratio (rounded to four decimal places): the quotient obtained by dividing (a) the Company Merger Shares by (b) the Company Outstanding Shares, in which:

- **Aggregate Valuation** means the sum of (a) the Company Valuation, plus (b) the Parent Valuation.

- **Company Valuation** means, subject to any adjustments pursuant to Section 5.22(f), \$70,000,000, a component of which is Company Net Cash.
- **Company Allocation Percentage** the quotient (rounded to two decimal places) determined by dividing (i) the Company Valuation by (ii) the Aggregate Valuation (it being understood and

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agreed that to the extent any adjustment to the Company Valuation is made pursuant to Section 5.22(f), the Company Allocation Percentage shall thereafter be adjusted accordingly to reflect such adjustment to the Company Valuation).

- **Company Merger Shares** means (a) the product determined by multiplying (i) the Post-Closing Parent Shares by (ii) the Company Allocation Percentage, minus (b) the number of shares of Parent Common Stock issuable upon the conversion of any convertible notes issued by the Company under a Permitted Bridge Financing.
- **Company Outstanding Shares** means the total number of shares of Company Capital Stock outstanding immediately prior to the Effective Time expressed on a fully-diluted and as-converted to Company Common Stock basis and assuming, without limitation or duplication, (i) the cashless exercise of all Company Options and Company Warrants outstanding as of immediately prior to the Effective Time with an exercise price less than the Parent Closing Price (on a converted to Company Common Stock basis) and (ii) the issuance of shares of Company Capital Stock in respect of all other outstanding options, warrants or rights to receive such shares, (assuming cashless exercise using the Parent Closing Price (on a converted to Company Common Stock basis) in the case of options, warrants and other similar rights), whether conditional or unconditional and including any outstanding options, warrants or rights, including any convertible notes and accrued interest in connection therewith and any accrued dividends on Company Capital Stock (but excluding any shares of Company Common Stock reserved for issuance). For the avoidance of doubt, no out-of-the-money Company Options or Company Warrants shall be included in the total number of shares of Company Capital Stock outstanding for purposes of determining the Company Outstanding Shares.
- **Parent Allocation Percentage** means the quotient (rounded to two decimal places) determined by dividing (i) the Parent Valuation by (ii) the Aggregate Valuation (it being understood and agreed that to the extent any adjustment to the Parent Valuation is made pursuant to Section 5.22(g), the Parent Allocation Percentage shall thereafter be adjusted accordingly to reflect such adjustment to the Parent Valuation).
- **Parent Outstanding Shares** means the total number of shares of Parent Common Stock outstanding immediately prior to the Effective Time expressed on a fully-diluted basis, but assuming, without limitation or duplication, (i) with respect to Parent Options and Parent Warrants, the cashless exercise solely of those Parent Options and Parent Warrants outstanding as of immediately prior to the Effective Time with an exercise price less than the Parent Closing Price (and otherwise disregarding any other Parent Options and Parent Warrants), (ii) the settlement of each Parent RSU that is outstanding immediately prior to the Effective Time for an equivalent number of shares of Parent Common Stock and (iii) the issuance of shares of Parent Common Stock in respect of all other outstanding options, warrants or rights to receive such shares (assuming cashless exercise using the Parent Closing Price in the case of options, warrants and other similar rights), whether conditional or unconditional and including any outstanding options, warrants or rights triggered by or associated with the consummation of the Merger (but excluding any shares of Parent Common Stock reserved for issuance). For the avoidance of doubt, no out-of-the-money Parent Options or Parent Warrants shall be included in the total number of shares of Parent Common Stock outstanding for purposes of determining the Parent Outstanding Shares.
- **Parent Valuation** means, subject to any adjustments pursuant to Section 5.22(g), \$30,000,000, a component of which is Parent Net Cash.
- **Post-Closing Parent Shares** means the quotient determined by dividing (i) the Parent Outstanding Shares by (ii) the Parent Allocation Percentage.

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

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Governmental Authorization means any: (a) permit, license, certificate, franchise, permission, variance, exception, order, clearance, registration, qualification or authorization issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Law; or (b) right under any Contract with any Governmental Body.

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

Hazardous Materials means any pollutant, chemical, substance and any toxic, infectious, carcinogenic, reactive, corrosive, ignitable or flammable chemical, or chemical compound, or hazardous substance, material or waste, whether solid, liquid or gas, that is subject to regulation, control or remediation under any Environmental Law, including without limitation, crude oil or any fraction thereof, and petroleum products or by-products.

Inducement Grants means those stock options set forth on Section A of the Parent Disclosure Schedule.

Intellectual Property means any and all intellectual and industrial property rights and other similar proprietary rights, in any jurisdiction throughout the world, whether registered or unregistered, including all rights pertaining to or deriving from: (a) patents and patent applications, (including any and all provisionals, continuations, continuations-in-part, continued prosecution, divisionals and patents of addition; requests for, and grants of, continued examination, extensions, supplemental protection certificates, re-examinations, post-grant confirmations or amendments, counterparts claiming priority from, or reissues of, any of the foregoing; and any patents or patent applications that claim priority to or from any of the foregoing) and all rights to claim priority arising from or related to any of the foregoing (collectively, **Patents**); (b) inventions, invention disclosures, discoveries and improvements, whether or not patentable; (c) copyrights and works of authorship, whether or not copyrightable (**Copyrights**); (d) computer software and firmware, including data files, source code, object code and software-related specifications and documentation; (e) trademarks, trade names, service marks, certification marks, service names, brands, trade dress and logos, applications therefore, and the goodwill associated therewith (collectively, **Trademarks**); (f) trade secrets (including those trade secrets defined in the Uniform Trade Secrets Act, the Defend Trade Secrets Act of 2016 and under corresponding foreign statutory Law and common law), non-public information, and confidential information, know-how, business and technical information, and rights to limit the use or disclosure thereof by any Person (collectively **Proprietary Information**); (g) mask works; (h) domain names; (i) proprietary databases and data compilations and all documentation relating to the foregoing; and, including in each case any and all (1) rights under which an employee, inventor, author or other person is obligated to assign or has assigned ownership any of the foregoing; (2) registrations of, applications to register, and renewals of, any of the foregoing with or by any Governmental Body in any jurisdiction throughout the world, (3) rights of action arising from the foregoing, including all claims for damages by reason of present, past and future infringement, misappropriation, violation misuse or breach of contract in respect of the foregoing, and present, past and future rights to sue and collect damages or seek injunctive relief for any such infringement, misappropriation, violation, misuse or breach; and (4) income, royalties and any other payments now and hereafter due and/or payable in respect of the foregoing.

IRS means the United States Internal Revenue Service.

Key Employee means an executive officer of the identified Party or any employee of such Party that reports directly to the board of directors of such Party or to the Chief Executive Officer or Chief Operating Officer of such Party.

Knowledge of the Company, Company's Knowledge or similar terms means the actual knowledge of the individuals set forth on Schedule II; *provided* that each such individual shall be deemed to have actual knowledge of any fact or matter if such individual would reasonably be expected to know such fact or matter in the ordinary course of the performance of such individual's employment responsibilities.

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Knowledge of Parent, Parent's Knowledge or similar terms means the actual knowledge of the individuals set forth on Schedule III; *provided* that each such individual shall be deemed to have actual knowledge of any fact or matter if such individual would reasonably be expected to know such fact or matter in the ordinary course of the performance of such individual's employment responsibilities.

Law means any federal, state, national, foreign, material local or municipal or other law, statute, constitution, principle of common law, resolution, ordinance, code, edict, decree, rule, regulation, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Body (including under the authority of NASDAQ or the Financial Industry Regulatory Authority).

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

Merger Sub Board means the board of directors of Merger Sub.

NASDAQ means the Nasdaq Stock Market, including the Nasdaq Global Select Market or such other Nasdaq market on which shares of Parent Common Stock are then listed.

Ordinary Course of Business means, in the case of each of the Company and Parent, such actions taken in the ordinary course of its normal operations and consistent with its past practices.

Organizational Documents means, with respect to any Person (other than an individual), (a) the certificate or articles of association or incorporation or organization or limited partnership or limited liability company, and any joint venture, limited liability company, operating or partnership agreement and other similar documents adopted or filed in connection with the creation, formation or organization of such Person and (b) all bylaws and similar documents or agreements relating to the organization or governance of such Person, in each case, as amended or supplemented.

Parent 401(k) Plan means the Parent 401(k) Profit Sharing Plan.

Parent Balance Sheet means the unaudited balance sheet of Parent as of September 30, 2018 (the **Parent Balance Sheet Date**), included in Parent's Report on Form 10-Q for the quarterly period ended September 30, 2018, as filed with the SEC.

Parent Board means the board of directors of Parent.

Parent Capitalization Representations means the representations and warranties of Parent set forth in Sections 3.6(a) and (c).

Parent Change in Circumstance means any event, development or change in circumstances that materially affects the business, assets or operations of Parent that occurs or arises after the date of this Agreement and to Parent that was neither known to Parent or the Parent Board nor reasonably foreseeable, as of the date of this Agreement (or the consequences of which were not known to the Parent Board, in their reasonable estimation, or reasonably foreseeable based on facts known to the Parent Board as of the date of this Agreement); *provided*, that **Parent Change in Circumstance** shall not include any such event, development or change to the extent related to any Acquisition Proposal, Acquisition Inquiry or the consequences thereof.

Parent Closing Price means the volume weighted average closing trading price of a share of Parent Common Stock on NASDAQ for the five consecutive trading days ending five trading days immediately prior to the date upon which the Merger becomes effective.

Parent Collar Range means a range between (and inclusive of) \$25,000,000 and \$25,800,000.

Parent Common Stock means the Common Stock, \$0.00033 par value per share, of Parent.

Parent Contract means any Contract: (a) to which Parent is a party; (b) by which Parent or any Parent IP Rights or any other asset of Parent is or may become bound or under which Parent has, or may become subject to, any obligation; or (c) under which Parent has or may acquire any right or interest.

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Parent Deficiency Amount means the amount equal to the minimum amount of the Parent Collar Range *minus* the final Parent Net Cash, as determined in accordance with Section 5.22, but only to the extent such final Parent Net Cash is less than the minimum amount of the Parent Collar Range.

Parent ERISA Affiliate means any corporation or trade or business (whether or not incorporated) which is treated with the Parent or any of its Subsidiaries as a single employer within the meaning of Section 414 of the Code.

Parent Excess Amount means the amount equal to the final Parent Net Cash, as determined in accordance with Section 5.22, *minus* the maximum amount of the Parent Collar Range, but only to the extent such final Parent Net Cash is more than the maximum amount of the Parent Collar Range.

Parent Exclusively Licensed IP Rights means all Intellectual Property exclusively licensed to Parent that is used in the business of Parent as presently conducted.

Parent Fundamental Representations means the representations and warranties of Parent and Merger Sub set forth in Sections 3.1(a) (Due Organization; Subsidiaries), 3.3 (Authority; Binding Nature of Agreement), 3.4 (Vote Required) and 3.19 (No Brokers Fees).

Parent IP Rights means Parent Licensed IP Rights and Parent Owned IP Rights.

Parent Licensed IP Rights means all Intellectual Property licensed to Parent that is used in the business of the Parent as presently conducted.

Parent Material Adverse Effect means any Effect that, considered together with all other Effects that have occurred prior to the date of determination of the occurrence of a Parent Material Adverse Effect, has or would reasonably be expected to have a material adverse effect on the business, condition (financial or otherwise), assets, liabilities or results of operations of Parent; *provided, however*, that Effects arising or resulting from the following shall not be taken into account in determining whether there has been a Parent Material Adverse Effect: (a) general business or economic conditions affecting the industry in which Parent operates, (b) acts of war, armed hostilities or terrorism, (c) changes in financial, banking or securities markets, (d) the taking of any action required to be taken by this Agreement, (e) any change in the stock price or trading volume of Parent Common Stock (it being understood, however, that any Effect causing or contributing to any change in stock price or trading volume of Parent Common Stock may be taken into account in determining whether a Parent Material Adverse Effect has occurred, unless such Effects are otherwise excepted from this definition), (f) any clinical trial programs or studies, including any adverse data, event or outcome arising out of or related to any such programs or studies or (g) the announcement of this Agreement or the pendency of the Contemplated Transactions except in each case with respect to clauses (a) through (c), to the extent disproportionately affecting Parent relative to other similarly situated companies in the industries in which Parent operates.

