

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 8-K

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

Date of Report (Date of earliest event reported): June 17, 2020

Rexahn Pharmaceuticals, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation)

001-34079
(Commission File Number)

11-3516358
(IRS Employer Identification No.)

15245 Shady Grove Road, Suite 455
Rockville, MD
(Address of principal executive offices)

20850
(Zip Code)

Registrant's telephone number, including area code: (240) 268-5300

N/A
(Former name or former address, if changed since last report.)

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

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$.0001 par value	REXN	Nasdaq Capital Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

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

Item 1.01 Entry into Material Definitive Agreement.

Reverse Merger with Ocuphire

On June 17, 2020, Rexahn Pharmaceuticals, Inc., a Delaware corporation (“Rexahn”), Razor Merger Sub, Inc., a Delaware corporation and wholly-owned subsidiary of Rexahn (“Merger Sub”), and Ocuphire Pharma, Inc., a Delaware corporation (“Ocuphire”), entered into an Agreement and Plan of Merger and Reorganization (the “Merger Agreement”), pursuant to which, among other things, and subject to the satisfaction or waiver of certain conditions set forth in the Merger Agreement, Merger Sub will merge with and into Ocuphire, with Ocuphire continuing as a wholly-owned subsidiary of Rexahn and the surviving corporation of the merger (the “Merger”). The Merger is intended to qualify as a tax-free reorganization for U.S. federal income tax purposes.

Subject to the terms and conditions of the Merger Agreement, at the effective time of the Merger (the “Effective Time”): (a) each share of Ocuphire Common Stock (as defined below) outstanding immediately prior to the Effective Time (excluding shares held as treasury stock, shares held by Ocuphire and dissenting shares) will be converted into the right to receive shares of Rexahn common stock (the “Rexahn Common Stock”) equal to the Exchange Ratio described below; and (b) each outstanding Ocuphire stock option that has not previously been exercised prior to the Effective Time will be assumed by Rexahn.

Under the exchange ratio formula in the Merger Agreement (the “Exchange Ratio”), immediately following the consummation of the Merger (the “Closing”), Rexahn’s then-current stockholders would own approximately 14.3% of the combined company’s common stock, and the former Ocuphire securityholders would own approximately 85.7% of the combined company’s common stock, in each case calculated on a fully-diluted basis, assuming Rexahn’s net cash balance at Closing is between \$3.2 million and \$6.0 million. The Exchange Ratio formula in the Merger Agreement is subject to adjustment for every \$100,000 that Rexahn’s actual net cash balance at Closing is less than \$3.2 million or more than \$6.0 million. Based on Rexahn’s current estimates, Rexahn believes that it is reasonably likely to deliver significantly less than \$3.2 million at Closing. If, for example, Rexahn’s actual net cash balance at Closing is \$0, which is the minimum amount of net cash that Rexahn is required to deliver at Closing, then immediately following the Closing, Rexahn’s then-current stockholders would own approximately 11.2% of the combined company’s common stock, and the former Ocuphire securityholders would own approximately 88.8% of the combined company’s common stock, in each case calculated on a fully-diluted basis. Under the terms of the Merger Agreement, Rexahn’s stockholders’ ownership percentage in the combined company is subject to a floor of 9.1% regardless of Rexahn’s actual net cash balance at Closing, assuming Ocuphire waives the minimum net cash requirement at Closing. These ownership percentages give effect to the shares of Ocuphire Common Stock that will be issued to Investors (as defined below) in the Pre-Merger Financing (as defined below) prior to the Closing, but do not account for any additional shares of Rexahn Common Stock that may be issued following the Closing or the Investor Warrants (as defined below) issuable to Investors after Closing. As a result, Ocuphire securityholders and holders of Rexahn Common Stock could own less of the combined company than currently contemplated.

In connection with the Merger, Rexahn will prepare and file with the U.S. Securities and Exchange Commission (“SEC”) a registration statement on Form S-4 that will contain a proxy statement/prospectus/information statement, and will seek the approval of Rexahn’s stockholders with respect to certain actions, including, but not limited to, the following:

- the issuance of Rexahn Common Stock to the Ocuphire stockholders pursuant to the Merger Agreement and the change of control of Rexahn resulting from the Merger pursuant to pertinent Nasdaq Stock Market (“Nasdaq”) listing rules;
- the amendment of Rexahn’s certificate of incorporation to effect a reverse split of all outstanding shares of the Rexahn Common Stock at a reverse stock split ratio as mutually agreed to by Rexahn and Ocuphire; and
- the amendment of Rexahn’s certificate of incorporation to change the name of Rexahn to “Ocuphire Pharma, Inc.”;

- the adoption of the Ocuphire Pharma, Inc. 2020 Equity Incentive Plan; and
- the issuance of (a) shares of Rexahn Common Stock upon the exercise of certain warrants to be issued in the Pre-Merger Financing, and (b) additional shares of Rexahn Common Stock that may be issued following the closing of the Pre-Merger Financing.

Consummation of the Merger is subject to certain Closing conditions, including, among other things: (i) approval by the stockholders of Rexahn and Ocuphire; (ii) the continued listing of the Rexahn Common Stock on Nasdaq and the listing of the additional Rexahn Common Stock issued in connection with the Merger on Nasdaq; (iii) the accuracy of the representations and warranties, subject to certain materiality qualifications; (iv) satisfaction by Rexahn of a minimum net cash at Closing requirement of \$0; and (v) completion of the Pre-Merger Financing.

Under the Merger Agreement, Rexahn's net cash at Closing is calculated as follows: (i) the sum of Rexahn's cash and cash equivalents, short-term investments, accrued investment interest receivable, and any prepaid refundable deposits of Rexahn, less (ii) the sum of Rexahn's accounts payable and accrued expenses, less (iii) all liabilities of Rexahn to any current or former officer, director, employee, consultant or independent contractor, including change of control payments, retention payments, severance and other related termination costs, or other payments pursuant to any of Rexahn's benefit plans, less (iv) any bona fide current liabilities of Rexahn payable in cash, less (v) Rexahn's transaction expenses incurred in connection with the Merger as calculated in accordance with the terms of the Merger Agreement, and less (vi) certain estimated liabilities associated with Rexahn's outstanding warrants to be calculated approximately 10 days prior to the Closing in accordance with the terms of the Merger Agreement. The estimated liabilities associated with Rexahn's outstanding warrants will be impacted by, among other things, the volatility and trading price of shares of Rexahn Common Stock on Nasdaq.

The Merger Agreement contains certain termination rights for both Rexahn and Ocuphire, and further provides that, upon termination of the Merger Agreement under specified circumstances, either party may be required to pay the other party a termination fee of \$750,000 or, in some circumstances, Ocuphire may be required to reimburse Rexahn's expenses up to a maximum of \$750,000.

Immediately after the Effective Time, the Board of Directors of Rexahn is expected to be comprised of seven members, one of whom is expected to be Richard J. Rodgers, a current member of the Rexahn board of directors, and the remaining six directors are expected to include existing Ocuphire board members and an additional director designated by Ocuphire. Following the Closing, Mina Sooch is expected to serve as Rexahn's President and Chief Executive Officer. Also at the Effective Time, Rexahn expects to effect a name change to "Ocuphire Pharma, Inc." and it is anticipated that Rexahn's securities will be listed for trading on The Nasdaq Capital Market under the symbol "OCUP."

The Merger Agreement contains customary representations, warranties and covenants made by Rexahn and Ocuphire, including covenants relating to obtaining the requisite approvals of the stockholders of Rexahn and Ocuphire, indemnification of directors and officers, and Rexahn's and Ocuphire's conduct of their respective businesses between the date of signing of the Merger Agreement and the Closing.

Contingent Value Rights Agreement

At the Effective Time, Rexahn, Shareholder Representative Services LLC, as representative of the Rexahn stockholders prior to the Effective Time (the "CVR Representative"), and Olde Monmouth Stock Transfer Co., Inc., as the Rights Agent, will enter into a Contingent Value Rights Agreement (the "CVR Agreement").

Pursuant to the Merger Agreement and the CVR Agreement, Rexahn stockholders of record as of immediately prior to the Effective Time will receive one contingent value right ("CVR") for each share of Rexahn Common Stock held.

Each CVR will entitle such holders to receive, for each calendar quarter (each, a "CVR Payment Period") during the 15-year period after the Closing (the "CVR Term"), an amount equal to the following:

- 90% of all payments received by Rexahn or its affiliates during such CVR Payment Period from or on behalf of BioSense Global LLC (“BioSense”) pursuant to that certain License and Assignment Agreement, dated as of February 25, 2019, by and between BioSense and Rexahn, as amended by Amendment No. 1, dated August 24, 2019, and as further amended by Amendment No. 2, dated March 10, 2020, minus certain permitted deductions;
- 90% of all payments received by Rexahn or its affiliates during such CVR Payment Period from or on behalf of Zhejiang HaiChang Biotechnology Co., Ltd. (“HaiChang”) pursuant to that certain Exclusive License Agreement, dated as of February 8, 2020, by and between HaiChang and Rexahn, minus certain permitted deductions; and
- 75% of the sum of (i) all cash consideration paid by a third party to Rexahn or its affiliates during the applicable CVR Payment Period in connection with the grant, sale or transfer of rights to Rexahn’s pre-Closing intellectual property (other than a grant, sale or transfer of rights involving a sale or disposition of the post-Merger combined company) that is entered into during the 10-year period after the Closing (“Parent IP Deal”), plus (ii) with respect to any non-cash consideration received by Rexahn or its affiliates from a third party during the applicable CVR Payment Period in connection with any Parent IP Deal, all amounts received by Rexahn and its affiliates for such non-cash consideration at the time such non-cash consideration is monetized by Rexahn or its affiliates, minus (iii) certain permitted deductions.

The CVRs are not transferable, except in certain limited circumstances, will not be certificated or evidenced by any instrument, will not accrue interest and will not be registered with the SEC or listed for trading on any exchange. The CVR Agreement will be effective prior to the Closing and will continue in effect until the later of the end of the CVR Term and the payment of all amounts payable thereunder, unless and until earlier terminated upon termination of the Merger Agreement.

Voting Agreements

Concurrently with the execution of the Merger Agreement, certain officers, directors and stockholders of Ocuphire entered into voting agreements with Rexahn and Ocuphire covering approximately 62.6% of the outstanding capital stock of Ocuphire as of the date of the Merger Agreement (the “Ocuphire Voting Agreements”). The Ocuphire Voting Agreements provide, among other things, that the directors, officers and stockholders party to the Ocuphire Voting Agreements will vote all of the shares of Ocuphire held by them in favor of the adoption of the Merger Agreement, the approval of the Merger and the other transactions contemplated by the Merger Agreement and against any competing acquisition proposals. The Ocuphire Voting Agreements also place certain restrictions on the transfer of the shares of Ocuphire held by the respective signatories thereto.

Lock-Up Agreements

Concurrently with the execution of the Merger Agreement, the executive officers and directors of Rexahn and the officers, directors and certain securityholders of Ocuphire entered into lock-up agreements (the “Lock-Up Agreements”), pursuant to which they accepted certain restrictions on transfers of any shares of Rexahn Common Stock for the 180-day period following the Effective Time.

The foregoing descriptions of the Merger Agreement, the CVR Agreement, the Ocuphire Voting Agreements, and the Lock-Up Agreements (collectively, the “Merger Transaction Agreements”) are not complete and are subject to, and qualified in their entirety by, the full text of those agreements, which are attached hereto as Exhibits 2.1, 10.1, 10.2 and 10.3, respectively, and incorporated herein by reference.

The Merger Transaction Agreements (and the foregoing description of the Merger Transaction Agreements and the transactions contemplated thereby) have been included to provide investors and stockholders with information regarding the terms of the Merger Transaction Agreements and the transactions contemplated thereby. They are not intended to provide any other factual information about Rexahn or Ocuphire or to modify or supplement any factual disclosures about Rexahn in its public reports filed with the SEC. The representations, warranties and covenants contained in the Merger Transaction Agreements were made only as of specified dates for the purposes of the Merger Transaction Agreements, were solely for the benefit of the parties to the Merger Transaction Agreements and may be subject to qualifications and limitations agreed upon by such parties. In particular, in reviewing the representations, warranties and covenants contained in the Merger Transaction Agreements, it is important to bear in mind that such representations, warranties and covenants were negotiated with the principal purpose of allocating risk between the parties, rather than establishing matters as facts. Such representations, warranties and covenants may also be subject to a contractual standard of materiality different from those generally applicable to stockholders and reports and documents filed with the SEC. Investors and stockholders are not third-party beneficiaries under the Merger Transaction Agreements. Accordingly, investors and stockholders should not rely on such representations, warranties and covenants as characterizations of the actual state of facts or circumstances described therein. Information concerning the subject matter of such representations, warranties and covenants may change after the date of the Merger Transaction Agreements, which subsequent information may or may not be fully reflected in the parties' public disclosures.

Pre-Merger Financing

Securities Purchase Agreement

On June 17, 2020, Ocuphire, Rexahn and certain investors (the "Investors") entered into a Securities Purchase Agreement (the "Securities Purchase Agreement"), pursuant to which, among other things, the Investors agreed to invest a total of \$21.15 million in cash (the "Purchase Price" and the financing arrangement described herein, the "Pre-Merger Financing") to fund the combined company following the Merger. In return, based on an agreed upon pre-money valuation of the combined company following the Merger (the "combined company") of \$120 million, Ocuphire will issue an amount of shares (the "Initial Shares") of Ocuphire common stock, par value \$0.0001 (the "Ocuphire Common Stock") to the Investors, which shares will be exchangeable in the Merger for approximately 15% of the Pre-Merger Financing Fully Diluted Shares (as defined below). In addition, (i) Ocuphire will deposit two times the number of Initial Shares of Ocuphire Common Stock (the "Additional Shares", and together with the Initial Shares the "Pre-Merger Financing Shares") into escrow with an escrow agent for the benefit of the Investors, to be exchanged for Rexahn Common Stock in the Merger, and to be delivered, in whole or in part, based on the formula set forth below, out of escrow to the Investors if 85% of the average of the five lowest volume-weighted average trading prices of a share of Rexahn Common Stock on Nasdaq during the first ten trading days (or earlier at the election of any Investor) immediately following the closing date of the Pre-Merger Financing (which closing date will be the same date as the Closing of the Merger) is lower than the effective price per share paid by the Investors for the Converted Initial Shares (as defined below), and (ii) on the tenth trading day following the closing date of the Pre-Merger Financing (the "warrant closing date"), Rexahn will issue to the Investors (x) Series A warrants to purchase shares of Rexahn Common Stock, as further described below (the "Series A Warrants") and (y) Series B warrants to purchase shares of Rexahn Common Stock, as further described below (the "Series B Warrants", together with the Series A Warrants, the "Investor Warrants" and, together with the Pre-Merger Financing Shares, the "Purchased Securities").

"Pre-Merger Financing Fully Diluted Shares" means the "fully-diluted" post-Merger outstanding shares of Rexahn Common Stock, which amount (i) includes all shares of Rexahn Common Stock that may be issued pursuant to in-the-money options, warrants or convertible securities, and (ii) with respect to new Rexahn warrants issued after the execution of the Securities Purchase Agreement in exchange for existing Rexahn warrants shall include (A) all shares of Rexahn Common Stock that are subject to each new Rexahn warrant that is in-the-money as of the date of issuance of such new Rexahn warrant and (B) 0.5 times the number of shares of Rexahn Common Stock that may be issued pursuant to such out-of-the-money new Rexahn warrant that is out-of-the-money as determined based on the closing sale price of Rexahn Common Stock immediately following the issuance of such Rexahn warrant, and (iii) excludes all other out-of-the-money options, warrants or convertible securities of Rexahn.

As a result of the Merger, at the Effective Time, each Initial Share will automatically be converted into the right to receive a number of shares (the “Converted Initial Shares”) of Rexahn Common Stock equal to the number of Initial Shares multiplied by the Exchange Ratio. Further, at the Effective Time, each Additional Share placed into escrow with the escrow agent will automatically be converted into the right to receive a number of shares (the “Converted Additional Shares”) of Rexahn Common Stock equal to the number of Additional Shares multiplied by the Exchange Ratio. The number of Converted Additional Shares deliverable out of escrow to each Investor will be determined on or prior to the warrant closing date by subtracting (i) the number of Converted Initial Shares issued to the Investor from (ii) the quotient determined by dividing (a) the pro rata portion of the Purchase Price paid by the Investor by (b) 85% of the average of the five lowest volume-weighted average trading prices of a share of Rexahn Common Stock on Nasdaq during the first ten trading days (or earlier at the election of any Investor) immediately following the Closing of the Merger, subject to the Floor Price (as defined below). Any Converted Additional Shares not deliverable to the Investors as of the warrant closing date based on the foregoing formula will be returned to Rexahn as treasury shares and cancelled. No Converted Additional Shares will be deliverable out of escrow if the foregoing formula results in a negative number. The lower of (x) the effective initial purchase price per Converted Initial Share and (y) the number obtained by the formula in clause (b) above, subject to the Floor Price, is called the “Final Purchase Price.” Notwithstanding the foregoing, no Converted Additional Shares will be delivered to Investors from escrow to the extent such delivery would result in such Investor, together with its affiliates and any other person whose beneficial ownership of Rexahn Common Stock would be aggregated with such Investor for purposes of Section 13(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), beneficially owning in excess of 4.99% or 9.99% of the outstanding Rexahn Common Stock (including the Converted Additional Shares so delivered). In the event that Rexahn fails to timely deliver any of the Converted Initial Shares or Converted Additional Shares then Rexahn shall be obligated to pay the affected Investor on each day while such failure is continuing an amount equal to 1.5% of the market value of the undelivered shares determined using any trading price of Rexahn Common Stock selected by the holder while the failure is continuing and if an affected Investor purchases shares of Rexahn Common Stock in connection with such failure (“Buy-In Shares”), then Rexahn must, at such Investor’s discretion, reimburse such Investor for the cost of such Buy-In Shares or deliver the owed shares and reimburse the Investor for the difference between the price such Investor paid for the Buy-In Shares and the market price of such shares, measured at any time of such Investor’s choosing while the delivery failure was continuing.

Pursuant to the Securities Purchase Agreement, at any time during the period commencing from the six month anniversary of the closing date of the Pre-Merger Financing and ending at such time that all of the shares of Rexahn Common Stock issued or issuable in the Pre-Merger Financing, if a registration statement is not available for the resale of such shares, may be sold without restriction or limitation pursuant to Rule 144 of the Securities Act of 1933, as amended (the “Securities Act”) and without the requirement to be in compliance with Rule 144(c)(1), if Rexahn (i) shall fail for any reason to satisfy the requirements of Rule 144(c)(1) under the Securities Act, including, without limitation, the failure to satisfy the current public information requirements under Rule 144(c) under the Securities Act or (ii) has ever been an issuer described in Rule 144(i)(1)(i) under the Securities Act or becomes such an issuer in the future, and Rexahn shall fail to satisfy any condition set forth in Rule 144(i)(2) under the Securities Act (each, a “Public Information Failure”), then Rexahn shall pay to each holder of Purchased Securities an amount in cash equal to 2.0% of such holder’s pro rata portion of the Purchase Price on the day of such Public Information Failure and on every thirtieth day thereafter until the earlier of (i) the date such Public Information Failure is cured and (ii) such time that such Public Information Failure no longer prevents a holder of Purchased Securities from selling such Purchased Securities pursuant to Rule 144 under the Securities Act without any restrictions or limitations.

The Securities Purchase Agreement contains customary representations and warranties of Ocuphire, Rexahn and the Investors. Each party’s obligation to consummate the transactions contemplated by the Securities Purchase Agreement is subject to the satisfaction or waiver of certain conditions, including the satisfaction or waiver of each of the conditions precedent to the closing of the Merger contained in the Merger Agreement, other than any conditions precedent relating to consummation of the Pre-Merger Financing.

The Securities Purchase Agreement restricts Rexahn from filing a registration statement or any amendment or supplement thereto, causing any registration statement to be declared effective by the SEC, or granting any registration rights, in each case subject to certain limited exceptions, until the date that is 90 days after the earlier of (i) such time as all of the shares of Rexahn Common Stock issued or issuable in the Pre-Merger Financing may be sold without restriction or limitation pursuant to Rule 144 and without the requirement to be in compliance with Rule 144(c)(1) (the “Rule 144 Date”), (ii) the one year anniversary of the closing date of the Pre-Merger Financing, and (iii) the date that the first registration statement registering for resale shares of Rexahn Common Stock issued or issuable in the Pre-Merger Financing has been declared effective by the SEC; provided, that clause (iii) shall only apply if there are no shares held by the Investors left unregistered due to a limitation on the maximum number of shares of Rexahn Common Stock permitted to be registered by the staff of the SEC pursuant to Rule 415 under the Securities Act.

Pursuant to the Securities Purchase Agreement, until the date that is the later of (i) 180 calendar days following the closing date of the Pre-Merger Financing and (ii) the earlier of (A) 60 calendar days following the date that all Registrable Securities (as defined below) are registered for resale pursuant to one or more registration statement(s) and (B) 240 calendar days following the closing of the Pre-Merger Financing, subject to certain exceptions, neither Ocuphire nor Rexahn may (i) offer, sell, grant any option to purchase, or otherwise dispose of any of its or its subsidiaries' debt, equity or equity equivalent securities (any such offer, sale, grant, disposition or announcement being referred to as a "Subsequent Placement"), or (ii) be party to any solicitations, negotiations or discussions with regard to the foregoing.

Additionally, for one year following the closing of the Pre-Merger Financing, Ocuphire, Rexahn and each of their subsidiaries shall be prohibited from effecting or entering into an agreement to effect any Subsequent Placement involving a transaction in which Ocuphire, Rexahn or any of their subsidiaries (i) issues or sells any stock or securities convertible into or exercisable or exchangeable for Ocuphire Common Stock or Rexahn Common Stock ("Convertible Securities") either (a) at a conversion, exercise or exchange rate or other price that is based upon and/or varies with the trading prices of or quotations for the shares of Ocuphire Common Stock or Rexahn Common Stock at any time after the initial issuance of such Convertible Securities, or (b) with a conversion, exercise or exchange price that is subject to being reset at some future date after the initial issuance of such Convertible Securities or upon the occurrence of specified or contingent events directly or indirectly related to the business of Ocuphire or Rexahn or the market for Ocuphire Common Stock or Rexahn Common Stock, other than pursuant to a customary "weighted average" anti-dilution provision or (ii) enters into any agreement (including, without limitation, an equity line of credit or an "at-the-market" offering) whereby Ocuphire, Rexahn or any of their subsidiaries may sell securities at a future determined price (other than standard and customary "preemptive" or "participation" rights); provided, that Rexahn will be permitted to consummate "at the market" offerings at any time after the later of (x) the date that is nine (9) months after the closing date of the Pre-Merger Financing and (y) ninety (90) days following the date the shares of Rexahn Common Stock issued and issuable in the Pre-Merger Financing are freely tradable.

The Securities Purchase Agreement may be amended only by an instrument in writing signed by Ocuphire, Rexahn and the Required Holders (as defined below). No provision of the Securities Purchase Agreement may be waived other than by an instrument in writing signed by the party against whom enforcement is sought. "Required Holders" means (i) prior to the closing date of the Pre-Merger Financing, the Investors entitled to purchase at the closing a majority of the aggregate amount of Initial Common Shares issuable under the Securities Purchase Agreement and the aggregate amount of shares issuable under the Investor Warrants (without regard to any restriction or limitation on the exercise of the Investor Warrant contained therein) and shall include the Lead Investor (as defined in the Securities Purchase Agreement) and (ii) on or after the closing of the Pre-Merger Financing, holders of at least a majority of the aggregate amount of Purchased Securities issued and issuable under the Securities Purchase Agreement and under the Investor Warrants (without regard to any restriction or limitation on the exercise of the Investor Warrants or the delivery of the Converted Additional Shares contained therein) held by the Investors or their successors and assigns as of the applicable time of determination and shall include the Lead Investor so long as the Lead Investor or any of its affiliates holds any Purchased Securities.

Upon written notice by the non-breaching party, the Securities Purchase Agreement may be terminated and the sale and purchase of the Purchased Securities abandoned if the closing of the Pre-Merger Financing has not occurred on or before November 14, 2020, due to any party's failure to satisfy the conditions to closing. The Securities Purchase Agreement will terminate automatically upon any termination of the Merger Agreement.

Series A Warrants

The Series A Warrants will be issued on the warrant closing date, will have an initial exercise price per share equal to 120% of per share Final Purchase Price, will be immediately exercisable and will have a term of five years from the date of issuance. The Series A Warrants issued to each Investor will initially be exercisable for an amount of Rexahn Common Stock equal to the sum of (i) the number of Converted Initial Shares issued to the Investor, (ii) the number of Converted Additional Shares delivered or deliverable to the Investor as of the warrant closing date and (iii) the number of shares, if any, underlying the Series B Warrants held by the Investor as of the warrant closing date.

The Series A Warrants will provide that, until the second anniversary of the date on which all shares of Rexahn Common Stock issued to the Investors (including any shares underlying Investor Warrants) are registered on one or more registration statements, if Rexahn publicly announces, issues or sells, enters into a definitive, binding agreement pursuant to which Rexahn is required to issue or sell or is deemed, pursuant to the provisions of the Series A Warrants, to have issued or sold, any shares of Rexahn Common Stock for a price per share lower than the exercise price then in effect, subject to certain limited exceptions, then the exercise price of the Series A Warrants shall be reduced to such lower price per share. Further, on each Reset Date (as defined below) the Series A Warrants will be adjusted downward (but not increased) such that the exercise price thereof becomes 120% of the Reset Price (as defined below), and the number of shares underlying the Series A Warrants will be increased (but not decreased) to the quotient of (a) (i) the exercise price in effect prior to such Reset (as defined below) multiplied by (ii) the number of shares underlying the Series A Warrants prior to the Reset divided by (b) the exercise price resulting from the Reset. In addition, the exercise price and the number of shares of Rexahn Common Stock issuable upon exercise of the Series A Warrants will also be subject to adjustment in the event of any stock splits, dividends or distributions or other similar transactions.

Pursuant to the Series A Warrants, Rexahn will agree not to enter into, allow or be party to certain fundamental transactions, generally including any merger with or into another entity, sale of all or substantially all of Rexahn's assets, tender offer or exchange offer, or reclassification of Rexahn Common Stock (a "Fundamental Transaction") until the 45th trading day immediately following the earlier to occur of (x) the Rule 144 Date and (y) one year after the warrant closing date (the "Reservation Date"). Thereafter, upon any exercise of a Series A Warrant, the holder shall have the right to receive, for each warrant share that would have been issuable upon such exercise immediately prior to the occurrence of a Fundamental Transaction, at the option of the holder (without regard to any limitation on the exercise of the Series A Warrant), the number of shares of common stock of the successor or acquiring corporation or of Rexahn, if it is the surviving corporation, and any additional consideration (the "Alternate Consideration") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Rexahn Common Stock for which the Series A Warrant is exercisable immediately prior to such Fundamental Transaction (without regard to any limitation on the exercise of the Series A Warrant). Additionally, at the request of a holder delivered before the 90th day after the consummation of a Fundamental Transaction, Rexahn or the surviving entity must purchase such holder's warrant for the value calculated using the Black-Scholes option pricing model as of the day immediately following the public announcement of the applicable contemplated Fundamental Transaction, or, if such Fundamental Transaction is not publicly announced, the date the Fundamental Transaction is consummated.

The Series A Warrants will also contain a "cashless exercise" feature that allows the holders to exercise the Series A Warrants without making a cash payment in the event that there is no effective registration statement registering the shares issuable upon exercise of the Series A Warrants. The Series A Warrants will be subject to a blocker provision which restricts the exercise of the Series A Warrants if, as a result of such exercise, the holder, together with its affiliates and any other person whose beneficial ownership of Rexahn Common Stock would be aggregated with the holder's for purposes of Section 13(d) of the Exchange Act would beneficially own in excess of 4.99% or 9.99% of the outstanding Rexahn Common Stock (including the shares of Rexahn Common Stock issuable upon such exercise).

If Rexahn fails to issue to a holder of Series A Warrants the number of shares of Rexahn Common Stock to which such holder is entitled upon such holder's exercise of the Series A Warrants, then Rexahn shall be obligated to pay the holder on each day while such failure is continuing an amount equal to 1.5% of the market value of the undelivered shares determined using a trading price of Rexahn Common Stock selected by the holder while the failure is continuing and if the holder purchases shares of Rexahn Common Stock in connection with such failure ("Series A Buy-In Shares"), then Rexahn must, at the holder's discretion, reimburse the holder for the cost of such Series A Buy-In Shares or deliver the owed shares and reimburse the holder for the difference between the price such holder paid for the Series A Buy-In Shares and the market price of such shares, measured at any time of the holder's choosing while the delivery failure was continuing.

Further, the Series A Warrants will provide that, in the event that Rexahn does not have sufficient authorized shares to deliver in satisfaction of an exercise of a Series A Warrant, then unless the holder elects to void such attempted exercise, the holder may require Rexahn to pay an amount equal to the product of (i) the number of shares that Rexahn is unable to deliver and (ii) the highest volume-weighted average price of a share of Rexahn Common Stock as quoted on Nasdaq during the period beginning on the date of such attempted exercise and ending on the date that Rexahn makes the applicable payment.

Series B Warrants

The Series B Warrants will be issued to each Investor on the warrant closing date, and each Investor's Series B Warrants will have an exercise price per share of \$0.0001, will be immediately exercisable and will expire on the day following the later to occur of (i) the Reservation Date, and (ii) the date on which the Investor's Series B Warrants have been exercised in full (without giving effect to any limitation on exercise contained therein) and no shares remain issuable thereunder. Each Investor's Series B Warrants will be initially exercisable for an amount of Rexahn Common Stock equal to the number (if positive) obtained by subtracting (i) the sum of (a) the number of Converted Initial Shares issued to the Investor and (b) the number of Converted Additional Shares delivered or deliverable to the Investor as of the warrant closing date, from (ii) the quotient determined by dividing (a) the pro rata portion of the Purchase Price paid by the Investor by (b) 85% of the average of the five lowest volume-weighted average trading prices of a share of Rexahn Common Stock on Nasdaq during the first ten trading days (or earlier at the election of any Investor) immediately following the Closing of the Merger, subject to the Floor Price.

Additionally, every ninth trading day up to and including the 45th trading day (each, a "Reset Date") following (i) each date on which a registration statement registering any Registrable Securities for resale by the holder is declared effective by the SEC and/or is available for use, (ii) if there is no effective Registration Statement that is available for use registering all of the shares underlying the Series B Warrant for resale by the holder, on the earlier date to occur of (x) the Rule 144 Date and (y) six months following the issuance date (such earlier date, the "Six Month Reset Date") and (iii) if a Public Information Failure has occurred at any time following the Six Month Reset Date, the earlier to occur of (x) the date that such Public Information Failure is cured and no longer prevents the holder from selling all underlying securities pursuant to Rule 144 without restriction or limitation and (y) the earlier to occur of (I) the Rule 144 Date and (II) one year after the issuance date (each such date provided in the foregoing clauses (i), (ii) and (iii), an "End Reset Measuring Date") (such 45 trading day period, the "Reset Period" and each such 45th trading day after an End Reset Measuring Date, an "End Reset Date"), the number of shares issuable upon exercise of each Investor's Series B Warrants shall be increased (a "Reset") to the number (if positive) obtained by subtracting (i) the sum of (a) the number of Converted Initial Shares issued to the Investor and (b) the number of Converted Additional Shares delivered or deliverable to the Investor as of the warrant closing date, from (ii) the quotient determined by dividing (a) the pro rata portion of the Purchase Price paid by the Investor, by (b) the greater of (x) the arithmetic average of the five lowest dollar volume-weighted average prices of a share of Rexahn Common Stock on Nasdaq during the applicable Reset Period immediately preceding the applicable Reset Date to date and (y) a floor price per share (the "Floor Price") calculated based on a pre-money valuation (of the combined company, assuming for this purpose the pre-money issuance of the Converted Initial Shares and Converted Additional Shares) of \$10 million (such number resulting in this clause (b), the "Reset Price").

Pursuant to the Series B Warrants, Rexahn will agree not to enter into, allow or be party to a Fundamental Transaction until the Reservation Date. Thereafter, upon any exercise of a Series B Warrant, the holder shall have the right to receive, for each warrant share that would have been issuable upon such exercise immediately prior to the occurrence of a Fundamental Transaction, at the option of the holder (without regard to any limitation on the exercise of the Series B Warrant), the number of shares of common stock of the successor or acquiring corporation or of Rexahn, if it is the surviving corporation, and any Alternate Consideration receivable as a result of such Fundamental Transaction by a holder of the number of shares of Rexahn Common Stock for which the Series B Warrant is exercisable immediately prior to such Fundamental Transaction (without regard to any limitation on the exercise of the Series B Warrant).

The Series B Warrants will also contain a "cashless exercise" feature that allows the holders to exercise the Series B Warrants without making a cash payment. The Series B Warrants will be subject to a blocker provision which restricts the exercise of the Series B Warrants if, as a result of such exercise, the holder, together with its affiliates and any other person whose beneficial ownership of Rexahn Common Stock would be aggregated with the holder's for purposes of Section 13(d) of the Exchange Act would beneficially own in excess of 4.99% or 9.99% of the outstanding Rexahn Common Stock (including the shares of Rexahn Common Stock issuable upon such exercise).

If Rexahn fails to issue to a holder of Series B Warrants the number of shares of Rexahn Common Stock to which such holder is entitled upon such holder's exercise of the Series B Warrants, then Rexahn shall be obligated to pay the holder on each day while such failure is continuing an amount equal to 1.5% of the market value of the undelivered shares determined using a trading price of Rexahn Common Stock selected by the holder while the failure is continuing and if the holder purchases shares of Rexahn Common Stock in connection with such failure ("Series B Buy-In Shares"), then Rexahn must, at the holder's discretion, reimburse the holder for the cost of such Series B Buy-In Shares or deliver the owed shares and reimburse the holder for the difference between the price such holder paid for the Series B Buy-In Shares and the market price of such shares, measured at any time of the holder's choosing while the delivery failure was continuing.

Further, the Series B Warrants will provide that, in the event that Rexahn does not have sufficient authorized shares to deliver in satisfaction of an exercise of a Series B Warrant, then unless the holder elects to void such attempted exercise, the holder may require Rexahn to pay an amount equal to the product of (i) the number of shares that Rexahn is unable to deliver and (ii) the highest volume-weighted average price of a share of Rexahn Common Stock as quoted on Nasdaq during the period beginning on the date of such attempted exercise and ending on the date that Rexahn makes the applicable payment.

Registration Rights Agreement

In connection with the Pre-Merger Financing, Rexahn entered into a Registration Rights Agreement with the Investors (the "Registration Rights Agreement"). Pursuant to the Registration Rights Agreement, Rexahn is required to file an initial resale registration statement with respect to 135% of the maximum number of shares of Rexahn Common Stock held by or issuable to the Investors pursuant to the Series A Warrants and 100% of the maximum number of shares of Rexahn Common Stock held by or issuable to the Investors pursuant to the Series B Warrants (the "Registrable Securities"), within 15 trading days after the Closing Date. Additionally, Rexahn is required to file additional resale registration statements with respect to the Registrable Securities within 15 days of each End Reset Date, to the extent that such Registrable Securities are not already registered for resale on a prior registration statement. Rexahn will be required to use its commercially reasonable efforts to maintain the effectiveness of these registration statements until the earlier of (i) the date as of which the Investors may sell all of the Registrable Securities covered by the applicable registration statement(s) without restriction or limitation pursuant to Rule 144 and without the requirement to be in compliance with Rule 144(c)(1) (or any successor thereto) or (ii) the date on which the Investors have sold all of the Registrable Securities covered by the applicable registration statement(s).

Subject to a limited exception, if Rexahn fails to file and obtain and maintain effectiveness of the resale registration statements required under the Registration Rights Agreement or fails, subject to limited grace periods, to maintain the effectiveness of the resale registration statements, then Rexahn shall be obligated to pay to each affected holder of Registrable Securities an amount equal to 1.0% of the aggregate Purchase Price of such Investor's Registrable Securities whether or not included in such registration statement on each of the day of such failure and on every thirtieth day thereafter (pro-rated for periods of less than 30 days) until the date such failure is cured, provided that the aggregate of all such payments will not exceed 5.0% of the aggregate Purchase Price for the Investor's Registrable Securities.

These registration rights granted under the Registration Rights Agreement are subject to certain conditions and limitations, including Rexahn's right to delay or withdraw a registration statement under certain circumstances. The registration rights granted in the Registration Rights Agreement are subject to customary indemnification and contribution provisions.

Financing Lock-Up Agreements

In connection with the Pre-Merger Financing, Rexahn and Ocuphire will enter into additional lock-up agreements (the “Financing Lock-Up Agreements”) with each officer, director or other person that will be subject to Section 16 of the Exchange Act, with respect to Rexahn immediately following the Closing (the “Financing Lock-Up Parties”), pursuant to which each of the Financing Lock-Up Parties will agree that until the date that is 90 calendar days after the earliest of (i) the date on which all Rexahn shares issued to the Investors (including any shares underlying warrants) are registered on one or more registration statements, (ii) such time as all of the Registrable Securities may be sold without restriction or limitation pursuant to Rule 144 and without the requirement to be in compliance with Rule 144(c)(1), (iii) the one (1) year anniversary of the Closing Date, subject to certain customary exceptions, such Financing Lock-Up Party will not and will cause its affiliates not to (A) sell, offer to sell, contract or agree to sell, hypothecate, pledge, grant any option to purchase, make any short sale or otherwise dispose of or agree to dispose of, directly or indirectly, any shares of Rexahn Common Stock or common stock equivalents, or establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Exchange Act with respect to any shares of Rexahn Common Stock or common stock equivalents owned directly by the Financing Lock-Up Parties (including holding as a custodian) or with respect to which the undersigned has beneficial ownership within the rules and regulations of the SEC (collectively, the “Subject Shares”), or (B) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any of the Subject Shares, whether any such transaction described in clause (A) or (B) above is to be settled by delivery of shares of Rexahn Common Stock or other securities, in cash or otherwise, (C) make any demand for or exercise any right or cause to be filed a registration statement, including any amendments thereto, with respect to the registration of any shares of Rexahn Common Stock or common stock equivalents or (D) publicly disclose the intention to do any of the foregoing.

Leak-Out Agreements

In connection with the Pre-Merger Financing, each Investor will enter into a leak-out agreement with Rexahn (collectively, the “Leak-Out Agreements”) limiting its daily sales to no more than its pro rata portion, based on such Investor’s investment amount, of 30% of the daily traded volume as reported by Bloomberg, LP.

The above summaries of the Securities Purchase Agreement, the Registration Rights Agreement, the Series A Warrant, the Series B Warrant, the Financing Lock-Up Agreements and the Leak-Out Agreements do not purport to be complete and are qualified in their entirety to the full text of each such agreement, which agreements are filed as Exhibits 10.4, 4.1, 4.2, 10.5 and 10.6 to this Current Report on Form 8-K and are qualified herein by this reference.

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

The Merger Agreement contemplates that Rexahn will terminate the employment of Douglas J. Swirsky, Rexahn’s President and Chief Executive Officer, effective immediately after the Effective Time, and will comply with the terms of that certain Employment Agreement, dated as of January 2, 2018, by and between Rexahn and Mr. Swirsky, as amended on November 14, 2018 (the “Swirsky Employment Agreement”). The Swirsky Employment Agreement entitles Mr. Swirsky to certain severance amounts and other benefits if Mr. Swirsky’s employment is terminated by Rexahn without Cause (as defined in the Swirsky Employment Agreement) and such termination date falls within the two-year period immediately following a Change of Control (as defined in the Swirsky Employment Agreement).

In accordance with the Merger Agreement, on June 17, 2020, the Board approved the termination of Mr. Swirsky’s employment with Rexahn, effective as of immediately following the Effective Time, as a result of which Mr. Swirsky will be entitled to the severance amounts and other benefits afforded Mr. Swirsky in connection with a termination of Mr. Swirsky’s employment by Rexahn without Cause within the two-year period immediately following a Change of Control pursuant to Section 8(c) of the Swirsky Employment Agreement, subject to Mr. Swirsky’s execution of a general release in favor of Rexahn. The termination of Mr. Swirsky’s employment is subject to and conditioned upon the closing of the Merger at the Effective Time, and therefore Mr. Swirsky shall not be terminated if the Merger is not consummated or the Merger Agreement is terminated prior to the Effective Time.

Item 8.01 Other Events.

Attached as Exhibit 99.1 is a copy of the joint press release issued by Rexahn and Ocuphire on June 17, 2020 announcing the execution of the Merger Agreement and the Securities Purchase Agreement.

Forward-Looking Statements

This communication contains forward-looking statements (including within the meaning of Section 21E of the Exchange Act and Section 27A of the Securities Act of 1933, as amended) concerning Rexahn, Ocuphire, the proposed Merger, the CVR Agreement, the Pre-Merger Financing and other matters, including without limitation, statements relating to the satisfaction of the conditions to and consummation of the Merger, the expected timing of the Closing, the expected ownership percentages of the combined company and Rexahn's estimates of its expected net cash at Closing. These statements may discuss goals, intentions and expectations as to future plans, trends, events, results of operations or financial condition, or otherwise, based on current beliefs of the management of Rexahn, as well as assumptions made by, and information currently available to, management. Forward-looking statements generally include statements that are predictive in nature and depend upon or refer to future events or conditions, and include words such as "may," "will," "should," "would," "expect," "anticipate," "plan," "likely," "believe," "estimate," "project," "intend," and other similar expressions. Statements that are not historical facts are forward-looking statements. Forward-looking statements are based on current beliefs and assumptions that are subject to risks and uncertainties and are not guarantees of future performance. Actual results could differ materially from those contained in any forward-looking statement as a result of various factors, including, without limitation: the risk that the conditions to the Closing are not satisfied, including the failure to obtain stockholder approval for the proposed Merger in a timely manner or at all; uncertainties as to the timing of the consummation of the proposed Merger and the ability of each of Rexahn and Ocuphire to consummate the Merger; risks related to Rexahn's ability to correctly estimate its expected net cash at Closing and estimate and manage its operating expenses and its expenses associated with the proposed Merger pending Closing; risks related to the calculation of the estimated warrant liability of Rexahn's net cash amount being impacted by the volatility and trading price of a share of Rexahn Common Stock on Nasdaq on the calculation date and its impact on Rexahn's expected net cash at Closing; Rexahn's ability to meet the minimum net cash requirement at Closing; risks related to Rexahn's continued listing on the Nasdaq Capital Market until Closing of the proposed Merger; risks related to the failure or delay in obtaining required approvals from any governmental or quasi-governmental entity necessary to consummate the proposed Merger; the risk that as a result of adjustments to the Exchange Ratio, Rexahn stockholders or Ocuphire stockholders could own more or less of the combined company than is currently anticipated; risks related to the market price of Rexahn Common Stock relative to the Exchange Ratio; the risk that the conditions to payment under the CVRs will be not be met and that the CVRs may otherwise never deliver any value to Rexahn stockholders; risks associated with the possible failure to realize certain anticipated benefits of the proposed Merger, including with respect to future financial and operating results; the ability of Rexahn or Ocuphire to protect their respective intellectual property rights; competitive responses to the Merger and changes in expected or existing competition; unexpected costs, charges or expenses resulting from the proposed Merger; potential adverse reactions or changes to business relationships resulting from the announcement or completion of the proposed Merger; the success and timing of regulatory submissions and pre-clinical and clinical trials; regulatory requirements or developments; changes to clinical trial designs and regulatory pathways; changes in capital resource requirements; risks related to the inability of the combined company to obtain sufficient additional capital to continue to advance its product candidates and its preclinical programs; legislative, regulatory, political and economic developments; and the effects of COVID-19 on clinical programs and business operations. The foregoing review of important factors that could cause actual events to differ from expectations should not be construed as exhaustive and should be read in conjunction with statements that are included herein and elsewhere, including the risk factors included in Rexahn's most recent Annual Report on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K filed with the SEC. Rexahn can give no assurance that the conditions to the Merger will be satisfied. You should not place undue reliance on these forward-looking statements, which are made only as of the date hereof or as of the dates indicated in the forward-looking statements. Except as required by applicable law, Rexahn undertakes no obligation to revise or update any forward-looking statement, or to make any other forward-looking statements, whether as a result of new information, future events or otherwise.

Important Additional Information Will be Filed with the SEC

In connection with the proposed Merger, Rexahn intends to file relevant materials with the SEC, including a registration statement on Form S-4 that will contain a proxy statement/prospectus/information statement. **INVESTORS AND STOCKHOLDERS OF REXAHN ARE URGED TO READ THESE MATERIALS CAREFULLY AND IN THEIR ENTIRETY WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT REXAHN, THE MERGER AND RELATED MATTERS.** Investors and stockholders will be able to obtain free copies of the proxy statement/prospectus/information statement and other documents filed by Rexahn with the SEC (when they become available) through the website maintained by the SEC at www.sec.gov. In addition, investors and stockholders will be able to obtain free copies of the proxy statement/prospectus/information statement and other documents filed by Rexahn with the SEC by contacting Rexahn by written request to: Rexahn Pharmaceuticals, Inc., 15245 Shady Grove Road, Suite 455, Rockville, Maryland, 20850, Attention: Corporate Secretary. Investors and stockholders are urged to read the proxy statement/prospectus/information statement and the other relevant materials when they become available before making any voting or investment decision with respect to the Merger.

No Offer or Solicitation

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

Participants in the Solicitation

Rexahn and its directors and executive officers and Ocuphire and its directors and executive officers may be deemed to be participants in the solicitation of proxies from the stockholders of Rexahn in connection with the Merger. Information regarding the special interests of these directors and executive officers in the Merger will be included in the proxy statement/prospectus/information statement referred to above. Additional information about Rexahn's directors and executive officers is included in Rexahn's Annual Report on Form 10-K for the fiscal year ended December 31, 2019, filed with the SEC on February 21, 2020, as amended on April 29, 2020, and in subsequent documents filed with the SEC, including the proxy statement/prospectus/information statement referred to above. Additional information regarding the persons who may be deemed participants in the proxy solicitations and a description of their direct and indirect interests in the proposed Merger, by security holdings or otherwise, will also be included in the proxy statement/prospectus/information statement and other relevant materials to be filed with the SEC when they become available. These documents are available free of charge at the SEC website (www.sec.gov) and from the Corporate Secretary of Rexahn at the address above.

Item 9.01 Financing Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
<u>2.1*</u>	Agreement and Plan of Merger, dated as of June 17, 2020, by and among Rexahn, Merger Sub and Ocuphire.
<u>4.1</u>	Form of Series A/B Warrants.
<u>4.2*</u>	Registration Rights Agreement, dated June 17, 2020, by and among Rexahn and certain investors named therein.
<u>10.1*</u>	Form of CVR Agreement, by and among Rexahn, the CVR Representative, and the Rights Agent.
<u>10.2</u>	Form of Ocuphire Voting Agreement, by and among Ocuphire, Rexahn and certain stockholders of Ocuphire.
<u>10.3</u>	Form of Lock-Up Agreement, by and among Rexahn, Ocuphire and certain stockholders of Rexahn and Ocuphire.
<u>10.4*</u>	Securities Purchase Agreement, dated as of June 17, 2020, by and among Rexahn, Ocuphire and the investors party thereto.
<u>10.5</u>	Form of Financing Lock-Up Agreement, by and among Rexahn, Ocuphire, and the investors party thereto.
<u>10.6</u>	Form of Leak-Out Agreement, by and between Rexahn and the investors party thereto.
<u>99.1</u>	Joint Press Release, dated June 17, 2020, issued by Rexahn and Ocuphire.

* Certain schedules and exhibits have been omitted pursuant to Item 601(a)(5) of Regulation S-K. A copy of any omitted schedule and/or exhibit will be furnished to the SEC upon request.

SIGNATURES

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

REXAHN PHARMACEUTICALS, INC.

Date: June 19, 2020

/s/ Douglas J. Swirsky
Douglas J. Swirsky
President and Chief Executive Officer

**AGREEMENT AND PLAN OF MERGER
AND REORGANIZATION**

among:

**REXAHN PHARMACEUTICALS, INC.,
a Delaware corporation;**

**RAZOR MERGER SUB, INC.,
a Delaware corporation; and**

**OCUPHIRE PHARMA, INC.
a Delaware corporation**

Dated as of June 17, 2020

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Exhibits:

Exhibit A	Definitions
Exhibit B	Form of Company Stockholder Support Agreement
Exhibit C-1	Form of Company Lock-Up Agreement
Exhibit C-2	Form of Parent Lock-Up Agreement
Exhibit D	Form of Contingent Value Right Agreement
Exhibit E	Post-Closing Directors and Officers
Exhibit F	Form of 2020 Plan

AGREEMENT AND PLAN OF MERGER AND REORGANIZATION

THIS AGREEMENT AND PLAN OF MERGER AND REORGANIZATION (this “*Agreement*”) is made and entered into as of June 17, 2020, by and among **REXAHN PHARMACEUTICALS, INC.**, a Delaware corporation (“*Parent*”), **RAZOR MERGER SUB, INC.**, a Delaware corporation and wholly owned subsidiary of Parent (“*Merger Sub*”), and **OCUPHIRE PHARMA, INC.**, 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 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 Parent Stockholder Matters.

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 votes 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 approve the Company Stockholder Matters.

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 in Section A of the Company Disclosure Schedule (solely in their capacity as stockholders of the Company) (the “*Company Signatories*”) are executing (a) support agreements in favor of Parent in substantially the form attached hereto as **Exhibit B** (the “*Company Stockholder Support Agreement*”), pursuant to which the Company Signatories have, subject to the terms and conditions set forth therein, agreed to vote all of their shares of Company Common Stock in favor of the Company Stockholder Matters and against any proposals that compete with the Contemplated Transactions, and (b) lock-up agreements in substantially the form attached hereto as **Exhibit C-1** (the “*Company Lock-Up Agreement*”).

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 Parent listed in Section A of the Parent Disclosure Schedule (solely in their capacity as stockholders of Parent) (the "**Parent Signatories**") are executing lock-up agreements in substantially the form attached hereto as **Exhibit C-2** (the "**Parent Lock-Up Agreement**").

H. It is expected that promptly after the Registration Statement is declared effective under the Securities Act (but in no event later than five (5) Business Days following the effectiveness of the Registration Statement), the Company shall deliver the Company Stockholder Written Consent evidencing the Required Company Stockholder Vote.

I. Prior to the execution and delivery of this Agreement, and as a condition of the willingness of Parent to enter into this Agreement, certain investors have executed one or more Subscription Agreements with the Company pursuant to which such investors have purchased and/or agreed to purchase certain shares of capital stock of the Company prior to the Closing in connection with the Pre-Closing Financing.

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 and in accordance with the DGCL, at the Effective Time, Merger Sub shall be merged with and into the Company, and the separate existence of Merger Sub shall cease. Following the Effective Time, 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, the Certificate of Merger and 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 third (3rd) Business Day following the satisfaction or waiver (to the extent permitted by applicable Law) 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; *provided, however*, that at the Effective Time, Parent shall file an amendment to the Surviving Corporation's certificate of incorporation to (i) change the name of the Surviving Corporation to "OcuSub, Inc." and (ii) make such other changes as are mutually agreed to by Parent and the Company;

(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 an amendment to its certificate of incorporation, to the extent approved by the requisite holders of Parent Common Stock as contemplated by Section 5.3, to (i) change the name of Parent to "Ocuphira Pharma, Inc.", (ii) effect the Nasdaq Reverse Split 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 (except that the name of the Surviving Corporation in such bylaws shall reflect the name identified in Section 1.4(a)), 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 5.11; 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 5.11, after giving effect to the provisions of Section 5.11, or such other persons as shall be mutually agreed upon by Parent and the Company.

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 Common Stock held as treasury stock or held or owned by the Company, Merger Sub or any Subsidiary of the Company 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) and Section 1.9, each share of Company Common Stock outstanding immediately prior to the Effective Time (excluding shares to be canceled pursuant to Section 1.5(a)(i), excluding Dissenting Shares and after giving effect to the Pre-Closing Financing and the Convertible Note Conversion) 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 Common 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 Common 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 Common Stock who would otherwise be entitled to receive a fraction of a share of Parent Common Stock (after aggregating all fractional shares of Parent Common Stock issuable to such holder) shall, in lieu of such fraction of a share and upon surrender by such holder of a letter of transmittal in accordance with Section 1.8 and 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 under the Company Plan shall be treated in accordance with Section 5.4(a).

(e) All Parent Options outstanding immediately prior to the Effective Time under the 2013 Plan shall be treated in accordance with Section 5.4(d).

(f) All Parent Options outstanding immediately prior to the Effective Time under the 2003 Plan shall be treated in accordance with Section 5.4(e).

(g) All Parent Warrants and Replacement Warrants outstanding immediately prior to the Effective Time shall be treated in accordance with Section 5.4(f).

(h) 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, if any, evidencing ownership of any such shares shall, as of the Effective Time, evidence ownership of such shares of common stock of the Surviving Corporation.

(i) If, between the time of calculating the Exchange Ratio and the Effective Time, any outstanding shares of Company Common 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 Nasdaq Reverse Split to the extent such split has not been previously taken into account in calculating the Exchange Ratio), 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 Common Stock, Company Options, Parent Common Stock, Parent Options, Parent Warrants and Replacement Warrants with the same economic effect as contemplated by this Agreement prior to such stock dividend, subdivision, reclassification, recapitalization, split (including the Nasdaq Reverse Split to the extent such split has not been previously taken into account in calculating the Exchange Ratio), 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 Common 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 Common Stock outstanding immediately prior to the Effective Time (after giving effect to the Pre-Closing Financing and the Convertible Note Conversion) shall be treated in accordance with Section 1.5(a), and all holders of (i) certificates representing shares of Company Common Stock and (ii) book-entry shares representing shares of Company Common Stock ("**Book-Entry Shares**"), in each case, 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 Common Stock outstanding immediately prior to the Effective Time. No further transfer of any such shares of Company Common Stock shall be made on such stock transfer books after the Effective Time. If, after the Effective Time, a valid certificate previously representing any shares of Company Common Stock outstanding immediately prior to the Effective Time (a "**Company Stock Certificate**") is presented to 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 1.8.

1.7 **Contingent Value Right.**

(a) Holders of Parent Common Stock of record as of immediately prior to the Effective Time shall be entitled to one contractual contingent value right ("**CVR**") issued by Parent subject to and in accordance with the terms and conditions of the Contingent Value Rights Agreement, attached hereto as **Exhibit D** (the "**CVR Agreement**"), for each share of Parent Common Stock held by such holders.

(b) At or prior to the Effective Time, Parent shall authorize and duly adopt, execute and deliver, and will ensure that the Exchange Agent and CVR Representative (as defined in the CVR Agreement) execute and deliver, the CVR Agreement, subject to any reasonable revisions to the CVR Agreement that are requested by such Exchange Agent (provided that such revisions are immaterial and not, individually or in the aggregate, detrimental or adverse, taken as a whole, to any holder of a CVR). Parent and the Company shall cooperate, including by making changes to the form of CVR Agreement, as necessary to ensure that the CVRs are not subject to registration under the Securities Act, the Exchange Act or any applicable state securities or "blue sky" laws.

(c) Parent, the Exchange Agent and (if necessary) CVR Representative shall, at or prior to the Effective Time, duly authorize, execute and deliver the CVR Agreement.

1.8 **Surrender of Certificates.**

(a) 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) 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 Common 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 or transfer of Book-Entry Shares to the Exchange Agent shall be effected, and risk of loss and title thereto shall pass, only upon proper delivery of such Company Stock Certificates or transfer of the Book-Entry Shares to the Exchange Agent); and (ii) instructions for effecting the surrender of Company Stock Certificates or transfer of Book-Entry Shares in exchange for shares of Parent Common Stock. Upon surrender of a Company Stock Certificate or transfer of Book-Entry Share 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 or Book-Entry Share shall be entitled to receive in exchange therefor 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 or Book-Entry Share so surrendered or transferred, as the case may be, shall be canceled. Until surrendered or transferred as contemplated by this Section 1.8(b), each Company Stock Certificate or Book-Entry Share shall be deemed, from and after the Effective Time, to represent only the right to receive 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 that includes an obligation of such owner to indemnify Parent against any claim suffered by Parent related to the lost, stolen or destroyed Company Stock Certificate as Parent may reasonably request. In the event of a transfer of ownership of a Company Stock Certificate or Book-Entry Share that is not registered in the transfer records of the Company, payment of the Merger Consideration in respect of such Company Stock Certificate or Book-Entry Share may be made to a Person other than the Person in whose name such Company Stock Certificate or Book-Entry Share so surrendered or transferred, as the case may be, is registered if such Company Stock Certificate shall be properly endorsed or otherwise be in proper form for transfer or such Book-Entry Share shall be properly transferred and the Person requesting such payment shall pay any transfer or other Taxes required by reason of the transfer or establish to the reasonable satisfaction of Parent that such Taxes have been paid or are not applicable. The Merger Consideration and any dividends or other distributions as are payable pursuant to Section 1.8(c) shall be deemed to have been in full satisfaction of any and all rights pertaining to Company Common Stock formerly represented by such Company Stock Certificates or Book-Entry Shares.

(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 or Book-Entry Shares 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 transfers such Book-Entry Shares or provides an affidavit of loss or destruction in lieu thereof in accordance with this Section 1.8 (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 unclaimed by holders of shares of Company Common Stock as of the date that is one hundred eighty (180) days after the Closing Date shall be delivered to Parent upon demand, and any holders of Company Stock Certificates or Book-Entry Shares who have not theretofore surrendered their Company Stock Certificates or transferred their Book-Entry Shares in accordance with this Section 1.8 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) No Party shall be liable to any holder of shares of Company Common Stock 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.

1.9 **Appraisal Rights.**

(a) Notwithstanding any provision of this Agreement to the contrary, shares of Company Common 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 Common 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 Common 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 Common 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 1.8.

(b) The Company shall give Parent prompt written notice of any demands by dissenting stockholders received by the Company, withdrawals of such demands and any other instruments served on the Company and any material correspondence received by the Company in connection with such demands, including the name of each dissenting stockholder and the number of shares of Company Common Stock to which the dissent relates, 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 the prior written consent of Parent, 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.

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.

1.11 **Withholding.** The Parties and the Exchange Agent shall be entitled to deduct and withhold from any amounts otherwise payable pursuant to this Agreement such amounts as such Party or the Exchange Agent is required to deduct and withhold under the Code or any other Law with respect to the making of such payment and shall be entitled to request any reasonably appropriate Tax forms, including an IRS Form W-9 or the appropriate IRS Form W-8, as applicable, from any recipient of payments hereunder. The payor shall provide commercially reasonable notice to the payee upon becoming aware of any such withholding obligation, and the Parties shall cooperate with each other to the extent reasonable to obtain reduction of or relief from such withholding. To the extent that amounts are so deducted and withheld and paid to the appropriate Person, such deducted and withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of whom such deduction and withholding was made.

1.12 **Calculation of Parent Cash Amount.**

(a) For the purposes of this Agreement, the “**Determination Date**” shall be the date that is ten (10) Business Days prior to the anticipated date for Closing, as agreed upon in good faith by Parent and the Company at least five (5) Business Days prior to the Parent Stockholders’ Meeting (the “**Anticipated Closing Date**”). Within five (5) Business Days following the Determination Date, Parent shall deliver to the Company a schedule (the “**Parent Cash Schedule**”) setting forth, in reasonable detail, Parent’s good faith, estimated calculation of the Parent Cash Amount (determined in a manner substantially consistent with the manner in which such items were determined for Parent’s most recent SEC filings) (the “**Parent Cash Calculation**”) as of the Anticipated Closing Date prepared and certified by Parent’s principal financial officer. Parent shall make the work papers and back-up materials used in preparing the Parent Cash Schedule, as reasonably requested by the Company, available to the Company and, if requested by the Company, its accountants and counsel at reasonable times and upon reasonable notice.

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

(c) If on or prior to the Response Date, (i) the Company notifies Parent in writing that it has no objections to the Parent Cash Calculation or (ii) the Company fails to deliver a Dispute Notice as provided in Section 1.12(b), then the Parent Cash Calculation as set forth in the Parent Cash Schedule shall be deemed to have been finally determined for purposes of this Agreement and to represent the Parent Cash Amount at the Anticipated Closing Date for purposes of this Agreement.

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

(e) If Representatives of Parent and the Company are unable to negotiate an agreed-upon determination of the Parent Cash Amount at the Anticipated Closing Date pursuant to Section 1.12(d) within three (3) calendar days after delivery of the Dispute Notice (or such other period as Parent and the Company may mutually agree upon), then any remaining disagreements as to the Parent Cash Calculation shall be referred to Dixon Hughes Goodman LLP, provided that if such firm is unwilling or unable to serve within three (3) Business Days after any remaining disagreements are referred to it, then any remaining disagreements shall be referred to Plante Moran, PLLC, provided, further, that if such firm is unwilling or unable to serve within three (3) Business Days after any remaining disagreements are referred to it, then any remaining disagreements shall be referred to BDO USA, LLP, provided, further, that if such firm is unwilling or unable to serve within three (3) Business Days after any remaining disagreements are referred to it, then any remaining disagreements shall be referred to another independent auditor of recognized national standing mutually agreed upon by the Company and Parent (the “**Accounting Firm**”). Parent shall promptly deliver to the Accounting Firm the work papers and back-up materials used in preparing the Parent Cash Schedule, and Parent and the Company shall use commercially reasonable efforts to cause the Accounting Firm to make its determination within ten (10) calendar days of accepting its selection. The Company and Parent shall be afforded the opportunity to present to the Accounting Firm any material related to the unresolved disputes and to discuss the issues with the Accounting Firm; *provided, however*, that no such presentation or discussion shall occur without the presence of a Representative of each of the Company and Parent. The determination of the Accounting Firm shall be limited to the disagreements submitted to the Accounting Firm. The determination of the Parent Cash Amount made by the Accounting Firm shall be deemed to have been finally determined for purposes of this Agreement and to represent the Parent Cash Amount at the Anticipated Closing Date for purposes of this Agreement, and the Parties shall delay the Closing until the resolution of the matters described in this Section 1.12(e). The fees and expenses of the Accounting Firm shall be allocated between Parent and the Company in the same proportion that the disputed amount of the Parent Cash Amount that was unsuccessfully disputed by such Party (as finally determined by the Accounting Firm) bears to the total disputed amount of the Parent Cash Amount (and for the avoidance of doubt the fees and expenses to be paid by Parent shall reduce the Parent Cash Amount). If this Section 1.12(e) applies as to the determination of the Parent Cash Amount at the Anticipated Closing Date described in Section 1.12(e), upon resolution of the matter in accordance with this Section 1.12(e), the Parties shall not be required to determine the Parent Cash Amount again even though the Closing Date may occur later than the Anticipated Closing Date, except that either Party may request a re-determination of the Parent Cash Amount if the Closing Date is more than thirty (30) calendar days after the Anticipated Closing Date.

(f) Within five (5) Business Days following the end of each calendar month before the Closing Date, Parent shall provide the Company in writing its good faith estimated calculation of the Parent Cash Amount as of the last day of such calendar month.

Section 2. REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Subject to Section 10.13(h), 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 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; (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; and (iii) to perform its obligations under all Contracts by which it is bound.

(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, except for the Entities identified in Section 2.1(c) of the Company Disclosure Schedule; and neither the Company nor any of the Company's Subsidiaries owns any capital stock of, or any equity, ownership or profit sharing interest of any nature in, or controls, directly or indirectly, any other Entity other than the Entities identified in Section 2.1(c) of the Company Disclosure Schedule. Each of the Company's Subsidiaries is a corporation or other legal entity duly incorporated or otherwise organized, validly existing and, if applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, as applicable, and has all necessary corporate or other power and authority to conduct its business in the manner in which its business is currently being conducted and 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 where the failure to have such power or authority would not be reasonably expected to have a Company Material Adverse Effect.

(d) Neither the Company nor any of its Subsidiaries is or has otherwise been, directly or indirectly, a party to, member of or participant in any partnership, joint venture or similar business entity. Neither the Company nor any of its Subsidiaries has agreed or is obligated to make, or is bound by any Contract under which it may become obligated to make, any future investment in or capital contribution to any other Entity. Neither the Company nor any of its Subsidiaries has, 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 made available to Parent accurate and complete copies of the Organizational Documents of the Company and each of its Subsidiaries in effect as of the date of this Agreement. Neither the Company nor any of its Subsidiaries is in material breach or violation of its respective Organizational Documents.

2.3 **Authority; Binding Nature of Agreement**

(a) The Company has all necessary corporate power and authority to enter into and to perform its obligations under this Agreement and, subject to receipt of the Required Company Stockholder Vote, to consummate the Contemplated Transactions. The Company Board (at meetings duly called and held) has (i) determined that the Contemplated Transactions are fair to, advisable and in the best interests of the Company and its stockholders, (ii) authorized, 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 approve the Company Stockholder Matters.

(b) 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.

2.4 **Vote Required.** The affirmative vote (or written consent in a form reasonably acceptable to Parent) of the holders of a majority of the shares of Company Common Stock outstanding on the record date (collectively, the “*Company Stockholder Written Consent*” and such 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 the Company Stockholder Matters, including this Agreement and the Contemplated Transactions.

2.5 **Non-Contravention; Consents.** Subject to obtaining the Required Company Stockholder Vote and the filing of the Certificate of Merger required by the DGCL, 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 material violation of, or, to the Knowledge of the Company, give any Governmental Body or other Person the right to challenge the Contemplated Transactions or to exercise any material remedy or obtain any material relief under, any Law or any order, writ, injunction, judgment or decree to which the Company or its Subsidiaries, or any of the assets owned or used by the Company or its Subsidiaries, 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 its Subsidiaries, 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 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 the case of any non-material breach, default, penalty or modification; or

(e) result in the imposition or creation of any Encumbrance upon or with respect to any material asset owned or used by the Company or its Subsidiaries (except for Permitted Encumbrances).

Except for (i) any Consent set forth in Section 2.5 of the Company Disclosure Schedule under any Company Contract, (ii) the Required Company Stockholder Vote, (iii) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware pursuant to the DGCL, and (iv) such consents, waivers, approvals, orders, authorizations, registrations, declarations and filings as may be required under applicable federal and state securities Laws, neither the Company nor any of its Subsidiaries is or will be required to make any filing with or give any notice to, or to obtain any Consent from, any Person in connection with (A) the execution, delivery or performance of this Agreement, the Company Stockholder Support Agreements and the Company Lock-Up Agreements, or (B) the consummation of the Contemplated Transactions, which if individually or in the aggregate were not given or obtained, would reasonably be expected to prevent or materially delay the ability of the Company to consummate the Contemplated Transactions. 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, the Company Stockholder Support Agreements, the Company Lock-Up 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, the Company Lock-Up Agreements or any of the Contemplated Transactions.

2.6 **Capitalization.**

(a) The authorized Company Capital Stock as of the date of this Agreement consists of (i) 5,000,000 shares of Company Common Stock, par value \$0.0001 per share, of which 3,543,751 shares have been issued and are outstanding as of the date of this Agreement, and (ii) 625,000 shares of Company Preferred Stock, of which no shares have been issued and are outstanding as of the date of this Agreement. The Company does not hold any shares of its capital stock in treasury. Section 2.6(a) of the Company Disclosure Schedule lists, as of the date of this Agreement (i) each record holder of issued and outstanding Company Capital Stock and the number and type of shares of Company Capital Stock held by such holder; and (ii)(A) each holder of issued and outstanding Company Convertible Notes, (B) the date each Company Convertible Note was issued, (C) the number, issuer and type of securities subject to each such Company Convertible Note, (D) the underlying principal amount and accrued interest of such Company Convertible Notes, (E) the maturity date of each Company Convertible Note and (F) the number of shares of Company Capital Stock issuable upon the exercise of such, or upon the conversion of all securities issuable upon the exercise of such, Company Convertible Notes, including the amount of Company Capital Stock to be issued to such holder in connection with the Convertible Note Conversion.

(b) All of the outstanding shares of Company Common Stock have been duly authorized and validly issued, and are fully paid and nonassessable. None of the outstanding shares of Company Common Stock are entitled or subject to any preemptive right, right of participation, right of maintenance or any similar right and none of the outstanding shares of Company Common Stock are subject to any right of first refusal in favor of the Company. Except as contemplated herein, 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. 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 or forfeiture 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 and whether the holder of such shares of Company Common Stock timely filed an election with the relevant Governmental Bodies under Section 83(b) of the Code with respect to such shares.

(c) Except for the Company Plan (and awards granted thereunder), 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 1,175,000 shares of Company Common Stock for issuance under the Company Plan, of which no shares have been issued and are currently outstanding, 1,175,000 shares have been reserved for issuance upon the exercise of Company Options previously granted and are currently outstanding under the Company Plan, and no shares of Company Common Stock remain available for future issuance pursuant to the Company Plan. Only shares of Company Common Stock are subject to Company Options. Section 2.6(c) 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 accurate and complete copies of the Company Plan and all forms of stock option and other award agreements evidencing outstanding options granted thereunder. No vesting of Company Options will accelerate in connection with the Closing of the Contemplated Transactions.

(d) Except for the Company Convertible Notes set forth in Section 2.6(a) of the Company Disclosure Schedule and the Company Options set forth in Section 2.6(c) 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 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 the Company or any of its Subsidiaries; or (iii) condition or circumstance that could be 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 the Company or any of its Subsidiaries. There are no outstanding or authorized stock appreciation, phantom stock, profit participation or other similar rights with respect to the Company or any of its Subsidiaries.

(e) All outstanding shares of Company Common Stock, Company Options, Company Convertible Notes and other securities of the Company have been issued and granted in material compliance with (i) the Organizational Documents of the Company in effect as of the relevant time and all applicable securities Laws and other applicable Law, and (ii) all requirements set forth in applicable Contracts.

(f) All distributions, dividends, repurchases and redemptions of the Company Common Stock or other equity interests of the Company were undertaken in material compliance with (i) the Organizational Documents of the Company in effect as of the relevant time and all applicable securities Laws and other applicable Laws, and (ii) all requirements set forth in applicable Contracts.

2.7 **Financial Statements.**

(a) The Company has provided to Parent (i) true and complete copies of the Company's audited consolidated balance sheets at December 31, 2019 and 2018, together with related audited consolidated 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 consolidated 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 Financial Statements***"). The Company Financial Statements were prepared in accordance with GAAP and fairly present, in all material respects, the financial position and operating results of the Company and its consolidated Subsidiaries as of the dates and for the periods indicated therein.

(b) Each of the Company and its Subsidiaries 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 its Subsidiaries in accordance with GAAP and to maintain accountability of the Company's and its Subsidiaries' assets; (iii) access to the Company's and its Subsidiaries' assets is permitted only in accordance with management's general or specific authorization; (iv) the recorded accountability for the Company's and its Subsidiaries' 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 and each of its Subsidiaries 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 in accordance with GAAP.

(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 or any of its Subsidiaries since January 1, 2017.

(d) 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. 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 and its Subsidiaries, (ii) any fraud, whether or not material, that involves the Company, any of its Subsidiaries, 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 and its Subsidiaries or (iii) any claim or allegation regarding any of the foregoing.

2.8 **Absence of Changes.** Since the Company Unaudited Interim Balance Sheet Date, 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 hereof, neither the Company nor any of its Subsidiaries has any liability, indebtedness, obligation or expense of any kind, whether accrued, absolute, contingent, matured or unmatured (whether or not required to be reflected in the financial statements in accordance with GAAP) (each a "**Liability**"), individually or in the aggregate, 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 or its Subsidiaries since the Company Unaudited Interim Balance Sheet Date in the Ordinary Course of Business; (c) Liabilities for performance of obligations of the Company or any of its Subsidiaries under Company Contracts; (d) Liabilities incurred in connection with the Contemplated Transactions; (e) Liabilities which would not, individually or in the aggregate, reasonably be expected to be material to the Company; and (f) Liabilities described in Section 2.9 of the Company Disclosure Schedule.

2.10 **Title to Assets.** Each of the Company and its Subsidiaries owns, and has good and valid title to, or, in the case of leased properties and assets, valid leasehold interests in, all tangible properties or tangible assets and equipment used or held for use in its business or operations or purported to be owned by it that are material to the Company, its Subsidiaries or their business, 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 or any of its Subsidiaries as being owned by the Company or such Subsidiary. All of such assets are owned or, in the case of leased assets, leased by the Company or any of its Subsidiaries free and clear of any Encumbrances, other than Permitted Encumbrances.

2.11 **Real Property; Leasehold.** Neither the Company nor any of its Subsidiaries owns or has 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 occupied or leased by the Company or any of its Subsidiaries, and (b) copies of all leases under which any such real property is possessed, occupied or leased (the "**Company Real Estate Leases**"), each of which is in full force and effect, with no existing material default thereunder. The Company's possession, occupancy, lease, use and/or 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 leasehold interest and has not granted any occupancy rights to tenants or licensees with respect to such leased property or leasehold interest. In addition, each such leased property and leasehold interest is free and clear of all Encumbrances other than Permitted Encumbrances. Neither the Company nor any of its Subsidiaries has received any written notice of existing, pending or threatened condemnation proceedings affecting such leased property or existing, pending or threatened zoning, building code or other moratorium proceedings, or similar matters which could reasonably be expected to adversely affect the ability to operate on the leased property as currently operated.

2.12 **Intellectual Property.**

(a) Section 2.12(a) of the Company Disclosure Schedule identifies each item of material Company IP that is the subject of a registration or application in any jurisdiction ("**Company Registered IP**"), including, with respect to each patent and patent application: (i) the name of the applicant/registrant, (ii) the jurisdiction of application/registration, (iii) the application or registration number and (iv) any other co-owners. To the Knowledge of the Company, each of the patents and patent applications included in Section 2.12(a) of the Company Disclosure Schedule properly identifies by name each and every inventor of the inventions claimed therein as determined in accordance with applicable Laws of the United States. To the Knowledge of the Company, as of the date of this Agreement, no cancellation, interference, opposition, reissue, reexamination or other proceeding of any nature (other than office actions or similar communications issued by any Governmental Body in the ordinary course of prosecution of any pending applications for registration) is pending or threatened in writing, in which the scope, validity, enforceability or ownership of any Company IP is being or has been contested or challenged. To the Knowledge of the Company, each item of Company IP is valid and enforceable, and with respect to Company Registered IP, subsisting. There are no actions that must be taken within ninety (90) days of the Closing, the failure of which will result in the abandonment, lapse or cancellation of any Company Registered IP.

(b) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, the Company and its Subsidiaries exclusively own, are the sole assignee of, or have exclusively licensed all material Company IP (other than as disclosed in Section 2.12(b) of the Company Disclosure Schedule), free and clear of all Encumbrances other than Permitted Encumbrances. The Company IP and the Intellectual Property Rights licensed to the Company pursuant to a valid, enforceable written agreement constitute all Intellectual Property Rights used in, material to or otherwise necessary for the operation of the Company's business as currently conducted or as proposed to be conducted. Each Company Associate involved in the creation or development of any material Company IP, pursuant to such Company Associate's activities on behalf of the Company or its Subsidiaries, has signed a valid and enforceable written agreement containing an assignment of such Company Associate's rights in such Company IP to the Company. Each Company Associate who has or has had access to the Company's trade secrets or confidential information has signed a valid and enforceable written agreement containing confidentiality provisions protecting the Company IP, trade secrets and confidential information. The Company and its Subsidiaries have taken commercially reasonable steps to protect and preserve the confidentiality of its trade secrets and confidential information.

(c) To the Knowledge of the Company, no funding, facilities or personnel of any Governmental Body or any university, college, research institute or other educational institution has been used to create Company IP, except for any such funding or use of facilities or personnel that does not result in such Governmental Body or institution obtaining ownership rights or a license to such Company IP (excluding confirmatory licenses to inventions made with government funding and for which the Company, its Subsidiaries or either of their licensors has duly retained title under the Bayh-Dole Act) or the right to receive royalties for the practice of such Company IP.

(d) Section 2.12(d) of the Company Disclosure Schedule sets forth each license agreement pursuant to which the Company (i) is granted a license under any material Intellectual Property Right owned by any third party that is used by the Company or its Subsidiaries in its business as currently conducted or as proposed to be conducted (each a “**Company In-bound License**”) or (ii) grants to any third party a license under any material Company IP or material Intellectual Property Right licensed to the Company or its Subsidiaries under a Company In-bound License (each a “**Company Out-bound License**”) (provided, that, Company In-bound Licenses shall not include, when entered into in the Ordinary Course of Business, material transfer agreements, clinical trial agreements, agreements with Company Associates, services agreements, commercially available Software-as-a-Service offerings or off-the-shelf software licenses; and Company Out-bound Licenses shall not include, when entered into in the Ordinary Course of Business, material transfer agreements, clinical trial agreements, services agreements, or non-exclusive outbound licenses). All Company In-bound Licenses and Company Out-bound Licenses are in full force and effect and are valid, enforceable and binding obligations of the Company and, to the Knowledge of Company, each other party to such Company In-bound Licenses or Company Out-bound Licenses. Neither the Company, nor to the Knowledge of the Company, any other party to such Company In-bound Licenses or Company Out-bound Licenses, is in material breach under any Company In-bound Licenses or Company Out-bound Licenses.

(e) To the Knowledge of the Company: (i) the operation of the businesses of the Company and its Subsidiaries as currently conducted does not infringe, misappropriate or otherwise violate any Intellectual Property Rights of any other Person and (ii) no other Person is infringing, misappropriating or otherwise violating any Company IP. No Legal Proceeding is pending (or, to the Knowledge of the Company, is threatened in writing) (A) against the Company or its Subsidiaries alleging that the operation of the businesses of the Company or its Subsidiaries infringes or constitutes the misappropriation or other violation of any Intellectual Property Rights of another Person or (B) by the Company or its Subsidiaries alleging that another Person has infringed, misappropriated or otherwise violated any of the Company IP or any Intellectual Property Rights exclusively licensed to the Company or its Subsidiaries. Since January 1, 2017, neither the Company nor its Subsidiaries has received any written notice or other written communication alleging that the operation of the business of the Company or its Subsidiaries infringes or constitutes the misappropriation or other violation of any Intellectual Property Right of another Person.

(f) None of the Company IP or, to the Knowledge of the Company, any material Intellectual Property Rights exclusively licensed to the Company or its Subsidiaries is subject to any pending or outstanding injunction, directive, order, judgment or other disposition of dispute that adversely and materially restricts the use, transfer, registration or licensing by the Company or its Subsidiaries of any such Company IP or material Intellectual Property Rights exclusively licensed to the Company or its Subsidiaries.

(g) To the Knowledge of the Company, the Company, its Subsidiaries and the operation of the Company’s and its Subsidiaries’ business are in substantial compliance with all Laws pertaining to data privacy and data security of any personally identifiable information or sensitive business information (collectively, “**Sensitive Data**”). Since January 1, 2017, there have been (i) no losses or thefts of data or security breaches relating to Sensitive Data used in the business of the Company or its Subsidiaries, (ii) no material violations of any security policy of the Company regarding any such Sensitive Data used in the business of the Company or its Subsidiaries and (iii) no unauthorized access, unauthorized use or unintended or improper disclosure of any Sensitive Data used in the business of the Company or its Subsidiaries. The Company has taken commercially reasonable steps and implemented reasonable disaster recovery and security plans and procedures to protect the information technology systems used in, material to or necessary for operation of the Company’s business as currently conducted from unauthorized use or access. To the Knowledge of the Company, there have been no material malfunctions or unauthorized intrusions or breaches of the information technology systems used in, material to or necessary for the operation of the Company’s business as currently conducted.

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 (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, its Subsidiaries or the Surviving Corporation to engage in any line of business or compete with any Person, (B) any most-favored pricing arrangement or similar term by which any Person is or could become entitled to any benefit, right or privilege that must be at least as favorable to such Person as those offered to any other Person, (C) any exclusivity provision, right of first refusal or right of first negotiation or similar covenant, or (D) any non-solicitation provision, in each case, except for restrictions that would not materially affect the ability of the Company and its Subsidiaries to conduct its business;

(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, in each case, involving payments in excess of \$100,000, other than Company Contracts in which the applicable acquisition or disposition has been consummated and there are no material ongoing obligations;

(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 of its Subsidiaries or any loans or debt obligations with officers or directors of the Company or its Subsidiaries;

(vi) each Company Contract requiring payment by or to the Company or its Subsidiaries 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 the Company or its Subsidiaries; (C) any dealer, distributor, joint marketing, alliance, joint venture, cooperation, development or other agreement currently in force under which the Company or its Subsidiaries has continuing obligations to develop or market any product, technology or service, or any agreement pursuant to which the Company or its Subsidiaries has continuing obligations to develop any Intellectual Property Rights that will not be owned, in whole or in part, by the Company or its Subsidiaries; or (D) any Contract with any third party providing any services relating to the manufacture or production of any product, service or technology of the Company or its Subsidiaries or any Contract to sell, distribute or commercialize any products or service of the Company or its Subsidiaries;

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

(viii) each Company Real Estate Lease;

(ix) each Company Contract with any Governmental Body;

(x) each Company Out-bound License and Company In-bound License, and each Company Contract containing a covenant not to sue or otherwise enforce any Intellectual Property Rights;

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

(xii) each (A) Company Contract, offer letter, employment agreement or other agreement with any employee that (1) is not immediately terminable at will by the Company without advance notice, severance, or other cost or liability or (2) provides for retention payments, change of control payments, severance, accelerated vesting or any payment or benefit that may or will become due as a result of the Merger (whether alone or in connection with any other event) and (B) each Company Contract, independent contractor agreement, or other agreement with any consultant or service provider that (1) is not immediately terminable at will by the Company without more than thirty (30) days' prior notice, severance, or other cost or liability or (2) provides for retention payments, change of control payments, severance, accelerated vesting or any payment or benefit that may or will become due as a result of the Merger (whether alone or in connection with any other event);

(xiii) each Company Contract providing any option to receive a license or other right, any right of first negotiation, any right of first refusal or any similar right to any Person related to any material Company IP or material Intellectual Property Right licensed to the Company under a Company In-bound License;

(xiv) each Company Contract entered into in settlement of any Legal Proceeding or other dispute;

(xv) any other Company Contract that is not terminable at will (with no penalty or payment) by the Company or its Subsidiaries, as applicable, and (A) which involves payment or receipt by the Company or its Subsidiaries 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 the Company and its Subsidiaries, taken as a whole; and

(xvi) each Subscription Agreement.

(b) The Company has delivered or made available to Parent accurate and complete copies of all Company Material Contracts, including all amendments thereto. There are no Company Material Contracts that are not in written form. Neither the Company nor any of its Subsidiaries has, nor to the Company's Knowledge, as of the date of this Agreement, has any other party to a Company Material Contract, breached, violated or defaulted under, or received 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 and its Subsidiaries, as of the date of this Agreement, each Company Material Contract is valid, binding, enforceable and in full force and effect, subject to the Enforceability Exceptions. No Person is renegotiating, or has a right pursuant to the terms of any Company Material Contract to change, any material amount paid or payable to the Company under any Company Material Contract or any other material term or provision of any Company Material Contract, and no Person has indicated in writing to the Company that it desires to renegotiate, modify, not renew or cancel any Company Material Contract.

2.14 **Compliance; Permits; Restrictions.**

(a) The Company and each of its Subsidiaries is, and since January 1, 2017 has been, in compliance in all material respects with all applicable Laws, including the Federal Food, Drug and Cosmetic Act and regulations issued thereunder by the United States Food and Drug Administration (“**FDA**”) (collectively, the “**FDCA**”), the Public Health Service Act and its implementing regulations (“**PHSA**”) and any other similar Law administered or promulgated by the FDA or other comparable Governmental Body responsible for regulation of the research, development, pre-clinical and clinical testing, manufacturing, storage, supply, approval, sale, marketing, distribution and importation or exportation of drug and biological products (each, a “**Drug Regulatory Agency**”), except for any noncompliance, either individually or in the aggregate, which would not be material to the Company.

(b) No investigation, claim, suit, proceeding, audit or other action by any Governmental Body is pending or, to the Knowledge of the Company, threatened against the Company or any of its Subsidiaries. There is no agreement, judgment, injunction, order or decree binding upon the Company or any of its Subsidiaries which (i) has or would reasonably be expected to have the effect of prohibiting or materially impairing any business practice of the Company or any of its Subsidiaries, any acquisition of material property by the Company or any of its Subsidiaries or the conduct of business by the Company or any of its Subsidiaries 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.

(c) The Company and its Subsidiaries hold all required Governmental Authorizations which are material to the operation of the business of the Company and its Subsidiaries as currently conducted (the “**Company Permits**”). Section 2.14(c) of the Company Disclosure Schedule identifies each Company Permit. Each such Company Permit is valid and in full force and effect, and each of the Company and its Subsidiaries 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 or its Subsidiaries, as applicable, immediately after the Effective Time on terms substantially identical to those enjoyed by the Company and its Subsidiaries as of the date of this Agreement and immediately prior to the Effective Time.

(d) There are no proceedings pending or, to the Knowledge of the Company, threatened against the Company or any of its Subsidiaries with respect to an alleged material violation by the Company or any of its Subsidiaries of the FDCA, PHSA or any other similar Law administered or promulgated by any Drug Regulatory Agency. Neither the Company nor any of its Subsidiaries nor any of their respective officers and employees has been or is subject to any enforcement proceedings by the FDA or other Governmental Body and, to the Knowledge of the Company, no such proceedings have been threatened. There has not been and is not now any Form FDA-483 observation, civil, criminal or administrative action, suit, demand, claim, complaint, hearing, investigation, demand letter, warning letter, untitled letter, or proceeding pending or in effect against the Company or its Subsidiaries or any of their respective officers and employees, and the Company has no liability for failure to comply with the FDCA, PHSA, or other similar Laws. There is no act, omission, event, or circumstance of which the Company has Knowledge that would reasonably be expected to give rise to or form the basis for any civil, criminal or administrative action, suit, demand, claim, complaint, hearing, investigation, demand letter, warning letter, untitled letter, proceeding or request for information or any liability (whether actual or contingent) for failure to comply with the FDCA, PHSA or other similar Laws.

(e) The Company and each of its Subsidiaries holds all required Governmental Authorizations to develop, test, manufacture, store, label, package, distribute, import and export the respective current products or product candidates and otherwise conduct the business of the Company as currently conducted (collectively, the “*Company Regulatory Permits*”) and no such Company Regulatory Permit has been revoked, withdrawn, suspended, canceled or terminated or modified in any adverse manner. There is no basis for believing that such Company Regulatory Permits will not be renewable upon expiration. The Company and each of its Subsidiaries 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 (i) any material violation of or failure to comply materially with any term or requirement of any Company Regulatory Permit or (ii) any revocation, withdrawal, suspension, cancellation, termination or material modification of any Company Regulatory Permit.

(f) All clinical, pre-clinical and other studies and tests conducted by or on behalf of, or sponsored by, the Company or its Subsidiaries, or of their respective current products or product candidates, 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 applicable regulations of any applicable Drug Regulatory Agency and other applicable Law, including the Good Clinical Practice (“*GCP*”) regulations under 21 C.F.R. Parts 50, 54, 56 and 312 and Good Laboratory Practice (“*GLP*”) regulations under 21 C.F.R. Part 58. No preclinical study or clinical trial conducted by or on behalf of the Company or any of its Subsidiaries has been terminated or suspended prior to completion for safety or non-compliance reasons. Since January 1, 2017, neither the Company nor any of its Subsidiaries has 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 any of its Subsidiaries or of their respective current products or product candidates.

(g) Neither the Company nor any of its Subsidiaries is the subject of any pending or, to the Knowledge of the Company, threatened investigation in respect of its business or products or product candidates pursuant to the FDA’s “Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities” Final Policy set forth in 56 Fed. Reg. 46191 (September 10, 1991). To the Knowledge of the Company, neither the Company nor any of its Subsidiaries has 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.

(h) Neither the Company nor its Subsidiaries, nor any of their respective officers, directors, employees or, to the Knowledge of the Company, agents has been, is, or is in anticipation of being (based on a conviction by the courts or a finding of fault by a regulatory authority): (a) debarred pursuant to the Generic Drug Enforcement Act of 1992 (21 U.S.C. § 335a), as amended from time to time; (b) disqualified from participating in clinical trials pursuant to 21 C.F.R. §312.70, as amended from time to time; (c) disqualified as a testing facility under 21 C.F.R. Part 58, Subpart K, as amended from time to time; (d) excluded, debarred or suspended from or otherwise ineligible to participate in a “Federal Health Care Program” as that term is defined in 42 U.S.C. 1320a-7b(f), including under 42 U.S.C. § 1320a-7 or relevant regulations in 42 C.F.R. Part 1001; (e) assessed or threatened with assessment of civil money penalties pursuant to 42 C.F.R. Part 1003; or (f) included on the HHS/OIG List of Excluded Individuals/Entities, the General Services Administration’s System for Award Management, or the FDA Debarment List or the FDA Disqualified/Restricted List. Neither the Company nor its Subsidiaries, nor any of their respective officers, directors, employees or, to the Knowledge of the Company, agents has engaged in any activities that are prohibited, or are cause for civil penalties, or grounds for mandatory or permissive exclusion, debarment, or suspension pursuant to any of these authorities. Neither the Company nor its Subsidiaries are using, or have ever used, in any capacity any Person that has ever been, or to the Knowledge of the Company, is the subject of a proceeding that could lead to the Persons becoming debarred, excluded, disqualified, restricted or suspended pursuant to any of these authorities.

(i) The Company and its Subsidiaries have materially complied with all applicable 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 and its Subsidiaries have entered into, where required, and are in compliance in all material respects with the terms of all Business Associate (as defined in HIPAA) agreements ("**Business Associate Agreements**") to which the Company or any Subsidiary is a party or otherwise bound. The Company and its Subsidiaries, where required, have created and maintained written policies and procedures to protect the privacy of all Protected Health Information, have provided training to all employees and agents, and have implemented security procedures, including physical, technical and administrative safeguards, to protect all Protected Health Information stored or transmitted in electronic form. Neither the Company nor any of its Subsidiaries has 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 federal or state law or regulation applicable to the protection of individually identifiable health information or personally identifiable information. No successful Security Incident, Breach of Unsecured Protected Health Information, unpermitted disclosure of Personal Health Information, or breach of personally identifiable information under applicable Laws has occurred with respect to information maintained or transmitted to the Company, any of its Subsidiaries or an agent or third party, including any subject to a Business Associate Agreement with the Company or a Subsidiary of the Company. The Company is, where required, currently submitting, receiving and handling or is capable of submitting, receiving and handling transactions in accordance with the Transactions and Code Sets Rule. All capitalized terms in this [Section 2.14\(i\)](#) 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 material 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) any of its Subsidiaries, (C) any Company Associate (in his or her capacity as such) or (D) any of the material assets owned or used by the Company or any of its Subsidiaries; or (ii) that challenges, or that would have the effect of preventing, delaying, making illegal or otherwise interfering with, the Contemplated Transactions.

(b) Since January 1, 2017 through the date of this Agreement, 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 its Subsidiaries, or any of the material assets owned or used by the Company or any of its Subsidiaries, is subject. To the Knowledge of the Company, no officer or employee of the Company or any of its Subsidiaries 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 any of its Subsidiaries or to any material assets owned or used by the Company or any of its Subsidiaries.

2.16 **Tax Matters.**

(a) The Company and each of its Subsidiaries has timely filed all income Tax Returns and other material Tax Returns (taking into account valid extensions granted in the ordinary course of business) 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 written claim has ever been made by any Governmental Body in any jurisdiction where the Company or any of its Subsidiaries does not file a particular Tax Return or pay a particular Tax that the Company or such Subsidiary is subject to taxation by that jurisdiction.

(b) All income and other material Taxes due and owing by the Company or any of its Subsidiaries on or before the date hereof (whether or not shown on any Tax Return) have been fully paid. The unpaid Taxes of the Company and its Subsidiaries did not, as of the Company Unaudited Interim Balance Sheet Date, materially exceed the reserve for Tax liability (excluding any reserve for deferred Taxes established to reflect timing differences between book and Tax items) set forth on the face of the Company Unaudited Interim Balance Sheet. Since the Company Unaudited Interim Balance Sheet Date, neither the Company nor any of its Subsidiaries has incurred any material Liability for Taxes outside the Ordinary Course of Business.

(c) All Taxes that the Company or any of its Subsidiaries are or were 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, lenders, customers 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 Permitted Encumbrances) upon any of the assets of the Company or any of its Subsidiaries.

(e) No deficiencies for income or other material Taxes with respect to the Company or any of its Subsidiaries have been claimed, proposed or assessed by any Governmental Body in writing other than any deficiency that has been resolved. 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 or any of its Subsidiaries. Neither the Company nor any of its Subsidiaries (or any of their 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, which waiver is still in effect.

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

(g) Neither the Company nor any of its Subsidiaries is 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) Neither the Company nor any of its Subsidiaries will be required to include any material item of income in, or exclude any material item of deduction from, taxable income for any Tax period (or portion thereof) ending after the Closing Date as a result of any: (i) change in method of accounting for Tax purposes filed on or prior to the Closing Date; (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) occurring on or prior to the Closing Date; (v) installment sale or open transaction disposition made on or prior to the Closing Date; (vi) prepaid amount received 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) made on or prior to the Closing Date. The Company has not made any election under Section 965(h) of the Code.

(i) Neither the Company nor any of its Subsidiaries has ever been (i) a member of a consolidated, combined or unitary Tax group (other than such a group the common parent of which is the Company) or (ii) a party to any joint venture, partnership, or other arrangement that is treated as a partnership for U.S. federal income Tax purposes. Neither the Company nor any of its Subsidiaries has any Liability for any Taxes of any Person (other than the Company and any of its Subsidiaries) under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local, or foreign Law), or as a transferee or successor.

(j) Neither the Company nor any of its Subsidiaries has, since January 1, 2017, 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) Neither the Company nor any of its Subsidiaries (i) is a “controlled foreign corporation” as defined in Section 957 of the Code; (ii) is a “passive foreign investment company” within the meaning of Section 1297 of the Code; (iii) has ever had a permanent establishment (within the meaning of an applicable Tax treaty) or otherwise had an office or fixed place of business in a country other than the country in which it is organized; or (iv) is or was a “surrogate foreign corporation” within the meaning of Section 7874(a)(2)(B) or is treated as a U.S. corporation under Section 7874(b) of the Code.

(l) Neither the Company nor any of its Subsidiaries has 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) Neither the Company nor any of its Subsidiaries has taken or agreed to take any action (other than the Contemplated Transactions) or knows of any fact that would reasonably be expected to prevent the Merger from qualifying for the Intended Tax Treatment.

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

(a) Section 2.17(a) of the Company Disclosure Schedule is a list of all Company Benefit Plans, including, without limitation, each Company Benefit Plan that provides for retirement, change in control, stay or retention, deferred compensation, incentive compensation, severance or retiree medical or life insurance benefits. “**Company Benefit Plan**” means each (i) “employee benefit plan” as defined in Section 3(3) of ERISA (whether or not ERISA governs such plan) and (ii) other pension, retirement, deferred compensation, excess benefit, profit sharing, bonus, incentive, equity or equity-based (other than individual Company Options made pursuant to the Company’s standard forms, in which case only representative standard forms of such stock option agreements shall be scheduled), phantom equity, employment (other than individual employment agreements made pursuant to the Company’s standard forms, in which case only representative standard forms of such employment agreements shall be scheduled), offer letter (other than individual offer letters made pursuant to the Company’s standard forms, in which case only representative standard forms of such offers shall be scheduled), consulting, severance, change-of-control, retention, health, life, disability, group insurance, paid-time off, holiday, welfare and fringe benefit plan, program, agreement, Contract, or arrangement (whether written or unwritten, qualified or nonqualified, funded or unfunded and including any that have been frozen), in any case, maintained, contributed to, or required to be contributed to, by the Company or any of its Subsidiaries or Company ERISA Affiliates for the benefit of any current or former employee, director, officer or independent contractor of the Company or any of its Subsidiaries or under which the Company or any of its Subsidiaries 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 Company Benefit Plan, the Company has made available to Parent, true and complete copies of (i) each Company Benefit Plan, including all amendments thereto, and in the case of an unwritten Company Benefit Plan, a written description thereof, (ii) all current trust documents, investment management Contracts, custodial agreements, 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 material records, notices and filings concerning IRS or Department of Labor or other Governmental Body audits or investigations, and (viii) any written reports constituting a valuation of the Company Common Stock for purposes of Sections 409A or 422 of the Code, whether prepared internally by the Company or by an outside, third-party valuation firm.

(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 that 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 received determination or opinion letters from the IRS on which they may currently rely to the effect that such plans are qualified under Section 401(a) of the Code and the related trusts are exempt from federal income Taxes under Section 501(a) of the Code, respectively, and to the Knowledge of the Company, nothing has occurred that would reasonably be expected to materially adversely affect the qualification of such Company Benefit Plan or the tax exempt status of the related trust.

(e) Neither the Company, any of its Subsidiaries 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). No Company Benefit Plan is sponsored by a professional employer organization.

(f) There are no pending audits or investigations by any Governmental Body involving any Company Benefit Plan, and no pending or, 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, any fiduciary thereof or service provider thereto, in any case except as would not be reasonably expected to result in material liability to the Company or any of its Subsidiaries. All contributions and premium payments required to have been made under any of the Company Benefit Plans or by applicable Law (without regard to any waivers granted under Section 412 of the Code), have been timely made in all material respects and neither the Company nor any Company ERISA Affiliate has any material liability for any unpaid contributions with respect to any Company Benefit Plan.

(g) Neither the Company, any of its Subsidiaries nor any Company ERISA Affiliates, nor to the Knowledge of the Company, any fiduciary, trustee or administrator of any Company Benefit Plan, has engaged in, or in connection with the Contemplated Transactions will engage in, any transaction with respect to any Company Benefit Plan which would subject any such Company Benefit Plan, the Company, any of its Subsidiaries or Company ERISA Affiliates or Parent to a material Tax, material penalty or material liability for a "prohibited transaction" under Section 406 of ERISA or Section 4975 of the Code.

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

(i) Neither the execution of this Agreement nor the consummation of the Contemplated Transactions 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 independent contractor of the Company or any of its Subsidiaries, (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, (iv) require any contribution or payment to fund any obligation under any Company Benefit Plan or (v) limit the right to merge, amend or terminate any Company Benefit Plan that is subject to ERISA.

(j) Neither the execution of this Agreement nor the consummation of the Contemplated Transactions (either alone or when combined with the occurrence of any other event, including without limitation, a termination of employment) will result in the receipt or retention by any Person who is a "disqualified individual" (within the meaning of Code Section 280G) with respect to the Company and its Subsidiaries of any payment or benefit under any Company Benefit Plan that is or could be characterized as a "parachute payment" (within the meaning of Code Section 280G), determined without regard to the application of Code Section 280G(b)(5).

(k) The exercise price of each Company Option granted to a U.S. taxpayer is not and never has been less than the fair market value of one share of Company Common Stock as of the grant date of such Company Option.

(l) Each Company Benefit Plan providing for deferred compensation that constitutes a "nonqualified deferred compensation plan" (as defined in Section 409A(d)(1) of the Code and the regulations promulgated thereunder) is, and has been, established, administered and maintained in material compliance with the requirements of Section 409A of the Code and the regulations promulgated thereunder in all material respects.

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

(n) No Company Benefit Plan is maintained outside of the United States.

(o) The Company has provided to Parent a true and correct list, as of the date of this Agreement, containing the names of all full-time, part-time or temporary employees and independent contractors (and indication as such), and, as applicable: (i) the annual dollar amount of all compensation (including wages, salary or fees, commissions, director’s fees, fringe benefits, bonuses, profit sharing payments, and other payments or benefits of any type) payable to each person; (ii) dates of employment or service; (iii) title; (iv) any eligibility to receive severance, retention payment, change of control payment, or other similar compensation; (v) visa status, if applicable; (vi) if any employee is on approved leave, the nature of the leave and the expected date of return, if known; and (vii) with respect to employees, a designation of whether they are classified as exempt or non-exempt for purposes of the Fair Labor Standards Act, as amended (“*FLSA*”) and any similar state law.

(p) Neither the Company nor any of its Subsidiaries has ever been a party to, bound by, or 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 or its Subsidiaries, including through the filing of a petition for representation election. 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 or any of its Subsidiaries. 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, union election petition, demand for recognition, any similar activity or dispute, or, to the Knowledge of the Company, any union organizing activity.

(q) The Company and each of its Subsidiaries is, and since January 1, 2017 has been, in material compliance with all applicable Laws respecting labor, employment, employment practices, and terms and conditions of employment, including worker classification, discrimination, harassment and retaliation, equal employment opportunities, fair employment practices, meal and rest periods, immigration, employee safety and health, payment of 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 or any of its Subsidiaries, with respect to employees of the Company and its Subsidiaries, each of the Company and its Subsidiaries, since January 1, 2017: (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 actions, suits, claims, charges, lawsuits, investigations, audits or administrative matters pending or, to the Knowledge of the Company, threatened or reasonably anticipated against the Company or any of its Subsidiaries relating to any employee, applicant for employment, consultant, employment agreement or Company Benefit Plan (other than routine claims for benefits).

(r) Except as would not be reasonably likely to result in a material liability to the Company or any of its Subsidiaries, with respect to each individual who currently renders services to the Company or any of its Subsidiaries, the Company and each of its Subsidiaries 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 and each of its Subsidiaries has accurately classified him or her as exempt or non-exempt under all applicable Laws. Neither the Company nor any of its Subsidiaries has any material liability with respect to any misclassification of: (a) any Person as an independent contractor rather than as an employee, (b) any employee leased from another employer, or (c) any employee currently or formerly classified as exempt under all applicable Laws.

(s) Within the preceding five (5) years, the Company has not implemented any “plant closing” or “mass layoff” of employees that would reasonably be expected to require notification under the WARN Act or any similar state or local Law, no such “plant closing” or “mass layoff” will be implemented before the Closing Date without advance notification to and approval of Parent, and there has been no “employment loss” as defined by the WARN Act or comparable state law within the ninety (90) days prior to the Closing Date.

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

2.18 **Environmental Matters.** The Company and each of its Subsidiaries are in compliance with and since January 1, 2017 have 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. Neither the Company nor any of its Subsidiaries has received since January 1, 2017 (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 or any of its Subsidiaries is not in compliance with or has liability pursuant to any Environmental Law and, to the Knowledge of the Company, there are no circumstances that would reasonably be expected to prevent or interfere with the Company’s or any of its Subsidiaries’ compliance in any material respects with any Environmental Law, except where such failure to comply would not reasonably be expected to be material to the Company or its business. No current or (during the time a prior property was leased or controlled by the Company or any of its Subsidiaries) prior property leased or controlled by the Company or any of its Subsidiaries has had a release of or exposure to Hazardous Materials in material violation of or as would reasonably be expected to result in any material liability of the Company or any of its Subsidiaries 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 consummation of the Contemplated Transactions by the Company. 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 or any of its Subsidiaries with respect to any property leased or controlled by the Company or any of its Subsidiaries or any business operated by them.

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 and each of its Subsidiaries. Each of such insurance policies is in full force and effect and the Company and each of its Subsidiaries are in compliance in all material respects with the terms thereof. Other than customary end of policy notifications from insurance carriers, since January 1, 2017, neither the Company nor any of its Subsidiaries has received any notice or other communication regarding any actual or possible: (a) cancellation or invalidation of any insurance policy; or (b) refusal or denial of any coverage, reservation of rights or rejection of any material claim under any insurance policy. The Company and each of its Subsidiaries has provided timely written notice to the appropriate insurance carrier(s) of each Legal Proceeding that is currently pending against the Company or any of its Subsidiaries for which the Company or such Subsidiary 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 or any of its Subsidiaries of its intent to do so.

2.20 **No Financial Advisors.** Except as set forth in 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 or any of its Subsidiaries.

2.21 **Disclosure.** The information supplied by the Company and each of its Subsidiaries for inclusion in the Registration Statement (including the Company Financial Statements and other Company Interim Financial Statements) will not, on the date the Registration Statement is filed with the SEC, at any time it is amended or supplemented, or at the time it becomes effective under the Securities Act, contain any untrue statement of a material fact, or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not false or misleading at the time and in the light of the circumstances under which such statement is made. The information supplied by the Company for use in the Proxy Statement relating to the Company and its Subsidiaries (including the Company Financial Statements and any other Company Interim Financial Statements) will not, on the date the Proxy Statement is first mailed to Parent's stockholders or at the time of the Parent Stockholders' Meeting, contain any untrue statement of any material fact, or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not false or misleading at the time and in the light of the circumstances under which such statement is made. Notwithstanding the foregoing, no representation is made by the Company with respect to the information that has been or will be supplied by Parent and Merger Sub or any of their Representatives for inclusion in the Registration Statement or Proxy Statement.

2.22 **Transactions with Affiliates.**

(a) Section 2.22(a) of the Company Disclosure Schedule (i) describes any material transactions or relationships, since January 1, 2017, between, on one hand, the Company or any of its Subsidiaries and, on the other hand, any (A) officer or director of the Company or, to the Knowledge of the Company, any of its Subsidiaries or any of such officer's or director's immediate family members, (B) owner of more than 5% of the voting power of the outstanding Company Common Stock or (C) to the Knowledge of the Company, any "related person" (within the meaning of Item 404 of Regulation S-K under the Securities Act) of any such officer, director or owner (other than the Company or its Subsidiaries) in the case of each of (A), (B) or (C) that is of the type that would be required to be disclosed under Item 404 of Regulation S-K under the Securities Act; and (ii) identifies each Person who is (or who may be deemed to be) an Affiliate of the Company as of the date of this Agreement.

(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 Common 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**").

2.23 **Anti-Bribery.** None of the Company or any of its Subsidiaries or any of their respective 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, or any other anti-bribery or anti-corruption Law (collectively, the "**Anti-Bribery Laws**"). To the Knowledge of the Company, neither the Company nor any of its Subsidiaries has been the subject of any investigation or inquiry by any Governmental Body with respect to potential violations of Anti-Bribery Laws.

2.24 **Disclaimer of Other Representations or Warranties**

(a) 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.

(b) The Company acknowledges and agrees that, except for the representations and warranties of Parent and Merger Sub set forth in Section 3, neither the Company nor any of its Representatives are relying on any other representation or warranty of Parent or any other Person made outside of Section 3, including regarding the accuracy or completeness of any such other representations or warranties or the omission of any material information, whether express or implied, in each case, with respect to the Contemplated Transactions.

Section 3. REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Subject to Section 10.13(h), except (a) as set forth in the written disclosure schedule delivered by Parent to the Company (the "**Parent Disclosure Schedule**") or (b) 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 (i) without giving effect to any amendment thereof filed with, or furnished to the SEC on or after the date hereof and (ii) 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), it being understood that any matter disclosed in Parent SEC Documents (x) shall not be deemed disclosed for the purposes of Section 3.1, 3.2, 3.3, 3.4, 3.5 or 3.6, and (y) shall be deemed to be disclosed in a section of the Parent Disclosure Schedule only to the extent that it is readily apparent from a reading of such Parent SEC Document that it is applicable to such section of the Parent Disclosure Schedule, Parent and Merger Sub represent and warrant to the Company as follows:

3.1 **Due Organization; No 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; (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; and (iii) to perform its obligations under all Contracts by which it is bound. 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) Other than Merger Sub, Parent does not have any Subsidiary. Merger Sub is a corporation duly incorporated, validly existing and in good standing under the Laws of the State of Delaware. Merger Sub was formed solely for the purpose of engaging in the Contemplated Transactions. All of the issued and outstanding capital stock of Merger Sub, which consists of 1,000 shares of common stock, \$0.0001 par value, is validly issued, fully paid and non-assessable and is owned, beneficially and of record, by Parent, free and clear of any Encumbrances with respect thereto. Except for obligations and liabilities incurred in connection with its incorporation and the Contemplated Transactions, Merger Sub has not, and will not have, incurred, directly or indirectly, any obligations or liabilities or engaged in any business activities of any type or kind whatsoever or entered into any agreements or arrangements with any Person.

(d) Parent is not and has not 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 and is not obligated to make, and is not 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, and has not 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 in effect as of the date of this Agreement. Neither Parent nor Merger Sub is in material breach or violation of its respective Organizational Documents.

3.3 **Authority; Binding Nature of Agreement**

(a) 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, subject, with respect to Parent, to receipt of the Required Parent Stockholder Vote and, with respect to Merger Sub, the adoption of this Agreement by Parent in its capacity as sole stockholder of Merger Sub, to consummate the Contemplated Transactions. The Parent Board (at meetings duly called and held) has: (i) determined that the Contemplated Transactions are fair to, advisable and in the best interests of Parent and its stockholders; (ii) authorized, 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 (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 Parent Stockholder Matters. The Merger Sub Board (by unanimous written consent) has: (A) determined that the Contemplated Transactions are fair to, advisable, and in the best interests of Merger Sub and its sole stockholder; (B) authorized, approved and declared advisable this Agreement and the Contemplated Transactions; and (C) 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.

(b) This Agreement has been duly executed and delivered by each of 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.** (a) The affirmative vote of the holders of a majority of the issued and outstanding shares of Parent Common Stock outstanding on the record date for 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 proposals in Section 5.3(a)(i) and Section 5.3(a)(ii), and (b) the affirmative vote of a majority in interest of the shareholders of Parent Common Stock present in person or by proxy at the Parent Stockholders' Meeting and entitled to vote thereon is the only vote of the holders of any class or series of Parent's capital stock necessary to approve the proposals in Section 5.3(a)(iii), 5.3(a)(iv), 5.3(a)(v) and 5.3(a)(vi) (the "**Required Parent Stockholder Vote**").

3.5 **Non-Contravention; Consents.** Subject to obtaining the Required Parent Stockholder Vote and the filing of the Certificate of Merger required by the DGCL, 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 material violation of, or, to the Knowledge of Parent, give any Governmental Body or other Person the right to challenge the Contemplated Transactions or to exercise any material remedy or obtain any material 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, 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 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 the case of any non-material breach, default, penalty or modification; or

(e) result in the imposition or creation of any Encumbrance upon or with respect to any material asset owned or used by Parent (except for Permitted Encumbrances).

Except for (i) any Consent set forth in Section 3.5 of the Parent Disclosure Schedule under any Parent Contract, (ii) the Required Parent Stockholder Vote, (iii) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware pursuant to the DGCL and (iv) such consents, waivers, approvals, orders, authorizations, registrations, declarations and filings as may be required under applicable federal and state securities Laws or stock exchange listing rules, neither Parent nor Merger Sub is or will be required to make any filing with or give any notice to, or to obtain any Consent from, any Person in connection with (A) the execution, delivery or performance of this Agreement and the Parent Lock-Up Agreements, or (B) the consummation of the Contemplated Transactions, which if individually or in the aggregate were not given or obtained, would reasonably be expected to prevent or materially delay the ability of Parent and Merger Sub to consummate the Contemplated Transactions. 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, the Parent Lock-Up 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 Parent Lock-Up Agreements or any of the Contemplated Transactions.

3.6 Capitalization.

(a) The authorized capital stock of Parent as of the date of this Agreement consists of (i) 75,000,000 shares of Parent Common Stock, par value \$0.0001 per share, of which 4,019,141 shares have been issued and are outstanding as of the close of business on the Reference Date, and (ii) 10,000,000 shares of preferred stock of Parent, par value \$0.0001 per share, of which no shares have been issued and are outstanding as of the date of this Agreement. 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 are 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 are subject to any right of first refusal in favor of Parent. Except as set forth in Section 3.6(b) of the Parent Disclosure Schedule or as otherwise contemplated herein (including the Pre-Closing Financing), 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. 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. As of the date hereof, there are outstanding Parent Warrants to purchase 1,921,489 shares of Parent Common Stock. Section 3.6(b) of the Parent Disclosure Schedule accurately and completely lists all repurchase or forfeiture rights held by Parent with respect to shares of Parent Common Stock (including shares issued pursuant to the exercise of stock options) and specifies which of those repurchase rights are currently exercisable and whether the holder of such shares of Parent Common Stock timely filed an election with the relevant Governmental Bodies under Section 83(b) of the Code with respect to such shares.

(c) Except for the Parent Stock Plans (and awards granted thereunder) and as set forth in 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 close of business on the Reference Date, (i) 146,224 shares of Parent Common Stock have been reserved for issuance upon the exercise of Parent Options granted under the Parent Stock Plans that are outstanding as of the date of this Agreement and (ii) 139,236 shares remain available for future issuance pursuant to the Parent Stock Plans. Section 3.6(c) of the Parent Disclosure Schedule sets forth the following information with respect to each Parent Option 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 at the time of grant; (iii) the number of shares of Parent Common Stock subject to such Parent Option as of the date of this Agreement; (iv) the exercise price of such Parent Option; (v) the date on which such Parent 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 Parent Option expires; and (viii) whether such Parent Option is intended to constitute an "incentive stock option" (as defined in the Code) or a non-qualified stock option. Parent has made available to the Company accurate and complete copies of the Parent Stock Plans and all forms of the stock option and other award agreements evidencing outstanding awards granted thereunder.

(d) Except for the Parent Warrants, the Replacement Warrants, the Parent Stock Plans and the Parent Options, 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; (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 (iii) condition or circumstance that could be 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. There are no outstanding or authorized stock appreciation, phantom stock, profit participation or other similar rights with respect to Parent. In addition, there are no stockholder rights plans (or similar plan commonly referred to as a “poison pill”) or bonds, debentures, notes or other indebtedness of Parent having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matters on which stockholders of Parent may vote (“**Parent Voting Debt**”).

(e) All outstanding shares of Parent Common Stock, Parent Options, Parent Warrants and other securities of Parent have been issued and granted in material compliance with (i) the Organizational Documents of Parent in effect as of the relevant time and all applicable securities Laws and other applicable Law, and (ii) all requirements set forth in applicable Contracts.

(f) All distributions, dividends, repurchases and redemptions of Parent Common Stock or other equity interests of Parent were undertaken in material compliance with (i) the Organizational Documents of Parent in effect as of the relevant time and all applicable securities Laws and other applicable Laws, 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, 2018 (the “**Parent SEC Documents**”), other than such documents that can be obtained on the SEC’s website at www.sec.gov. Since January 1, 2018, 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, or if amended or superseded by a filing prior to the date of this Agreement, on the date of the last such amendment or superseding filing prior to the date of this Agreement, 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 the 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, and no current or former executive officer of Parent has failed to make the Certifications required of him or her. Parent has made available to the Company true and complete copies of all correspondence, other than transmittal correspondence or general communications by the SEC not specifically addressed to Parent, between the SEC, on the one hand, and Parent, on the other, since January 1, 2017, including all SEC comment letters and responses to such comment letters and responses to such comment letters by or on behalf of Parent except for such comment letters and responses to such comment letters that are publicly accessible through EDGAR. As of the date of this Agreement, there are no outstanding unresolved comments in comment letters received from the SEC or Nasdaq with respect to Parent SEC Documents. To the Knowledge of Parent, none of the Parent SEC Documents are the subject of ongoing SEC review and there are no inquiries or investigations by the SEC or any internal investigations pending or threatened, including with regards to any accounting practices of Parent. 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 filed, 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 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.

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

(d) Since January 1, 2017 through the date of this Agreement, except as set forth in Section 3.7(d) of the Parent Disclosure Schedule, Parent has not received any comment letter from the SEC or the staff thereof or any correspondence from officials of Nasdaq or the staff thereof relating to the delisting or maintenance of listing of the Parent Common Stock on Nasdaq. As of the date of this Agreement, Parent has timely responded to all comment letters of the staff of the SEC relating to the Parent SEC Documents, and the SEC has not advised Parent that any final responses are inadequate, insufficient or otherwise non-responsive. Parent has made available to the Company true, correct and complete copies or all comment letters, written inquiries and enforcement correspondences between the SEC, on the one hand, and Parent, on the other hand, occurring since January 1, 2017 and will, reasonably promptly following the receipt thereof, make available to the Company any such correspondence sent or received after the date of this Agreement. To the Knowledge of Parent, as of the date of this Agreement, none of the Parent SEC Documents is the subject of an ongoing SEC report or outstanding SEC comment.

(e) Since January 1, 2017, there have been no formal 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, principal accounting officer or general counsel of Parent, the Parent Board or any committee thereof, other than ordinary course audits or reviews of accounting policies and practices or internal controls required by the Sarbanes-Oxley Act.

(f) Parent is and, since its first date of listing on Nasdaq, has been, in compliance in all material respects with the applicable current listing and governance rules and regulations of Nasdaq.

(g) 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, 2019 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.

(h) 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 all 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 time periods required by the SEC, 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.

(i) Since January 1, 2017, Parent has not received any material written complaint, allegation, assertion or claim regarding the accounting or auditing practices, procedures, methodologies or methods of Parent's internal accounting controls relating to periods after January 1, 2017, including any material written complaint, allegation, assertion or claim that Parent has engaged in questionable accounting or auditing practices (except for any of the foregoing after the date of this Agreement which have no reasonable basis).

3.8 **Absence of Changes.** Except as set forth in Section 3.8 of the Parent Disclosure Schedule, since the Parent Balance Sheet Date, 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.

3.9 **Absence of Undisclosed Liabilities.** Except as set forth in Section 3.9 of the Parent Disclosure Schedule, 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 Parent Balance Sheet Date in the Ordinary Course of Business; (c) Liabilities for performance of obligations of Parent under Parent Contracts; (d) Liabilities incurred in connection with the Contemplated Transactions; (e) Liabilities which would not, individually or in the aggregate, reasonably be expected to be material to Parent; and (f) Liabilities described in Section 3.9 of the Parent Disclosure Schedule.

3.10 **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 that are material to Parent or its business, including: (a) all tangible assets reflected on the Parent Balance Sheet; and (b) all other tangible assets reflected in the books and records of Parent as being owned by 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.

3.11 **Real Property; Leasehold.** Parent does not own and has never 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 occupied or leased by Parent, and (b) copies of all leases under which any such real property is possessed, occupied or leased (the "**Parent Real Estate Leases**"), each of which is in full force and effect, with no existing material default thereunder. Parent's possession, occupancy, lease, use and/or 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 leasehold interest and has not granted any occupancy rights to tenants or licensees with respect to such leased property or leasehold interest. In addition, each such leased property and leasehold interest is free and clear of all Encumbrances other than Permitted Encumbrances. Parent has not received any written notice of existing, pending or threatened condemnation proceedings affecting such leased property or existing, pending or threatened zoning, building code or other moratorium proceedings, or similar matters which could reasonably be expected to adversely affect the ability to operate on the leased property as currently operated.

3.12 **Intellectual Property.**

(a) Section 3.12(a) of the Parent Disclosure Schedule identifies each item of material Parent IP that is the subject of a registration or application in any jurisdiction ("**Parent Registered IP**"), including, with respect to each patent and patent application: (i) the name of the applicant/registrant, (ii) the jurisdiction of application/registration, (iii) the application or registration number and (iv) any other co-owners. To the Knowledge of Parent, each of the patents and patent applications included in Section 3.12(a) of the Parent Disclosure Schedule properly identifies by name each and every inventor of the inventions claimed therein as determined in accordance with applicable Laws of the United States. To the Knowledge of Parent, as of the date of this Agreement, no cancellation, interference, opposition, reissue, reexamination or other proceeding of any nature (other than office actions or similar communications issued by any Governmental Body in the ordinary course of prosecution of any pending applications for registration) is pending or threatened in writing, in which the scope, validity, enforceability or ownership of any Parent IP is being or has been contested or challenged. To the Knowledge of Parent, each item of Parent IP is valid and enforceable, and with respect to Parent Registered IP, subsisting. There are no actions that must be taken within ninety (90) days of the Closing, the failure of which will result in the abandonment, lapse or cancellation of any Parent Registered IP.

(b) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, Parent exclusively owns, is the sole assignee of, or has exclusively licensed all material Parent IP, free and clear of all Encumbrances other than Permitted Encumbrances. The Parent IP and the Intellectual Property Rights licensed to Parent pursuant to a valid, enforceable written agreement constitute all Intellectual Property Rights used in, material to or otherwise necessary for the operation of Parent's business as currently conducted. Each Parent Associate involved in the creation or development of any material Parent IP, pursuant to such Parent Associate's activities on behalf of Parent, has signed a valid and enforceable written agreement containing an assignment of such Parent Associate's rights in such Parent IP to Parent. Each Parent Associate who has or has had access to Parent's trade secrets or confidential information has signed a valid and enforceable written agreement containing confidentiality provisions protecting the Parent IP, trade secrets and confidential information. Parent has taken commercially reasonable steps to protect and preserve the confidentiality of its trade secrets and confidential information.

(c) To the Knowledge of Parent, except as set forth in Section 3.12(c) of the Parent Disclosure Schedule, no funding, facilities or personnel of any Governmental Body or any university, college, research institute or other educational institution has been used to create Parent IP, except for any such funding or use of facilities or personnel that does not result in such Governmental Body or institution obtaining ownership rights or a license to such Parent IP (excluding confirmatory licenses to inventions made with government funding and for which Parent or Parent's licensor has duly retained title under the Bayh-Dole Act) or the right to receive royalties for the practice of such Parent IP.

(d) Section 3.12(d) of the Parent Disclosure Schedule sets forth each license agreement pursuant to which Parent (i) is granted a license under any material Intellectual Property Right owned by any third party that is used by Parent in its business as currently conducted (each a "**Parent In-bound License**") or (ii) grants to any third party a license under any material Parent IP or material Intellectual Property Right licensed to Parent under a Parent In-bound License (each a "**Parent Out-bound License**") (*provided*, that, Parent In-bound Licenses shall not include, when entered into in the Ordinary Course of Business, material transfer agreements, clinical trial agreements, agreements with Parent Associates, services agreements, commercially available Software-as-a-Service offerings or off-the-shelf software licenses; and Parent Out-bound Licenses shall not include, when entered into in the Ordinary Course of Business, material transfer agreements, clinical trial agreements, services agreements, or non-exclusive outbound licenses). All Parent In-bound Licenses and Parent Out-bound Licenses are in full force and effect and are valid, enforceable and binding obligations of Parent and, to the Knowledge of Parent, each other party to such Parent In-bound Licenses or Parent Out-bound Licenses. Neither Parent, nor to the Knowledge of Parent, any other party to such Parent In-bound Licenses or Parent Out-bound Licenses, is in material breach under any Parent In-bound Licenses or Parent Out-bound Licenses. Except as set forth on Section 3.12(d) of the Parent Disclosure Schedule, none of the terms or conditions of any Parent In-Bound License or any Parent Out-bound License requires Parent or any of its Affiliates to maintain, develop or prosecute any Intellectual Property Rights.

(e) To the Knowledge of Parent: (i) the operation of the business of Parent as currently conducted does not infringe, misappropriate or otherwise violate any Intellectual Property Rights of any other Person and (ii) no other Person is infringing, misappropriating or otherwise violating any Parent IP. No Legal Proceeding is pending (or, to the Knowledge of Parent, is threatened in writing) (A) against Parent alleging that the operation of the business of Parent infringes or constitutes the misappropriation or other violation of any Intellectual Property Rights of another Person or (B) by Parent alleging that another Person has infringed, misappropriated or otherwise violated any of the Parent IP or any Intellectual Property Rights exclusively licensed to Parent. Since January 1, 2017, Parent has not received any written notice or other written communication alleging that the operation of the business of Parent infringes or constitutes the misappropriation or other violation of any Intellectual Property Right of another Person.

(f) Except as set forth in Section 3.12(f) of the Parent Disclosure Schedule, none of the Parent IP or, to the Knowledge of Parent, any material Intellectual Property Rights exclusively licensed to Parent is subject to any pending or outstanding injunction, directive, order, judgment or other disposition of dispute that adversely and materially restricts the use, transfer, registration or licensing by Parent of any such Parent IP or material Intellectual Property Rights exclusively licensed to Parent.

(g) To the Knowledge of Parent, Parent and the operation of Parent's business are in substantial compliance with all Laws pertaining to data privacy and data security of Sensitive Data. Since January 1, 2017, there have been (i) no losses or thefts of data or security breaches relating to Sensitive Data used in the business of Parent, (ii) no material violations of any security policy of Parent regarding any such Sensitive Data used in the business of Parent, (iii) no unauthorized access, unauthorized use or unintended or improper disclosure of any Sensitive Data used in the business of Parent. Parent has taken commercially reasonable steps and implemented reasonable disaster recovery and security plans and procedures to protect the information technology systems used in, material to or necessary for operation of Parent's business as currently conducted from unauthorized use or access. To the Knowledge of Parent, there have been no material malfunctions or unauthorized intrusions or breaches of the information technology systems used in, material to or necessary for the operation of Parent's business as currently conducted.

3.13 Agreements, Contracts and Commitments.

(a) Section 3.13(a) of the Parent Disclosure Schedule lists the following Parent Contracts in effect as of the date of this Agreement (each, a "**Parent Material Contract**" and collectively, the "**Parent Material Contracts**");

- (i) a material Contract as defined in Item 601(b)(10) of Regulation S-K as promulgated under the Securities Act;
- (ii) each Parent Contract relating to any agreement of indemnification or guaranty not entered into in the Ordinary Course of Business;
- (iii) each Parent 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 or similar term by which any Person is or could become entitled to any benefit, right or privilege that must be at least as favorable to such Person as those offered to any other Person, (C) any exclusivity provision, right of first refusal or right of first negotiation or similar covenant, or (D) any non-solicitation provision, in each case, except for restrictions that would not materially affect the ability of Parent to conduct its business;
- (iv) each Parent 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;
- (v) each Parent Contract relating to the disposition or acquisition of material assets or any ownership interest in any Entity, in each case, involving payments in excess of \$100,000, other than Parent Contracts in which the applicable acquisition or disposition has been consummated and there are no material ongoing obligations;
- (vi) each Parent 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;

(vii) each Parent 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 Rights that will not be owned, in whole or in part, by Parent; or (D) any Parent Contract with any third party providing any services relating to the manufacture or production of any product, service or technology of Parent or any Parent Contract to sell, distribute or commercialize any products or service of Parent;

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

(ix) each Parent Real Estate Lease;

(x) each Parent Contract with any Governmental Body;

(xi) each Parent Out-bound License and Parent In-bound License, and each Parent Contract containing a covenant not to sue or otherwise enforce any Intellectual Property Rights;

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

(xiii) each (A) Parent Contract, offer letter, employment agreement or other agreement with any employee that (1) is not immediately terminable at will by Parent without advance notice, severance, or other cost or liability or (2) provides for retention payments, change of control payments, severance, accelerated vesting or any payment or benefit that may or will become due as a result of the Merger (whether alone or in connection with any other event) and (B) each Parent Contract, independent contractor agreement, or other agreement with any consultant or service provider that (1) is not immediately terminable at will by the Company without more than thirty (30) days' prior notice, severance, or other cost or liability or (2) provides for retention payments, change of control payments, severance, accelerated vesting or any payment or benefit that may or will become due as a result of the Merger (whether alone or in connection with any other event);

(xiv) each Parent Contract providing any option to receive a license or other right, any right of first negotiation, any right of first refusal or any similar right to any Person related to any material Parent IP or material Intellectual Property Right licensed to Parent under a Parent In-bound License;

(xv) each Parent Contract entered into in settlement of any Legal Proceeding or other dispute; and

(xvi) any other Parent 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.

(b) Parent has delivered or made available to the Company accurate and complete copies of all Parent Material Contracts, including all amendments thereto. There are no Parent Material Contracts that are not in written form. Other than as set forth in Section 3.13(b) of the Parent Disclosure Schedule, 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 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, and no Person has indicated in writing to Parent that it desires to renegotiate, modify, not renew or cancel any Parent Material Contract.

3.14 **Compliance; Permits.**

(a) Parent is, and since January 1, 2017 has been, in compliance in all material respects with all applicable Laws, including the FDCA, PHSA and any other similar Law administered or promulgated by the FDA or other Drug Regulatory Agency, except for any noncompliance, either individually or in the aggregate, which would not be material to Parent.

(b) No investigation, claim, suit, proceeding, audit or other action by any Governmental Body is pending or, to the Knowledge of Parent, threatened 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.

(c) Parent holds all required Governmental Authorizations which are material to the operation of the business of Parent as currently conducted (the "*Parent Permits*"). Section 3.14(c) of the Parent Disclosure Schedule identifies each Parent Permit. Each such Parent Permit is valid and in full force and effect, and 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.

(d) There are no proceedings pending or, to the Knowledge of Parent, threatened against Parent with respect to an alleged material violation by Parent of the FDCA, PHSA or any other similar Law administered or promulgated by any Drug Regulatory Agency. Neither Parent nor any of its officers and employees has been or is subject to any enforcement proceedings by the FDA or other Governmental Body and, to the Knowledge of Parent, no such proceedings have been threatened. There has not been and is not now any Form FDA-483 observation, civil, criminal or administrative action, suit, demand, claim, complaint, hearing, investigation, demand letter, warning letter, untitled letter, or proceeding pending or in effect against Parent or any of its officers and employees, and Parent has no liability for failure to comply with the FDCA, PHSA, or other similar Laws. There is no act, omission, event, or circumstance of which Parent has Knowledge that would reasonably be expected to give rise to or form the basis for any civil, criminal or administrative action, suit, demand, claim, complaint, hearing, investigation, demand letter, warning letter, untitled letter, proceeding or request for information or any liability (whether actual or contingent) for failure to comply with the FDCA, PHSA or other similar Laws.

(e) Parent holds all required Governmental Authorizations to develop, test, manufacture, store, label, package, distribute, import and export the respective current products or product candidates and otherwise conduct the business of Parent as currently conducted (collectively, the "**Parent Regulatory Permits**") and no such Parent Regulatory Permit has been revoked, withdrawn, suspended, canceled or terminated or modified in any adverse manner. There is no basis for believing that such Parent Regulatory Permits will not be renewable upon expiration. Parent is in compliance in all material respects with the Parent Regulatory Permits and has not received any written notice or other written communication, or to the Knowledge of Parent, any other communication from any Drug Regulatory Agency regarding (i) any material violation of or failure to comply materially with any term or requirement of any Parent Regulatory Permit or (ii) any revocation, withdrawal, suspension, cancellation, termination or material modification of any Parent Regulatory Permit.

(f) All clinical, pre-clinical and other studies and tests conducted by or on behalf of, or sponsored by, Parent, or of its current products or product candidates, 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 applicable regulations of any applicable Drug Regulatory Agency and other applicable Law, including the GCP regulations under 21 C.F.R. Parts 50, 54, 56 and 312 and GLP regulations under 21 C.F.R. Part 58. Except as set forth in Section 3.14(f) of the Parent Disclosure Schedule, no preclinical study or clinical trial conducted by or on behalf of Parent has been terminated or suspended prior to completion for safety or non-compliance reasons. Since January 1, 2017, Parent has not received any notices, correspondence, or other communications from any Drug Regulatory Agency requiring, or to the Knowledge of Parent, threatening to initiate, the termination or suspension of any clinical studies conducted by or on behalf of, or sponsored by, Parent or of its current products or product candidates.

(g) Parent is not the subject of any pending or, to the Knowledge of Parent, threatened investigation in respect of its business or products or product candidates pursuant to the FDA's "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities" Final Policy set forth in 56 Fed. Reg. 46191 (September 10, 1991). 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.

(h) Neither Parent, nor any of its officers, directors, employees or, to the Knowledge of Parent, agents has been, is, or is in anticipation of being (based on a conviction by the courts or a finding of fault by a regulatory authority): (a) debarred pursuant to the Generic Drug Enforcement Act of 1992 (21 U.S.C. § 335a), as amended from time to time; (b) disqualified from participating in clinical trials pursuant to 21 C.F.R. §312.70, as amended from time to time; (c) disqualified as a testing facility under 21 C.F.R. Part 58, Subpart K, as amended from time to time; (d) excluded, debarred or suspended from or otherwise ineligible to participate in a "Federal Health Care Program" as that term is defined in 42 U.S.C. 1320a-7b(f), including under 42 U.S.C. § 1320a-7 or relevant regulations in 42 C.F.R. Part 1001; (e) assessed or threatened with assessment of civil money penalties pursuant to 42 C.F.R. Part 1003; or (f) included on the HHS/OIG List of Excluded Individuals/Entities, the General Services Administration's System for Award Management, or the FDA Debarment List or the FDA Disqualified/Restricted List. Neither Parent nor any of its officers, directors, employees or, to the Knowledge of Parent, agents has engaged in any activities that are prohibited, or are cause for civil penalties, or grounds for mandatory or permissive exclusion, debarment, or suspension pursuant to any of these authorities. Parent is not using, nor has it ever used, in any capacity any Person that has ever been, or to the Knowledge of Parent, is the subject of a proceeding that could lead to the Persons becoming debarred, excluded, disqualified, restricted or suspended pursuant to any of these authorities.

(i) Parent is not a Covered Entity governed by HIPAA, but each of its health plans, if required, has complied in all material respects with all applicable Laws relating to 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. Each of Parent's health plans has entered into, where required, and is in compliance in all material respects with the terms of, all Business Associate Agreements which Parent has signed as plan sponsor where the plan is a party or otherwise bound. Each of Parent's health plans, where required, has created and maintained written policies and procedures to protect the privacy of all Protected Health Information, has provided training to all employees and agents, and has implemented security procedures, including physical, technical and administrative safeguards, to protect all 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 federal or state law or regulation applicable to the protection of individually identifiable health information or personally identifiable information. No successful Security Incident, Breach of Unsecured Protected Health Information, unpermitted disclosure of Personal Health Information, or breach of personally identifiable information under applicable Laws has occurred with respect to information maintained or transmitted to Parent, or an agent or third party, including any subject to a Business Associate Agreement with Parent. If required, Parent is currently submitting, receiving and handling or is capable of submitting, receiving and handling transactions in accordance with the Transactions and Code Sets Rule. All capitalized terms in this Section 3.14(i) not otherwise defined in this Agreement shall have the meanings set forth under HIPAA.

3.15 Legal Proceedings; Orders.

(a) 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) any Parent Associate (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 would have the effect of preventing, delaying, making illegal or otherwise interfering with, the Contemplated Transactions.

(b) Since January 1, 2017 through the date of this Agreement, 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 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.

3.16 **Tax Matters.**

(a) Parent and Merger Sub have timely filed all income Tax Returns and other material Tax Returns (taking into account valid extensions granted in the ordinary course of business) 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 written claim has ever been made by any Governmental Body in any jurisdiction where Parent or Merger Sub does not file a particular Tax Return or pay a particular Tax that Parent or Merger Sub is subject to taxation by that jurisdiction.

(b) All income and other material Taxes due and owing by Parent or Merger Sub on or before the date hereof (whether or not shown on any Tax Return) have been fully paid. The unpaid Taxes of Parent and Merger Sub did not, as of the Parent Balance Sheet Date, materially exceed the reserve for Tax liability (excluding any reserve for deferred Taxes established to reflect timing differences between book and Tax items) set forth on the face of the Parent Balance Sheet. Since the Parent Balance Sheet Date, neither Parent nor Merger Sub has incurred any material Liability for Taxes outside the Ordinary Course of Business.

(c) All Taxes that Parent or Merger Sub are or were 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, lenders, customers 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 Permitted Encumbrances) upon any of the assets of Parent or Merger Sub.

(e) No deficiencies for income or other material Taxes with respect to Parent or Merger Sub have been claimed, proposed or assessed by any Governmental Body in writing other than any deficiency that has been resolved. 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 or Merger Sub. Neither Parent nor Merger Sub (or any of their 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 which waiver is still in effect.

(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) Neither Parent nor Merger Sub is 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) Neither Parent nor Merger Sub will 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 filed on or prior to the Closing Date; (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) occurring on or prior to the Closing Date; (v) installment sale or open transaction disposition made on or prior to the Closing Date; (vi) prepaid amount received 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) made on or prior to the Closing Date. Parent has not made any election under Section 965(h) of the Code.

(i) Neither Parent nor Merger Sub has ever been (i) a member of a consolidated, combined or unitary Tax group (other than such a group the common parent of which is Parent) or (ii) a party to any joint venture, partnership, or other arrangement that is treated as a partnership for U.S. federal income Tax purposes. Neither Parent nor Merger Sub has any Liability for any Taxes of any Person (other than Parent and Merger Sub) under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local, or foreign Law), or as a transferee or successor.

(j) Neither Parent nor Merger Sub has, since January 1, 2017, 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 and Merger Sub (i) are, and since their formation have been, domestic corporations for United States federal income tax purpose; and (ii) have never had a permanent establishment (within the meaning of an applicable Tax treaty) or otherwise had an office or fixed place of business in a country other than the United States.

(l) Neither Parent nor Merger Sub has 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) Neither Parent nor Merger Sub has taken or agreed to take any action (other than the Contemplated Transactions) or knows of any fact that would reasonably be expected to prevent the Merger from qualifying for the Intended Tax Treatment.

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

(a) Section 3.17(a) of the Parent Disclosure Schedule is a list of all Parent Benefit Plans, including, without limitation, each Parent Benefit Plan that provides for retirement, change in control, stay or retention, deferred compensation, incentive compensation, severance or retiree medical or life insurance benefits. “**Parent Benefit Plan**” means each (i) “employee benefit plan” as defined in Section 3(3) of ERISA (whether or not ERISA governs such plan) and (ii) other pension, retirement, deferred compensation, excess benefit, profit sharing, bonus, incentive, equity or equity-based (other than individual Parent Options made pursuant to Parent’s standard forms, in which case only representative standard forms of such stock option agreements and other award agreements shall be scheduled), phantom equity, employment (other than individual employment agreements made pursuant to Parent’s standard forms, in which case only representative standard forms of such employment agreements shall be scheduled), offer letter (other than individual offer letters made pursuant to Parent’s standard forms, in which case only representative standard forms of such offers shall be scheduled), consulting, severance, change-of-control, retention, health, life, disability, group insurance, paid-time off, holiday, welfare and fringe benefit plan, program, agreement, Contract, or arrangement (whether written or unwritten, qualified or nonqualified, funded or unfunded and including any that have been frozen), in any case, maintained, contributed to, or required to be contributed to, by Parent or Parent ERISA Affiliates for the benefit of any current or former employee, director, officer or independent contractor 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 Parent Benefit Plan, Parent has made available to the Company, true and complete copies of (i) each Parent Benefit Plan, including all amendments thereto, and in the case of an unwritten Parent Benefit Plan, a written description thereof, (ii) all current trust documents, investment management Contracts, custodial agreements, 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, and (vii) all material records, notices and filings concerning IRS or Department of Labor or other Governmental Body audits or investigations.

(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 that 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 received determination or opinion letters from the IRS on which they may currently rely to the effect that such plans are qualified under Section 401(a) of the Code and the related trusts are exempt from federal income Taxes under Section 501(a) of the Code, respectively, and to the Knowledge of Parent, nothing has occurred that would reasonably be expected to materially adversely affect the qualification of such Parent Benefit Plan or the tax exempt status of the related trust.

(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). No Parent Benefit Plan is sponsored by a professional employer organization.

(f) There are no pending audits or investigations by any Governmental Body involving any Parent Benefit Plan, and no pending or, 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, any fiduciary thereof or service provider thereto, in any case, except as would not be reasonably expected to result in material liability to Parent. All contributions and premium payments required to have been made under any of the Parent Benefit Plans or by applicable Law (without regard to any waivers granted under Section 412 of the Code), have been timely made in all material respects and neither Parent nor any Parent ERISA Affiliate has any material liability for any unpaid contributions with respect to any Parent Benefit Plan.

(g) Neither Parent nor any Parent ERISA Affiliates, nor to the Knowledge of Parent, any fiduciary, trustee or administrator of any Parent Benefit Plan, has engaged in, or in connection with the Contemplated Transactions will engage in, any transaction with respect to any Parent Benefit Plan which would subject any such Parent Benefit Plan, Parent or Parent ERISA Affiliates to a material Tax, material penalty or material liability for a “prohibited transaction” under Section 406 of ERISA or Section 4975 of the Code.

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

(i) Except as disclosed in Section 3.17(i) of the Parent Disclosure Schedule or as otherwise contemplated by Section 5.20, neither the execution of this Agreement nor the consummation of the Contemplated Transactions 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 independent contractor 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, (iv) require any contribution or payment to fund any obligation under any Parent Benefit Plan or (v) limit the right to merge, amend or terminate any Parent Benefit Plan that is subject to ERISA.

(j) Neither the execution of this Agreement nor the consummation of the Contemplated Transactions (either alone or when combined with the occurrence of any other event, including without limitation, a termination of employment) will result in the receipt or retention by any Person who is a “disqualified individual” (within the meaning of Code Section 280G) with respect to Parent of any payment or benefit under any Parent Benefit Plan that is or could be characterized as a “parachute payment” (within the meaning of Code Section 280G), determined without regard to the application of Code Section 280G(b)(5).

(k) The exercise price of each Parent Option granted to a U.S. taxpayer is not and never has been less than the fair market value of one share of Parent Common Stock as of the grant date of such Parent Option.

(l) Each Parent Benefit Plan providing for deferred compensation that constitutes a “nonqualified deferred compensation plan” (as defined in Section 409A(d)(1) of the Code and the regulations promulgated thereunder) is, and has been, established, administered and maintained in material compliance with the requirements of Section 409A of the Code and the regulations promulgated thereunder in all material respects.

(m) No current or former employee, officer, director or independent contractor of Parent has any “gross up” agreements with Parent or other assurance of reimbursement by Parent for any Taxes imposed under Code Section 409A or Code Section 4999.

(n) No Parent Benefit Plan is maintained outside of the United States.

(o) Parent has provided to the Company a true and correct list, as of the date of this Agreement, containing the names of all full-time, part-time or temporary employees and independent contractors (and indication as such), and, as applicable: (i) the annual dollar amount of all compensation (including wages, salary or fees, commissions, director’s fees, fringe benefits, bonuses, profit sharing payments, and other payments or benefits of any type) payable to each person; (ii), dates of employment or service; (iii) title; (iv) any eligibility to receive severance, retention payment, change of control payment, or other similar compensation; (v) visa status, if applicable; (vi) if any employee is an on approved leave, the nature of the leave and the expected date of return, if known; and (vii) with respect to employees, a designation of whether they are classified as exempt or non-exempt for purposes of the FLSA and any similar state law.

(p) Parent is not and never has been a party to, bound by, or 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. 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, union election petition, demand for recognition, any similar activity or dispute, or, to the Knowledge of Parent, any union organizing activity.

(q) Parent is, and since January 1, 2017 has been, in material compliance with all applicable Laws respecting labor, employment, employment practices, and terms and conditions of employment, including worker classification, discrimination, harassment and retaliation, equal employment opportunities, fair employment practices, meal and rest periods, immigration, employee safety and health, payment of 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, 2017: (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 actions, suits, claims, charges, lawsuits, investigations, audits or administrative matters pending or, to the Knowledge of Parent, threatened or reasonably anticipated against Parent relating to any employee, applicant for employment, consultant, employment agreement or Parent Benefit Plan (other than routine claims for benefits).

(r) 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 exempt or non-exempt under all applicable Laws. Parent has no material liability with respect to any misclassification of: (a) any Person as an independent contractor rather than as an employee, (b) any employee leased from another employer, or (c) any employee currently or formerly classified as exempt under all applicable Laws.

(s) Within the preceding five (5) years, Parent has not implemented any "plant closing" or "mass layoff" of employees that would reasonably be expected to require notification under the WARN Act or any similar state or local Law. No "plant closing" or "mass layoff" will be implemented before the Closing Date without advance notification to and approval of the Company, and there has been no "employment loss" as defined by the WARN Act or comparable state law within the ninety (90) days prior to the Closing Date.

(t) There is no Legal Proceeding, 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.

3.18 **Environmental Matters.** Parent is and since January 1, 2017 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, 2017 (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 and, to the Knowledge of Parent, there are no circumstances that would reasonably be expected to prevent or interfere with Parent's compliance in any material respects with any Environmental Law, except where such failure to comply would not reasonably be expected to be material to Parent or its business. No current or (during the time a prior property was leased or controlled by Parent) prior property leased or controlled by Parent has had a release of or exposure to Hazardous Materials 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 consummation of the Contemplated Transactions by Parent. 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 or controlled by Parent or any business operated by it.

3.19 **Insurance.** 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, 2017, Parent has not received any notice or other communication regarding any actual or possible: (a) cancellation or invalidation of any insurance policy; or (b) 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.

3.20 **No Financial Advisors.** Other than Oppenheimer & Co. Inc., 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.

3.21 **Transactions with Affiliates.** Except as set forth in the Parent SEC Documents filed prior to the date of this Agreement, since the date of Parent's last proxy statement filed in 2019 with the SEC, no event has occurred that would be required to be reported by Parent pursuant to Item 404 of Regulation S-K. Section 3.21 of the Parent Disclosure Schedule identifies each Person who is (or who may be deemed to be) an Affiliate of Parent as of the date of this Agreement.

3.22 **Anti-Bribery.** Neither Parent nor any of its directors, officers, employees or, to Parent's Knowledge, agents or any other Person acting on its 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 Anti-Bribery Laws. To the Knowledge of Parent, 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.

3.23 **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.

3.24 **Opinion of Financial Advisor.** The Parent Board has received an opinion of Oppenheimer & Co. Inc. to the effect that, as of the date of this Agreement and subject to the assumptions, qualifications, limitations and other matters set forth therein, the Exchange Ratio is fair, from a financial point of view, to the holders of Parent Common Stock. It is agreed and understood that such opinion is for the benefit of the Parent Board and may not be relied upon by the Company or any other party.

3.25 **Disclosure.** The information supplied by Parent for inclusion in the Registration Statement will not, on the date the Registration Statement is filed with the SEC, at any time it is amended or supplemented, or at the time it becomes effective under the Securities Act, contain any untrue statement of a material fact, or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not false or misleading at the time and in the light of the circumstances under which such statement is made. The information supplied by Parent for use in the Proxy Statement relating to Parent will not, on the date the Proxy Statement is first mailed to Parent's stockholders or at the time of the Parent Stockholders' Meeting, contain any untrue statement of any material fact, or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not false or misleading at the time and in the light of the circumstances under which such statement is made. Notwithstanding the foregoing, no representation is made by Parent or Merger Sub with respect to the information that has been or will be supplied by the Company, any of its Subsidiaries or any of their respective Representatives for inclusion in the Registration Statement or Proxy Statement.

3.26 **Disclaimer of Other Representations or Warranties**

(a) 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.

(b) Each of Parent and Merger Sub acknowledges and agrees that, except for the representations and warranties of the Company set forth in Section 2, none of Parent, Merger Sub or any of their respective Representatives is relying on any other representation or warranty of the Company or any other Person made outside of Section 2, including regarding the accuracy or completeness of any such other representations or warranties or the omission of any material information, whether express or implied, in each case, with respect to the Contemplated Transactions.

Section 4. CERTAIN COVENANTS OF THE PARTIES

4.1 Operation of Parent's Business.

(a) Except as set forth in Section 4.1(a) of the Parent Disclosure Schedule, as expressly permitted by this Agreement (including the Pre-Closing Financing), 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 2 and the Effective Time (the "**Pre-Closing Period**"), each of Parent and Merger Sub shall conduct its business and operations in the Ordinary Course of Business and in compliance in all material respects with all applicable Laws and the requirements of all Contracts that constitute Parent Material Contracts.

(b) Except (i) as expressly permitted by this Agreement (including the Pre-Closing Financing), (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, nor shall it cause or permit Merger Sub to, do any of the following:

(i) declare, accrue, set aside or pay any dividend or make any other distribution in respect of any shares of 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 and/or withholding Taxes incurred upon the exercise, settlement or vesting of any award granted under the Parent Stock Plans in accordance with the terms of such award in effect on the date of this Agreement);

(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 of outstanding Parent Options, Parent Warrants or Replacement Warrants, as applicable); (B) any option, warrant or right to acquire any capital stock or any other security, other than option grants to employees and service providers in the Ordinary Course of Business; or (C) any other instrument convertible into or exchangeable for any capital stock or other security of Parent;

(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 the advancement of reasonable expenses to employees, directors and 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 capital 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 (the "**Parent Budget**");

(vi) other than as required by applicable Law or the terms of any Parent Benefit Plan as in effect on the date of this Agreement: (A) adopt, terminate, establish or enter into any Parent Benefit Plan; (B) cause or permit any Parent Benefit Plan to be amended in any material respect (other than in connection with the termination thereof); (C) pay any bonus or make any profit-sharing or similar payment to, or 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 consistent with past practice; or (D) increase the severance, retention or change of control benefits offered to any current or former or new employees, directors or consultants;

(vii) recognize any labor union, labor organization, or similar Person, except as otherwise required by law and after advance notice to the Company;

(viii) acquire any material asset or sell, lease or otherwise irrevocably dispose of any of its material assets or properties, or grant any Encumbrance with respect to such assets or properties;

(ix) 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 material amended 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 matter of which is not Taxes), 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 pursuant to an extension of time to file any Tax Return granted in the Ordinary Course of Business of not more than six (6) months), or adopt or change any material accounting method in respect of Taxes;

(x) enter into, materially amend or terminate any Parent Material Contract;

(xi) other than the incurrence or payment of Parent Transaction Expenses, make any expenditures, incur any Liabilities or discharge or satisfy any Liabilities, in each case, outside of the Ordinary Course of Business;

(xii) other than as required by Law or GAAP, take any action to change accounting policies or procedures;

(xiii) initiate or settle any Legal Proceeding; or

(xiv) 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 in Section 4.2(a) of the Company Disclosure Schedule, as expressly permitted by this Agreement (including the Pre-Closing Financing), 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, each of the Company and its Subsidiaries shall conduct its respective business and operations in the Ordinary Course of Business and in compliance in all material respects with all applicable Laws and the requirements of all Contracts that constitute Company Material Contracts.

(b) Except (i) as expressly permitted by this Agreement (including the Pre-Closing Financing), (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, nor shall it cause or permit any of its Subsidiaries to, do any of the following:

(i) declare, accrue, set aside or pay any dividend or make any other distribution in respect of any shares of its capital stock or repurchase, redeem or otherwise reacquire any shares of its capital stock or other securities;

(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 the Company or any of its Subsidiaries (except for shares of outstanding Company Common Stock issued upon the valid exercise of Company Options); (B) any option, warrant or right to acquire any capital stock or any other security, other than option grants to employees and service providers in the Ordinary Course of Business; or (C) any other instrument convertible into or exchangeable for any capital stock or other security of the Company or any of its Subsidiaries;

(iii) except as required to give effect to anything in contemplation of the Closing, amend any of its or its Subsidiaries' 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 the advancement of reasonable expenses to employees, directors and 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 capital commitment in excess of the budgeted capital expenditure and commitment amounts set forth in the Company operating budget delivered to Parent concurrently with the execution of this Agreement (the "**Company Budget**");

(vi) other than as required by applicable Law or the terms of any Company Benefit Plan as in effect on the date of this Agreement: (A) adopt, terminate, establish or enter into any Company Benefit Plan; (B) cause or permit any Company Benefit Plan to be amended in any material respect; (C) pay any bonus or make any profit-sharing or similar payment to, or 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 consistent with past practice; or (D) increase the severance, retention or change of control benefits offered to any current or former or new employees, directors or consultants;

(vii) recognize any labor union, labor organization, or similar Person, except as otherwise required by law and after advance notice to Parent;

(viii) acquire any material asset or sell, lease or otherwise irrevocably dispose of any of its material assets or properties, or grant any Encumbrance with respect to such assets or properties;

(ix) sell, assign, transfer, license, sublicense, abandon, permit to lapse or otherwise dispose of any material Company IP (other than pursuant to non-exclusive licenses in the Ordinary Course of Business);

(x) 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 material amended 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 matter of which is not Taxes), 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 pursuant to an extension of time to file any Tax Return granted in the Ordinary Course of Business of not more than six (6) months), or adopt or change any material accounting method in respect of Taxes;

(xi) enter into, materially amend or terminate any Company Material Contract;

(xii) other than the incurrence or payment of Company Transaction Expenses, make any expenditures, incur any Liabilities or discharge or satisfy any Liabilities, in each case, outside of 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 or settle any Legal Proceeding; or

(xv) 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.

(a) Subject to the terms of the Confidentiality Agreement, which the Parties agree will continue in full force following the date of this Agreement, during the 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: (i) provide the other Party and such other Party's Representatives with reasonable access, upon reasonable notice and 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; (ii) 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; (iii) permit the other Party's officers and other employees to meet, upon reasonable notice and during normal business hours, with the principal 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 (iv) 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(a) shall be conducted in such manner as not to interfere unreasonably with the conduct of the business of the other Party. Each Party shall provide the other Party with good faith unaudited cash balances and a statement of accounts payable of the respective Party as of the end of each calendar month, which shall be prepared consistent with past practice and delivered within ten (10) Business Days after the end of such calendar month before the Closing Date, or such longer period as the Parties may agree to in writing.

(b) 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, if in the reasonable judgment of such Party, access would jeopardize protections afforded the Party under the attorney-client privilege or the attorney work product doctrine; *provided, however*, that such Party shall use commercially reasonable efforts to allow for such access in a manner that does not violate any such applicable Law or jeopardize protections afforded the Party under the attorney-client privilege or the attorney work product doctrine.

4.4 Parent Non-Solicitation.

(a) Except as expressly permitted by this Agreement, Parent agrees that, during the Pre-Closing Period, it shall not, and it shall instruct and cause its Representatives not 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 Parent to any Person in connection with or in response to an Acquisition Proposal or Acquisition Inquiry; (iii) engage in discussions (other than to inform any Person of the existence of the provisions contained in this Section 4.4) 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 (other than a confidentiality agreement permitted under this Section 4.4(a)); 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, directly or indirectly through any of its Representatives, furnish non-public information regarding Parent to, and enter into discussions or negotiations with, any Person in response to a *bona fide* 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, after consultation with Parent's 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, in the aggregate, at least as favorable to Parent as those contained in the Confidentiality Agreement, or is already party to a confidentiality agreement with such Person that is still in effect and contains provisions that require any counterparty thereto (and any of its Affiliates and representatives named therein) that receives material nonpublic information of or with respect to Parent to keep such information confidential; and (D) prior to or 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 (1) Business Day after Parent becomes aware of such Acquisition Proposal or Acquisition Inquiry) advise the Company 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 provided to such Person.

4.5 **Company Non-Solicitation**

(a) Except as expressly permitted by this Agreement, the Company agrees that, during the Pre-Closing Period, neither it nor any of its Subsidiaries shall, and it shall instruct and cause its Representatives not 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 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 (other than to inform any Person of the existence of the provisions contained in this Section 4.5) 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 5.2); (v) execute or enter into any letter of intent or any Contract contemplating or otherwise relating to any Acquisition Transaction (other than a confidentiality agreement permitted under this Section 4.5(a)); or (vi) publicly propose to do any of the foregoing; *provided, however*, that, notwithstanding anything contained in this Section 4.5 and subject to compliance with this Section 4.5, prior to obtaining the Required Company Stockholder Vote, the Company may, directly or indirectly through any of its Representatives, furnish non-public information regarding the Company to, and enter into discussions or negotiations with, any Person in response to a *bona fide* Acquisition Proposal by such Person, which the Company Board determines in good faith, after consultation with the Company'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 the Company nor any of its Representatives shall have breached this Section 4.5 in any material respect, (B) the Company Board concludes in good faith, after consultation with the Company's outside legal counsel, that the failure to take such action is reasonably likely to be inconsistent with the fiduciary duties of the Company Board under applicable Law; (C) the Company receives from such Person an executed confidentiality agreement containing provisions, in the aggregate, at least as favorable to the Company as those contained in the Confidentiality Agreement, or is already party to a confidentiality agreement with such Person that is still in effect and contains provisions that require any counterparty thereto (and any of its Affiliates and representatives named therein) that receives material nonpublic information of or with respect to the Company to keep such information confidential; and (D) prior to or substantially contemporaneously with furnishing any such nonpublic information to such Person, the Company furnishes such nonpublic information to Parent (to the extent such information has not been previously furnished by the Company to Parent). 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.

(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 (1) Business Day after the Company becomes aware of such Acquisition Proposal or Acquisition Inquiry) advise Parent 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 notice or other 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 or its Subsidiaries is commenced, or, to the Knowledge of the Company, threatened against the Company or its Subsidiaries or, to the Knowledge of the Company, any director or officer of the Company or its Subsidiaries; (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 could reasonably be expected to make the timely satisfaction of any of the conditions set forth in Sections 6 or 7, as applicable, impossible or materially less likely. No notification given to Parent pursuant to this Section 4.6(a) shall change, limit or otherwise affect any of the representations, warranties, covenants or obligations of the Company or any of its Subsidiaries 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 notice or other 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 is commenced, or, to the Knowledge of Parent, threatened against Parent or, to the Knowledge of Parent, any director or officer of Parent; (iii) Parent becomes aware of any inaccuracy in any representation or warranty made by it in this Agreement; or (iv) the failure of Parent to comply with any covenant or obligation of Parent or Merger Sub; in the case of (iii) and (iv) that could reasonably be expected to make the timely satisfaction of any of the conditions set forth in Sections 6 or 8, as applicable, impossible or materially less likely. No notification given to the Company pursuant to this Section 4.6(b) shall change, limit or otherwise affect any of the representations, warranties, covenants or obligations of Parent 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 (but in no event later than thirty (30) days following 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. 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. Each of the Parties shall use commercially reasonable efforts to cause the Registration Statement and the Proxy Statement to comply in all material respects 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 Parent's 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 and its Subsidiaries 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 registered public accounting firm, dated no more than two (2) 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.

(c) Prior to filing of the Registration Statement, Parent and the Company shall use their commercially reasonable efforts to execute and deliver to Hogan Lovells US LLP (“*Parent Counsel*”) and Honigman LLP (“*Company Counsel*”) the applicable “Tax Representation Letters” referenced in [Section 5.9\(d\)](#). Following the delivery of the Tax Representation Letters, Parent and the Company shall use their respective commercially reasonable efforts to cause Parent Counsel to deliver to Parent, and Company Counsel to deliver to the Company, Tax opinions satisfying the requirements of Item 601 of Regulation S-K under the Securities Act; *provided, however*, that Company Counsel shall also be responsible for opining that the Merger will qualify for the Intended Tax Treatment, which additional opinion shall be dated as of the Closing. In rendering their respective opinions, each of Parent Counsel and Company Counsel may require and rely upon (and may incorporate by reference) reasonable and customary representations and covenants, including the applicable Tax Representation Letters described in this [Section 5.1\(c\)](#) and [Section 5.9\(d\)](#).