Parent Net Cash means (a) the sum of (without duplication) and as of the Anticipated Closing Date (i) Parent's Cash and Cash Equivalents and (ii) the prepaid expenses of Parent referenced on Schedule 5.22(c), determined in a manner substantially consistent with the manner in which such items were determined in the Parent SEC Documents, *minus* (b) the sum of (without duplication) (i) Parent's accounts payable and accrued expenses (including accrued tax liabilities, but excluding accrued expenses which are Parent Transaction Expenses) and Parent's other current liabilities payable in cash, in each case as of the Anticipated Closing Date and determined in a manner substantially consistent with the manner in which such items were determined in the Parent SEC Documents, (ii) any Parent Transaction Expenses, (iii) any indebtedness for borrowed money of Parent as of the Anticipated Closing Date and (iv) to the extent the Identified Claim is still outstanding, \$1,000,000 less any amounts previously paid by Parent that would be applicable to the deductible under the insurance policy referenced on Section 3.17(b) of the Parent Disclosure

Schedule, and (v) to the extent not otherwise included as a Parent Transaction Expense or under clause (i), the amounts referenced in all Parent Representative Confirmation Letters. For the avoidance of doubt, Parent Net Cash may be a positive or negative number.

Parent Net Cash Schedule means a written schedule prepared in accordance with Section 5.22(c) and certified by the Chief Financial Officer of Parent, on behalf of Parent and not in his or her personal capacity, setting forth, in reasonable detail, Parent's good faith estimate of Parent Net Cash as of the Anticipated Closing Date.

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Parent Options means options or other rights to purchase shares of Parent Common Stock issued by Parent (excluding, for clarity, the Parent Warrants).

Parent Owned IP Rights means all Intellectual Property owned or purported to be owned by Parent that is used in the business of Parent as presently conducted.

Parent Representative Confirmation Letters means written confirmations, in a form reasonably satisfactory to the Company, from the attorneys, accountants, investment bankers and other professional advisors of Parent as to all amounts estimated in good faith owed by Parent with respect to services performed by them through the Closing (or following the Closing at the pre-Closing direction of Parent).

Parent Registered IP means all Parent Owned IP Rights that are registered, filed or issued under the authority of, with or by any Governmental Body, including all Patents, registered Copyrights, and registered Trademarks (including domain names) and all applications for any of the foregoing.

Parent RSUs means restricted stock units issued by Parent.

Parent Stock Plans means the Parent 2010 Equity Incentive Plan, the Parent 2012 Equity Incentive Plan and the Parent 2014 Equity Incentive Plan, each as amended from time to time, and the Inducement Grants.

Parent Transaction Expenses means Transaction Expenses of Parent or any of its Subsidiaries.

Parent Triggering Event shall be deemed to have occurred if: (a) Parent shall have failed to include in the Proxy Statement the Parent Board Recommendation or shall have made a Parent Board Adverse Recommendation Change; (b) the Parent Board or any committee thereof shall have publicly approved, endorsed or recommended any Acquisition Proposal; or (c) Parent shall have entered into any letter of intent or similar document or any Contract relating to any Acquisition Proposal (other than a confidentiality agreement permitted pursuant to Section 4.4).

Parent Warrants means all warrants to purchase Parent Common Stock.

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

Permitted Alternative Agreement means a definitive agreement that contemplates or otherwise relates to an Acquisition Transaction that constitutes a Superior Offer.

Permitted Bridge Financing means the Company's issuance, in a single transaction or series of transactions, of (a) shares of Company Common Stock, in which event such shares shall be included in the calculation of Company Outstanding Shares, (b) Company Warrants, in which event such Company Warrants shall be included in the calculation of Company Outstanding Shares to the extent provided in such definition, and/or (c) convertible promissory notes, which promissory notes shall convert into either shares of (i) Company Common Stock prior to the Closing, in which event such shares of Company Common Stock shall be included in the calculation of Company Outstanding Shares, or (ii) Parent Common Stock immediately after the Closing, in which event such shares shall be deducted from the calculation of Company Merger Shares, as provided in the definition thereof. In no event shall the aggregate proceeds of the Permitted Bridge Financing exceed \$3,000,000 without the prior written consent of Parent (which consent shall not be unreasonably withheld, conditioned or delayed).

Permitted Post-Measurement Date Financing means the Company's issuance in a single transaction or series of transactions, in each case after the Company Net Cash Measurement Date of (a) shares of Company Common Stock, (b) Company Warrants, and/or (c) convertible promissory notes, which promissory notes shall convert into either

shares of (i) Company Common Stock prior to the Closing, or (ii) Parent Common Stock immediately after the Closing. No securities issued in a Permitted Post-Measurement Date Financing shall be included in the calculation of Company Outstanding Shares or deducted from the calculation of Company Merger Shares such that, for the avoidance of doubt, any Permitted Post-Measurement Date Financing shall dilute the equityholders of Parent and the Company pro rata based on the Parent Allocation Percentage and Company Allocation Percentage, respectively. The terms

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of any Permitted Post-Measurement Date Financing shall be subject to the prior written consent of Parent (which consent shall not be unreasonably withheld, conditioned or delayed), and the aggregate proceeds thereof shall not exceed \$3,000,000 without the prior written consent of Parent (which consent shall not be unreasonably withheld, conditioned or delayed).

Permitted Encumbrance means: (a) any liens for current Taxes not yet due and payable or for Taxes that are being contested in good faith and for which adequate reserves have been made on the Company Unaudited Interim Balance Sheet or the Parent Balance Sheet, as applicable; (b) minor liens that have arisen in the Ordinary Course of Business and that do not (in any case or in the aggregate) materially detract from the value of the assets or properties subject thereto or materially impair the operations of the Company or Parent, as applicable; (c) statutory liens to secure obligations to landlords, lessors or renters under leases or rental agreements; (d) deposits or pledges made in connection with, or to secure payment of, workers' compensation, unemployment insurance or similar programs mandated by Law; (e) non-exclusive licenses of Intellectual Property granted by the Company or Parent, as applicable, in the Ordinary Course of Business and that do not (in any case or in the aggregate) materially detract from the value of the Intellectual Property subject thereto; and (f) statutory liens in favor of carriers, warehousemen, mechanics and materialmen, to secure claims for labor, materials or supplies.

Person means any individual, Entity or Governmental Body.

Personal Data means any information that relates to an identifiable natural person or that is otherwise considered personally identifiable information or personal data under applicable Law.

Proxy Statement means the proxy statement to be sent to Parent's stockholders in connection with the Parent Stockholders' Meeting.

Registration Statement means the registration statement on Form S-4 (or any other applicable form under the Securities Act to register Parent Common Stock) to be filed with the SEC by Parent registering the public offering and sale of Parent Common Stock to some or all holders of Company Common Stock in the Merger, including all shares of Parent Common Stock to be issued in exchange for all other shares of Company Common Stock in the Merger, as said registration statement may be amended prior to the time it is declared effective by the SEC.

Representatives means directors, officers, employees, agents, attorneys, accountants, investment bankers, advisors and representatives.

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

SEC means the United States Securities and Exchange Commission.

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

Subsequent Transaction means any Acquisition Transaction (with all references to 20% in the definition of Acquisition Transaction being treated as references to 50% for these purposes).

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

Superior Offer means an unsolicited bona fide written Acquisition Proposal (with all references to 20% in the definition of Acquisition Transaction being treated as references to greater than 50% for these purposes) that: (a) was not obtained or made as a direct or indirect result of a breach of (or in violation of) this Agreement; and (b) is on terms and conditions that the Parent Board or the Company Board, as applicable, determines in good faith, based on such matters that it deems relevant (including the likelihood of consummation thereof), as well as any written offer by the other Party to this Agreement to amend the terms of this Agreement, and following consultation with its outside legal counsel and outside financial advisors, if any, are more favorable, from a financial point of view, to Parent's stockholders or the Company's stockholders, as applicable, than the terms of the Contemplated Transactions.

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Takeover Statute means any fair price, moratorium, control share acquisition or other similar anti-takeover Law.

Tax means any federal, state, local, foreign or other tax, including any income, capital gain, gross receipts, capital stock, profits, transfer, estimated, registration, stamp, premium, escheat, unclaimed property, customs duty, ad valorem, occupancy, occupation, alternative, add-on, windfall profits, value added, severance, property, business, production, sales, use, license, excise, franchise, employment, payroll, social security, disability, unemployment, workers compensation, national health insurance, withholding or other taxes, duties, fees, assessments or governmental charges, surtaxes or deficiencies thereof of any kind whatsoever, however denominated, and including any fine, penalty, addition to tax or interest imposed by a Governmental Body with respect thereto.

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

Transaction Expenses means, with respect to any Person, the sum of (a) the cash cost of any change of control payments, retention payments, severance payments, transaction payments or similar payments that are or become due to any current or former employee, officer, director or independent contractor of such Person or any of its Subsidiaries in connection with the consummation of the Contemplated Transactions and that are unpaid as of the Closing (plus the employer portion of all employment, unemployment, payroll and similar Taxes payable thereon), but excluding for the avoidance of doubt, the vesting, exercise and settlement, as applicable of Company Options, Parent Options and Parent RSUs, (b) any costs, fees and expenses incurred by such Person or its Subsidiaries, or for which such Person or its Subsidiaries is liable, in connection with the negotiation, preparation and execution of this Agreement and the consummation of the Contemplated Transactions and that are unpaid as of the Closing, including brokerage fees and commissions, finders fees or financial advisory fees, or any fees and expenses of counsel, accountants or other advisors payable by such Person or its Subsidiaries, (c) any payments to third parties under any Contract to which such Person or its Subsidiaries are a party triggered by the consummation of the Contemplated Transactions, or any payment or consideration arising under or in relation to obtaining any consents, waivers or approvals of any third party under any Contract to which such Person or its Subsidiaries are a party required to be obtained in connection with the consummation of the Contemplated Transactions in order for any such Contract to remain in full force and effect following the Closing or resulting from agreed-upon modification or early termination of any such Contract; *provided,*

- with respect to Parent, Transaction Expenses will include (A) the out of pocket costs of any insurance tail policies that may be purchased by Parent relating to insurance policies held by it prior to the Closing (including all premiums payable in connection therewith) and, for clarity, shall not include the cost of any insurance tail policies of the Company or the costs of Parent after the Effective Time for coverage of Parent’s then-serving directors or other insurance policies of Parent
- (i) on or after the Effective Time, (B) the amount of any unpaid Parent Contract Termination Payments (regardless as to whether the underlying Parent Contract has been terminated prior to the Closing), and (C) the amount of any Parent Severance Payments (regardless as to the whether the applicable employee has been terminated or will be terminated in connection with the Contemplated Transactions);
- (ii) with respect to the Company, Transaction Expenses will include the out of pocket costs of any insurance tail policies that may be purchased by the Company relating to insurance policies held by it prior to the Closing (including all premiums payable in connection therewith) and, for clarity, shall not include the cost of any insurance tail policies of Parent or the costs of Parent after the Effective Time for coverage of Parent’s then-serving directors or other insurance policies of Parent

on or after the Effective Time;

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- Parent and the Company shall share equally all out of pocket costs and expenses, other than attorneys', accountants' and other similar service provider's fees and expenses, incurred in relation to (A) the filing with the SEC of the Form S-4 Registration Statement (including any financial statements and exhibits) and any amendments or supplements thereto and any related registration fees and the printing and delivery of such documents to the Parties' stockholders; and (B) any fees incurred in connection with obtaining Nasdaq approval for the merger, the name and ticker symbol changes, and the listing of the shares of Parent Common Stock to be issued, to the extent contemplated by this Agreement; and
- (iii) in the case of the Company, Transaction Expenses shall include any Transaction Expenses for which the Company is liable pursuant to the terms of this Agreement and which were paid by
- (iv) Parent at or prior to Closing on behalf of the Company and not reimbursed by the Company at or prior to Closing.

Treasury Regulations means the United States Treasury regulations promulgated under the Code.

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

Term	Section
Accounting Firm	5.22(e)
Agreement	Preamble
Allocation Certificate	5.18(a)
Anti-Bribery Laws	2.23
Capitalization Date	3.6(a)
Certificate of Merger	1.3
Certifications	3.7(a)
Closing	1.3
Closing Date	1.3
Company	Preamble
Company Audited Financial Statements	5.18(b)
Company Benefit Plan	2.17(a)
Company Board Recommendation	5.2(c)
Company Disclosure Schedule	Section 2
Company Dispute Notice	5.22(d)
Company Financials	2.7(a)
Company Interim Financial Statements	5.18(b)
Company Material Contract	2.13(a)
Company Material Contracts	2.13(a)
Company Net Cash Response Date	5.22(b)
Company Permits	2.14(b)
Company Preferred Stock	2.6(a)
Company Products	2.14(d)
Company Real Estate Leases	2.11
Company Regulatory Permits	2.14(d)

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Company Stock Certificate	1.6
Company Stockholder Support Agreement	Recitals
Company Stockholder Written Consent	Recitals
Company Termination Fee	9.3(b)
Continuing Employees	5.7(a)
Costs	5.8(a)
D&O Indemnified Parties	5.8(a)
Dechert	5.1(a)
Dissenting Shares	1.8(a)
DLA	5.1(a)

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Term	Section
Drug Regulatory Agency	2.14(a)
Effective Time	1.3
EMEA	2.14(a)
End Date	9.1(b)
Exchange Agent	1.7(a)
Exchange Fund	1.7(a)
FDA	2.14(a)
FDCA	2.14(a)
HIPAA	2.14(g)
Intended Tax Treatment	5.12
Investor Agreements	2.22(b)
IT Assets	2.24(a)
Liability	2.9
Lock-Up Agreement	7.7
Merger	Recitals
Merger Consideration	1.5(a)(ii)
Merger Sub	Preamble
NASDAQ Listing Application	5.11
Parent	Preamble
Parent Benefit Plan	3.15(a)
Parent Board Adverse Recommendation Change	5.3(b)
Parent Board Recommendation	5.3(b)
Parent Budget	4.1(b)(vi)
Parent Change in Circumstance Notice	5.3(d)
Parent Designees	5.14
Parent Disclosure Schedule	Section 3
Parent Dispute Notice	5.22(b)
Parent IP Agreements	3.10(a)
Parent IT Assets	3.25(a)
Parent Lock-Up Agreement	8.5
Parent Material Contract	3.11(n)
Parent Net Cash Response Date	5.22(d)
Parent Notice Period	5.3(c)
Parent Permits	3.12(b)
Parent Real Estate Leases	3.9
Parent SEC Documents	3.7(a)
Parent Stockholder Matters	5.3(a)
Parent Stockholder Support Agreement	Recitals

Parent Stockholders' Meeting	5.3(a)
Post-Closing Plans	5.7(a)
Pre-Closing Period	4.1(a)
Required Company Stockholder Vote	2.4
Required Parent Stockholder Merger Vote	3.4
Required Parent Stockholder Reverse Split Vote	3.4
Required Parent Stockholder Vote	3.4
Reverse Split	5.23
Risk Factors	Section 3
Stockholder Notice	5.2(b)
Surviving Corporation	1.1
Tax Representation Letter	5.1(a)

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Annex A-II

EXECUTION VERSION

AMENDMENT NO. 1 TO THE AGREEMENT AND PLAN OF MERGER
AND REORGANIZATION

This Amendment No.1, dated as of January 24, 2019 (this **Amendment**) to the Agreement and Plan of Merger and Reorganization (the **Original Agreement**), dated as of November 23, 2018, by and among Edge Therapeutics, Inc. (**Parent**), Echos Merger Sub, Inc. (**Merger Sub**) and PDS Biotechnology Corporation, a Delaware corporation (the **Company**) is entered into by and between Parent, Merger Sub and the Company. Capitalized terms used but not defined herein shall have the meanings assigned to them in the Original Agreement.

RECITALS

WHEREAS, Parent, Merger Sub and the Company desire to amend the Original Agreement as hereinafter provided;

WHEREAS, Section 10.2 of the Original Agreement provides that the Original Agreement may be amended with the approval of the respective Boards of Directors of the Company, Merger Sub and Parent at any time (whether before or after the adoption and approval of this Agreement by the Company's stockholders or before or after obtaining the Required Parent Stockholder Vote); *provided, however*, that after any such approval of this Agreement by a Party's stockholders, no amendment shall be made which by Law requires further approval of such stockholders without the further approval of such stockholders; and

WHEREAS, Section 10.2 of the Original Agreement further provides that the Original Agreement may not be amended except by an instrument in writing signed on behalf of each of the Company, Merger Sub and Parent.

NOW, THEREFORE, in consideration of the foregoing and the agreements contained herein, the parties, intending to be legally bound hereby, agree as follows:

Section 1. Amendment to Original Agreement.

a. Effective as of the date of this Amendment, Section 5.23 (Reverse Split) of the Original Agreement shall be deleted in its entirety and replaced with:

5.23. Reverse Split. Parent shall submit to the holders of Parent Common Stock at the Parent Stockholders Meeting a proposal to approve and adopt an amendment to the Parent Certificate of Incorporation to authorize the Board of Directors of Parent to effect a reverse stock split of all outstanding shares of Parent Common Stock at a reverse stock split ratio of between 5 and 25 for 1 as mutually agreed to by Parent and the Company (the **Reverse Split**). Parent shall use commercially reasonable efforts, including engaging a proxy solicitor to solicit from its stockholders proxies in favor of the Reverse Split.

Section 4. Representation of Parent and Merger Sub. Parent represents and warrants to the Company that the Board of Directors of each of Parent and Merger Sub have voted to adopt and approve this Amendment.

Section 5. Representation of Company. The Company represents and warrants to Parent that the Board of Directors of the Company has voted to adopt and approve this Amendment.

Section 6. Continuing Effect of Original Agreement. This Amendment shall only serve to amend and modify the Original Agreement to the extent specifically provided herein. All terms, conditions, provisions and references of and to the Original Agreement which are not specifically modified and/or amended herein shall remain in full force and effect and shall not be altered by any provisions herein contained. On and after the date of this Amendment, each reference in the Original Agreement to this Agreement, hereunder, hereof, herein or words of like import, and each reference to the Original Agreement in any other agreements, documents or instruments executed and delivered pursuant to the Original Agreement, shall mean and be a reference to the Original Agreement, as amended by this Amendment; provided that references to the date of this Agreement, the date hereof, and other similar references in the Original Agreement shall continue to refer to the date of the Original Agreement and not to the date of this Amendment.

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Section 7. Miscellaneous Provisions. This Amendment shall be subject to the general provisions contained in Section of the Original Agreement, which are incorporated by reference herein, in each case, *mutatis mutandis*.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to the Agreement and Plan of Merger and Reorganization as of the date first written above.

EDGE THERAPEUTICS, INC.

By: /s/ Brian A. Leuthner
Name: Brian A. Leuthner
Title: President and Chief Executive Officer

ECHOS MERGER SUB, INC.

By: /s/ Brian A. Leuthner
Name: Brian A. Leuthner
Title: President and Chief Executive Officer

PDS BIOTECHNOLOGY CORPORATION

By: /s/ Frank Bedu-Addo
Name: Frank Bedu-Addo
Title: Chief Executive Officer
[Signature Page to Amendment No. 1 to the Merger Agreement]

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Annex B

**FORM OF CERTIFICATE OF AMENDMENT OF RESTATED
CERTIFICATE OF INCORPORATION OF EDGE THERAPEUTICS, INC.**

Edge Therapeutics, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the Corporation),

DOES HEREBY CERTIFY:

FIRST: The name of Corporation is Edge Therapeutics, Inc.

SECOND: The Board of Directors of the Corporation, acting in accordance with the provisions of Sections 141 and 242 of the General Corporation Law of the State of Delaware, adopted resolutions amending its Restated Certificate of Incorporation as follows:

Subsection (a) of ARTICLE IV – CAPITALIZATION shall be deleted and the following paragraph shall be inserted in lieu thereof:¹

Authorized Shares. The total number of shares of stock which the Corporation shall have authority to issue is Eighty Million (80,000,000), consisting of Seventy Five Million (75,000,000) shares of Common Stock, par value \$0.00033 per share (Common Stock), and Five Million (5,000,000) shares of Preferred Stock, par value \$0.00033 per share (Preferred Stock). Such stock may be issued from time to time by the Corporation for such consideration as may be fixed by the board of directors of the Corporation (the Board of Directors). Except as otherwise provided by law, the shares of stock of the Corporation, regardless of class, may be issued by the Corporation from time to time in such amounts, for such consideration and for such corporate purposes as the Board of Directors may from time to time determine.

Contingent and effective upon the filing of this Certificate of Amendment to the Restated Certificate of Incorporation (the Certificate of Amendment) with the Secretary of State of the State of Delaware (the Effective Time), each [] ([]) shares of the Corporation's Common Stock, par value \$0.00033 per share, issued and outstanding prior to the Effective Time shall, automatically and without any action on the part of the respective holders thereof, be combined and converted into one (1) share of Common Stock, par value \$0.00033 per share, of the Corporation (the Reverse Split). No fractional share shall be issued in connection with the foregoing combination of the shares pursuant to the Reverse Split. The Corporation will pay in cash the fair value of such fractional shares, without interest and as determined in good faith by the Board of Directors of the Corporation when those entitled to receive such fractional shares are determined.

This amendment approves the reverse stock split of the Corporation's common stock, at a ratio in the range of 5-for-1 and 25-for-1. By approving this amendment, the stockholders of the Corporation would be deemed to approve any ratios within the range referred to above, as mutually agreed by the Corporation and PDS
¹ Biotechnology Company. If the stock issuance proposal is not approved by the Corporation's stockholders, the Corporation's board of directors may solely determine the reverse stock split ratio, within the range of 5-for-1 and 10-for-1, following the special meeting.

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Annex C

**AMENDED AND RESTATED
EDGE THERAPEUTICS, INC.
2014 EQUITY INCENTIVE PLAN**

Adopted by the Board of Directors January 17, 2019

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AMENDED AND RESTATED EDGE THERAPEUTICS, INC.

2014 EQUITY INCENTIVE PLAN

Section 1. Purpose of the Plan. The purpose of the Amended and Restated Edge Therapeutics, Inc. 2014 Equity Incentive Plan (the *Plan*) is to assist the Company and its Subsidiaries in attracting and retaining valued Employees, Consultants and Non-Employee Directors by offering them a greater stake in the Company's success and a closer identity with it, and to encourage ownership of the Company's stock by such Employees, Consultants and Non-Employee Directors.

Section 2. Definitions. As used herein, the following definitions shall apply:

2.1. *2014 Plan* means The Edge Therapeutics, Inc. 2014 Equity Incentive Plan.

2.2. *Award* means the grant of Restricted Stock, Options, SARs, Restricted Stock Units or Other Awards under the Plan.

2.3. *Award Agreement* means the written agreement, instrument or document evidencing an Award.

2.4. *Board* means the Board of Directors of the Company.

2.5. *Cause* means,

(a) if the applicable Participant is party to an effective employment, consulting, severance or similar agreement with the Company or a Subsidiary, and such term is defined therein, *Cause* shall have the meaning provided in such agreement;

(b) if the applicable Participant is not a party to an effective employment, consulting, severance or similar agreement or if no definition of *Cause* is set forth in the applicable employment, consulting, severance or similar agreement, *Cause* shall have the meaning provided in the applicable Award Agreement;

(c) if neither (a) nor (b) applies, then *Cause* shall mean, as determined by the Committee in its sole discretion, (i) the Participant's willful misconduct or gross negligence in connection with the performance of the Participant's duties for the Company or its Subsidiaries; (ii) the Participant's conviction of, or a plea of guilty or *nolo contendere* to, a felony or a crime involving fraud or moral turpitude; (iii) the Participant's engaging in any business that directly or indirectly competes with the Company or its Subsidiaries; or (iv) disclosure of trade secrets, customer lists or any other confidential information of the Company or its Subsidiaries to a competitor or an unauthorized person.