5.2 **Company Stockholder Matters.**

(a) Promptly after the Registration Statement shall have been declared effective under the Securities Act, and in any event no later than three (3) Business Days thereafter, the Company shall prepare, with the reasonable cooperation of Parent, and cause to be mailed to its stockholders an information statement (the “*Information Statement*”) to solicit (i) the Required Company Stockholder Vote for purposes of (within five (5) Business Days after the Registration Statement shall have been declared effective) (i) adopting and approving this Agreement and the Contemplated Transactions, (ii) adopting and approving an amendment of the Company’s certificate of incorporation to increase the authorized shares of Company Common Stock; (iii) 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 (iv) acknowledging that by its approval of the Merger it is not entitled to appraisal rights with respect to its shares in connection with the Merger and thereby waives any rights to receive payment of the fair value of its capital stock under the DGCL (collectively, the “*Company Stockholder Matters*”). Under no circumstances shall the Company assert that any other approval or consent is necessary by its stockholders to approve the Company Stockholder Matters. The Information Statement and any other materials (including any amendments thereto) submitted to the stockholders of the Company in accordance with this [Section 5.2\(a\)](#) shall be subject to Parent’s advance review and reasonable approval.

(b) The Company covenants and agrees that the Information Statement, including any pro forma financial statements included therein (and the letter to stockholders and form of Company Stockholder Written Consent included therewith), will not, at the time that the Information Statement or any amendment or supplement thereto is first mailed to the stockholders of the Company, at the time of receipt of the Required Company Stockholder Vote and at the Effective Time, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. Notwithstanding the foregoing, the Company makes no covenant, representation or warranty with respect to statements made in the Information Statement (and the letter to the stockholders and form of Company Stockholder Written Consent included therewith), if any, based on information furnished in writing by Parent specifically for inclusion therein. Each of the Parties shall use commercially reasonable efforts to cause the Information Statement to comply in all material respects with the applicable rules and regulations promulgated by the SEC.

(c) 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. The Stockholder Notice (including any amendments thereto) and any other materials submitted to the stockholders of the Company in accordance with this [Section 5.2\(c\)](#) shall be subject to Parent’s advance review and reasonable approval.

(d) The Company agrees that, subject to Section 5.2(e): (i) the Company Board shall recommend that the Company's stockholders vote to approve the Company Stockholder Matters and shall use its reasonable best efforts to solicit such approval from each of the Company stockholders necessary to deliver the Company Stockholder Written Consent evidencing the Required Company Stockholder Vote 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 (the actions set forth in the foregoing clause (ii), collectively, a "**Company Board Adverse Recommendation Change**").

(e) Notwithstanding anything to the contrary contained in Section 5.2(d) and subject to compliance with Section 4.5, if at any time prior to receipt of the Required Company Stockholder Vote:

(i) the Company has received a written Acquisition Proposal (which Acquisition Proposal did not arise out of a material breach of Section 4.5) from any Person that has not been withdrawn and after consultation with outside legal counsel, the Company Board shall have determined, in good faith, that such Acquisition Proposal is a Superior Offer, the Company Board may make a Company Board Adverse Recommendation Change, if and only if: (A) the Company Board determines in good faith, after consultation with the Company's outside legal counsel, that the failure to do so would reasonably be expected to be inconsistent with the fiduciary duties of the Company Board to the Company's stockholders under applicable Law; (B) the Company shall have given Parent prior written notice of its intention to consider making a Company Board Adverse Recommendation Change at least three (3) Business Days prior to making any such Company Board Adverse Recommendation Change (a "**Company Determination Notice**") (which notice shall not constitute a Company Board Adverse Recommendation Change); and (C) (1) the Company shall have provided to Parent a summary of the material terms and conditions of the Acquisition Proposal in accordance with Section 4.5(b), (2) the Company shall have given Parent three (3) Business Days after delivery of the Company Determination Notice to propose revisions to the terms of this Agreement or make another proposal and shall have made its Representatives reasonably available to negotiate in good faith with Parent (to the extent Parent desires to negotiate) with respect to such proposed revisions or other proposal, if any, and (3) after considering the results of any such negotiations and giving effect to the proposals made by Parent, if any, after consultation with outside legal counsel, the Company Board shall have determined, in good faith, that such Acquisition Proposal is a Superior Offer and that the failure to make the Company Board Adverse Recommendation Change would reasonably be expected to be inconsistent with the fiduciary duties of the Company Board to the Company's stockholders under applicable Law. For the avoidance of doubt, the provisions of this Section 5.2(e)(i) shall also apply to any material change to the facts and circumstances relating to such Acquisition Proposal and require a new Company Determination Notice, except that the references to three (3) Business Days shall be deemed to be two (2) Business Days.

(ii) other than in connection with an Acquisition Proposal, the Company Board may make a Company Board Adverse Recommendation Change in response to a Company Change in Circumstance, if and only if: (A) the Company Board determines in good faith, after consultation with the Company's outside legal counsel, that the failure to do so would reasonably be expected to be inconsistent with the fiduciary duties of the Company Board to the Company's stockholders under applicable Law; (B) the Company shall have given Parent a Company Determination Notice at least three (3) Business Days prior to making any such Company Board Adverse Recommendation Change; and (C) (1) the Company shall have specified the Company Change in Circumstance in reasonable detail, (2) the Company shall have given Parent the three (3) Business Days after delivery of the Company Determination Notice to propose revisions to the terms of this Agreement or make another proposal, and shall have made its Representatives reasonably available to negotiate in good faith with Parent (to the extent Parent desires to do so) with respect to such proposed revisions or other proposal, if any, and (3) after considering the results of any such negotiations and giving effect to the proposals made by Parent, if any, after consultation with outside legal counsel, the Company Board shall have determined, in good faith, that the failure to make the Company Board Adverse Recommendation Change in response to such Company Change in Circumstance would reasonably be expected to be inconsistent with the fiduciary duties of the Company Board to the Company's stockholders under applicable Law. For the avoidance of doubt, the provisions of this Section 5.2(e)(ii) shall also apply to any material change to the facts and circumstances relating to such Company Change in Circumstance and require a new Company Determination Notice, except that the references to three (3) Business Days shall be deemed to be two (2) Business Days.

(iii) 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) and Section 5.2(d) shall not be limited or otherwise affected by the commencement, disclosure, announcement or submission of any Superior Offer or other Acquisition Proposal or by any withdrawal or modification of the Company Board Recommendation.

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 for the purpose of seeking approval of the following matters:

- (i) the amendment of Parent's certificate of incorporation to effect the Nasdaq Reverse Split;
- (ii) the amendment of Parent's certificate of incorporation to effect the name change of Parent;
- (iii) the issuance of shares of Parent Common Stock to the Company's stockholders in connection with the Contemplated Transactions;
- (iv) the adoption of the equity incentive plan attached hereto as **Exhibit F** (the "**2020 Plan**");

(v) the change of control of Parent resulting from the Merger pursuant to Nasdaq rules ; and

(vi) the issuance of (a) shares of Parent Common Stock upon the exercise of certain warrants to be issued in the Pre-Closing Financing, and (b) additional shares of Parent Common Stock that may be issued following the closing of the Pre-Closing Financing (the matters contemplated by the clauses 5.3(a)(i)-(vi) are referred to as the “**Parent Stockholder Matters**,” and such meeting, the “**Parent Stockholders’ Meeting**”).

(b) 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 sixty (60) calendar days in connection with any postponements or adjournments in reliance on the preceding sentence.

(c) Parent agrees that, subject to Section 5.3(d): (i) the Parent Board shall recommend that the holders of Parent Common Stock vote to approve the Parent Stockholder Matters and shall use its reasonable best efforts to solicit such approval; (ii) the Proxy Statement shall include a statement to the effect that the Parent Board recommends that Parent’s stockholders vote to approve the Parent Stockholder Matters (the recommendation of the Parent Board with respect to the Parent Stockholder Matters 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**”).

(d) Notwithstanding anything to the contrary contained in Section 5.3(c) and subject to compliance with Section 4.4, if at any time prior to the approval of Parent Stockholder Matters by the Required Parent Stockholder Vote:

(i) Parent has received a written Acquisition Proposal (which Acquisition Proposal did not arise out of a material breach of Section 4.4), the Parent Board shall have determined, in good faith, that such Acquisition Proposal is a Superior Offer, the Parent Board may make a Parent Board Adverse Recommendation Change, if and only if: (A) the Parent Board determines in good faith, after consultation with Parent’s outside legal counsel, that the failure to do so would reasonably be expected to be inconsistent with the fiduciary duties of the Parent Board to Parent’s stockholders under applicable Law; (B) Parent shall have given the Company prior written notice of its intention to consider making a Parent Board Adverse Recommendation Change at least three (3) Business Days prior to making any such Parent Board Adverse Recommendation Change (a “**Parent Determination Notice**”) (which notice shall not constitute a Parent Board Adverse Recommendation Change); and (C) (1) Parent shall have provided to the Company a summary of the material terms and conditions of the Acquisition Proposal in accordance with Section 4.4(b), (2) Parent shall have given the Company the three (3) Business Days after delivery of the Parent Determination Notice to propose revisions to the terms of this Agreement or make another proposal and shall have made its Representatives reasonably available to negotiate in good faith with the Company (to the extent the Company desires to negotiate) with respect to such proposed revisions or other proposal, if any, and (3) after considering the results of any 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 such Acquisition Proposal is a Superior Offer and that the failure to make the Parent Board Adverse Recommendation Change would reasonably be expected to be inconsistent with the fiduciary duties of the Parent Board to Parent’s stockholders under applicable Law. For the avoidance of doubt, the provisions of this Section 5.3(d)(i) shall also apply to any material change to the facts and circumstances relating to such Acquisition Proposal and require a new Parent Determination Notice, except that the references to three (3) Business Days shall be deemed to be two (2) Business Days.

(ii) Other than in connection with an Acquisition Proposal, 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 Parent's outside legal counsel, that the failure to do so would reasonably be expected to be inconsistent with the fiduciary duties of the Parent Board to Parent's stockholders under applicable Law; (B) Parent shall have given the Company a Parent Determination Notice at least three (3) Business Days prior to making any such Parent Board Adverse Recommendation Change; and (C) (1) Parent shall have specified the Parent Change in Circumstance in reasonable detail, (2) Parent shall have given the Company the three (3) Business Days after delivery of the Parent Determination Notice to propose revisions to the terms of this Agreement or make another proposal, and shall have made its Representatives reasonably available to negotiate in good faith with the Company (to the extent the Company desires to do so) with respect to such proposed revisions or other proposal, if any, and (3) after considering the results of any 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 would reasonably be expected to be inconsistent with the fiduciary duties of the Parent Board to Parent's stockholders under applicable Law. For the avoidance of doubt, the provisions of this Section 5.3(d)(ii) shall also apply to any material change to the facts and circumstances relating to such Parent Change in Circumstance and require a new Parent Determination Notice, except that the references to three (3) Business Days shall be deemed to be two (2) Business Days.

(iii) Parent's obligation to solicit the consent of its stockholders to approve the Parent Stockholder Matters shall not be limited or otherwise affected by the commencement, disclosure, announcement or submission of any Superior Offer or other Acquisition Proposal or by any withdrawal or modification of the Parent Board Recommendation.

(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 Parent's stockholders if, 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 reasonably be expected to be inconsistent with applicable Law, including its fiduciary duties under applicable Law.

5.4 **Company Options, Parent Options, and Parent Warrants**

(a) At the Effective Time, each Company Option that is outstanding and unexercised immediately prior to the Effective Time under the Company Plan, whether or not vested, shall be converted into and become an option to purchase Parent Common Stock, and Parent shall assume the Company Plan and each such Company Option in accordance with the terms (as in effect as of the date of this Agreement) of the Company Plan and the terms of the stock option agreement by which such Company Option is evidenced (but with changes to such documents as Parent and the Company mutually agree 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. 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 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 for the Parent Common Stock issuable upon the 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) to the extent provided under the terms of a Company Option and the Company Plan, such Company Option may be further adjusted as necessary 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. Notwithstanding anything to the contrary in this Section 5.4(a), the conversion of each Company Option (regardless of whether such option qualifies as an "incentive stock option" within the meaning of Section 422 of the Code) into an option to purchase shares of Parent Common Stock shall be made in a manner consistent with Treasury Regulation Section 1.424-1, such that the conversion of a Company Option shall not constitute a "modification" of such Company Option for purposes of Section 409A or Section 424 of the Code.

(b) Parent shall file with the SEC, promptly after the Effective Time, a registration statement on Form S-8 (or any successor or alternative form), relating to the shares of Parent Common Stock issuable with respect to Company Options assumed by Parent in accordance with Section 5.4(a).

(c) Prior to the Effective Time, the Company shall take all actions that may be necessary (under the Company Plan and otherwise) to effectuate the provisions of Section 5.4(a) 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 Section 5.4(a).

(d) Prior to the Closing, the Parent Board shall have adopted appropriate resolutions and taken all other actions necessary and appropriate to provide that each unexpired, unexercised and unvested Parent Option granted under the 2013 Plan shall be accelerated in full effective as of immediately prior to the Effective Time. Effective as of the Effective Time, each outstanding and unexercised Parent Option granted under the 2013 Plan having an exercise price per share less than the Parent Closing Price shall be entitled to receive a number of shares of Parent Common Stock calculated by dividing (a) the product of (i) the total number of shares of Parent Common Stock previously subject to such Parent Option, and (ii) the excess of the Parent Closing Price over the exercise price per share of the Parent Common Stock previously subject to such Parent Option by (b) the Parent Closing Price. Notwithstanding anything herein to the contrary, the tax withholding obligations for each holder receiving shares of Parent Common Stock in accordance with the preceding sentence shall be satisfied by Parent withholding from issuance that number of shares of Parent Common Stock calculated by multiplying the maximum statutory withholding rate for such holder in connection with such issuance by the number of shares of Parent Common Stock to be issued in accordance with the preceding sentence, and rounding up to the nearest whole share. Each outstanding and unexercised Parent Option granted under the 2013 Plan that has an exercise price equal to or greater than the Parent Closing Price shall be terminated and cease to exist as of immediately prior to the Effective Time for no consideration. Prior to the Effective Time, Parent shall take all actions that may be necessary (under the 2013 Plan and otherwise, including, if it deems it necessary or desirable, adopting and approving amendments to the existing underlying grant agreements) to effectuate the provisions of this Section 5.4(d) and to ensure that, from and after the Effective Time, holders of Parent Options granted under the 2013 Plan have no rights with respect thereto other than those specifically provided in this Section 5.4(d).

(e) At the Effective Time, each Parent Option granted under the 2003 Plan that is outstanding and unexercised immediately prior to the Effective Time, shall survive the Closing and remain outstanding in accordance with its terms.

(f) Promptly after the date of this Agreement, and in any event within twenty (20) days before the Effective Time, Parent shall notify the holders of the Parent Warrants of the Contemplated Transactions in accordance with the terms of the applicable Parent Warrants, which notice shall be subject to the review and approval of the Company (not to be unreasonably withheld, conditioned or delayed). At the Effective Time, each Parent Warrant that is outstanding and unexercised immediately prior to the Effective Time, shall survive the Closing and remain outstanding in accordance with its terms. At the Effective Time, each Replacement Warrant that is outstanding and unexercised immediately prior to the Effective Time shall be treated in accordance with its terms.

5.5 **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, jointly and severally, 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 and their respective Subsidiaries, 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 and investigation 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 or their respective Subsidiaries, 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 Parent's Organizational Documents 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 amended, modified or repealed for a period of six (6) 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, prior to the Effective Time, Parent shall purchase a six (6)-year prepaid "tail policy" through Parent's recognized broker of record for the non-cancellable extension of the directors' and officers' liability coverage of Parent's existing directors' and officers' insurance policies for a claims reporting or discovery period of at least six (6) 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 (the "**D&O Tail Policy**").

(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 5.5 in connection with their successful enforcement of the rights provided to such persons in this Section 5.5.

(f) The provisions of this Section 5.5 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. The obligations set forth in this Section 5.5 shall not be terminated, amended or otherwise modified in any manner that adversely affects any D&O Indemnified Party (and their heirs and Representatives) without the prior written consent of such affected D&O Indemnified Party (or their heirs and 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 5.5. Parent shall cause the Surviving Corporation to perform all of the obligations of the Surviving Corporation under this Section 5.5.

5.6 **Additional Agreements.**

(a) 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: (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 (with respect to Contracts set forth in Schedule 5.6) 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.

(b) The Company shall use reasonable best efforts to cause to be taken all actions necessary to consummate the Pre-Closing Financing prior to the Closing.

5.7 **Disclosure.** The initial press release relating to this Agreement shall be a joint press release issued by the Company and Parent and thereafter Parent and the Company shall consult with each other before issuing any further press release(s) or otherwise making any public statement or making any announcement to Parent Associates or Company Associates (to the extent not previously issued or made in accordance with this Agreement) with respect to the Contemplated Transactions and shall not issue any such press release, public statement or announcement to Parent Associates or Company Associates without the other Party's written consent (which shall not be unreasonably withheld, conditioned or delayed). Notwithstanding the foregoing: (a) each Party may, without such consultation or consent, make any public statement in response to questions from the press, analysts, investors or those attending industry conferences, make internal announcements to employees and make disclosures in Parent SEC Documents, so long as such statements are consistent with previous press releases, public disclosures or public statements made jointly by the Parties (or individually, if approved by the other Party); (b) a Party may, without the prior consent of the other Party hereto but subject to giving advance notice to the other Party, issue any such press release or make any such public announcement or statement as may be required by any Law; and (c) Parent need not consult with the Company in connection with such portion of any press release, public statement or filing to be issued or made pursuant to Section 5.3(d)(iii) or with respect to any Acquisition Proposal or Parent Board Adverse Recommendation Change.

5.8 **Listing.** Parent shall use its commercially reasonable efforts: (a) to maintain its existing listing on Nasdaq until the Effective Time; (b) 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); (c) to effect the Nasdaq Reverse Split; and (d) 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. Each Party will promptly inform the other Party of all verbal or written communications between Nasdaq and such Party or its Representatives. All Nasdaq fees associated with the Nasdaq Listing Application and the Nasdaq Reverse Split, if any (the "***Nasdaq Fees***"), shall be borne by the Company. The Company will cooperate with Parent as reasonably requested by Parent with respect to the Nasdaq Listing Application and promptly furnish to Parent all information concerning the Company and its stockholders that may be required or reasonably requested in connection with any action contemplated by this Section 5.8.

5.9 **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 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 acknowledge and agree that each has relied upon the advice of its own tax advisors in connection with the Merger and the Contemplated Transactions and that none of the Company, on the one hand, and Parent and Merger Sub, on the other hand, makes any representation or warranty as to the Intended Tax Treatment, other than the representations and warranties contained in Sections 2.16(m) and 3.16(m), respectively.

(c) The Parties shall use their respective commercially reasonable efforts to cause the Merger to qualify, and will not take any action (other than the Contemplated Transactions) or cause any action to be taken which action would reasonably be expected to prevent the Merger from qualifying, for the Intended Tax Treatment.

(d) Each of Parent and the Company shall use its commercially reasonable efforts to deliver to Parent Counsel and Company Counsel “Tax Representation Letters,” dated as of the date of the opinions of Parent Counsel and Company Counsel described in Section 5.1(c) and signed by an officer of Parent and the Company, respectively, containing representations of Parent and Merger Sub and the Company, as applicable, in each case, as shall be reasonably necessary or appropriate to enable Parent Counsel and Company Counsel to render the applicable opinions described in Section 5.1(c).

5.10 **Legends.** Parent shall be entitled to place appropriate legends on the book entries 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.

5.11 **Directors and Officers.**

(a) The Parties shall use commercially reasonable efforts and take all necessary action so that immediately after the Effective Time, (i) the Parent Board is comprised of seven (7) members, with (A) one (1) such member designated by Parent (the “***Parent Designee***”) and (B) six (6) such members designated by the Company, and (ii) the Persons listed in **Exhibit E** 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 elected or appointed and qualified in accordance with applicable Law. If any Person listed in **Exhibit E** 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 Person listed in **Exhibit E** under the heading “Board Designee – Parent” shall be Parent’s designee pursuant to clause (i) of this Section 5.11(a) (provided that if such Person later becomes unwilling or unable to serve, such list may be changed by Parent prior to the Closing by written notice to the Company to include a different board designee who is reasonably acceptable to the Company). The Persons listed in **Exhibit E** under the heading “Board Designees – Company” shall be the Company’s designees pursuant to clause (i) of this Section 5.11(a) (provided that if such Person later becomes unwilling or unable to serve, such list may be changed by the Company prior to the Closing by written notice to Parent to include different board designees who are reasonably acceptable to Parent).

(b) At the first annual or special meeting of Parent stockholders held following the Effective Time at which directors of Parent are elected, Parent will re-nominate the Parent Designee for election to the Parent Board so long as such Parent Designee is able and willing to serve, and shall use reasonable best efforts to obtain stockholder approval for the election of the Parent Designee at such meeting (including by soliciting proxies in favor of the Parent Designee) and will support the Parent Designee for election in a manner no less rigorous or favorable than the manner in which Parent supports any of its other nominees.

5.12 **Termination of Certain Agreements and Rights.** The Company shall cause any Investor Agreements (excluding the Company Stockholder Support Agreements and the Company Lock-Up Agreements) to be terminated immediately prior to the Effective Time, without any liability being imposed on the part of Parent or the Surviving Corporation.

5.13 **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) calendar 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 Common 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 Common Stock owned by such individual and expected to be converted into shares of Parent Common Stock, restricted stock awards to acquire Parent Common Stock or derivative securities with respect to Parent Common Stock in connection with the Merger.

5.14 **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.

5.15 **Allocation Certificates.**

(a) The Company will prepare and deliver to Parent at least five (5) Business Days prior to the Closing Date a certificate signed by the Chief Executive Officer of the Company in a form reasonably acceptable to Parent setting forth (as of immediately prior to the Effective Time, after giving effect to the Pre-Closing Financing and the Convertible Note Conversion) (i) each holder of Company Common Stock and Company Options; (ii) such holder's name and address; (iii) the number and type of Company Common Stock held and/or underlying the Company Options as of immediately prior to the Effective Time for each such holder and the per share exercise price of each Company Option; and (iv) the number of shares of Parent Common Stock to be issued to such holder, or to underlie any Parent Option to be issued to such holder, pursuant to this Agreement in respect of the Company Common Stock or Company Options held by such holder as of immediately prior to the Effective Time (the "**Allocation Certificate**").

(b) Parent will prepare and deliver to the Company at least five (5) Business Days prior to the Closing Date a certificate signed by the Chief Executive Officer of Parent in a form reasonably acceptable to the Company, setting forth (as of immediately prior to the Effective Time), the number of Parent Outstanding Shares and each component thereof (broken down by outstanding shares of Parent Common Stock, Parent Options, Parent Warrants and Replacement Warrants that are included in Parent Outstanding Shares) (the “*Parent Outstanding Shares Certificate*”).

5.16 **Company Financial Statements.** Prior to the date hereof, the Company has furnished to Parent the Company Financial Statements for inclusion in the Proxy Statement and the Registration Statement. The Company shall also promptly furnish to Parent 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 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 Financial Statements or the Company Interim Financial Statements, as the case may be.

5.17 **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.

5.18 **Stockholder Litigation.** Each Party shall promptly notify the other Party in writing, and conduct and control the settlement and defense, of any stockholder litigation brought or threatened against such Party or any of its directors and officers relating to or challenging this Agreement or the consummation of the Contemplated Transactions; *provided*, that prior to Closing, such Party shall (a) consult with the other Party with respect to any such stockholder litigation and in good faith take any comments of the other Party into account with respect to such stockholder litigation, and (b) keep the other Party reasonably apprised of any material developments in connection with any such stockholder litigation.

5.19 **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.

5.20 **Employee Benefits.**

(a) Parent shall terminate the employment and service, as applicable, of each employee, independent contractor or officer of Parent listed in Section 5.20(a) of the Parent Disclosure Schedule (each, a “*Terminated Parent Associate*”), effective immediately after the Effective Time, and shall comply with the terms of any employment, severance, retention, change of control, or similar Contract specified in Section 3.17(a) of the Parent Disclosure Schedule; *provided, however*, that any Terminated Parent Associate not otherwise party to a Contract specified in Section 3.17(a) of the Parent Disclosure Schedule shall be paid severance by Parent equal to two (2) weeks of base salary plus one (1) week of base salary for each full or partial year of employment with Parent, but no less than a minimum of twelve (12) weeks of base salary.

(b) Each Person, other than any Person who has previously entered into a Contract with Parent providing for the payment of severance benefits or is a Terminated Parent Associate, who is an employee of Parent as of the Effective Time and who is terminated by Parent following the Effective Time shall be entitled to severance benefits to be paid by Parent pursuant to Parent's current severance practice, but in no event shall such severance benefits be less than two (2) weeks of base salary plus one (1) week of base salary for each full or partial year of employment with Parent, but no less than a minimum of twelve (12) weeks of base salary.

5.21 **Company Convertible Note Conversion.** The Company shall take all necessary action to effect the conversion of the Company Convertible Notes into Company Common Stock, which shall occur not later than immediately prior to the Effective Time (the "**Convertible Note Conversion**").

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 **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.

6.2 **Stockholder Approval.** (a) Parent shall have obtained the Required Parent Stockholder Vote with regard to the proposals in Sections 5.3(a)(i), 5.3(a)(ii), 5.3(a)(iii), 5.3(a)(v), and 5.3(a)(vi), and (b) the Company shall have obtained the Required Company Stockholder Vote.

6.3 **Listing.** The existing shares of Parent Common Stock shall have been continually listed on Nasdaq as of and from the date of this Agreement through the Closing Date, the approval of the listing of additional shares of Parent Common Stock on Nasdaq shall have been obtained and the shares of Parent Common Stock to be issued in the Merger pursuant to this Agreement shall have been approved for listing (subject to official notice of issuance) on Nasdaq as of the Closing.

6.4 **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.

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 in all material respects as of such date). The representations and warranties of the Company contained in this Agreement (other than the Company Fundamental 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).

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, 7.6, and 7.10 have been duly satisfied and (ii) that the information set forth in the Allocation Certificate delivered by the Company in accordance with Section 5.15 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 directors of the Company who will not be a director of Parent or the Surviving Corporation pursuant to Section 5.11; and

(c) the Allocation Certificate.

7.4 **FIRPTA Certificate.** Parent shall have received (i) an original signed statement from the Company that the Company is not, and has not been at any time during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code, a “United States real property holding corporation,” as defined in Section 897(c)(2) of the Code, conforming to the requirements of Treasury Regulations Section 1.1445-2(c)(3) and 1.897-2(h), and (ii) an original signed notice to be delivered to the IRS in accordance with the provisions of Treasury Regulations Section 1.897-2(h)(2), together with written authorization for Parent to deliver such notice to the IRS on behalf of the Company following the Closing, each dated as of the Closing Date, duly executed by an authorized officer of the Company, 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.

7.7 **Company Lock-Up Agreements.** Parent shall have received the Company Lock-Up Agreements duly executed by each of the Company 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.

7.8 **Company Stockholder Support Agreements** Parent shall have received the Company Stockholder Support Agreements duly executed by each of the Company 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.

7.9 **Pre-Closing Financing.** The Pre-Closing Financing shall have been consummated, and the Company shall have received all of the proceeds of the Pre-Closing Financing (including, for the avoidance of doubt, the minimum gross proceeds of \$20,000,000) prior to the Effective Time on the terms and conditions set forth in the Subscription Agreements.

7.10 **Company Stockholder Written Consent** The Company Stockholder Written Consent evidencing the Required Company Stockholder Vote shall be in full force and effect.

7.11 **Dissenting Shares.** No more than 5% of the Company Common Stock shall be Dissenting Shares.

7.12 **Convertible Note Conversion.** The Company shall have effected the Convertible Note Conversion.

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.** 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 in all material respects as of such date). The representations and warranties of Parent and Merger Sub contained in this Agreement (other than the Parent Fundamental 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 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 of Parent confirming that the conditions set forth in Sections 8.1, 8.2, and 8.4 have been duly satisfied;

(b) the Parent Cash Schedule and a certificate executed by the principal financial officer of Parent certifying that the information set forth in the Parent Cash Schedule delivered by Parent in accordance with Section 1.12 is true and accurate in all material respects as of the Anticipated Closing Date;

(c) the Parent Outstanding Shares Certificate; and

(d) 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 directors of Parent who are not to continue as directors of Parent after the Closing pursuant to Section 5.11.

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 **Minimum Parent Cash Amount.** The Parent Cash Amount, calculated as of the Anticipated Closing Date, shall not be less than \$0.00.

8.6 **Parent Lock-Up Agreements.** The Company shall have received the Parent Lock-Up Agreements duly executed by each of the Parent Signatories, each of which shall be in full force and effect.

8.7 **Board of Directors.** Parent shall have taken all actions necessary to cause the Parent Board to be constituted as set forth in Section 5.11 of this Agreement effective as of the Effective Time.

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 November 14, 2020 (subject to possible extension as provided in this Section 9.1(b), the "**End Date**"); *provided, however*, that the right to terminate this Agreement pursuant to 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, *provided, further, however*, that, 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 Party; *provided, further, however*, that, in the event an adjournment or postponement of the Parent Stockholders' Meeting has occurred as permitted pursuant to Section 5.3(b) and such adjournment or postponement continues through the End Date, then the End Date shall automatically extend until the date that is ten (10) calendar days following such adjournment or postponement, or, in the event of an additional permitted adjournment or postponement, the date that is ten (10) calendar days following such permitted adjournment or postponement;

(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 Company Stockholder Written Consent evidencing the Required Company Stockholder Vote shall not have been obtained within five (5) Business Days of the Registration Statement becoming effective in accordance with the provisions of the Securities Act; *provided, however*, that once the Company Stockholder Written Consent evidencing 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, if applicable, following adjournments or postponements thereof as permitted pursuant to Section 5.3(b)) shall have been held and completed and Parent's stockholders shall have taken a final vote on the Parent Stockholder Matters and (ii) Sections 5.3(a)(i), 5.3(a)(ii), 5.3(a)(iii), 5.3(a)(v) and 5.3(a)(vi) of 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 the right to terminate this Agreement pursuant to this Section 9.1(e) shall not be available to Parent where the failure to obtain the Required Parent Stockholder Vote has been directly caused by the action or failure to act of Parent and such action or failure to act constitutes a material breach by Parent of this Agreement;

(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 Parent (at any time prior to the Required Company Stockholder Vote being obtained) if a Company Triggering Event shall have occurred;

(h) 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(h) as a result of such particular breach or inaccuracy until the expiration of a fifteen (15)-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(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 Parent or Merger Sub is cured prior to such termination becoming effective);

(i) 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(i) as a result of such particular breach or inaccuracy until the expiration of a fifteen (15)-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(i) (it being understood that this Agreement shall not terminate pursuant to this Section 9.1(i) as a result of such particular breach or inaccuracy if such breach by the Company is cured prior to such termination becoming effective); or

(j) by Parent, at any time, upon entering into a Permitted Alternative Agreement if (i) Parent has received a Superior Offer, (ii) Parent has complied with its obligations under Section 5.3(d) with respect to such Superior Offer, (iii) Parent enters into a Permitted Alternative Agreement with respect to such Superior Offer and (iv) within five (5) Business Days of such termination, Parent pays to the Company the Company Termination Fee in accordance with Section 9.3(d).

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 5.7, 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 and material breach of any representation, warranty, covenant, obligation or other provision contained in this Agreement.

9.3 **Expenses; Termination Fees.**

(a) Except as set forth in this Section 9.3, whether or not the Merger is consummated, (i) all Parent Transaction Expenses shall be paid by Parent (or on behalf of Parent) at or prior to the Closing and (ii) all Company Transaction Expenses shall be paid by the Company.

(b) If (i) this Agreement is terminated by (A) Parent or the Company pursuant to Section 9.1(b) or Section 9.1(e) or (B) the Company pursuant to Section 9.1(f) or Section 9.1(h), (ii) 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 (iii) within six (6) months after the date of such termination, Parent enters into a definitive agreement for any Subsequent Transaction or consummates any Subsequent Transaction, then Parent shall pay to the Company, upon such entry into a definitive agreement for or consummation of a Subsequent Transaction, a nonrefundable fee in an amount equal to \$750,000 (the "**Company Termination Fee**").

(c) If (i) this Agreement is terminated by (A) Parent or the Company pursuant to Section 9.1(b) or (B) Parent pursuant to Section 9.1(d), Section 9.1(g) or Section 9.1(i), (ii) an Acquisition Proposal with respect to the Company shall have been publicly announced or disclosed or otherwise communicated to the Company or the Company Board after the date of this Agreement but prior to the termination of this Agreement, and (iii) within six (6) months after the date of such termination, the Company enters into a definitive agreement for a Subsequent Transaction or consummates any Subsequent Transaction, then the Company shall pay to Parent, upon such entry into a definitive agreement for or consummation of a Subsequent Transaction, a nonrefundable fee in an amount equal to \$750,000 (the "**Parent Termination Fee**"), less any amount actually paid to Parent pursuant to Section 9.3(e).

(d) If this Agreement is terminated by Parent pursuant to Section 9.1(j), then Parent shall pay to the Company the Company Termination Fee within five (5) Business Days of such termination.

(e) If this Agreement is terminated by Parent pursuant to Section 9.1(d), then the Company shall reimburse Parent for all reasonable fees and expenses incurred by Parent in connection with this Agreement and the transactions contemplated hereby, including: (i) all fees and expenses incurred in connection with the preparation, printing and filing, as applicable, of the Registration Statement or Proxy Statement (including any preliminary materials related thereto and all amendments and supplements thereto, as well as any financial statements and schedules thereto), (ii) reasonable legal and auditor fees and expenses; and (iii) all fees and expenses incurred in connection with the preparation and filing under any filing requirement of any Governmental Body applicable to this Agreement and the transactions contemplated hereby; *provided, however*, the fees and expenses for clauses (i) through (iii) above (collectively, the "**Third-Party Expenses**"), shall be capped at a maximum of \$750,000 for such Third-Party Expenses.

(f) Any Company Termination Fee, Parent Termination Fee or reimbursement of Third-Party Expenses due under this Section 9.3 shall be paid by wire transfer of same day funds. If a Party fails to pay when due any amount payable by it under this Section 9.3, then such Party shall pay to the other Party interest on such overdue amount (for the period commencing as of the date such overdue amount was originally required to be paid and ending on the date such overdue amount is actually paid to the other Party in full) at a rate per annum equal to the "prime rate" (as published in *The Wall Street Journal* or any successor thereto) in effect on the date such overdue amount was originally required to be paid.

(g) The Parties agree that, (i) 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 (A) Parent shall have no further liability to the Company in connection with or arising out of this Agreement or the termination thereof, any breach of this Agreement by Parent giving rise to such termination, or the failure of the Contemplated Transactions to be consummated, (B) 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 (C) 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; *provided, however*, that nothing in this Section 9.3(g) shall limit the rights of the Company under Section 10.11 or with respect to claims of fraud or willful and material breach of this Agreement by either Party prior to the date of termination.

(h) The Parties agree that, (i) subject to Section 9.2, payment of the Parent 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 Parent following the termination of this Agreement, it being understood that in no event shall the Company be required to pay the amounts payable pursuant to this Section 9.3 on more than one occasion and (ii) following payment of the Parent Termination Fee (A) the Company shall have no further liability to Parent in connection with or arising out of this Agreement or the termination thereof, any breach of this Agreement by the Company giving rise to such termination, or the failure of the Contemplated Transactions to be consummated, (B) neither Parent nor any of its Affiliates shall be entitled to bring or maintain any other claim, action or proceeding against the Company 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 (C) Parent and its Affiliates shall be precluded from any other remedy against the Company and its 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; *provided, however*, that nothing in this Section 9.3(h) shall limit the rights of Parent and Merger Sub under Section 10.11 or with respect to claims of fraud or willful and material breach of this Agreement by either Party prior to the date of termination.

(i) 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 Party 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; Waiver of Jury Trial**

(a) 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 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; and (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.

(b) EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION (i) ARISING UNDER THIS AGREEMENT OR (ii) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO IN RESPECT OF THIS AGREEMENT OR ANY OF THE CONTEMPLATED TRANSACTIONS, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY, OR OTHERWISE. EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT THE PARTIES TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR 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 (1) 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 (with a written or electronic confirmation of delivery) prior to 5:00 p.m. New York 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:

Rexahn Pharmaceuticals, Inc.
15245 Shady Grove Road, Suite 455
Rockville, MD 20850
Attention: Douglas J. Swirsky
Email: swirskyd@rexahn.com

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

Hogan Lovells US LLP
100 International Drive, Suite 2000
Baltimore, MD 21202
Attention: Asher M. Rubin; William I. Intner
Email: asher.rubin@hoganlovells.com; william.intner@hoganlovells.com

if to the Company:

Ocuphire Pharma, Inc.
37000 Grand River Ave, Suite 120
Farmington Hills, MI 48335
Attention: Mina Sooch
Email: mssooch@ocuphire.com

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

Honigman LLP
650 Trade Centre Way, Suite 200
Kalamazoo, MI 49002
Attention: Phillip D. Torrence
Email: ptorrence@honigman.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 5.5) 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.

(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) 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.

(f) 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.

(g) 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.

(h) 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 readily apparent on its face from a reading of the disclosure that such disclosure is applicable to such other sections and subsections.

(i) Each of “delivered” or “made available” means, with respect to any documentation, that prior to 11:59 p.m. (New York time) on the date that is two (2) Business 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 prior to the date hereof and publicly made available on the SEC’s Electronic Data Gathering Analysis and Retrieval system.

(j) 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)

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

REXAHN PHARMACEUTICALS, INC.

By: /s/ Douglas J. Swirsky
Name: Douglas J. Swirsky
Title: President and Chief Executive Officer

RAZOR MERGER SUB, INC.

By: /s/ Douglas J. Swirsky
Name: Douglas J. Swirsky
Title: President

OCUPHIRE PHARMA, INC.

By: /s/ Mina Sooch
Name: Mina Sooch
Title: Chief Executive Officer

[Signature Page to Agreement and Plan of Merger and Reorganization]

**EXHIBIT A
CERTAIN DEFINITIONS**

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

“**2003 Plan**” means the Rexahn Pharmaceuticals, Inc. Stock Option Plan, dated August 5, 2003 and assumed by Parent on May 13, 2005.

“**2013 Plan**” means the Rexahn Pharmaceuticals, Inc. 2013 Stock Option Plan, as amended and restated on June 9, 2016, and as further amended on April 11, 2017.

“**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 or any of its Affiliates, on the one hand, or Parent or any of its Affiliates, on the other hand, to the other Party) that could 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, however, that, in the case of the Company, to the extent that the Pre-Closing Financing is effected in accordance with the terms and conditions of this Agreement, the Pre-Closing Financing shall not constitute 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.

“**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.

“**Antitrust Laws**” shall mean the Sherman Act, as amended, the Clayton Act, as amended, the HSR Act, the Federal Trade Commission Act, as amended, all applicable foreign anti-trust laws and all other applicable Laws issued by a Governmental Body that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening of competition.

“**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 Liability Replacement Warrant**” means a Replacement Warrant that entitles the holder of such Replacement Warrant to exchange such Replacement Warrant for a cash payment in connection with the Contemplated Transactions.

“**Cash and Cash Equivalents**” means all (a) cash and cash equivalents (excluding Restricted Cash) and (b) marketable securities, 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 or its Subsidiaries.

“**Company Board**” means the board of directors of the Company.

“**Company Capital Stock**” means the Company Common Stock and the Company Preferred Stock.

“**Company Change in Circumstance**” means (a) a change in circumstances neither known nor reasonably foreseeable by the Company Board as of, or prior to, the date of this Agreement nor known nor reasonably foreseeable by any of the officers of the Company as of or prior to the date of this Agreement and (b) does not relate to (i) any Acquisition Proposal, (ii) any events, changes or circumstances relating to Parent or Merger Sub, (iii) clearance of the Merger under any applicable antitrust Laws or (iv) the mere fact that the Company meets or exceeds any internal or analysts’ published projections, forecasts, estimates or predictions of revenue, earnings or other financial or operating metrics for any period ending on or after the date hereof.

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

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

“**Company Convertible Notes**” means the outstanding notes convertible into Company Common Stock set forth in Section 2.6(a) of the Company Disclosure Schedule.

“**Company ERISA Affiliate**” means any corporation or trade or business (whether or not incorporated) which is (or at any relevant time was) treated with the Company or any of its Subsidiaries as a single employer within the meaning of Section 414 of the Code.

“**Company Fundamental Representations**” means the representations and warranties of the Company set forth in Sections 2.1 (Due Organization; Subsidiaries), 2.3 (Authority; Binding Nature of Agreement), 2.6(a) and (c) (Capitalization) and 2.20 (No Financial Advisors).

“**Company IP**” means all Intellectual Property Rights that are owned or purported to be owned by, assigned to, or exclusively licensed by, the Company or its Subsidiaries.

“**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, financial condition, assets, liabilities or results of operations of the Company or its Subsidiaries or ability to consummate the Contemplated Transactions, taken as a whole; *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, economic or political conditions affecting the industry in which the Company and its Subsidiaries operate, (b) any natural disaster or any acts of war, armed hostilities or terrorism, (c) changes in financial, banking or securities markets, (d) 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 (e) resulting from the taking of any action, or the failure to take any action, by the Company that is required to be taken by this Agreement; except in each case with respect to clauses (a) through (c), to the extent disproportionately affecting the Company and its Subsidiaries, taken as a whole, relative to other similarly situated companies in the industries in which the Company and its Subsidiaries operate.

“**Company Options**” means options or other rights to purchase shares of Company Common Stock issued by the Company.

“**Company Plan**” means the Ocuphire Pharma, Inc. 2018 Equity Incentive Plan, as amended.

“**Company Preferred Stock**” means the preferred stock, \$0.0001 par value per share, of the Company.

“**Company Transaction Expenses**” means all fees and expenses incurred by the Company at or prior to the Effective Time in connection with the Contemplated Transactions and this Agreement, including: (a) any fees and expenses of legal counsel and accountants, the maximum amount of fees and expenses payable to financial advisors, investment bankers, brokers, consultants, and other advisors of the Company, including, without limitation, for preparation of the Registration Statement, Proxy Statement, and any amendments and supplements thereto, preparing responses to any SEC comments, and drafting any charter amendments (and in each case, the related disclosure required in the Registration Statement and Proxy Statement); (b) the costs or expenses, including attorney’s fees or settlement costs, incurred in connection with any potential or actual security holder litigation arising or resulting from this Agreement, the Merger or the Contemplated Transactions and that may be brought in connection with or on behalf of any Company security holder’s interest in any of the Company’s outstanding securities (including all amounts paid or payable up to the retention amount of any insurance policy that is or may cover such costs or expenses and amounts not covered by any such insurance policy); (c) 50% of (i) the fees paid to the SEC in connection with filing the Registration Statement, the Proxy Statement, and any amendments and supplements thereto with the SEC; and (ii) any fees and expenses incurred by Olde Monmouth Stock Transfer Co., Inc., Parent’s transfer agent, and the Proxy Solicitor, in connection with the filing and distribution of the Registration Statement and any amendments and supplements thereto with the SEC (without duplication of the fees and expenses addressed in clause (c)(i) above); and (iii) the fees and expenses paid or payable to the Exchange Agent pursuant to the engagement agreement with the Exchange Agent; and (d) 100% of the Nasdaq Fees.

“**Company Triggering Event**” shall be deemed to have occurred if: (a) the Company shall have made a Company Board Adverse Recommendation Change; (b) the Company Board or any committee thereof shall have publicly approved, endorsed or recommended any Acquisition Proposal; (c) the Company shall have entered into any letter of intent or similar document relating to any Acquisition Proposal; or (d) the Company, or any director or officer of the Company, shall have willfully and intentionally breached the provisions set forth in Section 4.5.

“**Company Unaudited Interim Balance Sheet**” means the unaudited consolidated balance sheet of the Company and its consolidated Subsidiaries for the period ended March 31, 2020 (the “**Company Unaudited Interim Balance Sheet Date**”) provided to Parent prior to the date hereof.

“**Confidentiality Agreement**” means that certain Confidentiality Agreement, dated as of September 30, 2019, 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 Nasdaq Reverse Split, and the other transactions and actions contemplated by this Agreement, including the CVR Agreement.

“**Contract**” means, with respect to any Person, any written or oral 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.

“**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.

“**Estimated Warrant Amount**” means the amount set forth in Section C of the Parent Disclosure Schedule (the “**Estimated Warrant Schedule**”); *provided, however*, that Parent will update the Estimated Warrant Schedule on the Determination Date to reflect (a) any such Parent Warrants that have been or will be exercised, exchanged, cancelled and/or terminated (the “**Omitted Warrants**”) between the date hereof and the Closing Date, in which case the Estimated Warrant Amount shall be reduced by an amount equivalent to the sum of the aggregate amount obtained by multiplying each Omitted Warrant by the amount set forth in the Value Amount row of the Estimated Warrant Schedule that is applicable to the Omitted Warrant, and (b) the closing trading price of a share of Parent Common Stock on Nasdaq on the Determination Date. In each case Parent shall update the Estimated Warrant Schedule using the same methodology used to calculate the original Estimated Warrant Amount, except to reflect any changes resulting from the change of the closing trading price of a share of Parent Common Stock on Nasdaq on the Determination Date (and to reflect any changes resulting from Omitted Warrants referenced in (a) above). For the avoidance of doubt, (a) any Parent Warrants that are exercised, exchanged, cancelled and/or terminated prior to the Closing shall be removed from the Estimated Warrant Schedule even if such Parent Warrants are exercised, exchanged, cancelled and/or terminated after the Determination Date and (b) in no event shall any Replacement Warrants (other than Cash Liability Replacement Warrants) be included in the Estimated Warrant Amount.

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

“**Exchange Ratio**” means, subject to Section 1.5(i), 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 (i) the Company Valuation, plus (ii) the Parent Valuation.
- “**Company Allocation Percentage**” means the quotient (expressed as a percentage with the percentage rounded to two decimal places) determined by dividing (i) the Company Valuation by (ii) the Aggregate Valuation.
- “**Company Merger Shares**” means the product determined by multiplying (i) the Post-Closing Parent Shares by (ii) the Company Allocation Percentage.
- “**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 exercise of all Company Options outstanding as of immediately prior to the Effective Time, (ii) the conversion of all Company Convertible Notes and other outstanding indebtedness, (iii) the closing of the Pre-Closing Financing (excluding any shares of Company Common Stock issued into escrow pursuant to the terms of the Pre-Closing Financing), and (iv) the issuance of shares of Company Common Stock in respect of all other outstanding options, restricted stock awards, warrants or rights to receive such shares, whether conditional or unconditional, and including any outstanding options, restricted stock awards, warrants or rights triggered by or associated with the consummation of the Merger (but excluding any other shares of Company Common Stock reserved for issuance under the Company Plan).

- “**Company Valuation**” means \$120,000,000.
- “**Parent Allocation Percentage**” means the quotient (expressed as a percentage, with the percentage rounded to two decimal places) determined by dividing (i) the Parent Valuation by (ii) the Aggregate 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 and as converted to Parent Common Stock basis, with any in-the-money Replacement Warrants calculated based on the treasury stock method using the Market Price, and (i) assuming, without limitation or duplication, the exercise of all Replacement Warrants (other than Cash Liability Replacement Warrants) (subject to sub-clause (ii)(e) below) and the settlement in shares of each in-the-money Parent Option outstanding as of the Effective Time pursuant to Section 5.4(d) solely to the extent such Parent Option will not be canceled at or prior to the Effective Time pursuant to Section 5.4(d) or exercised prior thereto, and (ii) without regard to and excluding (a) any Parent Options canceled at or prior to the Effective Time pursuant to Section 5.4(d), (b) any out-of-the-money Parent Options granted under the 2003 Plan, (c) any Omitted Warrants, (d) any out-of-the-money Parent Warrants, (e) one-half of each share of Parent Common Stock underlying any out-of-the-money Replacement Warrants, and (f) any shares of Parent Common Stock reserved for future issuance pursuant to the Parent Stock Plans. A Parent Option, Parent Warrant and Replacement Warrant is out-of-the-money if its exercise price is equivalent to or greater than \$2.5025 (the “**Market Price**”), and is in-the-money if its exercise price is less than such amount.
- “**Parent Valuation**” means \$20,000,000 (the “**Parent Base Valuation**”); *provided, however*, to the extent that (i) the Parent Cash Amount determined pursuant to Section 1.12 is less than \$3,200,000, then the Parent Base Valuation shall be reduced by \$150,000 for each \$100,000 that the Parent Cash Amount as so determined is less than \$3,200,000, subject to a minimum Parent Valuation of \$12,000,000 (for example, the Parent Valuation would be \$19,700,000 if the Parent Cash Amount determined pursuant to Section 1.12 is \$3,000,000); and (ii) the Parent Cash Amount determined pursuant to Section 1.12 is greater than \$6,000,000, then the Parent Base Valuation shall be increased by \$150,000 for each \$100,000 that the Parent Cash Amount as so determined is greater than \$6,000,000 (for example, the Parent Valuation would be \$20,300,000 if the Parent Cash Amount determined pursuant to Section 1.12 is \$6,200,000).
- “**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.

“**Governmental Authorization**” means any: (a) permit, license, certificate, certification, franchise, permission, approval, consent, exemption, 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.

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

“Intellectual Property Rights” means and includes all intellectual property or other proprietary rights under the laws of any jurisdiction in the world, including, without limitation: (a) rights associated with works of authorship, including exclusive exploitation rights, copyrights, moral rights, software, databases, and mask works; (b) trademarks, service marks, trade dress, logos, trade names and other source identifiers, domain names and URLs and similar rights and any and all goodwill associated therewith; (c) rights associated with trade secrets, know how, inventions, invention disclosures, methods, processes, protocols, specifications, techniques and other forms of technology; (d) patents and industrial property rights; and (e) other similar proprietary rights in intellectual property of every kind and nature; (f) rights of privacy and publicity; and (g) all registrations, renewals, extensions, statutory invention registrations, provisionals, continuations, continuations-in-part, provisionals, divisions, or reissues of, and applications for, any of the rights referred to in clauses “(a)” through “(f)” above (whether or not in tangible form and including all tangible embodiments of any of the foregoing, such as samples, studies and summaries), along with all rights to prosecute and perfect the same through administrative prosecution, registration, recordation or other administrative proceeding, and all causes of action and rights to sue or seek other remedies arising from or relating to the foregoing, including for past, present or future infringement of any of the foregoing.

“IRS” means the United States Internal Revenue Service.

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

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

“**Merger Sub Board**” means the board of directors of Merger Sub.

“**Nasdaq**” means the Nasdaq Stock Market, LLC, including the Nasdaq Capital Market or such other Nasdaq market on which shares of Parent Common Stock are then listed.

“**Nasdaq Reverse Split**” means a reverse stock split of all outstanding shares of Parent Common Stock at a reverse stock split ratio as mutually agreed to by Parent and the Company that is effected by Parent for the purpose of maintaining compliance with Nasdaq listing standards.

“**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, regulations and similar documents or agreements relating to the organization or governance of such Person, in each case, as amended or supplemented.

“**Parent Associate**” means any current or former employee, independent contractor, officer or director of Parent.

“**Parent Balance Sheet**” means the unaudited balance sheet of Parent as of March 31, 2020 (the “**Parent Balance Sheet Date**”), included in Parent’s Report on Form 10-Q for the quarterly period ended March 31, 2020, as filed with the SEC.

“**Parent Board**” means the board of directors of Parent.

“**Parent Cash Amount**” (a) the sum of all Cash and Cash Equivalents, short-term investments, accrued investment interest receivable, and any prepaid refundable deposits listed in Section 1.12(a) of the Parent Disclosure Schedule, in each case, of Parent as of the Determination Date, calculated in accordance with Section 1.12, minus (b) Parent’s accounts payable and accrued expenses (without duplication of any expenses accounted for below), in each case as of such date and determined in a manner consistent with the manner in which such items were historically determined and in accordance with Parent’s audited financial statements and unaudited interim balance sheet, minus (c) all liabilities of Parent to any current or former Parent officer, director, employee, consultant or independent contractor, including change of control payments, retention payments, severance and other employee-, consultant- or independent contractor-related termination costs, or other payments pursuant to any Parent Benefit Plan, including but not limited to payments of deferred compensation, accrued but unpaid bonuses and accrued but unpaid vacation or paid time off (including related employer employment taxes on all the foregoing), regardless of whether or not such amounts are accrued or due as of the Determination Date and regardless of when paid or payable and regardless of whether such amounts will be paid or are payable as a result of actions taken at, or immediately prior to or after the Effective Time, minus (d) any bona fide current liabilities payable in cash, in each case to the extent not canceled at or prior to the Determination Date (without duplication of any of the items above), minus (e) the Parent Transaction Expenses, and minus (f) the Estimated Warrant Amount (as may be adjusted prior to the Closing in accordance with this Agreement); *provided, however*, that for each share of Parent Common Stock that is subject to a Parent Warrant as of the date of this Agreement that is exchanged by Parent following the date of this Agreement for newly issued shares of Parent Common Stock and permanently ceases prior to, at or following the Determination Date to be subject to a Parent Warrant or any other option, warrant, convertible security or derivative security of Parent, Parent shall receive credit of \$1.00 towards the Parent Cash Amount for each such share of Parent Common Stock that permanently ceases prior to, at or following the Determination Date to be subject to a Parent Warrant or any other option, warrant, convertible security or derivative security of Parent.

“Parent Change in Circumstance” means (a) a change in circumstances neither known nor reasonably foreseeable by the Parent Board as of, or prior to, the date of this Agreement nor known nor reasonably foreseeable by any of the officers of Parent as of or prior to the date of this Agreement and (b) does not relate to (i) any Acquisition Proposal, (ii) any events, changes or circumstances relating to the Company, (iii) clearance of the Merger under any applicable antitrust Laws or (iv) the mere fact that Parent meets or exceeds any internal or analysts’ published projections, forecasts, estimates or predictions of revenue, earnings or other financial or operating metrics for any period ending on or after the date hereof.

“Parent Closing Price” means the volume weighted average closing trading price of a share of Parent Common Stock on Nasdaq for the five (5) consecutive trading days ending five (5) trading days immediately prior to the date upon which the Merger becomes effective.

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

“Parent Contract” means any Contract: (a) to which Parent or Merger Sub is a party; (b) by which Parent, Merger Sub or any Parent IP or any other asset of Parent or Merger Sub is or may become bound or under which Parent or Merger Sub has, or may become subject to, any obligation; or (c) under which Parent or Merger Sub has or may acquire any right or interest.

“Parent ERISA Affiliate” means any corporation or trade or business (whether or not incorporated) which is (or at any relevant time was) treated with Parent or any of its Subsidiaries as a single employer within the meaning of Section 414 of the Code.

“Parent Fundamental Representations” means the representations and warranties of Parent and Merger Sub set forth in Sections 3.1(a) and (b) (Due Organization; No Subsidiaries), 3.3 (Authority; Binding Nature of Agreement), 3.6(a) and (c) (Capitalization) and 3.20 (No Financial Advisors).

“Parent IP” means all Intellectual Property Rights that are owned or purported to be owned by, assigned to, or exclusively licensed by, Parent or its Subsidiaries.

“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, financial condition, assets, liabilities or results of operations of Parent or ability to consummate the Contemplated Transactions; *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, economic or political conditions affecting the industry in which Parent operates, (b) any natural disaster or any 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 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); (g) continued losses from operations or decreases in cash balances of Parent; or (h) resulting from the taking of any action or the failure to take any action, by Parent that is required to be taken by this Agreement, 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 Options” means options or other rights to purchase shares of Parent Common Stock issued by Parent.

“Parent Stock Plans” means the 2003 Plan and the 2013 Plan, in each case, as amended from time to time.

“Parent Transaction Expenses” means the sum of: (a) the cash cost of any change of control payments or severance, termination or similar payments that are due or become due to any current or former employee, director or independent contractor of Parent upon the consummation of the Contemplated Transactions that are unpaid and not otherwise included in the Parent Cash Amount; (b) the costs or expenses, including attorney’s fees or settlement costs, incurred in connection with any potential or actual security holder litigation arising or resulting from this Agreement, the Merger or the Contemplated Transactions and that may be brought in connection with or on behalf of any Parent security holder’s interest in any of Parent’s outstanding securities (including all amounts paid or payable up to the retention amount of any insurance policy that is or may cover such costs or expenses and amounts not covered by any such insurance policy); (c) any fees and expenses of legal counsel, accountants, financial advisors, investment bankers, brokers, consultants, and other advisors of Parent, including, without limitation, for preparation of the Registration Statement, Proxy Statement, and any amendments and supplements thereto, preparing responses to any SEC comments, and drafting any charter amendments (and in each case, the related disclosure required in the Registration Statement and Proxy Statement); (d) 50% of (i) the fees paid to the SEC in connection with filing the Registration Statement, the Proxy Statement, and any amendments and supplements thereto with the SEC; (ii) the fees and expenses paid or payable to the Exchange Agent pursuant to the engagement agreement with the Exchange Agent; and (iii) any fees and expenses incurred by Olde Monmouth Stock Transfer Co., Inc., Parent’s transfer agent, and the Proxy Solicitor, in connection with the filing and distribution of the Registration Statement and any amendments and supplements thereto with the SEC (without duplication of the fees and expenses addressed in clause (d)(i) above); and (e) the D&O Tail Policy.

“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; (c) Parent shall have entered into any letter of intent or similar document relating to any Acquisition Proposal (other than a confidentiality agreement permitted pursuant to Section 4.4); or (d) Parent, or any director or officer of Parent, shall have willfully and intentionally breached the provisions set forth in Section 4.4.

“Parent Warrants” means the warrants to purchase capital stock of Parent listed in Section B of the Parent Disclosure Schedule.

“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 Encumbrance” means: (a) any liens for current Taxes not yet due and payable or for Taxes that are being contested in good faith and, in each case, 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 any of its Subsidiaries 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 Rights granted by the Company or any of its Subsidiaries 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 Rights 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.

“Pre-Closing Financing” means the sale of Company securities (equity or debt) to be consummated prior to the Closing with aggregate gross cash proceeds to the Company of at least \$20,000,000 (excluding the amount of the Company Convertible Notes) pursuant to the terms and conditions set forth in the Subscription Agreements or other financing documents.

“Proxy Solicitor” means the proxy solicitor engaged by Parent to assist in the solicitation of proxies from Parent’s stockholders in connection with the Parent Stockholders’ Meeting.

“Proxy Statement” means the proxy statement to be sent to Parent’s stockholders in connection with the Parent Stockholders’ Meeting.

“Reference Date” means June 17, 2020.

“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 holders 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.

“Replacement Warrants” means any warrants to purchase capital stock of Parent in exchange for the exercise, exchange, cancellation, modification or termination of the Parent Warrants between the date hereof and the Closing.

“Representatives” means directors, officers, employees, agents, attorneys, accountants, investment bankers, advisors and representatives.

“Restricted Cash” means any cash or cash equivalents that are unavailable for dividend or distribution as a result of the requirements of applicable Law or the dividend or distribution of which is subject to Tax, including any withholding or other similar Tax, or the dividend or distribution of which would produce other adverse Tax consequences for Parent or its Affiliates.

“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.

“**Subscription Agreement**” means any stock purchase agreement, as well as related investment agreements entered into by and among the Company and the Person(s) named therein (in each case, substantially in the forms entered into by the Company in connection with the Pre-Closing Financing prior to the date of this Agreement), pursuant to which such Person(s) have agreed to purchase the number of shares of Company Common Stock in such amounts and on such terms set forth therein in connection with the Pre-Closing Financing.

“**Subsequent Transaction**” means any Acquisition Transaction (with all references to 20% in the definition of Acquisition Transaction being treated as references to 85% for these purposes).

“**Subsidiary**” means, with respect to a Person, another entity of which such Person directly or indirectly owns or purports to own, beneficially or of record, (a) an amount of voting securities or other interests 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 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.

“**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.

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

“*WARN Act*” means the Worker Adjustment Retraining and Notification Act of 1988, as amended, or any similar state or local plant closing mass layoff statute, rule or regulation.

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

Term	Section
2020 Plan	5.3(a)(iv)
Accounting Firm	1.12(e)
Agreement	Preamble
Allocation Certificate	5.15(a)
Anti-Bribery Laws	2.23
Anticipated Closing Date	1.12(a)
Book-Entry Shares	1.6
Business Associate Agreements	2.14(i)
Certificate of Merger	1.3
Certifications	3.7(a)
Closing	1.3
Closing Date	1.3
Company	Preamble
Company Benefit Plan	2.17(a)
Company Board Adverse Recommendation Change	5.2(d)
Company Board Recommendation	5.2(d)
Company Budget	4.2(b)(v)
Company Counsel	5.1(c)
Company Determination Notice	5.2(e)(i)
Company Disclosure Schedule	Section 2
Company Financial Statements	2.7(a)
Company In-bound License	2.12(d)
Company Interim Financial Statements	5.16
Company Lock-Up Agreement	Recitals
Company Material Contract	2.13(a)
Company Material Contracts	2.13(a)
Company Out-bound License	2.12(d)
Company Permits	2.14(c)
Company Real Estate Leases	2.11
Company Registered IP	2.12(a)
Company Regulatory Permits	2.14(e)
Company Signatories	Recitals
Company Stock Certificate	1.6
Company Stockholder Matters	5.2(a)
Company Stockholder Support Agreement	Recitals
Company Stockholder Written Consent	2.4
Company Termination Fee	9.3(b)
Convertible Note Conversion	5.21
CVR	1.7(a)
CVR Agreement	1.7(a)
D&O Indemnified Parties	5.5(a)
D&O Tail Policy	5.5(d)
Determination Date	1.12(a)
Dispute Notice	1.12(b)

Dissenting Shares	1.9(a)
Drug Regulatory Agency	2.14(a)
Effective Time	1.3
End Date	9.1(b)
Exchange Agent	1.8(a)
Exchange Fund	1.8(a)
FDA	2.14(a)
FDCA	2.14(a)
FLSA	2.17(o)
GCP	2.14(f)
GLP	2.14(f)
HIPAA	2.14(i)
Information Statement	5.2(a)
Intended Tax Treatment	5.9(a)
Investor Agreements	2.22(b)
Liability	2.9
Merger	Recitals
Merger Consideration	1.5(a)(ii)
Merger Sub	Preamble
Nasdaq Fees	5.8
Nasdaq Listing Application	5.8
Parent	Preamble
Parent Benefit Plan	3.17(a)
Parent Board Adverse Recommendation Change	5.3(c)
Parent Board Recommendation	5.3(c)
Parent Budget	4.1(b)(v)
Parent Cash Calculation	1.12(a)
Parent Cash Schedule	1.12(a)
Parent Counsel	5.1(c)
Parent Designee	5.11(a)
Parent Determination Notice	5.3(d)(i)
Parent Disclosure Schedule	Section 3
Parent In-bound License	3.12(d)
Parent Lock-Up Agreement	Recitals
Parent Material Contract	3.13(a)
Parent Material Contracts	3.13(a)
Parent Out-bound License	3.12(d)
Parent Outstanding Shares Certificate	5.15(b)
Parent Permits	3.14(c)
Parent Real Estate Leases	3.11
Parent Registered IP	3.12(a)
Parent Regulatory Permits	3.14(e)
Parent SEC Documents	3.7(a)
Parent Signatories	Recitals
Parent Stockholder Matters	5.3(a)(vi)
Parent Stockholders' Meeting	5.3(a)(vi)
Parent Termination Fee	9.3(c)
Parent Voting Debt	3.6(d)
PHSA	2.14(a)
Pre-Closing Period	4.1(a)
Required Company Stockholder Vote	2.4

Required Parent Stockholder Vote	3.4
Response Date	1.12(b)
Sensitive Data	2.12(g)
Stockholder Notice	5.2(c)
Surviving Corporation	1.1
Terminated Parent Associate	5.20(a)
Third-Party Expenses	9.3(d)

EXHIBIT B

Form of Company Stockholder Support Agreement

EXHIBIT C-1

Form of Company Lock-Up Agreement

EXHIBIT C-2

Form of Parent Lock-Up Agreement

EXHIBIT D
Form of CVR Agreement

EXHIBIT E

Post-Closing Directors and Officers

Parent and Surviving Corporation:

Officers:

- Mina Sooch, Chief Executive Officer, President & Treasurer
- Bernhard Hoffman, VP of Corporate Development & Finance, Secretary

Directors:

- Mina Sooch
 - Sean Ainsworth
 - Alan Meyer
 - James Manuso
 - Cam Gallagher
 - Richard Rodgers
 - One additional director to be appointed by Ocuphire
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EXHIBIT F
Form of 2020 Plan

[FORM OF SERIES [A] [B] WARRANT]

NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE EXERCISABLE HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL SELECTED BY THE HOLDER, IN A FORM REASONABLY SATISFACTORY TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD OR ELIGIBLE TO BE SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

OCUPHIRE PHARMA, INC.

Series [A] [B] Warrant To Purchase Common Stock

Warrant No.: _____

Number of Shares of Common Stock: _____

Date of Issuance: [●], 2020¹ (“**Issuance Date**”)

Ocuphire Pharma, Inc., a Delaware corporation formerly known as Rexahn Pharmaceuticals, Inc. (the “**Company**”), hereby certifies that, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, [HOLDER], the registered holder hereof or its permitted assigns (the “**Holder**”), is entitled, subject to the terms set forth below, to purchase from the Company, at the Exercise Price (as defined below) then in effect, at any time or times on or after the date hereof, but not after 11:59 p.m., New York time, on the Expiration Date, (as defined below), [INSERT IN SERIES A WARRANT: _____] (_____)² fully paid nonassessable shares of Common Stock [INSERT IN SERIES B WARRANT: a number of fully paid nonassessable shares of Common Stock equal to the Maximum Eligibility Number], subject to adjustment as provided herein (the “**Warrant Shares**”). Except as otherwise defined herein, capitalized terms in this Warrant to Purchase Common Stock (including any Warrants to Purchase Common Stock issued in exchange, transfer or replacement hereof, this “**Warrant**”), shall have the meanings set forth in Section 18. This Warrant is one of the [INSERT IN SERIES A WARRANT: Series A] [INSERT IN SERIES B WARRANT: Series B] Warrants to purchase Common Stock (the “**SPA Warrants**”) issued pursuant to Section 1 of that certain Securities Purchase Agreement, dated as of June [•], 2020 (the “**Subscription Date**”), by and among the Company, Ocuphire Pharma, Inc., a Delaware corporation (“**Ocuphire Private Company**”), and the investors (the “**Buyers**”) referred to therein (as may be amended, amended and restated, supplemented or otherwise modified from time to time in accordance with its terms, the “**Securities Purchase Agreement**”). Capitalized terms used herein and not otherwise defined shall have the definitions ascribed to such terms in the Securities Purchase Agreement.

¹ Insert the Warrant Closing Date (as defined in the Securities Purchase Agreement).

² Insert 100% of the sum of (i) the number of Exchange Shares issued in exchange for the number of Initial Common Shares (as defined in the Securities Purchase Agreement) purchased by the Holder pursuant to the Securities Purchase Agreement, (ii) the number of Exchange Shares issued in exchange of the number of Additional Common Shares (as defined in the Securities Purchase Agreement) delivered or deliverable to the Holder pursuant to the Securities Purchase Agreement without giving effect to any limitation on delivery to the Holder pursuant to Section 1(c)(iv) of the Securities Purchase Agreement and (iii) the Initial Maximum Eligibility Number (as defined in the Series B Warrants).

1. EXERCISE OF WARRANT.

(a) Mechanics of Exercise. Subject to the terms and conditions hereof (including, without limitation, the limitations set forth in Section 1(f)), this Warrant may be exercised by the Holder at any time or times on or after the Issuance Date, in whole or in part, by (i) delivery of a written notice, in the form attached hereto as Exhibit A (the “**Exercise Notice**”), of the Holder’s election to exercise this Warrant and (ii) (A) payment to the Company of an amount equal to the applicable Exercise Price multiplied by the number of Warrant Shares as to which this Warrant is being exercised (the “**Aggregate Exercise Price**”) in cash by wire transfer of immediately available funds or (B) **[INSERT IN SERIES A WARRANT: if the provisions of Section 1(d) are applicable,]** by notifying the Company that this Warrant is being exercised pursuant to a Cashless Exercise (as defined in Section 1(d)). The Holder shall not be required to deliver the original Warrant in order to effect an exercise hereunder, nor shall any ink-original signature or medallion guarantee (or other type of guarantee or notarization) with respect to any Exercise Notice be required. Execution and delivery of the Exercise Notice with respect to less than all of the Warrant Shares shall have the same effect as cancellation of the original Warrant and issuance of a new Warrant evidencing the right to purchase the remaining number of Warrant Shares. On or before the first (1st) Trading Day following the date on which the Holder has delivered the applicable Exercise Notice to the Company, the Company shall transmit by facsimile or electronic mail an acknowledgment of confirmation of receipt of the Exercise Notice to the Holder and the Company’s transfer agent (the “**Transfer Agent**”). On or before the applicable Share Delivery Date, the Company shall (X) provided that the Transfer Agent is participating in The Depository Trust Company (“**DTC**”) Fast Automated Securities Transfer Program and (A) the applicable Warrant Shares are subject to an effective resale registration statement in favor of the Holder or (B) if exercised via Cashless Exercise, at a time when Rule 144 would be available for immediate resale of the applicable Warrant Shares by the Holder, credit such aggregate number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the Holder’s or its designee’s balance account with DTC through its Deposit / Withdrawal At Custodian system, or (Y) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program or (A) the applicable Warrant Shares are not subject to an effective resale registration statement in favor of the Holder and (B) if exercised via Cashless Exercise, at a time when Rule 144 would not be available for immediate resale of the applicable Warrant Shares by the Holder, issue and dispatch by overnight courier to the address as specified in the Exercise Notice, a certificate, registered in the Company’s share register in the name of the Holder or its designee, for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise. The Company shall be responsible for all fees and expenses of the Transfer Agent and all fees and expenses with respect to the issuance of Warrant Shares via DTC, if any, including, without limitation, for same day processing. Upon delivery of the Exercise Notice, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date such Warrant Shares are credited to the Holder’s DTC account or the date of delivery of the certificates evidencing such Warrant Shares, as the case may be. If this Warrant is submitted in connection with any exercise pursuant to this Section 1(a) and the number of Warrant Shares represented by this Warrant submitted for exercise is greater than the number of Warrant Shares being acquired upon an exercise, then the Company shall as soon as practicable and in no event later than two (2) Trading Days after any exercise and at its own expense, issue a new Warrant (in accordance with Section 7(d)) representing the right to purchase the number of Warrant Shares issuable immediately prior to such exercise under this Warrant, less the number of Warrant Shares with respect to which this Warrant is exercised. No fractional Warrant Shares are to be issued upon the exercise of this Warrant, but rather the number of Warrant Shares to be issued shall be rounded up to the nearest whole number. The Company shall pay any and all taxes which may be payable with respect to the issuance and delivery of Warrant Shares upon exercise of this Warrant. The Company’s obligations to issue and deliver Warrant Shares in accordance with the terms and subject to the conditions hereof are absolute and unconditional, irrespective of any action or inaction by the Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination. While any SPA Warrants remain outstanding, the Company shall use a transfer agent that participates in the DTC Fast Automated Securities Transfer Program. **[INSERT IN SERIES B WARRANT: NOTWITHSTANDING ANY PROVISION OF THIS WARRANT TO THE CONTRARY, NO MORE THAN THE MAXIMUM ELIGIBILITY NUMBER OF WARRANT SHARES SHALL BE EXERCISABLE IN THE AGGREGATE HEREUNDER.]** For the avoidance of doubt, without limiting any rights of a Holder to receive cash payments pursuant to Section 1(c) below, the Company shall not be required to cash settle the exercise of this Warrant if an effective resale registration statement is not in place at the time of exercise.

(b) Exercise Price. For purposes of this Warrant, “**Exercise Price**” means \$[•]³ per share, subject to adjustment as provided herein.

(c) Company’s Failure to Timely Deliver Securities. If the Company shall fail for any reason or for no reason to issue to the Holder on or prior to the applicable Share Delivery Date either (I) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, a certificate for the number of shares of Common Stock to which the Holder is entitled and register such shares of Common Stock on the Company’s share register or if the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program, to credit the Holder’s balance account with DTC, for such number of shares of Common Stock to which the Holder is entitled upon the Holder’s exercise of this Warrant or (II) if the Registration Statement covering the resale of the Warrant Shares that are the subject of the Exercise Notice (the “**Unavailable Warrant Shares**”) is not available for the resale of such Unavailable Warrant Shares and the Company fails to promptly, but in no event later than as is required pursuant to the Registration Rights Agreement (x) so notify the Holder and (y) deliver the Warrant Shares electronically without any restrictive legend by crediting such aggregate number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the Holder’s or its designee’s balance account with DTC through its Deposit / Withdrawal At Custodian system (the event described in the immediately foregoing clause (II) is hereinafter referred to as a “**Notice Failure**” and together with the event described in clause (I) above, an “**Exercise Failure**”), then, in addition to all other remedies available to the Holder, (X) the Company shall pay in cash to the Holder on each day after the applicable Share Delivery Date and during such Exercise Failure an amount equal to 1.5% of the product of (A) the number of shares of Common Stock not issued to the Holder on or prior to the applicable Share Delivery Date and to which the Holder is entitled, and (B) any trading price of the Common Stock selected by the Holder in writing as in effect at any time during the period beginning on the applicable date of delivery of the applicable Exercise Notice and ending on the applicable Share Delivery Date, and (Y) the Holder, upon written notice to the Company, may void its Exercise Notice with respect to, and retain or have returned, as the case may be, any portion of this Warrant that has not been exercised pursuant to such Exercise Notice; provided that the voiding of an Exercise Notice shall not affect the Company’s obligations to make any payments which have accrued prior to the date of such notice pursuant to this Section 1(c) or otherwise. In addition to the foregoing, if on or prior to the applicable Share Delivery Date either (I) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, the Company shall fail to issue and deliver a certificate to the Holder and register such shares of Common Stock on the Company’s share register or, if the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program, credit the Holder’s balance account with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder’s exercise hereunder or pursuant to the Company’s obligation pursuant to clause (ii) below or (II) a Notice Failure occurs, and if on or after such Trading Day the Holder purchases (in an open market transaction or otherwise) shares of Common Stock relating to the applicable Exercise Failure (a “**Buy-In**”), then the Company shall, within three (3) Trading Days after the Holder’s request and in the Holder’s discretion, either (i) pay cash to the Holder in an amount equal to the Holder’s total purchase price (including brokerage commissions and other out-of-pocket expenses, if any) for the shares of Common Stock so purchased (the “**Buy-In Price**”), at which point the Company’s obligation to deliver such certificate (and to issue such shares of Common Stock) or credit the Holder’s balance account with DTC for such shares of Common Stock shall terminate, or (ii) promptly honor its obligation to deliver to the Holder a certificate or certificates representing such shares of Common Stock or credit the Holder’s balance account with DTC, as applicable, and pay cash to the Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of shares of Common Stock, times (B) any trading price of the Common Stock selected by the Holder in writing as in effect at any time during the period beginning on the date of delivery of the applicable Exercise Notice and ending on the applicable Share Delivery Date. Nothing herein shall limit the Holder’s right to pursue any other remedies available to it hereunder, at law or in equity, including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company’s failure to timely deliver certificates representing shares of Common Stock (or to electronically deliver such shares of Common Stock) upon the exercise of this Warrant as required pursuant to the terms hereof.

³ [INSERT IN SERIES A WARRANT: Insert 120% of the Final Per Share Price (as defined in the Securities Purchase Agreement), rounded to four decimal places.]

[INSERT IN SERIES B WARRANT: Insert 0.0001.]

(d) Cashless Exercise. Notwithstanding anything contained herein to the contrary, [INSERT IN SERIES A WARRANT: if the Registration Statement covering the resale of the Unavailable Warrant Shares is not available for the resale of such Unavailable Warrant Shares,] the Holder may, in its sole discretion, exercise this Warrant in whole or in part and, in lieu of making the cash payment otherwise contemplated to be made to the Company upon such exercise in payment of the Aggregate Exercise Price, elect instead to receive upon such exercise the “Net Number” of shares of Common Stock determined according to the following formula (a “Cashless Exercise”):

$$\text{Net Number} = \frac{(A \times B) - (A \times C)}{B}$$

For purposes of the foregoing formula:

A= the total number of shares with respect to which this Warrant is then being exercised.

B= as applicable: (i) the Weighted Average Price of the Common Stock on the Trading Day immediately preceding the date of the applicable Exercise Notice if such Exercise Notice is (1) both executed and delivered pursuant to Section 1(a) hereof on a day that is not a Trading Day or (2) both executed and delivered pursuant to Section 1(a) hereof on a Trading Day prior to the opening of “regular trading hours” (as defined in Rule 600(b)(68) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, (ii) at the option of the Holder, either (y) the Weighted Average Price of the Common Stock on the Trading Day immediately preceding the date of the applicable Exercise Notice or (z) the Bid Price of the Common Stock on the principal Eligible Market for the Common Stock as reported by Bloomberg as of the time of the Holder’s execution of the applicable Exercise Notice if such Exercise Notice is executed during “regular trading hours” on a Trading Day and is delivered within two (2) hours thereafter (including until two (2) hours after the close of “regular trading hours” on a Trading Day) pursuant to Section 1(a) hereof or (iii) the Weighted Average Price of the Common Stock on the date of the applicable Exercise Notice if the date of such Exercise Notice is a Trading Day and such Exercise Notice is both executed and delivered pursuant to Section 1(a) hereof after the close of “regular trading hours” on such Trading Day.

C= the Exercise Price then in effect for the applicable Warrant Shares at the time of such exercise.

If shares of Common Stock are issued pursuant to this Section 1(d), the Company hereby acknowledges and agrees that the Warrant Shares issued in a Cashless Exercise shall be deemed to have been acquired by the Holder, and the holding period for the Warrant Shares for purposes of Rule 144(d), shall be deemed to have commenced, on the date this Warrant was originally issued pursuant to the Securities Purchase Agreement. The Company agrees not to take any position contrary to this Section 1(d).

(e) Disputes. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the Warrant Shares, the Company shall promptly issue to the Holder the number of Warrant Shares that are not disputed and resolve such dispute in accordance with Section 12.