2.6. *Change in Control* means, unless otherwise provided in an Award Agreement:

(a) the acquisition in one or more transactions (whether by purchase, merger or otherwise) by any Person (as such term is used for purposes of Section 13(d) or Section 14(d) of the Exchange Act, but excluding, for this purpose, (i) the Company or its Subsidiaries, (ii) any employee benefit plan of the Company or its Subsidiaries, (iii) an entity owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company) of Beneficial Ownership (within the meaning of Rule 13d-3 under the Exchange Act) of more than fifty percent (50%) of the combined voting power of the Company's then outstanding voting securities (the *Voting Securities*);

(b) a change in the composition of the Board such that the individuals who as of any date constitute the Board (the *Incumbent Board*) cease to constitute a majority of the Board at any time during the 24-month period immediately following such date; provided, however, that if the election, or nomination for election by the Company's shareholders, of any new director was approved by a vote of at least a majority of the Incumbent Board, such new director shall be considered as a member of the Incumbent Board, and provided further that any reductions in the size of the Board that are instituted voluntarily by the Incumbent Board shall not constitute a Change in Control, and after any such reduction the *Incumbent Board* shall mean the Board as so reduced;

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- (c) a complete liquidation or dissolution of the Company; or
- (d) the sale of all or substantially all of the Company's and its Subsidiaries' assets (determined on a consolidated basis), other than to a Person described in clauses (i), (ii) or (iii) of Section 2.5(a) above.
- 2.7. *Code* means the Internal Revenue Code of 1986, as amended.
- 2.8. *Common Stock* means the common stock of the Company, par value \$0.00033 per share.
- 2.9. *Company* means Edge Therapeutics, Inc., a Delaware corporation, or any successor corporation.
- 2.10. *Committee* means the Compensation Committee of the Board, provided that the Committee shall at all times have at least two members, each of whom shall be a non-employee director as defined in Rule 16b-3 under the Exchange Act and an independent director under the rules of any applicable stock exchange.
- 2.11. *Consultant* means a natural person who provides bona fide services to the Company or its Subsidiaries other than in connection with the offer or sale of securities in a capital-raising transaction and is not engaged in activities that directly or indirectly promote or maintain a market for the Company's securities.
- 2.12. *Disability* means, unless otherwise provided in an Award Agreement, that the Participant is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.
- 2.13. *Effective Date* means the date of the Merger.
- 2.14. *Employee* means an officer or other employee of the Company or a Subsidiary, including a director who is such an employee.
- 2.15. *Exchange Act* means the Securities Exchange Act of 1934, as amended.
- 2.16. *Fair Market Value* means, on any given date (i) if the shares of Common Stock are then listed on a national securities exchange, including the Nasdaq Global Select Market (NASDAQ), the closing sales price per share of Common Stock on the exchange for such date, or if no sale was made on such date on the exchange, on the last preceding day on which a sale occurred; (ii) if shares of Common Stock are not then listed on a national securities exchange but are then quoted on another stock quotation system, the closing price for the shares of Common Stock as quoted on such quotation system on such date, or if no sale was made on such date on such quotation system, on the last preceding day on which a sale was made; or (iii) if (i) and (ii) do not apply, such value as the Committee in its discretion may in good faith determine in accordance with Section 409A of the Code and the regulations thereunder (and, with respect to Incentive Stock Options, in accordance with Section 422 of the Code and the regulations thereunder).
- 2.17. *Incentive Stock Option* means an Option or portion thereof intended to meet the requirements of an incentive stock option as defined in Section 422 of the Code and designated as an Incentive Stock Option.
- 2.18. *Merger* means the consummation of the transactions contemplated by that certain Agreement and Plan of Merger, dated November 23, 2018, among the Company, Echos Merger Sub, Inc. and PDS Biotechnology Corporation.

2.19. *Non-Employee Director* means a member of the Board or the board of directors or board of managers of a Subsidiary, in either case, who is not an Employee.

2.20. *Non-Qualified Option* means an Option or portion thereof not intended to be, or that does not satisfy all requirements to be, an Incentive Stock Option.

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- 2.21. *Option* means a right granted under Section 6.1 of the Plan to purchase a specified number of shares of Common Stock at a specified price. An Option may be an Incentive Stock Option or a Non-Qualified Option; provided, however, that unless otherwise explicitly stated in an Award Agreement, each Option shall be a Non-Qualified Option.
- 2.22. *Participant* means any Employee, Non-Employee Director or Consultant who receives an Award.
- 2.23. *Performance Goal* means any goal established by the Committee, in its sole discretion, the attainment of which is substantially uncertain at the time such goal is established. Performance Goals may be described in terms of Company-wide objectives or objectives that are related to the performance of the individual Participant or the Subsidiary, division, department or function within the Company or Subsidiary in which the Participant is employed. Performance Goals may be measured on an absolute or relative basis. Relative performance may be measured by a group of peer companies or by a financial market index. Performance Goals may, without limitation, be based on the following: specified levels of or increases in return on capital, equity or assets; earnings measures/ratios (on a gross, net, pre-tax or post-tax basis), including diluted earnings per share, total earnings, operating earnings, earnings growth, earnings before interest and taxes (EBIT) and earnings before interest, taxes, depreciation and amortization (EBITDA); net economic profit (which is operating earnings minus a charge to capital); net income; operating income; sales; sales growth; gross margin; direct margin; share price (including but not limited to growth measures and total shareholder return); operating profit; per period or cumulative cash flow (including but not limited to operating cash flow and free cash flow) or cash flow return on investment (which equals net cash flow divided by total capital); inventory turns; financial return ratios; market share; balance sheet measurements such as receivable turnover; improvement in or attainment of expense levels; improvement in or attainment of working capital levels; debt reduction; strategic innovation, including but not limited to entering into, substantially completing, or receiving payments under, relating to, or deriving from a joint development agreement, licensing agreement, or similar agreement; customer or employee satisfaction; individual objectives; operating efficiency; regulatory body approvals for commercialization of products; implementation or completion of critical projects or related milestones (including, without limitation, milestones such as clinical trial enrollment targets, commencement of phases of clinical trials and completion of phases of clinical trials); partnering or similar transactions; any combination of any of the foregoing criteria; or any other metric as determined by the Committee.
- 2.24. *Performance Period* means the period selected by the Committee during which the performance of the Company, any Subsidiary, any department of the Company or any Subsidiary, or any individual is measured for the purpose of determining the extent to which a Performance Goal has been achieved.
- 2.25. *Restricted Stock* means Common Stock awarded by the Committee under Section 6.3 of the Plan.
- 2.26. *Restricted Stock Unit* means the right granted under Section 6.4 of the Plan to receive, on the date of settlement, an amount equal to the Fair Market Value of one share of Common Stock. An Award of Restricted Stock Units may be settled in cash, shares of Common Stock or any combination of the foregoing.
- 2.27. *Restriction Period* means the period during which Restricted Stock and Restricted Stock Units are subject to forfeiture.
- 2.28. *SAR* means a stock appreciation right awarded by the Committee under Section 6.2 of the Plan.
- 2.29. *Securities Act* means the Securities Act of 1933, as amended.

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2.30. *Subsidiary* means any corporation, partnership, joint venture or other business entity of which 50% or more of the outstanding voting power is beneficially owned, directly or indirectly, by the Company.

2.31. *Ten Percent Shareholder* means a person who on any given date owns, either directly or indirectly (taking into account the attribution rules contained in Section 424(d) of the Code), stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or a Subsidiary.

Section 3. Eligibility. Any Employee, Non-Employee Director or Consultant shall be eligible to be selected to receive an Award under the Plan; provided, however, that only persons who are Employees may be granted Options which are intended to qualify as Incentive Stock Options.

Section 4. Administration and Implementation of the Plan.

4.1. The Plan and all Award Agreements shall be administered by the Committee. Any action of the Committee in administering the Plan and an Award Agreement shall be final, conclusive and binding on all persons, including the Company, its Subsidiaries, Participants, persons claiming rights from or through Participants and shareholders of the Company. No member of the Committee (or any person to whom the Committee has delegated authority to act under the Plan) shall be personally liable for any action, determination, or interpretation taken or made in good faith by the Committee (or such person) with respect to the Plan or any Awards granted hereunder, and all members of the Committee (and such persons) shall be fully indemnified and protected by the Company in respect of any such action, determination or interpretation to the fullest extent permitted by law.

4.2. Subject to the provisions of the Plan, the Committee shall have full and final authority in its discretion to (i) select the Employees, Non-Employee Directors and Consultants who will receive Awards pursuant to the Plan; (ii) determine the type or types of Awards to be granted to each Participant; (iii) determine the number of shares of Common Stock to which an Award will relate, the terms and conditions of any Award granted under the Plan (including, but not limited to, restrictions as to vesting, transferability or forfeiture, exercisability or settlement of an Award and waivers or accelerations thereof, and waivers of or modifications to Performance Goals relating to an Award, based in each case on such considerations as the Committee shall determine) and all other matters to be determined in connection with an Award; (iv) determine the exercise price or purchase price (if any) of an Award; (v) determine whether, to what extent, and under what circumstances an Award may be cancelled, forfeited, or surrendered; (vi) determine whether, and to certify that, Performance Goals to which an Award is subject are satisfied; (vii) correct any defect or supply any omission or reconcile any inconsistency in the Plan, and adopt, amend and rescind such rules, regulations, guidelines, forms of agreements and instruments relating to the Plan as it may deem necessary or advisable; (viii) construe and interpret the Plan; and (ix) make all other determinations as it may deem necessary or advisable for the administration of the Plan; provided, however, that the Committee shall be prohibited from effecting a repricing of any outstanding Award without shareholder approval.

4.3. To the extent permitted by applicable law, the Committee may delegate some or all of its authority with respect to the Plan and Awards to any executive officer of the Company or any other person or persons designated by the Committee, in each case, acting individually or as a committee, provided that the Committee may not delegate its authority hereunder to any person to make Awards to (a) Employees who are (i) officers as defined in Rule 16a-1(f) under the Exchange Act or (ii) officers or other Employees who are delegated authority by the Committee pursuant to this Section or (b) members of the Board. Any delegation hereunder shall be subject to the restrictions and limits that the Committee specifies at the time of such delegation or thereafter. The Committee may at any time rescind the authority delegated to any person pursuant to this Section. Any action undertaken by any such person or persons in accordance with the Committee's delegation of authority pursuant to this Section shall have the same force and effect as if undertaken directly by the Committee.

Section 5. Shares of Common Stock Subject to the Plan.

5.1. Share Pool. Subject to adjustment as provided in this Section 5 and in Section 8 hereof, the total number of shares of Common Stock available for Awards under the Plan as of the Effective Date shall be

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the sum of (x) []¹ plus (y) the total number of shares of Common Stock that remain available for issuance, and are not covered by outstanding awards issued, under the 2014 Plan immediately prior to the closing of the Merger (clauses (x) and (y), collectively, the *Plan Limit*).

5.2. Adjustments to Plan Limit. On and after the Effective Date, the Plan Limit shall be adjusted, in addition to any adjustments to be made pursuant to Section 8 of the Plan, as follows:

- (i) The Plan Limit as of such date shall be reduced, on the date of grant, by one share for each share of Common Stock made subject to an Award granted under the Plan;
- (ii) The Plan Limit shall be increased by the number of shares underlying an Award or portion thereof granted under this Plan or an award or portion thereof granted under the 2014 Plan, the Edge Therapeutics, Inc. 2010 Equity Incentive Plan (the *2010 Plan*) or the Edge Therapeutics, Inc. 2012 Equity Incentive Plan (the *2012 Plan*), in any case, that on or after the Effective Date is forfeited, cancelled or otherwise terminates, expires or is settled for any reason whatsoever without an actual distribution of shares; and
- (iii) The Plan Limit shall be increased, on the forfeiture date, by the number of shares of Common Stock that are forfeited back to the Company after issuance due to a failure to meet a contingency or condition with respect to any Award or portion thereof granted under this Plan, any award or portion thereof granted under the 2010 Plan, any award or portion thereof granted under the 2012 Plan or any award or portion thereof granted under the 2014 Plan.

For the avoidance of doubt, any shares tendered by a Participant in payment of an exercise price for an Award (or an award granted under the 2014 Plan, the 2012 Plan or the 2010 Plan) or the tax liability with respect to an Award (or an award granted under the 2014 Plan, the 2012 Plan or the 2010 Plan), including shares withheld from any such Award or award, shall not be available for future Awards hereunder. Common Stock awarded under the Plan may be reserved or made available from the Company's authorized and unissued Common Stock or from Common Stock reacquired and held in the Company's treasury. Any shares of Common Stock issued by the Company through the assumption or substitution of outstanding grants from an acquired company shall not reduce the shares of Common Stock available for Awards under the Plan.

5.3. ISO Limit. Up to 11,000,000 shares (the *ISO Limit*) available for Awards under the Plan may be issued pursuant to Incentive Stock Options.

5.4. Director Limit. In addition, the Committee may establish compensation for Non-Employee Directors from time to time, subject to the limitations in the Plan. The Committee will from time to time determine the terms, conditions and amounts of all such Non-Employee Director compensation in its discretion and pursuant to the exercise of its business judgment, taking into account such factors, circumstances and considerations as it shall deem relevant from time to time, provided that the sum of any cash compensation and the grant date fair value of Awards (as determined in accordance with Financial Accounting Standards Board Accounting Standards Codification Topic 718, or any successor thereto) granted under the Plan to a Non-Employee Director as compensation for services as a Non-Employee Director during any calendar year of the Company may not exceed \$500,000 for an annual grant, provided however, in a Non-Employee Director's first year of service, compensation for services may not exceed \$1,000,000 (such limits, the *Director Limits*). The Committee may make exceptions to the Director Limit for individual Non-Employee Directors in extraordinary circumstances, as the Committee may determine in its discretion, provided that the Non-Employee Director receiving such additional compensation may not participate in the decision to award such compensation or in other compensation decisions involving such Non-Employee Director.

Section 6. Awards. Awards may be granted on the terms and conditions set forth in this Section 6. In addition, the Committee may impose on any Award or the settlement or exercise thereof, at the date of grant or thereafter, such

additional terms and conditions, not inconsistent with the provisions of the Plan, as the Committee shall determine, including without limitation terms requiring forfeiture of Awards in the event of the termination of employment or other relationship with the Company or any Subsidiary by the Participant; provided, however, that the Committee shall retain full power to accelerate or waive any such additional term or

¹ Number of shares to be equal to 9.5% multiplied by the total number of shares of Edge common stock outstanding immediately following the closing of the merger.

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condition as it may have previously imposed (provided that, in any case, any such action is permitted under Code Section 409A). The right of a Participant to exercise or receive a grant or settlement of any Award, and the timing thereof, may be subject to such Performance Goals as may be determined by the Committee. Each Award, and the terms and conditions applicable thereto, shall be evidenced by an Award Agreement.

6.1. Options. Options give a Participant the right to purchase a specified number of shares of Common Stock from the Company for a specified time period at a fixed exercise price, as provided in the applicable Award Agreement. Options may be either Incentive Stock Options or Non-Qualified Options; provided that Incentive Stock Options may not be granted to Non-Employee Directors or Consultants. The grant of Options shall be subject to the following terms and conditions:

(a) *Exercise Price*. The price per share at which Common Stock may be purchased upon exercise of an Option shall be determined by the Committee and specified in the Award Agreement, but shall be not less than the Fair Market Value of a share of Common Stock on the date of grant (or 110% of the Fair Market Value of a share of Common Stock on the date of grant in the case of an Incentive Stock Option granted to a Ten Percent Shareholder).

(b) *Term of Options*. The term of an Option shall be specified in the Award Agreement, but shall in no event be greater than ten years from the grant date (or five years from the grant date in the case of an Incentive Stock Option granted to a Ten Percent Shareholder).

(c) *Exercise of Option*. Each Award Agreement with respect to an Option shall specify the time or times at which an Option may be exercised in whole or in part and the terms and conditions applicable thereto, including (i) a vesting schedule which may be based upon the passage of time, attainment of Performance Goals or a combination thereof, (ii) whether the exercise price for an Option shall be paid in cash, with shares of Common Stock, with any combination of cash and shares of Common Stock, or with other legal consideration that the Committee may deem appropriate, (iii) the methods of payment, which may include payment through cashless and net exercise arrangements, to the extent permitted by applicable law and (iv) the methods by which, or the time or times at which, Common Stock will be delivered or deemed to be delivered to Participants upon the exercise of such Option. Payment of the exercise price shall in all events be made within three days after the date of exercise of an Option. With respect to any Participant who is subject to Section 16 of the Exchange Act, such Participant may direct the Company to reduce the number of Shares that would otherwise be deliverable upon the exercise of his or her Option having a Fair Market Value on the date of exercise equal to the exercise price of the portion of the Option then being exercised.

(d) *Termination of Employment or Other Service*. Unless otherwise provided in an Award Agreement, upon a Participant's termination of employment or other service with the Company and its Subsidiaries, the unvested portion of such Participant's Options shall cease to vest and shall be forfeited and the vested portion of such Participant's Options shall remain exercisable by the Participant or the Participant's beneficiary or legal representative, as the case may be, for a period of (i) 30 days in the event of a termination by the Company or a Subsidiary without Cause, (ii) 180 days in the event of a termination due to death or Disability and (iii) 30 days in the event of the Participant's voluntary termination; provided, however, that in no event shall any Option be exercisable after its stated term has expired. All of a Participant's Options, whether or not vested, shall be forfeited immediately upon such Participant's termination by the Company or a Subsidiary for Cause.

(e) *Incentive Stock Options*. Each Participant awarded an Incentive Stock Option under the Plan shall notify the Company in writing immediately after the date he or she makes a disqualifying disposition (as defined in Section 421(b) of the Code) of any shares of Common Stock acquired pursuant to the exercise of such Incentive Stock Option. The Company may, if determined by the Committee and in accordance with procedures established by it, retain possession of any shares acquired pursuant to the exercise of an Incentive Stock Option as agent for the applicable Participant until the end of any period during which a disqualifying disposition could occur, subject to complying with

any instructions from such Participant as to the sale of such shares. The aggregate Fair Market Value, determined as of the date of grant, for Awards granted under the Plan (or any other stock option plan required to be taken into account under Section 422(d) of the Code) that are intended to be Incentive Stock Options which are first exercisable by the Participant during any calendar year shall not exceed \$100,000. To the extent an Award purporting to be an Incentive Stock Option exceeds the limitation in the previous sentence, the portion of the Award in excess of such limit shall be a Non-Qualified Option.

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6.2. Stock Appreciation Rights. An SAR shall confer on the Participant a right to receive, upon exercise thereof, the excess of (i) the Fair Market Value of one share of Common Stock on the date of exercise over (ii) the grant price of the SAR as determined by the Committee, but which may never be less than the Fair Market Value of one share of Common Stock on the date of grant. The grant of SARs shall be subject to the following terms and conditions:

(a) *General*. Each Award Agreement with respect to an SAR shall specify the number of SARs granted, the grant price of the SAR, the time or times at which an SAR may be exercised in whole or in part (including vesting upon the passage of time, the attainment of Performance Goals, or a combination thereof), the method of exercise, method of settlement (in cash, Common Stock or a combination thereof), method by which Common Stock will be delivered or deemed to be delivered to Participants (if applicable) and any other terms and conditions of any SAR.

(b) *Termination of Employment or Other Service*. Unless otherwise provided in an Award Agreement, upon a Participant's termination of employment or other service with the Company and its Subsidiaries, the unvested portion of such Participant's SARs shall cease to vest and shall be forfeited and the vested portion of such Participant's SARs shall remain exercisable by the Participant or the Participant's beneficiary or legal representative, as the case may be, for a period of (i) 30 days in the event of a termination by the Company or a Subsidiary without Cause, (ii) 180 days in the event of a termination due to death or Disability and (iii) 30 days in the event of the Participant's voluntary termination; provided, however, that in no event shall any SAR be exercisable after its stated term has expired. All of a Participant's SARs, whether or not vested, shall be forfeited immediately upon such Participant's termination by the Company or a Subsidiary for Cause.

(c) *Term*. The term of an SAR shall be specified in the Award Agreement, but shall in no event be greater than ten years.

6.3. Restricted Stock. An Award of Restricted Stock is a grant by the Company of a specified number of shares of Common Stock to the Participant, which shares are subject to forfeiture upon the happening of specified events during the Restriction Period. Such an Award shall be subject to the following terms and conditions:

(a) *General*. Each Award Agreement with respect to Restricted Stock shall specify the duration of the Restriction Period and/or each installment thereof, the conditions under which the Restricted Stock may be forfeited to the Company, and the amount, if any, the Participant must pay to receive the Restricted Stock. Such restrictions may include a vesting schedule based upon the passage of time, the attainment of Performance Goals or a combination thereof.

(b) *Transferability*. During the Restriction Period, the transferability of Restricted Stock shall be prohibited or restricted in the manner and to the extent prescribed in the applicable Award Agreement. Such restrictions may include, without limitation, rights of repurchase or first refusal in the Company or provisions subjecting the Restricted Stock to a continuing substantial risk of forfeiture in the hands of any transferee.

(c) *Shareholder Rights*. Unless otherwise provided in the applicable Award Agreement, during the Restriction Period the Participant shall have all the rights of a shareholder with respect to Restricted Stock, including, without limitation, the right to receive dividends thereon (whether in cash or shares of Common Stock) and to vote such shares of Restricted Stock; provided, however, that dividends shall be subject to the same restrictions as the underlying Restricted Stock (unless otherwise provided by the Committee in the Award Agreement) and cash dividends shall be held by the Company in its general assets and released to the Participant only upon the vesting of the underlying Restricted Stock (unless otherwise provided by the Committee in the Award Agreement).

(d) *Termination of Employment or Other Service*. Unless otherwise provided in the applicable Award Agreement, upon a Participant's termination of employment or other service with the Company and its Subsidiaries for any reason,

the unvested portion of each Award of Restricted Stock held by such Participant shall be forfeited with no compensation due the Participant.

(e) *Additional Matters.* Upon the Award of Restricted Stock, the Committee may direct the number of shares of Common Stock subject to such Award be issued to the Participant or placed in a restricted stock account (including an electronic account) with the transfer agent and in either case designating the Participant as the registered owner. The certificate(s), if any, representing such shares shall be physically or electronically

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legended, as applicable, as to sale, transfer, assignment, pledge or other encumbrances during the Restriction Period and, if issued to the Participant, returned to the Company to be held in escrow during the Restriction Period. In all cases, the Participant shall sign a stock power endorsed in blank to the Company to be held in escrow during the Restriction Period.

6.4. Restricted Stock Units. Restricted Stock Units are solely a device for the measurement and determination of the amounts to be paid to a Participant under the Plan. Restricted Stock Units do not constitute Common Stock and shall not be treated as (or as giving rise to) property or as a trust fund of any kind; provided, however, that the Company may establish a bookkeeping reserve to meet its obligations hereunder or a trust or other funding vehicle that would not cause the Plan to be deemed to be funded for tax purposes or for purposes of Title I of the Employee Retirement Income Security Act of 1974, as amended. The right of any Participant in respect of an Award of Restricted Stock Units shall be no greater than the right of any unsecured general creditor of the Company. The grant of Restricted Stock Units shall be subject to the following terms and conditions:

(a) *Restriction Period*. Each Award Agreement with respect to Restricted Stock Units shall specify the duration of the Restriction Period, if any, and/or each installment thereof and the conditions under which such Award may be forfeited to the Company. Such restrictions may include a vesting schedule based upon the passage of time, the attainment of Performance Goals or a combination thereof.

(b) *Termination of Employment or Other Service*. Unless otherwise provided in the applicable Award Agreement, upon a Participant's termination of employment or other service with the Company and its Subsidiaries for any reason, the unvested portion of each Award of Restricted Stock Units credited to such Participant shall be forfeited with no compensation due the Participant.

(c) *Settlement*. Unless otherwise provided in an Award Agreement (i) an Award of Restricted Stock Units shall be settled in shares of Common Stock, provided that any fractional Restricted Stock Units shall be settled in cash and (ii) subject to the Participant's continued employment or other service with the Company or a Subsidiary from the date of grant through the expiration of the Restriction Period (or applicable portion thereof), the vested portion of an Award of Restricted Stock Units shall be settled within 30 days after the expiration of the Restriction Period (or applicable portion thereof).

(d) *Shareholder Rights*. Nothing contained in the Plan shall be construed to give any Participant rights as a shareholder with respect to an Award of Restricted Stock Units (including, without limitation, any voting, dividend or derivative or other similar rights). Notwithstanding the foregoing, the Committee may provide in an Award Agreement that amounts equal to any dividends declared during the Restriction Period on the shares of Common Stock represented by an Award of Restricted Stock Units will be credited to the Participant's account and deemed to be reinvested in additional Restricted Stock Units, such additional Restricted Stock Units to be subject to the same forfeiture restrictions and settlement date as the Restricted Stock Units to which they relate.

6.5. Other Stock-Based Awards. The Committee is authorized, subject to limitations under applicable law, to grant to Participants any type of Award (in addition to those Awards provided in Sections 6.1, 6.2, 6.3 or 6.4 hereof) that is payable in, or valued in whole or in part by reference to, shares of Common Stock, and that is deemed by the Committee to be consistent with the purposes of the Plan, including, without limitation, dividend equivalents, performance shares and performance units (*Other Awards*).

Section 7. Change in Control.

7.1. General. Notwithstanding any provision in the Plan to the contrary, upon the occurrence of a Change in Control, the Committee, in its discretion, may accelerate the vesting and, if applicable, exercisability of all outstanding Awards

such that all outstanding Awards are fully vested and, if applicable, exercisable (effective immediately prior to such Change in Control) and may determine whether all applicable Performance Goals have been achieved and the applicable level of performance.