(f) Beneficial Ownership Limitation on Exercises. Notwithstanding anything to the contrary contained herein, the Company shall not effect the exercise of any portion of this Warrant, and the Holder shall not have the right to exercise any portion of this Warrant, pursuant to the terms and conditions of this Warrant and any such exercise shall be null and void and treated as if never made, to the extent that after giving effect to such exercise, the Holder together with the other Attribution Parties collectively would beneficially own in excess of [4.99] [9.99]%⁴ (the “**Maximum Percentage**”) of the number of shares of Common Stock outstanding immediately after giving effect to such exercise. For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by the Holder and the other Attribution Parties shall include the number of shares of Common Stock held by the Holder and all other Attribution Parties plus the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which the determination of such sentence is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (A) exercise of the remaining, unexercised portion of this Warrant beneficially owned by the Holder or any of the other Attribution Parties and (B) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company (including, without limitation, any convertible notes or convertible preferred stock or warrants, including the [INSERT IN SERIES A WARRANT: Series B] [INSERT IN SERIES B WARRANT: Series A] Warrants) beneficially owned by the Holder or any other Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 1(f). For purposes of this Section 1(f), beneficial ownership shall be calculated in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended (the “**1934 Act**”). For purposes of this Warrant, in determining the number of outstanding shares of Common Stock the Holder may acquire upon the exercise of this Warrant without exceeding the Maximum Percentage, the Holder may rely on the number of outstanding shares of Common Stock as reflected in (x) the Company’s most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the Securities and Exchange Commission (the “**SEC**”), as the case may be, (y) a more recent public announcement by the Company or (3) any other written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding (the “**Reported Outstanding Share Number**”). If the Company receives an Exercise Notice from the Holder at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding Share Number, the Company shall (i) promptly notify the Holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such Exercise Notice would otherwise cause the Holder’s beneficial ownership, as determined pursuant to this Section 1(f), to exceed the Maximum Percentage, the Holder must notify the Company of a reduced number of Warrant Shares to be purchased pursuant to such Exercise Notice (the number of shares by which such purchase is reduced, the “**Reduction Shares**”) and (ii) as soon as reasonably practicable, the Company shall return to the Holder any exercise price paid by the Holder for the Reduction Shares. For any reason at any time, upon the written or oral request of the Holder, the Company shall within one (1) Trading Day confirm in writing or by electronic mail to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Warrant, by the Holder and any other Attribution Party since the date as of which the Reported Outstanding Share Number was reported. In the event that the issuance of shares of Common Stock to the Holder upon exercise of this Warrant results in the Holder and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the 1934 Act), the number of shares so issued by which the Holder’s and the other Attribution Parties’ aggregate beneficial ownership exceeds the Maximum Percentage (the “**Excess Shares**”) shall be deemed null and void and shall be cancelled ab initio and any portion of this Warrant so exercised shall be reinstated, and the Holder shall not have the power to vote or to transfer the Excess Shares. As soon as reasonably practicable after the issuance of the Excess Shares has been deemed null and void, the Company shall return to the Holder the exercise price paid by the Holder for the Excess Shares. Upon delivery of a written notice to the Company, the Holder may from time to time increase or decrease the Maximum Percentage to any other percentage not in excess of 9.99% as specified in such notice; provided that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61st) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to the Holder and the other Attribution Parties and not to any other holder of SPA Warrants that is not an Attribution Party of the Holder. For purposes of clarity, the shares of Common Stock issuable pursuant to the terms of this Warrant in excess of the Maximum Percentage shall not be deemed to be beneficially owned by the Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the 1934 Act. No prior inability to exercise this Warrant pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of exercisability. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 1(f) to the extent necessary to correct this paragraph or any portion of this paragraph which may be defective or inconsistent with the intended beneficial ownership limitation contained in this Section 1(f) or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be waived and shall apply to a successor holder of this Warrant. For the avoidance of doubt, without limiting any rights of a Holder to receive cash payments pursuant to Section 1(c) below, in no event shall the Company be required to cash settle any Excess Shares.

⁴ Insert Maximum Percentage as indicated on the Buyer’s signature page attached to the Securities Purchase Agreement.

(g) Insufficient Authorized Shares. If at any time while this Warrant remains outstanding the Company does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve for issuance upon exercise of this Warrant at least a number of shares of Common Stock equal to: (i) until the Reservation Date, [INSERT IN SERIES A WARRANT: 135% of the number of Warrant Shares issued and issuable pursuant to the SPA Warrants determined in accordance with Section 2(d) assuming a Reset Price equal to the Reset Floor Price without giving effect to any limitation on exercise set forth therein] [INSERT IN SERIES B WARRANT: the number of Warrant Shares issued and issuable pursuant to the SPA Warrants assuming that the Maximum Eligibility Number is determined based on a Reset Price equal to the Reset Floor Price without giving effect to any limitation on exercise set forth therein] and (ii) thereafter, [INSERT IN SERIES A WARRANT: 135%] [INSERT IN SERIES B WARRANT: 100%] of the maximum number of shares of Common Stock as shall from time to time be necessary to effect the exercise of all of this Warrant then outstanding without regard to any limitation on exercise included herein (the foregoing clauses (i) and (ii), as applicable, the “**Required Reserve Amount**” and the failure to have such sufficient number of authorized and unreserved shares of Common Stock, an “**Authorized Share Failure**”), then the Company shall immediately take all action necessary to increase the Company’s authorized shares of Common Stock to an amount sufficient to allow the Company to reserve the Required Reserve Amount for this Warrant then outstanding. Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than sixty (60) days after the occurrence of such Authorized Share Failure, the Company shall hold a meeting of its stockholders for the approval of an increase in the number of authorized shares of Common Stock. In connection with such meeting, the Company shall provide each stockholder with a proxy statement and shall use its best efforts to solicit its stockholders’ approval of such increase in authorized shares of Common Stock and to cause its board of directors to recommend to the stockholders that they approve such proposal. Notwithstanding the foregoing, if any such time of an Authorized Share Failure, the Company is able to obtain the written consent of a majority of the shares of its issued and outstanding shares of Common Stock to approve the increase in the number of authorized shares of Common Stock, the Company may satisfy this obligation by obtaining such consent and submitting for filing with the SEC an Information Statement on Schedule 14C. In the event that upon any exercise of this Warrant, the Company does not have sufficient authorized shares to deliver in satisfaction of such exercise, then unless the Holder elects to void such attempted exercise, the Holder may require the Company to pay to the Holder within three (3) Trading Days of the applicable exercise, cash in an amount equal to the product of (i) the number of Warrant Shares that the Company is unable to deliver pursuant to this Section 1(g) and (ii) the highest Weighted Average Price during the period beginning on the date of such attempted exercise and the date that the Company makes the applicable cash payment.

2. ADJUSTMENT OF EXERCISE PRICE AND NUMBER OF WARRANT SHARES. The Exercise Price and the number of Warrant Shares shall be adjusted from time to time as follows:

(a) [INSERT IN SERIES B WARRANT: Intentionally omitted.] [INSERT IN SERIES A WARRANT: Adjustment Upon Issuance of Shares of Common Stock. If and whenever on or after the Subscription Date to and including the second (2nd) anniversary of the date all Registrable Securities (without regard to any Cutback Shares (as defined in the Registration Rights Agreement)) are registered for resale pursuant to one or more Registration Statement(s), the Company publicly announces, issues or sells, enters into a definitive, binding agreement pursuant to which the Company is required to issue or sell or, in accordance with clauses (i) or (ii) of this Section 2(a), is deemed to have issued or sold, any shares of Common Stock owned or held by or for the account of the Company, but excluding shares of Common Stock deemed to have been issued or sold by the Company in connection with any Excluded Securities) for a consideration per share (the “**New Issuance Price**”) less than a price (the “**Applicable Price**”) equal to the Exercise Price in effect immediately prior to such public announcement, issue or sale or deemed issuance or sale or entry into such a definitive, binding agreement (the foregoing a “**Dilutive Issuance**”), then immediately after such Dilutive Issuance, the Exercise Price then in effect shall be reduced to an amount equal to the New Issuance Price. Upon each such adjustment of the Exercise Price hereunder, the number of Warrant Shares issuable immediately prior to such Dilutive Issuance shall be adjusted to the number of shares of Common Stock determined by multiplying the Exercise Price then in effect immediately prior to such adjustment by the number of Warrant Shares acquirable upon exercise of this Warrant immediately prior to such adjustment and dividing the product thereof by the Exercise Price resulting from such adjustment. For purposes of determining the adjusted Exercise Price under this Section 2(a), the following shall be applicable (in each case, rounded to four decimal places):

(i) Issuance of Options. If the Company in any manner grants or sells or enters into a definitive, binding agreement pursuant to which the Company is required to grant or sell, or the Company publicly announces the issuance or sale of, any Options and the lowest price per share for which one share of Common Stock is issuable upon the exercise of any such Option or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option is less than the Applicable Price, then such share of Common Stock shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the granting or sale of such Option for such price per share. For purposes of this Section 2(a)(i), the “lowest price per share for which one share of Common Stock is issuable upon the exercise of any such Option or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option” shall be equal to the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to any one share of Common Stock upon the granting or sale of the Option, upon exercise of the Option and upon conversion, exercise or exchange of any Convertible Security issuable upon exercise of such Option less any consideration paid or payable by the Company with respect to such one share of Common Stock upon the granting or sale of such Option, upon exercise of such Option and upon conversion exercise or exchange of any Convertible Security issuable upon exercise of such Option. No further adjustment of the Exercise Price or number of Warrant Shares shall be made upon the actual issuance of such shares of Common Stock or of such Convertible Securities upon the exercise of such Options or upon the actual issuance of such shares of Common Stock upon conversion, exercise or exchange of such Convertible Securities.

(ii) Issuance of Convertible Securities. If the Company in any manner issues or sells, or enters into a definitive, binding agreement pursuant to which the Company is required to grant or sell or the Company publicly announces the issuance or sale of, any Convertible Securities and the lowest price per share for which one share of Common Stock is issuable upon the conversion, exercise or exchange thereof is less than the Applicable Price, then such share of Common Stock shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the issuance or sale of such Convertible Securities for such price per share. For the purposes of this Section 2(a)(ii), the “lowest price per share for which one share of Common Stock is issuable upon the conversion, exercise or exchange thereof” shall be equal to the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to any one share of Common Stock upon the issuance or sale of the Convertible Security and upon conversion, exercise or exchange of such Convertible Security less any consideration paid or payable by the Company with respect to such one share of Common Stock upon the issuance or sale of such Convertible Security and upon conversion, exercise or exchange of such Convertible Security. No further adjustment of the Exercise Price or number of Warrant Shares shall be made upon the actual issuance of such shares of Common Stock upon conversion, exercise or exchange of such Convertible Securities, and if any such issue or sale of such Convertible Securities is made upon exercise of any Options for which adjustment of this Warrant has been or is to be made pursuant to other provisions of this Section 2(a), no further adjustment of the Exercise Price or number of Warrant Shares shall be made by reason of such issue or sale.

(iii) Change in Option Price or Rate of Conversion. If the purchase price provided for in any Options, the additional consideration, if any, payable upon the issue, conversion, exercise or exchange of any Convertible Securities, or the rate at which any Convertible Securities are convertible into or exercisable or exchangeable for shares of Common Stock increases or decreases at any time, the Exercise Price and the number of Warrant Shares in effect at the time of such increase or decrease shall be adjusted to the Exercise Price and the number of Warrant Shares, which would have been in effect at such time had such Options or Convertible Securities provided for such increased or decreased purchase price, additional consideration or increased or decreased conversion rate, as the case may be, at the time initially granted, issued or sold. For purposes of this Section 2(a)(iii), if the terms of any Option or Convertible Security that was outstanding as of the Subscription Date are increased or decreased in the manner described in the immediately preceding sentence, then such Option or Convertible Security and the shares of Common Stock deemed issuable upon exercise, conversion or exchange thereof shall be deemed to have been issued as of the date of such increase or decrease. No adjustment pursuant to this Section 2(a) shall be made if such adjustment would result in an increase of the Exercise Price then in effect or a decrease in the number of Warrant Shares.

(iv) Calculation of Consideration Received. If any Option and/or Convertible Security and/or Adjustment Right is issued in connection with the issuance or sale or deemed issuance or sale of any other securities of the Company (as determined by the Holder, the “**Primary Security**”, and such Option and/or Convertible Security and/or Adjustment Right, the “**Secondary Securities**”), together comprising one integrated transaction, (or one or more transactions if such issuances or sales or deemed issuances or sales of securities of the Company either (A) have at least one investor or purchaser in common, (B) are consummated in reasonable proximity to each other and/or (C) are consummated under the same plan of financing) the aggregate consideration per share of Common Stock with respect to such Primary Security shall be deemed to be equal to the difference of (x) the lowest price per share for which one share of Common Stock was issued (or was deemed to be issued pursuant to Section 2(a)(i) or Section 2(a)(ii), as applicable) in such integrated transaction solely with respect to such Primary Security, minus (y) with respect to such Secondary Securities, the sum of (I) the Black Scholes Consideration Value of each such Option, if any, (II) the fair market value (as determined by the Holder in good faith) or the Black Scholes Consideration Value, as applicable, of such Adjustment Right, if any, and (III) the fair market value (as determined by the Holder) of such Convertible Security, if any, in each case, as determined on a per share basis in accordance with this Section 2(a)(iv). If any shares of Common Stock, Options or Convertible Securities are issued or sold or deemed to have been issued or sold for cash, the consideration received therefor (for the purpose of determining the consideration paid for such Common Stock, Option or Convertible Security, but not for the purpose of the calculation of the Black Scholes Consideration Value) will be deemed to be the net amount of consideration received by the Company therefor. If any shares of Common Stock, Options or Convertible Securities are issued or sold for a consideration other than cash, the amount of such consideration received by the Company (for the purpose of determining the consideration paid for such Common Stock, Option or Convertible Security, but not for the purpose of the calculation of the Black Scholes Consideration Value) will be the fair value of such consideration, except where such consideration consists of publicly traded securities, in which case the amount of consideration received by the Company for such securities will be the arithmetic average of the Weighted Average Prices of such security for each of the five (5) Trading Days immediately preceding the date of receipt. If any shares of Common Stock, Options or Convertible Securities are issued to the owners of the non-surviving entity in connection with any merger in which the Company is the surviving entity, the amount of consideration therefor (for the purpose of determining the consideration paid for such Common Stock, Option or Convertible Security, but not for the purpose of the calculation of the Black Scholes Consideration Value) will be deemed to be the fair value of such portion of the net assets and business of the non-surviving entity as is attributable to such shares of Common Stock, Options or Convertible Securities (as the case may be). The fair value of any consideration other than cash or publicly traded securities will be determined jointly by the Company and the Holder. If such parties are unable to reach agreement within ten (10) days after the occurrence of an event requiring valuation (the “**Valuation Event**”), the fair value of such consideration will be determined within five (5) Trading Days after the tenth (10th) day following such Valuation Event by an independent, reputable appraiser jointly selected by the Company and the Holder. The determination of such appraiser shall be final and binding upon all parties absent manifest error and the fees and expenses of such appraiser shall be borne by the Company. Notwithstanding anything to the contrary contained herein, if a calculation pursuant to this Section 2(a)(iv) would result in an Exercise Price that is lower than the par value of the Common Stock, then the Exercise Price shall be deemed to equal the par value of the Common Stock.

(v) Record Date. If the Company takes a record of the holders of shares of Common Stock for the purpose of entitling them (A) to receive a dividend or other distribution payable in shares of Common Stock, Options or in Convertible Securities or (B) to subscribe for or purchase shares of Common Stock, Options or Convertible Securities, then such record date will be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

(v i) No Readjustments. For the avoidance of doubt, in the event the Exercise Price has been adjusted pursuant to this Section 2(a) and the Dilutive Issuance that triggered such adjustment does not occur, is not consummated, is unwound or is cancelled after the facts for any reason whatsoever, in no event shall the Exercise Price be readjusted to the Exercise Price that would have been in effect if such Dilutive Issuance had not occurred or been consummated.]

(b) Voluntary Adjustment By Company. The Company may at any time during the term of this Warrant, with the prior written consent of the Holder, (i) reduce the then current Exercise Price and/or (ii) increase the then current number of Warrant Shares, in each case, to any amount or number and for any period of time deemed appropriate by the Board of Directors of the Company.

(c) Adjustment Upon Subdivision or Combination of Common Stock. If the Company at any time on or after the Closing Date subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Exercise Price in effect immediately prior to such subdivision will be proportionately reduced and the number of Warrant Shares will be proportionately increased. If the Company at any time on or after the Closing Date combines (by combination, reverse stock split or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Exercise Price in effect immediately prior to such combination will be proportionately increased and the number of Warrant Shares will be proportionately decreased. Any adjustment under this Section 2(c) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(d) Resets. **[INSERT IN SERIES A WARRANT:** On each Reset Date the Exercise Price shall be adjusted to equal the applicable Reset Price. Upon each Reset Date, the number of Warrant Shares issuable immediately prior to such reset shall be increased, but in no event decreased, to the number of shares of Common Stock determined by multiplying (x) the Exercise Price in effect on the Issuance Date (as adjusted for stock splits, stock dividends, recapitalizations, reorganizations, reclassification, combinations, reverse stock splits or other similar events related to the Common Stock occurring after the Issuance Date), or if a Reset Date has occurred hereunder, the Reset Price in effect on the immediately preceding Reset Date (in each case, as adjusted for stock splits, stock dividends, recapitalizations, reorganizations, reclassification, combinations, reverse stock splits or other similar events related to the Common Stock occurring after such Reset Date), as applicable, by (y) the number of Warrant Shares acquirable upon exercise of this Warrant immediately prior to such reset (which number of Warrant Shares, for the avoidance of doubt, shall give effect to any prior exercises of this Warrant) without regard to any limitation on exercise included herein, and dividing the product thereof by the Exercise Price resulting from such reset.] **[INSERT IN SERIES B WARRANT:** The Maximum Eligibility Number shall be increased (but not decreased) on each Reset Date to equal the applicable Reset Share Amount.]

(e) INSERT IN SERIES A WARRANT: Other Events. If any event occurs of the type contemplated by the provisions of this Section 2 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features), then the Company's Board of Directors will make an appropriate adjustment in the Exercise Price and the number of Warrant Shares, as mutually determined by the Company's Board of Directors and the Required Holders, so as to protect the rights of the Holder; provided that no such adjustment pursuant to this Section 2(e) will increase the Exercise Price or decrease the number of Warrant Shares as otherwise determined pursuant to this Section 2.]

3. RIGHTS UPON DISTRIBUTION OF ASSETS. If the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property, Options, evidence of indebtedness or any other assets by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "**Distribution**"), at any time after the Closing Date, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations or restrictions on exercise of this Warrant, including without limitation, the Maximum Percentage) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, that to the extent that the Holder's right to participate in any such Distribution would result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Distribution to such extent (and shall not be entitled to beneficial ownership of such shares of Common Stock as a result of such Distribution (and beneficial ownership) to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time or times as its right thereto would not result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, at which time or times the Holder shall be granted such Distribution (and any Distributions declared or made on such initial Distribution or on any subsequent Distribution held similarly in abeyance) to the same extent as if there had been no such limitation).

4. PURCHASE RIGHTS: FUNDAMENTAL TRANSACTIONS.

(a) Purchase Rights. In addition to any adjustments pursuant to Section 2 above, if at any time following the Closing Date the Company grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of Common Stock (the “**Purchase Rights**”), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations or restrictions on exercise of this Warrant, including without limitation, the Maximum Percentage) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, that to the extent that the Holder’s right to participate in any such Purchase Right would result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Purchase Right to such extent (and shall not be entitled to beneficial ownership of such shares of Common Stock as a result of such Purchase Right (and beneficial ownership) to such extent) and such Purchase Right to such extent shall be held in abeyance for the benefit of the Holder until such time or times as its right thereto would not result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, at which time or times the Holder shall be granted such right (and any Purchase Right granted, issued or sold on such initial Purchase Right or on any subsequent Purchase Right held similarly in abeyance) to the same extent as if there had been no such limitation).

(b) Fundamental Transactions. The Company shall not enter into, allow or be a party to a Fundamental Transaction until the Reservation Date. If, at any time after the Reservation Date until this Warrant ceases to be outstanding, a Fundamental Transaction occurs or is consummated, then, upon any subsequent exercise of this Warrant, the Holder shall have the right to receive, for each Warrant Share that would have been issuable upon such exercise immediately prior to the occurrence of such Fundamental Transaction, at the option of the Holder (without regard to any limitation in Section 1(f) on the exercise of this Warrant), the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration (the “**Alternate Consideration**”) receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Warrant is exercisable immediately prior to such Fundamental Transaction (without regard to any limitation in Section 1(f) on the exercise of this Warrant). For purposes of any such exercise, the determination of the Exercise Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Company shall apportion the Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any exercise of this Warrant following such Fundamental Transaction. The Company shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the “**Successor Entity**”) to assume in writing all of the obligations of the Company under this Warrant in accordance with the provisions of this Section 4(b) pursuant to written agreements in form and substance reasonably satisfactory to the Required Holders and approved by the Required Holders (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the Holder, deliver to the Holder in exchange for this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant which is exercisable for a corresponding number of shares of capital stock of such Successor Entity (or its Parent Entity) equivalent to the shares of Common Stock acquirable and receivable upon exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) prior to such Fundamental Transaction, and with an exercise price which applies the exercise price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Warrant immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Required Holders. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Warrant referring to the “Company” shall be added to the term “Company” under this Warrant (so that from and after the occurrence or consummation of such Fundamental Transaction, each and every provision of this Warrant referring to the “Company” shall refer instead to each of the Company and the Successor Entity or Successor Entities, jointly and severally), and the Successor Entity or Successor Entities, jointly and severally with the Company, may exercise every right and power of the Company prior thereto and the Successor Entity or Successor Entities shall assume all of the obligations of the Company prior thereto under this Warrant with the same effect as if the Company and such Successor Entity or Successor Entities, jointly and severally, had been named as the Company in this Warrant.

(c) **[INSERT IN SERIES A WARRANTS:** Notwithstanding the foregoing, in the event of a Fundamental Transaction, at the request of the Holder delivered before the ninetieth (90th) day after the occurrence or consummation of such Fundamental Transaction, the Company (or the Successor Entity) shall purchase this Warrant from the Holder by paying to the Holder, within five (5) Business Days after such request (or, if later, on the effective date of the Fundamental Transaction), cash in an amount equal to the Black Scholes Value of the remaining unexercised portion of this Warrant on the effective date of such Fundamental Transaction; provided, however, that, if such Fundamental Transaction is not within the Company's control, including not approved by the Company's Board of Directors, the Holder shall only be entitled to receive from the Company or any Successor Entity, the same type or form of consideration (and in the same proportion), at the Black Scholes Value of the unexercised portion of this Warrant, that is being offered and paid to the holders of Common Stock of the Company in connection with such Fundamental Transaction, whether that consideration be in the form of cash, stock or any combination thereof, or whether the holders of Common Stock are given the choice to receive from among alternative forms of consideration in connection with such Fundamental Transaction; provided, further, that if holders of Common Stock of the Company are not offered or paid any consideration in such Fundamental Transaction, such holders of Common Stock will be deemed to have received common stock of the Successor Entity (which Successor Entity may be the Company following such Fundamental Transaction) in such Fundamental Transaction. The payment of the Black Scholes Value will be made by wire transfer of immediately available funds (or such other consideration) within the later of (i) five (5) Business Days of the Holder's election and (ii) the date of consummation of the Fundamental Transaction.]

5 . NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its Certificate of Incorporation or Bylaws, or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, and will at all times in good faith carry out all of the provisions of this Warrant and take all action as may be required to protect the rights of the Holder. Without limiting the generality of the foregoing, the Company (i) shall not increase the par value of any shares of Common Stock receivable upon the exercise of this Warrant above the Exercise Price then in effect, (ii) shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock upon the exercise of this Warrant, and (iii) shall, so long as any of the SPA Warrants are outstanding, take all action necessary to reserve and keep available out of its authorized and unissued shares of Common Stock, solely for the purpose of effecting the exercise of the SPA Warrants, the Required Reserve Amount of shares of Common Stock.

6 . WARRANT HOLDER NOT DEEMED A STOCKHOLDER. Except as otherwise specifically provided herein, the Holder, solely in such Person's capacity as a holder of this Warrant, shall not be entitled to vote or receive dividends or be deemed the holder of capital stock of the Company for any purpose, nor shall anything contained in this Warrant be construed to confer upon the Holder, solely in such Person's capacity as the Holder of this Warrant, any of the rights of a stockholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, conveyance or otherwise), receive notice of meetings, receive dividends or subscription rights, or otherwise, prior to the issuance to the Holder of the Warrant Shares which such Person is then entitled to receive upon the due exercise of this Warrant. In addition, nothing contained in this Warrant shall be construed as imposing any liabilities on the Holder to purchase any securities (upon exercise of this Warrant or otherwise) or as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company. Notwithstanding this Section 6, the Company shall provide the Holder with copies of the same notices and other information given to the stockholders of the Company generally, contemporaneously with the giving thereof to the stockholders.

7. REISSUANCE OF WARRANTS.

(a) Transfer of Warrant. If this Warrant is to be transferred, the Holder shall surrender this Warrant to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Warrant (in accordance with Section 7(d)), registered as the Holder may request, representing the right to purchase the number of Warrant Shares being transferred by the Holder and, if less than the total number of Warrant Shares then underlying this Warrant is being transferred, a new Warrant (in accordance with Section 7(d)) to the Holder representing the right to purchase the number of Warrant Shares not being transferred.

(b) Lost, Stolen or Mutilated Warrant. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant, and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary form and, in the case of mutilation, upon surrender and cancellation of this Warrant, the Company shall execute and deliver to the Holder a new Warrant (in accordance with Section 7(d)) representing the right to purchase the Warrant Shares then underlying this Warrant.

(c) Exchangeable for Multiple Warrants. This Warrant is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Warrant or Warrants (in accordance with Section 7(d)) representing in the aggregate the right to purchase the number of Warrant Shares then underlying this Warrant, and each such new Warrant will represent the right to purchase such portion of such Warrant Shares as is designated by the Holder at the time of such surrender; provided, however, that no SPA Warrants for fractional Warrant Shares shall be given.

(d) Issuance of New Warrants. Whenever the Company is required to issue a new Warrant pursuant to the terms of this Warrant, such new Warrant (i) shall be of like tenor with this Warrant, (ii) shall represent, as indicated on the face of such new Warrant, the right to purchase the Warrant Shares then underlying this Warrant (or in the case of a new Warrant being issued pursuant to Section 7(a) or Section 7(c), the Warrant Shares designated by the Holder which, when added to the number of shares of Common Stock underlying the other new Warrants issued in connection with such issuance, does not exceed the number of Warrant Shares then underlying this Warrant), (iii) shall have an issuance date, as indicated on the face of such new Warrant which is the same as the Issuance Date, and (iv) shall have the same rights and conditions as this Warrant.

8 . NOTICES. Whenever notice is required to be given under this Warrant, unless otherwise provided herein, such notice shall be given in accordance with Section 10(f) of the Securities Purchase Agreement. The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Warrant, including in reasonable detail a description of such action and the reason therefor. Without limiting the generality of the foregoing, the Company will give written notice to the Holder (i) immediately upon any adjustment of the Exercise Price, setting forth in reasonable detail, and certifying, the calculation of such adjustment and (ii) at least fifteen (15) days prior to the date on which the Company closes its books or takes a record (A) with respect to any dividend or distribution upon the shares of Common Stock, (B) with respect to any grants, issuances or sales of any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property to holders of shares of Common Stock or (C) for determining rights to vote with respect to any Fundamental Transaction, dissolution or liquidation; provided in each case that such information shall be made known to the public prior to or in conjunction with such notice being provided to the Holder. It is expressly understood and agreed that the time of exercise specified by the Holder in each Exercise Notice shall be definitive and may not be disputed or challenged by the Company.

9 . AMENDMENT AND WAIVER. Except as otherwise provided herein, the provisions of this Warrant may be amended or waived and the Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the Company has obtained the written consent of the Required Holders. Any change, amendment or waiver pursuant to the immediately preceding sentence shall be binding on the Holder of this Warrant and all holders of the SPA Warrants. **[INSERT IN SERIES A WARRANTS: Notwithstanding the foregoing, after the date that is ten (10) Trading Days immediately following the Reservation Date, the provisions of this Warrant may be amended or waived and the Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, if the Company has obtained the written consent of the Holder.]**

10. GOVERNING LAW; JURISDICTION; JURY TRIAL. This Warrant shall be governed by and construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Warrant shall be governed by, the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. The Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. The Company hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to the Company at the address set forth in Section 10(f) of the Securities Purchase Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude the Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to the Holder, to realize on any collateral or any other security for such obligations, or to enforce a judgment or other court ruling in favor of the Holder. **THE COMPANY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS WARRANT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

11. CONSTRUCTION; HEADINGS. This Warrant shall be deemed to be jointly drafted by the Company and all the Buyers and shall not be construed against any Person as the drafter hereof. The headings of this Warrant are for convenience of reference and shall not form part of, or affect the interpretation of, this Warrant.

12. DISPUTE RESOLUTION. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the Warrant Shares, the Company shall cause the Transfer Agent to issue to the Holder the number of shares of Common Stock that is not disputed and the Company shall submit the disputed determinations or arithmetic calculations via facsimile or electronic mail within one (1) Business Day of receipt of the Exercise Notice giving rise to such dispute, as the case may be, to the Holder. If the Holder and the Company are unable to agree upon such determination or calculation of the Exercise Price or the Warrant Shares within two (2) Business Days of such disputed determination or arithmetic calculation being submitted to the Holder, then the Company shall, within one (1) Business Day submit via facsimile or electronic mail (a) the disputed determination of the Exercise Price to an independent, reputable investment bank selected by the Holder and approved by the Company, such approval not to be unreasonably withheld, conditioned or delayed or (b) the disputed arithmetic calculation of the Warrant Shares to the Company's independent, outside accountant. The Company shall cause at its expense the investment bank or the accountant, as the case may be, to perform the determinations or calculations and notify the Company and the Holder of the results no later than five (5) Business Days from the time it receives the disputed determinations or calculations. Such investment bank's or accountant's determination or calculation, as the case may be, shall be binding upon all parties absent demonstrable error.

13. REMEDIES, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF. The remedies provided in this Warrant shall be cumulative and in addition to all other remedies available under this Warrant and the other Transaction Documents, at law or in equity (including a decree of specific performance and/or other injunctive relief). No remedy contained herein shall be deemed a waiver of compliance with the provisions giving rise to such remedy. Nothing herein shall limit the right of the Holder to pursue actual damages for any failure by the Company to comply with the terms of this Warrant. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the holder of this Warrant shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required.

14. TRANSFER. This Warrant and the Warrant Shares may be offered for sale, sold, transferred, pledged or assigned without the consent of the Company, except as may otherwise be required by Section 2(f) of the Securities Purchase Agreement.

15. SEVERABILITY. If any provision of this Warrant is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Warrant so long as this Warrant as so modified continues to express, without material change, the original intentions of the Company and the Holder as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the Company and the Holder or the practical realization of the benefits that would otherwise be conferred upon the Company and the Holder. The Company and the Holder will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

16. DISCLOSURE. Upon receipt or delivery by the Company of any notice in accordance with the terms of this Warrant, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, nonpublic information relating to the Company or its Subsidiaries, the Company shall contemporaneously with any such receipt or delivery publicly disclose such material, nonpublic information on a Current Report on Form 8-K or otherwise. In the event that the Company believes that a notice contains material, nonpublic information relating to the Company or its Subsidiaries, the Company so shall indicate to the Holder contemporaneously with delivery of such notice, and in the absence of any such indication, the Holder shall be allowed to presume that all matters relating to such notice do not constitute material, nonpublic information relating to the Company or its Subsidiaries.

17. PAYMENT OF COLLECTION, ENFORCEMENT AND OTHER COSTS. If (a) this Warrant is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding or the Holder otherwise takes action to collect amounts due under this Warrant or to enforce the provisions of this Warrant or (b) there occurs any bankruptcy, reorganization, receivership of the company or other proceedings affecting company creditors' rights and involving a claim under this Warrant, then the Company shall pay the costs incurred by the Holder for such collection, enforcement or action or in connection with such bankruptcy, reorganization, receivership or other proceeding, including, without limitation, attorneys' fees and disbursements.

18. CERTAIN DEFINITIONS. For purposes of this Warrant, the following terms shall have the following meanings:

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

(b) **[INSERT IN SERIES B WARRANT: "Additional Vested Common Shares"** means the Exchange Shares issued in exchange for the Additional Common Shares (as defined in the Securities Purchase Agreement) delivered or deliverable to the initial Holder of this Warrant pursuant to the Securities Purchase Agreement without giving effect to any limitation on delivery to the Holder pursuant to Section 1(c)(iv) of the Securities Purchase Agreement. **]** **[INSERT IN SERIES A WARRANT: Intentionally omitted.]**

(c) **[INSERT IN SERIES A WARRANT: "Adjustment Right"** means any right granted with respect to any securities issued in connection with, or with respect to, any issuance or sale (or deemed issuance or sale in accordance with Section 2(a)(i) or Section 2(a)(ii) of shares of Common Stock (other than rights of the type described in Section 3 and 4 hereof) that could result in a decrease in the net consideration received by the Company in connection with, or with respect to, such securities (including, without limitation, any cash settlement rights, cash adjustment or other similar rights). **]** **[INSERT IN SERIES B WARRANT: Intentionally omitted.]**

(d) “**Affiliate**” shall have the meaning ascribed to such term in Rule 405 promulgated under the 1933 Act or any successor rule.

(e) **[INSERT IN SERIES A WARRANT: “Approved Stock Plan”** means any employee benefit plan or equity incentive plan which has been approved by the Board of Directors of the Company or a bona fide inducement grant to new employees outside of any such plan duly adopted by a majority of the non-employee members of the Board of Directors of the Company or a majority of the members of a committee of non-employee directors established for such purpose, pursuant to which the Company’s securities may be issued to any employee, officer, director or consultant for services provided to the Company.] **[INSERT IN SERIES B WARRANT: Intentionally omitted.]**

(f) “**Attribution Parties**” means, collectively, the following Persons: (i) any investment vehicle, including, any funds, feeder funds or managed accounts, currently, or from time to time after the Issuance Date, directly or indirectly managed or advised by the Holder’s investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of the Holder or any of the foregoing, (iii) any Person acting or who could be deemed to be acting as a Group together with the Holder or any of the foregoing and (iv) any other Person whose beneficial ownership of the Common Stock would or could be aggregated with the Holder’s and the other Attribution Parties for purposes of Section 13(d) of the 1934 Act. For clarity, the purpose of the foregoing is to subject collectively the Holder and all other Attribution Parties to the Maximum Percentage.

(g) “**Bid Price**” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on an Eligible Market, the bid price of the Common Stock for the time in question (or the nearest preceding date) on the Eligible Market on which the Common Stock is then listed or quoted as reported by Bloomberg (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported in the Pink Open Market (f/k/a OTC Pink) published by OTC Markets Group, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (c) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Purchasers of a majority in interest of the Securities then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

(h) **[INSERT IN SERIES A WARRANT: “Black Scholes Consideration Value”** means the value of the applicable Option, Convertible Security or Adjustment Right (as the case may be) calculated using the Black-Scholes Option Pricing Model obtained from the “OV” function on Bloomberg determined as of the date of issuance and reflecting (i) a risk-free interest rate corresponding to the U.S. Treasury rate for a period equal to the remaining term of such Option, Convertible Security or Adjustment Right (as the case may be) as of the date of issuance of such Option, Convertible Security or Adjustment Right (as the case may be), (ii) an expected volatility equal to the greater of 100% and the 100 day volatility obtained from the HVT function on Bloomberg as of the Trading Day immediately following the public announcement of the issuance of such Option, Convertible Security or Adjustment Right (as the case may be), or, if the issuance of such Option, Convertible Security or Adjustment Right (as the case may be) is not publicly announced, the date of issuance of such Option, Convertible Security or Adjustment Right (as the case may be), (iii) the underlying price per share used in such calculation shall be the highest Weighted Average Price of the Common Stock during the period beginning on the Trading Day prior to the execution of definitive documentation relating to the issuance of such Option or Convertible Security (as the case may be) and ending on (A) the Trading Day immediately following the public announcement of the execution of definitive documents with respect to the issuance of such Option or Convertible Security (as the case may be), or, (B) if the execution of definitive documents with respect to the issuance of such Option or Convertible Security (as the case may be) is not publicly announced, the date of such issuance, (iv) a remaining option time equal to the time between the date of the public announcement of the execution of definitive documents with respect to the issuance of such Option or Convertible Security (as the case may be) or, if the execution of definitive documents with respect to the issuance of such Option or Convertible Security (as the case may be) is not publicly announced, the date of such issuance, (v) a zero cost of borrow and (vi) a 365 day annualization factor.] **[INSERT IN SERIES B WARRANT: Intentionally omitted.]**

(i) **[INSERT IN SERIES A WARRANT: “Black Scholes Value”** means the value of this Warrant calculated using the Black-Scholes Option Pricing Model obtained from the “OV” function on Bloomberg determined as of the day immediately following the public announcement of the applicable contemplated Fundamental Transaction, or, if such contemplated Fundamental Transaction is not publicly announced, the date such Fundamental Transaction has occurred or is consummated, for pricing purposes and reflecting (i) a risk-free interest rate corresponding to the U.S. Treasury rate for a period equal to the remaining term of this Warrant as of such date of request, (ii) an expected volatility equal to the greater of 100% and the 100 day volatility obtained from the HVT function on Bloomberg as of the Trading Day immediately following the public announcement of the applicable contemplated Fundamental Transaction, or, if such contemplated Fundamental Transaction is not publicly announced, the date such Fundamental Transaction has occurred or is consummated, (iii) the underlying price per share used in such calculation shall be the greater of (x) the highest Weighted Average Price of the Common Stock during the period beginning on the Trading Day prior to the execution of definitive documentation relating to the applicable Fundamental Transaction and ending on (A) the Trading Day immediately following the public announcement of such contemplated Fundamental Transaction, if the applicable contemplated Fundamental Transaction is publicly announced or (B) the Trading Day immediately following the consummation of the applicable Fundamental Transaction if the applicable contemplated Fundamental Transaction is not publicly announced and (y) the sum of the price per share being offered in cash, if any, plus the value of any non-cash consideration, if any, being offered in such Fundamental Transaction, (iv) a remaining option time equal to the time between the date of the public announcement of the applicable contemplated Fundamental Transaction or, if such applicable contemplated Fundamental Transaction is not publicly announced, the date such Fundamental Transaction has occurred or is consummated, (v) a zero cost of borrow and (vi) a 365 day annualization factor.] **[INSERT IN SERIES B WARRANT: Intentionally omitted.]**

(j) **“Bloomberg”** means Bloomberg Financial Markets.

(k) “**Business Day**” means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

(l) “**Closing Date**” shall have the meaning ascribed to such term in the Securities Purchase Agreement.

(m) “**Common Stock**” means (i) the Company’s shares of common stock, par value \$0.0001 per share, and (ii) any capital stock into which such Common Stock shall have been changed or any capital stock resulting from a reclassification, reorganization or recapitalization of such Common Stock.

(n) “**Convertible Securities**” means any stock or securities (other than Options) directly or indirectly convertible into or exercisable or exchangeable for shares of Common Stock.

(o) “**Designee**” means Altium Capital Management, LP.

(p) “**Eligible Market**” means the Principal Market, the NYSE American, The Nasdaq Global Select Market, The Nasdaq Global Market or The New York Stock Exchange, Inc.

(q) [INSERT IN SERIES A WARRANT: Intentionally omitted.][INSERT IN SERIES B WARRANT: “**End Reset Date**” means the forty-fifth (45th) Trading Day immediately following each End Reset Measuring Date.]

(f) [INSERT IN SERIES B WARRANT: “**End Reset Measuring Date**” each of the following:

(1) each date on which a Registration Statement registering any Registrable Securities for resale by the Holder is declared effective by the SEC and/or is available for use;

(2) if there is no effective Registration Statement(s) that is available for use registering all of the Underlying Securities for resale by the Holder on the earlier to occur of (x) the Rule 144 Date and (y) [•]⁵ (such earlier date, the “**Six Month Reset Date**”) then, the Six Month Reset Date; and

(3) if a Public Information Failure has occurred at any time following the Six Month Reset Date, the earlier to occur of (x) the date that such Public Information Failure is cured and no longer prevents the Holder from selling all Underlying Securities pursuant to Rule 144 without restriction or limitation and (y) the earlier to occur of (I) the date the Holder can sell all Underlying Securities pursuant to Rule 144 without restriction or limitation and without the requirement to be in compliance with Rule 144(c)(1) and (II) [•]⁶.]

⁵ Insert the date that is six (6) months immediately following the Issuance Date.

⁶ Insert the date that is the one (1) year anniversary of the Issuance Date.

(r) **[INSERT IN SERIES A WARRANT: “Excluded Securities”** means any Common Stock issued or issuable or deemed to be issued in accordance with Section 2(a)(i) or Section 2(a)(ii) by the Company (including, for the avoidance of doubt, Options or Convertible Securities issued by the Company): (i) under any Approved Stock Plan; provided, however, that no more than an aggregate of [*]⁷ shares of Common Stock (as adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction occurring relating to the Common Stock after the Warrant Closing Date (as defined in the Securities Purchase Agreement)) are issued or issuable to consultants and/or to new employees outside of an employee benefit plan or equity incentive plan hereunder as Excluded Securities, (ii) upon exercise of any SPA Warrants and any Series B Warrants issued pursuant to the Securities Purchase Agreement; provided, that the terms of such SPA Warrants and Series B Warrants are not amended, modified or changed on or after the Subscription Date, (iii) upon conversion, exercise or exchange of any Options or Convertible Securities which are outstanding on the day immediately preceding the Subscription Date; provided, that such issuance of Common Stock upon exercise of such Options or Convertible Securities is made pursuant to the terms of such Options or Convertible Securities in effect on the date immediately preceding the Subscription Date and such Options or Convertible Securities are not amended, modified or changed on or after the Subscription Date, except as set forth in the Executed Merger Agreement, (iv) prior to the Closing Date in connection with the exercise, exchange, cancellation, modification or termination of Parent Warrants (as defined in the Draft Merger Agreement (as defined in the Securities Purchase Agreement)) that are outstanding on the day immediately preceding the Subscription Date, (v) pursuant to the Executed Merger Agreement or the Final Form S-4 (as defined in the Securities Purchase Agreement), (vi) in connection with acquisitions, asset purchases, licenses, joint ventures, technology license agreements, collaborations or strategic transactions involving the Company and other Persons approved by the Board of Directors of the Company but only if such Person is, itself or through its subsidiaries, an operating company or an owner of an asset in a business synergistic with the business of the Company and shall provide to the Company additional benefits in addition to the investment of funds, but shall not include a transaction in which the Company is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities or (vii) to financial institutions or lessors in connection with credit or lending arrangements, equipment financings or lease arrangements in an amount not to exceed an aggregate of [*]⁸ shares of Common Stock (as adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction occurring relating to the Common Stock after the Warrant Closing Date).] **[INSERT IN SERIES B WARRANT: Intentionally omitted.]**

(s) **“Expiration Date”** means **[INSERT IN SERIES A WARRANTS:** the date sixty (60) months after the Issuance Date or, if such date falls on a day other than a Business Day or on which trading does not take place on the Principal Market (a **“Holiday”**), the next day that is not a Holiday] **[INSERT IN SERIES B WARRANTS:** the day following the later to occur of (x) the Reservation Date and (y) the date on which this Warrant has been exercised in full and no Warrant Shares remain issuable hereunder (without giving effect any limitation on exercise included herein)].

⁷ Insert three percent (3.0%) of the issued and outstanding shares of Common Stock determined as of the Warrant Closing Date.

⁸ Insert three percent (3.0%) of the issued and outstanding shares of Common Stock determined as of the Warrant Closing Date.

(t) [INSERT IN SERIES B WARRANT: “Exchange Shares” shall have the meaning ascribed to such term in the Securities Purchase Agreement.] [INSERT IN SERIES A WARRANT: Intentionally omitted.]

(u) “Executed Merger Agreement” shall have the meaning ascribed to such term in the Securities Purchase Agreement.

(v) “Fundamental Transaction” means (A) that the Company shall, directly or indirectly, including through Subsidiaries, Affiliates or otherwise, in one or more related transactions, (i) consolidate or merge with or into (whether or not the Company is the surviving corporation) another Subject Entity, or (ii) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company or any of its “significant subsidiaries” (as defined in Rule 1-02 of Regulation S-X) to one or more Subject Entities, or (iii) make, or allow one or more Subject Entities to make, or allow the Company to be subject to or have its Common Stock be subject to or party to one or more Subject Entities making, a purchase, tender or exchange offer that is accepted by the holders of at least either (x) 50% of the outstanding shares of Common Stock, (y) 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all Subject Entities making or party to, or Affiliated with any Subject Entities making or party to, such purchase, tender or exchange offer were not outstanding; or (z) such number of shares of Common Stock such that all Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such purchase, tender or exchange offer, become collectively the beneficial owners (as defined in Rule 13d-3 under the 1934 Act) of at least 50% of the outstanding shares of Common Stock, or (iv) consummate a stock purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with one or more Subject Entities whereby all such Subject Entities, individually or in the aggregate, acquire, either (x) at least 50% of the outstanding shares of Common Stock, (y) at least 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all the Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such stock purchase agreement or other business combination were not outstanding; or (z) such number of shares of Common Stock such that the Subject Entities become collectively the beneficial owners (as defined in Rule 13d-3 under the 1934 Act) of at least 50% of the outstanding shares of Common Stock, or (v) reorganize, recapitalize or reclassify its Common Stock, (B) that the Company shall, directly or indirectly, including through Subsidiaries, Affiliates or otherwise, in one or more related transactions, allow any Subject Entity individually or the Subject Entities in the aggregate to be or become the “beneficial owner” (as defined in Rule 13d-3 under the 1934 Act), directly or indirectly, whether through acquisition, purchase, assignment, conveyance, tender, tender offer, exchange, reduction in outstanding shares of Common Stock, merger, consolidation, business combination, reorganization, recapitalization, spin-off, scheme of arrangement, reorganization, recapitalization or reclassification or otherwise in any manner whatsoever, of either (x) at least 50% of the aggregate ordinary voting power represented by issued and outstanding shares of Common Stock, (y) at least 50% of the aggregate ordinary voting power represented by issued and outstanding shares of Common Stock not held by all such Subject Entities as of the Subscription Date calculated as if any shares of Common Stock held by all such Subject Entities were not outstanding, or (z) a percentage of the aggregate ordinary voting power represented by issued and outstanding shares of Common Stock or other equity securities of the Company sufficient to allow such Subject Entities to effect a statutory short form merger or other transaction requiring other stockholders of the Company to surrender their shares of Common Stock without approval of the stockholders of the Company or (C) that the Company shall, directly or indirectly, including through Subsidiaries, Affiliates or otherwise, in one or more related transactions, the issuance of or the entering into any other instrument or transaction structured in a manner to circumvent, or that circumvents, the intent of this definition in which case this definition shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this definition to the extent necessary to correct this definition or any portion of this definition which may be defective or inconsistent with the intended treatment of such instrument or transaction. For the avoidance of doubt, in no event shall the Merger (as defined in the Executed Merger Agreement) or the transactions contemplated by the Executed Merger Agreement and completed before the Issuance Date be deemed to be a “Fundamental Transaction.”

(w) “Group” means a “group” as that term is used in Section 13(d) of the 1934 Act and as defined in Rule 13d-5 thereunder.

(x) [INSERT IN SERIES B WARRANT: “Initial Common Shares” means the Exchange Shares issued in exchange for the Initial Common Shares (as defined in the Securities Purchase Agreement) purchased by the initial Holder of this Warrant.] [INSERT IN SERIES A WARRANT: Intentionally omitted.]

(y) [INSERT IN SERIES B WARRANT: “Initial Maximum Eligibility Number” means, the number (if positive) obtained by subtracting (i) the sum of (x) the number of Initial Common Shares purchased by the initial Holder of this Warrant on the Closing Date (as adjusted for stock splits, stock dividends, recapitalizations, reorganizations, reclassification, combinations, reverse stock splits or other similar events related to the Common Stock occurring after the Closing Date) and (y) the number of Additional Vested Common Shares (as adjusted for stock splits, stock dividends, recapitalizations, reorganizations, reclassification, combinations, reverse stock splits or other similar events related to the Common Stock occurring after the applicable date the Additional Vested Common Shares are delivered) delivered or deliverable to the initial Holder of this Warrant pursuant to the Securities Purchase Agreement, from (ii) the quotient determined by dividing (x) the aggregate Purchase Price paid by the initial Holder of this Warrant on the Closing Date, by (y) the greater of (I) the Reset Floor Price and (II) eighty-five percent (85%) of the sum of the five (5) lowest Weighted Average Prices of the Common Stock during the period beginning on the first (1st) Trading Day immediately following the Closing Date and ending on the First Additional Exchange Shares Delivery Date (as defined in the Securities Purchase Agreement), inclusive (as adjusted for stock splits, stock dividends, recapitalizations, reorganizations, reclassification, combinations, reverse stock splits or other similar events during such period) (as adjusted for stock splits, stock dividends, recapitalizations, reorganizations, reclassification, combinations, reverse stock splits or other similar events related to the Common Stock occurring after the Closing Date), divided by five (5).] [INSERT IN SERIES A WARRANT: Intentionally omitted.]

(z) [INSERT IN SERIES B WARRANT: “**Interim Reset Date**” means each of the ninth (9th) Trading Day, the eighteenth (18th) Trading Day, the twenty-seventh (27th) Trading Day and the thirty-sixth (36th) Trading Day, in each case, immediately following each End Reset Measuring Date.] [INSERT IN SERIES A WARRANT: Intentionally omitted.]

(aa) [INSERT IN SERIES B WARRANT: “**Maximum Eligibility Number**” means, initially, the Initial Maximum Eligibility Number, and such number shall be increased (but not decreased) on each Reset Date to equal the applicable Reset Share Amount.] [INSERT IN SERIES A WARRANT: Intentionally omitted.]

(bb) “**Options**” means any rights, warrants or options to subscribe for or purchase (i) shares of Common Stock or (ii) Convertible Securities, including without limitation, the Warrants (as defined in the Securities Purchase Agreement).

(cc) “**Parent Entity**” of a Person means an entity that, directly or indirectly, controls the applicable Person, including such entity whose common capital or equivalent equity security is quoted or listed on an Eligible Market (or, if so elected by the Holder, any other market, exchange or quotation system), or, if there is more than one such Person or such entity, the Person or such entity designated by the Required Holders or in the absence of such designation, such Person or entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

(dd) “**Person**” means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and a government or any department or agency thereof.

(ee) “**Principal Market**” means The Nasdaq Capital Market.

(ff) [INSERT IN SERIES B WARRANT: “**Public Information Failure**” shall have the meaning ascribed to such term in the Securities Purchase Agreement.] [INSERT IN SERIES A WARRANT: Intentionally omitted.]

(gg) [INSERT IN SERIES B WARRANT: “**Purchase Price**” shall have the meaning ascribed to such term in the Securities Purchase Agreement.] [INSERT IN SERIES A WARRANT: Intentionally omitted.]

(hh) “**Registrable Securities**” shall have the meaning ascribed to such term in the Registration Rights Agreement.

(ii) “**Registration Rights Agreement**” means that certain Registration Rights Agreement dated as of the Subscription Date by and among the Company and the Buyers.

(jj) “**Registration Statement**” shall have the meaning ascribed to such term in the Registration Rights Agreement.

(kk) “**Required Holders**” means the holders of the SPA Warrants representing at least a majority of the shares of Common Stock underlying the SPA Warrants then outstanding and shall include the Designee so long as the Designee or any of its Affiliates holds any SPA Warrants.

(ll) “**Reservation Date**” means the forty-fifth (45th) Trading Day immediately following the earlier to occur of (x) the date the Holder can sell all Underlying Securities pursuant to Rule 144 without restriction or limitation and without the requirement to be in compliance with Rule 144(c)(1) and (y) [•]⁹.

(mm) “**Reset Date**” [INSERT IN SERIES A WARRANT: shall have the meaning ascribed to such term in the Series B Warrants.] [INSERT IN SERIES B WARRANT: means each Interim Reset Date and each End Reset Date; provided, however, that the Holder may by written notice to the Company elect to waive any such Reset Date; provided, further, that any Reset Date that has been waived pursuant to the immediately preceding proviso may be advanced or delayed to any date selected by the Holder; provided, further, that each End Reset Date may be advanced, but not delayed.]

(nn) “**Reset Floor Price**” means \$[•]¹⁰ (as adjusted for stock splits, stock dividends, recapitalizations, reorganizations, reclassification, combinations, reverse stock splits or other similar events related to the Common Stock occurring after the Closing Date).

(oo) [INSERT IN SERIES B WARRANT: “**Reset Period**” means the period beginning on the End Reset Measuring Date and ending on the applicable Reset Date.] [INSERT IN SERIES A WARRANT: Intentionally omitted.]

(pp) “**Reset Price**” means [INSERT IN SERIES B WARRANT: the arithmetic average of the five (5) lowest Weighted Average Prices of the Common Stock during the applicable Reset Period immediately preceding the applicable Reset Date (as adjusted for stock splits, stock dividends, recapitalizations, reorganizations, reclassification, combinations, reverse stock splits or other similar events during such period); provided, however, that the Reset Price shall not be lower than the Reset Floor Price]. [INSERT IN SERIES A WARRANT: the lower of (i) the Exercise Price then in effect and (ii) 120% of the applicable Reset Price (as defined in the Series B Warrants) determined as of the related Reset Date.]

(qq) [INSERT IN SERIES B WARRANT: “**Reset Share Amount**” means the number of shares of Common Stock equal to the number (if positive) obtained by subtracting (I) the sum of (i) the number of Initial Common Shares purchased by the initial Holder of this Warrant pursuant to the Securities Purchase Agreement (as adjusted for stock splits, stock dividends, recapitalizations, reorganizations, reclassification, combinations, reverse stock splits or other similar events related to the Common Stock occurring after the Subscription Date) and (ii) the number of Additional Vested Common Shares (as adjusted for stock splits, stock dividends, recapitalizations, reorganizations, reclassification, combinations, reverse stock splits or other similar events related to the Common Stock occurring after the applicable date the Additional Vested Common Shares are delivered) delivered or deliverable to the initial Holder of this Warrant pursuant to the Securities Purchase Agreement, from (II) the quotient determined by dividing (x) the aggregate Purchase Price paid by the initial Holder of this Warrant pursuant to the Securities Purchase Agreement, by (y) the applicable Reset Price determined as of the related Reset Date.] [INSERT IN SERIES A WARRANT: Intentionally omitted.]

⁹ Insert the date that is the one (1) year anniversary of the Issuance Date.

¹⁰ Insert price equal to: \$10,000,000 divided by the Parent Fully Diluted Number (as defined in the Securities Purchase Agreement), calculated solely for this purpose by limiting the amount of any Additional Vested Common Shares up to a cap equal to the number of Initial Common Shares, without giving effect to the limitations under Section 1(c)(iv) of the Securities Purchase Agreement, rounded to four decimal places.

(rr) “**Rule 144**” means Rule 144 promulgated under the 1933 Act or any successor rule.

(ss) [INSERT IN SERIES B WARRANT: “**Rule 144 Date**” means the first date on which the Holder can sell all the Underlying Securities without restriction or limitation pursuant to Rule 144.] [INSERT IN SERIES A WARRANT: Intentionally omitted.]

(tt) [INSERT IN SERIES B WARRANT: “**Series A Warrants**” shall have the meaning ascribed to such term in the Securities Purchase Agreement.] [INSERT IN SERIES A WARRANT: “**Series B Warrants**” shall have the meaning ascribed to such term in the Securities Purchase Agreement.]

(uu) “**Share Delivery Date**” means the earlier of (i) the second (2nd) Trading Day and (ii) the number of Trading Days comprising the Standard Settlement Period, in each case, following the date on which the Holder delivers the applicable Exercise Notice to the Company, so long as the Holder delivers the applicable Aggregate Exercise Price (or notice of a Cashless Exercise) on or prior to the earlier of (i) the second (2nd) Trading Day following the date on which the Holder has delivered the applicable Exercise Notice to the Company and (ii) the number of Trading Days comprising the Standard Settlement Period following the date on which the Holder has delivered the applicable Exercise Notice to the Company (provided that if the applicable Aggregate Exercise Price (or applicable notice of a Cashless Exercise) has not been delivered by such date, the applicable Share Delivery Date shall be one (1) Trading Day after the Holder has delivered the applicable Aggregate Exercise Price (or applicable notice of a Cashless Exercise to the Company).

(vv) “**Standard Settlement Period**” means the standard settlement period, expressed in a number of Trading Days, on the Company’s primary Eligible Market with respect to the Common Stock as in effect on the date of delivery of the applicable Exercise Notice.

(ww) “**Subject Entity**” means any Person, Persons or Group or any Affiliate or associate of any such Person, Persons or Group.

(xx) “**Subsidiary**” shall have the meaning ascribed to such term in the Securities Purchase Agreement.

(yy) “**Successor Entity**” means one or more Person or Persons (or, if so elected by the Holder, the Company or Parent Entity) formed by, resulting from or surviving any Fundamental Transaction or one or more Person or Persons (or, if so elected by the Holder, the Company or the Parent Entity) with which such Fundamental Transaction shall have been entered into.

(zz) “**Trading Day**” means any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock on such day, then on the principal securities exchange or securities market on which the Common Stock is then traded.

(aaa) [INSERT IN SERIES B WARRANT: “**Underlying Securities**” means (i) the shares of Common Stock issued or issuable upon exercise of the Series A Warrants, (ii) the shares of Common Stock issued or issuable upon exercise of the SPA Warrants and (iii) any capital stock of the Company issued or issuable with respect to the Series A Warrants, the SPA Warrants or the shares of Common Stock issued or issuable upon exercise of the Series A Warrants or the SPA Warrants, in each case as a result of any stock split, stock dividend, recapitalization, exchange or similar event or otherwise, without regard to any limitations on the exercise of the Series A Warrants or the SPA Warrants.] [INSERT IN SERIES A WARRANT: Intentionally omitted.]

(bbb) “**Weighted Average Price**” means, for any security as of any date, the dollar volume-weighted average price for such security on the Principal Market during the period beginning at 9:30:00 a.m., New York time (or such other time as the Principal Market publicly announces is the official open of trading), and ending at 4:00:00 p.m., New York time (or such other time as the Principal Market publicly announces is the official close of trading), as reported by Bloomberg through its “Volume at Price” function or, if the foregoing does not apply, the dollar volume-weighted average price of such security in the over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30:00 a.m., New York time (or such other time as such market publicly announces is the official open of trading), and ending at 4:00:00 p.m., New York time (or such other time as such market publicly announces is the official close of trading), as reported by Bloomberg, or, if no dollar volume-weighted average price is reported for such security by Bloomberg for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for such security as reported in the OTC Link or Pink Open Market (f/k/a OTC Pink) published by the OTC Markets Group, Inc. (or similar organization or agency succeeding to its functions of reporting prices). If the Weighted Average Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Weighted Average Price of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved pursuant to Section 12 with the term “Weighted Average Price” being substituted for the term “Exercise Price.” All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination, reclassification or other similar transaction relating to the Common Stock during the applicable calculation period.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has caused this Warrant to Purchase Common Stock to be duly executed as of the Issuance Date set out above.

OCUPHIRE PHARMA, INC.

By: _____

Name:

Title:

**EXERCISE NOTICE
TO BE EXECUTED BY THE REGISTERED HOLDER TO EXERCISE THIS
WARRANT TO PURCHASE COMMON STOCK**

OCUPHIRE PHARMA, INC.

The undersigned holder hereby exercises the right to purchase _____ shares of Common Stock ("**Warrant Shares**") of Ocuphire Pharma, Inc., a Delaware corporation formerly known as Rexahn Pharmaceuticals, Inc. (the "**Company**"), evidenced by the attached Warrant to Purchase Common Stock (the "**Warrant**"). **[INSERT IN SERIES B WARRANT: In lieu of a fixed number of Warrant Shares, the undersigned holder may elect to indicate above a percentage of the trading volume on the date of this Exercise Notice, which may be subject to a minimum and/or a maximum number of Warrant Shares, all subject to the provisions of Section 1(f) of the Warrant. If a fixed number of Warrant Shares is not indicated above, then the number of Warrant Shares and the Aggregate Exercise Price set forth in Sections 1, 2 and 3 of this Exercise Notice shall be mutually calculated by the Company and the undersigned holder after the end of trading on the Principal Market on the date of this Exercise Notice in accordance with the foregoing instructions and the provisions of Section 1(f) of the Warrant.]** Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Warrant.

1. Form of Exercise Price. The Holder intends that payment of the Exercise Price shall be made as:

_____ a "Cash Exercise" with respect to _____ Warrant Shares; and/or

_____ a "Cashless Exercise" with respect to _____ Warrant Shares, resulting in a delivery obligation of the Company to the Holder of _____ shares of Common Stock representing the applicable Net Number.

2. Payment of Exercise Price. In the event that the holder has elected a Cash Exercise with respect to some or all of the Warrant Shares to be issued pursuant hereto, the holder shall pay the Aggregate Exercise Price in the sum of \$_____ to the Company in accordance with the terms of the Warrant.

3. Delivery of Warrant Shares. The Company shall deliver to the holder _____ Warrant Shares in accordance with the terms of the Warrant.

4. Please issue the Common Stock into which the Warrant is being exercised to the Holder, or for its benefit, as follows:

Check here if requesting delivery as a certificate to the following name and to the following address:

Issue to: _____

Address: _____

Telephone Number: _____

Facsimile Number: _____

Check here if requesting delivery by Deposit/Withdrawal at Custodian as follows:

DTC Participant: _____

DTC Number: _____

Account Number: _____

Authorization:

By: _____

Title: _____

Dated:

Account Number (if electronic book entry transfer):

Transaction Code Number (if electronic book entry transfer): _____

Date: _____, _____

Name of Registered Holder

By: _____

Name:

Title:

ACKNOWLEDGMENT

The Company hereby acknowledges this Exercise Notice and hereby directs [Olde Monmouth Stock Transfer Co., Inc.] to issue the above indicated number of shares of Common Stock in accordance with the Transfer Agent Instructions dated [●], 2020 from the Company and acknowledged and agreed to by [Olde Monmouth Stock Transfer Co., Inc.].

OCUPHIRE PHARMA, INC.

By: _____
Name:
Title:

REGISTRATION RIGHTS AGREEMENT

REGISTRATION RIGHTS AGREEMENT (this “**Agreement**”), dated as of June 17, 2020, by and among Rexahn Pharmaceuticals, Inc., a Delaware corporation, with headquarters located at 15245 Shady Grove Road, Suite 455, Rockville, MD 20850 to be renamed “Ocuphire Pharma, Inc.” pursuant to the Merger Agreement (as defined below) (the “**Company**”), and the investors listed on the Schedule of Buyers attached hereto (each, a “**Buyer**” and collectively, the “**Buyers**”).

WHEREAS:

A. In connection with the Securities Purchase Agreement (the “**Securities Purchase Agreement**”) by and among Ocuphire Pharma, Inc., a Delaware corporation (“**Ocuphire Private Company**”), the Company and the Buyers of even date herewith, upon the terms and subject to the conditions of the Securities Purchase Agreement, (i) Ocuphire Private Company has agreed to issue to each Buyer shares of common stock, \$0.0001 par value per share, of Ocuphire Private Company and (ii) the Company has agreed to issue Series A Warrants and Series B Warrants (each as defined below and collectively, the “**Warrants**”) which each will be exercisable to purchase shares of the Company’s common stock, par value \$0.0001 per share (the “**Common Stock**”) (as exercised, collectively, the “**Warrant Shares**”) in accordance with the terms of the Warrants.

B. In accordance with the terms of the Securities Purchase Agreement, provided that the transactions contemplated by that certain Agreement and Plan of Merger and Reorganization among the Company, Razor Merger Sub, Inc., a Delaware corporation and wholly owned subsidiary of the Company and Ocuphire Private Company, dated as of June 17, 2020 (the “**Merger Agreement**”) are consummated, the Company has agreed to provide certain registration rights under the Securities Act of 1933, as amended, and the rules and regulations thereunder, or any similar successor statute (collectively, the “**1933 Act**”), and applicable state securities laws.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and each of the Buyers hereby agree as follows:

1. Definitions.

Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Securities Purchase Agreement. As used in this Agreement, the following terms shall have the following meanings:

(a) “**Additional Effective Date**” means the date an Additional Registration Statement is declared effective by the SEC.

(b) “**Additional Effectiveness Deadline**” means the date which is the earlier of (i) in the event that the Additional Registration Statement (x) is not subject to a full review by the SEC, the date which is thirty (30) Trading Days after the earlier of the applicable Additional Filing Date and the Additional Filing Deadline or (y) is subject to a full review by the SEC, the date which is sixty (60) Trading Days after the earlier of the applicable Additional Filing Date and the Additional Filing Deadline and (ii) the fifth (5th) Business Day after the date the Company is notified (orally or in writing, whichever is earlier) by the SEC that such Additional Registration Statement will not be reviewed or will not be subject to further review; provided, however, that if the Additional Effectiveness Deadline falls on a Saturday, Sunday or other day that the SEC is closed for business, the Additional Effectiveness Deadline shall be extended to the next Business Day on which the SEC is open for business.

(c) **“Additional Filing Date”** means the date on which an Additional Registration Statement is filed with the SEC.

(d) **“Additional Filing Deadline”** means if Cutback Shares are required to be included in any Additional Registration Statement, the later of (i) the date sixty (60) days after the date substantially all of the Registrable Securities registered under the immediately preceding Registration Statement are sold and (ii) the date six (6) months from the Initial Effective Date, the most recent Subsequent Effective Date or the most recent Additional Effective Date, as applicable.

(e) **“Additional Registrable Securities”** means, (i) any Cutback Shares not previously included on a Registration Statement, and (ii) any capital stock of the Company issued or issuable with respect to the Series A Warrants, the Series B Warrants, the Series A Warrant Shares, the Series B Warrant Shares or the Cutback Shares, as applicable, as a result of any stock split, stock dividend, recapitalization, exchange or similar event or otherwise, without regard to any limitations on exercise of the Warrants.

(f) **“Additional Registration Statement”** means a registration statement or registration statements of the Company filed under the 1933 Act covering the resale any Additional Registrable Securities.

(g) **“Additional Required Registration Amount”** means any Cutback Shares not previously included on a Registration Statement, all subject to adjustment as provided in Section 2(g), without regard to any limitations on the exercise of the Warrants.

(h) **“Business Day”** means any day other than Saturday, Sunday or any other day on which commercial banks in the City of New York are authorized or required by law to remain closed.

(i) **“Closing Date”** shall have the meaning set forth in the Securities Purchase Agreement.

(j) **“Cutback Shares”** means any of the Initial Required Registration Amount, the Subsequent Required Registration Amount and/or the Additional Required Registration Amount of Registrable Securities which the SEC will not allow to be included in a Registration Statement as a result of a limitation on the maximum number of shares of Common Stock of the Company permitted to be registered by the staff of the SEC pursuant to Rule 415. For the purpose of determining the Cutback Shares, in order to determine any applicable Required Registration Amount, unless an Investor gives written notice to the Company to the contrary with respect to the allocation of its Cutback Shares, first the Series A Warrant Shares shall be excluded on a pro rata basis among the Investors until all of the Series A Warrant Shares have been excluded and second the Series B Warrant Shares shall be excluded on a pro rata basis among the Investors until all of the Series B Warrant Shares have been excluded.

- (k) **“Designee”** means Altium Capital Management, LP.
- (l) **“effective”** and **“effectiveness”** refer to a Registration Statement that has been declared effective by the SEC and is available for the resale of the Registrable Securities required to be covered thereby.
- (m) **“Effective Date”** means the Initial Effective Date, each Subsequent Effective Date and/or each Additional Effective Date, as applicable.
- (n) **“Effectiveness Deadline”** means the Initial Effectiveness Deadline, each Subsequent Effectiveness Deadline and/or each Additional Effectiveness Deadline, as applicable.
- (o) **“Eligible Market”** means the Principal Market, the NYSE American, The Nasdaq Global Select Market, The Nasdaq Global Market or The New York Stock Exchange, Inc.
- (p) **“End Reset Date”** shall have the meaning ascribed to such term in the Series B Warrants.
- (q) **“Filing Deadline”** means the Initial Filing Deadline, each Subsequent Filing Deadline and/or each Additional Filing Deadline, as applicable.
- (r) **“Initial Effective Date”** means the date that the Initial Registration Statement has been declared effective by the SEC.
- (s) **“Initial Effectiveness Deadline”** means the date which is the earlier of (x) (i) in the event that the Initial Registration Statement is not subject to a full review by the SEC, forty five (45) Trading Days after the Closing Date or (ii) in the event that the Initial Registration Statement is subject to a full review by the SEC, seventy five (75) Trading Days after the Closing Date and (y) the fifth (5th) Business Day after the date the Company is notified (orally or in writing, whichever is earlier) by the SEC that such Initial Registration Statement will not be reviewed or will not be subject to further review; provided, however, that if the Initial Effectiveness Deadline falls on a Saturday, Sunday or other day that the SEC is closed for business, the Initial Effectiveness Deadline shall be extended to the next Business Day on which the SEC is open for business.
- (t) **“Initial Filing Deadline”** means the date which is fifteen (15) Trading Days after the Closing Date.
- (u) **“Initial Registrable Securities”** means (i) the Series A Warrant Shares issued or issuable upon exercise of the Series A Warrants, (ii) the Series B Warrant Shares issued or issuable upon exercise of the Series B Warrants and (iii) any capital stock of the Company issued or issuable with respect to the Series A Warrant Shares, the Series A Warrants, the Series B Warrant Shares or the Series B Warrants, in each case as a result of any stock split, stock dividend, recapitalization, exchange or similar event or otherwise, without regard to any limitations on the exercise of the Series A Warrants and/or the Series B Warrants.

(v) **“Initial Registration Statement”** means a registration statement or registration statements of the Company filed under the 1933 Act covering the resale of Initial Registrable Securities.

(w) **“Initial Required Registration Amount”** means the number of shares of Common Stock issued and issuable pursuant to the Series A Warrants and the Series B Warrants equal to the greater of (A) the sum of (x) 135% of the number of Series A Warrant Shares issued and issuable pursuant to the Series A Warrants determined in accordance with Section 2(d) of the Series A Warrants assuming a Reset Price (as defined in the Series A Warrants) equal to the Reset Floor Price without giving effect to any limitation on exercise set forth therein and (y) 100% of the number of Series B Warrant Shares issued and issuable pursuant to the Series B Warrants assuming that the Maximum Eligibility Number (as defined in the Series B Warrant) is determined based on a Reset Price (as defined in the Series B Warrants) equal to the Reset Floor Price without giving effect to any limitation on exercise set forth therein and (B) the sum of (x) 135% of the number of shares of Common Stock issuable upon exercise of the Series A Warrants without giving effect to any limitation on exercise set forth in the Series A Warrants and (y) 100% of the number of shares of Common Stock issuable upon exercise of the Series B Warrants without giving effect to any limitation on exercise set forth in the Series B Warrants, calculated as of the Trading Day immediately preceding the applicable date of determination and all subject to adjustment as provided in Section 2(g).

(x) **“Investor”** means a Buyer or any transferee or assignee thereof to whom a Buyer assigns its rights under this Agreement and who agrees to become bound by the provisions of this Agreement in accordance with Section 9 and any transferee or assignee thereof to whom a transferee or assignee assigns its rights under this Agreement and who agrees to become bound by the provisions of this Agreement in accordance with Section 9.

(y) **“Person”** means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization and a government or any department or agency thereof.

(z) **“Principal Market”** means The Nasdaq Capital Market.

(aa) **“register,” “registered,”** and **“registration”** refer to a registration effected by preparing and filing one or more Registration Statements (as defined below) in compliance with the 1933 Act and pursuant to Rule 415, and the declaration or ordering of effectiveness of such Registration Statement(s) by the SEC.

(bb) **“Registrable Securities”** means the Initial Registrable Securities, the Subsequent Registrable Securities and/or the Additional Registrable Securities, as applicable.

(cc) **“Registration Statement”** means the Initial Registration Statement, the Subsequent Registration Statement(s) and/or the Additional Registration Statement(s), as applicable.

(dd) **“Required Holders”** means the holders of at least a majority of the Registrable Securities and shall include the Designee so long as the Designee or any of its affiliates holds any Warrants or Registrable Securities.

(ee) **“Required Registration Amount”** means either the Initial Required Registration Amount, the Subsequent Required Registration Amount and/or the Additional Required Registration Amount, as applicable.

(ff) **“Reservation Date”** shall have the meaning ascribed to such term in the Warrants.

(gg) **“Reset Floor Price”** shall have the meaning ascribed to such term in the Warrants.

(hh) **“Rule 415”** means Rule 415 promulgated under the 1933 Act or any successor rule providing for offering securities on a continuous or delayed basis.

(ii) **“SEC”** means the United States Securities and Exchange Commission.

(jj) **“Series A Warrants”** shall have the meaning set forth in the Securities Purchase Agreement.

(kk) **“Series A Warrant Shares”** shall have the meaning set forth in the Securities Purchase Agreement.

(ll) **“Series B Warrants”** shall have the meaning set forth in the Securities Purchase Agreement.

(mm) **“Series B Warrant Shares”** shall have the meaning set forth in the Securities Purchase Agreement.

(nn) **“Subsequent Effective Date”** means the date that a Subsequent Registration Statement has been declared effective by the SEC.

(oo) **“Subsequent Effectiveness Deadline”** means the date which is the earlier of (x) the sixtieth (60th) day after the earlier of the applicable Subsequent Filing Date and the applicable Subsequent Filing Deadline and (y) the fifth (5th) Business Day after the date the Company is notified (orally or in writing, whichever is earlier) by the SEC that such Subsequent Registration Statement will not be reviewed or will not be subject to further review; provided, however, that if a Subsequent Effectiveness Deadline falls on a Saturday, Sunday or other day that the SEC is closed for business, the Subsequent Effectiveness Deadline shall be extended to the next Business Day on which the SEC is open for business.

(pp) **“Subsequent Filing Date”** means the date on which the applicable Subsequent Registration Statement is filed with the SEC.

(qq) **“Subsequent Filing Deadline”** means the date which is fifteen (15) calendar days after each End Reset Date.

(rr) **“Subsequent Registrable Securities”** means (i) the Series A Warrant Shares issued or issuable upon exercise of the Series A Warrants to the extent such Series A Warrant Shares were not included in all Registration Statements previously declared effective hereunder, (ii) the Series B Warrant Shares issued or issuable upon exercise of the Series B Warrants to the extent such Series B Warrant Shares were not included in all Registration Statements previously declared effective hereunder and (iii) any capital stock of the Company issued or issuable with respect to the Series A Warrant Shares, Series B Warrant Shares, Series A Warrants or Series B Warrants to the extent such capital stock was not included in all Registration Statements previously declared effective hereunder, in each case as a result of any stock split, stock dividend, recapitalization, exchange or similar event or otherwise, without regard to any limitations on the exercise of the Warrants.

(ss) **“Subsequent Registration Statement”** means a registration statement or registration statements of the Company filed under the 1933 Act covering the resale of Subsequent Registrable Securities.

(tt) **“Subsequent Required Registration Amount”** means the number of shares of Common Stock issued and issuable pursuant to the Series A Warrants and the Series B Warrants equal the greater of (A) the sum of (x) 135% of the number of Series A Warrant Shares issued and issuable pursuant to the Series A Warrants determined in accordance with Section 2(d) of the Series A Warrants assuming a Reset Price (as defined in the Series A Warrants) equal to Reset Floor Price without giving effect to any limitation on exercise set forth therein to the extent such Series A Warrant Shares were not included in all Registration Statements previously declared effective hereunder and (y) 100% of the number of Series B Warrant Shares issued and issuable pursuant to the Series B Warrants assuming that the Maximum Eligibility Number (as defined in the Series B Warrant) is determined based on a Reset Price (as defined in the Series B Warrants) equal to the Reset Floor Price without giving effect to any limitation on exercise set forth therein to the extent such Series B Warrant Shares were not included in all Registration Statements previously declared effective hereunder and (B) the sum of (x) 135% of the number of shares of Common Stock issuable upon exercise of the Series A Warrants without giving effect to any limitation on exercise set forth in the Series A Warrants to the extent such Series A Warrant Shares were not included in all Registration Statements previously declared effective hereunder and (y) 100% of the number of shares of Common Stock issuable upon exercise of the Series B Warrants without giving effect to any limitation on exercise set forth in the Series B Warrants to the extent such Series B Warrant Shares were not included in all Registration Statements previously declared effective hereunder, calculated as of the Trading Day immediately preceding the applicable date of determination and all subject to adjustment as provided in Section 2(g).

(uu) **“Trading Day”** means any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock on such day, then on the principal securities exchange or securities market on which the Common Stock is then traded.

2. Registration.

(a) Initial Mandatory Registration. The Company shall prepare, and, as soon as practicable but in no event later than the Initial Filing Deadline, file with the SEC the Initial Registration Statement on Form S-3 covering the resale of all of the Initial Registrable Securities. In the event that Form S-3 is unavailable for such a registration, the Company shall use such other form as is available for such a registration on another appropriate form reasonably acceptable to the Required Holders, subject to the provisions of Section 2(f). The Initial Registration Statement prepared pursuant hereto shall register for resale at least the number of shares of Common Stock equal to the Initial Required Registration Amount determined as of the date the Initial Registration Statement is initially filed with the SEC, subject to adjustment as provided in Section 2(g). The Initial Registration Statement shall contain (except if otherwise directed by the Required Holders) the “Plan of Distribution” and “Selling Stockholders” sections in substantially the form attached hereto as Exhibit B. The Company shall use its commercially reasonable efforts to have the Initial Registration Statement declared effective by the SEC as soon as practicable, but in no event later than the Initial Effectiveness Deadline. By 9:30 a.m. New York time on the Business Day following the Initial Effective Date, the Company shall file with the SEC in accordance with Rule 424 under the 1933 Act the final prospectus to be used in connection with sales pursuant to such Initial Registration Statement.

(b) Subsequent Mandatory Registrations. The Company shall prepare, and, as soon as practicable but in no event later than the Subsequent Filing Deadline, file with the SEC a Subsequent Registration Statement on Form S-3 covering the resale of all of the Subsequent Registrable Securities not previously registered on a Subsequent Registration Statement hereunder. In the event that Form S-3 is unavailable for such a registration, the Company shall use such other form as is available for such a registration on another appropriate form reasonably acceptable to the Required Holders, subject to the provisions of Section 2(f). Each Subsequent Registration Statement prepared pursuant hereto shall register for resale at least that number of shares of Common Stock equal to the Subsequent Required Registration Amount determined as of the date such Subsequent Registration Statement is initially filed with the SEC, subject to adjustment as provided in Section 2(g). Each Subsequent Registration Statement shall contain (except if otherwise directed by the Required Holders) the “Plan of Distribution” and “Selling Stockholders” sections in substantially the form attached hereto as Exhibit B. The Company shall use its commercially reasonable efforts to have each Subsequent Registration Statement declared effective by the SEC as soon as practicable, but in no event later than the Subsequent Effectiveness Deadline. By 9:30 a.m. New York time on the Business Day following the Subsequent Effective Date, the Company shall file with the SEC in accordance with Rule 424 under the 1933 Act the final prospectus to be used in connection with sales pursuant to such Subsequent Registration Statement.

(c) Additional Mandatory Registrations. The Company shall prepare, and, as soon as practicable but in no event later than the Additional Filing Deadline, file with the SEC an Additional Registration Statement on Form S-3 covering the resale of all of the Additional Registrable Securities not previously registered on an Additional Registration Statement hereunder. To the extent the staff of the SEC does not permit the Additional Required Registration Amount to be registered on an Additional Registration Statement, the Company shall file Additional Registration Statements successively trying to register on each such Additional Registration Statement the maximum number of remaining Additional Registrable Securities until the Additional Required Registration Amount has been registered with the SEC. In the event that Form S-3 is unavailable for such a registration, the Company shall use such other form as is available for such a registration on another appropriate form reasonably acceptable to the Required Holders, subject to the provisions of Section 2(f). Each Additional Registration Statement prepared pursuant hereto shall register for resale at least that number of shares of Common Stock equal to the Additional Required Registration Amount determined as of the date such Additional Registration Statement is initially filed with the SEC, subject to adjustment as provided in Section 2(g). Each Additional Registration Statement shall contain (except if otherwise directed by the Required Holders) the “Plan of Distribution” and “Selling Stockholders” sections in substantially the form attached hereto as Exhibit B. The Company shall use its commercially reasonable efforts to have each Additional Registration Statement declared effective by the SEC as soon as practicable, but in no event later than the Additional Effectiveness Deadline. By 9:30 a.m. New York time on the Business Day following the Additional Effective Date, the Company shall file with the SEC in accordance with Rule 424 under the 1933 Act the final prospectus to be used in connection with sales pursuant to such Additional Registration Statement.

(d) Allocation of Registrable Securities. The initial number of Registrable Securities included in any Registration Statement and any increase or decrease in the number of Registrable Securities included therein shall be allocated pro rata among the Investors based on the number of Registrable Securities held by each Investor at the time the Registration Statement covering such initial number of Registrable Securities or increase or decrease thereof is declared effective by the SEC. In the event that an Investor sells or otherwise transfers any of such Investor’s Registrable Securities, each transferee shall be allocated a pro rata portion of the then remaining number of Registrable Securities included in such Registration Statement for such transferor. Any shares of Common Stock included in a Registration Statement and which remain allocated to any Person which ceases to hold any Registrable Securities covered by such Registration Statement shall be allocated to the remaining Investors, pro rata based on the number of Registrable Securities then held by such Investors which are covered by such Registration Statement. In no event shall the Company include any securities other than Registrable Securities on any Registration Statement without the prior written consent of the Required Holders.

(e) Legal Counsel. Subject to Section 5 hereof, the Required Holders shall have the right to select one legal counsel to review and oversee any registration pursuant to this Section 2 (“**Legal Counsel**”), which shall be Schulte Roth & Zabel LLP or such other counsel as thereafter designated by the Required Holders. The Company and Legal Counsel shall reasonably cooperate with each other in performing the Company’s obligations under this Agreement.

(f) Ineligibility for Form S-3. In the event that Form S-3 is not available for the registration of the resale of Registrable Securities hereunder, the Company shall (i) register the resale of the Registrable Securities on Form S-1 or another appropriate form reasonably acceptable to the Required Holders and (ii) undertake to register the Registrable Securities on Form S-3 as soon as such form is available, provided that the Company shall maintain the effectiveness of the Registration Statement then in effect until such time as a Registration Statement on Form S-3 covering the Registrable Securities has been declared effective by the SEC.

(g) Sufficient Number of Shares Registered. In the event the number of shares available under a Registration Statement filed pursuant to Section 2(a), Section 2(b) or Section 2(c) is insufficient to cover the Required Registration Amount of Registrable Securities required to be covered by such Registration Statement or an Investor's allocated portion of the Registrable Securities pursuant to Section 2(d), the Company shall amend the applicable Registration Statement, or file a new Registration Statement (on the short form available therefor, if applicable), or both, so as to cover at least the Required Registration Amount as of the Trading Day immediately preceding the date of the filing of such amendment or new Registration Statement, in each case, as soon as practicable, but in any event not later than fifteen (15) days after the necessity therefor arises. The Company shall use its commercially reasonable efforts to cause such amendment and/or new Registration Statement to become effective as soon as practicable following the filing thereof. For purposes of the foregoing provision, the number of shares available under a Registration Statement shall be deemed "insufficient to cover all of the Registrable Securities" if at any time the number of shares of Common Stock available for resale under the Registration Statement is less than the Required Registration Amount as of such time. The calculation set forth in the foregoing sentence shall be made without regard to any limitations on the exercise of the Warrants, and (i) until the Reservation Date, such calculation shall assume that the Series A Warrants and the Series B Warrants are then exercisable in full into a number of shares of Common Stock equal to the sum of (x) 135% of the number of Series A Warrant Shares issued and issuable pursuant to the Series A Warrants determined in accordance with Section 2(d) of the Series A Warrants assuming a Reset Price (as defined in the Series A Warrants) equal to the Reset Floor Price without giving effect to any limitation on exercise set forth therein and (y) 100% of the number of Series B Warrant Shares issued and issuable pursuant to the Series B Warrants assuming that the Maximum Eligibility Number (as defined in the Series B Warrant) is determined based on a Reset Price (as defined in the Series B Warrants) equal to the Reset Floor Price without giving effect to any limitation on exercise set forth therein, and (ii) thereafter, the sum of (x) 135% of the maximum number of shares of Common Stock as shall from time to time be necessary to effect the exercise of all of the Series A Warrants then outstanding without giving effect to any limitation on exercise set forth therein and (y) 100% of the maximum number of shares of Common Stock as shall from time to time be necessary to effect the exercise of all of the Series B Warrants then outstanding without giving effect to any limitation on exercise set forth therein.

(h) Effect of Failure to File and Obtain and Maintain Effectiveness of Registration Statement If (x) a Registration Statement covering all of the Registrable Securities required to be covered thereby and required to be filed by the Company pursuant to this Agreement is (A) not filed with the SEC on or before the applicable Filing Deadline (a “**Filing Failure**”) or (B) not declared effective by the SEC on or before the applicable Effectiveness Deadline, (an “**Effectiveness Failure**”) or (y) on any day after the applicable Effective Date sales of all of the Registrable Securities required to be included on such Registration Statement cannot be made (other than during an Allowable Grace Period (as defined in Section 3(r)) pursuant to such Registration Statement or otherwise (including, without limitation, because of the suspension of trading or any other limitation imposed by an Eligible Market, a failure to keep such Registration Statement effective, a failure to disclose such information as is necessary for sales to be made pursuant to such Registration Statement, a failure to register a sufficient number of shares of Common Stock or a failure to maintain the listing of the Common Stock) (a “**Maintenance Failure**”), then, as partial relief for the damages to any holder by reason of any such delay in or reduction of its ability to sell the Registrable Securities (which remedy shall not be exclusive of any other remedies available at law or in equity, including, without limitation, specific performance or the additional obligation of the Company to register any Cutback Shares), the Company shall pay to each holder of Registrable Securities relating to such Registration Statement an amount in cash equal to 1.0% of the aggregate Purchase Price (as such term is defined in the Securities Purchase Agreement) of such Investor’s Registrable Securities whether or not included in such Registration Statement on each of the following dates: (i) the day of a Filing Failure; (ii) the day of an Effectiveness Failure; (iii) the initial day of a Maintenance Failure; (iv) on the thirtieth day after the date of a Filing Failure and every thirtieth day thereafter (pro rated for periods totaling less than thirty days) until such Filing Failure is cured; (v) on the thirtieth day after the date of an Effectiveness Failure and every thirtieth day thereafter (pro rated for periods totaling less than thirty days) until such Effectiveness Failure is cured; and (vi) on the thirtieth day after the initial date of a Maintenance Failure and every thirtieth day thereafter (pro rated for periods totaling less than thirty days) until such Maintenance Failure is cured. The payments to which a holder shall be entitled pursuant to this Section 2(h) are referred to herein as “**Registration Delay Payments**.” In no event shall the aggregate amount of all Registration Delay Payments payable to an Investor exceed 5.0% of the aggregate Purchase Price of such Investor’s Registrable Securities. Registration Delay Payments shall be paid on the earlier of (I) the dates set forth above and (II) the third Business Day after the event or failure giving rise to the Registration Delay Payments is cured. In the event the Company fails to make Registration Delay Payments in a timely manner, such Registration Delay Payments shall bear interest at the rate of one and one-half percent (1.5%) per month (prorated for partial months) until paid in full. Notwithstanding anything to the contrary set forth herein, the Company shall not be obligated to make any Registration Delay Payments with respect to any Effectiveness Failure resulting from the failure to register any Cutback Shares.

3. Related Obligations.

At such time as the Company is obligated to file a Registration Statement with the SEC pursuant to Section 2(a), 2(b), 2(c), 2(f) or 2(g), the Company will use its commercially reasonable efforts to effect the registration of the Registrable Securities in accordance with the intended method of disposition thereof and, pursuant thereto, the Company shall have the following obligations:

(a) The Company shall promptly prepare and file with the SEC a Registration Statement with respect to the Registrable Securities and use its commercially reasonable efforts to cause such Registration Statement relating to the Registrable Securities to become effective as soon as practicable after such filing (but in no event later than the Effectiveness Deadline). On and after the applicable Effective Date, the Company shall use commercially reasonable efforts to keep each Registration Statement effective pursuant to Rule 415 at all times until the earlier of (i) the date as of which the Investors may sell all of the Registrable Securities covered by such Registration Statement without restriction or limitation pursuant to Rule 144 and without the requirement to be in compliance with Rule 144(c)(1) (or any successor thereto) promulgated under the 1933 Act or (ii) the date on which the Investors shall have sold all of the Registrable Securities covered by such Registration Statement (the “**Registration Period**”). The Company shall ensure that each Registration Statement (including any amendments or supplements thereto and prospectuses contained therein) shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein (in the case of prospectuses, in the light of the circumstances in which they were made) not misleading. The term “commercially reasonable efforts” shall mean, among other things, that the Company shall submit to the SEC, within two (2) Business Days after the later of the date that (i) the Company learns that no review of a particular Registration Statement will be made by the staff of the SEC or that the staff has no further comments on a particular Registration Statement, as the case may be, and (ii) the approval of Legal Counsel pursuant to Section 3(c) (which approval is immediately sought), a request for acceleration of effectiveness of such Registration Statement to a time and date not later than two (2) Business Days after the submission of such request. The Company shall respond in writing to comments made by the SEC in respect of a Registration Statement as soon as practicable, but in no event later than fifteen (15) days after the receipt of comments by or notice from the SEC that an amendment is required in order for a Registration Statement to be declared effective.

(b) The Company shall prepare and file with the SEC such amendments (including post-effective amendments) and supplements to an effective Registration Statement and the prospectus used in connection with such Registration Statement, which prospectus is to be filed pursuant to Rule 424 promulgated under the 1933 Act, as may be necessary to keep such Registration Statement effective at all times during the Registration Period, and, during such period, comply with the provisions of the 1933 Act with respect to the disposition of all Registrable Securities of the Company covered by such Registration Statement until such time as all of such Registrable Securities shall have been disposed of in accordance with the intended methods of disposition by the seller or sellers thereof as set forth in such Registration Statement. In the case of amendments and supplements to a Registration Statement which are required to be filed pursuant to this Agreement (including pursuant to this Section 3(b)) by reason of the Company filing a report on Form 10-K, Form 10-Q or Form 8-K or any analogous report under the Securities Exchange Act of 1934, as amended (the “**1934 Act**”), the Company shall have incorporated such report by reference into such Registration Statement, if applicable, or shall file such amendments or supplements with the SEC on the same day on which the 1934 Act report is filed which created the requirement for the Company to amend or supplement such Registration Statement.

(c) The Company shall (A) permit Legal Counsel to review and comment upon (i) a Registration Statement at least three (3) Business Days prior to its filing with the SEC and (ii) all amendments and supplements to all Registration Statements (except for Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and any similar or successor reports) within a reasonable number of days prior to their filing with the SEC, and (B) not file any Registration Statement or amendment or supplement thereto in a form to which Legal Counsel reasonably objects. The Company shall not submit a request for acceleration of the effectiveness of a Registration Statement or any amendment or supplement thereto without the prior approval of Legal Counsel, which consent shall not be unreasonably withheld. The Company shall furnish to Legal Counsel, without charge, (i) copies of any correspondence from the SEC or the staff of the SEC to the Company or its representatives relating to any Registration Statement, (ii) unless the following are filed with the SEC through EDGAR and are available to the public through the EDGAR system, promptly after the same is prepared and filed with the SEC, one copy of any Registration Statement and any amendment(s) thereto, including financial statements and schedules, all documents incorporated therein by reference, if requested by an Investor, and all exhibits and (iii) unless the following are filed with the SEC through EDGAR and are available to the public through the EDGAR system, upon the effectiveness of any Registration Statement, one copy of the prospectus included in such Registration Statement and all amendments and supplements thereto. The Company shall reasonably cooperate with Legal Counsel in performing the Company’s obligations pursuant to this Section 3.

(d) The Company shall furnish to each Investor whose Registrable Securities are included in any Registration Statement, without charge, upon request, (i) promptly after the same is prepared and filed with the SEC, at least one copy of such Registration Statement and any amendment(s) thereto, including financial statements and schedules, all documents incorporated therein by reference, if requested by an Investor, all exhibits and each preliminary prospectus, (ii) upon the effectiveness of any Registration Statement, ten (10) copies of the prospectus included in such Registration Statement and all amendments and supplements thereto (or such other number of copies as such Investor may reasonably request) and (iii) such other documents, including copies of any preliminary or final prospectus, as such Investor may reasonably request from time to time in order to facilitate the disposition of the Registrable Securities owned by such Investor.

(e) The Company shall use its commercially reasonable efforts to (i) register and qualify, unless an exemption from registration and qualification applies, the resale by Investors of the Registrable Securities covered by a Registration Statement under such other securities or “blue sky” laws of all applicable jurisdictions in the United States, (ii) following the applicable Effective Date, prepare and file in those jurisdictions such amendments (including post-effective amendments) and supplements to such registrations and qualifications as may be necessary to maintain the effectiveness thereof during the Registration Period, (iii) take such other actions as may be reasonably necessary to maintain such registrations and qualifications in effect at all times during the Registration Period, and (iv) take all other actions reasonably necessary or advisable to qualify the Registrable Securities for sale in such jurisdictions; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to (x) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 3(e), (y) subject itself to general taxation in any such jurisdiction, or (z) file a general consent to service of process in any such jurisdiction. The Company shall promptly notify Legal Counsel and each Investor who holds Registrable Securities of the receipt by the Company of any notification with respect to the suspension of the registration or qualification of any of the Registrable Securities for sale under the securities or “blue sky” laws of any jurisdiction in the United States or its receipt of actual notice of the initiation or threatening of any proceeding for such purpose.

(f) The Company shall notify Legal Counsel and each Investor in writing of the happening of any event, as promptly as practicable after becoming aware of such event but in any event on the same Trading Day as such event, as a result of which the prospectus included in a Registration Statement, as then in effect, includes an untrue statement of a material fact or omission to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (provided that in no event shall such notice contain any material, nonpublic information), and, subject to Section 3(r), promptly prepare a supplement or amendment to such Registration Statement to correct such untrue statement or omission, and, if requested by an Investor, unless filed with the SEC through EDGAR and available to the public through the EDGAR system, deliver one copy of such supplement or amendment to Legal Counsel and each Investor (or such other number of copies as Legal Counsel or such Investor may reasonably request). The Company shall also promptly notify Legal Counsel and each Investor in writing (i) when a prospectus or any prospectus supplement or post-effective amendment has been filed, and when a Registration Statement or any post-effective amendment has become effective (notification of such effectiveness shall be delivered to Legal Counsel and each Investor by facsimile or email on the same day of such effectiveness and by overnight mail), (ii) of any request by the SEC for amendments or supplements to a Registration Statement or related prospectus or related information and (iii) of the Company’s reasonable determination that a post-effective amendment to a Registration Statement would be appropriate. By 9:30 a.m. New York City time on the Trading Day following the date any post-effective amendment has become effective, the Company shall file with the SEC in accordance with Rule 424 under the 1933 Act the final prospectus to be used in connection with sales pursuant to such Registration Statement.

(g) The Company shall use its commercially reasonable efforts to prevent the issuance of any stop order or other suspension of effectiveness of a Registration Statement, or the suspension of the qualification of any of the Registrable Securities for sale in any jurisdiction and, if such an order or suspension is issued, to obtain the withdrawal of such order or suspension at the earliest possible moment and to notify Legal Counsel and each Investor who holds Registrable Securities being sold of the issuance of such order and the resolution thereof or its receipt of actual notice of the initiation or threat of any proceeding for such purpose.

(h) If any Investor is required under applicable securities laws to be described in the Registration Statement as an underwriter or an Investor believes that it could reasonably be deemed to be an underwriter of Registrable Securities, at the reasonable request of such Investor, the Company shall furnish to such Investor, on the date of the effectiveness of the Registration Statement and thereafter from time to time on such dates as an Investor may reasonably request (i) a letter, dated such date, from the Company's independent certified public accountants in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the Investors, and (ii) an opinion, dated as of such date, of counsel representing the Company for purposes of such Registration Statement, in form, scope and substance as is customarily given in an underwritten public offering, addressed to the Investors.

(i) If any Investor is required under applicable securities laws to be described in the Registration Statement as an underwriter or an Investor believes that it could reasonably be deemed to be an underwriter of Registrable Securities, the Company shall make available for inspection by (i) such Investor, (ii) Legal Counsel and (iii) one firm of accountants or other agents retained by the Investors (collectively, the "**Inspectors**"), all pertinent financial and other records, and pertinent corporate documents and properties of the Company (collectively, the "**Records**"), as shall be reasonably deemed necessary by each Inspector, and cause the Company's officers, directors and employees to supply all information which any Inspector may reasonably request; provided, however, that each Inspector shall agree to hold in strict confidence and shall not make any disclosure (except to an Investor) or use of any Record or other information which the Company determines in good faith to be confidential, and of which determination the Inspectors are so notified, unless (a) the disclosure of such Records is necessary to avoid or correct a misstatement or omission in any Registration Statement or is otherwise required under the 1933 Act, (b) the release of such Records is ordered pursuant to a final, non-appealable subpoena or order from a court or government body of competent jurisdiction, or (c) the information in such Records has been made generally available to the public other than by disclosure in violation of this Agreement. Each Investor agrees that it shall, upon learning that disclosure of such Records is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt notice to the Company and allow the Company, at its expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, the Records deemed confidential. Nothing herein (or in any other confidentiality agreement between the Company and any Investor) shall be deemed to limit the Investors' ability to sell Registrable Securities in a manner which is otherwise consistent with applicable laws and regulations.

(j) The Company shall hold in confidence and not make any disclosure of information concerning an Investor provided to the Company unless (i) disclosure of such information is necessary to comply with federal or state securities laws, (ii) the disclosure of such information is necessary to avoid or correct a misstatement or omission in any Registration Statement, (iii) the release of such information is ordered pursuant to a subpoena or other final, non-appealable order from a court or governmental body of competent jurisdiction, or (iv) such information has been made generally available to the public other than by disclosure in violation of this Agreement or any other agreement. The Company agrees that it shall, upon learning that disclosure of such information concerning an Investor is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt written notice to such Investor and allow such Investor, at the Investor's expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, such information.

(k) The Company shall use its commercially reasonable efforts either to (i) cause all of the Registrable Securities covered by a Registration Statement to be listed on each securities exchange on which securities of the same class or series issued by the Company are then listed, if any, if the listing of such Registrable Securities is then permitted under the rules of such exchange or (ii) secure the inclusion for quotation of all of the Registrable Securities on the Principal Market or (iii) if, despite the Company's commercially reasonable efforts, the Company is unsuccessful in satisfying the preceding clauses (i) and (ii), to secure the inclusion for quotation on an Eligible Market for such Registrable Securities and, without limiting the generality of the foregoing, to use its commercially reasonable efforts to arrange for at least two market makers to register with the Financial Industry Regulatory Authority, Inc. ("**FINRA**") as such with respect to such Registrable Securities. The Company shall pay all fees and expenses in connection with satisfying its obligation under this Section 3(k).

(l) The Company shall cooperate with the Investors who hold Registrable Securities being offered and, to the extent applicable, facilitate the timely preparation and delivery of certificates (not bearing any restrictive legend) representing the Registrable Securities to be offered pursuant to a Registration Statement and enable such certificates to be in such denominations or amounts, as the case may be, as the Investors may reasonably request and registered in such names as the Investors may request.

(m) If requested by an Investor, the Company shall as soon as practicable (i) incorporate in a prospectus supplement or post-effective amendment such information as an Investor reasonably requests to be included therein relating to the sale and distribution of Registrable Securities, including, without limitation, information with respect to the number of Registrable Securities being offered or sold, the purchase price being paid therefor and any other terms of the offering of the Registrable Securities to be sold in such offering; (ii) make all required filings of such prospectus supplement or post-effective amendment after being notified of the matters to be incorporated in such prospectus supplement or post-effective amendment; and (iii) supplement or make amendments to any Registration Statement if reasonably requested by an Investor holding any Registrable Securities.

(n) The Company shall use its commercially reasonable efforts to cause the Registrable Securities covered by a Registration Statement to be registered with or approved by such other governmental agencies or authorities as may be necessary to consummate the disposition of such Registrable Securities.

(o) The Company shall make generally available to its security holders as soon as practical, but not later than ninety (90) days after the close of the period covered thereby, an earnings statement (in form complying with, and in the manner provided by, the provisions of Rule 158 under the 1933 Act) covering a twelve-month period beginning not later than the first day of the Company's fiscal quarter next following the applicable Effective Date of a Registration Statement.

(p) The Company shall otherwise use its commercially reasonable efforts to comply with all applicable rules and regulations of the SEC in connection with any registration hereunder.

(q) Within two (2) Business Days after a Registration Statement which covers Registrable Securities is declared effective by the SEC, the Company shall deliver, and shall cause legal counsel for the Company to deliver, to the transfer agent for such Registrable Securities (with copies to the Investors whose Registrable Securities are included in such Registration Statement) confirmation that such Registration Statement has been declared effective by the SEC in the form attached hereto as Exhibit A.

(r) Notwithstanding anything to the contrary herein, at any time after the Effective Date, the Company may delay the disclosure of material, non-public information concerning the Company the disclosure of which at the time is not, in the good faith opinion of the Board of Directors of the Company and its counsel, in the best interest of the Company and, in the opinion of counsel to the Company, otherwise required (a "**Grace Period**"); provided, that the Company shall promptly (i) notify the Investors in writing of the existence of material, non-public information giving rise to a Grace Period (provided that in each notice the Company will not disclose the content of such material, non-public information to the Investors) and the date on which the Grace Period will begin, and (ii) notify the Investors in writing of the date on which the Grace Period ends; and, provided further, that no Grace Period shall exceed five (5) consecutive Trading Days and during any three hundred sixty five (365) day period such Grace Periods shall not exceed an aggregate of forty (40) days and the first day of any Grace Period must be at least five (5) Trading Days after the last day of any prior Grace Period (each, an "**Allowable Grace Period**"). For purposes of determining the length of a Grace Period above, the Grace Period shall begin on and include the date the Investors receive the notice referred to in clause (i) and shall end on and include the later of the date the Investors receive the notice referred to in clause (ii) and the date referred to in such notice. The provisions of Section 3(g) hereof shall not be applicable during the period of any Allowable Grace Period. Upon expiration of the Grace Period, the Company shall again be bound by the first sentence of Section 3(f) with respect to the information giving rise thereto unless such material, non-public information is no longer applicable. Notwithstanding anything to the contrary, the Company shall cause its transfer agent to deliver unlegended shares of Common Stock to a transferee of an Investor in accordance with the terms of the Securities Purchase Agreement in connection with any sale of Registrable Securities with respect to which an Investor has entered into a contract for sale, prior to the Investor's receipt of the notice of a Grace Period and for which the Investor has not yet settled.

(s) Neither the Company nor any Subsidiary or affiliate thereof shall identify any Investor as an underwriter in any public disclosure or filing with the SEC, the Principal Market or any Eligible Market and any Investor being deemed an underwriter by the SEC shall not relieve the Company of any obligations it has under this Agreement or any other Transaction Document (as defined in the Securities Purchase Agreement); provided, however, that the foregoing shall not prohibit the Company from including the disclosure found in the “Plan of Distribution” section attached hereto as Exhibit B in the Registration Statement.

(t) Neither the Company nor any of its Subsidiaries has entered, as of the date hereof, nor shall the Company or any of its Subsidiaries, on or after the date of this Agreement, enter into any agreement with respect to its securities, that would have the effect of impairing the rights granted to the Buyers in this Agreement or otherwise conflicts with the provisions hereof.

4. Obligations of the Investors.

(a) At least five (5) Business Days prior to the first anticipated Filing Date of a Registration Statement, the Company shall notify each Investor in writing of the information the Company requires from each such Investor if such Investor elects to have any of such Investor’s Registrable Securities included in such Registration Statement. It shall be a condition precedent to the obligations of the Company to complete any registration pursuant to this Agreement with respect to the Registrable Securities of a particular Investor that such Investor shall furnish to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it as shall be reasonably required to effect and maintain the effectiveness of the registration of such Registrable Securities and shall execute such documents in connection with such registration as the Company may reasonably request.

(b) Each Investor, by such Investor’s acceptance of the Registrable Securities, agrees to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of any Registration Statement hereunder, unless such Investor has notified the Company in writing of such Investor’s election to exclude all of such Investor’s Registrable Securities from such Registration Statement.

(c) Each Investor agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 3(g) or the first sentence of Section 3(f), such Investor will immediately discontinue disposition of Registrable Securities pursuant to any Registration Statement(s) covering such Registrable Securities until such Investor's receipt of copies of the supplemented or amended prospectus as contemplated by Section 3(g) or the first sentence of Section 3(f) or receipt of notice that no supplement or amendment is required. Notwithstanding anything to the contrary, the Company shall cause its transfer agent to deliver unlegended shares of Common Stock to a transferee of an Investor in accordance with the terms of the Securities Purchase Agreement in connection with any sale of Registrable Securities with respect to which an Investor has entered into a contract for sale prior to the Investor's receipt of a notice from the Company of the happening of any event of the kind described in Section 3(g) or the first sentence of Section 3(f) and for which the Investor has not yet settled.

(d) Each Investor covenants and agrees that it will comply with the prospectus delivery requirements of the 1933 Act as applicable to it or an exemption therefrom in connection with sales of Registrable Securities pursuant to the Registration Statement.

5. Expenses of Registration.

All reasonable expenses, other than underwriting discounts and commissions, incurred in connection with registrations, filings or qualifications pursuant to Sections 2 and 3, including, without limitation, all registration, listing and qualifications fees, printers and accounting fees, and fees and disbursements of counsel for the Company shall be paid by the Company. The Company shall also reimburse the Investors for the fees and disbursements of Legal Counsel in connection with the registration, filing or qualification pursuant to Sections 2 and 3 of this Agreement, which amount shall be limited to \$10,000 for each such registration, filing or qualification without the prior written consent of the Company

6. Indemnification.

In the event any Registrable Securities are included in a Registration Statement under this Agreement:

(a) To the fullest extent permitted by law, the Company will, and hereby does, indemnify, hold harmless and defend each Investor, the directors, officers, partners, members, employees, agents, representatives of, and each Person, if any, who controls any Investor within the meaning of the 1933 Act or the 1934 Act (each, an "**Indemnified Person**"), against any losses, claims, damages, liabilities, judgments, fines, penalties, charges, costs, reasonable attorneys' fees, amounts paid in settlement or expenses, joint or several (collectively, "**Claims**"), incurred in investigating, preparing or defending any action, claim, suit, inquiry, proceeding, investigation or appeal taken from the foregoing by or before any court or governmental, administrative or other regulatory agency, body or the SEC, whether pending or threatened, whether or not an indemnified party is or may be a party thereto ("**Indemnified Damages**"), to which any of them may become subject insofar as such Claims (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon: (i) any untrue statement or alleged untrue statement of a material fact in a Registration Statement or any post-effective amendment thereto or in any filing made in connection with the qualification of the offering under the securities or other "blue sky" laws of any jurisdiction in which Registrable Securities are offered ("**Blue Sky Filing**"), or the omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) any untrue statement or alleged untrue statement of a material fact contained in any preliminary prospectus if used prior to the effective date of such Registration Statement, or contained in the final prospectus (as amended or supplemented, if the Company files any amendment thereof or supplement thereto with the SEC) or the omission or alleged omission to state therein any material fact necessary to make the statements made therein, in light of the circumstances under which the statements therein were made, not misleading, (iii) any violation or alleged violation by the Company of the 1933 Act, the 1934 Act, any other law, including, without limitation, any state securities law, or any rule or regulation thereunder relating to the offer or sale of the Registrable Securities pursuant to a Registration Statement or (iv) any violation of this Agreement (the matters in the foregoing clauses (i) through (iv) being, collectively, "**Violations**"). For the avoidance of doubt, the Violations set forth in this Section 6(a) are intended to apply, and shall apply, to direct claims asserted by any Buyer against the Company as well as any third party claims asserted by an Indemnified Person (other than a Buyer) against the Company. Subject to Section 6(c), the Company shall reimburse the Indemnified Persons, promptly as such expenses are incurred and are due and payable, for any legal fees or other reasonable expenses incurred by them in connection with investigating or defending any such Claim. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 6(a): (i) shall not apply to a Claim by an Indemnified Person arising out of or based upon a Violation which occurs in reliance upon and in conformity with information furnished in writing to the Company by such Indemnified Person for such Indemnified Person expressly for use in connection with the preparation of the Registration Statement or any such amendment thereof or supplement thereto, if such prospectus was timely made available by the Company pursuant to Section 3(d); and (ii) shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Company, which consent shall not be unreasonably withheld or delayed. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Indemnified Person and shall survive the transfer of the Registrable Securities by the Investors pursuant to Section 9.

(b) In connection with any Registration Statement in which an Investor is participating, each such Investor agrees to severally and not jointly indemnify, hold harmless and defend, to the same extent and in the same manner as is set forth in Section 6(a), the Company, each of its directors, each of its officers who signs the Registration Statement and each Person, if any, who controls the Company within the meaning of the 1933 Act or the 1934 Act (each, an “**Indemnified Party**”), against any Claim or Indemnified Damages to which any of them may become subject, under the 1933 Act, the 1934 Act or otherwise, insofar as such Claim or Indemnified Damages arise out of or are based upon any Violation, in each case to the extent, and only to the extent, that such Violation occurs in reliance upon and in conformity with written information furnished to the Company by such Investor expressly for use in connection with such Registration Statement; and, subject to Section 6(c), such Investor shall reimburse the Indemnified Party for any legal or other expenses reasonably incurred by an Indemnified Party in connection with investigating or defending any such Claim; provided, however, that the indemnity agreement contained in this Section 6(b) and the agreement with respect to contribution contained in Section 7 shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of such Investor, which consent shall not be unreasonably withheld or delayed; provided, further, however, that the Investor shall be liable under this Section 6(b) for only that amount of a Claim or Indemnified Damages as does not exceed the net proceeds to such Investor as a result of the sale of Registrable Securities pursuant to such Registration Statement. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such Indemnified Party and shall survive the transfer of the Registrable Securities by the Investors pursuant to Section 9.

(c) Promptly after receipt by an Indemnified Person or Indemnified Party under this Section 6 of notice of the commencement of any action or proceeding (including any governmental action or proceeding) involving a Claim, such Indemnified Person or Indemnified Party shall, if a Claim in respect thereof is to be made against any indemnifying party under this Section 6, deliver to the indemnifying party a written notice of the commencement thereof, and, the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume control of the defense thereof with counsel mutually satisfactory to the indemnifying party and the Indemnified Person or the Indemnified Party, as the case may be; provided, however, that an Indemnified Person or Indemnified Party shall have the right to retain its own counsel with the fees and expenses of not more than one counsel for all such Indemnified Person or Indemnified Party to be paid by the indemnifying party, if, in the reasonable opinion of counsel retained by the Indemnified Person or Indemnified Party, as applicable, the representation by such counsel of the Indemnified Person or Indemnified Party, as the case may be, and the indemnifying party would be inappropriate due to actual or potential differing interests between such Indemnified Person or Indemnified Party and any other party represented by such counsel in such proceeding. In the case of an Indemnified Person, legal counsel referred to in the immediately preceding sentence shall be selected by the Investors holding at least a majority in interest of the Registrable Securities included in the Registration Statement to which the Claim relates. The Indemnified Party or Indemnified Person shall reasonably cooperate with the indemnifying party in connection with any negotiation or defense of any such action or Claim by the indemnifying party and shall furnish to the indemnifying party all information reasonably available to the Indemnified Party or Indemnified Person which relates to such action or Claim. The indemnifying party shall keep the Indemnified Party or Indemnified Person fully apprised at all times as to the status of the defense or any settlement negotiations with respect thereto. No indemnifying party shall be liable for any settlement of any action, claim or proceeding effected without its prior written consent, provided, however, that the indemnifying party shall not unreasonably withhold, delay or condition its consent. No indemnifying party shall, without the prior written consent of the Indemnified Party or Indemnified Person, consent to entry of any judgment or enter into any settlement or other compromise which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party or Indemnified Person of a release from all liability in respect to such Claim or litigation and such settlement shall not include any admission as to fault on the part of the Indemnified Party. Following indemnification as provided for hereunder, the indemnifying party shall be subrogated to all rights of the Indemnified Party or Indemnified Person with respect to all third parties, firms or corporations relating to the matter for which indemnification has been made. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action shall not relieve such indemnifying party of any liability to the Indemnified Person or Indemnified Party under this Section 6, except to the extent that the indemnifying party is prejudiced in its ability to defend such action. The provisions of this Section 6(c) shall not apply to direct claims between the Company and a Buyer.

(d) The indemnification required by this Section 6 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or Indemnified Damages are incurred.

(e) The indemnity agreements contained herein shall be in addition to (i) any cause of action or similar right of the Indemnified Party or Indemnified Person against the indemnifying party or others, and (ii) any liabilities the indemnifying party may be subject to pursuant to the law.

7. Contribution.

To the extent any indemnification by an indemnifying party is prohibited or limited by law, the indemnifying party agrees to make the maximum contribution with respect to any amounts for which it would otherwise be liable under Section 6 to the fullest extent permitted by law; provided, however, that: (i) no Person involved in the sale of Registrable Securities which Person is guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) in connection with such sale shall be entitled to contribution from any Person involved in such sale of Registrable Securities who was not guilty of fraudulent misrepresentation; and (ii) contribution by any seller of Registrable Securities shall be limited in amount to the amount of net proceeds received by such seller from the sale of such Registrable Securities pursuant to such Registration Statement.

8. Reports Under the 1934 Act

With a view to making available to the Investors the benefits of Rule 144 promulgated under the 1933 Act or any other similar rule or regulation of the SEC that may at any time permit the Investors to sell securities of the Company to the public without registration (“**Rule 144**”), the Company agrees to, so long as an Investor owns Registrable Securities:

(a) make and keep public information available, as those terms are understood and defined in Rule 144;

(b) file with the SEC in a timely manner all reports and other documents required of the Company under the 1933 Act and the 1934 Act so long as the Company remains subject to such requirements and the filing of such reports and other documents is required for the applicable provisions of Rule 144; and

(c) furnish to each Investor so long as such Investor owns Registrable Securities, promptly upon request, (i) a written statement by the Company, if true, that it has complied with the reporting requirements of Rule 144, the 1933 Act and the 1934 Act, (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company (unless such report or document is already publicly available), and (iii) such other information as may be reasonably requested to permit the Investors to sell such securities pursuant to Rule 144 without registration.

9. Assignment of Registration Rights.

The rights under this Agreement shall be automatically assignable by the Investors to any transferee of all or any portion of such Investor's Registrable Securities if: (i) the Investor agrees in writing with the transferee or assignee to assign such rights, and a copy of such agreement is furnished to the Company within a reasonable time after such assignment; (ii) the Company is, within a reasonable time after such transfer or assignment, furnished with written notice of (a) the name and address of such transferee or assignee, and (b) the securities with respect to which such registration rights are being transferred or assigned; (iii) immediately following such transfer or assignment the further disposition of such securities by the transferee or assignee is restricted under the 1933 Act or applicable state securities laws; (iv) at or before the time the Company receives the written notice contemplated by clause (ii) of this sentence the transferee or assignee agrees in writing with the Company to be bound by all of the provisions contained herein; and (v) such transfer shall have been made in accordance with the applicable requirements of the Securities Purchase Agreement.

10. Amendment of Registration Rights.

Provisions of this Agreement may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Required Holders. Any amendment or waiver effected in accordance with this Section 10 shall be binding upon each Investor and the Company. No such amendment shall be effective to the extent that it applies to less than all of the holders of the Registrable Securities. No consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of this Agreement unless the same consideration (other than the reimbursement of legal fees) also is offered to all of the parties to this Agreement.

11. Miscellaneous.

(a) Notwithstanding anything herein to the contrary, this Agreement shall not be effective unless and until the transactions contemplated by the Merger Agreement are consummated. This Agreement shall terminate automatically upon termination of the Securities Purchase Agreement if such termination occurs prior to the consummation of the transactions contemplated by the Merger Agreement.

(b) A Person is deemed to be a holder of Registrable Securities whenever such Person owns or is deemed to own of record such Registrable Securities. If the Company receives conflicting instructions, notices or elections from two or more Persons with respect to the same Registrable Securities, the Company shall act upon the basis of instructions, notice or election received from such record owner of such Registrable Securities.

(c) Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon delivery, when sent by facsimile (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party), (iii) upon delivery, when sent by electronic mail (provided that the sending party does not receive an automated rejection notice); or (iv) one Business Day after deposit with a nationally recognized overnight delivery service, in each case properly addressed to the party to receive the same. The addresses, facsimile numbers and e-mail addresses for such communications shall be:

If to the Company:

Rexahn Pharmaceuticals, Inc.
15245 Shady Grove Road, Suite 455
Rockville, MD 20850
Telephone: (240) 268-5300
Attention: Douglas J. Swirsky
E-mail: swirskyd@rexahn.com

With a copy (for informational purposes only) to:

Honigman LLP
650 Trade Centre Way, Suite 200
Kalamazoo, MI 49002-0402
Telephone: (269) 337-7702
Facsimile: (269) 337-7703
Attention: Phillip D. Torrence, Esq.
E-mail: ptorrence@honigman.com

and, if on or prior to the Closing Date:

Hogan Lovells US LLP
100 International Drive, Suite 2000
Baltimore, MD 21202
Telephone: (410) 659-2700
Facsimile: (410) 659-2701
Attention: Asher M. Rubin; William I. Intner
E-mail: asher.rubin@hoganlovells.com;
william.intner@hoganlovells.com

If to the Transfer Agent:

Olde Monmouth Stock Transfer Co., Inc.
200 Memorial Parkway
Atlantic Highlands, NJ 07716
Telephone: (732) 872-2727, Ext. 101
Attention: Matthew J. Troster, President
E-mail: matt@oldemonmouth.com

If to Legal Counsel:

Schulte Roth & Zabel LLP
919 Third Avenue
New York, New York 10022
Telephone: (212) 756-2000
Facsimile: (212) 593-5955
Attention: Eleazer Klein, Esq.
Email: eleazer.klein@srz.com

If to a Buyer, to its address, facsimile number or email address set forth on the Schedule of Buyers attached hereto, with copies to such Buyer's representatives as set forth on the Schedule of Buyers, or to such other address, facsimile number and/or email address to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's facsimile machine or e-mail transmission containing the time, date, recipient facsimile number or e-mail address and an image of the first page of such transmission or (C) provided by a courier or overnight courier service shall be rebuttable evidence of personal service, receipt by facsimile or receipt from a nationally recognized overnight delivery service in accordance with clause (i), (ii) or (iii) above, respectively.

(d) Failure of any party to exercise any right or remedy under this Agreement or otherwise, or delay by a party in exercising such right or remedy, shall not operate as a waiver thereof.

(e) All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HEREWITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

(f) If any provision of this Agreement is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Agreement so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

(g) This Agreement, the other Transaction Documents (as defined in the Securities Purchase Agreement) and the instruments referenced herein and therein constitute the entire agreement among the parties hereto with respect to the subject matter hereof and thereof. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein and therein. This Agreement, the other Transaction Documents and the instruments referenced herein and therein supersede all prior agreements and understandings among the parties hereto with respect to the subject matter hereof and thereof.

(h) Subject to the requirements of Section 9, this Agreement shall inure to the benefit of and be binding upon the permitted successors and assigns of each of the parties hereto.

(i) The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(j) This Agreement may be executed in identical counterparts, each of which shall be deemed an original but all of which shall constitute one and the same agreement. This Agreement, once executed by a party, may be delivered to the other party hereto by facsimile transmission or electronic mail of a copy of this Agreement bearing the signature of the party so delivering this Agreement.

(k) Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

(l) All consents and other determinations required to be made by the Investors pursuant to this Agreement shall be made, unless otherwise specified in this Agreement, by the Required Holders, determined as if all of the Warrants held by Investors then outstanding have been exercised for Registrable Securities without regard to any limitations on exercise of the Warrants.

(m) The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent and no rules of strict construction will be applied against any party.

(n) This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

(o) The obligations of each Investor hereunder are several and not joint with the obligations of any other Investor, and no provision of this Agreement is intended to confer any obligations on any Investor vis-à-vis any other Investor. Nothing contained herein, and no action taken by any Investor pursuant hereto, shall be deemed to constitute the Investors as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Investors are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated herein.

* * * * *

[Signature Page Follows]

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Registration Rights Agreement to be duly executed as of the date first written above.

COMPANY:

REXAHN PHARMACEUTICALS, INC.

By: /s/ Douglas J. Swirsky

Name: Douglas J. Swirsky

Title: President and Chief Executive Officer

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Registration Rights Agreement to be duly executed as of the date first written above.

BUYERS:

ALTIUM GROWTH FUND, LP

By: Altium Capital Management, LP

By: /s/ Mark Gottlieb

Name: Mark Gottlieb

Title: Chief Operating Officer

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Registration Rights Agreement to be duly executed as of the date first written above.

OTHER BUYERS:

EMPERY ASSET MASTER, LTD.

By: Empery Asset Master, LP, its authorized agent

By: /s/ Brett Director
Name: Brett Director
Title: General Counsel

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Registration Rights Agreement to be duly executed as of the date first written above.

OTHER BUYERS:

EMPERY TAX EFFICIENT, LP

By: Empery Asset Management, LP, its authorized agent

By: /s/ Brett Director

Name: Brett Director

Title: General Counsel

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Registration Rights Agreement to be duly executed as of the date first written above.

OTHER BUYERS:

EMPERY DEBT OPPORTUNITY FUND, LP

By: Empery Asset Management, LP, its authorized agent

By: /s/ Brett Director

Name: Brett Director

Title: General Counsel

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Registration Rights Agreement to be duly executed as of the date first written above.

OTHER BUYERS:

By: /s/ Jatinder-Bir S. Sandhu

Name: Jatinder-Bir S. Sandhu

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Registration Rights Agreement to be duly executed as of the date first written above.

OTHER BUYERS:

By: /s/ Devang Shah
Name: Devang Shah

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Registration Rights Agreement to be duly executed as of the date first written above.

OTHER BUYERS:

MICHIGAN ANGEL FUND III, LLC

By: /s/ Joseph Simms

Name: Joseph Simms

Title: Managing Member

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Registration Rights Agreement to be duly executed as of the date first written above.

OTHER BUYERS:

harry kraemer, jr. and julie m. jansen kraemer

By: /s/ Harry M. Kraemer, Jr.

Name: Harry M. Kraemer, Jr.

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Registration Rights Agreement to be duly executed as of the date first written above.

OTHER BUYERS:

THOMAS TALLERICO TRUST DATED JULY 13, 2018

By: /s/ Thomas Talerico
Name: Thomas Talerico
Title: Trustee

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Registration Rights Agreement to be duly executed as of the date first written above.

OTHER BUYERS:

THE BELLE MICHIGAN IMPACT FUND, LP

By: /s/ Carolyn Cassin
Name: Carolyn Cassin
Title: General Partner

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Registration Rights Agreement to be duly executed as of the date first written above.

OTHER BUYERS:

BELLE MICHIGAN IMPACT FUND SIDE CAR, LP

By: /s/ Carolyn Cassin
Name: Carolyn Cassin
Title: General Partner

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Registration Rights Agreement to be duly executed as of the date first written above.

OTHER BUYERS:

INVEST DETROIT FOUNDATION d/b/a FIRST CAPITAL FUND

By: /s/ Martin Dober
Name: Martin Dober
Title: SVP and Managing Director

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Registration Rights Agreement to be duly executed as of the date first written above.

OTHER BUYERS:

By: /s/ Mina Sooch
Name: Mina Sooch

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Registration Rights Agreement to be duly executed as of the date first written above.

OTHER BUYERS:

By: /s/ Richard J. Rodgers
Name: Richard J. Rodgers

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Registration Rights Agreement to be duly executed as of the date first written above.

OTHER BUYERS:

By: /s/ Alan R. Meyer

Name: Alan R. Meyer

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Registration Rights Agreement to be duly executed as of the date first written above.

OTHER BUYERS:

By: /s/ James S. Manuso

Name: James S. Manuso

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Registration Rights Agreement to be duly executed as of the date first written above.

OTHER BUYERS:

By: /s/ Cam Gallagher

Name: Cam Gallagher

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Registration Rights Agreement to be duly executed as of the date first written above.

OTHER BUYERS:

By: /s/ Sean Ainsworth

Name: Sean Ainsworth

SCHEDULE OF BUYERS

Buyer

**Address, Facsimile Number
and E-mail**

FORM OF NOTICE OF EFFECTIVENESS
OF REGISTRATION STATEMENT

Olde Monmouth Stock Transfer Co., Inc.
200 Memorial Parkway
Atlantic Highlands, NJ 07716
Telephone: (732) 872-2727, Ext. 101
Attention: Matthew J. Troster, President
E-mail: matt@oldemonmouth.com

Re: Rexahn Pharmaceuticals, Inc.

Ladies and Gentlemen:

[We are][I am] counsel to Rexahn Pharmaceuticals, Inc., a Delaware corporation to be renamed "Ocuphire Pharma, Inc." (the "**Company**") pursuant to that certain Agreement and Plan of Merger and Reorganization among the Company, Razor Merger Sub, Inc., a Delaware corporation and wholly owned subsidiary of the Company and Ocuphire Pharma, Inc., a Delaware corporation ("**Ocuphire Private Company**"), dated as of June [•], 2020, and have represented the Company in connection with that certain Securities Purchase Agreement, dated as of [•], 2020 (the "**Securities Purchase Agreement**"), entered into by and among the Company, Ocuphire Private Company, and the buyers named therein (collectively, the "**Holders**") pursuant to which Ocuphire Private Company issued to the Holders shares of common stock, [•] par value per share, of Ocuphire Private Company, and the Company issued to the Holders two series of warrants (the "**Warrants**") exercisable for shares of the Company's common stock, par value \$0.0001 per share (the "**Common Stock**"). Pursuant to the Securities Purchase Agreement, the Company also has entered into a Registration Rights Agreement with the Holders (the "**Registration Rights Agreement**") pursuant to which the Company agreed, among other things, to register the resale of the Registrable Securities (as defined in the Registration Rights Agreement), including the shares of Common Stock issuable upon exercise of the Warrants under the Securities Act of 1933, as amended (the "**1933 Act**"). In connection with the Company's obligations under the Registration Rights Agreement, on _____, 20__, the Company filed a Registration Statement on Form S-3 (File No. 333-_____) (the "**Registration Statement**") with the Securities and Exchange Commission (the "**SEC**") relating to the Registrable Securities which names each of the Holders as a selling stockholder thereunder.

In connection with the foregoing, [we][I] advise you that a member of the SEC's staff has advised [us][me] by telephone that the SEC has entered an order declaring the Registration Statement effective under the 1933 Act at [ENTER TIME OF EFFECTIVENESS] on [ENTER DATE OF EFFECTIVENESS] and [we][I] have no knowledge, after telephonic inquiry of a member of the SEC's staff, that any stop order suspending its effectiveness has been issued or that any proceedings for that purpose are pending before, or threatened by, the SEC and the Registrable Securities are available for resale under the 1933 Act pursuant to the Registration Statement.

This letter shall serve as our standing instruction to you that the shares of Common Stock are freely transferable by the Holders pursuant to the Registration Statement. You need not require further letters from us to effect any future legend-free issuance or reissuance of shares of Common Stock to the Holders as contemplated by the Company's Irrevocable Transfer Agent Instructions dated [●].

Very truly yours,

[ISSUER'S COUNSEL]

By: _____

CC: [LIST NAMES OF HOLDERS]

SELLING STOCKHOLDERS

The shares of common stock being offered by the selling stockholders are those issuable to the selling stockholders, upon exercise of the warrants. For additional information regarding the issuances of those shares of common stock and the warrants, see “Private Placement of Common Shares and Warrants” above. We are registering the Common Stock in order to permit the selling stockholders to offer the shares for resale from time to time. Except for the ownership of the shares of common stock and the warrants, the selling stockholders have not had any material relationship with us within the past three years.

The table below lists the selling stockholders and other information regarding the beneficial ownership of the shares of common stock by each of the selling stockholders. The second column lists the number of shares of common stock beneficially owned by each selling stockholder, based on its ownership of the shares of common stock and the warrants, as of _____, 20__, assuming exercise of the warrants held by the selling stockholders on that date, without regard to any limitations on exercises.

The third column lists the shares of common stock being offered by this prospectus by the selling stockholders.

In accordance with the terms of a registration rights agreement with the selling stockholders, this prospectus generally covers the resale of the maximum number of shares of common stock issuable upon exercise of the related warrants, determined as if the outstanding warrants were exercised in full as of the trading day immediately preceding the date this registration statement was initially filed with the SEC, each as of the trading day immediately preceding the applicable date of determination and all subject to adjustment as provided in the registration rights agreement, without regard to any limitations on the exercise of the Series A Warrants and the Series B Warrants and this registration statement registers (A) until the Reservation Date, a number of shares of common stock issued and issuable pursuant to the Series A Warrants and Series B Warrants equal to the sum of (x) 135% of the number of Series A Warrant Shares issued and issuable pursuant to the Series A Warrants determined in accordance with Section 2(d) of the Series A Warrants assuming a Reset Price (as defined in the Series A Warrants) equal to the Reset Floor Price (as defined in the warrants) without giving effect to any limitation on exercise set forth therein and (y) 100% of the number of Series B Warrant Shares issued and issuable pursuant to the Series B Warrants assuming that the Maximum Eligibility Number (as defined in the Series B Warrant) is determined based on a Reset Price (as defined in the Series B Warrants) equal to the Reset Floor Price without giving effect to any limitation on exercise set forth therein and (B) from and after the Reservation date, the sum of (x) 135% of the maximum number of shares of Common Stock issuable upon exercise of the Series A Warrants as shall from time to time be necessary to effect the exercise of all of the Series A Warrants then outstanding without giving effect to any limitation on exercise set forth in the Series A Warrants and (y) 100% of the maximum number of shares of Common Stock issuable upon exercise of the Series B Warrants as shall from time to time be necessary to effect the exercise of all of the Series B Warrants then outstanding without giving effect to any limitation on exercise set forth in the Series B Warrants. The fourth column assumes the sale of all of the shares offered by the selling stockholders pursuant to this prospectus.

Under the terms of the Series A Warrants and the Series B Warrants, a selling stockholder may not exercise the Series A Warrants or the Series B Warrants to the extent such exercise would cause such selling stockholder, together with its affiliates, to beneficially own a number of shares of common stock which would exceed 4.99% or 9.99%, as applicable, of our then outstanding common stock following such exercise, excluding for purposes of such determination common stock issuable upon exercise of the warrants which have not been exercised. The number of shares in the second column does not reflect this limitation. The selling stockholders may sell all, some or none of their shares in this offering. See “Plan of Distribution.”

<u>Name of Selling Stockholder</u>	<u>Number of Shares of Common Stock Owned Prior to Offering</u>	<u>Maximum Number of Shares of Common Stock to be Sold Pursuant to this Prospectus</u>	<u>Number of Shares of Common Stock Owned After Offering</u>	<u>Percentage of Shares of Common Stock Owned After Offering if Greater than 1%</u>
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PLAN OF DISTRIBUTION

We are registering the shares of common stock issued and issuable upon exercise of the warrants to permit the resale of these shares of common stock by the holders of the common stock warrants from time to time after the date of this prospectus. We will not receive any of the proceeds from the sale by the selling stockholders of the shares of common stock. We will bear all fees and expenses incident to our obligation to register the shares of common stock.

The selling stockholders may sell all or a portion of the shares of common stock beneficially owned by them and offered hereby from time to time directly or through one or more underwriters, broker-dealers or agents. If the shares of common stock are sold through underwriters or broker-dealers, the selling stockholders will be responsible for underwriting discounts or commissions or agent's commissions. The shares of common stock may be sold in one or more transactions at fixed prices, at prevailing market prices at the time of the sale, at varying prices determined at the time of sale, or at negotiated prices. These sales may be effected in transactions, which may involve crosses or block transactions,

- on any national securities exchange or quotation service on which the securities may be listed or quoted at the time of sale;
- in the over-the-counter market;
- in transactions otherwise than on these exchanges or systems or in the over-the-counter market;
- through the writing of options, whether such options are listed on an options exchange or otherwise;
- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the shares as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- short sales;
- sales pursuant to Rule 144;
- broker-dealers may agree with the selling securityholders to sell a specified number of such shares at a stipulated price per share;
- a combination of any such methods of sale; and
- any other method permitted pursuant to applicable law.

If the selling stockholders effect such transactions by selling shares of common stock to or through underwriters, broker-dealers or agents, such underwriters, broker-dealers or agents may receive commissions in the form of discounts, concessions or commissions from the selling stockholders or commissions from purchasers of the shares of common stock for whom they may act as agent or to whom they may sell as principal (which discounts, concessions or commissions as to particular underwriters, broker-dealers or agents may be in excess of those customary in the types of transactions involved). In connection with sales of the shares of common stock or otherwise, the selling stockholders may enter into hedging transactions with broker-dealers, which may in turn engage in short sales of the shares of common stock in the course of hedging in positions they assume. The selling stockholders may also sell shares of common stock short and deliver shares of common stock covered by this prospectus to close out short positions and to return borrowed shares in connection with such short sales. The selling stockholders may also loan or pledge shares of common stock to broker-dealers that in turn may sell such shares.

The selling stockholders may pledge or grant a security interest in some or all of the warrants or shares of common stock owned by them and, if they default in the performance of their secured obligations, the pledgees or secured parties may offer and sell the shares of common stock from time to time pursuant to this prospectus or any amendment to this prospectus under Rule 424(b)(3) or other applicable provision of the Securities Act of 1933, as amended, amending, if necessary, the list of selling stockholders to include the pledgee, transferee or other successors in interest as selling stockholders under this prospectus. The selling stockholders also may transfer and donate the shares of common stock in other circumstances in which case the transferees, donees, pledgees or other successors in interest will be the selling beneficial owners for purposes of this prospectus.

The selling stockholders and any broker-dealer participating in the distribution of the shares of common stock may be deemed to be “underwriters” within the meaning of the Securities Act, and any commission paid, or any discounts or concessions allowed to, any such broker-dealer may be deemed to be underwriting commissions or discounts under the Securities Act. At the time a particular offering of the shares of common stock is made, a prospectus supplement, if required, will be distributed which will set forth the aggregate amount of shares of common stock being offered and the terms of the offering, including the name or names of any broker-dealers or agents, any discounts, commissions and other terms constituting compensation from the selling stockholders and any discounts, commissions or concessions allowed or reallocated or paid to broker-dealers.

Under the securities laws of some states, the shares of common stock may be sold in such states only through registered or licensed brokers or dealers. In addition, in some states the shares of common stock may not be sold unless such shares have been registered or qualified for sale in such state or an exemption from registration or qualification is available and is complied with.

There can be no assurance that any selling stockholder will sell any or all of the shares of common stock registered pursuant to the registration statement, of which this prospectus forms a part.

The selling stockholders and any other person participating in such distribution will be subject to applicable provisions of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder, including, without limitation, Regulation M of the Exchange Act, which may limit the timing of purchases and sales of any of the shares of common stock by the selling stockholders and any other participating person. Regulation M may also restrict the ability of any person engaged in the distribution of the shares of common stock to engage in market-making activities with respect to the shares of common stock. All of the foregoing may affect the marketability of the shares of common stock and the ability of any person or entity to engage in market-making activities with respect to the shares of common stock.

We will pay all expenses of the registration of the shares of common stock pursuant to the registration rights agreement, estimated to be \$[] in total, including, without limitation, Securities and Exchange Commission filing fees and expenses of compliance with state securities or “blue sky” laws; provided, however, that a selling stockholder will pay all underwriting discounts and selling commissions, if any. We will indemnify the selling stockholders against liabilities, including some liabilities under the Securities Act, in accordance with the registration rights agreements, or the selling stockholders will be entitled to contribution. We may be indemnified by the selling stockholders against civil liabilities, including liabilities under the Securities Act, that may arise from any written information furnished to us by the selling stockholder specifically for use in this prospectus, in accordance with the related registration rights agreement, or we may be entitled to contribution.

Once sold under the registration statement, of which this prospectus forms a part, the shares of common stock will be freely tradable in the hands of persons other than our affiliates.

CONTINGENT VALUE RIGHTS AGREEMENT

THIS CONTINGENT VALUE RIGHTS AGREEMENT, dated as of [●], 2020 (this "*Agreement*"), is entered into by and among Rexahn Pharmaceuticals, Inc., a Delaware corporation ("*Parent*"), Shareholder Representative Services LLC, a Colorado limited liability company, solely in its capacity as representative of the Holders (the "*CVR Representative*"), and Olde Monmouth Stock Transfer Co., Inc., as Rights Agent.

RECITALS

WHEREAS, Parent, Razor Merger Sub, Inc., a Delaware corporation ("*Merger Sub*"), and Ocuphire Pharma, Inc., a Delaware corporation (the "*Company*"), have entered into an Agreement and Plan of Merger and Reorganization, dated as of June 17, 2020 (as it may be amended or supplemented from time to time pursuant to the terms thereof, the "*Merger Agreement*"), pursuant to which Merger Sub will merge with and into the Company, with the Company surviving the Merger as a subsidiary of Parent; and

WHEREAS, pursuant to the Merger Agreement, Parent has agreed to provide to the holders of record of Parent's common stock, par value \$0.0001 per share ("*Parent Common Stock*"), immediately prior to the Effective Time, the right to receive certain contingent cash payments, on the terms and subject to the conditions hereinafter described.

NOW, THEREFORE, in consideration of the foregoing and the consummation of the transactions referred to above, Parent, the CVR Representative and Rights Agent agree, for the proportionate benefit of all Holders (as hereinafter defined), as follows:

1. DEFINITIONS; CERTAIN RULES OF CONSTRUCTION

1.1 Definitions. Capitalized terms used but not otherwise defined herein will have the meanings ascribed to them in the Merger Agreement, unless expressly set forth otherwise herein. As used in this Agreement, the following terms will have the following meanings:

"*Acquiror*" has the meaning set forth in Section 7.3(a).

"*Acquisition*" has the meaning set forth in Section 7.3(a).

"*Affiliate*" means, with respect to any Person, 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 more than fifty percent (50%) of the voting securities entitled to vote for directors (or similar officials) of a Person or the possession, by contract or otherwise, of the authority to direct the management and policies of a Person.

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

“**Aggregate CVR Payment Amount**” means, for each CVR Payment Period, an amount equal to the sum of the BioSense Payment Amount, the HaiChang Payment Amount, and the Parent IP Payment Amount.

“**Assignee**” has the meaning set forth in Section 7.3(a).

“**BioSense**” means BioSense Global LLC or its successor or any of their respective Affiliates.

“**BioSense Agreement**” means that certain License and Assignment Agreement, dated as of February 25, 2019, by and between BioSense and Parent, as amended by Amendment No. 1, dated August 24, 2019, and as further amended by Amendment No. 2, dated March 10, 2020.

“**BioSense Payment Amount**” means, for each CVR Payment Period, an amount equal to ninety percent (90%) of all payments received, without duplication, by Parent or one or more of Parent’s Affiliates during such CVR Payment Period from or on behalf of BioSense pursuant to Article 6 of the BioSense Agreement, or otherwise on account of the fees, payments or royalties payable by BioSense under such Article 6 of the BioSense Agreement minus the amount of any fees, costs or expenses paid by Parent and its Affiliates during such CVR Payment Period related to the performance of Parent’s obligations under the BioSense Agreement or incurred by Parent and its Affiliates in connection with enforcing Parent’s rights under the BioSense Agreement, including, without limitation, Parent’s compliance with Section 4.3 below.

“**Board of Directors**” means the board of directors of Parent.

“**Board Resolution**” means a copy of a resolution certified by the secretary or an assistant secretary of Parent to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Rights Agent.

“**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.

“**Company**” has the meaning set forth in the Recitals.

“**CVR Payment**” has the meaning set forth in Section 2.4(c).

“**CVR Payment Amount**” means, with respect to each CVR Payment Period and each Holder, an amount equal to the Aggregate CVR Payment Amount divided by the total number of CVRs and then multiplied by the total number of CVRs held by such Holder as reflected on the CVR Register (rounded down to the nearest whole cent).

“**CVR Payment Period**” means each calendar quarter during the CVR Term, with the first CVR Payment Period commencing on the date hereof and ending on [●], 2020.

“**CVR Payment Statement**” means, for a given CVR Payment Period, a written statement of Parent, setting forth in reasonable detail, (a) the Aggregate CVR Payment Amount for such CVR Payment Period, (b) a description of the total amounts received during such CVR Payment Period from each of the BioSense Agreement, the HaiChang Agreement and a Parent IP Deal, as applicable, (c) a delineation and calculation of the Permitted Parent IP Deductions applicable to a Parent IP Deal during such CVR Payment Period, and (d) to the extent that any Aggregate CVR Payment Amount or Permitted Parent IP Deduction is recorded in any currency other than United States dollars during such CVR Payment Period, the exchange rates used for conversion of such currency into United States dollars.

“**CVR Register**” has the meaning set forth in Section 2.3(b).

“**CVR Representative**” means the CVR Representative named in the Preamble or any direct or indirect successor CVR Representative designated in accordance with Section 6.3.

“**CVR Shortfall**” has the meaning set forth in Section 4.5(b).

“**CVR Term**” means the period beginning on the date hereof and ending fifteen (15) years thereafter.

“**CVRs**” means the rights of Holders to receive contingent cash payments pursuant to the Merger Agreement and this Agreement.

“**DTC**” means The Depository Trust Company or any successor thereto.

“**Funds**” has the meaning set forth in Section 7.9.

“**Governmental Entity**” means any foreign or domestic arbitrator, court, nation, government, any state or other political subdivision thereof and an entity exercising executive, legislative, judicial regulatory or administrative functions of, or pertaining to, government.

“**HaiChang**” means Zhejiang HaiChang Biotechnology Co., Ltd. or its successor or any of their respective Affiliates.

“**HaiChang Agreement**” means that certain Exclusive License Agreement, dated as of February 8, 2020, by and between HaiChang and Parent.

“**HaiChang Payment Amount**” means, for each CVR Payment Period, an amount equal to ninety percent (90%) of all payments received, without duplication, by Parent or one or more of Parent’s Affiliates during such CVR Payment Period from or on behalf of HaiChang pursuant to Article 4 of the HaiChang Agreement, or otherwise on account of the fees, payments or royalties payable by HaiChang under such Article 4 of the HaiChang Agreement minus the amount of any fees, costs or expenses paid by Parent and its Affiliates during such CVR Payment Period related to the performance of Parent’s obligations under the HaiChang Agreement or incurred by Parent and its Affiliates in connection with enforcing Parent’s rights under the HaiChang Agreement, without limitation, Parent’s compliance with Section 4.3 below.

“**Holder**” means a Person in whose name a CVR is registered in the CVR Register at the applicable time.

“Independent Accountant” means an independent certified public accounting firm of nationally recognized standing designated either (a) jointly by the CVR Representative and Parent, or (b) if the CVR Representative and Parent fail to make a designation, jointly by an independent public accounting firm selected by Parent and an independent public accounting firm selected by the CVR Representative.

“License Agreements” means the BioSense Agreement and the HaiChang Agreement.

“Merger Agreement” has the meaning set forth in the Recitals.

“Merger Sub” has the meaning set forth in the Recitals.

“Officer’s Certificate” means a certificate signed by the chief executive officer, president, chief financial officer, any vice president, the controller, the treasurer or the secretary, in each case of Parent, in his or her capacity as such an officer, and delivered to the Rights Agent.

“Parent” has the meaning set forth in the Preamble.

“Parent Common Stock” has the meaning set forth in the Recitals.

“Parent IP” means any and all Parent IP listed on Schedule A hereto.

“Parent IP Deal” means any transaction (a) that is entered into during the period beginning on the date hereof and ending ten (10) years thereafter and (b) pursuant to which Parent or its Affiliate grants, sells or otherwise transfers to a Third Party any rights to the Parent IP or any rights to research, develop or commercialize the Parent IP, including a license, option, or sale of assets with respect to the Parent IP. For clarity, the sale of all or substantially all of Parent’s or an Affiliate’s stock or assets (to the extent such asset sale includes assets unrelated to the Parent IP), or a merger, acquisition or similar transaction shall not be deemed a Parent IP Deal.

“Parent IP Payment Amount” means, for each CVR Payment Period, an amount equal to seventy five percent (75%) of the following amounts: (a) all cash consideration paid by a Third Party to Parent or its Affiliates during the applicable CVR Payment Period in connection with any Parent IP Deal, plus (b) with respect to any non-cash consideration received by Parent or its Affiliates from a Third Party during the applicable CVR Payment Period in connection with any Parent IP Deal, all amounts received by Parent and its Affiliates for such non-cash consideration at the time such non-cash consideration is monetized by the Parent or its Affiliates (which amounts will be subject to payment to the Rights Agent when such non-cash consideration is monetized and such amounts are received by Parent or any of its Affiliates), minus any Permitted Parent IP Deductions during such CVR Payment Period. If a Parent IP Deal also involves assets that are not related to Parent IP but are related to other proprietary technology, products or assets of Parent or its Affiliates, then the total consideration will be allocated between all such technology, products and assets, and only that consideration allocated to the Parent IP will be included in the Parent IP Payment Amount.

“**Permitted Parent IP Deductions**” means, with respect to each CVR Payment Period, and without duplication, the sum of: (a) all fees, milestones, royalties and other payments paid by Parent and its Affiliates during such CVR Payment Period to any Third Party licensor in consideration for a license to such Third Party’s patents that would be infringed, absent such license, by the practice of such Parent IP, plus (b) all patent prosecution and maintenance costs, and drug product storage costs, paid by Parent and its Affiliates during such CVR Payment Period with respect to the Parent IP that are not otherwise reimbursed or reimbursable, plus (c) all out-of-pocket transaction costs incurred by Parent and its Affiliates to Third Parties during such CVR Payment Period for the negotiation, entry into and closing of a Parent IP Deal, including any broker fees, finder’s fees, advisory fees, accountant or attorney’s fees.

“**Permitted Transfer**” means a transfer of CVRs (a) on death of a Holder by will or intestacy; (b) by instrument to an inter vivos or testamentary trust in which the CVRs are to be passed to beneficiaries upon the death of the trustee; (c) pursuant to a court order; (d) made by operation of law (including a consolidation or merger) or without consideration in connection with the dissolution, liquidation or termination of any corporation, limited liability company, partnership or other entity; (e) in the case of CVRs held in book-entry or other similar nominee form, from a nominee to a beneficial owner (through an intermediary if applicable) or from a nominee to another nominee for the same beneficial owner, to the extent allowable by the Rights Agent; (f) or a transfer from a participant’s account in a tax-qualified employee benefit plan to the participant or to such participant’s account in a different tax-qualified employee benefit plan or to a tax-qualified individual retirement account for the benefit of such participant; or (g) to Parent for any or no consideration.

“**Person**” means any natural person, corporation, limited liability company, trust, unincorporated association, partnership, joint venture or other entity.

“**Record Time**” has the meaning set forth in Section 2.3(e).

“**Rights Agent**” means the Rights Agent named in the Preamble, until a successor Rights Agent will have become such pursuant to the applicable provisions of this Agreement, and thereafter “Rights Agent” will mean such successor Rights Agent.

“**Third Party**” means any Person other than Parent, Rights Agent or their respective Affiliates.

1.2 **Rules of Construction.** Except as otherwise explicitly specified to the contrary, (a) references to a Section means a Section of this Agreement unless another agreement is specified, (b) the word “including” (in its various forms) means “including without limitation,” (c) references to a particular statute or regulation include all rules and regulations thereunder and any predecessor or successor statute, rules or regulation, in each case as amended or otherwise modified from time to time, (d) words in the singular or plural form include the plural and singular form, respectively, (e) references to a particular Person include such Person’s successors and assigns to the extent not prohibited by this Agreement and (f) all references to dollars or “\$” refer to United States dollars. For clarity, the parties agree that the phrase “materially adverse” when used in this Agreement with respect to the Holders includes any amendment or other action, as applicable, that does or would be reasonably expected to reduce, eliminate, or materially delay (y) any payment to the Holders under this Agreement, or (z) any payment to Parent or its successor or their Affiliates under the BioSense Agreement or HaiChang Agreement that would otherwise be included in the Aggregate CVR Payment Amount.

2. CONTINGENT VALUE RIGHTS

2.1 CVRs: Appointment of Rights Agent.

(a) Each Holder is entitled to one CVR for each share of Parent Common Stock held by such Holder as of the Record Time. The CVRs represent the rights of Holders to receive contingent cash payments pursuant to the Merger Agreement and this Agreement. The initial Holders will be the holders of Parent Common Stock as of immediately prior to the Effective Time.

(b) Parent hereby appoints the Rights Agent to act as rights agent for Parent as contemplated hereby in accordance with the express terms and conditions set forth in this Agreement (and no implied terms or conditions), and the Rights Agent hereby accepts such appointment.

2.2 Nontransferable. The CVRs shall not be sold, assigned, transferred, pledged, encumbered or in any other manner transferred or disposed of, in whole or in part, other than through a Permitted Transfer.

2.3 No Certificate; Registration; Registration of Transfer; Change of Address.

(a) The CVRs will not be evidenced by a certificate or other instrument.

(b) The Rights Agent will create and keep a register (the “*CVR Register*”) for the purpose of registering CVRs and transfers of CVRs as permitted herein. The CVR Register will be created, and CVRs will be distributed, pursuant to written instructions to the Rights Agent from Parent. The CVR Register will initially show one position for Cede & Co. representing all the shares of Parent Common Stock held by DTC on behalf of the street name holders of the shares of Parent Common Stock held by such holders as of immediately prior to the Effective Time. The Rights Agent will have no responsibility whatsoever directly to the street name holders with respect to transfers of CVRs unless and until such CVRs are transferred into the name of such street name holders in accordance with Section 2.2 of this Agreement. With respect to any payments to be made under Section 2.4(c) below, the Rights Agent will accomplish the payment to any former street name holders of shares of Parent Common Stock by sending one lump payment to DTC. The Rights Agent will have no responsibilities whatsoever with regard to the distribution of payments by DTC to such street name holders.

(c) Subject to the restrictions on transferability set forth in Section 2.2, every request made to transfer a CVR must be in writing and accompanied by a written instrument of transfer in form reasonably satisfactory to the Rights Agent, duly executed by the Holder thereof or the Holder’s attorney duly authorized in writing, personal representative or survivor and setting forth in reasonable detail the circumstances relating to the transfer. Upon receipt of such written notice, the Rights Agent will, subject to its reasonable determination that the transfer instrument is in proper form and the transfer otherwise complies with the other terms and conditions of this Agreement (including the provisions of Section 2.2), register the transfer of the CVRs in the CVR Register. No service charge shall be made for any registration of transfer of a CVR, but Parent and Rights Agent may require payment of a sum sufficient to cover any stamp or other tax or governmental charge that is imposed in connection with any such registration of transfer. The Rights Agent shall have no duty or obligation to take any action under any section of this Agreement that requires the payment by a Holder of applicable taxes or charges unless and until the Rights Agent is satisfied that all such taxes or charges have been paid or will be paid. All duly transferred CVRs registered in the CVR Register will be the valid obligations of Parent and will entitle the transferee to the same benefits and rights under this Agreement as those held immediately prior to the transfer by the transferor. No transfer of a CVR will be valid until registered in the CVR Register.

(d) A Holder may make a written request to the Rights Agent to change such Holder's address of record in the CVR Register. The written request must be duly executed by the Holder. Upon receipt of such written notice, the Rights Agent will promptly record the change of address in the CVR Register.

(e) Parent will provide written instructions to the Rights Agent for the distribution of CVRs to holders of Parent Common Stock as of immediately prior to the Effective Time (the "**Record Time**"). Subject to the terms and conditions of this Agreement and Parent's prompt confirmation of the Effective Time, the Rights Agent shall effect the distribution of the CVRs, less any applicable tax withholding, to each holder of Parent Common Stock as of the Record Time by the mailing of a statement of holding reflecting such CVRs.

2.4 Payment Procedures.

(a) Within thirty (30) days after the end of each CVR Payment Period during the CVR Term, Parent shall deliver to the CVR Representative and Rights Agent a CVR Payment Statement for such CVR Payment Period. Concurrent with the delivery of each CVR Payment Statement, Parent shall provide the CVR Representative with reasonable documentation to support its calculation of the Aggregate CVR Payment Amount (including any allocations applied when calculating the Parent IP Payment Amount component thereof and including its determination of the applicable fair market value(s)) and pay the Rights Agent in U.S. dollars an amount equal to the Aggregate CVR Payment Amount (if any) with respect to the applicable CVR Payment Period. For clarity, to the extent that any non-cash consideration in the Parent IP Payment Amount is monetized after the end of the CVR Term, Parent will include a description of such non-cash consideration in the CVR Payment Statement for the CVR Payment Period in which it is received, and will make the applicable payment to the Rights Agent upon monetization of such non-cash consideration (regardless of whether such monetization occurs after the end of the CVR Term). The CVR Payment Statements shall reflect any Representative Losses payable to the CVR Representative, and the CVR Payment Statement for the first CVR Payment Period shall include the payment of \$60,000 to the CVR Representative, in any case, deducted from the CVR Payment payable to the Holders on a pro rata basis.

(b) All payments by Parent to the Rights Agent under this Agreement shall be made in U.S. dollars. The rate of exchange to be used in computing the amount of currency equivalent in U.S. dollars shall be made at the average of the closing exchange rates reported in The Wall Street Journal (U.S., Eastern Edition) for the ten (10) Business Days preceding the date of the CVR Payment Statement.

(c) The Rights Agent will promptly, and in any event within ten (10) Business Days after receipt of a CVR Payment Statement under Section 2.4(a), send each Holder at its address set forth on the CVR Register a copy of such statement. If the Rights Agent also receives any payment under Section 2.4(a) (each, a "***CVR Payment***"), then within ten (10) Business Days after the receipt of each CVR Payment, the Rights Agent will also pay to each Holder, by check mailed to the address of each Holder as reflected in the CVR Register as of the close of business on the date of the receipt of the CVR Payment Statement, such Holder's CVR Payment Amount, and to the extent applicable, pay any Representative Losses to the CVR Representative. Upon the first CVR Payment to be made hereunder, the Rights Agent is hereby authorized and directed to pay \$60,000 to the CVR Representative.

(d) Parent and the Rights Agent shall be entitled to deduct and withhold from any CVR Payment Amount otherwise payable or otherwise deliverable pursuant to this Agreement, in each case directly or through an authorized payroll agent, such amounts as are reasonably determined to be required to be deducted or withheld therefrom under the Code or any other provision of any applicable federal, state, local or non-U.S. Tax Law. To the extent such amounts are so deducted or withheld and paid over or deposited with the relevant Tax authority, such amounts shall be treated for all purposes under this Agreement as having been paid to the Holder(s) to whom such amounts would otherwise have been paid or delivered. Prior to making any such Tax withholdings or causing any such Tax withholdings to be made with respect to any Holder, the Rights Agent shall, to the extent practicable, provide notice to the Holder of such potential withholding and a reasonable opportunity for the Holder to provide any necessary Tax forms (including an IRS Form W-9 or an applicable IRS Form W-8) in order to avoid or reduce such withholding amounts; provided that the time period for payment of a CVR Payment Amount by the Rights Agent set forth in Sections 2.4(c) shall be extended by a period equal to any delay caused by the Holder providing such forms; provided, further, that in no event shall such period be extended for more than ten (10) Business Days, unless otherwise requested by the Holder for the purpose of delivering such forms and agreed to by the Rights Agent.

(e) Any portion of any CVR Payment that remains undistributed to the Holders six months after the CVR Payment is received by the Rights Agent from the Parent, provided that the Rights Agent has fully complied with Section 2.4(c), will be delivered by the Rights Agent to Parent, upon demand, and any Holder will thereafter look only to Parent for payment of its share of such returned CVR Payment, without interest.

(f) Neither Parent nor the Rights Agent will be liable to any person in respect of any CVR Payment Amount delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law. If, despite Parent's and/or the Rights Agent's reasonable best efforts to deliver a CVR Payment Amount to the applicable Holder, such CVR Payment Amount has not been paid immediately prior to the date on which such CVR Payment Amount would otherwise escheat to or become the property of any Governmental Entity, any such CVR Payment Amount will, to the extent permitted by applicable Law, become the property of Parent, free and clear of all claims or interest of any person previously entitled thereto. In addition to and not in limitation of any other indemnity obligation herein, Parent agrees to indemnify and hold harmless Rights Agent with respect to any liability, penalty, cost or expense Rights Agent may incur or be subject to in connection with transferring such property to Parent.

2.5 No Voting, Dividends or Interest; No Equity or Ownership Interest in Parent

- (a) The CVRs will not have any voting or dividend rights, and interest will not accrue on any amounts payable on the CVRs to any Holder.
- (b) The CVRs will not represent any equity or ownership interest in Parent or in any constituent company to the Merger.

(c) Each Holder acknowledges and agrees to the appointment and authority of the CVR Representative to act as the exclusive representative, agent and attorney-in-fact of such Holder and all Holders as set forth in this Agreement. Each Holder agrees that such Holder will not challenge or contest any action, inaction, determination or decision of the CVR Representative or the authority or power of the CVR Representative and will not threaten, bring, commence, institute, maintain, prosecute or voluntarily aid any action, which challenges the validity of or seeks to enjoin the operation of any provision of this Agreement, including, without limitation, the provisions related to the authority of the CVR Representative to act on behalf of such Holder and all Holders as set forth in this Agreement.

2.6 Ability to Abandon CVR. A Holder may at any time, at such Holder's option, abandon all of such Holder's remaining rights in a CVR by transferring such CVR to Parent without consideration therefor. Nothing in this Agreement is intended to prohibit Parent from offering to acquire CVRs for consideration in its sole discretion.

3. THE RIGHTS AGENT

3.1 Certain Duties and Responsibilities. The Rights Agent will not have any liability for any actions taken or not taken in connection with this Agreement, except to the extent of its willful misconduct, bad faith or gross negligence.