7.2. Options and SARs. Notwithstanding any provision in the Plan to the contrary, upon the occurrence of a Change in Control, the Committee, in its discretion, may take one or more of the following actions with respect to Options and SARs that are outstanding as of such Change in Control: (a) cancel any outstanding Options or SARs in exchange for a cash payment in an amount equal to the excess, if any, of the Fair Market Value of the Common Stock underlying the unexercised portion of the Option or SAR as of the date of the Change in Control over the exercise price or grant price, as the case may be, of such portion,

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provided that any Option or SAR with an exercise price or grant price, as the case may be, that equals or exceeds the Fair Market Value of the Common Stock on the date of such Change in Control shall be cancelled with no payment due the Participant; (b) terminate any Option or SAR, effectively immediately prior to the Change in Control, provided that the Company provides the Participant an opportunity to exercise such Award within a specified period following the Participant's receipt of a written notice of such Change in Control and the Company's intention to terminate such Awards, effective immediately prior to such Change in Control; (c) terminate any Options or SARs, the Performance Goals of which have not been satisfied as of the Change in Control, (d) require the successor or acquiring company (or its parents or subsidiaries), following a Change in Control, to assume any outstanding Option or SAR and to substitute such Option or SAR with awards involving the common equity securities of such company on terms and conditions necessary to preserve the rights of Participants with respect to such Options or SARs or (e) take such other actions as the Committee believes may be appropriate.

7.3. Restricted Stock, Restricted Stock Units and Other Awards. With respect to Restricted Stock, Restricted Stock Units or Other Awards, the Committee generally may (a) provide in an Award that, upon the occurrence of a Change in Control, any vested Restricted Stock, Restricted Stock Units and Other Awards shall become immediately vested and/or payable, provided that if such Awards constitute non-qualified deferred compensation (within the meaning of Code Section 409A) such Change in Control satisfies the requirements of Treasury Regulation Section 1.409A-3(i)(5)(v), (vi) or (vii); (b) with respect to any Restricted Stock, Restricted Stock Units or Other Awards that do not constitute non-qualified deferred compensation, elect to settle such Restricted Stock, Restricted Stock Units and Other Awards upon a Change in Control, (c) terminate any Restricted Stock, Restricted Stock Units or Other Awards if the applicable Performance Goals were not satisfied as of the Change in Control, (d) require the successor or acquiring company (or its parents or subsidiaries), following a Change in Control, to assume such Restricted Stock, Restricted Stock Units and Other Awards or to substitute such Awards with awards involving the equity securities of the acquiring or successor company on terms and conditions so as to preserve the rights of participants, or (e) to the extent permitted by Code Section 409A, take such other actions as the Committee believes may be appropriate (including terminating such Awards for a cash payment equal to the fair market value of the underlying shares).

The judgment of the Committee with respect to any matter referred to in this Section 7 shall be conclusive and binding upon each Participant without the need for any amendment to the Plan.

Section 8. Adjustments upon Changes in Capitalization.

8.1. In order to prevent dilution or enlargement of the rights of Participants under the Plan as a result of any stock dividend, recapitalization, forward stock split or reverse stock split, reorganization, division, merger, consolidation, spin-off, combination, repurchase or share exchange, extraordinary or unusual cash distribution or other similar corporate transaction or event that affects the Common Stock, the Committee shall adjust (i) the number and kind of shares of Common Stock which may thereafter be issued in connection with Awards, (ii) the number and kind of shares of Common Stock issuable in respect of outstanding Awards, (iii) the aggregate number and kind of shares of Common Stock available under the Plan (including any of the specific limitations under Section 5 hereof), and (iv) the exercise or grant price relating to any Award. Any such adjustment shall be made in an equitable manner which reflects the effect of such transaction or event. It is provided, however, that in the case of any such transaction or event, the Committee may, in lieu of making adjustments to the items in (i) through (iv) above, make a cash payment with respect to any outstanding Award; provided, further, that no adjustment shall be made under this Section 8.1 that would cause the Plan to violate Section 422 of the Code with respect to Incentive Stock Options, that would cause any Award or the Plan to fail to be exempt from and fail to comply with Section 409A of the Code, or that would adversely affect the status of any Award that is performance-based compensation under Section 162(m) of the Code.

8.2. In addition, the Committee is authorized to make adjustments in the terms and conditions of, and the criteria included in, Awards, including any Performance Goals, in recognition of unusual or nonrecurring events (including,

without limitation, events described in Section 8.1) affecting the Company or any Subsidiary, or in response to changes in applicable laws, regulations, or accounting principles. Notwithstanding the foregoing, all adjustments shall be made in accordance with Section 409A of the Code and the regulations thereunder to the extent applicable.

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Section 9. Termination and Amendment.

9.1. Changes to the Plan and Awards. The Board may amend, alter, suspend, discontinue, or terminate the Plan without the consent of the Company's shareholders or Participants, except that any such amendment, alteration, suspension, discontinuation, or termination shall be subject to the approval of the Company's shareholders if (i) such action would increase the number of shares subject to the Plan, (ii) such action would decrease the price at which Awards may be granted, or (iii) such shareholder approval is required by any applicable federal, state or foreign law or regulation or the rules of any stock exchange or automated quotation system on which the Common Stock may then be listed or quoted, and the Board may otherwise, in its discretion, determine to submit such other changes to the Plan to the Company's shareholders for approval; provided, however, that except as provided in Section 18, without the consent of an affected Participant, no amendment, alteration, suspension, discontinuation, or termination of the Plan may materially and adversely affect the rights of such Participant under any outstanding Award unless such modification is necessary to avoid the additional tax described in Section 409A of the Code.

9.2. The Committee may waive any conditions or rights under, or amend, alter, suspend, discontinue, or terminate, any Award theretofore granted and any Award Agreement relating thereto; provided, however, that except as provided in Section 18, without the consent of an affected Participant, no such amendment, alteration, suspension, discontinuation, or termination of any Award may materially and adversely affect the rights of such Participant under such Award unless such modification is necessary to avoid the additional tax described in Section 409A of the Code.

9.3. Notwithstanding anything in this Section 9 to the contrary, any Performance Goal applicable to an Award shall not be deemed a fixed contractual term, but shall remain subject to adjustment by the Committee, in its discretion at any time in view of the Committee's assessment of the Company's strategy, performance of comparable companies, and other circumstances.

9.4. Notwithstanding anything in the Plan or an Award Agreement to the contrary, no Award may be repriced, replaced or regranted through cancellation or bought out for cash or other consideration without the approval of the shareholders of the Company, provided that nothing herein shall prevent the Committee from taking any action provided for in Section 8.

Section 10. No Right to Award, Employment or Service. No Participant shall have any claim to be granted any Award under the Plan, and there is no obligation that the terms of Awards be uniform or consistent among Participants. Neither the Plan nor any action taken hereunder shall be construed as giving any Participant any right to be retained in the employ or service of the Company or any Subsidiary. For purposes of this Plan, a transfer of employment or service between the Company and its Subsidiaries shall not be deemed a termination of employment or service; provided, however, that individuals employed by, or otherwise providing services to, an entity that ceases to be a Subsidiary shall be deemed to have incurred a termination of employment or service, as the case may be, as of the date such entity ceases to be a Subsidiary unless such individual becomes an employee of, or service provider to, the Company or another Subsidiary as of the date of such cessation.

Section 11. Taxes. Each Participant must make appropriate arrangement for the payment of any taxes relating to an Award granted hereunder. The Company or any Subsidiary is authorized to withhold from any payment relating to an Award under the Plan, including from a distribution of Common Stock or any payroll or other payment to a Participant, amounts of withholding and other taxes due in connection with any transaction involving an Award, and to take such other action as the Committee may deem advisable to enable the Company and Participants to satisfy obligations for the payment of withholding taxes and other tax obligations relating to any Award. This authority shall include the ability to withhold or receive Common Stock or other property and to make cash payments in respect thereof in satisfaction of a Participant's tax obligations.

Section 12. Limits on Transferability; Beneficiaries. No Award or other right or interest of a Participant under the Plan shall be pledged, encumbered, or hypothecated to, or in favor of, or subject to any lien, obligation, or liability of such Participant to, any party, other than the Company or any Subsidiary, or assigned or transferred by such Participant otherwise than by will or the laws of descent and distribution, and such Awards and rights shall be exercisable during the lifetime of the Participant only by the Participant or his or her guardian or legal representative. Notwithstanding the foregoing, the Committee may, in its discretion, provide that Options, SARs and Restricted Stock be transferable, without consideration, to immediate family members (i.e., children, grandchildren or spouse), to trusts for the benefit of such immediate family members and to partnerships in

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which such family members are the only partners (any vesting conditions shall be unaffected by such transfer). The Committee may attach to such transferability feature such terms and conditions as it deems advisable. In addition, a Participant may, in the manner established by the Committee, designate a beneficiary (which may be a person or a trust) to exercise the rights of the Participant, and to receive any distribution, with respect to any Award upon the death of the Participant. A beneficiary, guardian, legal representative or other person claiming any rights under the Plan from or through any Participant shall be subject to all terms and conditions of the Plan and any Award Agreement applicable to such Participant, except as otherwise determined by the Committee, and to any additional restrictions deemed necessary or appropriate by the Committee.

Section 13. Foreign Nationals. Without amending the Plan, Awards may be granted to Employees, Consultants and Non-Employee Directors who are foreign nationals or are employed or providing services outside the United States or both, on such terms and conditions different from those specified in the Plan as may, in the judgment of the Committee, be necessary or desirable to further the purpose of the Plan. Moreover, the Committee may approve such supplements to, or amendments, restatements or alternative versions of, the Plan as it may consider necessary or appropriate for such purposes without thereby affecting the terms of the Plan as in effect for any other purpose, provided that no such supplements, amendments, restatements or alternative versions shall include any provisions that are inconsistent with the terms of the Plan, as then in effect, unless the Plan could have been amended to eliminate such inconsistency without further approval by the stockholders of the Company.

Section 14. Securities Law Requirements.

14.1. No shares of Common Stock may be issued hereunder if the Company shall at any time determine that to do so would (i) violate the listing requirements of an applicable securities exchange, or adversely affect the registration or qualification of the Company's Common Stock under any state or federal law, or (ii) require the consent or approval of any regulatory body or the satisfaction of withholding tax or other withholding liabilities. In any of the events referred to in clause (i) or clause (ii) above, the issuance of such shares shall be suspended and shall not be effective unless and until such withholding, listing, registration, qualifications or approval shall have been effected or obtained free of any conditions not acceptable to the Company in its sole discretion, notwithstanding any termination of any Award or any portion of any Award during the period when issuance has been suspended.

14.2. The Committee may require, as a condition to the issuance of shares hereunder, representations, warranties and agreements to the effect that such shares are being purchased or acquired by the Participant for investment only and without any present intention to sell or otherwise distribute such shares and that the Participant will not dispose of such shares in transactions which, in the opinion of counsel to the Company, would violate the registration provisions of the Securities Act, and the rules and regulations thereunder.

Section 15. Termination. Unless earlier terminated, the Plan shall terminate with respect to the grant of Awards on January 17, 2029.

Section 16. Fractional Shares. The Company will not be required to issue any fractional shares of Common Stock pursuant to the Plan. The Committee may provide for the elimination of fractions and settlement of such fractional shares of Common Stock in cash.

Section 17. Discretion. In exercising, or declining to exercise, any grant of authority or discretion hereunder, the Committee may consider or ignore such factors or circumstances and may accord such weight to such factors and circumstances as the Committee alone and in its sole judgment deems appropriate and without regard to the effect such exercise, or declining to exercise such grant of authority or discretion, would have upon the affected Participant, any other Participant, any Employee, the Company, any Subsidiary, any affiliate, any shareholder or any other person.

Section 18. Code Section 409A. The Plan and all Awards are intended to comply with, or be exempt from, Code Section 409A and all regulations, guidance, compliance programs and other interpretative authority thereunder, and shall be interpreted in a manner consistent therewith. Notwithstanding anything contained herein to the contrary, in the event any Award is subject to Code Section 409A, the Committee may, in its sole discretion and without a Participant's prior consent, amend the Plan and/or Award, adopt policies and procedures, or take any other actions as deemed appropriate by the Committee to (i) exempt the Plan and/or any Award from the application of Code Section 409A, (ii) preserve the intended tax treatment of any such Award or (iii) comply

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with the requirements of Code Section 409A. Notwithstanding anything contained in the Plan or in an Award Agreement to the contrary, neither the Company, any member of the Committee nor any Subsidiary shall have any liability or obligation to any Participant or any other person for taxes, interest, penalties or fines (including any of the foregoing resulting from the failure of any Award granted hereunder to comply with, or be exempt from, Code Section 409A). In the event that a Participant is a specified employee within the meaning of Code Section 409A, and a payment or benefit provided for under the Plan would be subject to additional tax under Code Section 409A if such payment or benefit is paid within six (6) months after such Participant's separation from service (within the meaning of Code Section 409A), then such payment or benefit shall not be paid (or commence) during the six (6) month period immediately following such Participant's separation from service except as provided in the immediately following sentence. In such an event, any payments or benefits that would otherwise have been made or provided during such six (6) month period and which would have incurred such additional tax under Code Section 409A shall instead be paid to the Participant in a lump-sum, without interest, on the earlier of (i) the first business day of the seventh month following the month in which such Participant's separation from service occurs or (ii) the tenth business day following such Participant's death (but not earlier than if such delay had not applied).