3.2 Certain Rights of Rights Agent. The Rights Agent undertakes to perform such duties and only such duties as are specifically set forth in this Agreement, and no implied covenants or obligations will be read into this Agreement against the Rights Agent. In addition:

- (a) the Rights Agent may rely and will be protected by Parent in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties;
- (b) whenever the Rights Agent will deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Rights Agent may, in the absence of bad faith, gross negligence or willful misconduct on its part, request and rely upon an Officer's Certificate with respect to such matter;
- (c) the Rights Agent may engage and consult with counsel of its selection and the written advice of such counsel or any opinion of counsel will be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

- (d) the permissive rights of the Rights Agent to do things enumerated in this Agreement will not be construed as a duty;
- (e) the Rights Agent will not be required to give any note or surety in respect of the execution of such powers or otherwise in respect of the premises;
- (f) Parent agrees to indemnify Rights Agent for, and hold Rights Agent harmless against, any loss, liability, claim, demands, suits or expense arising out of or in connection with Rights Agent's duties under this Agreement, including the costs and expenses of defending Rights Agent against any claims, charges, demands, suits or loss, unless such loss has been determined by a court of competent jurisdiction to be a result of Rights Agent's gross negligence, bad faith or willful or intentional misconduct; and
- (g) Parent agrees (i) to pay the fees and expenses of the Rights Agent in connection with this Agreement as agreed upon in writing by Rights Agent and Parent on or prior to the date hereof, and (ii) to reimburse the Rights Agent for all taxes and governmental charges, reasonable expenses and other charges of any kind and nature incurred by the Rights Agent in the execution of this Agreement (other than taxes imposed on or measured by the Rights Agent's net income and franchise or similar taxes imposed on it (in lieu of net income taxes)). The Rights Agent will also be entitled to reimbursement from Parent for all reasonable and necessary out-of-pocket expenses paid or incurred by it in connection with the administration by the Rights Agent of its duties hereunder.

3.3 Resignation and Removal: Appointment of Successor.

(a) The Rights Agent may resign at any time by giving written notice thereof to Parent and the CVR Representative specifying a date when such resignation will take effect, which notice will be sent at least sixty (60) days prior to the date so specified. Parent has the right to remove the Rights Agent at any time by a Board Resolution specifying a date when such removal will take effect. Notice of such removal will be given by Parent to the Rights Agent, which notice will be sent at least sixty (60) days prior to the date so specified.

(b) If the Rights Agent provides notice of its intent to resign, is removed or becomes incapable of acting, Parent, by a Board Resolution, will as soon as is reasonably possible appoint a qualified successor Rights Agent who, unless otherwise consented to in writing by the CVR Representative, shall be a stock transfer agent or national reputation or the corporate trust department of a commercial bank. The successor Rights Agent so appointed will, forthwith upon its acceptance of such appointment in accordance with Section 3.4, become the successor Rights Agent.

(c) Parent will give notice to each Holder of each resignation and each removal of a Rights Agent and each appointment of a successor Rights Agent by mailing written notice of such event by first-class mail to the Holders as their names and addresses appear in the CVR Register. Each notice will include the name and address of the successor Rights Agent. If Parent fails to send such notice within ten (10) Business Days after acceptance of appointment by a successor Rights Agent, the successor Rights Agent will cause the notice to be mailed at the expense of Parent.

3.4 Acceptance of Appointment by Successor. Every successor Rights Agent appointed hereunder will execute, acknowledge and deliver to Parent and to the retiring Rights Agent an instrument accepting such appointment and a counterpart of this Agreement, and thereupon such successor Rights Agent, without any further act, deed or conveyance, will become vested with all the rights, powers, trusts and duties of the retiring Rights Agent. On request of Parent or the successor Rights Agent, the retiring Rights Agent will execute and deliver an instrument transferring to the successor Rights Agent all the rights (except such rights of the predecessor Rights Agent which survive pursuant to Section 3.3 of this Agreement), powers and trusts of the retiring Rights Agent.

4. COVENANTS

4.1 List of Holders. Parent will furnish or cause to be furnished to the Rights Agent in such form as Parent receives from Parent's transfer agent (or other agent performing similar services for Parent), the names and addresses of the Holders within ten (10) Business Days of the Effective Time.

4.2 Payment of CVR Payment Amounts. If any CVR Payment is due under Section 2.4(a), Parent will deposit the CVR Payment with the Rights Agent for payment to the Holders in accordance with Section 2.4(c).

4.3 License Agreements. Without the prior written consent of Holders of not less than a majority of the then-outstanding CVRs, neither Parent nor any of its Affiliates shall (i) amend, restate, supplement, terminate or otherwise modify either of the License Agreements in a manner materially adversely affecting the Holders' rights under this Agreement, (ii) take any action or fail to take any action, including by waiving any right or failing to enforce any right under either of the License Agreements, in a manner materially adversely affecting the Holders' rights under this Agreement or (iii) permit or agree to any of the foregoing. Without limiting the foregoing, Parent and its Affiliates shall pursue their rights under each of the License Agreements in good faith, and not take any action intended to avoid, reduce, or materially delay any payment to the Holders hereunder. Notwithstanding the foregoing, nothing in this Agreement shall require Parent or any of its Affiliates to take any action outside of the terms and conditions set forth in the License Agreements, including, without limitation, the prosecution or maintenance of any intellectual property rights that may revert back to Parent or its Affiliates under the terms of the License Agreements.

4.4 Records. Parent shall, and shall cause its Affiliates to, keep true, complete and accurate records in sufficient detail to enable the Holders and their consultants or professional advisors to confirm (a) whether any payments related to either License Agreement giving rise to any CVR Payment Amounts have been received by Parent or its successors or Affiliates and (b) the applicable CVR Payment Amount payable to each Holder hereunder in accordance with the terms specified in this Agreement.

4.5 Audit Rights.

(a) Upon the written request of the CVR Representative provided to Parent not less than forty-five (45) days in advance (such request not to be made more than four times in any twelve (12) month period), Parent shall permit, and shall cause its Affiliates to permit, the Independent Accountant to have access during normal business hours to such of the records of Parent or its Affiliates as may be reasonably necessary to determine the accuracy of the Aggregate CVR Payment Amount reported by Parent. Parent shall, and shall cause its Affiliates to, furnish to the Independent Accountant such access, work papers and other documents and information reasonably necessary for the Independent Accountant to calculate and verify the Aggregate CVR Payment Amount; provided that Parent may, and may cause its Affiliates to, redact documents and information not relevant for such calculation pursuant to this Section 4.5. The Independent Accountant shall disclose to Parent and the CVR Representative any matters directly related to its findings to the extent reasonably necessary to verify the Aggregate CVR Payment Amount.

(b) If the Independent Accountant concludes that a CVR Payment that was properly due was not paid to the Rights Agent, or that any CVR Payment made was in an amount less than the amount due, Parent shall pay the CVR Payment or underpayment thereof to the Rights Agent for further distribution to the Holders (such amount being the “*CVR Shortfall*”). The CVR Shortfall shall be paid within ten (10) Business Days after the date the Independent Accountant delivers to Parent and the CVR Representative the Independent Accountant’s written report. The decision of the Independent Accountant shall be final, conclusive and binding on Parent and the Holders, shall be non-appealable and shall not be subject to further review. The fees charged by the Independent Accountant shall be paid by Parent.

(c) Each Person seeking to receive information from Parent in connection with a review pursuant to this Section 4.5 shall enter into, and shall cause its accounting firm to enter into, a reasonable and mutually satisfactory confidentiality agreement with Parent or any controlled Affiliate obligating such party to retain all such information disclosed to such party in confidence pursuant to such confidentiality agreement.

5. AMENDMENTS

5.1 Amendments without Consent of Holders.

(a) Without the consent of any Holders or the CVR Representative, Parent, when authorized by a Board Resolution, at any time and from time to time, and the Rights Agent may enter into one or more amendments hereto, solely to evidence any successor to or permitted assignee of Parent and the assumption by any such successor or permitted assignee of the covenants of Parent herein as provided in Section 7.3.

(b) Without the consent of any Holders, Parent, when authorized by a Board Resolution, and the Rights Agent, in the Rights Agent’s sole and absolute discretion, at any time and from time to time, may enter into one or more amendments hereto, solely for any of the following purposes:

(i) to evidence the succession of another Person as a successor Rights Agent in accordance with Section 3 and the assumption by any successor of the covenants and obligations of the Rights Agent herein;

(ii) to add to the covenants of Parent such further covenants, restrictions, conditions or provisions as Parent and the Rights Agent consider to be for the protection of the Holders; provided that, in each case, such provisions do not adversely affect the interests of the Holders;

(iii) to cure any ambiguity, to correct or supplement any provision herein that may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Agreement; provided that, in each case, such provisions do not adversely affect the interests of the Holders;

(iv) as may be necessary or appropriate to ensure that the CVRs are not subject to registration under the Securities Act or the Exchange Act; provided that, in each case, such provisions do not adversely affect the interests of the Holders; or

(v) any other amendments hereto for the purpose of adding, eliminating or changing any provisions of this Agreement, unless such addition, elimination or change is adverse to the interests of the Holders or the CVR Representative.

(c) Promptly after the execution by Parent and the Rights Agent of any amendment pursuant to the provisions of this Section 5.1, Parent will mail (or cause the Rights Agent to mail) a notice thereof by first class mail to the Holders at their addresses as they appear on the CVR Register, setting forth in general terms the substance of such amendment.

5.2 Amendments with Consent of Holders.

(a) Subject to Section 5.1 (which amendments pursuant to Section 5.1 may be made without the consent of the Holders), with the consent of Holders of not less than a majority of the then-outstanding CVRs, whether evidenced in writing or taken at a meeting of the Holders, CVR Representative, Parent, when authorized by a Board Resolution, and the Rights Agent may enter into one or more amendments hereto for the purpose of adding, eliminating or changing any provisions of this Agreement, even if such addition, elimination or change is materially adverse to the interest of the Holders. Parent and the Rights Agent agree to fully cooperate with the CVR Representative in soliciting and obtaining the consent of the Holders of not less than a majority of the then-outstanding CVRs as required hereunder.

(b) Promptly after the execution by Parent, the CVR Representative and the Rights Agent of any amendment pursuant to the provisions of this Section 5.2, Parent will mail (or cause the Rights Agent to mail) a notice thereof by first class mail to the Holders at their addresses as they appear on the CVR Register, setting forth in general terms the substance of such amendment.

5.3 Execution of Amendments. In executing any amendment permitted by this Section 5, the Rights Agent will be entitled to receive, and will be fully protected in relying upon, an opinion of counsel selected by Parent stating that the execution of such amendment is authorized or permitted by this Agreement. The Rights Agent may, but is not obligated to, enter into any such amendment that affects the Rights Agent's own rights, privileges, covenants or duties under this Agreement or otherwise. No supplement or amendment to this Agreement shall be effective unless duly executed by the Rights Agent.

5.4 Effect of Amendments. Upon the execution of any amendment under this Section 5, this Agreement will be modified in accordance therewith, such amendment will form a part of this Agreement for all purposes and every Holder will be bound thereby.

6. CVR REPRESENTATIVE

6.1 Appointment of CVR Representative. To the extent valid and binding under applicable Law, the CVR Representative is hereby appointed, authorized and empowered to be the exclusive representative, agent and attorney-in-fact of each Holder, with full power of substitution, to make all decisions and determinations and to act (or not act) and execute, deliver and receive all agreements, documents, instruments and consents on behalf of and as agent for each Holder at any time in connection with, and that may be necessary or appropriate to accomplish the intent and implement the provisions of this Agreement and to facilitate the consummation of the transactions contemplated hereby, including without limitation for purposes of (i) negotiating and settling, on behalf of the Holders, any dispute that arises under this Agreement after the Effective Time, (ii) confirming the satisfaction of Parent's obligations under this Agreement and (iii) negotiating and settling matters with respect to the amounts to be paid to the Holders pursuant to this Agreement.

6.2 Authority. To the extent valid and binding under applicable Law, the appointment of the CVR Representative by the Holders upon the Effective Time is coupled with an interest and may not be revoked in whole or in part (including, without limitation, upon the death or incapacity of any stockholder). Subject to the prior qualifications, such appointment shall be binding upon the heirs, executors, administrators, estates, personal representatives, officers, directors, security holders, successors and assigns of each Holder. To the extent valid and binding under applicable Law, all decisions of the CVR Representative shall be final and binding on all Holders. Parent and the Rights Agent shall be entitled to rely upon, without independent investigation, any act, notice, instruction or communication from the CVR Representative and any document executed by the CVR Representative on behalf of any Holder and shall be fully protected in connection with any action or inaction taken or omitted to be taken in reliance thereon, absent willful misconduct by Parent or the Rights Agent (as such willful misconduct is determined by a final, non-appealable judgment of a court of competent jurisdiction). The CVR Representative shall not be responsible for any loss suffered by, or liability of any kind to, the Holders arising out of any act done or omitted by the CVR Representative in connection with the acceptance or administration of the CVR Representative's duties hereunder, unless such act or omission directly resulted from the CVR Representative's gross negligence or willful misconduct. In the event of any losses, liabilities, damages, claims, penalties, fines, forfeitures, actions, fees, costs and expenses (including the fees and expenses of counsel and experts and their staffs and all expense of document location, duplication and shipment) incurred by the CVR Representative (collectively, "**Representative Losses**") arising out of or in connection with the CVR Representative's execution and performance of this Agreement and any agreements ancillary hereto, the CVR Representative will provide Parent and the Rights Agent with a written notice of such Representative Loss, which will be deducted from the next CVR Payment and paid by the Rights Agent to the CVR Representative; provided, that in the event that any such Representative Loss is finally adjudicated to have been directly caused by the gross negligence or willful misconduct of the CVR Representative, the CVR Representative will pay the amount of such indemnified Representative Loss to the extent attributable to such gross negligence or willful misconduct to the Rights Agent for further distribution to the Holders. In no event will the CVR Representative be required to advance its own funds on behalf of the Holders or otherwise. Parent, the Company and the Rights Agent acknowledge and agree that the CVR Representative has entered into this Agreement solely in such capacity, and the CVR Representative shall not be responsible for any loss suffered by, or liability of any kind to, Parent, the Company, the Rights Agent or any other person except for losses or liabilities arising out of or in connection with this Agreement and directly caused by the CVR Representative's actions. The exculpation of the CVR Representative set forth in this Section 6.2 shall survive the termination of this Agreement and the resignation or removal of the CVR Representative.

6.3 Successor CVR Representative. The CVR Representative may be removed for any reason or no reason by written consent of Holders of not less than a majority of the then-outstanding CVRs. The CVR Representative may resign upon twenty (20) days' written notice to Parent and the Rights Agent in the event of circumstances rendering it impracticable for the CVR Representative to continue to effectively serve, including amendments increasing the CVR Representative's responsibilities without its consent or failure to pay amounts due to the CVR Representative, and upon the effectiveness of such resignation, shall have no further obligations or liabilities hereunder. In the event that the CVR Representative becomes unable to perform its responsibilities hereunder or resigns or is removed from such position, Holders of not less than a majority of the then-outstanding CVRs shall be authorized to and shall select another representative to fill such vacancy and such substituted representative shall be deemed to be the CVR Representative for all purposes of this Agreement. The newly-appointed CVR Representative shall notify Parent, the Rights Agent and any other appropriate Person in writing of its appointment, provide evidence that the Holders of not less than a majority of the then-outstanding CVRs approved such appointment and provide appropriate contact information for purposes of this Agreement. Parent and the Rights Agent shall be entitled to rely upon, without independent investigation, the identity and validity of such newly-appointed CVR Representative as set forth in such written notice. In the event that within thirty (30) days after the CVR Representative becomes unable to perform its responsibilities hereunder or resigns or is removed from such position, no successor CVR Representative has been so selected, Parent shall cause the Rights Agent to notify the Person holding the largest quantity of the outstanding CVRs (and who is not Parent or, to the Rights Agent's actual knowledge, any Affiliate of Parent) that such Person is the successor CVR Representative, and such Person shall be the successor CVR Representative hereunder. If such Person notifies the Rights Agent in writing that such Person declines to serve, the Rights Agent shall forthwith notify the Person holding the next-largest quantity of the outstanding CVRs (and who is not Parent or, to the Rights Agent's actual knowledge, any Affiliate of Parent) that such next-largest-quantity Person is the successor CVR Representative, and such next-largest-quantity Person shall be the successor CVR Representative hereunder. (And so on, to the extent as may be necessary.) The Holders are intended third party beneficiaries of this Section 6.3. If a successor CVR Representative is not appointed pursuant to the preceding procedure within sixty (60) days after the CVR Representative becomes unable to perform its responsibilities hereunder or resigns or is removed from such position, Parent shall appoint a successor CVR Representative.

6.4 Termination of Duties and Obligations. The CVR Representative's duties and obligations under this Agreement shall survive until no CVRs remain outstanding or until this Agreement expires or is terminated pursuant to Section 7.7, whichever is earlier.

7. OTHER PROVISIONS OF GENERAL APPLICATION

7.1 Notices to Rights Agent, Parent and CVR Representative. Any notice or other communication required or permitted hereunder shall be in writing and shall be deemed given when delivered in person, by overnight courier or by electronic mail, or two (2) Business Days after being sent by registered or certified mail (postage prepaid, return receipt requested), as follows:

If to the Rights Agent, to it at:

Olde Monmouth Stock Transfer Co., Inc.
Telephone: (732) 872-2727, Ext. 101
Email: matt@oldemonmouth.com
Attention: Matthew J. Troster, President

If to Parent, to it at:

Rexahn Pharmaceuticals, Inc.
Telephone: [●]
Email: [●]
Attention: [●]

with a copy to:

[●]
Telephone: [●]
Email: [●]
Attention: [●]

If to the CVR Representative, to it at:

Shareholder Representative Services LLC
950 17th Street, Suite 1400
Denver, CO 80202
Telephone: (303) 648-4085
Email: deals@srsacquiom.com
Attention: Managing Director

with a copy to:

Hogan Lovells US LLP
100 International Drive, Suite 2000
Baltimore, MD 21202
Attention: Asher M. Rubin; William I. Intner
Email: asher.rubin@hoganlovells.com; william.intner@hoganlovells.com

The Rights Agent, Parent or CVR Representative may specify a different address, email address by giving notice to each other in accordance with this Section 7.1 and to the Holders in accordance with Section 7.2.

7.2 Notice to Holders. Where this Agreement provides for notice to Holders, such notice will be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Holder affected by such event, at the Holder's address as it appears in the CVR Register, not later than the latest date, and not earlier than the earliest date, if any, prescribed for the giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder will affect the sufficiency of such notice with respect to other Holders.

7.3 Parent Successors and Assigns.

(a) Parent may not assign this Agreement without the prior written consent of the CVR Representative, provided that (i) Parent may assign, in its sole discretion and without the consent of any other party, any or all of its rights, interests and obligations hereunder to one or more direct or indirect wholly-owned subsidiaries of Parent for so long as they remain wholly owned subsidiaries of Parent (each, an "*Assignee*"); provided that the Assignee agrees to assume and be bound by all of the terms of this Agreement; provided, however, that in connection with any assignment to an Assignee, Parent shall, and shall agree to, remain liable for the performance by such Assignee of all obligations of Parent hereunder, with such Assignee substituted for Parent under this Agreement, and (ii) Parent may assign this Agreement in its entirety without the consent of any other party to its successor in interest in connection with the sale of all or substantially all of its assets or of its stock, or in connection with a merger, acquisition or similar transaction (such successor in interest, the "*Acquiror*", and such transaction, the "*Acquisition*"). This Agreement will be binding upon, inure to the benefit of and be enforceable by Parent's successors, acquirers and each Assignee. Each reference to "*Parent*" in this Agreement shall be deemed to include Parent's successors, acquirers and all Assignees. Each of Parent's successors, acquirers and assigns shall expressly assume by an instrument supplemental hereto, executed and delivered to the Rights Agent, the due and punctual payment of the CVR Payments and the due and punctual performance and observance of all of the covenants and obligations of this Agreement to be performed or observed by Parent.

(b) Any Person into which the Rights Agent or any successor Rights Agent may be merged or with which it may be consolidated, or any Person resulting from any merger or consolidation to which the Rights Agent or any successor Rights Agent shall be a party, or any Person succeeding to the stock transfer or other shareholder services business of the Rights Agent or any successor Rights Agent, shall be the successor to the Rights Agent under this Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto, provided that such Person would be eligible for appointment as a successor Rights Agent under the provisions of the Agreement. The purchase of all or substantially all of the Rights Agent's assets employed in the performance of transfer agent activities shall be deemed a merger or consolidation for purposes of this Section 7.3(b).

7.4 Benefits of Agreement. Parent and the Rights Agent hereby agree that the respective covenants and agreements set forth herein are intended to be for the benefit of, and shall be enforceable by, the CVR Representative (on behalf of itself and the Holders) and the Holders, acting by the written consent of Holders of not less than a majority of the then-outstanding CVRs, all of whom are intended third-party beneficiaries hereof. Nothing in this Agreement, express or implied, will give to any Person (other than the Rights Agent, Parent, Parent's successors and permitted assignees, and the Holders and their respective successors and permitted assignees) any benefit or any legal or equitable right, remedy or claim under this Agreement or under any covenant or provision herein contained, all such covenants and provisions being for the sole benefit of the Rights Agent, Parent, Parent's successors and permitted assignees, and the Holders and their respective successors and permitted assignees. The rights of Holders are limited to those expressly provided in this Agreement and the Merger Agreement. Notwithstanding anything to the contrary contained herein, any Holder may agree to renounce, in whole or in part, such Holder's rights under this Agreement by written notice to the Rights Agent and Parent, which notice, if given, shall be irrevocable. In such event, such Holder's CVRs will not be included for determining the number of outstanding CVRs held by other Holders and the Aggregate CVR Payment Amount shall be distributed to the Holders based on the number of the CVRs then outstanding.

7.5 Governing Law. This Agreement, the CVRs and all claims and causes of action based upon, arising out of or in connection herewith shall be governed by, and construed in accordance with, the Laws of the State of Delaware, without regard to Laws that may be applicable under conflicts of laws principles (whether of the State of Delaware or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of Delaware.

Each of the parties hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Court of Chancery of the State of Delaware or, if such court does not have jurisdiction, any Delaware state court, or federal court of the United States of America, sitting in Delaware, and any appellate court from any thereof, in any Legal Proceeding arising out of or relating to this Agreement or the transactions contemplated hereby or for recognition or enforcement of any judgment relating thereto, and each of the parties hereby irrevocably and unconditionally (i) agrees not to commence any such Legal Proceeding except in such courts, (ii) agrees that any claim in respect of any such Legal Proceeding may be heard and determined in such court, (iii) waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any such Legal Proceeding in any such court, and (iv) waives, to the fullest extent permitted by Law, the defense of an inconvenient forum to the maintenance of such Legal Proceeding in any such court. Each of the parties agrees that a final judgment in any such Legal Proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 7.1. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by Law.

7.6 Severability. If any term or other provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other terms, conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible to the fullest extent permitted by applicable Law and in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

7.7 Counterparts and Signature. This Agreement may be signed in any number of counterparts, including by electronic transmission, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

7.8 Termination. This Agreement will expire and be of no force or effect, the parties hereto will have no liability hereunder (other than with respect to monies due and owing by Parent to Rights Agent or any other rights of the Rights Agent which expressly survive the termination of this Agreement), and no additional payments will be required to be made, upon the later of (i) the conclusion of the CVR Term and (ii) the payment of the full amount of all CVR Payments to the Rights Agent and the payment of the full amount of all CVR Payment Amounts to the Holders by the mailing by the Rights Agent of each applicable CVR Payment Amount to each Holder at the address reflected in the CVR Register.

7.9 Funds. All funds received by the Rights Agent under this Agreement that are to be distributed or applied by the Rights Agent in the performance of services hereunder (the "**Funds**") shall be held by the Rights Agent as agent for the Parent and deposited in one or more bank accounts to be maintained by the Rights Agent in its name as agent for the Parent. Until paid pursuant to the terms of this Agreement, the Rights Agent will hold the Funds through such accounts in: deposit accounts of commercial banks with Tier 1 capital exceeding \$1 billion or with an average rating above investment grade by S&P (LT Local Issuer Credit Rating), Moody's (Long Term Rating) and Fitch Ratings, Inc. (LT Issuer Default Rating) (each as reported by Bloomberg Finance L.P.). The Rights Agent shall have no responsibility or liability for any diminution of the Funds that may result from any deposit made by the Rights Agent in accordance with this paragraph, including any losses resulting from a default by any bank, financial institution or other Third Party. The Rights Agent may from time to time receive interest, dividends or other earnings in connection with such deposits. The Rights Agent shall not be obligated to pay such interest, dividends or earnings to the Parent, any Holder or any other party.

7.10 Entire Agreement. This Agreement and the Merger Agreement (including the schedules, annexes and exhibits thereto, the documents and instruments referred to therein and the documents delivered pursuant thereto) constitute the entire agreement of the parties and supersede all prior agreements and undertakings, both written and oral, among the parties, or any of them, with respect to the subject matter hereof and, except as otherwise expressly provided herein or therein, are not intended to confer upon any other Person any rights or remedies hereunder or thereunder. If and to the extent that any provision of this Agreement is inconsistent or conflicts with the Merger Agreement, this Agreement will govern and control.

7.11 Waiver of Jury Trial. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ANY OF THE AGREEMENTS DELIVERED IN CONNECTION HERewith OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE EITHER OF SUCH WAIVERS, (II) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVERS, (III) IT MAKES SUCH WAIVERS VOLUNTARILY AND (IV) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 7.11.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed on its behalf by its duly authorized officers as of the day and year first above written.

REXAHN PHARMACEUTICALS, INC.

By: _____
Name: _____
Title: _____

OLDE MONMOUTH STOCK TRANSFER CO., INC.

By: _____
Name: _____
Title: _____

SHAREHOLDER REPRESENTATIVE SERVICES LLC, solely in its capacity as the CVR Representative

By: _____
Name: _____
Title: _____

[Signature Page to Contingent Value Rights Agreement]

SCHEDULE A

PARENT IP

VOTING AGREEMENT

This VOTING AGREEMENT (this “*Agreement*”) is entered into as of June , 2020, among Ocuphire Pharma, Inc., a Delaware corporation (the “*Company*”), Rexahn Pharmaceuticals, Inc., a Delaware corporation (“*Parent*”), and the undersigned stockholder (the “*Stockholder*”) of the Company.

WHEREAS, as of the date hereof, the Stockholder is the sole record and beneficial owner of and has the sole power to vote (or to direct the voting of) the number of shares of common stock, par value \$0.0001 per share (the “*Common Stock*”) of the Company, set forth opposite the Stockholder’s name on *Schedule I* hereto (such Common Stock, together with any other shares of the Company (“*Shares*”) the voting power of which is acquired by such Stockholder during the Voting Period (as defined below), are collectively referred to herein as the “*Subject Shares*”);

WHEREAS, the Company, Parent, and Razor Merger Sub, Inc., a Delaware corporation and a wholly-owned subsidiary of Parent (“*Merger Sub*”), are concurrently entering into an Agreement and Plan of Merger and Reorganization, dated on or about the date hereof (as amended from time to time, the “*Merger Agreement*”), pursuant to which Merger Sub shall be merged with and into the Company, with the Company continuing as the surviving corporation and as a wholly owned subsidiary of Parent (the “*Merger*”);

WHEREAS, the adoption of the Merger Agreement and the transactions contemplated thereby requires the written consent or affirmative vote of the holders of a majority of the shares of the Common Stock outstanding; and

WHEREAS, as an inducement to the Company’s and Parent’s willingness to enter into the Merger Agreement and consummate the transactions contemplated thereby, transactions from which the Stockholder believes it will derive substantial benefits through its ownership interest in the Company, the Stockholder is entering into this Agreement.

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

**ARTICLE I
DEFINITIONS**

SECTION 1.1 Capitalized Terms. For purposes of this Agreement, capitalized terms used and not defined herein shall have the respective meanings ascribed to them in the Merger Agreement.

**ARTICLE II
VOTING AGREEMENT AND IRREVOCABLE PROXY****SECTION 2.1 Agreement to Vote.**

(a) The Stockholder hereby agrees that, within five (5) Business Days after the Registration Statement becomes effective, the Stockholder shall execute and deliver, or cause to be executed and delivered, to the Company, a written consent (a “*Written Consent*”) approving the Stockholder Approval Matters (as defined below). The Written Consent shall be coupled with an interest and shall be irrevocable. As used herein, the term “*Expiration Time*” shall mean the earliest to occur of (i) the Effective Time and (ii) the date and time of the valid termination of the Merger Agreement in accordance with its terms, and the term “*Voting Period*” shall mean such period of time between the date hereof and the Expiration Time.

(b) The Stockholder hereby agrees that, during the Voting Period, and at any duly called meeting of the stockholders of the Company (or any adjournment or postponement thereof), or in any other circumstances (including action by written consent of stockholders in lieu of a meeting) upon which a vote, adoption or other approval or consent with respect to the adoption of the Merger Agreement or the approval of the Merger and any of the transactions contemplated thereby is sought, the Stockholder shall, if a meeting is held, appear at the meeting, in person or by proxy, and shall provide a written consent or vote (or cause to be voted), in person or by proxy, all of the Subject Shares, in each case (i) in favor of (A) any proposal to adopt and approve or reapprove the Merger Agreement and the transactions contemplated thereby, including without limitation (1) adoption and approval of the Merger Agreement and the Contemplated Transactions, (2) adoption and approval of an amendment of the Company's certificate of incorporation to increase the authorized shares of the Company's Common Stock in the form of *Exhibit A* hereto, (3) acknowledgment that the approval given thereby is irrevocable and that the Stockholder is aware of the Stockholder's 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 the Stockholder has received and read a copy of Section 262 of the DGCL, (4) acknowledgment that by the Stockholder's approval of the Merger the Stockholder is not entitled to appraisal rights with respect to the Subject Shares in connection with the Merger and thereby waives any rights to receive payment of the fair value of the Stockholder's capital stock under the DGCL, and (B) waiving any notice that may have been or may be required relating to the Merger or any of the other transactions contemplated by the Merger Agreement (the "*Stockholder Approval Matters*"), and (ii) against (A) any Acquisition Proposal and any action in furtherance of any such Acquisition Proposal and (B) any action, proposal, transaction or agreement that, to the knowledge of the Stockholder, would reasonably be expected to (x) result in a material breach of any covenant, representation or warranty or any other obligation or agreement of the Stockholder under this Agreement or the Company under the Merger Agreement or (y) prevent or materially delay or adversely affect the consummation of the Contemplated Transactions, including the Merger, or change in any manner the voting rights of any class of Shares.

SECTION 2.2 Grant of Irrevocable Proxy. The Stockholder hereby appoints the Company and any designee of the Company, and each of them individually, as the Stockholder's proxy, with full power of substitution and resubstitution, to vote, including by executing written consents, during the Voting Period with respect to any and all of the Subject Shares on the matters and in the manner specified in *Section 2.1*; provided, however, that the Stockholder's grant of the proxy contemplated by this *Section 2.2* shall be effective with respect to *Section 2.1* if, and only if, the Stockholder does not deliver the Written Consent in accordance with *Section 2.1(a)* after being given a reasonable opportunity to do so, or attempts to vote or consent in a manner inconsistent with the provisions of *Section 2.1(b)*. The Stockholder shall take all further action or execute such other instruments as may be necessary to effectuate the intent of any such proxy. The Stockholder affirms that the irrevocable proxy given by it hereby with respect to the Merger Agreement and the transactions contemplated thereby is given to the Company by the Stockholder to secure the performance of the obligations of the Stockholder under this Agreement. It is agreed that the Company (and its officers on behalf of the Company) will use the irrevocable proxy that is granted by the Stockholder hereby only in accordance with applicable Laws and that, to the extent the Company (and its officers on behalf of the Company) uses such irrevocable proxy, it will only vote (or sign written consents in respect of) the Subject Shares subject to such irrevocable proxy with respect to the matters specified in, and in accordance with the provisions of, *Section 2.1*.

SECTION 2.3 Nature of Irrevocable Proxy. The proxy granted pursuant to *Section 2.2* to the Company by the Stockholder shall be irrevocable during the term of this Agreement, shall be deemed to be coupled with an interest sufficient in law to support an irrevocable proxy and shall revoke any and all prior proxies or powers of attorney granted by the Stockholder and no subsequent proxy or power of attorney shall be given or written consent executed (and if given or executed, shall not be effective) by the Stockholder with respect thereto. The proxy that may be granted hereunder shall terminate upon the termination of this Agreement, but shall survive the death or incapacity of the Stockholder and any obligation of the Stockholder under this Agreement shall be binding upon the heirs, personal representatives and successors of the Stockholder.

ARTICLE III COVENANTS

SECTION 3.1 Subject Shares.

(a) The Stockholder agrees that (i) from the date hereof until the Effective Time, it shall not, and shall not commit or agree to, without the prior written consent of Parent and the Company, directly or indirectly, whether by merger, consolidation or otherwise, offer for sale, sell (including short sales), transfer, tender, pledge, encumber, assign or otherwise dispose of (including by gift or by operation of law) (collectively, a "*Transfer*"), or enter into any contract, option, derivative, hedging or other agreement or arrangement or understanding (including any profit-sharing arrangement) with respect to, or consent to or permit, a Transfer of, any or all of the Subject Shares or any interest therein; and (ii) during the Voting Period, it shall not, and shall not commit or agree to, without the prior written consent of Parent and the Company, (A) grant any proxies or powers of attorney with respect to any or all of the Subject Shares or agree to vote (or sign written consents in respect of) the Subject Shares on any matter or divest itself of any voting rights in the Subject Shares, or (B) take any action that would have the effect of preventing or disabling the Stockholder from performing its obligations under this Agreement. Notwithstanding the foregoing, the Stockholder may, at any time, Transfer its Subject Shares (1) by will or other testamentary document or by intestacy, (2) to any investment fund or other entity controlled or managed by the Stockholder, (3) to any member of the Stockholder's immediate family or (4) to any trust for the direct or indirect benefit of the Stockholder or the immediate family of the Stockholder or otherwise for estate planning purposes; *provided*, that the applicable transferee shall have executed and delivered a voting agreement substantially identical to the Agreement. The Stockholder agrees that any Transfer of Subject Shares not permitted hereby shall be null and void and that any such prohibited Transfer shall be enjoined. If any voluntary or involuntary transfer of any Subject Shares covered hereby shall occur (including, but not limited to, a sale by the Stockholder's trustee in bankruptcy, or a sale to a purchaser at any creditor's or court sale), the transferee (which term, as used herein, shall include any and all transferees and subsequent transferees of the initial transferee) shall take and hold such Subject Shares subject to all of the restrictions, liabilities and rights under this Agreement, which shall continue in full force and effect.

(b) In the event of a stock dividend or distribution, or any change in the Subject Shares by reason of any stock dividend or distribution, split-up, recapitalization, combination, conversion, exchange of shares or the like, the term "Subject Shares" shall be deemed to refer to and include the Subject Shares as well as all such stock dividends and distributions and any securities into which or for which any or all of the Subject Shares may be changed or exchanged or which are received in such transaction. The Stockholder further agrees that, in the event Stockholder purchases or otherwise acquires beneficial or record ownership of or an interest in, or acquires the right to vote or share in the voting of, any additional Shares, in each case after the execution of this Agreement and prior to the Expiration Time, the Stockholder shall deliver promptly to the Company and Parent written notice of such event, which notice shall state the number of additional Shares so acquired. The Stockholder agrees that any such additional Shares shall constitute Subject Shares for all purposes of this Agreement and shall be subject to the terms of this Agreement, including all covenants, agreements, obligations, representations and warranties set forth herein as if those additional Shares were owned by the Stockholder on the date of this Agreement.

SECTION 3.2 Stockholder's Capacity. All agreements and understandings made herein shall be made solely in the Stockholder's capacity as a holder of the Subject Shares and not in any other capacity.

SECTION 3.3 Other Offers. Except to the extent the Company is permitted to take such action pursuant to the Merger Agreement, the Stockholder (in the Stockholder's capacity as such) shall not, and shall instruct and cause its Representatives not to, take any of the following actions: (a) solicit, initiate, knowingly encourage or knowingly facilitate an Acquisition Proposal, (b) furnish any non-public information regarding the Company to any Person in connection with or in response to an Acquisition Proposal, (c) engage in, enter into, continue or otherwise participate in any discussions or negotiations with any Person with respect to, or otherwise knowingly cooperate in any way with any Person (or any representative thereof) with respect to, any Acquisition Proposal, (d) approve, endorse or recommend or propose to approve, endorse or recommend, any Acquisition Proposal or (e) enter into any letter of intent or similar document or any Contract contemplating, approving, endorsing or recommending or proposing to approve, endorse or recommend, any Acquisition Transaction or accepting any Acquisition Proposal; *provided, however*, that none of the foregoing restrictions shall apply to the Stockholder's and its Representatives' interactions with Parent, Merger Sub, the Company and their respective subsidiaries and representatives. Without limiting the foregoing, it is understood that any violation of the foregoing restrictions by any Representatives of the Stockholder shall be deemed to be a breach of this Section 3.3 by the Stockholder. The Stockholder shall, and shall use reasonable best efforts to cause its Representatives to, immediately cease any and all existing discussions or negotiations with any Persons conducted heretofore with respect to any Acquisition Proposal.

SECTION 3.4 Communications. During the Voting Period, the Stockholder shall not, and shall use its reasonable best efforts to cause its Representatives, if any, not to, directly or indirectly, make any press release, public announcement or other public communication that criticizes or disparages this Agreement or the Merger Agreement or any of the transactions contemplated hereby and thereby, without the prior written consent of Parent and the Company, *provided* that the foregoing shall not limit or affect any actions taken by the Stockholder (or any affiliated officer or director of Stockholder) that would be permitted to be taken by Stockholder pursuant to the Merger Agreement. The Stockholder hereby (a) consents to and authorizes the publication and disclosure by Parent, Merger Sub and the Company (including in any publicly filed documents relating to the Merger or any transaction contemplated by the Merger Agreement) of: (i) the Stockholder's identity; (ii) the Stockholder's beneficial ownership of the Subject Shares; (iii) this Agreement; and (iv) the nature of the Stockholder's commitments, arrangements and understandings under this Agreement, and any other information that Parent, Merger Sub or the Company determines to be necessary in any SEC disclosure document in connection with the Merger or any transactions contemplated by the Merger Agreement and (b) agrees as promptly as practicable to notify Parent, Merger Sub and the Company of any required corrections with respect to any written information supplied by the Stockholder specifically for use in any such disclosure document.

SECTION 3.5 Voting Trusts. The Stockholder agrees that it will not, nor will it permit any entity under its control to, deposit any of its Subject Shares in a voting trust or subject any of its Subject Shares to any arrangement with respect to the voting of such Subject Shares other than as provided herein.

SECTION 3.6 Waiver of Appraisal Rights. The Stockholder hereby irrevocably and unconditionally waives, and agrees not to assert, exercise or perfect (or attempt to exercise, assert or perfect) any rights of appraisal or rights to dissent from the Merger or quasi-appraisal rights that it may at any time have under applicable Laws, including Section 262 of the DGCL. The Stockholder agrees not to commence, join in, facilitate, assist or encourage, and agrees to take all actions necessary to opt out of any class in any class action with respect to, any claim, derivative or otherwise, against Parent, Merger Sub, the Company or any of their respective successors, directors or officers, (a) challenging the validity, binding nature or enforceability of, or seeking to enjoin the operation of, this Agreement or the Merger Agreement, or (b) alleging a breach of any fiduciary duty of any Person in connection with the evaluation, negotiation, entry into or consummation of the Merger Agreement.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF STOCKHOLDER

The Stockholder hereby represents and warrants to the Company as follows:

SECTION 4.1 Due Authorization, etc. The Stockholder is a natural person, corporation, limited partnership or limited liability company. If the Stockholder is a corporation, limited partnership or limited liability company, Stockholder is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is incorporated, organized or constituted. The Stockholder has all necessary power and authority to execute and deliver this Agreement, perform the Stockholder's obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement, the performance of the Stockholder's obligations hereunder and the consummation of the transactions contemplated hereby by the Stockholder have been duly authorized by all necessary action on the part of the Stockholder and no other proceedings on the part of the Stockholder are necessary to authorize this Agreement, or to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by the Stockholder and (assuming the due authorization, execution and delivery by Parent and the Company) constitutes a valid and binding obligation of the Stockholder, enforceable against the Stockholder in accordance with its terms, except to the extent enforcement is limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar Laws of general applicability relating to or affecting creditors' rights and by general equitable principles.

SECTION 4.2 Ownership of Shares. *Schedule I* hereto sets forth opposite the Stockholder's name the Shares over which the Stockholder has sole record and beneficial ownership as of the date hereof. As of the date hereof, the Stockholder is the lawful owner of the Shares denoted as being owned by the Stockholder on *Schedule I* hereto, has the sole power to vote or cause to be voted such Shares and has the sole power to dispose of or cause to be disposed such Shares (other than, if Stockholder is a partnership or a limited liability company, the rights and interest of Persons that own partnership interests or units in Stockholder under the partnership agreement or operating agreement governing Stockholder and applicable partnership or limited liability company law, or if Stockholder is a married individual and resides in a state with community property laws, the community property interest of his or her spouse to the extent applicable under such community property laws, which spouse hereby consents to this Agreement by executing the spousal consent attached hereto). The Stockholder has, and will at all times up until the Expiration Time have, good and valid title to the Shares denoted as being owned by the Stockholder on *Schedule I* hereto, free and clear of any and all pledges, mortgages, liens, charges, proxies, voting agreements, encumbrances, adverse claims, options, security interests and demands of any nature or kind whatsoever, other than (a) those created by this Agreement, or (b) those existing under applicable securities laws. Without limiting the generality of the foregoing, no Person has any contractual or other right or obligation to purchase or otherwise acquire any of the Shares, and no Shares are subject to any proxy, voting trust or other agreement or arrangement with respect to the voting of the Shares except as provided hereunder.

SECTION 4.3 No Conflicts. (a) No filing with any Governmental Body, and no authorization, consent or approval of any other Person is necessary for the execution of this Agreement by the Stockholder and (b) none of the execution and delivery of this Agreement by the Stockholder, the performance of the Stockholder's obligations hereunder, the consummation by the Stockholder of the transactions contemplated hereby or compliance by the Stockholder with any of the provisions hereof shall (i) conflict with or result in any breach of the organizational documents of the Stockholder, (ii) result in, or give rise to, a violation or breach of or a default under any of the terms of any material contract, understanding, agreement or other instrument or obligation to which the Stockholder is a party or by which the Stockholder or any of the Subject Shares or its assets may be bound or (iii) violate any applicable order, writ, injunction, decree, judgment, statute, rule or regulation, except for any of the foregoing as would not reasonably be expected to impair the Stockholder's ability to perform its obligations under this Agreement.

SECTION 4.4 Finder's Fees. No investment banker, broker, finder or other intermediary is entitled, whether directly or indirectly, to a fee, commission or other benefit from Parent, Merger Sub or the Company in respect of this Agreement based upon any Contract made by or on behalf of the Stockholder, solely in the Stockholder's capacity as a stockholder of the Company.

SECTION 4.5 Reliance. The Stockholder has had the opportunity to review the Merger Agreement and this Agreement with counsel of the Stockholder's own choosing. The Stockholder understands and acknowledges that the Company is entering into the Merger Agreement in reliance upon the Stockholder's execution, delivery and performance of this Agreement.

SECTION 4.6 No Litigation. As of the date of this Agreement, there is no Legal Proceeding pending or, to the knowledge of the Stockholder, threatened against the Stockholder that would reasonably be expected to impair the ability of the Stockholder to perform its obligations hereunder or consummate the transactions contemplated hereby.

ARTICLE V TERMINATION

SECTION 5.1 Termination. This Agreement shall automatically terminate, and none of Parent, the Company or the Stockholder shall have any rights or obligations hereunder and this Agreement shall become null and void and have no effect upon the earliest to occur of: (a) the Effective Time; and (b) the valid termination of the Merger Agreement in accordance with its terms. The parties acknowledge that upon termination of this Agreement as permitted under and in accordance with the terms of this Agreement, Stockholder shall have no right to recover any claim with respect to any losses suffered by Stockholder in connection with such termination. Notwithstanding anything to the contrary herein, (i) nothing set forth in this Section 5.1 shall relieve Stockholder from liability for any breach of this Agreement prior to termination hereof, and (ii) the provisions of this Article V and of Article VI shall survive the termination of this Agreement.

ARTICLE VI MISCELLANEOUS

SECTION 6.1 Further Actions. Subject to the terms and conditions set forth in this Agreement, the Stockholder agrees to take any all actions and to do all things reasonably necessary to effectuate this Agreement. If the Stockholder is a married individual, his or her spouse shall deliver the spousal consent attached hereto unless such Stockholder can demonstrate to Parent's and the Company's reasonable satisfaction that his or her spouse does not have any community property interests in the Subject Shares.

SECTION 6.2 Fees and Expenses. Except as otherwise specifically provided herein, each party shall bear its own fees and expenses in connection with this Agreement and the transactions contemplated hereby.

SECTION 6.3 Amendments, Waivers, etc. This Agreement may not be amended except by an instrument in writing signed by all the parties hereto and specifically referencing this Agreement. The failure of any party to assert any rights or remedies shall not constitute a waiver of such rights or remedies.

SECTION 6.4 Notices. Any notice, request, instruction or other document required to be given hereunder shall be sufficient if in writing, and sent by confirmed electronic mail transmission of a "portable document format" (".pdf") attachment (provided that any notice received by electronic mail transmission or otherwise at the addressee's location on any business day after 5:00 p.m. (addressee's local time) shall be deemed to have been received at 9:00 a.m. (addressee's local time) on the next business day), by reliable overnight delivery service (with proof of service), or hand delivery, addressed as follows:

If to the Company, to

Ocuphire Pharma, Inc.
37000 Grand River Ave, Suite 120
Farmington Hills, MI 48335
Attn: Mina Sooch
Email: mssooch@ocuphire.com

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

Honigman LLP
650 Trade Centre Way, Suite 2000
Kalamazoo, MI 49002
Attention: Phillip D. Torrence
Email: ptorrence@honigman.com

If to Parent, to

Rexahn Pharmaceuticals, Inc.
15245 Shady Grove Road, Suite 455
Rockville, MD 20850
Attn: Douglas J. Swirsky
Email: swirskyd@rexahn.com

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

Hogan Lovells US LLP
100 International Drive, Suite 2000
Baltimore, MD 21202
Attention: Asher M. Rubin; William I. Intner
Email: asher.rubin@hoganlovells.com; william.intner@hoganlovells.com

If to the Stockholder, to the address or electronic mail address set forth on the signature pages hereto or to such other Person or address as any party shall specify by written notice so given.

SECTION 6.5 Interpretation; Construction. Headings of the Articles and Sections of this Agreement are for convenience of the parties only, and shall be given no substantive or interpretive effect whatsoever. 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. 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."

SECTION 6.6 Severability. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application of such provision to any Person or any circumstance, is invalid or unenforceable (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application of such provision, in any other jurisdiction.

SECTION 6.7 Entire Agreement; Assignment. This Agreement constitutes the entire agreement, and supersedes all other prior agreements and understandings, both written and oral, between the parties, or any of them, with respect to the subject matter hereof; *provided, however*, that, as between the Company and Parent, to the extent of any conflict between the Merger Agreement and this Agreement, the terms of the Merger Agreement shall control and supersede any such conflicting terms. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other parties, except that, without consent, each of Parent and the Company may assign all or any of its rights and obligations hereunder to any of its Affiliates that assume the rights and obligations of such party under the Merger Agreement. Subject to the preceding two sentences, this Agreement will be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns. Notwithstanding anything to the contrary set forth herein, the Stockholder agrees that this Agreement and the obligations hereunder shall be binding upon any Person to which record or beneficial ownership of the Stockholder's Subject Shares shall pass, whether by operation or law or otherwise, including the Stockholder's heirs, guardians, administrators or successors and assigns, and the Stockholder agrees to take all actions necessary to effect the foregoing.

SECTION 6.8 Governing Law. THIS AGREEMENT AND ALL QUESTIONS RELATING TO THE INTERPRETATION OR ENFORCEMENT OF THIS AGREEMENT SHALL BE DEEMED TO BE MADE IN AND IN ALL RESPECTS SHALL BE INTERPRETED, CONSTRUED AND GOVERNED BY AND IN ACCORDANCE WITH THE LAW OF THE STATE OF DELAWARE WITHOUT REGARD TO THE CONFLICTS OF LAW PRINCIPLES THEREOF TO THE EXTENT THAT SUCH PRINCIPLES WOULD DIRECT A MATTER TO ANOTHER JURISDICTION.

SECTION 6.9 Specific Performance. The Stockholder acknowledges that any breach of this Agreement would give rise to irreparable harm for which monetary damages would not be an adequate remedy and each of the Company and Parent shall be entitled to a decree of specific performance and to temporary, preliminary and permanent injunctive relief to prevent breaches or threatened breaches of any of the provisions of this Agreement, without the necessity of proving the inadequacy of monetary damages as a remedy, which shall be the sole and exclusive remedy for any such breach.

SECTION 6.10 Submission to Jurisdiction. The parties hereby irrevocably submit to the exclusive personal jurisdiction of the Court of Chancery of the State of Delaware, or, if the Chancery Court declines jurisdiction, the United States District Court for the District of Delaware or the courts of the State of Delaware solely in respect of the interpretation and enforcement of the provisions of this Agreement and hereby waive, and agree not to assert, as a defense in any action, suit or proceeding for the interpretation or enforcement hereof, that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in said courts or that the venue thereof may not be appropriate or that this Agreement may not be enforced in or by such courts, and the parties hereto irrevocably agree that all claims relating to such action, suit or proceeding shall be heard and determined in such courts. The parties hereby consent to and grant any such court jurisdiction over the person of such parties and, to the extent permitted by law, over the subject matter of such dispute and agree that mailing of process or other papers in connection with any such action or proceeding in the manner provided in *Section 6.4* or in such other manner as may be permitted by applicable Laws shall be valid and sufficient service thereof.

SECTION 6.11 Waiver of Jury Trial. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (a) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (b) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (c) EACH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (d) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 6.11.

SECTION 6.12 Counterparts. This Agreement may be executed in two or more counterparts (including by facsimile transmission or other means of electronic transmission, such as by electronic mail in "pdf" form), each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument, and shall become effective when one or more counterparts have been signed by each of the parties and delivered (by facsimile or otherwise) to the other parties.

(Signature Page Follows)

IN WITNESS WHEREOF, the Company, Parent and the Stockholder have caused this Agreement to be duly executed as of the day and year first above written.

OCUPHIRE PHARMA, INC.

By: _____
Name:
Title:

REXAHN PHARMACEUTICALS, INC.

By: _____
Name: Douglas J. Swirsky
Title: President and Chief Executive Officer

STOCKHOLDER

By: _____
Name:
Title:

Address:

Electronic Mail Address:

[Signature Page to Voting Agreement]

Exhibit A

Certificate of Amendment

[See attached.]

Schedule I

Ownership of Shares

Name and Address of Stockholder

[•]

Number of Shares of Common Stock

[•]

Rexahn Pharmaceuticals, Inc.
15245 Shady Grove Road, Suite 455
Rockville, MD 20850

Lock-Up Agreement

June __, 2020

This Lock-Up Agreement (this "**Agreement**") is executed in connection with the Agreement and Plan of Merger and Reorganization (the "**Merger Agreement**") by and among Rexahn Pharmaceuticals, Inc. ("**Parent**"), Razor Merger Sub, Inc. ("**Merger Sub**"), and Ocuphire Pharma, Inc. (the "**Company**"), dated as of June 17, 2020. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Merger Agreement.

In connection with, and as a material inducement to, each of the parties entering into the Merger Agreement and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the undersigned, by executing this Agreement, irrevocably agrees that, without the prior written consent of Parent, during the period commencing at the Effective Time and continuing until the end of the Lock-Up Period (as hereinafter defined), the undersigned will not: (1) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, make any short sale or otherwise transfer or dispose of or lend, directly or indirectly, any shares of Parent Common Stock or any securities convertible into, exercisable or exchangeable for or that represent the right to receive Parent Common Stock (including without limitation, Parent Common Stock or such other securities which may be deemed to be beneficially owned by the undersigned in accordance with the rules and regulations of the SEC and securities of Parent which may be issued upon exercise of a stock option, restricted stock unit or warrant) whether now owned or hereafter acquired (collectively, the "**Parent Securities**"); (2) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the Parent Securities, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Parent Common Stock or such other securities, in cash or otherwise; (3) make any demand for or exercise any right with respect to, the registration of any Parent Common Stock or any security convertible into or exercisable or exchangeable for Parent Common Stock; (4) except for any voting agreement entered into as of the date hereof by the undersigned with Parent and the Company, grant any proxies or powers of attorney with respect to any Parent Securities, deposit any Parent Securities into a voting trust or enter into a voting agreement or similar arrangement or commitment with respect to any Parent Securities; or (5) publicly disclose the intention to do any of the foregoing (each of the foregoing restrictions, the "**Lock-Up Restrictions**").

Notwithstanding the terms of the foregoing paragraph, the Lock-Up Restrictions shall automatically terminate and cease to be effective on the date that is one-hundred and eighty (180) days after the Effective Time. The period during which the Lock-Up Restrictions apply to the Parent Securities shall be deemed the "**Lock-Up Period**" with respect thereto.

The undersigned agrees that the Lock-Up Restrictions preclude the undersigned from engaging in any hedging or other transaction with respect to any then-subject Parent Securities which is designed to or which reasonably could be expected to lead to or result in a sale or disposition of such Parent Securities even if such Parent Securities would be disposed of by someone other than the undersigned. Such prohibited hedging or other transactions would include without limitation any short sale or any purchase, sale or grant of any right (including without limitation any put or call option) with respect to such Parent Securities or with respect to any security that includes, relates to, or derives any significant part of its value from such Parent Securities.

Notwithstanding the foregoing, the undersigned may transfer any of the Parent Securities (i) if the undersigned is a natural person, (1) to any person related to the undersigned by blood or adoption who is an immediate family member (not more remote than first cousin), or a family member by marriage or domestic partnership (a "**Family Member**"), (2) as a *bona fide* gift or charitable contribution, (3) to any trust for the direct or indirect benefit of the undersigned or any Family Member of the undersigned, (4) to the undersigned's estate, following the death of the undersigned, by will, intestacy or other operation of law, (5) by operation of law pursuant to a qualified domestic order or in connection with a divorce settlement, or (6) to any partnership, corporation, limited liability company, investment fund or other entity which is controlled by the undersigned and/or by any Family Member of the undersigned; (ii) if the undersigned is a corporation, partnership, limited liability company, trust or other business entity, (1) to another corporation, partnership, limited liability company, trust or other business entity that is a direct or indirect affiliate (as defined in Rule 405 promulgated under the Securities Act of 1933, as amended) of the undersigned or (2) as distributions or dividends of shares of Parent Common Stock or any security convertible into or exercisable for Parent Common Stock to limited partners, limited liability company members or stockholders of the undersigned or holders of similar equity interests in the undersigned, (iii) if the undersigned is a trust, to the beneficiary of such trust, (iv) to a nominee or custodian of a person or entity to whom a disposition or transfer would be permissible under above clauses (i) through (iii), (v) to Parent in a transaction exempt from Section 16(b) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**") upon a vesting event of the Parent Securities or upon the exercise of options or warrants to purchase Parent Common Stock on a "cashless" or "net exercise" basis or to cover tax withholding obligations of the undersigned in connection with such vesting or exercise (but for the avoidance of doubt, excluding all manners of exercise that would involve a sale in the open market of any securities relating to such options or warrants, whether to cover the applicable aggregate exercise price, withholding tax obligations or otherwise), (vi) to Parent in connection with the termination of employment or other termination of a service provider and pursuant to agreements in effect as of the Effective Time whereby Parent has the option to repurchase such shares or securities, (vii) acquired by the undersigned in open market transactions after the Effective Time, (viii) pursuant to a bona fide third party tender offer, merger, consolidation or other similar transaction made to all holders of Parent's capital stock involving a change of control of Parent, provided that in the event that such tender offer, merger, consolidation or other such transaction is not completed, the Parent Securities shall remain subject to the restrictions contained in this Agreement, or (ix) pursuant to an order of a court or regulatory agency; *provided*, in the case of clauses (i)-(iv), that (A) such transfer shall not involve a disposition for value and (B) the transferee shall have executed and delivered a Lock-Up Agreement with terms and in a form substantially identical to this Agreement with respect to the shares of Parent Common Stock or other securities so transferred; and *provided, further*, in the case of clauses (i)-(vii), no filing or public announcement under the Exchange Act or otherwise shall be required or voluntarily made by any person in connection with such transfer.

In addition, the foregoing restrictions shall not apply to (i) the exercise of stock options granted pursuant to equity incentive plans existing immediately following the Effective Time, including the “net” exercise of such options in accordance with their terms and the surrender of Parent Common Stock in lieu of payment in cash of the exercise price and any tax withholding obligations due as a result of such exercise (but for the avoidance of doubt, excluding all manners of exercise that would involve a sale in the open market of any securities relating to such options, whether to cover the applicable aggregate exercise price, withholding tax obligations or otherwise); *provided* that it shall apply to any of the Parent Securities issued upon such exercise, (ii) the sale or transfer of Parent Common Stock in an amount approximately equivalent to satisfy any income tax liabilities associated with ownership of Parent Securities; or (iii) the establishment of any contract, instruction or plan (a “*Plan*”) that satisfies all of the requirements of Rule 10b5-1(c)(1)(i)(B) under the Exchange Act; *provided* that (A) such Plan does not provide for the transfer of Parent Common Stock or any securities convertible into or exercisable or exchangeable for Parent Common Stock during the Lock-Up Period and (B) no public announcement or filing with the SEC or other regulatory authority is required or voluntarily made by or on behalf of the undersigned, Parent or any other person, prior to the expiration of the Lock-Up Period, in connection with the establishment of such Plan or any transactions contemplated thereunder.

Any attempted transfer in violation of this Agreement will be of no effect and null and void, regardless of whether the purported transferee has any actual or constructive knowledge of the transfer restrictions set forth in this Agreement, and will not be recorded on the share register of Parent. In furtherance of the foregoing, the undersigned hereby agrees and consents to the entry of “stop transfer” instructions with Parent’s transfer agent and registrar relating to the transfer of the undersigned’s shares of Parent Common Stock in violation of this Agreement and further agrees that Parent and its transfer agent and registrar are hereby authorized to decline to make any transfer of shares of Parent Common Stock if such transfer would constitute a violation or breach of this Agreement.

Parent may cause the legend set forth below, or a legend substantially equivalent thereto, to be placed upon any certificate(s) or other documents, ledgers or instruments evidencing the undersigned’s ownership of Parent Common Stock:

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO AND MAY ONLY BE TRANSFERRED IN COMPLIANCE WITH A LOCK-UP AGREEMENT, A COPY OF WHICH IS ON FILE AT THE PRINCIPAL OFFICE OF THE COMPANY.

The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this Agreement and that upon request, the undersigned will execute any additional documents reasonably necessary to ensure the validity or enforcement of this Agreement. All authority herein conferred or agreed to be conferred and any obligations of the undersigned shall be binding upon the successors, assigns, heirs or personal representatives of the undersigned.

In the event that any holder of Parent Securities that is subject to a substantially similar agreement entered into by such holder and that acquired such Parent Securities as a former securityholder of the Company pursuant to the Merger Agreement, other than the undersigned, is permitted by Parent to sell or otherwise transfer or dispose of shares of Parent Common Stock for value other than as permitted by this or a substantially similar agreement entered into by such holder, the same percentage of shares of Parent Common Stock held by the undersigned shall be immediately and fully released on the same terms from any remaining restrictions set forth herein (the “**Pro-Rata Release**”). Upon the release of any Parent Securities from this Agreement, Parent will cooperate with the undersigned to facilitate the timely preparation and delivery of evidence of book-entry shares representing the Parent Securities without the restrictive legend above or the withdrawal of any stop transfer instructions.

The undersigned understands that the undersigned shall be released from all obligations under this Agreement upon the earlier of (i) the expiration of the Lock-Up Period, and (ii) if the Merger Agreement is terminated prior to the Effective Time pursuant to its terms, upon the date of such termination.

Any and all remedies herein expressly conferred upon Parent and the Company will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity, and the exercise by Parent and/or the Company of any one remedy will not preclude the exercise of any other remedy. The undersigned agrees that irreparable damage would occur to Parent and the Company in the event that any provision of this Agreement were not performed in accordance with its specific terms or were otherwise breached. It is accordingly agreed that Parent and the Company shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which Parent and the Company are entitled at law or in equity, and the undersigned waives any bond, surety or other security that might be required of Parent or the Company with respect thereto.

This Agreement and any claim, controversy or dispute arising under or related to this Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, without regard to the conflict of laws principles thereof.

This Agreement, and any certificates, documents, instruments and writings that are delivered pursuant hereto, constitutes the entire agreement and understanding of Parent, the Company and the undersigned in respect of the subject matter hereof and supersedes all prior understandings, agreements or representations by or among Parent, the Company and the undersigned, written or oral, to the extent they relate in any way to the subject matter hereof. This Agreement may be executed in 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 the undersigned by facsimile or electronic transmission in “.pdf” format shall be sufficient to bind the undersigned to the terms and conditions of this Agreement.

(Signature Page Follows)

The undersigned understands that Parent, Merger Sub and the Company are relying on this Lock-Up Agreement in entering into the Merger Agreement and proceeding toward consummation of the transactions contemplated thereby. The undersigned further understands that this Lock-Up Agreement is irrevocable and shall be binding upon the undersigned and the heirs, personal representatives, successors and assigns of the undersigned.

Very truly yours,

Printed Name of Holder

By: _____

Signature

Printed Name of Person Signing
(and indicate capacity of person signing if signing
as custodian, trustee, or on behalf of an entity)

[Lock-Up Agreement Signature Page]

SECURITIES PURCHASE AGREEMENT

SECURITIES PURCHASE AGREEMENT (this “**Agreement**”), dated as of June 17, 2020, by and among Ocuphire Pharma, Inc., a Delaware corporation, with headquarters located at 37000 Grand River Ave, Suite 120, Farmington Hills, MI 48335 (“**Ocuphire**”), Rexahn Pharmaceuticals, Inc., a Delaware corporation, with headquarters located at 15245 Shady Grove Road, Suite 455, Rockville, MD 20850 (“**Rexahn**”), and the investors listed on the Schedule of Buyers attached hereto (each, a “**Buyer**” and collectively, the “**Buyers**”).

WHEREAS:

A. Ocuphire, Rexahn and each Buyer is executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by Section 4(a)(2) of the Securities Act of 1933, as amended (the “**1933 Act**”), and Rule 506(b) of Regulation D (“**Regulation D**”) as promulgated by the United States Securities and Exchange Commission (the “**SEC**”) under the 1933 Act.

B. Each Buyer wishes to purchase, and Ocuphire wishes to sell, upon the terms and conditions stated in this Agreement, (i) that aggregate number of shares of Ocuphire’s common stock, \$0.0001 par value per share (the “**Ocuphire Common Stock**”), set forth opposite such Buyer’s name in column (3) on the Schedule of Buyers (which aggregate amount of Ocuphire Common Stock for all Buyers together (the “**Buyers’ Allocation Number**”) shall equal a number of shares, to be determined on the Closing Date (as defined below), that is exchangeable on the terms described in the Draft Merger Agreement (as defined below) for an aggregate of 15% of the estimated Parent Fully Diluted Number (as defined below), assuming solely for this purpose that all of the Exchange Shares (as defined below) estimated to be issued in exchange for Additional Common Shares (as defined below) were not then outstanding, and shall collectively be referred to herein as the “**Initial Common Shares**”), and (ii) up to that aggregate number of shares of Ocuphire Common Stock set forth opposite such Buyer’s name in column (4) of the Schedule of Buyers attached hereto (which aggregate amount for all Buyers shall equal the Buyers’ Allocation Number) (the “**Additional Common Shares**” and together with the Initial Common Shares, the “**Common Shares**”), which shall be issued in escrow to The Bank of New York Mellon acting as escrow agent (the “**Escrow Agent**”) in accordance with those certain escrow agreements by and among each Buyer, on the one hand, and Ocuphire, Rexahn and the Escrow Agent on the other hand, in the form attached hereto as Exhibit A (collectively, the “**Securities Escrow Agreement**”) and which shall be delivered from time to time to the Buyers pursuant to the terms and conditions set forth in this Agreement.

C. In addition, Rexahn hereby agrees to issue to each Buyer, following completion of the Merger (as defined below) upon the terms and conditions stated in this Agreement (i) warrants, in the form attached hereto as Exhibit B-1 (the “**Series A Warrants**”), representing the right to acquire an initial amount of shares of Rexahn’s common stock, par value \$0.0001 per share (the “**Rexahn Common Stock**”) equal to one-hundred (100%) percent of the quotient determined by dividing the Purchase Price (as defined below) paid by such Buyer on the Closing Date, by the Final Per Share Price (as defined below) (such shares of Rexahn Common Stock issuable upon exercise of the Series A Warrants, collectively, the “**Series A Warrant Shares**”), and (ii) warrants, in the form attached hereto as Exhibit B-2 (the “**Series B Warrants**”) and, together with the Series A Warrants, the “**Warrants**”), representing the right to acquire that number of shares of Rexahn Common Stock in accordance with its terms and conditions (such shares of Rexahn Common Stock issuable upon exercise of the Series B Warrants, collectively, the “**Series B Warrant Shares**” and, together with the Series A Warrant Shares, the “**Warrant Shares**”).

D. Contemporaneously with the execution and delivery of this Agreement, the Buyers and Rexahn are executing and delivering a Registration Rights Agreement, in the form attached hereto as Exhibit C (the “**Registration Rights Agreement**”), pursuant to which Rexahn has agreed to provide, following the closing of the Merger, certain registration rights with respect to the Registrable Securities (as defined in the Registration Rights Agreement) under the 1933 Act and the rules and regulations promulgated thereunder, and applicable state securities laws.

E. The Common Shares (and, as applicable, the Exchange Shares issued in exchange therefor), the Warrants and the Warrant Shares collectively are referred to herein as the “**Securities**.”

F. The “Parent Fully Diluted Number” is equal to the “fully-diluted” post-Merger outstanding shares of Rexahn Common Stock, which figure (i) includes all shares of Rexahn Common Stock that may be issued pursuant to in-the-money options, warrants or convertible securities, and (ii) with respect to Replacement Warrants (as defined in the Draft Merger Agreement) issued by Rexahn following the Subscription Date in exchange for existing Parent Warrants (as defined in the Draft Merger Agreement) shall include (A) all shares of Rexahn Common Stock that are subject to each Replacement Warrant that is in-the-money as of the date of issuance of such Replacement Warrant and (B) 0.5 times the number of shares of Rexahn Common Stock that may be issued pursuant to such out-of-the-money Replacement Warrants that is out-of-the-money as of the date of issuance of such Replacement Warrant and (iii) excludes all other out-of-the-money options, warrants or convertible securities of Rexahn; provided, however, for determining whether Replacement Warrants are in-the-money or out-of-the-money such determination will be made based on the difference between the exercise price of such Replacement Warrant as compared to the first Closing Sale Price (as defined in the Warrants) of a share of Rexahn Common Stock immediately following the issuance of such Replacement Warrant.

NOW, THEREFORE, Ocuphire, Rexahn and each Buyer hereby agree as follows:

1. PURCHASE AND SALE OF COMMON SHARES AND WARRANTS

(a) Purchase of Initial Common Shares. Subject to the satisfaction (or waiver) of the conditions set forth in Sections 7 and 8 below, (x) Ocuphire shall issue and sell to each Buyer, and each Buyer severally, but not jointly, agrees to purchase from Ocuphire on the Closing Date, the number of Initial Common Shares as is set forth opposite such Buyer’s name in column (3) on the Schedule of Buyers and (y) Ocuphire shall issue in escrow in the name of the Escrow Agent a number of shares of Ocuphire Common Stock equal to the Buyers’ Allocation Number (as adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction occurring after the date hereof) issuable as Additional Common Shares, in accordance with the terms hereof and the Securities Escrow Agreement (the “**Closing**”).

(b) Closing. The date and time of the Closing (the “**Closing Date**”) shall be 10:00 a.m., New York City time, on a date mutually agreed to by OcuPhire, Rexahn and each Buyer after notification of satisfaction (or waiver) of the conditions to the Closing set forth in Sections 7 and 8 below, and shall take place remotely by electronic transfer of Closing documentation, or at such other date as the parties hereto agree.

(c) Issuance of Warrants and Delivery of Additional Common Shares.

(i) Obligation to Issue Warrants. On the Warrant Closing Date (as defined below), and for no additional consideration, Rexahn shall issue to each Buyer (x) Series A Warrants to acquire an initial amount of shares of Rexahn Common Stock equal to one-hundred (100%) percent of the quotient determined by dividing the Purchase Price paid by such Buyer on the Closing Date, by the Final Per Share Price and (y) Series B Warrants to acquire Series B Warrant Shares in accordance with its terms and conditions (the “**Warrant Closing**”).

(ii) Obligation to Deliver Additional Common Shares. Promptly but in any event by no later than (x) the earlier to occur of (i) the tenth (10th) Trading Day (as defined in the Warrants) immediately following the Closing Date and (ii) with respect to any Buyer, the first (1st) Trading Day following the delivery to Rexahn of a written notice by such Buyer (an “**Early Delivery Notice**”) at any time from the fifth (5th) Trading Day immediately following the Closing Date indicating that such Buyer elects to determine the Final Per Share Price using the five (5) lowest Weighted Average Prices (as defined in the Warrants) of the Rexahn Common Stock during the period beginning on the first (1st) Trading Day immediately following the Closing Date and ending on the date such Buyer delivers such Early Delivery Notice to Rexahn, inclusive (as adjusted for stock splits, stock dividends, recapitalizations, reorganizations, reclassification, combinations, reverse stock splits or other similar events during such period) (such earlier date, the “**First Additional Exchange Shares Delivery Date**”) and/or (y) if Section 1(c)(iv) prevents the delivery on the First Additional Exchange Shares Delivery Date of all or any portion of the Exchange Shares (as defined in Section 5(d)) issued in exchange of Additional Common Shares to a Buyer, the second (2nd) Trading Day immediately after the delivery to the Escrow Agent (with a copy to Rexahn) of a notice by such Buyer in the form attached hereto as **Exhibit D** setting forth such Buyer’s election to receive all or any portion of the Exchange Shares issued in exchange of the Additional Common Shares such Buyer is entitled to pursuant to this Section 1(c)(ii) and the delivery of which is no longer prevented by Section 1(c)(iv) (a “**Capacity Notice**”) (the First Additional Exchange Shares Delivery Date and each second (2nd) Trading Day immediately following the delivery to the Escrow Agent of a Capacity Notice, an “**Additional Exchange Shares Delivery Date**”), subject to Section 1(c)(iv), Rexahn acknowledges that, in each case, without any additional consideration, the Escrow Agent shall transfer from the escrow account governed by the Securities Escrow Agreement and deliver via The Depository Trust Company (“**DTC**”) free delivery / free receive system, the Additional Common Shares (once exchanged for the Exchange Shares as set forth herein) (as adjusted for stock splits, stock dividends, recapitalizations, reorganizations, reclassification, combinations, reverse stock splits or other similar events occurring after the date hereof and including any securities, cash, rights or other property distributed with respect to such Additional Common Shares or in exchange for such Additional Common Shares), which such Exchange Shares issued in exchange of Additional Common Shares shall be equal to the lesser of (A) the number of Exchange Shares issued in exchange for the Additional Common Shares deposited in such Buyer’s escrow account (as adjusted for stock splits, stock dividends, recapitalizations, reorganizations, reclassification, combinations, reverse stock splits or other similar events occurring after the date hereof) and (B) the number (if positive) obtained by subtracting (I) the number of Exchange Shares issued in exchange for the Initial Common Shares purchased by such Buyer on the Closing Date (as adjusted for stock splits, stock dividends, recapitalizations, reorganizations, reclassification, combinations, reverse stock splits or other similar events occurring after the date hereof), from (II) the quotient determined by dividing (x) the aggregate Purchase Price paid by such Buyer on the Closing Date, by (y) with respect to each applicable Buyer, the greater of (a) the Reset Floor Price (as defined in the Warrants) and (b) eighty-five percent (85%) of the sum of the five (5) lowest Weighted Average Prices of the Rexahn Common Stock during the period beginning on the first (1st) Trading Day immediately following the Closing Date and ending on the First Additional Exchange Shares Delivery Date, inclusive (as adjusted for stock splits, stock dividends, recapitalizations, reorganizations, reclassification, combinations, reverse stock splits or other similar events during such period), divided by five (5) (the greater of the price set forth in the immediately preceding clauses (a) and (b), the “**Per Share Price**” and the lower of (i) the Per Share Price and (ii) the quotient obtained by dividing (x) the Purchase Price paid by such Buyer on the Closing Date, by (y) the amount of Initial Common Shares purchased by such Buyer on the Closing Date (as adjusted for stock splits, stock dividends, recapitalizations, reorganizations, reclassification, combinations, reverse stock splits or other similar events related to the Common Stock occurring after the Closing Date), the “**Final Per Share Price**”). Rexahn shall notify the Escrow Agent in writing of the occurrence of a First Additional Exchange Shares Delivery Date applicable to each Buyer and shall deliver a copy of such notice to such Buyer. On the First Additional Exchange Shares Delivery Date applicable to each Buyer, the Investor Representative (as defined in the applicable Securities Escrow Agreement) related to such Buyer and Rexahn shall instruct the Escrow Agent to release to Rexahn from the applicable escrow account governed by the Securities Escrow Agreement any Exchange Shares issued in exchange for Additional Common Shares to the extent that the Buyer(s) affiliated with such Investor Representative is not entitled to receive such Exchange Shares pursuant to this Section 1(c)(ii) without giving effect to the limitations under Section 1(c)(iv). Upon request of an Investor Representative, upon delivery of any Capacity Notice to the Escrow Agent, Rexahn hereby agrees to give instructions and to take any additional actions reasonably requested by such Investor Representative, to cause the Escrow Agent to promptly deliver (but in no event later than two (2) Trading Days after such request) the Additional Common Shares to which the applicable Buyer(s) are entitled pursuant to such Capacity Notice.

(iii) Mechanics of Delivery.

(1) General. Rexahn shall be responsible for all fees and expenses of its transfer agent (the “**Transfer Agent**”) and all fees and expenses with respect to the delivery of Exchange Shares issued in exchange of Additional Common Shares and transfer of such shares to each Buyer’s or its designee’s balance account with DTC, if any, including, without limitation, for same day processing. Rexahn’s obligations to cause the Transfer Agent to deliver and transfer Exchange Shares issued in exchange of Additional Common Shares to the Buyers in accordance with the terms and subject to the conditions hereof and the Securities Escrow Agreement are absolute and unconditional, irrespective of any action or inaction by such Buyer to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person (as defined below) or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination. Notwithstanding anything to the contrary contained herein, in no event will Rexahn have any responsibility under Section 1(c) until after the completion of the Merger and any Exchange Shares issued in exchange of Additional Common Shares be delivered with any restrictive legends or any restrictions or limitations on resale by the Buyers. If Rexahn and/or the Transfer Agent requires any legal opinions with respect to the delivery of any Exchange Shares issued in exchange of Additional Common Shares without restrictive legends or the removal of any such restrictive legends, Rexahn agrees to cause at its expense its legal counsel to issue any such legal opinions. Rexahn hereby acknowledges and agrees that the holding period of any Exchange Shares issued in exchange of Additional Common Shares delivered hereunder for purposes of Rule 144 (as defined below) shall be deemed to have commenced on the Closing Date. For purposes of this Agreement, “**Person**” means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization and a government or any department or agency thereof.

(2) Rexahn's Failure to Timely Deliver Securities. If Rexahn shall fail for any reason or for no reason to credit such Buyer's or its designee's balance account with DTC on the applicable Additional Exchange Shares Delivery Date for such number of Exchange Shares issued in exchange of shares of Rexahn Common Stock to which such Buyer is entitled under Section 1(c)(ii) (a "**Delivery Failure**"), then, in addition to all other remedies available to such Buyer, Rexahn shall pay in cash to such Buyer on each day after such Additional Exchange Shares Delivery Date that Rexahn shall fail to credit such Buyer's or its designee's balance account with DTC for the number of shares of Rexahn Common Stock to which such Buyer is entitled pursuant to Rexahn's obligation pursuant to clause (ii) below, an amount equal to 1.5 % of the product of (A) the number of Exchange Shares not issued to such Buyer on or prior to the applicable Additional Exchange Shares Delivery Date and to which the Buyer is entitled, and (B) any trading price of the Rexahn Common Stock selected by the Buyer in writing as in effect at any time during the period beginning on the applicable Additional Exchange Shares Delivery Date and ending on the date Rexahn makes the applicable cash payment, and if on or after such Trading Day such Buyer (or any Person in respect of, or on behalf, of such Buyer) purchases (in an open market transaction or otherwise) shares of Rexahn Common Stock related to the applicable Delivery Failure, then, in addition to all other remedies available to such Buyer, Rexahn shall, within two (2) Trading Days after such Buyer's request and in such Buyer's discretion, either (i) pay cash to such Buyer in an amount equal to such Buyer's total purchase price (including brokerage commissions and other out-of-pocket expenses, if any) for the shares of Rexahn Common Stock so purchased (the "**Buy-In Price**"), at which point Rexahn's obligation to credit such Buyer's or its designee's balance account with DTC for such shares of Rexahn Common Stock shall terminate, or (ii) promptly honor its obligation to credit such Buyer's or its designee's balance account with DTC and pay cash to such Buyer in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of shares of Rexahn Common Stock, multiplied by (B) any trading price of the Rexahn Common Stock selected by such Buyer in writing as in effect at any time during the period beginning on the applicable Additional Exchange Shares Delivery Date and ending on the date of such delivery and payment under this Section 1(c)(iii)(2). Nothing shall limit any Buyer's right to pursue any other remedies available to it hereunder, at law or in equity, including, without limitation, a decree of specific performance and/or injunctive relief with respect to Rexahn's failure to timely electronically deliver shares of Rexahn Common Stock as required pursuant to the terms hereof. Notwithstanding the foregoing, Rexahn shall have no obligations under Section 1(c) until after the closing of the Merger.

(3) Charges, Taxes and Expenses. Issuance of the Additional Common Shares to the Escrow Agent and subsequent delivery of the Exchange Shares issued in exchange thereof to the Buyers shall be made without charge to the Buyers for any issue or transfer tax or other incidental expense in respect of such issuance and transfer, all of which taxes (other than the Buyers' income taxes) and expenses shall be paid by Rexahn, and the Exchange Shares issued in exchange of such Additional Common Shares shall be delivered in the name of the respective Buyer or in such name or names as may be directed by the respective Buyer.

(4) Closing of Books. Neither Ocuphire nor Rexahn will close its stockholder books or records in any manner which prevents the timely exercise of such Buyer's rights with respect to the Exchange Shares issued in exchange of the Additional Common Shares.

(iv) **Blocker.** Notwithstanding anything to the contrary contained herein, Rexahn shall not deliver Exchange Shares issued in exchange of Additional Common Shares, and no Buyer shall have the right to receive Exchange Shares issued in exchange of Additional Common Shares, and any such delivery shall be null and void and treated as if never made, to the extent that after giving effect to such delivery, such Buyer together with its other Attribution Parties (as defined in the Warrants) would beneficially own in excess of such percentage corresponding to the checked box on such Buyer's signature page attached hereto (the "**Maximum Percentage**") of the number of shares of Rexahn Common Stock outstanding immediately after giving effect to such delivery. For purposes of the foregoing sentence, the aggregate number of shares of Rexahn Common Stock beneficially owned by such Buyer and the other Attribution Parties shall include the number of shares of Rexahn Common Stock held by such Buyer and all other Attribution Parties plus the number of Exchange Shares issued in exchange of Additional Common Shares delivered to such Buyer pursuant to Section 1(c) hereof with respect to which the determination of such sentence is being made, but shall exclude the number of shares of Rexahn Common Stock which would be issuable upon (i) exercise of the remaining, unexercised portion of the Warrants beneficially owned by such Buyer or any of the other Attribution Parties and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of Rexahn beneficially owned by such Buyer or any of the other Attribution Parties (including, without limitation, any convertible notes or convertible preferred stock or warrants) subject to a limitation on conversion or exercise analogous to the limitation contained herein. For purposes of this Section 1(c)(iv), beneficial ownership shall be calculated in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended (the "**1934 Act**"). For purposes of determining the number of outstanding shares of Rexahn Common Stock that the Buyers may receive without exceeding the Maximum Percentage, the Buyers may rely on the number of outstanding shares of Rexahn Common Stock as reflected in (1) Rexahn's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the SEC, as the case may be, (2) a more recent public announcement by Rexahn or (3) any other written notice by Rexahn or the Transfer Agent setting forth the number of shares of Rexahn Common Stock outstanding (the "**Reported Outstanding Share Number**"). If Rexahn receives a Capacity Notice from such Buyer at a time when the actual number of outstanding shares of Rexahn Common Stock is less than the Reported Outstanding Share Number, Rexahn shall promptly notify the Buyers in writing of the number of shares of Rexahn Common Stock then outstanding and, to the extent that such Capacity Notice would otherwise cause a Buyer's beneficial ownership, as determined pursuant to this Section 1(c)(iv), to exceed the Maximum Percentage, such Buyer must notify Rexahn of a reduced number of Exchange Shares issued in exchange of Additional Common Shares to be delivered pursuant to such Capacity Notice. For any reason at any time, upon the written or oral request of a Buyer, Rexahn shall within one (1) Business Day (as defined below) confirm in writing or by electronic mail to such Buyer the number of shares of Rexahn Common Stock then outstanding. In any case, the number of outstanding shares of Rexahn Common Stock shall be determined after giving effect to the conversion or exercise of securities of Rexahn, including the Warrants held by each Buyer and the other Attribution Parties since the date as of which the Reported Outstanding Share Number was reported. In the event that the delivery of Exchange Shares issued in exchange of Additional Common Shares to such Buyer results in such Buyer and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Rexahn Common Stock (as determined under Section 13(d) of the 1934 Act), the number of shares so delivered by which such Buyer's and the other Attribution Parties' aggregate beneficial ownership exceeds the Maximum Percentage (the "**Excess Shares**") shall be deemed null and void and shall be cancelled ab initio, and such Buyer shall not have the power to vote or to transfer the Excess Shares. If a Buyer's right to receive Exchange Shares issued in exchange of Additional Common Shares is limited, in whole or in part, by this Section 1(c)(iv), all such Exchange Shares issued in exchange of Additional Common Shares that are so limited shall be held in abeyance for the benefit of such Buyer by the Escrow Agent until the earlier to occur of the fifth (5th) anniversary of the Closing Date and such time as such Buyer notifies Rexahn that its right thereto would not result in such Buyer exceeding the Maximum Percentage and Rexahn shall promptly but in any event within two (2) Trading Days after the delivery of such Capacity Notice deliver to such Buyer the Exchange Shares issued in exchange of such Additional Common Shares. Upon delivery of a written notice to Rexahn, each Buyer may from time to time increase or decrease the Maximum Percentage to any other percentage not in excess of 9.99% as specified in such notice; provided that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61st) day after such notice is delivered to Rexahn and (ii) any such increase or decrease will apply only to such Buyer and the other Attribution Parties and not to any of the other Buyers that is not an Attribution Party of such Buyer. For purposes of clarity, the Exchange Shares issued in exchange of the Additional Common Shares deliverable pursuant to the terms hereof in excess of the Maximum Percentage shall not be deemed to be beneficially owned by such Buyer for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the 1934 Act. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 1(c)(iv) to the extent necessary to correct this paragraph or any portion of this paragraph which may be defective or inconsistent with the intended beneficial ownership limitation contained in this Section 1(c)(iv) or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be waived and shall apply to a successor of such Buyer. As used herein, "**Business Day**" means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

(d) Warrant Closing. The time of the Warrant Closing shall be 10:00 a.m., New York City time on the tenth (10th) Trading Day immediately following the Closing Date (the "**Warrant Closing Date**"), and shall take place remotely by electronic transfer of Warrant Closing documentation, or at such other date and place as the parties hereto agree.

(e) Purchase Price. The purchase price for the Common Shares and the related Warrants to be purchased by each Buyer pursuant to this Agreement shall be the amount set forth opposite such Buyer's name in column (5) of the Schedule of Buyers (the "**Purchase Price**").

(f) Form of Payment. On the Closing Date, (i) each Buyer shall pay its respective Purchase Price (less, in the case of Altium Growth Fund, LP (the "**Lead Investor**"), any amounts withheld pursuant to Section 5(h)) to Ocuphire for the Common Shares and the Warrants to be issued and sold to such Buyer pursuant to this Agreement by wire transfer of immediately available funds in accordance with Ocuphire's written wire instructions and (ii) Ocuphire shall deliver to each Buyer the number of Initial Common Shares such Buyer is purchasing as is set forth opposite such Buyer's name in column (3) of the Schedule of Buyers. On the Warrant Closing Date, Rexahn shall deliver to each Buyer (x) a Series A Warrant pursuant to which such Buyer shall have the right to acquire an initial amount of shares of Rexahn Common Stock equal to one-hundred (100%) percent of the quotient determined by dividing the Purchase Price paid by such Buyer on the Closing Date, by the Final Per Share Price, and (y) a Series B Warrant pursuant to which such Buyer shall have the right to acquire Series B Warrant Shares in accordance with its terms and conditions, in each case duly executed on behalf of Rexahn and registered in the name of such Buyer or its designee.

2. BUYER'S REPRESENTATIONS AND WARRANTIES. Each Buyer, severally and not jointly, represents and warrants with respect to only itself to each of Ocuphire and Rexahn that, as of the date hereof and as of the Closing Date:

(a) No Public Sale or Distribution. Such Buyer is (i) acquiring the Common Shares and the Warrants and (ii) upon exercise of the Warrants (other than pursuant to a Cashless Exercise (as defined in the Warrants)) will acquire the Warrant Shares issuable upon exercise of the Warrants, for its own account and not with a view towards, or for resale in connection with, the public sale or distribution thereof, except pursuant to sales registered or exempted under the 1933 Act; provided, however, that by making the representations herein, such Buyer does not agree to hold any of the Securities for any minimum or other specific term and reserves the right to dispose of the Securities at any time in accordance with or pursuant to a registration statement or an exemption under the 1933 Act. Such Buyer is acquiring the Securities hereunder in the ordinary course of its business. Such Buyer does not presently have any agreement or understanding, directly or indirectly, with any Person to distribute any of the Securities.

(b) Accredited Investor Status; No Disqualification Events. Such Buyer is an “accredited investor” as that term is defined in Rule 501(a) of Regulation D. To the extent such Buyer is a beneficial owner of 10% or more of Rexahn Common Stock as of the date hereof or as of the Closing Date, none of (i) such Buyer, (ii) any of such Buyer’s directors, executive officers, other officers that may serve as a director or officer of any company in which it invests, general partners or managing members, or (iii) any beneficial owner of Ocuphire’s or Rexahn’s voting equity securities (in accordance with Rule 506(d) of the 1933 Act) held by such Buyer is subject to any Disqualification Event (as defined below), except for Disqualification Events covered by Rule 506(d)(2) or (d)(3) under the 1933 Act and disclosed reasonably in advance of the Closing in writing in reasonable detail to Ocuphire and Rexahn.

(c) Reliance on Exemptions. Such Buyer understands that the Securities are being offered and sold to it in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that Ocuphire and Rexahn are relying in part upon the truth and accuracy of, and such Buyer’s compliance with, the representations, warranties, agreements, acknowledgments and understandings of such Buyer set forth herein in order to determine the availability of such exemptions and the eligibility of such Buyer to acquire the Securities.

(d) Information. Such Buyer and its advisors, if any, have been furnished with all materials relating to the business, finances and operations of Ocuphire and Rexahn and materials relating to the offer and sale of the Securities that have been requested by such Buyer. Such Buyer and its advisors, if any, have been afforded the opportunity to ask questions of Ocuphire and Rexahn. Neither such inquiries nor any other due diligence investigations conducted by such Buyer or its advisors, if any, or its representatives shall modify, amend or affect such Buyer’s right to rely on Ocuphire’s and Rexahn’s representations and warranties contained herein. Such Buyer understands that its investment in the Securities involves a high degree of risk. Such Buyer has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision with respect to its acquisition of the Securities. Such Buyer acknowledges and agrees that neither the Placement Agent (as defined in Section 3(g)) nor any Affiliate (as defined in Rule 144) of the Placement Agent has provided such Buyer with any information or advice with respect to the Securities nor is such information or advice necessary or desired. Neither the Placement Agent nor any Affiliate has made or makes any representation as to Ocuphire and Rexahn or the quality of the Securities and the Placement Agent and any Affiliate may have acquired non-public information with respect to Ocuphire and Rexahn which such Buyer agrees need not be provided to it. In connection with the issuance of the Securities to such Buyer, neither the Placement Agent nor any of its Affiliates has acted as a financial advisor or fiduciary to such Buyer.

(e) No Governmental Review. Such Buyer understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Securities or the fairness or suitability of the investment in the Securities nor have such authorities passed upon or endorsed the merits of the offering of the Securities.

(f) Transfer or Resale. Such Buyer understands that except as provided in the Registration Rights Agreement: (i) the Securities have not been and are not being registered under the 1933 Act or any state securities laws, and may not be offered for sale, sold, assigned or transferred unless (A) subsequently registered thereunder, (B) subject to Section 1(c)(iii)(1), such Buyer shall have delivered to Rexahn an opinion of counsel, in a form reasonably satisfactory to Rexahn, to the effect that such Securities to be sold, assigned or transferred may be sold, assigned or transferred pursuant to an exemption from such registration, or (C) such Buyer provides Rexahn with reasonable assurance that such Securities can be sold, assigned or transferred pursuant to Rule 144 or Rule 144A promulgated under the 1933 Act, as amended, (or a successor rule thereto) (collectively, "**Rule 144**"); (ii) any sale of the Securities made in reliance on Rule 144 may be made only in accordance with the terms of Rule 144 and further, if Rule 144 is not applicable, any resale of the Securities under circumstances in which the seller (or the Person through whom the sale is made) may be deemed to be an underwriter (as that term is defined in the 1933 Act) may require compliance with some other exemption under the 1933 Act or the rules and regulations of the SEC thereunder; and (iii) neither Rexahn nor any other Person is under any obligation to register the Securities under the 1933 Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder; provided, however, that the Common Shares will be exchanged on the Closing Date and pursuant to Section 5(d) will be exchangeable, for shares of Rexahn Common Stock registered under the 1933 Act pursuant to the registration statement on Form S-4 to be filed by Rexahn following the execution of this Agreement (as amended from time to time, the "**Final Form S-4**"). Notwithstanding the foregoing, the Securities may be pledged in connection with a bona fide margin account or other loan or financing arrangement secured by the Securities and such pledge of Securities shall not be deemed to be a transfer, sale or assignment of the Securities hereunder, and no Buyer effecting a pledge of Securities shall be required to provide Rexahn with any notice thereof or otherwise make any delivery to Rexahn pursuant to this Agreement or any other Transaction Document (as defined in Section 4(b)), including, without limitation, this Section 2(f).

(g) Legends. Such Buyer understands that the certificates or other instruments representing the Common Shares and the Warrants and, until such time as the resale or exchange of the Common Shares and the Warrant Shares have been registered under the 1933 Act as contemplated by the Registration Rights Agreement or the most recent draft registration statement on Form S-4 as of the date of this Agreement provided to such Buyer for such Buyer's review (the "**Draft Form S-4**", and together with the Final Form S-4, the "**Form S-4**"), as applicable, the stock certificates representing the Securities, except as set forth below, shall bear a restrictive legend in the following form (and a stop-transfer order may be placed against transfer of such stock certificates):

[NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE EXERCISABLE HAVE BEEN][THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN] REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL SELECTED BY THE HOLDER, IN A FORM REASONABLY SATISFACTORY TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD OR ELIGIBLE TO BE SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

The legend set forth above shall be removed and Rexahn shall issue a certificate without such legend to the holder of the Securities upon which it is stamped or issue to such holder by electronic delivery at the applicable balance account at DTC, if (i) such Securities are registered for resale under the 1933 Act or exchanged for other securities in a transaction registered under the 1933 Act, (ii) in connection with a sale, assignment or other transfer, except as provided in Section 1(c)(iii)(1), such holder provides Rexahn with an opinion of counsel, in a form reasonably satisfactory to Rexahn, to the effect that such sale, assignment or transfer of the Securities may be made without registration under the applicable requirements of the 1933 Act, or (iii) the Securities can be sold, assigned or transferred pursuant to Rule 144. Rexahn shall be responsible for the fees of its Transfer Agent and all DTC fees associated with such issuance. If Rexahn shall fail for any reason or for no reason to issue to the holder of the Securities within two (2) Trading Days after the occurrence of any of (i) through (iii) above (the initial date of such occurrence, the “**Legend Removal Date**” and such failure, a “**Legend Removal Failure**”), a certificate without such legend to such holder or to issue such Securities to such holder by electronic delivery at the applicable balance account at DTC, then, in addition to all other remedies available to such holder, Rexahn shall pay in cash to such holder on each day after the second (2nd) Trading Day after the Legend Removal Date and during such Legend Removal Failure an amount equal to 2.0% of the product of (i) the number of shares represented by such certificate, and (ii) any trading price of the Rexahn Common Stock selected by the holder in writing as in effect at any time during the period beginning on the applicable Legend Removal Date and ending on the date Rexahn makes the applicable cash payment, and if on or after such Trading Day the holder purchases (in an open market transaction or otherwise) Rexahn Common Stock relating to the applicable Legend Removal Failure, then Rexahn shall, within two (2) Trading Days after the holder’s request and in the holder’s discretion, either (i) pay cash to the holder in an amount equal to the holder’s total purchase price (including brokerage commissions, if any) for the Rexahn Common Stock so purchased (the “**Legend Buy-In Price**”), at which point the obligation of Rexahn to deliver such unlegended Securities shall terminate, or (ii) promptly honor its obligation to deliver to the holder such unlegended Securities as provided above and pay cash to the holder in an amount equal to the excess (if any) of the Legend Buy-In Price over the product of (A) such number of shares of Rexahn Common Stock, times (B) any trading price of the Rexahn Common Stock selected by the holder in writing as in effect at any time during the period beginning on the applicable Legend Removal Date and ending on the date Rexahn makes the applicable cash payment. Rexahn shall be responsible for the fees of its Transfer Agent and all DTC fees associated with such issuance.

(h) Validity; Enforcement. This Agreement and the other Transaction Documents to which such Buyer is a party have been duly and validly authorized, executed and delivered on behalf of such Buyer and shall constitute the legal, valid and binding obligations of such Buyer enforceable against such Buyer in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or to applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies.

(i) No Conflicts. The execution, delivery and performance by such Buyer of this Agreement and the other Transaction Documents to which such Buyer is a party and the consummation by such Buyer of the transactions contemplated hereby and thereby will not (i) result in a violation of the organizational documents of such Buyer or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which such Buyer is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to such Buyer, except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of such Buyer to perform its obligations hereunder.

3. REPRESENTATIONS AND WARRANTIES OF OCUPHIRE

Ocuphire represents and warrants to each of the Buyers that, as of the date hereof and as of the Closing Date:

(a) Organization and Qualification. Each of Ocuphire and its "Ocuphire Subsidiaries" (which for purposes of this Agreement means any entity in which Ocuphire, directly or indirectly, owns any of the capital stock or holds an equity or similar interest) are entities duly organized and validly existing and in good standing under the laws of the jurisdiction in which they are formed, and have the requisite power and authorization to own their properties and to carry on their business as now being conducted and as presently proposed to be conducted. Each of Ocuphire and each of the Ocuphire Subsidiaries is duly qualified as a foreign entity to do business and is in good standing in every jurisdiction in which its ownership of property or the nature of the business conducted by it makes such qualification necessary, except to the extent that the failure to be so qualified or be in good standing would not reasonably be expected to have a Ocuphire Material Adverse Effect. As used in this Agreement, "**Ocuphire Material Adverse Effect**" means any material adverse effect on the business, properties, assets, liabilities, operations, results of operations, condition (financial or otherwise) or prospects of Ocuphire and the Ocuphire Subsidiaries, individually or taken as a whole, or on the transactions contemplated hereby or on the other Ocuphire Transaction Documents (as defined below) or by the agreements and instruments to be entered into in connection herewith or therewith, or on the authority or ability of Ocuphire to perform any of its obligations under any of the Ocuphire Transaction Documents. Ocuphire has no Ocuphire Subsidiaries except as set forth in Schedule 3(a). The outstanding shares of capital stock of each of the Ocuphire Subsidiaries have been duly authorized and validly issued, are fully paid and non-assessable and are owned by Ocuphire or another Ocuphire Subsidiary free and clear of all liens, encumbrances and equities and claims; and no options, warrants or other rights to purchase, agreements or other obligations to issue or other rights to convert any obligations into shares of capital stock or ownership interests in the Ocuphire Subsidiaries are outstanding.

(b) Authorization; Enforcement; Validity. As of (i) the date hereof, subject to the approval of the Ocuphire stockholders of the transactions contemplated by the Draft Merger Agreement (collectively, the “**Ocuphire Required Stockholder Approvals**”) and (ii) the Closing Date, Ocuphire has the requisite corporate power and authority to enter into and perform its obligations under this Agreement, the Securities Escrow Agreement, the Lock-Up Agreements (as defined in Section 8(k)) and each of the other agreements entered into by Ocuphire in connection with the transactions contemplated by this Agreement (collectively, the “**Ocuphire Transaction Documents**”) and to issue the Common Shares in accordance with the terms hereof and thereof. The execution and delivery of this Agreement and the other Ocuphire Transaction Documents by Ocuphire and the consummation by Ocuphire of the transactions contemplated hereby and thereby, including, without limitation, the issuance of the Common Shares, have been duly authorized by Ocuphire’s board of directors and (other than the filing of a Form D with the SEC and any other filings as may be required by any state securities agencies), no further filing, consent or authorization is required by Ocuphire, its board of directors or its stockholders (other than, as of the date hereof, the Ocuphire Required Stockholder Approvals). This Agreement and the other Ocuphire Transaction Documents have been duly executed and delivered by Ocuphire, and constitute the legal, valid and binding obligations of Ocuphire, enforceable against Ocuphire in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors’ rights and remedies.

(c) Issuance of Common Shares. As of (i) the date hereof, subject to the Ocuphire Required Stockholder Approvals and (ii) the Closing Date, the issuance of the Common Shares is duly authorized and, upon issuance in accordance with the terms of the Ocuphire Transaction Documents, the Common Shares shall be validly issued and free from all preemptive or similar rights (except for those which have been validly waived prior to the date hereof), taxes, liens and charges and other encumbrances with respect to the issue thereof and the Common Shares shall be fully paid and nonassessable with the holders being entitled to all rights accorded to a holder of Ocuphire Common Stock. Assuming the accuracy of each of the representations and warranties set forth in Section 3 of this Agreement, the offer and issuance by Ocuphire of the Common Shares is exempt from registration under the 1933 Act.

(d) No Conflicts. Except as disclosed in Schedule 3(d), the execution, delivery and performance of the Ocuphire Transaction Documents by Ocuphire and any of the Ocuphire Subsidiaries and the consummation by Ocuphire of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Common Shares) will not (i) as of (x) the date hereof, subject to the Ocuphire Required Stockholder Approvals, and (y) as of the Closing Date, result in a violation of the Ocuphire Certificate of Incorporation (as defined below) or Ocuphire Bylaws (as defined below) or other organizational documents of Ocuphire or any of the Ocuphire Subsidiaries, any capital stock of Ocuphire or any of the Ocuphire Subsidiaries or the articles of association or bylaws of Ocuphire or any of the Ocuphire Subsidiaries or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) in any respect under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which Ocuphire or any of the Ocuphire Subsidiaries is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including foreign, federal and state securities laws, rules and regulations) applicable to Ocuphire or any of the Ocuphire Subsidiaries or by which any property or asset of Ocuphire or any of the Ocuphire Subsidiaries is bound or affected, except, in the case of clauses (ii) and (iii) above, as would not have or reasonably be expected to result in a Ocuphire Material Adverse Effect.

(e) Consents. As of (i) the date hereof, other than the Ocuphire Required Stockholder Approvals and (ii) the Closing Date, Ocuphire is not required to obtain any consent from, authorization or order of, or make any filing or registration with (other than the filing of a Form D with the SEC and any other filings as may be required by any state securities agencies or the filing of an amendment to Ocuphire's certificate of incorporation following receipt of the Ocuphire Required Stockholder Approvals to increase the number of authorized shares of Ocuphire Common Stock), any court, governmental agency or any regulatory or self-regulatory agency or any other Person in order for it to execute, deliver or perform any of its obligations under or contemplated by the Ocuphire Transaction Documents, in each case, in accordance with the terms hereof or thereof. All consents, authorizations, orders, filings and registrations which Ocuphire is required to obtain pursuant to the preceding sentence have been obtained or effected on or prior to the Closing Date (or in the case of filings detailed above, will be made timely after the Closing Date).

(f) Acknowledgment Regarding Buyer's Purchase of Securities. Ocuphire acknowledges and agrees that each Buyer is acting solely in the capacity of an arm's length purchaser with respect to the Ocuphire Transaction Documents and the transactions contemplated hereby and thereby and that, prior to the purchase of Securities hereunder, no Buyer is (i) an officer or director of Ocuphire or any of the Ocuphire Subsidiaries, (ii) an "affiliate" of Ocuphire or any of the Ocuphire Subsidiaries (as defined in Rule 144) or (iii) to the knowledge of Ocuphire, a "beneficial owner" of more than 10% of the Ocuphire Common Stock (as defined for purposes of Rule 13d-3 of the 1934 Act). Ocuphire further acknowledges that no Buyer is acting as a financial advisor or fiduciary of Ocuphire or any of the Ocuphire Subsidiaries (or in any similar capacity) with respect to the Ocuphire Transaction Documents and the transactions contemplated hereby and thereby, and any advice given by a Buyer or any of its representatives or agents in connection with the Ocuphire Transaction Documents and the transactions contemplated hereby and thereby is merely incidental to such Buyer's purchase of the Securities. Ocuphire further represents to each Buyer that Ocuphire's decision to enter into the Ocuphire Transaction Documents has been based solely on the independent evaluation by Ocuphire and its representatives.

(g) No General Solicitation; Placement Agent's Fees. Neither Ocuphire, nor any of the Ocuphire Subsidiaries or their affiliates, nor any Person acting on its or their behalf, has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with the offer or sale of the Securities. Ocuphire shall be responsible for the payment of any placement agent's fees, financial advisory fees, or brokers' commissions (other than for Persons engaged by any Buyer or its investment advisor) relating to or arising out of the transactions contemplated hereby, including, without limitation, placement agent fees payable to Canaccord Genuity LLC and Cantor Fitzgerald & Co. (collectively, the "**Placement Agent**") in connection with the sale of the Securities. Ocuphire shall pay, and hold each Buyer harmless against, any liability, loss or expense (including, without limitation, attorney's fees and out-of-pocket expenses) arising in connection with any such claim. Ocuphire acknowledges that it has engaged the Placement Agent in connection with the sale of the Securities. Other than the Placement Agent, neither Ocuphire nor any of the Ocuphire Subsidiaries has not engaged any placement agent or other agent in connection with the offer or sale of the Securities.

(h) No Integrated Offering. None of Ocuphire, the Ocuphire Subsidiaries, their affiliates, nor any Person acting on their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would require registration of the issuance of any of the Securities under the 1933 Act, whether through integration with prior offerings or otherwise, or cause this offering of the Securities to require approval of stockholders of Ocuphire for purposes of the 1933 Act or any applicable stockholder approval provisions, including, without limitation, under the rules and regulations of any exchange or automated quotation system on which any of the securities of Rexahn are listed or designated for quotation. None of Ocuphire, the Ocuphire Subsidiaries, their affiliates nor any Person acting on their behalf will take any action or steps that would require registration of the issuance of any of the Securities under the 1933 Act or cause the offering of any of the Securities to be integrated with other offerings for purposes of any such applicable stockholder approval provisions.

(i) Application of Takeover Protections: Rights Agreement. Ocuphire and its board of directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, interested stockholder, business combination (including, without limitation, under Section 203 of the Delaware General Corporation Law (“**DGCL**”)), poison pill (including, without limitation, any distribution under a rights agreement) or other similar anti-takeover provision under the Ocuphire Certificate of Incorporation, Ocuphire Bylaws or other organizational documents or the laws of the jurisdiction of its formation which is or could become applicable to any Buyer as a result of the transactions contemplated by this Agreement, including, without limitation, Ocuphire’s issuance of the Common Shares and any Buyer’s ownership of the Securities. Ocuphire and its board of directors have taken all necessary action, if any, in order to render inapplicable any stockholder rights plan or similar arrangement relating to accumulations of beneficial ownership of Ocuphire Common Stock or a change in control of Ocuphire or any of the Ocuphire Subsidiaries.

(j) S-4; Financial Statements. As of the date hereof, the sections of the Draft Form S-4 titled “Risk Factors – Risks Related to Ocuphire,” “Ocuphire Business,” “Ocuphire Management’s Discussion and Analysis of Financial Condition and Results of Operations,” “Related Party Transactions of Directors and Executive Officers of the Combined Company – Ocuphire Transactions” and “Principal Stockholders of Ocuphire,” and at the time the Final Form S-4 or such amendment thereto is filed with the SEC, do not, and will not, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. As of the date hereof, the Draft Form S-4, and as of each filing date of the Final Form S-4 or any amendment thereto, the financial statements of Ocuphire included in the Draft Form S-4 comply, and in the Final Form S-4 will comply, as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto. Such financial statements have been, and will be, prepared in accordance with U.S. generally accepted accounting principles consistently applied during the periods involved (“GAAP”), (except (i) as may be otherwise indicated in such financial statements or the notes thereto, or (ii) in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed or summary statements) and fairly present in all material respects the financial position of Ocuphire and the Ocuphire Subsidiaries as of the dates thereof and the results of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments which will not be material, either individually or in the aggregate). No other information provided by or on behalf of Ocuphire to any of the Buyers which is not included in the Draft Form S-4 (including, without limitation, information referred to in Section 2(d) of this Agreement or in the disclosure schedules to this Agreement) contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein, in the light of the circumstance under which they are or were made, not misleading.

(k) Absence of Certain Changes. Except as disclosed in Schedule 3(k)(i), since December 31, 2019, there has been no material adverse change and no material adverse development in the business, assets, liabilities, properties, operations, condition (financial or otherwise), results of operations or prospects of Ocuphire or the Ocuphire Subsidiaries. Except as disclosed in Schedule 3(k)(ii), since December 31, 2019, neither Ocuphire nor any of the Ocuphire Subsidiaries have (i) declared or paid any dividends, (ii) sold any assets, individually or in the aggregate, in excess of \$100,000 outside of the ordinary course of business or (iii) had capital expenditures, individually or in the aggregate, in excess of \$100,000. Neither Ocuphire nor any of the Ocuphire Subsidiaries has taken any steps to seek protection pursuant to any law or statute relating to bankruptcy, insolvency, reorganization, receivership, liquidation or winding up, nor does Ocuphire or any of the Ocuphire Subsidiaries have any knowledge or reason to believe that any of its creditors intend to initiate involuntary bankruptcy proceedings or any actual knowledge of any fact which would reasonably lead a creditor to do so. Ocuphire and the Ocuphire Subsidiaries, individually and on a consolidated basis, are not as of the date hereof, and, after giving effect to the transactions contemplated hereby to occur at the Closing, will not be Insolvent (as defined below). For purposes of this Agreement, “**Insolvent**” means, with respect to any Person, (i) the present fair saleable value of such Person’s assets is less than the amount required to pay such Person’s total Indebtedness (as defined below), (ii) such Person is unable to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured, (iii) such Person intends to incur or believes that it will incur debts that would be beyond its ability to pay as such debts mature or (iv) such Person has unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted.

(l) No Undisclosed Events, Liabilities, Developments or Circumstances. No event, liability, development or circumstance has occurred or exists, or is contemplated to occur with respect to Ocuphire, the Ocuphire Subsidiaries or their respective business, properties, prospects, operations or financial condition, that would be required to be disclosed by Ocuphire under applicable securities laws on a registration statement on Form S-1 filed with the SEC relating to an issuance and sale by Ocuphire of Ocuphire Common Stock and which has not been publicly announced.

(m) Conduct of Business: Regulatory Permits. Neither Ocuphire nor any of the Ocuphire Subsidiaries is in violation of any term of or in default under the Ocuphire Certificate of Incorporation, any certificate of designations, preferences or rights of any outstanding series of preferred stock of Ocuphire or any of the Ocuphire Subsidiaries, the Ocuphire Bylaws or their organizational charter or memorandum of association or certificate of incorporation or articles of association or bylaws, respectively. Neither Ocuphire nor any of the Ocuphire Subsidiaries is in violation of any judgment, decree or order or any statute, ordinance, rule or regulation applicable to Ocuphire or any of the Ocuphire Subsidiaries, and neither Ocuphire nor any of the Ocuphire Subsidiaries will conduct its business in violation of any of the foregoing, except in all cases for possible violations which would not, individually or in the aggregate, reasonably be expected to have a Ocuphire Material Adverse Effect. Ocuphire and the Ocuphire Subsidiaries possess all certificates, authorizations and permits issued by the appropriate foreign, federal or state regulatory authorities necessary to conduct their respective businesses, except where the failure to possess such certificates, authorizations or permits would not have, individually or in the aggregate, a Ocuphire Material Adverse Effect, and neither Ocuphire nor any such Ocuphire Subsidiary has received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit. Without limiting the generality of the foregoing, except as set forth in Schedule 3(m), Ocuphire has no knowledge of any facts or circumstances that would reasonably lead to delisting or suspension of the Rexahn Common Stock by the Nasdaq Capital Market (the “**Principal Market**”) in the foreseeable future.

(n) Foreign Corrupt Practices. Neither Ocuphire nor any of the Ocuphire Subsidiaries, nor any director, officer, agent, employee or other Person acting on behalf of Ocuphire or any of the Ocuphire Subsidiaries has, in the course of its actions for, or on behalf of, Ocuphire or any of the Ocuphire Subsidiaries (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; (iii) violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended (the “**FCPA**”); or (iv) made any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any foreign or domestic government official or employee.

(o) Transactions With Affiliates. Except as set forth in Schedule 3(o), none of the officers, directors or employees of Ocuphire or any of the Ocuphire Subsidiaries is presently a party to any transaction with Ocuphire or any of the Ocuphire Subsidiaries (other than for ordinary course services as employees, officers or directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any such officer, director or employee or, to the knowledge of the Ocuphire or any of the Ocuphire Subsidiaries, any corporation, partnership, trust or other Person in which any such officer, director, or employee has a substantial interest or is an employee, officer, director, trustee or partner.

(p) Equity Capitalization. As of the date hereof, the authorized capital stock of Ocuphire consists of (i) 5,000,000 shares of Ocuphire Common Stock, of which as of the date hereof, 3,543,751 shares are issued and outstanding, 1,175,000 shares are reserved for issuance pursuant to Ocuphire's stock option and purchase plans, of which 281,249 shares are subject to outstanding Ocuphire options granted under the Ocuphire stock plans and no shares are subject to outstanding Ocuphire restricted stock units. Prior to the Closing Date, 894,367 shares shall have been reserved for issuance pursuant to securities exercisable or exchangeable for, or convertible, into Ocuphire Common Stock (including 892,425 shares of Ocuphire Common Stock reserved for issuance in exchange for those certain notes as set forth in that certain conversion agreement, dated as of June 8, 2020, by and among Ocuphire and the entities whose names are listed on the schedule of purchasers therein (the "**Conversion Agreement**"), assuming the conversion of such notes as of the date hereof, and any increases of the Ocuphire Common Stock from such conversion after the date hereof shall only result from accrued interest), and (ii) 625,000 shares of preferred stock, of which as of the date hereof, no shares were issued and outstanding. No Ocuphire Common Stock is held in treasury. All of such outstanding shares are duly authorized and as of (i) the date hereof, the Ocuphire Required Stockholder Approvals, and (ii) as of the Closing Date, have been, or upon issuance will be, validly issued and are fully paid and nonassessable. (i) Except as disclosed in Schedule 3(p)(i), hereto, none of Ocuphire's or any Ocuphire Subsidiary's capital stock is subject to preemptive rights or any other similar rights or any liens or encumbrances suffered or permitted by Ocuphire or any Ocuphire Subsidiary's; (ii) except as disclosed in Schedule 3(p)(ii), there are no outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any capital stock of Ocuphire or any of the Ocuphire Subsidiaries, or contracts, commitments, understandings or arrangements by which Ocuphire is or may become bound to issue additional capital stock of Ocuphire or any of the Ocuphire Subsidiaries or options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any capital stock of Ocuphire or any of the Ocuphire Subsidiaries; (iii) except as disclosed in Schedule 3(p)(iii), there are no outstanding debt securities, notes, credit agreements, credit facilities or other agreements, documents or instruments evidencing Indebtedness of Ocuphire or any of the Ocuphire Subsidiaries or by which Ocuphire or any of the Ocuphire Subsidiaries is or may become bound; (iv) except as disclosed in Schedule 3(p)(iv), there are no financing statements securing obligations in any amounts filed in connection with Ocuphire or any of the Ocuphire Subsidiaries; (v), except as disclosed in Schedule 3(p)(v), there are no agreements or arrangements under which Ocuphire or any of the Ocuphire Subsidiaries is obligated to register the sale of any of their securities under the 1933 Act; (vi) except as disclosed in Schedule 3(p)(vi), there are no outstanding securities or instruments of Ocuphire or any of the Ocuphire Subsidiaries which contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which Ocuphire or any of the Ocuphire Subsidiaries is or may become bound to redeem a security of Ocuphire or any of the Ocuphire Subsidiaries; (vii) except as disclosed in Schedule 3(p)(vii), there are no securities or instruments containing anti-dilution or similar provisions that will be triggered by the issuance of the Securities; (viii) except as disclosed in Schedule 3(p)(viii), neither Ocuphire nor any of its Ocuphire Subsidiaries has any stock appreciation rights or "phantom stock" plans or agreements or any similar plan or agreement; and (ix) except as disclosed in Schedule 3(p)(ix), Ocuphire or any of the Ocuphire Subsidiaries have no liabilities or obligations, other than those incurred in the ordinary course of Ocuphire's or any of the Ocuphire Subsidiary's respective businesses and which, individually or in the aggregate, do not or could not have a Ocuphire Material Adverse Effect. True, correct and complete copies of Ocuphire's certificate of incorporation, as amended and as in effect on the date hereof (the "**Ocuphire Certificate of Incorporation**"), and Ocuphire's bylaws, as in effect on the date hereof (the "**Ocuphire Bylaws**"), and the terms of all securities convertible into, or exercisable or exchangeable for, Ocuphire Common Stock and the material rights of the holders thereof in respect thereto shall be provided to the Buyers on the Closing Date.

(q) Indebtedness and Other Contracts. Neither Ocuphire nor any of the Ocuphire Subsidiaries, (i) except as disclosed in Schedule 3(q)(i), has any outstanding Indebtedness, (ii) except as disclosed in Schedule 3(q)(ii), is a party to any contract, agreement or instrument, the violation of which, or default under which, by the other party(ies) to such contract, agreement or instrument would reasonably be expected to result in a Ocuphire Material Adverse Effect, (iii) except as disclosed in Schedule 3(q)(iii), is in violation of any term of, or in default under, any contract, agreement or instrument relating to any Indebtedness, except where such violations and defaults would not result, individually or in the aggregate, in a Ocuphire Material Adverse Effect, or (iv) except as disclosed in Schedule 3(q)(iv), is a party to any contract, agreement or instrument relating to any Indebtedness, the performance of which, in the judgment of Ocuphire's officers, has or is expected to have a Ocuphire Material Adverse Effect. Schedule 3(q) provides a detailed description of the material terms of such outstanding Indebtedness. For purposes of this Agreement: (x) "**Indebtedness**" of any Person means, without duplication (A) all indebtedness for borrowed money, (B) all obligations issued, undertaken or assumed as the deferred purchase price of property or services (including, without limitation, "capital leases" in accordance with GAAP) (other than trade payables entered into in the ordinary course of business consistent with past practice), (C) all reimbursement or payment obligations with respect to letters of credit, surety bonds and other similar instruments, (D) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses, (E) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property), (F) all monetary obligations under any leasing or similar arrangement which, in connection with GAAP is classified as a capital lease, (G) all indebtedness referred to in clauses (A) through (F) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any mortgage, claim, lien, tax, right of first refusal, pledge, charge, security interest or other encumbrance upon or in any property or assets (including accounts and contract rights) owned by any Person, even though the Person which owns such assets or property has not assumed or become liable for the payment of such indebtedness, and (H) all Contingent Obligations (as defined below) in respect of indebtedness or obligations of others of the kinds referred to in clauses (A) through (G) above; and (y) "**Contingent Obligation**" means, as to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to any indebtedness, capital lease, dividend or other obligation of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto.

(r) Absence of Litigation. There is no action, suit, proceeding, inquiry or investigation before or by any court, public board, government agency, self-regulatory organization or body pending or, to the knowledge of Ocuphire, threatened against or affecting Ocuphire or any of the Ocuphire Subsidiaries, the Ocuphire Common Stock or any of the Ocuphire Subsidiary's capital stock or any of Ocuphire's or any of the Ocuphire Subsidiary's officers or directors, whether of a civil or criminal nature or otherwise, in their capacities as such, except as set forth in Schedule 3(r). The matters set forth in Schedule 3(r) would not reasonably be expected to have an Ocuphire Material Adverse Effect.

(s) Insurance. Ocuphire and each of the Ocuphire Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as management of Ocuphire believes to be prudent and customary in the businesses in which Ocuphire and the Ocuphire Subsidiaries are engaged. Neither Ocuphire nor any of the Ocuphire Subsidiaries has been refused any insurance coverage sought or applied for and neither Ocuphire nor any of the Ocuphire Subsidiaries has any reason to believe that it will be unable to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Ocuphire Material Adverse Effect.

(t) Employee Relations. Neither Ocuphire nor any of the Ocuphire Subsidiaries is a party to any collective bargaining agreement or employs any member of a union. Ocuphire and the Ocuphire Subsidiaries believe that their relations with their respective employees are good. No executive officer (as defined in Rule 501(f) promulgated under the 1933 Act) or other key employee of Ocuphire or any of the Ocuphire Subsidiaries has notified Ocuphire or any such Ocuphire Subsidiary that such officer intends to leave Ocuphire or any such Ocuphire Subsidiary or otherwise terminate such officer's employment with Ocuphire or any such Ocuphire Subsidiary. No executive officer or other key employee of Ocuphire or any of the Ocuphire Subsidiaries is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement, non-competition agreement, or any other contract or agreement or any restrictive covenant, and the continued employment of each such executive officer or other key employee (as the case may be) does not subject Ocuphire or any of the Ocuphire Subsidiaries to any liability with respect to any of the foregoing matters. Ocuphire and the Ocuphire Subsidiaries are in compliance with all federal, state, local and foreign laws and regulations respecting labor, employment and employment practices and benefits, terms and conditions of employment and wages and hours, except where failure to be in compliance would not, either individually or in the aggregate, reasonably be expected to result in a Ocuphire Material Adverse Effect.

(u) Title. Ocuphire and the Ocuphire Subsidiaries have good and marketable title in fee simple to all real property and good and marketable title to all personal property owned by them which is material to the business of Ocuphire and the Ocuphire Subsidiaries, in each case free and clear of all liens, encumbrances and defects except such as do not materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by Ocuphire and any of the Ocuphire Subsidiaries. Any real property and facilities held under lease by Ocuphire and any of the Ocuphire Subsidiaries are held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not interfere with the use made and proposed to be made of such property and buildings by Ocuphire and the Ocuphire Subsidiaries.

(v) Intellectual Property Rights. Ocuphire and the Ocuphire Subsidiaries own or possess adequate rights or licenses to use all trademarks, trade names, service marks, service mark registrations, service names, patents, patent rights, copyrights, original works of authorship, inventions, licenses, approvals, governmental authorizations, trade secrets and other intellectual property rights and all applications and registrations therefor (“**Intellectual Property Rights**”) necessary to conduct their respective businesses as now conducted. Each of the patents owned by Ocuphire or any of the Ocuphire Subsidiaries is listed on Schedule 3(v)(i). Except as set forth in Schedule 3(v)(ii), none of Ocuphire’s or any of the Ocuphire’s Subsidiaries’ Intellectual Property Rights have expired, terminated or been abandoned, or are expected to expire, terminate or be abandoned, within three years from the date of this Agreement. Ocuphire has no knowledge of any infringement by Ocuphire or the Ocuphire Subsidiaries of Intellectual Property Rights of others. There is no claim, action or proceeding being made or brought, or to the knowledge of Ocuphire or any of the Ocuphire Subsidiaries, being threatened, against Ocuphire or any of the Ocuphire Subsidiaries regarding their Intellectual Property Rights. Neither Ocuphire nor any of the Ocuphire Subsidiaries is aware of any facts or circumstances which might give rise to any of the foregoing infringements or claims, actions or proceedings. Ocuphire and the Ocuphire Subsidiaries have taken reasonable security measures to protect the secrecy, confidentiality and value of all of their Intellectual Property Rights.

(w) Environmental Laws. Ocuphire and the Ocuphire Subsidiaries (A) are in compliance with all Environmental Laws (as defined below), (B) have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses and (C) are in compliance with all terms and conditions of any such permit, license or approval where, in each of the foregoing clauses (A), (B) and (C), the failure to so comply could be reasonably expected to have, individually or in the aggregate, a Ocuphire Material Adverse Effect. The term “**Environmental Laws**” means all federal, state, local or foreign laws relating to pollution or protection of human health or the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata), including, without limitation, laws relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, or toxic or hazardous substances or wastes (collectively, “**Hazardous Materials**”) into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, as well as all authorizations, codes, decrees, demands or demand letters, injunctions, judgments, licenses, notices or notice letters, orders, permits, plans or regulations issued, entered, promulgated or approved thereunder.

(x) Subsidiary Rights. Ocuphire or one of the Ocuphire Subsidiaries has the unrestricted right to vote, and (subject to limitations imposed by applicable law) to receive dividends and distributions on, all capital securities of the Ocuphire Subsidiaries as owned by Ocuphire or such Ocuphire Subsidiary.

(y) Tax Status. Ocuphire and each of the Ocuphire Subsidiaries (i) has timely made or filed all foreign, federal and state income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has timely paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and (iii) has set aside on its books provisions reasonably adequate for the payment of all taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of Ocuphire know of no basis for any such claim.

(z) Internal Accounting. Ocuphire and each of the Ocuphire Subsidiaries maintain a system of internal accounting controls sufficient 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 financial statements in conformity with GAAP and applicable law, and to maintain asset and liability accountability, (iii) access to assets or incurrence of liabilities is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets and liabilities is compared with the existing assets and liabilities at reasonable intervals and appropriate action is taken with respect to any difference. Except as set forth in Schedule 3(z), during the twelve months prior to the date hereof neither Ocuphire nor any of the Ocuphire Subsidiaries has received any notice or correspondence from any accountant relating to any material weakness in any part of the system of internal accounting controls of Ocuphire or any of the Ocuphire Subsidiaries.

(aa) Off Balance Sheet Arrangements. There is no transaction, arrangement, or other relationship between Ocuphire and an unconsolidated or other off balance sheet entity that would be reasonably likely to have an Ocuphire Material Adverse Effect.

(bb) Investment Company Status. Neither Ocuphire nor any of the Ocuphire Subsidiaries is, and upon consummation of the sale of the Securities, and for so long as any Buyer holds any Securities, will not be, an "investment company," an affiliate of an "investment company," a company controlled by an "investment company" or an "affiliated person" of, or "promoter" or "principal underwriter" for, an "investment company" as such terms are defined in the Investment Company Act of 1940, as amended.

(cc) Acknowledgement Regarding Buyers' Trading Activity. Ocuphire acknowledges and agrees that, except as set forth in the Leak-Out Agreements (as defined in Section 8(t)), (i) none of the Buyers has been asked to agree, nor has any Buyer agreed, to desist from purchasing or selling, long and/or short, securities of Ocuphire or Rexahn, or "derivative" securities based on securities issued by Ocuphire or Rexahn or to hold the Securities for any specified term; (ii) any Buyer, and counter-parties in "derivative" transactions to which any such Buyer is a party, directly or indirectly, presently may have a "short" position in the Ocuphire Common Stock or Rexahn Common Stock and (iii) each Buyer shall not be deemed to have any affiliation with or control over any arm's length counter-party in any "derivative" transaction. Ocuphire further understands and acknowledges that (a) one or more Buyers may engage in hedging and/or trading activities at various times during the period that the Securities are outstanding, including, without limitation, during the periods that the value of the Warrant Shares are being determined and (b) such hedging and/or trading activities, if any, can reduce the value of the existing stockholders' equity interest in Ocuphire and/or Rexahn both at and after the time the hedging and/or trading activities are being conducted. Ocuphire acknowledges that such aforementioned hedging and/or trading activities do not constitute a breach of this Agreement, the Warrants or any of the documents executed in connection herewith.

(d d) Manipulation of Price. Ocuphire has not, and to its knowledge no one acting on its behalf has, (i) taken, directly or indirectly, any action designed to cause or to result, or that could reasonably be expected to cause or result, in the stabilization or manipulation of the price of any security of Ocuphire or Rexahn to facilitate the sale or resale of any of the Securities, (ii) other than the Placement Agent, sold, bid for, purchased, or paid any compensation for soliciting purchases of, any of the Securities, or (iii) other than the Placement Agent, paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of Ocuphire or Rexahn.

(e e) FDA. As to each product subject to the jurisdiction of the U.S. Food and Drug Administration (the “**FDA**”) under the Federal Food, Drug and Cosmetic Act, as amended, and the regulations thereunder (“**FDCA**”) that is manufactured, packaged, labeled, tested, distributed, sold, and/or marketed by Ocuphire or any of its Ocuphire Subsidiaries (each such product, a “**Pharmaceutical Product**”), such Pharmaceutical Product is being manufactured, packaged, labeled, tested, distributed, sold and/or marketed by Ocuphire in compliance with all applicable requirements under FDCA and similar laws, rules and regulations relating to registration, investigational use, premarket clearance, licensure, or application approval, good manufacturing practices, good laboratory practices, good clinical practices, product listing, quotas, labeling, advertising, record keeping and filing of reports, except where the failure to be in compliance would not have a Ocuphire Material Adverse Effect. There is no pending, completed or, to Ocuphire’s knowledge, threatened, action (including any lawsuit, arbitration, or legal or administrative or regulatory proceeding, charge, complaint, or investigation) against Ocuphire or any of its Ocuphire Subsidiaries, and none of Ocuphire or any of its Ocuphire Subsidiaries has received any notice, warning letter or other communication from the FDA or any other governmental entity, which (i) contests the premarket clearance, licensure, registration, or approval of, the uses of, the distribution of, the manufacturing or packaging of, the testing of, the sale of, or the labeling and promotion of any Pharmaceutical Product, (ii) withdraws its approval of, requests the recall, suspension, or seizure of, or withdraws or orders the withdrawal of advertising or sales promotional materials relating to, any Pharmaceutical Product, (iii) imposes a clinical hold on any clinical investigation by Ocuphire or any of its Ocuphire Subsidiaries, (iv) enjoins production at any facility of Ocuphire or any of its Ocuphire Subsidiaries, (v) enters or proposes to enter into a consent decree of permanent injunction with Ocuphire or any of its Ocuphire Subsidiaries, or (vi) otherwise alleges any violation of any laws, rules or regulations by Ocuphire or any of its Ocuphire Subsidiaries, and which, either individually or in the aggregate, would have a Ocuphire Material Adverse Effect. The properties, business and operations of Ocuphire have been and are being conducted in all material respects in accordance with all applicable laws, rules and regulations of the FDA. Except as set forth on Schedule 3(ee) or as disclosed in the SEC Documents (as defined in Annex I), Ocuphire has not been informed by the FDA that the FDA will prohibit the marketing, sale, license or use in the United States of any product proposed to be developed, produced or marketed by Ocuphire nor has the FDA expressed any concern as to approving or clearing for marketing any product being developed or proposed to be developed by Ocuphire.

(ff) U.S. Real Property Holding Corporation. Neither Ocuphire nor any of the Ocuphire Subsidiaries is, or has ever been, and so long as any of the Securities are held by any of the Buyers, shall become, a U.S. real property holding corporation within the meaning of Section 897 of the Internal Revenue Code of 1986, as amended, and Ocuphire and each Ocuphire Subsidiary shall so certify upon any Buyer's request.

(g g) Transfer Taxes. On the Closing Date, all stock transfer or other taxes (other than income or similar taxes) which are required to be paid in connection with the issuance, sale and transfer of the Securities to be sold to each Buyer hereunder will be, or will have been, fully paid or provided for by Ocuphire, and all laws imposing such taxes will be or will have been complied with.

(hh) Bank Holding Company Act. Neither Ocuphire nor any of the Ocuphire Subsidiaries or affiliates is subject to the Bank Holding Company Act of 1956, as amended (the "**BHCA**") and to regulation by the Board of Governors of the Federal Reserve System (the "**Federal Reserve**"). Neither Ocuphire nor any of the Ocuphire Subsidiaries or their affiliates owns or controls, directly or indirectly, five percent (5%) or more of the outstanding shares of any class of voting securities or twenty-five percent (25%) or more of the total equity of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve. Neither Ocuphire nor any of the Ocuphire Subsidiaries or affiliates exercises a controlling influence over the management or policies of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve.

(ii) Shell Company Status. Ocuphire is not, and has never been, an issuer identified in, or subject to, Rule 144(i)(1) of the 1933 Act.

(jj) Compliance with Anti-Money Laundering Laws. The operations of Ocuphire and the Ocuphire Subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements and all other applicable U.S. and non-U.S. anti-money laundering laws, rules and regulations, including, but not limited to, those of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the United States Bank Secrecy Act, as amended by the USA PATRIOT Act of 2001, and the United States Money Laundering Control Act of 1986 (18 U.S.C. §§1956 and 1957), as amended, as well as the implementing rules and regulations promulgated thereunder, and the applicable money laundering statutes of all applicable jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency or self-regulatory body (collectively, the "**Anti-Money Laundering Laws**"), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving Ocuphire or any of the Ocuphire Subsidiaries with respect to the Anti-Money Laundering Laws is pending or, to the knowledge of Ocuphire, threatened.

(kk) No Conflicts with Sanctions Laws. Neither Ocuphire nor any of the Ocuphire Subsidiaries, nor any director, officer, employee, agent, affiliate or other Person associated with or acting on behalf of Ocuphire or any of the Ocuphire Subsidiaries or any of their affiliates is, or is directly or indirectly owned or controlled by, a Person that is currently the subject or the target of any sanctions administered or enforced by the U.S. government (including, without limitation, the Office of Foreign Assets Control of the U.S. Department of the Treasury (“**OFAC**”) or the U.S. Departments of State or Commerce and including, without limitation, the designation as a “Specially Designated National” or on the “Sectoral Sanctions Identifications List”, collectively “**Blocked Persons**”), the United Nations Security Council, the European Union, Her Majesty’s Treasury or any other relevant sanctions authority (collectively, “**Sanctions Laws**”); neither Ocuphire, nor any of the Ocuphire Subsidiaries, any director, officer, employee, agent, affiliate or other Person associated with or acting on behalf of Ocuphire, any of the Ocuphire Subsidiaries or their affiliates, is located, organized or resident in a country or territory that is the subject or target of a comprehensive embargo or Sanctions Laws prohibiting trade with the country or territory, including, without limitation, Crimea, Cuba, Iran, North Korea, Sudan and Syria (each, a “**Sanctioned Country**”); Ocuphire maintains in effect and enforces policies and procedures designed to ensure compliance by Ocuphire and the Ocuphire Subsidiaries with applicable Sanctions Laws; neither Ocuphire, nor any of the Ocuphire Subsidiaries, any director, officer, employee, agent, affiliate or other Person associated with or acting on behalf of Ocuphire or any of the Ocuphire Subsidiaries or their affiliates, acting in any capacity in connection with the operations of Ocuphire or the Ocuphire Subsidiaries, conducts any business with or for the benefit of any Blocked Person or engages in making or receiving any contribution of funds, goods or services to, from or for the benefit of any Blocked Person, or deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked or subject to blocking pursuant to any applicable Sanctions Laws; no action of Ocuphire or the Ocuphire Subsidiaries in connection with (i) the execution, delivery and performance of this Agreement and the other Ocuphire Transaction Documents, (ii) the issuance and sale of the Securities, or (iii) the direct or indirect use of proceeds from the Securities or the consummation of any other transaction contemplated hereby or by the other Ocuphire Transaction Documents or the fulfillment of the terms hereof or thereof, will result in the proceeds of the transactions contemplated hereby and by the other Ocuphire Transaction Documents being used, or loaned, contributed or otherwise made available, directly or indirectly, to any Ocuphire Subsidiary, joint venture partner or other Person, for the purpose of (i) unlawfully funding or facilitating any activities of or business with any Person that, at the time of such funding or facilitation, is the subject or target of Sanctions Laws, (ii) unlawfully funding or facilitating any activities of or business in any Sanctioned Country or (iii) in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as underwriter, advisor, investor or otherwise) of Sanctions Laws. For the past five (5) years, Ocuphire and the Ocuphire Subsidiaries have not knowingly engaged in and is not now knowingly engaged in any dealings or transactions with any Person that at the time of the dealing or transaction is or was the subject or the target of Sanctions Laws or with any Sanctioned Country.

(ll) Anti-Bribery. Neither Ocuphire nor any of the Ocuphire Subsidiaries has made any contribution or other payment to any official of, or candidate for, any federal, state or foreign office in violation of any law which violation is required to be disclosed. Neither Ocuphire, nor any of the Ocuphire Subsidiaries, any of their affiliates, nor any director, officer, agent, employee or other Person associated with or acting on behalf of Ocuphire, the Ocuphire Subsidiaries or any of their affiliates, has (i) used any funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity, (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee, to any employee or agent of a private entity with which Ocuphire or the Ocuphire Subsidiaries does or seeks to do business or to foreign or domestic political parties or campaigns, (iii) violated or is in violation of any provision of any applicable law or regulation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions or any applicable provision of the FCPA, the U.K. Bribery Act 2010, or any other similar law of any other jurisdiction in which Ocuphire or the Ocuphire Subsidiaries operates its business, including, in each case, the rules and regulations thereunder (the “**Anti-Bribery Laws**”), (iv) taken, is currently taking or will take any action in furtherance of an offer, payment, gift or anything else of value, directly or indirectly, to any Person while knowing that all or some portion of the money or value will be offered, given or promised to anyone to improperly influence official action, to obtain or retain business or otherwise to secure any improper advantage or (v) otherwise made any offer, bribe, rebate, payoff, influence payment, unlawful kickback or other unlawful payment; Ocuphire and the Ocuphire Subsidiaries have instituted and have maintained, and will continue to maintain, policies and procedures reasonably designed to promote and achieve compliance with the laws referred to in (iii) above and with this representation and warranty; none of Ocuphire, nor the Ocuphire Subsidiaries or any of their affiliates will directly or indirectly use the proceeds of the Convertible Securities (as defined below) or Options (as defined below) or lend, contribute or otherwise make available such proceeds to any subsidiary, affiliate, joint venture partner or other Person for the purpose of financing or facilitating any activity that would violate the laws and regulations referred to in (iii) above; there are, and have been, no allegations, investigations or inquiries with regard to a potential violation of any Anti-Bribery Laws by Ocuphire, the Ocuphire Subsidiaries or their affiliates, or any of their respective current or former directors, officers, employees, stockholders, representatives or agents, or other Persons acting or purporting to act on their behalf.

(mm) No Additional Agreements. Neither Ocuphire nor any of the Ocuphire Subsidiaries have any agreement or understanding with any Buyer with respect to the transactions contemplated by the Ocuphire Transaction Documents other than as specified in the Ocuphire Transaction Documents.

(nn) Disclosure. Except for discussions specifically regarding the offer and sale of the Securities, Ocuphire confirms that neither it nor any other Person acting on its behalf has provided any of the Buyers or their agents or counsel with any information that constitutes or could reasonably be expected to constitute material, non-public information concerning Ocuphire, any of any of the Ocuphire Subsidiaries, Rexahn or any of the Rexahn Subsidiaries (as defined below), other than the existence of the transactions contemplated by this Agreement and the other Transaction Documents. Ocuphire understands and confirms that each of the Buyers will rely on the foregoing representations in effecting transactions in securities of Ocuphire and Rexahn. All disclosure provided to the Buyers regarding Ocuphire or any of the Ocuphire Subsidiaries, their business and the transactions contemplated hereby, including the schedules to this Agreement, furnished by or on behalf of Ocuphire is true and correct and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. All of the written information furnished after the date hereof by or on behalf of Ocuphire to you pursuant to or in connection with this Agreement and the other Ocuphire Transaction Documents, taken as a whole, will be true and correct in all material respects as of the date on which such information is so provided and will not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they are made, not misleading. Each press release issued by Ocuphire or any of the Ocuphire Subsidiaries during the twelve (12) months preceding the date of this Agreement did not at the time of release contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. No event or circumstance has occurred or information exists with respect to Ocuphire or any of the Ocuphire Subsidiaries or its or their business, properties, liabilities, prospects, operations (including results thereof) or conditions (financial or otherwise), which, under applicable law, rule or regulation, requires public disclosure at or before the date hereof or announcement by Ocuphire but which has not been so publicly disclosed. Ocuphire acknowledges and agrees that no Buyer makes or has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 2.

(oo) Stock Option Plans. Each stock option granted by Ocuphire was granted (i) in accordance with the terms of the applicable Ocuphire stock option plan and (ii) with an exercise price at least equal to the fair market value of the Ocuphire Common Stock on the date such stock option would be considered granted under GAAP and applicable law. No stock option granted under Ocuphire's stock option plan has been backdated. Ocuphire has not knowingly granted, and there is no and has been no Ocuphire policy or practice to knowingly grant, stock options prior to, or otherwise knowingly coordinate the grant of stock options with, the release or other public announcement of material information regarding Ocuphire or the Ocuphire Subsidiaries or their financial results or prospects.

(pp) No Disagreements with Accountants and Lawyers. There are no material disagreements of any kind presently existing, or reasonably anticipated by Ocuphire to arise, between Ocuphire and the accountants and lawyers formerly or presently employed by Ocuphire and Ocuphire is current with respect to any fees owed to its accountants and lawyers which could affect Ocuphire's ability to perform any of its obligations under any of the Ocuphire Transaction Documents.

(qq) No Disqualification Events. With respect to Securities to be offered and sold hereunder in reliance on 506(b) of Regulation D ("**Regulation D Securities**"), none of Ocuphire, any of its predecessors, any affiliated issuer, any director, executive officer, other officer of Ocuphire participating in the offering hereunder, any beneficial owner of 20% or more of Ocuphire's outstanding voting equity securities, calculated on the basis of voting power, nor any promoter (as that term is defined in Rule 405 under the 1933 Act) connected with Ocuphire in any capacity at the time of sale (each, an "**Ocuphire Covered Person**" and, together, "**Ocuphire Covered Persons**") is subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the 1933 Act (a "**Disqualification Event**"), except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3). Ocuphire has exercised reasonable care to determine whether any Issuer Covered Person is subject to a Disqualification Event. Ocuphire has complied, to the extent applicable, with its disclosure obligations under Rule 506(e), and has furnished to the Buyers a copy of any disclosures provided thereunder.

(r r) Other Covered Persons. Ocuphire is not aware of any Person (other than the Placement Agent) that has been or will be paid (directly or indirectly) remuneration for solicitation of Buyers or potential purchasers in connection with the sale of any Regulation D Securities.

(s s) Notice of Disqualification Events. Ocuphire will notify the Buyers and the Placement Agent in writing, prior to the Closing Date of (i) any Disqualification Event relating to any Ocuphire Covered Person and (ii) any event that would, with the passage of time, become a Disqualification Event relating to any Ocuphire Covered Person.

(tt) Dilutive Effect. Ocuphire understands and acknowledges that the number of Additional Common Shares issuable pursuant to Section 1(c)(ii) and the number of Warrant Shares issuable pursuant to the terms of the Warrants will increase in certain circumstances. Ocuphire further acknowledges that its obligation to issue Additional Common Shares pursuant to this Agreement and the obligation of Rexahn to issue Warrant Shares pursuant to the terms of the Warrants in accordance with this Agreement and with the Warrants are absolute and unconditional regardless of the dilutive effect that such issuance may have on the ownership interests of other stockholders of Ocuphire or Rexahn.

4. REPRESENTATIONS AND WARRANTIES OF REXAHN.

Rexahn represents and warrants to each of the Buyers that, as of the date hereof and as of the Closing Date:

(a) Organization and Qualification. Each of Rexahn and each of its “**Rexahn Subsidiaries**” (which for purposes of this Agreement means any entity in which Rexahn, directly or indirectly, owns any of the capital stock or holds an equity or similar interest) (the Rexahn Subsidiaries, together with the Ocuphire Subsidiaries, the “**Subsidiaries**”) are entities duly organized and validly existing and in good standing under the laws of the jurisdiction in which they are formed, and have the requisite power and authorization to own their properties and to carry on their business as now being conducted and as presently proposed to be conducted. Each of Rexahn and each of the Rexahn Subsidiaries is duly qualified as a foreign entity to do business and is in good standing in every jurisdiction in which its ownership of property or the nature of the business conducted by it makes such qualification necessary, except to the extent that the failure to be so qualified or be in good standing would not reasonably be expected to have a Rexahn Material Adverse Effect. As used in this Agreement, “**Rexahn Material Adverse Effect**” means any material adverse effect on the business, properties, assets, liabilities, operations, results of operations or condition (financial or otherwise) of Rexahn and the Rexahn Subsidiaries, individually or taken as a whole, or on the transactions contemplated hereby or on the other Rexahn Transaction Documents (as defined below) or by the agreements and instruments to be entered into in connection herewith or therewith, or on the authority or ability of Rexahn to perform any of its obligations under any of the Rexahn Transaction Documents. Rexahn has no Rexahn Subsidiaries except Razor Merger Sub, Inc., a Delaware corporation. The outstanding shares of capital stock of each of the Rexahn Subsidiaries have been duly authorized and validly issued, are fully paid and non-assessable and are owned by Rexahn or another Rexahn Subsidiary free and clear of all liens, encumbrances and equities and claims; and no options, warrants or other rights to purchase, agreements or other obligations to issue or other rights to convert any obligations into shares of capital stock or ownership interests in the Rexahn Subsidiaries are outstanding.

(b) Authorization; Enforcement; Validity. As of (i) the date hereof, subject to the approval of the Rexahn stockholders for the transactions contemplated by the Draft Merger Agreement and the Rexahn Transaction Documents (collectively, the “**Rexahn Required Stockholder Approvals**”), and (ii) the Closing Date, Rexahn has the requisite corporate power and authority to enter into and perform its obligations under this Agreement, the Warrants, the Registration Rights Agreement, the Securities Escrow Agreement, the Irrevocable Transfer Agent Instructions (as defined in Section 6(b)), the Lock-Up Agreements, the Leak-Out Agreements and each of the other agreements entered into by Rexahn in connection with the transactions contemplated by this Agreement (collectively, the “**Rexahn Transaction Documents**” and, together with the Ocuphire Transaction Documents, the “**Transaction Documents**”) and to issue the Warrants and the Warrant Shares in accordance with the terms hereof and thereof. The execution and delivery of this Agreement and the other Rexahn Transaction Documents by Rexahn and the consummation by Rexahn of the transactions contemplated hereby and thereby, including, without limitation, the issuance of the Warrants and the reservation for issuance and the issuance of the Warrant Shares issuable upon exercise of the Warrants have been duly authorized by Rexahn’s board of directors and (other than the filing with the SEC of one or more Registration Statements (as defined in the Registration Rights Agreement) in accordance with the requirements of the Registration Rights Agreement, a Form D with the SEC and any other filings as may be required by any state securities agencies) no further filing, consent or authorization is required by Rexahn, its board of directors or its stockholders (other than, as of the date hereof, the Rexahn Required Stockholder Approvals). This Agreement has been duly executed and delivered by Rexahn, and constitutes the legal, valid and binding obligations of Rexahn, enforceable against Rexahn in accordance with its terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors’ rights and remedies.

(c) Issuance of Securities. The issuance of the Warrants are duly authorized and, upon issuance in accordance with the terms of the Rexahn Transaction Documents, as of (i) the date hereof, subject to the Rexahn Required Stockholder Approvals, and (ii) the Closing Date, the Warrants shall be validly issued and free from all preemptive or similar rights (except for those which have been validly waived prior to the date hereof), taxes, liens and charges and other encumbrances with respect to the issue thereof. As of the Closing Date, a number of shares of Rexahn Common Stock shall have been duly authorized and reserved for issuance which equals (i) until the Reservation Date (as defined in the Warrants), such calculation shall assume that the Series A Warrants and the Series B Warrants are then exercisable in full into a number of shares of Rexahn Common Stock equal to the sum of at least (x) 135% of the maximum number of Series A Warrant Shares issued and issuable pursuant to the Series A Warrants determined in accordance with Section 2(d) of the Series A Warrants assuming a Reset Price (as defined in the Series A Warrants) equal to the Reset Floor Price (as defined in the Warrants) without giving effect to any limitation on exercise set forth therein and (y) 100% of the maximum number of Series B Warrant Shares issued and issuable pursuant to the Series B Warrants assuming that the Maximum Eligibility Number (as defined in the Series B Warrant) is determined based on a Reset Price (as defined in the Series B Warrants) equal to the Reset Floor Price without giving effect to any limitation on exercise set forth therein, and (ii) thereafter, the sum of at least (x) 135% of the maximum number of shares of Rexahn Common Stock as shall from time to time be necessary to effect the exercise of all of the Series A Warrants then outstanding, without giving effect to any limitation on exercise set forth therein and (y) 100% of the maximum number of shares of Rexahn Common Stock as shall from time to time be necessary to effect the exercise of all of the Series B Warrants then outstanding, without giving effect to any limitation on exercise set forth therein (the foregoing clauses (i) and (ii), as applicable, the “**Required Reserve Amount**”) (as adjusted for stock splits, stock dividends, recapitalizations, reorganizations, reclassification, combinations, reverse stock splits or other similar events occurring after the date hereof). Upon exercise of the Warrants in accordance with the Warrants, the Warrant Shares when issued will be validly issued, fully paid and nonassessable and free from all preemptive or similar rights, taxes, liens, charges and other encumbrances with respect to the issue thereof, with the holders being entitled to all rights accorded to a holder of Rexahn Common Stock. Assuming the accuracy of each of the representations and warranties set forth in Section 2 of this Agreement, the offer and issuance by Rexahn of the Warrants and the Warrant Shares is exempt from registration under the 1933 Act.

(d) No Conflicts. The execution, delivery and performance of the Rexahn Transaction Documents by Rexahn and the consummation by Rexahn of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Warrants and reservation for issuance and issuance of the Warrant Shares) will not (i) as of (x) the date hereof, subject to the Rexahn Required Stockholder Approvals, and (y) as of the Closing Date, result in a violation of the Rexahn Certificate of Incorporation (as defined below) or Rexahn Bylaws (as defined below) or other organizational documents of Rexahn or any of the Rexahn Subsidiaries, any capital stock of Rexahn or any of the Rexahn Subsidiaries or the articles of association or bylaws of Rexahn or any of the Rexahn Subsidiaries or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) in any respect under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which Rexahn or any of the Rexahn Subsidiaries is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including foreign, federal and state securities laws and regulations and the rules and regulations of the Principal Market and including all applicable foreign, federal, state laws, rules and regulations) applicable to Rexahn or any of the Rexahn Subsidiaries or by which any property or asset of Rexahn or any of the Rexahn Subsidiaries is bound or affected; except, in the case of clauses (ii) and (iii) above, as would not have or reasonably be expected to result in a Rexahn Material Adverse Effect.

(e) Consents. Other than from (i) approval of the Principal Market to list additional shares on the Principal Market and (ii) the Rexahn Required Stockholder Approvals (in each case, as of the date hereof), Rexahn is not required to obtain any consent from, authorization or order of, or make any filing or registration with (other than the filing with the SEC of one or more Registration Statements in accordance with the requirements of the Registration Rights Agreement, a Form D with the SEC and any other filings as may be required by any state securities agencies or the filing of an amended and restated certificate of incorporation following receipt of the Rexahn Required Stockholder Approvals to increase the number of authorized shares of Rexahn Common Stock pursuant to the reverse stock split as contemplated in the Draft Merger Agreement and change the name of Rexahn to “Ocuphire Pharma, Inc.”), any court, governmental agency or any regulatory or self-regulatory agency or any other Person in order for it to execute, deliver or perform any of its obligations under or contemplated by the Rexahn Transaction Documents, in each case, in accordance with the terms hereof or thereof. All consents, authorizations, orders, filings and registrations which Rexahn is required to obtain pursuant to the preceding sentence have been obtained or effected on or prior to the Closing Date (or in the case of filings detailed above, will be made timely after the Closing Date), and Rexahn has not received written notice from any governmental entity which would reasonably be expected to prevent Rexahn from obtaining or effecting any of the registration, application or filings contemplated by the Rexahn Transaction Documents. Except as disclosed in the SEC Documents, Rexahn is not in violation of the listing requirements of the Principal Market and has not received written notice from the Principal Market which would reasonably be expected to lead to delisting or suspension of the Rexahn Common Stock in the foreseeable future. The issuance by Rexahn of the Warrants and Warrant Shares shall not have the effect of delisting or suspending the Rexahn Common Stock from the Principal Market.

(f) No General Solicitation. Neither Rexahn, nor any of the Rexahn Subsidiaries or their affiliates, nor any Person acting on its or their behalf, has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with the offer or sale of the Securities.

(g) Application of Takeover Protections; Rights Agreement. Rexahn and its board of directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, interested stockholder, business combination (including, without limitation, under Section 203 of the DGCL), poison pill (including, without limitation, any distribution under a rights agreement) or other similar anti-takeover provision under the Rexahn amended and restated certificate of incorporation, as amended and as in effect on the date hereof (the “**Rexahn Certificate of Incorporation**”), and the Rexahn restated and amended bylaws, as in effect on the date hereof (the “**Rexahn Bylaws**”) or other organizational documents or the laws of the jurisdiction of its formation which is or could become applicable to any Buyer as a result of the transactions contemplated by this Agreement, including, without limitation, Rexahn’s issuance of the Securities and any Buyer’s ownership of the Securities.

(h) Foreign Corrupt Practices. Neither Rexahn, nor any of the Rexahn Subsidiaries, nor any director, officer, agent, employee or other Person acting on behalf of Rexahn or any of the Rexahn Subsidiaries has, in the course of its actions for, or on behalf of, Rexahn or any of the Rexahn Subsidiaries (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; (iii) violated or is in violation of any provision of the FCPA as amended; or (iv) made any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any foreign or domestic government official or employee.

(i) Equity Capitalization. As of the date hereof, the authorized capital stock of Rexahn consists of (i) 75,000,000 shares of Rexahn Common Stock, of which as of the date hereof, 4,019,141 are issued and outstanding, 285,460 shares are reserved for issuance pursuant to Rexahn’s stock option plans, of which 146,224 shares are subject to outstanding Rexahn options granted under the Rexahn stock plans and warrants to purchase 1,921,489 shares of Rexahn Common Stock and (ii) 10,000,000 shares of preferred stock, 0.0001 par value per share, of which no shares are issued and outstanding as of the date hereof. No Rexahn Common Stock are held in treasury. All of such outstanding shares are duly authorized and have been, or upon issuance will be, validly issued and are fully paid and nonassessable.

(j) Investment Company Status. Neither Rexahn nor any of the Rexahn Subsidiaries is an “investment company,” an affiliate of an “investment company,” a company controlled by an “investment company” or an “affiliated person” of, or “promoter” or “principal underwriter” for, an “investment company” as such terms are defined in the Investment Company Act of 1940, as amended.

(k) Shell Company Status. Rexahn is not, and has never been, an issuer identified in, or subject to, Rule 144(i)(1) of the 1933 Act.

(l) Compliance with Anti-Money Laundering Laws. The operations of Rexahn and the Rexahn Subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements and all other applicable Anti-Money Laundering Laws, and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving Rexahn or any of the Rexahn Subsidiaries with respect to the Anti-Money Laundering Laws is pending or, to the knowledge of Rexahn, threatened.

(m) No Conflicts with Sanctions Laws. Neither Rexahn nor any of the Rexahn Subsidiaries, nor any director, officer, employee, agent, affiliate or other Person associated with or acting on behalf of Rexahn or any of the Rexahn Subsidiaries or any of their affiliates is, or is directly or indirectly owned or controlled by, a Person that is currently the subject or the target of any sanctions administered or enforced by the U.S. government (including, without limitation, the Sanctions Laws; neither Rexahn, nor any of Rexahn Subsidiaries, any director, officer, employee, agent, affiliate or other Person associated with or acting on behalf of Rexahn or any of the Rexahn Subsidiaries or their affiliates, is located, organized or resident in a country or territory that is the subject or target of a comprehensive embargo or Sanctions Laws prohibiting trade with the country or territory, including, without limitation, a Sanctioned Country); Rexahn maintains in effect and enforces policies and procedures designed to ensure compliance by Rexahn and the Rexahn Subsidiaries with applicable Sanctions Laws; neither Rexahn, nor any of the Rexahn Subsidiaries, any director, officer, employee, agent, affiliate or other Person associated with or acting on behalf of Rexahn or any of the Rexahn Subsidiaries or their affiliates, acting in any capacity in connection with the operations of Rexahn or the Rexahn Subsidiaries, conducts any business with or for the benefit of any Blocked Person or engages in making or receiving any contribution of funds, goods or services to, from or for the benefit of any Blocked Person, or deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked or subject to blocking pursuant to any applicable Sanctions Laws; no action of Rexahn or any of the Rexahn Subsidiaries in connection with (i) the execution, delivery and performance of this Agreement and the other Rexahn Transaction Documents, (ii) the issuance and sale of the Securities, or (iii) the direct or indirect use of proceeds from the Securities or the consummation of any other transaction contemplated hereby or by the other Rexahn Transaction Documents or the fulfillment of the terms hereof or thereof, will result in the proceeds of the transactions contemplated hereby and by the other Rexahn Transaction Documents being used, or loaned, contributed or otherwise made available, directly or indirectly, to any Rexahn Subsidiary, joint venture partner or other Person, for the purpose of (i) unlawfully funding or facilitating any activities of or business with any Person that, at the time of such funding or facilitation, is the subject or target of Sanctions Laws, (ii) unlawfully funding or facilitating any activities of or business in any Sanctioned Country or (iii) in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as underwriter, advisor, investor or otherwise) of Sanctions Laws. For the past five (5) years, Rexahn and the Rexahn Subsidiaries have not knowingly engaged in and are not now knowingly engaged in any dealings or transactions with any Person that at the time of the dealing or transaction is or was the subject or the target of Sanctions Laws or with any Sanctioned Country.

(n) Anti-Bribery. Neither Rexahn nor any of the Rexahn Subsidiaries has made any contribution or other payment to any official of, or candidate for, any federal, state or foreign office in violation of any law which violation is required to be disclosed. Neither Rexahn, nor any of the Rexahn Subsidiaries or any of their affiliates, nor any director, officer, agent, employee or other Person associated with or acting on behalf of Rexahn, the Rexahn Subsidiaries or any of their affiliates, has (i) used any funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity, (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee, to any employee or agent of a private entity with which Rexahn or the Rexahn Subsidiaries does or seeks to do business or to foreign or domestic political parties or campaigns, (iii) violated or is in violation of any provision of any applicable law or regulation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions or any applicable provision of the FCPA, the U.K. Bribery Act 2010, or the Anti-Bribery Laws, (iv) taken, is currently taking or will take any action in furtherance of an offer, payment, gift or anything else of value, directly or indirectly, to any Person while knowing that all or some portion of the money or value will be offered, given or promised to anyone to improperly influence official action, to obtain or retain business or otherwise to secure any improper advantage or (v) otherwise made any offer, bribe, rebate, payoff, influence payment, unlawful kickback or other unlawful payment; Rexahn and the Rexahn Subsidiaries have instituted and have maintained, and will continue to maintain, policies and procedures reasonably designed to promote and achieve compliance with the laws referred to in (iii) above and with this representation and warranty; none of Rexahn, nor the Rexahn Subsidiaries or any of their affiliates will directly or indirectly use the proceeds of the Convertible Securities or Options or lend, contribute or otherwise make available such proceeds to any subsidiary, affiliate, joint venture partner or other Person for the purpose of financing or facilitating any activity that would violate the laws and regulations referred to in (iii) above; there are, and have been, no allegations, investigations or inquiries with regard to a potential violation of any Anti-Bribery Laws by Rexahn, the Rexahn Subsidiaries or their affiliates, or any of their respective current or former directors, officers, employees, stockholders, representatives or agents, or other Persons acting or purporting to act on their behalf.

5. COVENANTS.

(a) Commercially Reasonable Efforts. Each party shall use its commercially reasonable efforts timely to satisfy each of the covenants and the conditions to be satisfied by it as provided in Sections 7 and 8 of this Agreement.

(b) Form D and Blue Sky. Each of Ocuphire and Rexahn agrees to file a Form D with respect to the Common Shares and Warrants, respectively, as required under Regulation D and to provide a copy thereof to each Buyer promptly after such filing. Ocuphire shall, on or before the Closing Date, take such action as it shall reasonably determine is necessary in order to obtain an exemption for or to qualify the Securities for sale to the Buyers at the Closing pursuant to this Agreement under applicable securities or “Blue Sky” laws of the states of the United States (or to obtain an exemption from such qualification), and shall provide evidence of any such action so taken to the Buyers on or prior to the Closing Date. Rexahn shall, after the closing of the Merger and on or before the Warrant Closing Date, take such action as it shall reasonably determine is necessary in order to obtain an exemption for or to qualify the Securities for sale to the Buyers at the Warrant Closing pursuant to this Agreement under applicable securities or “Blue Sky” laws of the states of the United States (or to obtain an exemption from such qualification), and shall provide evidence of any such action so taken to the Buyers on or prior to the Warrant Closing Date. Each of Ocuphire and Rexahn shall make all filings and reports relating to the offer and sale of the Securities required under applicable securities or “Blue Sky” laws of the states of the United States following the Closing Date.