Section 19. Governing Law. The validity and construction of the Plan and any Award Agreement entered into hereunder shall be construed and enforced in accordance with the laws of the State of Delaware, but without giving effect to the conflict of laws principles thereof.

Section 20. Recoupment. Any Award granted pursuant to the Plan shall be subject to mandatory repayment by the Participant to the Company pursuant to the terms of any Company clawback or recoupment policy directly applicable to the Plan and (i) set forth in the Participant's Award Agreement, (ii) set forth in the Company policy or (iii) required by law to be applicable to the Participant.

Section 21. Effective Date. The Plan shall become effective upon the Effective Date, and no Award shall become exercisable, realizable or vested prior to the Effective Date.

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Annex D

345 Park Ave, New York, NY 10154
Tel: (212) 284-9300
Piper Jaffray & Co. Since 1895. Member
SIPC and NYSE.

November 23, 2018

Board of Directors
Edge Therapeutics, Inc.
300 Connell Drive, Suite 4000
Berkeley Heights, NJ 07922

Members of the Board:

You have requested our opinion as to the fairness, from a financial point of view, to Edge Therapeutics, Inc. (the Company) of the Exchange Ratio (as defined below) provided for under the terms of the proposed Agreement and Plan of Merger and Reorganization, dated as of November 23, 2018 (the Agreement), to be entered into among the Company, Echos Merger Sub, Inc. (Merger Sub), a newly formed wholly-owned subsidiary of the Company, and PDS Biotechnology Corporation (PDS). The Agreement provides for, among other things, the merger (the Merger) of the Merger Sub with and into PDS, pursuant to which each share of common stock of PDS Biotechnology Corporation (PDS), par value \$0.00001 per share (PDS Common Stock), outstanding immediately prior to the Effective Time (as defined in the Agreement), other than shares of PDS Common Stock held in treasury or owned by the Company or Merger Sub and shares of PDS Common Stock held by stockholders who have exercised and perfected appraisal rights for such shares, shall be automatically converted solely into the right to receive a to be determined number of shares of common stock of the Company, par value \$0.00033 per share (Company Common Stock), determined upon consummation of the Merger, based upon the Exchange Ratio (as such term is defined in the Agreement), subject to adjustment on the terms set forth in the Agreement, including adjustment for any potential dilution related to shares of Company Common Stock issuable upon conversion or exercise of any convertible promissory notes that might be issued by PDS prior to the consummation of the Merger pursuant to any bridge financing permitted pursuant to the Agreement (as to which adjustments we express no opinion), but excluding adjustment for any potential dilution related to shares of Company Common Stock issuable upon conversion or exercise of any securities that might be issued by PDS prior to the consummation of the Merger pursuant to a permitted financing occurring after February 28, 2019. The terms and conditions of the Merger are more fully set forth in the Agreement.

In connection with our review of the Merger, and in arriving at our opinion, we have: (i) reviewed and analyzed the financial terms of a draft of the Agreement dated November 23, 2018; (ii) reviewed and analyzed certain financial and other data with respect to the Company and PDS which was publicly available; (iii) reviewed and analyzed certain information, including financial forecasts, relating to the estimated cash usage of each of the Company and PDS, on stand-alone bases, that were furnished to us by the Company and PDS; (iv) conducted discussions with members of senior management and representatives of each of the Company and PDS concerning the matters described in clauses (ii) and (iii) above, as well as the business and prospects of the Company before and after giving effect to the Merger; (v) reviewed the current and historical reported prices and trading activity of the Company; (vi) compared the business profile of PDS with that of certain publicly traded companies that we deemed relevant; and (vii) reviewed the valuations of certain companies implied by the pricing of such companies' initial public offerings that we deemed relevant. In addition, we have conducted such other analyses, examinations and inquiries and considered such other financial, economic and market criteria as we have deemed necessary in arriving at our opinion.

We have relied upon and assumed, without assuming liability or responsibility for independent verification, the accuracy and completeness of all information that was publicly available or was furnished, or otherwise made available, to us or discussed with or reviewed by us. We have further relied upon the assurances of the management of the Company that the financial information provided has been prepared on a reasonable basis in accordance with industry practice, and that they are not aware of any information or facts that would make any information provided to us incomplete or misleading. Without limiting the generality of the foregoing, for the purpose of this opinion, we have assumed that with respect to financial forecasts reviewed by us, that such forecasts have been reasonably prepared based on assumptions reflecting the best currently available estimates and judgments of the managements of each of the Company and PDS as to the expected future cash usages of

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each of the Company and PDS. We express no opinion as to any such financial forecasts, estimates or forward-looking information or the assumptions on which they were based. In particular, our opinion and the underlying analyses relating thereto are based upon the estimated respective amounts of Parent Net Cash and Company Net Cash (in each case, as defined in the Agreement) as of the consummation of the Merger, as provided to us by the respective managements of the Company and PDS. We have relied, with your consent, on advice of the outside counsel and the independent accountants to the Company, and on the assumptions of the management of the Company as to all accounting, legal, tax and financial reporting matters with respect to the Company, PDS and the Agreement.

In arriving at our opinion, we have assumed that the executed Agreement will be in all material respects identical to the last draft reviewed by us. We have relied upon and assumed, without independent verification, that (i) the representations and warranties of all parties to the Agreement and all other related documents and instruments that are referred to therein are true and correct, consistent with any standards set forth therein; (ii) each party to such agreements will fully and timely perform all of the covenants and agreements required to be performed by such party; (iii) the Merger will be consummated pursuant to the terms of the Agreement without amendments thereto; and (iv) all conditions to the consummation of the Merger will be satisfied without waiver by any party of any conditions or obligations thereunder. Additionally, we have assumed that all the necessary regulatory approvals and consents required for the Merger will be obtained in a manner that will not adversely affect the Company, PDS or the contemplated benefits of the Merger.

In arriving at our opinion, we have not performed any appraisals or valuations of any specific assets or liabilities (fixed, contingent or other) of the Company or PDS, and have not been furnished or provided with any such appraisals or valuations, nor have we evaluated the solvency of the Company or PDS under any state or federal law relating to bankruptcy, insolvency or similar matters. The analyses performed by us with respect to PDS in connection with this opinion were going concern analyses. We express no opinion regarding the liquidation value of the Company, PDS or any other entity. Without limiting the generality of the foregoing, we have undertaken no independent analysis of any pending or threatened litigation, regulatory action, possible unasserted claims or other contingent liabilities, to which the Company, PDS or any of their affiliates is a party or may be subject, and at the direction of the Company and with its consent, our opinion makes no assumption concerning, and therefore does not consider, the possible assertion of claims, outcomes or damages arising out of any such matters. We have also assumed that neither the Company nor PDS is party to (or contemplates becoming party to) any material pending transaction, including without limitation any financing, recapitalization, acquisition or merger, divestiture or spin-off, other than (i) the Merger; (ii) the reverse stock split of Company Common Stock contemplated by the Agreement; and (iii) a possible permitted financing contemplated by the Agreement.

No company or transaction used in any analysis for purposes of comparison is identical to the Company or PDS. Accordingly, an analysis of the results of the comparisons is not mathematical; rather, it involves complex considerations and judgments about differences in the companies and transactions to which PDS was compared and other factors that could affect the public trading value or transaction value of the companies.

This opinion is necessarily based upon the information available to us and facts and circumstances as they exist and are subject to evaluation on the date hereof; events occurring after the date hereof could materially affect the assumptions used in preparing this opinion. We are not expressing any opinion herein as to the price at which shares of Company Common Stock may trade following announcement of the Merger or at any future time. We have not undertaken to reaffirm or revise this opinion or otherwise comment upon any events occurring after the date hereof and do not have any obligation to update, revise or reaffirm this opinion.

In connection with our review of the Merger, and in arriving at our opinion, we have solicited expressions of interest from other parties with respect to a business combination with the Company or any other alternative transactions.

We have been engaged by the Board of Directors of the Company (the Board) to act as the Board's financial advisor in connection with the Merger and we will receive a fee from the Company for providing our services, a significant portion of which is contingent upon the consummation of the Merger. We will also receive a fee for rendering this opinion, which will be credited against the fee for financial advisory services. Our opinion fee is not contingent upon the consummation of the Merger or the conclusions reached in our opinion. The Company has also agreed to indemnify us against certain liabilities and reimburse us for certain expenses in

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connection with our services. We have, in the past, acted as one of several underwriters of equity offerings completed by portfolio companies of New Leaf Venture Partners, a significant shareholder of the Company and an entity in which a member of the Company's Board is a partner, for which we received fees. In addition, in the ordinary course of our business, we and our affiliates may actively trade securities of the Company for our own account or the account of our customers and, accordingly, may at any time hold a long or short position in such securities. We may also, in the future, provide investment banking and financial advisory services to the Company, PDS or entities that are affiliated with the Company or PDS, for which we would expect to receive compensation.

This opinion is provided to the Board in connection with its consideration of the Merger and is not intended to be and does not constitute a recommendation to any stockholder of the Company as to how such stockholder should act or vote with respect to the Merger or any other matter. Except with respect to the use of this opinion in connection with the proxy statement relating to the Merger in accordance with our engagement letter with the Company, this opinion shall not be disclosed, referred to, published or otherwise used (in whole or in part), nor shall any public references to us be made, without our prior written approval. This opinion has been approved for issuance by the Piper Jaffray Opinion Committee.

This opinion addresses solely the fairness, from a financial point of view, to the Company of the proposed Exchange Ratio and does not address any other terms or agreement relating to the Merger or any other terms of the Agreement. We were not requested to opine as to, and this opinion does not address: (i) the basic business decision to proceed with or effect the Merger; (ii) the merits of the Merger relative to any alternative transaction or business strategy that may be available to the Company; (iii) any other terms contemplated by the Agreement; or (iv) the solvency or financial viability of the Company or PDS at the date hereof, upon consummation of the Merger, or at any other future time. Furthermore, we express no opinion with respect to the amount or nature of compensation to be paid in the Merger to any officer, director or employee of any party to the Merger, or any class of such persons, relative to the Exchange Ratio or with respect to the fairness of any such compensation.

Based upon and subject to the foregoing and based upon such other factors as we consider relevant, it is our opinion that the Exchange Ratio is fair, from a financial point of view, to the Company as of the date hereof.

Sincerely,

PIPER JAFFRAY & CO.

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TABLE OF CONTENTS**Annex E****SECTION 262 OF THE DELAWARE GENERAL CORPORATION LAW****§ 262 Appraisal rights.**

(a) Any stockholder of a corporation of this State who holds shares of stock on the date of the making of a demand pursuant to subsection (d) of this section with respect to such shares, who continuously holds such shares through the effective date of the merger or consolidation, who has otherwise complied with subsection (d) of this section and who has neither voted in favor of the merger or consolidation nor consented thereto in writing pursuant to §228 of this title shall be entitled to an appraisal by the Court of Chancery of the fair value of the stockholder's shares of stock under the circumstances described in subsections (b) and (c) of this section. As used in this section, the word *stockholder* means a holder of record of stock in a corporation; the words *stock* and *share* mean and include what is ordinarily meant by those words; and the words *depository receipt* mean a receipt or other instrument issued by a depository representing an interest in 1 or more shares, or fractions thereof, solely of stock of a corporation, which stock is deposited with the depository.

(b) Appraisal rights shall be available for the shares of any class or series of stock of a constituent corporation in a merger or consolidation to be effected pursuant to §251 (other than a merger effected pursuant to §251(g) of this title¹ and, subject to paragraph (b)(3) of this section, § 251(h) of this title), §252, §254, §255, §256, §257, §258, §263 or §264 of this title:

Provided, however, that, except as expressly provided in §363(b) of this title, no appraisal rights under this section shall be available for the shares of any class or series of stock, which stock, or depository receipts in respect thereof, at the record date fixed to determine the stockholders entitled to receive notice of the meeting of stockholders to act upon the agreement of merger or consolidation (*or, in the case of a merger pursuant to*

(1) *§ 251(h), as of immediately prior to the execution of the agreement of merger*), were either: (i) listed on a national securities exchange or (ii) held of record by more than 2,000 holders; and further provided that no appraisal rights shall be available for any shares of stock of the constituent corporation surviving a merger if the merger did not require for its approval the vote of the stockholders of the surviving corporation as provided in §251(f) of this title.

(2) Notwithstanding paragraph (b)(1) of this section, appraisal rights under this section shall be available for the shares of any class or series of stock of a constituent corporation if the holders thereof are required by the terms of an agreement of merger or consolidation pursuant to §§251, 252, 254, 255, 256, 257, 258, 263 and 264 of this title to accept for such stock anything except:

a. Shares of stock of the corporation surviving or resulting from such merger or consolidation, or depository receipts in respect thereof;

b. Shares of stock of any other corporation, or depository receipts in respect thereof, which shares of stock (or depository receipts in respect thereof) or depository receipts at the effective date of the merger or consolidation will be either listed on a national securities exchange or held of record by more than 2,000 holders;

c. Cash in lieu of fractional shares or fractional depository receipts described in the foregoing paragraphs (b)(2)a. and b. of this section; or

d. Any combination of the shares of stock, depository receipts and cash in lieu of fractional shares or fractional depository receipts described in the foregoing paragraphs (b)(2)a., b. and c. of this section.

(3) In the event all of the stock of a subsidiary Delaware corporation party to a merger effected under² §251(h), §253 or §267 of this title is not owned by the parent immediately prior to the merger, appraisal rights shall be available for the shares of the subsidiary Delaware corporation.

(4) In the event of an amendment to a corporation's certificate of incorporation contemplated by §363(a) of this title, appraisal rights shall be available as contemplated by §363(b) of this title, and the procedures

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of this section, including those set forth in subsections (d) and (e) of this section, shall apply as nearly as practicable, with the word amendment substituted for the words merger or consolidation, and the word corporation substituted for the words constituent corporation and/or surviving or resulting corporation.

Any corporation may provide in its certificate of incorporation that appraisal rights under this section shall be available for the shares of any class or series of its stock as a result of an amendment to its certificate of incorporation, any merger or consolidation in which the corporation is a constituent corporation or the sale of all or substantially all of the assets of the corporation. If the certificate of incorporation contains such a provision, the provisions of this section, including those set forth in subsections (d), (e), and (g) of this section, shall apply as nearly as is practicable.

(d) Appraisal rights shall be perfected as follows:

If a proposed merger or consolidation for which appraisal rights are provided under this section is to be submitted for approval at a meeting of stockholders, the corporation, not less than 20 days prior to the meeting, shall notify each of its stockholders who was such on the record date for notice of such meeting (or such members who received notice in accordance with §255(c) of this title) with respect to shares for which appraisal rights are available pursuant to subsection (b) or (c) of this section that appraisal rights are available for any or all of the shares of the constituent corporations, and shall include in such notice a copy of this section and, if 1 of the constituent corporations is a nonstock corporation, a copy of §114 of this title. Each stockholder electing to demand the appraisal of such stockholder's shares shall deliver to the corporation,

- (1) before the taking of the vote on the merger or consolidation, a written demand for appraisal of such stockholder's shares. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such stockholder's shares. A proxy or vote against the merger or consolidation shall not constitute such a demand. A stockholder electing to take such action must do so by a separate written demand as herein provided. Within 10 days after the effective date of such merger or consolidation, the surviving or resulting corporation shall notify each stockholder of each constituent corporation who has complied with this subsection and has not voted in favor of or consented to the merger or consolidation of the date that the merger or consolidation has become effective; or
- (2) If the merger or consolidation was approved pursuant to §228, §251(h), §253, or §267 of this title, then either a constituent corporation before the effective date of the merger or consolidation or the surviving or resulting corporation within 10 days thereafter shall notify each of the holders of any class or series of stock of such constituent corporation who are entitled to appraisal rights of the approval of the merger or consolidation and that appraisal rights are available for any or all shares of such class or series of stock of such constituent corporation, and shall include in such notice a copy of this section and, if 1 of the constituent corporations is a nonstock corporation, a copy of §114 of this title. Such notice may, and, if given on or after the effective date of the merger or consolidation, shall, also notify such stockholders of the effective date of the merger or consolidation. Any stockholder entitled to appraisal rights may, within 20 days after the date of mailing of such notice or, in the case of a merger approved pursuant to §251(h) of this title, within the later of the consummation of the offer contemplated by §251(h) of this title and 20 days after the date of mailing of such notice, demand in writing from the surviving or resulting corporation the appraisal of such holder's shares. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such holder's shares. If such notice did not notify stockholders of the effective date of the merger or consolidation, either (i) each such constituent corporation shall send a second notice before the effective date of the merger or consolidation notifying each of the holders of any class or series of stock of such constituent corporation that are entitled to appraisal rights of the effective date of the merger or consolidation or (ii) the surviving or resulting corporation shall send such a second notice to all such holders on or within 10 days after such effective date; provided, however, that if such second notice is sent more than 20 days following the sending of the first notice or, in the case of a merger approved pursuant to §251(h) of this title, later than the later of the consummation of the

offer contemplated by §251(h) of this title and 20 days following the sending of the first notice, such second notice need only be sent to each stockholder who is entitled to

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appraisal rights and who has demanded appraisal of such holder's shares in accordance with this subsection. An affidavit of the secretary or assistant secretary or of the transfer agent of the corporation that is required to give either notice that such notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein. For purposes of determining the stockholders entitled to receive either notice, each constituent corporation may fix, in advance, a record date that shall be not more than 10 days prior to the date the notice is given, provided, that if the notice is given on or after the effective date of the merger or consolidation, the record date shall be such effective date. If no record date is fixed and the notice is given prior to the effective date, the record date shall be the close of business on the day next preceding the day on which the notice is given.

Within 120 days after the effective date of the merger or consolidation, the surviving or resulting corporation or any stockholder who has complied with subsections (a) and (d) of this section hereof and who is otherwise entitled to appraisal rights, may commence an appraisal proceeding by filing a petition in the Court of Chancery demanding a determination of the value of the stock of all such stockholders. Notwithstanding the foregoing, at any time within 60 days after the effective date of the merger or consolidation, any stockholder who has not commenced an appraisal proceeding or joined that proceeding as a named party shall have the right to withdraw such stockholder's demand for appraisal and to accept the terms offered upon the merger or consolidation. Within 120 days after the effective date of the merger or consolidation, any stockholder who has complied with the requirements of subsections (a) and (d) of this section hereof, upon written request, shall be entitled to receive from the corporation surviving the merger or resulting from the consolidation a statement

(e) setting forth the aggregate number of shares not voted in favor of the merger or consolidation³ and *(or, in the case of a merger approved pursuant to § 251(h) of this title, the aggregate number of shares (other than any excluded stock (as defined in §251(h)(6)d. of this title)) that were the subject of, and were not tendered into, and accepted for purchase or exchange in, the offer referred to in §251(h)(2)), and, in either case, with respect to which demands for appraisal have been received and the aggregate number of holders of such shares. Such written statement shall be mailed to the stockholder within 10 days after such stockholder's written request for such a statement is received by the surviving or resulting corporation or within 10 days after expiration of the period for delivery of demands for appraisal under subsection (d) of this section hereof, whichever is later. Notwithstanding subsection (a) of this section, a person who is the beneficial owner of shares of such stock held either in a voting trust or by a nominee on behalf of such person may, in such person's own name, file a petition or request from the corporation the statement described in this subsection.*

- Upon the filing of any such petition by a stockholder, service of a copy thereof shall be made upon the surviving or resulting corporation, which shall within 20 days after such service file in the office of the Register in Chancery in which the petition was filed a duly verified list containing the names and addresses of all stockholders who have demanded payment for their shares and with whom agreements as to the value of their shares have not been reached by the surviving or resulting corporation. If the petition shall be filed by the surviving or resulting corporation, the petition shall be accompanied by such a duly verified list. The Register in Chancery, if so ordered by the Court, shall give notice of the time and place fixed for the hearing of such petition by registered or certified mail to the surviving or resulting corporation and to the stockholders shown on the list at the addresses therein stated. Such notice shall also be given by 1 or more publications at least 1 week before the day of the hearing, in a newspaper of general circulation published in the City of Wilmington, Delaware or such publication as the Court deems advisable. The forms of the notices by mail and by publication shall be approved by the Court, and the costs thereof shall be borne by the surviving or resulting corporation.
- (f) At the hearing on such petition, the Court shall determine the stockholders who have complied with this section and who have become entitled to appraisal rights. The Court may require the stockholders who have demanded an appraisal for their shares and who hold stock represented by certificates to submit their certificates of stock to the Register in Chancery for notation thereon of the pendency of the appraisal proceedings; and if any stockholder fails to comply with such direction, the Court may dismiss the proceedings as to such stockholder. If immediately
- (g)

before the merger or consolidation the shares of the class or series of stock of the constituent corporation as to which appraisal rights are available were listed on a national securities exchange, the Court shall dismiss the proceedings as to all holders of such shares who are otherwise entitled to appraisal rights unless (1) the total number of shares entitled to appraisal exceeds 1%

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of the outstanding shares of the class or series eligible for appraisal, (2) the value of the consideration provided in the merger or consolidation for such total number of shares exceeds \$1 million, or (3) the merger was approved pursuant to §253 or §267 of this title.

(h) After the Court determines the stockholders entitled to an appraisal, the appraisal proceeding shall be conducted in accordance with the rules of the Court of Chancery, including any rules specifically governing appraisal proceedings. Through such proceeding the Court shall determine the fair value of the shares exclusive of any element of value arising from the accomplishment or expectation of the merger or consolidation, together with interest, if any, to be paid upon the amount determined to be the fair value. In determining such fair value, the Court shall take into account all relevant factors. Unless the Court in its discretion determines otherwise for good cause shown, and except as provided in this subsection, interest from the effective date of the merger through the date of payment of the judgment shall be compounded quarterly and shall accrue at 5% over the Federal Reserve discount rate (including any surcharge) as established from time to time during the period between the effective date of the merger and the date of payment of the judgment. At any time before the entry of judgment in the proceedings, the surviving corporation may pay to each stockholder entitled to appraisal an amount in cash, in which case interest shall accrue thereafter as provided herein only upon the sum of (1) the difference, if any, between the amount so paid and the fair value of the shares as determined by the Court, and (2) interest theretofore accrued, unless paid at that time. Upon application by the surviving or resulting corporation or by any stockholder entitled to participate in the appraisal proceeding, the Court may, in its discretion, proceed to trial upon the appraisal prior to the final determination of the stockholders entitled to an appraisal. Any stockholder whose name appears on the list filed by the surviving or resulting corporation pursuant to subsection (f) of this section and who has submitted such stockholder's certificates of stock to the Register in Chancery, if such is required, may participate fully in all proceedings until it is finally determined that such stockholder is not entitled to appraisal rights under this section.

(i) The Court shall direct the payment of the fair value of the shares, together with interest, if any, by the surviving or resulting corporation to the stockholders entitled thereto. Payment shall be so made to each such stockholder, in the case of holders of uncertificated stock forthwith, and the case of holders of shares represented by certificates upon the surrender to the corporation of the certificates representing such stock. The Court's decree may be enforced as other decrees in the Court of Chancery may be enforced, whether such surviving or resulting corporation be a corporation of this State or of any state. The costs of the proceeding may be determined by the Court and taxed upon the parties as the Court deems equitable in the circumstances. Upon application of a stockholder, the Court may order all or a portion of the expenses incurred by any stockholder in connection with the appraisal proceeding, including, without limitation, reasonable attorney's fees and the fees and expenses of experts, to be charged pro rata against the value of all the shares entitled to an appraisal.

(j) From and after the effective date of the merger or consolidation, no stockholder who has demanded appraisal rights as provided in subsection (d) of this section shall be entitled to vote such stock for any purpose or to receive payment of dividends or other distributions on the stock (except dividends or other distributions payable to stockholders of record at a date which is prior to the effective date of the merger or consolidation); provided, however, that if no petition for an appraisal shall be filed within the time provided in subsection (e) of this section, or if such stockholder shall deliver to the surviving or resulting corporation a written withdrawal of such stockholder's demand for an appraisal and an acceptance of the merger or consolidation, either within 60 days after the effective date of the merger or consolidation as provided in subsection (e) of this section or thereafter with the written approval of the corporation, then the right of such stockholder to an appraisal shall cease. Notwithstanding the foregoing, no appraisal proceeding in the Court of Chancery shall be dismissed as to any stockholder without the approval of the Court, and such approval may be conditioned upon such terms as the Court deems just; provided, however that this provision shall not affect the right of any stockholder who has not commenced an appraisal proceeding or joined that proceeding as a named party to withdraw such stockholder's demand for appraisal and to accept the terms offered upon the merger or consolidation within 60 days after the

effective date of the merger or consolidation, as set forth in subsection (e) of this section.

- The shares of the surviving or resulting corporation to which the shares of such objecting stockholders would
- (1) have been converted had they assented to the merger or consolidation shall have the status of authorized and unissued shares of the surviving or resulting corporation.

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