(c) Reporting Status. From the closing of the Merger until the date on which the Investors (as defined in the Registration Rights Agreement) shall have sold all of the Warrant Shares and none of the Warrants are outstanding (such period of time, the “**Reporting Period**”), Rexahn shall use its commercially reasonable efforts to timely file all reports required to be filed with the SEC pursuant to the 1934 Act, and Rexahn shall not terminate its status as an issuer required to file reports under the 1934 Act unless the 1934 Act or the rules and regulations thereunder would no longer require or otherwise permit such termination, and Rexahn shall take all actions reasonably necessary to maintain its eligibility to register the Warrant Shares for resale by the Investors on Form S-3 or, if it is ineligible to use Form S-3, on Form S-1.

(d) Exchange of Shares.

(i) Promptly following the issuance of the Common Shares on the Closing Date, the Common Shares shall be exchanged for shares of Rexahn Common Stock (the “**Exchange Shares**”) at the completion of the Merger on the terms described in that certain Agreement and Plan of Merger and Reorganization, to be executed on the date hereof, by and among Rexahn, Razor Merger Sub, Inc. and Ocuphire (as may be amended, supplemented or modified from time to time by the parties thereto, the “**Executed Merger Agreement**”), the most recent draft thereof as of the date of this Agreement provided to such Buyer for such Buyer’s review (the “**Draft Merger Agreement**”). Such Exchange Shares shall be delivered to each Buyer by crediting to such Buyer’s or its designee’s balance account within (i) with respect to the Exchange Shares being issued in exchange of the Initial Common Shares, two (2) Trading Days following the Closing Date and (ii) with respect to the Exchange Shares being issued in exchange of any Additional Common Shares, on the applicable Additional Exchange Shares Delivery Date. Notwithstanding anything to the contrary contained herein, in no event will any Exchange Shares be delivered with any restrictive legends or any restrictions or limitations on resale by the Buyers, except to the extent any Buyer is then an affiliate of Rexahn. If Rexahn and/or the Transfer Agent requires any legal opinions with respect to the delivery of any Exchange Shares without restrictive legends or the removal of any such restrictive legends, Rexahn agrees to cause at its expense its legal counsel to issue any such legal opinions.

(ii) So long as such Buyer has paid its Purchase Price hereunder and has complied with the requirements set forth in Section 1.8 of the Merger Agreement, as applicable, if Rexahn shall following the completion of the Merger fail for any reason or for no reason to credit such Buyer's or its designee's balance account with DTC within two (2) Trading Days following the Closing Date (the "**Merger Delivery Date**") the applicable Exchange Shares with respect to the Initial Common Shares to which such Buyer is entitled hereunder (a "**Merger Delivery Failure**"), then, in addition to all other remedies available to such Buyer, Rexahn shall pay in cash to such Buyer on each day after such Merger Delivery Date that Rexahn shall fail to credit such Buyer's or its designee's balance account with DTC for the number of shares of Rexahn Common Stock to which such Buyer is entitled pursuant to the exchange of the Initial Common Shares for Rexahn Common Stock pursuant to the Merger, an amount equal to 2.0% of the product of (A) the number of Exchange Shares with respect to the Initial Common Shares not delivered to such Buyer on or prior to the Merger Delivery Date and to which the Buyer is entitled, and (B) any trading price of the Rexahn Common Stock selected by the Buyer in writing as in effect at any time during the period beginning on the Merger Delivery Date and ending on the date Rexahn makes the applicable cash payment, and if on or after such Trading Day such Buyer (or any Person in respect of, or on behalf, of such Buyer) purchases (in an open market transaction or otherwise) shares of Rexahn Common Stock related to the applicable Merger Delivery Failure, then, in addition to all other remedies available to such Buyer, Rexahn shall, within two (2) Trading Days after such Buyer's request and in such Buyer's discretion, either (i) pay cash to such Buyer in an amount equal to such Buyer's total purchase price (including brokerage commissions and other out-of-pocket expenses, if any) for the shares of Rexahn Common Stock so purchased (the "**Merger Buy-In Price**"), at which point Rexahn's obligation to credit such Buyer's or its designee's balance account with DTC for such shares of Rexahn Common Stock shall terminate, or (ii) promptly honor its obligation to credit such Buyer's or its designee's balance account with DTC and pay cash to such Buyer in an amount equal to the excess (if any) of the Merger Buy-In Price over the product of (A) such number of shares of Rexahn Common Stock, multiplied by (B) any trading price of the Rexahn Common Stock selected by such Buyer in writing as in effect at any time during the period beginning on the Merger Delivery Date and ending on the date of such delivery and payment under this Section 5(d)(ii). Nothing shall limit any Buyer's right to pursue any other remedies available to it hereunder, at law or in equity, including, without limitation, a decree of specific performance and/or injunctive relief with respect to Rexahn's failure to timely electronically deliver shares of Rexahn Common Stock as required pursuant to the terms hereof.

(e) Use of Proceeds. Ocuphire shall use the proceeds from the sale of the Securities for (i) expenses incurred by Ocuphire in connection with the Merger, (ii) operating expenses incurred by Ocuphire in the operation of its business, (iii) payment of Ocuphire's obligations arising under that certain Apexian Sublicense Agreement, dated as of January 21, 2020, by and between Ocuphire and Apexian Pharmaceuticals, Inc., (iv) the payment of any obligations owed to the holders of the Parent Warrants (as defined in the Draft Merger Agreement) that may be triggered as a result of the consummation of the Merger, (v) working capital and (vi) general corporate purposes, provided however, Ocuphire shall not use the proceeds from the sale of the Securities to pay (y) any outstanding obligations for money borrowed by Ocuphire or (z) any outstanding obligations of Ocuphire relating to any letter of credit, banker's acceptance or similar credit transaction.

(f) Financial Information. Rexahn agrees to send the following to each Investor (as defined in the Registration Rights Agreement) during the Reporting Period (i) unless the following are filed with the SEC through EDGAR and are available to the public through the EDGAR system, within one (1) Business Day after the filing thereof with the SEC, a copy of its Annual Reports on Form 10-K, any Quarterly Reports on Form 10-Q, any Current Reports on Form 8-K (or any analogous reports under the 1934 Act) and any registration statements (other than on Form S-8) or amendments filed pursuant to the 1933 Act, (ii) unless the following have been widely disseminated by wire service or in one or more newspapers of general circulation, on the same day as the release thereof, facsimile or e-mailed copies of all press releases issued by Rexahn, and (iii) unless the following are filed with the SEC through EDGAR and are available to the public through the EDGAR system, copies of any notices and other information made available or given to the stockholders of Rexahn generally, contemporaneously with the making available or giving thereof to the stockholders.

(g) Listing. During the Reporting Period, Rexahn shall promptly secure the listing of all of the Exchange Shares and Registrable Securities on the Principal Market and shall use its reasonable best efforts to maintain such listing of all Exchange Shares and Registrable Securities from time to time issuable under the terms of the Transaction Documents. Rexahn shall maintain the authorization for quotation of the Rexahn Common Stock on the Principal Market or any other Eligible Market (as defined in the Warrants). During the Reporting Period, neither Rexahn nor any of the Rexahn Subsidiaries shall take any action which would be reasonably expected to result in the delisting or suspension of the Rexahn Common Stock on the Principal Market. Rexahn shall pay all fees and expenses in connection with satisfying its obligations under this Section 5(g).

(h) Fees. Ocuphire shall, upon the request of the Lead Investor (a Buyer) or its designee(s), deposit with counsel for the Lead Investor up to \$50,000 (in addition to any other amounts paid to any Buyer or its counsel prior to the date of this Agreement) for all costs and expenses incurred in connection with the transactions contemplated by the Transaction Documents (including all legal fees and disbursements in connection therewith, documentation and implementation of the transactions contemplated by the Transaction Documents and due diligence in connection therewith). At the Closing, Ocuphire shall reimburse the Lead Investor (a Buyer) or its designee(s) for all costs and expenses incurred in connection with the transactions contemplated by the Transaction Documents (including all legal fees and disbursements in connection therewith, documentation and implementation of the transactions contemplated by the Transaction Documents and due diligence in connection therewith), which amount may be withheld by such Buyer from its Purchase Price to the extent not previously deposited by Ocuphire; provided, however, in no event will the amount of costs, fees and expenses of the Lead Investor to be reimbursed by Ocuphire in connection with this Agreement and the Closing exceed \$130,000 (including any amounts paid to the Lead Investor or its counsel prior to the Closing) without the prior approval from Ocuphire. Ocuphire shall be responsible for the payment of any placement agent's fees, financial advisory fees, or broker's commissions (other than for Persons engaged by any Buyer) relating to or arising out of the transactions contemplated hereby, including, without limitation, any fees or commissions payable to the Placement Agent and the Escrow Agent. Ocuphire shall pay, and hold each Buyer harmless against, any liability, loss or expense (including, without limitation, attorney's fees and out-of-pocket expenses) arising in connection with any claim relating to any such payment. Except as otherwise set forth in the Transaction Documents, each party to this Agreement shall bear its own expenses in connection with the sale of the Securities to the Buyers.

(i) Pledge of Securities. Each of Ocuphire and Rexahn acknowledges and agrees that the Securities (excluding Securities held in escrow pursuant to the Securities Escrow Agreement) may be pledged by an Investor, at the Investor's sole cost and expense, in connection with a bona fide margin agreement or other loan or financing arrangement that is secured by the Securities. The pledge of Securities shall not be deemed to be a transfer, sale or assignment of the Securities hereunder, and no Investor effecting a pledge of Securities shall be required to provide Rexahn with any notice thereof or otherwise make any delivery to Rexahn pursuant to this Agreement or any other Transaction Document, including, without limitation, Section 2(f) hereof; provided that an Investor and its pledgee shall be required to comply with the provisions of Section 2(f) hereof in order to effect a sale, transfer or assignment of Securities to such pledgee. Rexahn hereby agrees to execute and deliver such documentation as a pledgee of the Securities may reasonably request in connection with a pledge of the Securities to such pledgee by an Investor, at the Investor's sole cost and expense.

(j) Disclosure of Transactions and Other Material Information.

(i) On or before the Disclosure Time (as defined below), Rexahn shall file a Current Report on Form 8-K describing the terms of the transactions contemplated by the Transaction Documents in the form required by the 1934 Act and attaching the material Transaction Documents (including, without limitation, this Agreement (and all material schedules and exhibits to this Agreement), the form of the Warrant, the Registration Rights Agreement, the Securities Escrow Agreement, the Form of Lock-Up Agreement and the form of Leak-Out Agreement) as exhibits to such filing (including all attachments) (the "**8-K Filing**"). As of the filing of the Final Form S-4, no Buyer shall be in possession of any material, non-public information received from Ocuphire, Rexahn, any of their respective Subsidiaries or any of their respective officers, directors, employees, affiliates or agents, that is not disclosed in the Final Form S-4. Each of Ocuphire and Rexahn shall not, and shall cause each of their respective Subsidiaries and its and each of their respective officers, directors, employees, affiliates and agents, not to, provide any Buyer with any material, non-public information regarding Ocuphire, Rexahn or any of their respective Subsidiaries from and after the filing of the Final Form S-4 until the Closing except as necessary to amend or waive the transactions contemplated by this Agreement or to amend, update or finalize the Draft Merger Agreement and/or the Draft Form S-4. To the extent such Buyer is provided with material, non-public information pursuant to the foregoing sentence, Rexahn shall make public disclosure of such material, non-public information in due course, but in any event, no later than the Closing. From and after the Closing, no Buyer shall be in possession of any material, non-public information received from Ocuphire, Rexahn, any of their respective Subsidiaries or any of their respective officers, directors, employees, affiliates or agents. In addition, from and after the Closing, each of Ocuphire and Rexahn acknowledges and agrees that any and all confidentiality or similar obligations under any agreement, whether written or oral, between Ocuphire, Rexahn, any of their respective Subsidiaries or any of their respective officers, directors, affiliates, employees or agents, on the one hand, and any of the Buyers or any of their affiliates, on the other hand, shall terminate and be of no further force or effect. Each of Ocuphire and Rexahn shall not, and shall cause each of their respective Subsidiaries and its and each of their respective officers, directors, employees, affiliates and agents, not to, provide any Buyer with any material, non-public information regarding Ocuphire, Rexahn or any of their respective Subsidiaries from and after the Closing without the express prior written consent of such Buyer. If after the Closing, a Buyer has, or believes it has, received any such material, non-public information regarding Ocuphire, Rexahn or any of their respective Subsidiaries from Ocuphire, Rexahn, any of their respective Subsidiaries or any of their respective officers, directors, employees, affiliates or agents, it may provide Rexahn with written notice thereof. Following the Closing, Rexahn shall, within two (2) Trading Days of receipt of such notice, make public disclosure of such material, non-public information. In the event of a breach of the foregoing covenant by Ocuphire, Rexahn, any of their respective Subsidiaries, or any of their respective officers, directors, employees, affiliates and agents, in addition to any other remedy provided herein or in the Transaction Documents, a Buyer shall have the right to make a public disclosure, in the form of a press release, public advertisement or otherwise, of such material, non-public information without the prior approval by Ocuphire, Rexahn, their respective Subsidiaries, or any of their respective officers, directors, employees, affiliates or agents. No Buyer shall have any liability to Ocuphire, Rexahn, their respective Subsidiaries, or any of its or their respective officers, directors, employees, affiliates or agents for any such disclosure. To the extent that Ocuphire or Rexahn delivers any material, non-public information to a Buyer without such Buyer's consent, each of Ocuphire and Rexahn hereby covenants and agrees that following the Closing such Buyer shall not have any duty of confidentiality to Ocuphire, Rexahn, any of their respective Subsidiaries or any of their respective officers, directors, employees, affiliates or agents with respect to, or a duty to Ocuphire, Rexahn, any of their respective Subsidiaries or any of their respective officers, directors, employees, affiliates or agents not to trade on the basis of, such material, non-public information. Subject to the foregoing, none of Ocuphire, Rexahn, their respective Subsidiaries nor any Buyer shall issue any press releases or any other public statements with respect to the transactions contemplated hereby; provided, however, that each of Ocuphire and Rexahn shall be entitled, without the prior approval of any Buyer, to make any press release or other public disclosure with respect to such transactions (i) in substantial conformity with the 8-K Filing and contemporaneously therewith, (ii) in the Final Form S-4 and (iii) as is required by applicable law and regulations (provided, that in the case of clause (i) the Lead Investor shall be consulted by Ocuphire or Rexahn in connection with any such 8-K Filing or other public disclosure prior to its release). Except for the 8-K Filing, the Final Form S-4 and the Registration Statement required to be filed pursuant to the Registration Rights Agreement, without the prior written consent of any applicable Buyer, none of Ocuphire, Rexahn or any of their respective Subsidiaries or affiliates shall disclose the name of such Buyer in any filing, announcement, release or otherwise. Subject to the terms set forth in Section 5(n)(iii) below, following the Closing, upon receipt or delivery by Rexahn of any notice in accordance with the terms of this Agreement or any other Transaction Document, unless Rexahn has in good faith determined that the matters relating to such notice do not constitute material, nonpublic information relating to Rexahn or the Rexahn Subsidiaries, Rexahn shall contemporaneously with any such receipt or delivery publicly disclose such material, nonpublic information on a Current Report on Form 8-K or otherwise. In the event that Rexahn believes that a notice contains material, nonpublic information relating to Rexahn or the Rexahn Subsidiaries, Rexahn so shall indicate to the Buyers contemporaneously with delivery of such notice, and in the absence of any such indication, the Buyers shall be allowed to presume that all matters relating to such notice do not constitute material, nonpublic information relating to Rexahn or the Rexahn Subsidiaries. As used herein, "**Disclosure Time**" means, (i) if this Agreement is signed on a day that is not a Trading Day or after 9:00 a.m. (New York City time) and before midnight (New York City time) on any Trading Day, no later than 5:30 p.m. (New York City time) on the Trading Day immediately following the date hereof, unless otherwise instructed in writing as to an earlier time by the Lead Investor, or (ii) if this Agreement is signed between midnight (New York City time) and 9:00 a.m. (New York City time) on any Trading Day, no later than 9:01 a.m. (New York City time) on the date hereof, unless otherwise instructed in writing as to an earlier time by the Lead Investor.

(k) Corporate Existence. So long as any Buyer beneficially owns any Securities, Rexahn shall maintain its corporate existence and shall not be party to any Fundamental Transaction (as defined in the Warrants) unless Rexahn is in compliance with the applicable provisions governing Fundamental Transactions set forth in the Warrants.

(l) Reservation of Shares. From and after the closing of the Merger and while any Warrants remain outstanding, Rexahn shall take all action necessary to have authorized, and reserved for the purpose of issuance, no less than the number of shares of Rexahn Common Stock equal to the Required Reserve Amount. If at any time the number of shares of Rexahn Common Stock authorized and reserved for issuance is not sufficient to meet the requirements set forth in this Section 5(l), Rexahn will promptly take all corporate action necessary to authorize and reserve a sufficient number of shares, including, without limitation, calling a special meeting of stockholders to authorize additional shares to meet Rexahn's obligations under this Section 5(l), in the case of an insufficient number of authorized shares, obtain stockholder approval of an increase in such authorized number of shares, and voting the management shares of Rexahn in favor of an increase in the authorized shares of Rexahn Common Stock to ensure that the number of authorized shares is sufficient to meet the requirements set forth in this Section 5(l).

(m) Conduct of Business. The business of Ocuphire, Rexahn and their respective Subsidiaries shall not be conducted in violation of any law, ordinance or regulation of any governmental entity, including, without limitation, FCPA and other applicable Anti-Bribery Laws, OFAC regulations and other applicable Sanctions Laws, and Anti-Money Laundering Laws.

(i) None of Ocuphire, Rexahn, nor any of their Subsidiaries or affiliates, directors, officers, employees, representatives or agents shall:

(1) conduct any business or engage in any transaction or dealing with or for the benefit of any Blocked Person, including the making or receiving of any contribution of funds, goods or services to, from or for the benefit of any Blocked Person;

(2) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked or subject to blocking pursuant to the applicable Sanctions Laws;

(3) use any of the proceeds of the transactions contemplated by this Agreement to finance, promote or otherwise support in any manner any illegal activity, including, without limitation, any Anti-Money Laundering Laws, Sanctions Laws, or Anti-Bribery Laws; or

(4) violate, attempt to violate, or engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, any of the Anti-Money Laundering Laws, Sanctions Laws, or Anti-Bribery Laws.

(ii) Each of Ocuphire and Rexahn shall maintain in effect and enforce policies and procedures designed to ensure compliance by it and its Subsidiaries and their directors, officers, employees, agents, representatives and affiliates with the Sanctions Laws and Anti-Bribery Laws.

(iii) During the Reporting Period, each of Ocuphire and Rexahn will promptly notify the Buyers in writing if any ofit, or any of its Subsidiaries or affiliates, directors, officers, employees, representatives or agents, shall become a Blocked Person, or become directly or indirectly owned or controlled by a Blocked Person.

(iv) During the Reporting Period, each of Ocuphire and Rexahn shall provide such information and documentation as the Buyers or any of their affiliates may require to satisfy compliance with the Anti-Money Laundering Laws, Sanctions Laws, or Anti-Bribery Laws.

(v) The covenants set forth above shall be ongoing during the Reporting Period. During the Reporting Period, each of Ocuphire and Rexahn shall promptly notify the Buyers in writing should it become aware (a) of any changes to these covenants, or (b) if it cannot comply with the covenants set forth herein. During the Reporting Period, each of Ocuphire and Rexahn shall also promptly notify the Buyers in writing should they become aware of an investigation, litigation or regulatory action relating to an alleged or potential violation of the Anti-Money Laundering Laws, Sanctions Laws, and Anti-Bribery Laws.

(n) Additional Issuances of Securities.

(i) For purposes of this Agreement, the following definitions shall apply.

(1) “**Convertible Securities**” means any stock or securities (other than Options) convertible into or exercisable or exchangeable for Ocuphire Common Stock or Rexahn Common Stock.

(2) “**Options**” means any rights, warrants or options to subscribe for or purchase Ocuphire Common Stock, Rexahn Common Stock or Convertible Securities, including without limitation, any Warrants.

(3) “**Trigger Date**” means the date that is ninety (90) calendar days after the earlier of (x) such time as all of the Registrable Securities may be sold without restriction or limitation pursuant to Rule 144 and without the requirement to be in compliance with Rule 144(c)(1), (y) the one (1) year anniversary of the Closing Date, and (z) the date that the Initial Registration Statement (as defined in the Registration Rights Agreement) has been declared effective by the SEC; provided, that this clause (z) shall only apply if there are no Cutback Shares (as defined in the Registration Rights Agreement) arising from the Initial Registration Statement.

(ii) From the date hereof until the Trigger Date, Rexahn shall not, directly or indirectly, file any registration statement or any amendment or supplement thereto other than (A) the Final Form S-4 and (B) registration statements after the effective date of the Merger with respect to the issuance or resale of any Excluded Securities (as defined in the Series A Warrants) ((A) and (B), including any amendments or supplements thereto provided that the registration statements referenced in clauses (A) and (B) shall not register pursuant to any amendment or supplement thereto a greater number of shares of Rexahn Common Stock as being contemplated on the date hereof (as such number of shares of Rexahn Common Stock may be adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction occurring after the date hereof), collectively, “**Exempt Registration Statements**”), or cause any registration statement other than the Exempt Registration Statements to be declared effective by the SEC, or grant any registration rights to any Person that can be exercised prior to such time as set forth above, other than pursuant to the Registration Rights Agreement. From the date hereof until the date that is the later of (i) one-hundred eighty (180) calendar days following the Closing Date and (ii) the earlier of (A) sixty (60) calendar days following the date that all Registrable Securities are registered for resale pursuant to one or more Registration Statement(s) and (B) two-hundred forty (240) calendar days following the Closing Date, except for issuances pursuant to this Agreement or as contemplated by the Executed Merger Agreement, neither Ocuphire nor Rexahn shall, directly or indirectly, offer, sell, grant any option to purchase, or otherwise dispose of (or announce any offer, sale, grant or any option to purchase or other disposition of) any of its or its Subsidiaries’ debt, equity or equity equivalent securities (any such offer, sale, grant, disposition or announcement being referred to as a “**Subsequent Placement**”) or be party to any solicitations, negotiations or discussions with regard to the foregoing.

(iii) From the date hereof until the one (1) year anniversary of the Closing Date, Rexahn will not, directly or indirectly, effect any Subsequent Placement unless Rexahn shall have first complied with this Section 5(n)(iii).

(1) At least two (2) Business Days prior to any proposed or intended Subsequent Placement, Rexahn shall deliver to each Buyer a written notice (each such notice, a “**Pre-Notice**”), which Pre-Notice shall not contain any information (including, without limitation, material, non-public information) other than: (A) if the proposed Offer Notice (as defined below) constitutes or contains material, non-public information, a statement asking whether such Buyer is willing to accept material non-public information or (B) if the proposed Offer Notice does not constitute or contain material, non-public information, (x) a statement that Rexahn proposes or intends to effect a Subsequent Placement, (y) a statement that the statement in clause (x) above does not constitute material, non-public information and (z) a statement informing such Buyer that it is entitled to receive an Offer Notice with respect to such Subsequent Placement upon its written request. Upon the written request of a Buyer within two (2) Business Days after Rexahn’s delivery to such Buyer of such Pre-Notice, and only upon a written request by such Buyer, Rexahn shall promptly, but no later than 6:00 p.m. New York Time on the second Business Day after the delivery to such Buyer of such Pre-Notice, deliver to such Buyer a written notice (the “**Offer Notice**”) of any proposed or intended issuance or sale or exchange (the “**Offer**”) of the securities being offered (the “**Offered Securities**”) in a Subsequent Placement, which Offer Notice shall (w) identify and describe the Offered Securities, (x) describe the price (if known) and other terms upon which they are to be issued, sold or exchanged, and the number or amount of the Offered Securities to be issued, sold or exchanged, (y) identify the Persons (if known) to which or with which the Offered Securities are to be offered, issued, sold or exchanged and (z) offer to issue and sell to or exchange with such Buyers at least fifty percent (50%) of the Offered Securities (subject to the restrictions applicable to the Buyers set forth in Section 1(c)(iv) above), allocated among such Buyers (a) based on such Buyer’s pro rata portion of the number of Initial Common Shares purchased hereunder (the “**Basic Amount**”) and (b) with respect to each Buyer that elects to purchase its Basic Amount, Buyer who purchases more than \$1,000,000 in value of the Initial Common Shares (each a “**Qualified Buyer**”) shall indicate it will purchase or acquire should the other Buyers subscribe for less than their Basic Amounts (the “**Undersubscription Amount**”), which process shall be repeated until the Qualified Buyers shall have an opportunity to subscribe for any remaining Undersubscription Amount.

(2) To accept an Offer, in whole or in part, such Buyer must deliver a written notice to Rexahn prior to the end of the second (2^d) Business Day after such Buyer’s receipt of the Offer Notice (the “**Offer Period**”), setting forth the portion of such Buyer’s Basic Amount that such Buyer elects to purchase and, if such Buyer shall elect to purchase all of its Basic Amount, the Undersubscription Amount, if any, that such Qualified Buyer elects to purchase (in either case, the “**Notice of Acceptance**”). If the Basic Amounts subscribed for by all Buyers are less than the total of all of the Basic Amounts, then each Qualified Buyer who has set forth an Undersubscription Amount in its Notice of Acceptance shall be entitled to purchase, in addition to the Basic Amounts subscribed for, the Undersubscription Amount it has subscribed for; provided, however, that if the Undersubscription Amounts subscribed for exceed the difference between the total of all the Basic Amounts and the Basic Amounts subscribed for (the “**Available Undersubscription Amount**”), each Qualified Buyer who has subscribed for any Undersubscription Amount shall be entitled to purchase only that portion of the Available Undersubscription Amount as the Basic Amount of such Qualified Buyer bears to the total Basic Amounts of all Qualified Buyers that have subscribed for Undersubscription Amounts, subject to rounding by Rexahn to the extent it deems reasonably necessary. Notwithstanding anything to the contrary contained herein, if Rexahn desires to modify or amend the material terms and conditions of the Offer prior to the expiration of the Offer Period, Rexahn may deliver to each Buyer a new Offer Notice and the Offer Period shall expire at 10:00 p.m. New York Time on the second (2nd) Business Day after the day such Buyer receives such new Offer Notice. If a Buyer fails to timely notify Rexahn of its willingness to participate in the Subsequent Placement or otherwise fails to respond to the Pre-Notice, Rexahn may effect such Subsequent Placement without the participation of such on the terms set forth in the Offer Notice.

(3) Rexahn shall have two (2) Business Days from the expiration of the Offer Period above to offer, issue, sell or exchange all or any part of such Offered Securities as to which a Notice of Acceptance has not been given by the Buyers (the “**Refused Securities**”) pursuant to a definitive agreement (the “**Subsequent Placement Agreement**”), but only to the offerees described in the Offer Notice (if so described therein) and only upon terms and conditions (including, without limitation, unit prices and interest rates) that are not more favorable to the acquiring Person or Persons or less favorable to Rexahn than those set forth in the Offer Notice and to publicly announce (a) the execution of such Subsequent Placement Agreement and (b) either (x) the consummation of the transactions contemplated by such Subsequent Placement Agreement or (y) the termination of such Subsequent Placement Agreement, which shall be filed with the SEC on a Current Report on Form 8-K with such Subsequent Placement Agreement and any documents contemplated therein filed as exhibits thereto.

(4) In the event Rexahn shall propose to sell less than all the Refused Securities (any such sale to be in the manner and on the terms specified in Section 5(n)(iii)(3) above), then each Buyer may, at its sole option and in its sole discretion, reduce the number or amount of the Offered Securities specified in its Notice of Acceptance to an amount that shall be not less than the number or amount of the Offered Securities that such Buyer elected to purchase pursuant to Section 5(n)(iii)(2) above multiplied by a fraction, (i) the numerator of which shall be the number or amount of Offered Securities Rexahn actually proposes to issue, sell or exchange (including Offered Securities to be issued or sold to Buyers pursuant to Section 5(n)(iii)(3) above prior to such reduction) and (ii) the denominator of which shall be the original amount of the Offered Securities. In the event that any Buyer so elects to reduce the number or amount of Offered Securities specified in its Notice of Acceptance, Rexahn may not issue, sell or exchange more than the reduced number or amount of the Offered Securities unless and until such securities have again been offered to the Buyers in accordance with the mechanics of the Offer Notice set forth in Section 5(n)(iii)(1) above.

(5) Upon the closing of the issuance, sale or exchange of all or less than all of the Refused Securities, the Buyers shall acquire from Rexahn, and Rexahn shall issue to the Buyers, the number or amount of Offered Securities specified in the Notices of Acceptance, as reduced pursuant to Section 5(n)(iii)(4) above if the Buyers have so elected, upon the terms and conditions specified in the Offer. Notwithstanding anything to the contrary contained in this Agreement, if Rexahn does not consummate the closing of the issuance, sale or exchange of all or less than all of the Refused Securities, within fifteen (15) Business Days of the expiration of the Offer Period, Rexahn shall issue to the Buyers, the number or amount of Offered Securities specified in the Notice of Acceptance, as reduced pursuant to Section 5(n)(iii)(4) above if the Buyers have so elected, upon the terms and conditions specified in the Offer. The purchase by the Buyers of any Offered Securities is subject in all cases to the preparation, execution and delivery by Rexahn and the Buyers of a purchase agreement relating to such Offered Securities reasonably satisfactory in form and substance to the Buyers and their respective counsel.

(6) Any Offered Securities not acquired by the Buyers or other Persons in accordance with Section 5(n)(iii)(3) above may not be issued, sold or exchanged until they are again offered to the Buyers under the procedures specified in this Section 5(n)(iii).

(7) Rexahn and the Buyers agree that if any Buyer elects to participate in the Offer, (x) neither the definitive agreements with respect to such Offer nor any other transaction documents related thereto shall include any term or provisions whereby any Buyer shall be required to agree to any restrictions in trading as to any securities of Rexahn owned by such Buyer prior to such Subsequent Placement and (y) the Buyers shall be entitled to the same registration rights provided to other investors in the Subsequent Placement.

(8) Notwithstanding anything to the contrary in this Section 5(n) and unless otherwise agreed to by the Buyers, Rexahn shall either confirm in writing to the Buyers that the transaction with respect to the Subsequent Placement has been abandoned or shall publicly disclose its intention to issue the Offered Securities, in either case in such a manner such that the Buyers will not be in possession of material, nonpublic information, by the fifteenth (15th) Business Day following delivery of the Offer Notice. If by the fifteenth (15th) Business Day following delivery of the Offer Notice no public disclosure regarding a transaction with respect to the Offered Securities has been made, and no notice regarding the abandonment of such transaction has been received by the Buyers, such transaction shall be deemed to have been abandoned and the Buyers shall not be deemed to be in possession of any material, nonpublic information with respect to Rexahn. Should Rexahn decide to pursue such transaction with respect to the Offered Securities, Rexahn shall provide each Buyer with another Offer Notice and each Buyer will again have the right of participation set forth in this Section 5(n)(iii). Rexahn shall not be permitted to deliver more than one (1) such Offer Notice to the Buyers in any 60 day period (other than the Offer Notices contemplated by the last sentence of Section 5(n)(iii)(2) of this Agreement).

(9) Notwithstanding the foregoing, solely with respect to registered public offerings or other Subsequent Placements in which securities are issued primarily pursuant to one or more registration statements filed with the SEC with an underwriter or placement agent engaged by Rexahn with respect to such Subsequent Placement (each, a “**Registered Subsequent Placement**”), (x) any corresponding Offer Notice with respect thereto shall not be required to include pricing information to the extent such pricing information is then unavailable (but Rexahn (or the placement agent or underwriter, as applicable) shall provide such pricing information to each Buyer as soon as commercially practicable following the pricing call or meeting, as applicable, of such Registered Subsequent Placement) and (y) in lieu of the end of the Offer Period being determined as described above (but without modifying the obligation of Rexahn to deliver the Offer Notice for such Registered Subsequent Placement without such pricing in the timeframe as described above), each Buyer shall, after receipt of such pricing information, have the customary period, as reasonably determined by the underwriter or placement agent, as applicable, to thereafter elect to subscribe for such Buyer’s Basic Amount of the Offered Securities (or such greater allocation, at the discretion of the placement agent or underwriter, as applicable, and Rexahn) in such Registered Subsequent Placement. For the purposes of a Registered Subsequent Placement, Rexahn shall be deemed to have complied with this Section 5(n) (iii) if: (i) Rexahn or its underwriter, placement agent or financial advisor in good faith attempts to inform a Buyer of such offering on a confidential basis pursuant to a customary “wall crossing” procedure and such Buyer declines to speak with Rexahn or its underwriter, placement agent or financial advisor regarding the offering (i.e., it does not come “over the wall”) (it being understood that a Buyer will be deemed to have “declined to speak” to Rexahn or its underwriter, placement agent or financial advisor, and thus have waived its right to participate in such offering, if it could not be reached or does not provide a response within 24 hours after such good faith attempt to inform such Buyer of such offering); or (ii) Rexahn or its underwriter, placement agent or financial advisor contacts a Buyer following the first public announcement of the public offering and such Buyer is offered an allocation of or is allocated in such offering the lesser of: (A) its requested allocation in such public offering or (B) such Buyer’s Basic Amount; or (iii) if such Buyer cannot be located or is not responsive during the period between the first public announcement of the public offering and the pricing of such public offering (which may be the same day as the announcement in the case of a confidentially marketed public offering).

(iv) The restrictions contained in subsections (ii) and (iii) of this Section 5(n) shall not apply to (x) the disposition, exercise, cancellation, modification or termination of Parent Warrants that are outstanding on the day immediately preceding the date of this Agreement, (y) any issuance or proposed issuance of any Excluded Securities and (z) any solicitations, negotiations or discussions with regard to the foregoing. In addition, the restrictions contained in Section 5(n)(iii) shall not apply to (x) any offering or sale of securities on Form S-8 or Form S-4, or any similar or successor forms or (y) any offering or sale pursuant to an “at the market” offering by Rexahn that is effected by Rexahn through a broker-dealer; provided, however, that the transactions in the immediately preceding clauses (x) and (y) are otherwise permitted under this Agreement.

(o) Public Information. At any time during the period commencing from the six (6) month anniversary of the Closing Date and ending at such time that all of the Registrable Securities, if a registration statement is not available for the resale of all of the Registrable Securities, may be sold without restriction or limitation pursuant to Rule 144 and without the requirement to be in compliance with Rule 144(c)(1), if Rexahn shall (i) fail for any reason to satisfy the requirements of Rule 144(c)(1), including, without limitation, the failure to satisfy the current public information requirements under Rule 144(c) or (ii) if Rexahn has ever been an issuer described in Rule 144(i)(1)(i) or becomes such an issuer in the future, and Rexahn shall fail to satisfy any condition set forth in Rule 144(i)(2) (each, a “**Public Information Failure**”) then, as partial relief for the damages to any holder of Securities by reason of any such delay in or reduction of its ability to sell the Securities (which remedy shall not be exclusive of any other remedies available at law or in equity), Rexahn shall pay to each such holder an amount in cash equal to two percent (2.0%) of the aggregate Purchase Price of such holder’s Securities on the day of a Public Information Failure and on every thirtieth day (prorated for periods totaling less than thirty days) thereafter until the earlier of (i) the date such Public Information Failure is cured and (ii) such time that such Public Information Failure no longer prevents a holder of Securities from selling such Securities pursuant to Rule 144 without any restrictions or limitations. The payments to which a holder shall be entitled pursuant to this Section 5(o) are referred to herein as “**Public Information Failure Payments**.” Public Information Failure Payments shall be paid on the earlier of (I) the last day of the calendar month during which such Public Information Failure Payments are incurred and (II) the third Business Day after the event or failure giving rise to the Public Information Failure Payments is cured. In the event Rexahn fails to make Public Information Failure Payments in a timely manner, such Public Information Failure Payments shall bear interest at the rate of one and one-half percent (1.5%) per month (prorated for partial months) until paid in full.

(p) Notice of Disqualification Events. Each of Ocuphire and Rexahn will notify the Buyers in writing, prior to the Closing Date of (i) any Disqualification Event relating to any Ocuphire Covered Person or Rexahn Covered Person, respectively (as defined in Annex I), and (ii) any event that would, with the passage of time, reasonably be expected to become a Disqualification Event relating to any Ocuphire Covered Person or Rexahn Covered Person, respectively.

(q) FAST Compliance. While any Warrants are outstanding, Rexahn shall maintain a transfer agent that participates in the DTC Fast Automated Securities Transfer Program.

(r) Lock-Up. Rexahn shall not amend, modify, waive or terminate any provision of any of the Lock-Up Agreements except to extend the term of the lock-up period and shall enforce the provisions of each Lock-Up Agreement in accordance with its terms. If any officer or director that is a party to a Lock-Up Agreement breaches any provision of a Lock-Up Agreement, Rexahn shall promptly use its commercially reasonable efforts to seek specific performance of the terms of such Lock-Up Agreement.

(s) Leak-Out. Rexahn shall not amend, modify, waive or terminate any provision of any of the Leak-Out Agreements and shall enforce the provisions of each Leak-Out Agreement in accordance with its terms. If any officer or director that is a party to a Leak-Out Agreement breaches any provision of a Leak-Out Agreement, Rexahn shall promptly use its commercially reasonable efforts to seek specific performance of the terms of such Leak-Out Agreement.

(t) Variable Securities. From the date hereof until the first anniversary of the Closing Date, Ocuphire, Rexahn, each Ocuphire Subsidiary and each Rexahn Subsidiary shall be prohibited from effecting or entering into an agreement to effect any Subsequent Placement involving a Variable Rate Transaction. "Variable Rate Transaction" means a transaction in which Ocuphire, Rexahn, any Ocuphire Subsidiary or any Rexahn Subsidiary (i) issues or sells any Convertible Securities either (A) at a conversion, exercise or exchange rate or other price that is based upon and/or varies with the trading prices of or quotations for the shares of Ocuphire Common Stock or Rexahn Common Stock at any time after the initial issuance of such Convertible Securities, or (B) with a conversion, exercise or exchange price that is subject to being reset at some future date after the initial issuance of such Convertible Securities or upon the occurrence of specified or contingent events directly or indirectly related to the business of Ocuphire or Rexahn or the market for the Ocuphire Common Stock or Rexahn Common Stock, other than pursuant to a customary "weighted average" anti-dilution provision or (ii) enters into any agreement (including, without limitation, an equity line of credit or an "at-the-market" offering) whereby Ocuphire, Rexahn, any Ocuphire Subsidiary or any Rexahn Subsidiary may sell securities at a future determined price (other than standard and customary "preemptive" or "participation" rights); provided, however, (i) a Variable Rate Transaction shall not include (x) any of the transactions pursuant to the Executed Merger Agreement or (y) the issuance of shares of Common Stock, Options or Convertible Securities issued by Rexahn prior to the Closing Date in connection with the exercise, exchange, cancellation or termination of the Parent Warrants that are outstanding on the day immediately preceding the date of this Agreement and (ii) Rexahn shall be permitted to consummate "at-the-market" offerings by a broker-dealer at any time after the later of (x) the date that is nine (9) months from the Closing Date and (y) the Trigger Date. Each Buyer shall be entitled to obtain injunctive relief against Ocuphire, Rexahn, the Ocuphire Subsidiaries and the Rexahn Subsidiaries to preclude any such issuance, which remedy shall be in addition to any right to collect damages for an actual breach of this Section 5(t).

(u) Merger Agreement. The Executed Merger Agreement shall be substantially identical to the Draft Merger Agreement, subject to any amendments entered into in compliance with the terms of the Executed Merger Agreement and this Section 5(u). Neither Ocuphire nor Rexahn shall amend any of the terms of the Executed Merger Agreement without the prior written consent of the Required Holders (as defined in Section 10(e)) if such amendment would (x) adversely affect the rights of the Buyers under the Transaction Documents, (y) materially and adversely affect the Buyers as stockholders of Rexahn or (z) materially and adversely affect the transactions contemplated under the Transaction Documents. Ocuphire shall not waive any terms of the Executed Merger Agreement without the prior written consent of the Required Holders. Nothing herein shall prevent Ocuphire or Rexahn from terminating the Merger Agreement in accordance with its terms.

(v) Closing Documents. On or prior to fourteen (14) calendar days after the Closing Date, Rexahn agrees to deliver, or cause to be delivered, to each Buyer and Schulte Roth & Zabel LLP a complete closing set (which may be solely in electronic format) of the executed Transaction Documents, Securities and any other documents required to be delivered to any party pursuant to Section 8 hereof or otherwise.

(w) Rexahn Closing Representations and Warranties. Effective as of the time of completion of the Merger, Rexahn covenants and agrees to make the representations and warranties set forth on Annex I attached hereto to each of the Buyers.

6. REGISTER; TRANSFER AGENT INSTRUCTIONS.

(a) Register. Rexahn shall maintain at its principal executive offices (or such other office or agency of Rexahn as it may designate by notice to each holder of Securities), a register for the Warrants in which Rexahn shall record the name and address of the Person in whose name the Warrants have been issued (including the name and address of each transferee) and the number of Warrant Shares issuable upon exercise of the Warrants held by such Person. Rexahn shall keep the register open and available at all times during business hours for inspection of any Buyer or its legal representatives.

(b) Transfer Agent Instructions. Following the completion of the Merger, Rexahn shall issue irrevocable instructions to its Transfer Agent, and any subsequent transfer agent, in the form attached hereto as Exhibit E, (the “**Irrevocable Transfer Agent Instructions**”) to issue certificates or credit shares to the applicable balance accounts at DTC, registered in the name of each Buyer or its respective nominee(s), for the Exchange Shares issued in exchange of the Additional Common Shares and the Warrant Shares upon delivery of a Capacity Notice or upon exercise of the Warrant, as applicable, in such amounts as specified from time to time by each Buyer to Rexahn upon delivery of a Capacity Notice or upon exercise of the Warrants, as applicable. Rexahn warrants that no instruction other than the Irrevocable Transfer Agent Instructions referred to in this Section 6(b), and stop transfer instructions to give effect to Section 2(f) hereof, will be given by Rexahn to its Transfer Agent, and that the Securities shall otherwise be freely transferable on the books and records of Rexahn as and to the extent provided in this Agreement and the other Transaction Documents. If a Buyer effects a sale, assignment or transfer of the Securities in accordance with Section 2(f), Rexahn shall permit the transfer and shall promptly instruct its Transfer Agent to issue one or more certificates or credit shares to the applicable balance accounts at DTC in such name and in such denominations as specified by such Buyer to effect such sale, transfer or assignment. In the event that such sale, assignment or transfer involves the Warrant Shares sold, assigned or transferred pursuant to an effective registration statement or pursuant to Rule 144, the Transfer Agent shall issue such Securities to the Buyer, assignee or transferee, as the case may be, without any restrictive legend. Rexahn acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to a Buyer. Accordingly, Rexahn acknowledges that the remedy at law for a breach of its obligations under this Section 6(b) will be inadequate and agrees, in the event of a breach or threatened breach by Rexahn of the provisions of this Section 6(b), that a Buyer shall be entitled, in addition to all other available remedies, to an order and/or injunction restraining any breach and requiring immediate issuance and transfer, without the necessity of showing economic loss and without any bond or other security being required.

7. CONDITIONS TO OCUPHIRE’S OBLIGATION TO SELL AND REXAHN’S OBLIGATION TO ISSUE

The obligation of Ocuphire hereunder to issue and sell the Common Shares at the Closing and the obligation of Rexahn hereunder to issue the Warrants at the Warrant Closing is subject to the satisfaction, at or before the Closing Date, of each of the following conditions, provided that these conditions are for each of Ocuphire’s and Rexahn’s sole benefit and may be waived by Ocuphire and/or Rexahn at any time in its sole discretion by providing each Buyer with prior written notice thereof:

(a) Such Buyer shall have executed each of the Transaction Documents to which it is a party and delivered the same to Ocuphire.

(b) Such Buyer shall have delivered to Ocuphire the Purchase Price (less, in the case of the Lead Investor, the amounts withheld pursuant to Section 5(h)), for the Common Shares and the related Warrants being purchased by such Buyer at the Closing by wire transfer of immediately available funds pursuant to the wire instructions provided by Ocuphire.

(c) The representations and warranties of such Buyer shall be true and correct as of the date when made and as of the Closing Date as though made at that time (except for representations and warranties that speak as of a specific date which shall be true and correct as of such specified date), and such Buyer shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by such Buyer at or prior to the Closing Date.

(d) All conditions precedent to the closing of the transactions contemplated by the Draft Merger Agreement (the “**Merger**”), other than any conditions precedent relating to consummation of the transactions contemplated by this Agreement, shall have been satisfied or waived.

8. CONDITIONS TO EACH BUYER’S OBLIGATION TO PURCHASE

The obligation of each Buyer hereunder to purchase the Common Shares and the related Warrants at the Closing is subject to the satisfaction, at or before the Closing Date, of each of the following conditions, provided that these conditions are for each Buyer’s sole benefit and may be waived by such Buyer at any time in its sole discretion by providing Ocuphire with prior written notice thereof:

(a) Ocuphire shall have duly executed and delivered to such Buyer (A) each of the Ocuphire Transaction Documents and (B) the Common Shares (allocated in such amounts as such Buyer shall request), being purchased by such Buyer at the Closing pursuant to this Agreement.

(b) Rexahn shall have duly executed and delivered to such Buyer each of the Rexahn Transaction Documents (other than the Warrants).

(c) Such Buyer shall have received the opinion of Honigman LLP, Ocuphire’s outside counsel, dated as of the Closing Date, in the form and substance substantially identical to the opinion agreed to between Ocuphire and the Lead Investor on or prior to the date hereof.

(d) Such Buyer shall have received the opinion of Hogan Lovells US LLP, Rexahn’s outside counsel, dated as of the Closing Date, in the form and substance substantially identical to the opinion agreed to between Rexahn and the Lead Investor on or prior to the date hereof.

(e) Rexahn shall have delivered to such Buyer a copy of the Irrevocable Transfer Agent Instructions in escrow to be released upon the effectiveness of the Merger, which instructions shall have been delivered to and acknowledged in writing by the Transfer Agent.

(f) Each of Ocuphire and Rexahn shall have delivered to such Buyer a certificate evidencing the formation and good standing of Ocuphire and Rexahn in such entity's jurisdiction of formation issued by the Secretary of State (or comparable office) of such jurisdiction, as of a date within ten (10) calendar days prior to the Closing Date.

(g) Each of Ocuphire and Rexahn shall have delivered to such Buyer a certificate evidencing its qualification as a foreign corporation and good standing issued by the Secretary of State (or comparable office) of the jurisdiction in which it has its headquarters, as of a date within ten (10) calendar days prior to the Closing Date.

(h) Each of Ocuphire and Rexahn shall have delivered to such Buyer a certified copy of the Ocuphire Certificate of Incorporation and the Rexahn Certificate of Incorporation, respectively, as certified by the Secretary of State (or comparable office) of its jurisdiction of formation within ten (10) calendar days prior to the Closing Date.

(i) Each of Ocuphire and Rexahn shall have delivered to such Buyer a certificate, executed by its Secretary and dated as of the Closing Date, as to (i) the resolutions consistent with Section 3(b) or Section 4(b), respectively, as adopted by its board of directors, (ii) the Ocuphire Certificate of Incorporation or the Rexahn Certificate of Incorporation, respectively, and (iii) the Ocuphire Bylaws and Rexahn Bylaws, respectively, each as in effect at the Closing, in the form attached hereto as Exhibit F.

(j) The representations and warranties of each of Ocuphire and Rexahn shall be true and correct in all material respects (except for those representations and warranties that are qualified by materiality, Rexahn Material Adverse Effect or Ocuphire Material Adverse Effect, which are true and correct in all respects) as of the date when made and as of the Closing Date as though made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct in all material respects (except for those representations and warranties that are qualified by materiality, Rexahn Material Adverse Effect or Ocuphire Material Adverse Effect, which are true and correct in all respects) as of such specified date) and each of Ocuphire and Rexahn shall have performed, satisfied and complied in all respects with the covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by it at or prior to the Closing Date. Such Buyer shall have received certificates, executed by the Chief Executive Officer of each of Ocuphire and Rexahn, dated as of the Closing Date, to the foregoing effect and as to such other matters as may be reasonably requested by such Buyer in the form attached hereto as Exhibit G.

(k) Each of Ocuphire and Rexahn shall have delivered to each Buyer a lock-up agreement, in the form attached hereto as Exhibit H (collectively, the "**Lock-Up Agreements**"), executed by any Person that will be subject to Section 16 of the 1934 Act with respect to Rexahn immediately following the consummation of the Merger.

(l) Rexahn shall have delivered to such Buyer a letter from its Transfer Agent certifying the number of shares of Rexahn Common Stock outstanding as of a date within five (5) calendar days of the Closing Date.

(m) The proposed Merger between Ocuphire and Rexahn shall occur immediately following the Closing and the Rexahn Common Stock (I) shall be designated for quotation or listed on the Principal Market and (II) shall not have been suspended, as of the Closing Date, by the SEC or the Principal Market from trading on the Principal Market nor shall suspension by the SEC or the Principal Market have been threatened, as of the Closing Date, either (A) in writing by the SEC or the Principal Market or (B) by falling below the minimum listing maintenance requirements or initial listing requirements of the Principal Market.

(n) Each of Ocuphire and Rexahn shall have obtained all stockholder, governmental, regulatory or other third party consents and approvals, including, without limitation, approval of the Principal Market, necessary for the completion of the Merger and the sale of the Securities, including, without limitation, in the case of Rexahn, any and all stockholder approval required by the Principal Market with respect to the issuances of the Warrants and the Warrant Shares in full upon exercise of the Warrants without giving effect to any limitation on the exercise of the Warrants set forth therein.

(o) All conditions precedent to the closing of the Merger contained in the Draft Merger Agreement, other than any conditions precedent relating to consummation of the transactions contemplated by this Agreement, shall have been satisfied or waived.

(p) The Final Form S-4 shall have become effective in accordance with the provisions of the 1933 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 Final Form S-4 that has not been withdrawn.

(q) The Securities Escrow Agreement shall have been executed and delivered to such Buyer by the other parties thereto.

(r) Ocuphire shall have issued the Additional Common Shares in escrow in the name of the Escrow Agent in accordance with the terms of the Securities Escrow Agreement.

(s) Such Buyer shall have received Ocuphire's wire instructions on Ocuphire's letterhead duly executed by an authorized executive officer of Ocuphire.

(t) Each Buyer shall have delivered to Ocuphire a leak-out agreement, in the form attached hereto as Exhibit I, executed by each Buyer (the "**Leak-Out Agreements**").

(u) Rexahn shall have a number of shares of Rexahn Common Stock equal to the Required Reserve Amount available in its authorized capital and reserved for issuances under the Transaction Documents.

(v) Those certain notes set forth in the Conversion Agreement shall have been converted into Ocuphire Common Stock.

(w) Ocuphire shall have delivered written notice to the Escrow Agent, with a copy of such notice to the Lead Investor, that the Closing is occurring on the Closing Date.

(x) Each of Ocuphire and Rexahn shall have delivered to such Buyer such other documents relating to the transactions contemplated by this Agreement as such Buyer or its counsel may reasonably request.

9. TERMINATION.

(a) In the event that the Closing shall not have occurred with respect to a Buyer on or before November 14, 2020 due to Ocuphire's, Rexahn's or such Buyer's failure to satisfy the conditions set forth in Sections 7 and 8 above (and the nonbreaching party's failure to waive such unsatisfied condition(s)), the Buyer, if such Buyer is the nonbreaching party, or Ocuphire, if Ocuphire is the nonbreaching party, or Rexahn, if Rexahn is the nonbreaching party, shall have the option to terminate this Agreement with respect to such Buyer, if such Buyer is the breaching party, or with respect to Ocuphire and Rexahn, if Ocuphire or Rexahn are the breaching party, at the close of business on such date by delivering a written notice to that effect to each other party to this Agreement and without liability of any party to any other party; provided, however, that if this Agreement is terminated pursuant to this Section 9(a), Ocuphire shall remain obligated to reimburse the Lead Investor or its designee(s), as applicable, for the expenses described in Section 5(h) above.

(b) This Agreement shall terminate automatically upon termination of the Executed Merger Agreement in accordance with its terms; provided, however, Sections 5(h) and 5(j) shall survive the termination of this Agreement.

10. MISCELLANEOUS.

(a) Governing Law; Jurisdiction; Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.** In addition to, but not in limitation of, any other rights of a Buyer hereunder, if (a) this Agreement is placed in the hands of an attorney for collection of any indemnification or other obligation hereunder then outstanding or enforcement or any such obligation is collected or enforced through any legal proceeding or a Buyer otherwise takes action to collect amounts due under this Agreement or to enforce the provisions of this Agreement or (b) there occurs any bankruptcy, reorganization, receivership of Ocuphire or Rexahn or other proceedings affecting Ocuphire's or Rexahn's creditors' rights and involving a claim under this Agreement, then Ocuphire or Rexahn, as applicable, shall pay the costs incurred by such Buyer for such collection, enforcement or action or in connection with such bankruptcy, reorganization, receivership or other proceeding, including, without limitation, attorneys' fees and disbursements.

(b) Counterparts. This Agreement may be executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party; provided that a facsimile or .pdf signature shall be considered due execution and shall be binding upon the signatory thereto with the same force and effect as if the signature were an original, not a facsimile or .pdf signature.

(c) Headings. The headings of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement.

(d) Severability. If any provision of this Agreement is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Agreement so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

(e) Entire Agreement; Amendments. This Agreement and the other Transaction Documents supersede all other prior oral or written agreements between Ocuphire, Rexahn, their affiliates and Persons acting on their behalf, on the one hand, and the Buyers, their affiliates and Persons acting on their behalf, on the other hand, with respect to the matters discussed herein, and this Agreement, the other Transaction Documents and the instruments referenced herein and therein contain the entire understanding of the parties with respect to the matters covered herein and therein and, except as specifically set forth herein or therein, none of Ocuphire, Rexahn nor any Buyer makes any representation, warranty, covenant or undertaking with respect to such matters. No provision of this Agreement may be amended other than by an instrument in writing signed by Ocuphire, Rexahn and the Required Holders, and any amendment to this Agreement made in conformity with the provisions of this Section 10(e) shall be binding on all Buyers and holders of Securities, Ocuphire and Rexahn. No provisions hereto may be waived other than by an instrument in writing signed by the party against whom enforcement is sought. No such amendment shall be effective to the extent that it applies to less than all of the Buyers or holders of the applicable Securities then outstanding. No consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of any of the Transaction Documents unless the same consideration (other than the reimbursement of legal fees) also is offered to all of the parties to the Transaction Documents, holders of Common Shares or holders of the Warrants, as the case may be. Neither Ocuphire nor Rexahn has, directly or indirectly, made any agreements with any Buyers relating to the terms or conditions of the transactions contemplated by the Transaction Documents except as set forth in the Transaction Documents. Without limiting the foregoing, each of Ocuphire and Rexahn confirms that, except as set forth in this Agreement, no Buyer has made any commitment or promise or has any other obligation to provide any financing to Ocuphire or Rexahn or otherwise. As used herein, “**Required Holders**” means (I) prior to the Closing Date, the Buyers entitled to purchase at the Closing a majority of the aggregate amount of Initial Common Shares issuable hereunder and the aggregate amount of Warrant Shares issuable under the Warrants (without regard to any restriction or limitation on the exercise of the Warrants contained therein) and shall include the Lead Investor and (II) on or after the Closing Date, holders of at least a majority of the aggregate amount of Securities issued and issuable hereunder and under the Warrants held by the Buyers or successors and assigns of the Buyers pursuant to Section 10(g) (without regard to any restriction or limitation on the exercise of the Warrants or the delivery of the Exchange Shares issued in exchange of Additional Common Shares contained therein or herein) as of the applicable time of determination and shall include the Lead Investor so long as the Lead Investor or any of its Affiliates holds any Securities.

(f) Notices. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement or any of the other Transaction Documents must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon delivery, when sent by facsimile (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party) or by electronic mail; (iii) upon delivery, when sent by electronic mail (provided that the sending party does not receive an automated rejection notice); or (iv) one (1) Business Day after deposit with an overnight courier service, in each case properly addressed to the party to receive the same. The addresses, facsimile numbers and e-mail addresses for such communications shall be:

If to Ocuphire:

Ocuphire Pharma, Inc.
37000 Grand River Ave, Suite 120
Farmington Hills, MI 48335
Telephone: (248) 980-6538
Attention: Mina Sooch
Email: msooch@ocuphire.com

With a copy (for informational purposes only) to:

Honigman LLP
650 Trade Centre Way, Suite 200
Kalamazoo, MI 49002-0402
Telephone: (269) 337-7702
Facsimile: (269) 337-7703
Attention: Phillip D. Torrence, Esq.
E-mail: ptorrence@honigman.com

If to Rexahn:

Rexahn Pharmaceuticals, Inc.
15245 Shady Grove Road, Suite 455
Rockville, MD 20850
Telephone: 240.268.5300 x330
Facsimile: 240.268.5310
Attention: Douglas J. Swirsky, President and CEO
E-mail: swirskyd@rexahn.com

With a copy (for informational purposes only) to:

Hogan Lovells US LLP
100 International Drive, Suite 2000
Baltimore, MD 21202
Telephone: 410 659 2700
Facsimile: 410 659 2701
Attention: Asher M. Rubin; William I. Intner
E-mail: asher.rubin@hoganlovells.com; william.intner@hoganlovells.com

If to the Escrow Agent:

The Bank of New York Mellon
Corporate Trust Administration
240 Greenwich Street
New York, NY 10286
Attention: Escrow Unit

If to the Transfer Agent:

Olde Monmouth Stock Transfer Co., Inc.
200 Memorial Parkway
Atlantic Highlands, NJ 07716
Telephone: (732) 872-2727
Attention: Matthew J. Troster, President
E-mail: matt@oldemonmouth.com

If to a Buyer, to its address, facsimile number and e-mail address set forth on the Schedule of Buyers, with copies to such Buyer's representatives as set forth on the Schedule of Buyers,

With a copy (for informational purposes only) to:

Schulte Roth & Zabel LLP
919 Third Avenue
New York, NY 10022
Telephone: (212) 756-2000
Facsimile: (212) 593-5955
Attention: Eleazer N. Klein, Esq.
E-mail: eleazer.klein@srz.com

or to such other address, facsimile number and/or e-mail address and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) calendar days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's facsimile machine or e-mail containing the time, date, recipient facsimile number and an image of the first page of such transmission or (C) provided by an overnight courier service shall be rebuttable evidence of personal service, receipt by facsimile or receipt from an overnight courier service in accordance with clause (i), (ii) or (iii) above, respectively.

(g) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, including any purchasers of the Common Shares or the Warrants. Neither Ocuphire nor Rexahn shall assign this Agreement or any rights or obligations hereunder without the prior written consent of the Required Holders, including by way of a Fundamental Transaction (unless Rexahn is in compliance with the applicable provisions governing Fundamental Transactions set forth in the Warrants and other than the Merger in accordance with the terms and conditions of the Executed Merger Agreement). A Buyer may assign some or all of its rights hereunder without the consent of Ocuphire or Rexahn, in which event such assignee shall be deemed to be a Buyer hereunder with respect to such assigned rights.

(h) Third Party Beneficiaries. The Placement Agent shall be a third party beneficiary of the representations and warranties of the Buyers in Section 2, the representations and warranties of Ocuphire in Section 3 and the representations and warranties of Rexahn in Section 4. This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, except that each Indemnitee (as defined below) shall have the right to enforce the obligations of Ocuphire and Rexahn with respect to Section 10(k) and as otherwise set forth in this Section 10(h).

(i) Survival. Unless this Agreement is terminated under Section 9, the representations and warranties of Ocuphire, Rexahn and the Buyers contained in Sections 2, 3 and 4, and the agreements and covenants set forth in Sections 5, 6 and 10 shall survive the Closing. Each Buyer, and each of Ocuphire and Rexahn, shall be responsible only for its own representations, warranties, agreements and covenants hereunder.

(j) Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

(k) Indemnification.

(i) In consideration of each Buyer's execution and delivery of the Transaction Documents and acquiring the Securities thereunder and in addition to all of Ocuphire's other obligations under the Transaction Documents, Ocuphire shall defend, protect, indemnify and hold harmless each Buyer and each other holder of the Securities and all of their stockholders, partners, members, officers, directors, employees and direct or indirect investors and any of the foregoing Persons' agents or other representatives (including, without limitation, those retained in connection with the transactions contemplated by this Agreement) (collectively, the "**Indemnitees**") from and against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages, and expenses in connection therewith (irrespective of whether any such Indemnitee is a party to the action for which indemnification hereunder is sought), and including reasonable attorneys' fees and disbursements (the "**Indemnified Liabilities**"), incurred by any Indemnitee as a result of, or arising out of, or relating to (a) any misrepresentation or breach of any representation or warranty made by Ocuphire in the Transaction Documents or any other certificate, instrument or document of Ocuphire contemplated hereby or thereby, (b) any breach of any covenant, agreement or obligation of Ocuphire contained in the Transaction Documents or any other certificate, instrument or document of Ocuphire contemplated hereby or thereby, (c) any cause of action, suit or claim brought or made against such Indemnitee by a third party (including for these purposes a derivative action brought on behalf of Ocuphire or Rexahn) and arising out of or resulting from (i) the execution, delivery, performance or enforcement of the Transaction Documents or any other certificate, instrument or document contemplated hereby or thereby, (ii) any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of the issuance of the Securities, (iii) any disclosure made by such Buyer pursuant to Section 5(j), or (iv) the status of such Buyer or holder of the Securities as an investor in Ocuphire pursuant to the transactions contemplated by the Transaction Documents, or (d) any cause of action, suit or claim brought or made against such Indemnitee by the Escrow Agent. To the extent that the foregoing undertaking by Ocuphire may be unenforceable for any reason, Ocuphire shall make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities that is permissible under applicable law. Except as otherwise set forth herein, the mechanics and procedures with respect to the rights and obligations under this Section 10(k)(i) shall be the same as those set forth in Section 6 of the Registration Rights Agreement.

(ii) In consideration of each Buyer's execution and delivery of the Transaction Documents and acquiring the Securities thereunder and in addition to all of Rexahn's other obligations under the Transaction Documents, Rexahn (starting immediately after the Closing) shall defend, protect, indemnify and hold harmless the Indemnitees from and against any and all Indemnified Liabilities incurred by any Indemnitee as a result of, or arising out of, or relating to (a) any misrepresentation or breach of any representation or warranty made by Rexahn in the Transaction Documents or any other certificate, instrument or document contemplated hereby or thereby, (b) any breach of any covenant, agreement or obligation of Rexahn contained in the Transaction Documents or any other certificate, instrument or document contemplated hereby or thereby or (c) any cause of action, suit or claim brought or made against such Indemnitee by a third party (including for these purposes a derivative action brought on behalf of Ocuphire or Rexahn) and arising out of or resulting from (i) the execution, delivery, performance or enforcement of the Transaction Documents or any other certificate, instrument or document contemplated hereby or thereby, (ii) any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of the issuance of the Securities, (iii) any disclosure made by such Buyer pursuant to Section 5(j), or (iv) the status of such Buyer or holder of the Securities as an investor in Rexahn pursuant to the transactions contemplated by the Transaction Documents. To the extent that the foregoing undertaking by Rexahn may be unenforceable for any reason, Rexahn shall make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities that is permissible under applicable law. Except as otherwise set forth herein, the mechanics and procedures with respect to the rights and obligations under this Section 10(k)(ii) shall be the same as those set forth in Section 6 of the Registration Rights Agreement.

(1) No Strict Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

(m) Remedies. Each Buyer and each holder of the Securities shall have all rights and remedies set forth in the Transaction Documents and all rights and remedies which such holders have been granted at any time under any other agreement or contract and all of the rights which such holders have under any law. Any Person having any rights under any provision of this Agreement shall be entitled to enforce such rights specifically (without posting a bond or other security), to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights granted by law. Furthermore, each of Ocuphire and Rexahn recognizes that in the event that it fails to perform, observe, or discharge any or all of its obligations under the Transaction Documents, any remedy at law may prove to be inadequate relief to the Buyers. Each of Ocuphire and Rexahn therefore agrees that the Buyers shall be entitled to seek temporary and permanent injunctive relief in any such case without the necessity of proving actual damages and without posting a bond or other security.

(n) Rescission and Withdrawal Right. Notwithstanding anything to the contrary contained in (and without limiting any similar provisions of) the Transaction Documents, whenever any Buyer exercises a right, election, demand or option under a Transaction Document and either Ocuphire or Rexahn does not timely perform its related obligations within the periods therein provided, then such Buyer may rescind or withdraw, in its sole discretion from time to time upon written notice to Ocuphire or Rexahn, as applicable, any relevant notice, demand or election in whole or in part without prejudice to its future actions and rights.

(o) Payment Set Aside. To the extent that Ocuphire or Rexahn makes a payment or payments to the Buyers hereunder or pursuant to any of the other Transaction Documents or the Buyers enforce or exercise their rights hereunder or thereunder, and such payment or payments or the proceeds of such enforcement or exercise or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, recovered from, disgorged by or are required to be refunded, repaid or otherwise restored to Ocuphire or Rexahn, a trustee, receiver or any other Person under any law (including, without limitation, any bankruptcy law, foreign, state or federal law, common law or equitable cause of action), then to the extent of any such restoration the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.

(p) Independent Nature of Buyers' Obligations and Rights. The obligations of each Buyer under any Transaction Document are several and not joint with the obligations of any other Buyer, and no Buyer shall be responsible in any way for the performance of the obligations of any other Buyer under any Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by any Buyer pursuant hereto or thereto, shall be deemed to constitute the Buyers as, and each of Ocuphire and Rexahn acknowledges that the Buyers do not so constitute, a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Buyers are in any way acting in concert or as a group, and neither Ocuphire nor Rexahn shall assert any such claim with respect to such obligations or the transactions contemplated by the Transaction Documents and each of Ocuphire and Rexahn acknowledges that the Buyers are not acting in concert or as a group with respect to such obligations or the transactions contemplated by the Transaction Documents. Each of Ocuphire and Rexahn acknowledges and each Buyer confirms that it has independently participated in the negotiation of the transaction contemplated hereby with the advice of its own counsel and advisors. Each Buyer shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of any other Transaction Documents, and it shall not be necessary for any other Buyer to be joined as an additional party in any proceeding for such purpose.

[Signature Pages Follow]

IN WITNESS WHEREOF, each Buyer, Ocuphire and Rexahn have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

OCUPHIRE PHARMA, INC.

By: /s/ Mina Sooch
Name: Mina Sooch
Title: Chief Executive Officer

[Signature Page to Securities Purchase Agreement]

IN WITNESS WHEREOF, each Buyer, Ocuphire and Rexahn have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

REXAHN PHARMACEUTICALS, INC.

By: /s/ Douglas J. Swirsky

Name: Douglas J. Swirsky

Title: President and Chief Executive Officer

[Signature Page to Securities Purchase Agreement]

IN WITNESS WHEREOF, each Buyer, Ocuphire and Rexahn have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

BUYERS:

ALTIUM GROWTH FUND, LP

By: Altium Capital Management, LP

By: /s/ Mark Gottlieb

Name: Mark Gottlieb

Title: Chief Operating Officer

Maximum Percentage with respect to the delivery for the Exchange Shares to be issued in exchange of the Additional Common Shares: 4.99%

9.99%

Maximum Percentage to be included in the Series A Warrants:

4.99%

9.99%

Maximum Percentage to be included in the Series B Warrants:

4.99%

9.99%

IN WITNESS WHEREOF, each Buyer, Ocuphire and Rexahn have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

OTHER BUYERS:

EMPERY ASSET MASTER, LTD.

By: Empery Asset Management, LP, its authorized agent

By: /s/ Brett Director

Name: Brett Director

Title: General Counsel

Maximum Percentage with respect to the delivery for the Exchange Shares to be issued in exchange of the Additional Common Shares: 4.99%

9.99%

Maximum Percentage to be included in the Series A Warrants:

4.99%

9.99%

Maximum Percentage to be included in the Series B Warrants:

4.99%

9.99%

IN WITNESS WHEREOF, each Buyer, Ocuphire and Rexahn have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

OTHER BUYERS:

EMPERY TAX EFFICIENT, LP

By: Empery Asset Management, LP, its authorized agent

By: /s/ Brett Director

Name: Brett Director

Title: General Counsel

Maximum Percentage with respect to the delivery for the Exchange Shares to be issued in exchange of the Additional Common Shares: 4.99%

9.99%

Maximum Percentage to be included in the Series A Warrants:

4.99%

9.99%

Maximum Percentage to be included in the Series B Warrants:

4.99%

9.99%

IN WITNESS WHEREOF, each Buyer, Ocuphire and Rexahn have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

OTHER BUYERS:

EMPERY DEBT OPPORTUNITY FUND, LP

By: Empery Asset Management, LP, its authorized agent

By: /s/ Brett Director

Name: Brett Director

Title: General Counsel

Maximum Percentage with respect to the delivery for the Exchange Shares to be issued in exchange of the Additional Common Shares: 4.99%

9.99%

Maximum Percentage to be included in the Series A Warrants:

4.99%

9.99%

Maximum Percentage to be included in the Series B Warrants:

4.99%

9.99%

IN WITNESS WHEREOF, each Buyer, Ocuphire and Rexahn have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

OTHER BUYERS:

By: /s/ Jatinder-Bir S. Sandhu

Name: Jatinder-Bir S. Sandhu

Maximum Percentage with respect to the delivery for the Exchange Shares to be issued in exchange of the Additional Common Shares: 4.99%

9.99%

Maximum Percentage to be included in the Series A Warrants:

4.99%

9.99%

Maximum Percentage to be included in the Series B Warrants:

4.99%

9.99%

IN WITNESS WHEREOF, each Buyer, Ocuphire and Rexahn have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

OTHER BUYERS:

By: /s/ Devang Shah

Name: Devang Shah

Maximum Percentage with respect to the delivery for the Exchange Shares to be issued in exchange of the Additional Common Shares: 4.99%

9.99%

Maximum Percentage to be included in the Series A Warrants:

4.99%

9.99%

Maximum Percentage to be included in the Series B Warrants:

4.99%

9.99%

IN WITNESS WHEREOF, each Buyer, Ocuphire and Rexahn have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

OTHER BUYERS:

MICHIGAN ANGEL FUND III, LLC

By: /s/ Joseph Simms

Name: Joseph Simms

Title: Managing Member

Maximum Percentage with respect to the delivery for the Exchange Shares to be issued in exchange of the Additional Common Shares: 4.99%

9.99%

Maximum Percentage to be included in the Series A Warrants: 4.99%

9.99%

Maximum Percentage to be included in the Series B Warrants: 4.99%

9.99%

IN WITNESS WHEREOF, each Buyer, Ocuphire and Rexahn have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

OTHER BUYERS:

By: /s/ Harry M. Kraemer, Jr.
Name: Harry M. Kraemer, Jr.

By: _____
Name: Julie M. Jansen Kraemer

Maximum Percentage with respect to the delivery for the Exchange Shares to be issued in exchange of the Additional Common Shares: 4.99%

9.99%

Maximum Percentage to be included in the Series A Warrants: 4.99%

9.99%

Maximum Percentage to be included in the Series B Warrants: 4.99%

9.99%

IN WITNESS WHEREOF, each Buyer, Ocuphire and Rexahn have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

OTHER BUYERS:

THOMAS TALLERICO TRUST DATED JULY 13, 2018

By: /s/ Thomas J. Talerico

Name: Thomas J. Talerico

Title: Trustee

Maximum Percentage with respect to the delivery for the Exchange Shares to be issued in exchange of the Additional Common Shares: 4.99%

9.99%

Maximum Percentage to be included in the Series A Warrants:

4.99%

9.99%

Maximum Percentage to be included in the Series B Warrants:

4.99%

9.99%

IN WITNESS WHEREOF, each Buyer, Ocuphire and Rexahn have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

OTHER BUYERS:

THE BELLE MICHIGAN IMPACT FUND, LP

By: /s/ Carolyn Cassin

Name: Carolyn Cassin

Title: General Partner

Maximum Percentage with respect to the delivery for the Exchange Shares to be issued in exchange of the Additional Common Shares: 4.99%

9.99%

Maximum Percentage to be included in the Series A Warrants: 4.99%

9.99%

Maximum Percentage to be included in the Series B Warrants: 4.99%

9.99%

IN WITNESS WHEREOF, each Buyer, Ocuphire and Rexahn have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

OTHER BUYERS:

BELLE MICHIGAN IMPACT FUND SIDE CAR, LP

By: /s/ Carolyn Cassin

Name: Carolyn Cassin

Title: General Partner

Maximum Percentage with respect to the delivery for the Exchange Shares to be issued in exchange of the Additional Common Shares: 4.99%

9.99%

Maximum Percentage to be included in the Series A Warrants: 4.99%

9.99%

Maximum Percentage to be included in the Series B Warrants: 4.99%

9.99%

IN WITNESS WHEREOF, each Buyer, Ocuphire and Rexahn have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

OTHER BUYERS:

INVEST DETROIT FOUNDATION d/b/a FIRST CAPITAL FUND

By: /s/ Martin Dober

Name: Martin Dober

Title: SVP and Managing Director

Maximum Percentage with respect to the delivery for the Exchange Shares to be issued in exchange of the Additional Common Shares: 4.99%
 9.99%

Maximum Percentage to be included in the Series A Warrants: 4.99%
 9.99%

Maximum Percentage to be included in the Series B Warrants: 4.99%
 9.99%

IN WITNESS WHEREOF, each Buyer, Ocuphire and Rexahn have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

OTHER BUYERS:

By: /s/ Mina Sooch

Name: Mina Sooch

Maximum Percentage with respect to the delivery for the Exchange
Shares to be issued in exchange of the Additional Common Shares: 4.99%

9.99%

Maximum Percentage to be included in the Series A Warrants: 4.99%

9.99%

Maximum Percentage to be included in the Series B Warrants: 4.99%

9.99%

IN WITNESS WHEREOF, each Buyer, Ocuphire and Rexahn have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

OTHER BUYERS:

By: /s/ Richard J. Rodgers

Name: Richard J. Rodgers

Maximum Percentage with respect to the delivery for the Exchange
Shares to be issued in exchange of the Additional Common Shares: 4.99%

9.99%

Maximum Percentage to be included in the Series A Warrants: 4.99%

9.99%

Maximum Percentage to be included in the Series B Warrants: 4.99%

9.99%

IN WITNESS WHEREOF, each Buyer, Ocuphire and Rexahn have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

OTHER BUYERS:

By: /s/ Alan R. Meyer

Name: Alan R. Meyer

Maximum Percentage with respect to the delivery for the Exchange
Shares to be issued in exchange of the Additional Common Shares: 4.99%

9.99%

Maximum Percentage to be included in the Series A Warrants: 4.99%

9.99%

Maximum Percentage to be included in the Series B Warrants: 4.99%

9.99%

IN WITNESS WHEREOF, each Buyer, Ocuphire and Rexahn have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

OTHER BUYERS:

By: /s/ James S. Manuso
Name: James S. Manuso

Maximum Percentage with respect to the delivery for the Exchange Shares to be issued in exchange of the Additional Common Shares: 4.99%

9.99%

Maximum Percentage to be included in the Series A Warrants: 4.99%

9.99%

Maximum Percentage to be included in the Series B Warrants: 4.99%

9.99%

IN WITNESS WHEREOF, each Buyer, Ocuphire and Rexahn have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

OTHER BUYERS:

By: /s/ Cam Gallagher
Name: Cam Gallagher

Maximum Percentage with respect to the delivery for the Exchange Shares to be issued in exchange of the Additional Common Shares: 4.99%
 9.99%

Maximum Percentage to be included in the Series A Warrants: 4.99%
 9.99%

Maximum Percentage to be included in the Series B Warrants: 4.99%
 9.99%

IN WITNESS WHEREOF, each Buyer, Ocuphire and Rexahn have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

OTHER BUYERS:

By: /s/ Sean Ainsworth
Name: Sean Ainsworth

Maximum Percentage with respect to the delivery for the Exchange Shares to be issued in exchange of the Additional Common Shares: 4.99%

9.99%

Maximum Percentage to be included in the Series A Warrants: 4.99%

9.99%

Maximum Percentage to be included in the Series B Warrants: 4.99%

9.99%

SCHEDULE OF BUYERS

(1) Buyer	(2) Address, Facsimile Number and E-mail	(3) Number of Initial Common Shares	(4) Number of Additional Common Shares	(5) Purchase Price
Altium Growth Fund, LP	[●]	A number of shares equal to the product of (i) the Buyers' Allocation Number, multiplied by (ii) the quotient of (x) the applicable Buyer's Purchase Price, divided by (y) \$21,150,000, rounded to the nearest whole share.	A number of shares equal will be held in escrow equal to (i) two <i>multiplied</i> by (ii) the number of Initial Common Shares issued to such Buyer.	[●]
Empery Asset Master, Ltd.	[●]	A number of shares equal to the product of (i) the Buyers' Allocation Number, multiplied by (ii) the quotient of (x) the applicable Buyer's Purchase Price, divided by (y) \$21,150,000, rounded to the nearest whole share.	A number of shares equal will be held in escrow equal to (i) two <i>multiplied</i> by (ii) the number of Initial Common Shares issued to such Buyer.	[●]
Empery Tax Efficient, LP	[●]	A number of shares equal to the product of (i) the Buyers' Allocation Number, multiplied by (ii) the quotient of (x) the applicable Buyer's Purchase Price, divided by (y) \$21,150,000, rounded to the nearest whole share.	A number of shares equal will be held in escrow equal to (i) two <i>multiplied</i> by (ii) the number of Initial Common Shares issued to such Buyer.	[●]
Empery Debt Opportunity Fund, LP	[●]	A number of shares equal to the product of (i) the Buyers' Allocation Number, multiplied by (ii) the quotient of (x) the applicable Buyer's Purchase Price, divided by (y) \$21,150,000, rounded to the nearest whole share.	A number of shares equal will be held in escrow equal to (i) two <i>multiplied</i> by (ii) the number of Initial Common Shares issued to such Buyer.	[●]
Jatinder-Bir S. Sandhu	[●]	A number of shares equal to the product of (i) the Buyers' Allocation Number, multiplied by (ii) the quotient of (x) the applicable Buyer's Purchase Price, divided by (y) \$21,150,000, rounded to the nearest whole share.	A number of shares equal will be held in escrow equal to (i) two <i>multiplied</i> by (ii) the number of Initial Common Shares issued to such Buyer.	[●]
Devang Shah	[●]	A number of shares equal to the product of (i) the Buyers' Allocation Number, multiplied by (ii) the quotient of (x) the applicable Buyer's Purchase Price, divided by (y) \$21,150,000, rounded to the nearest whole share.	A number of shares equal will be held in escrow equal to (i) two <i>multiplied</i> by (ii) the number of Initial Common Shares issued to such Buyer.	[●]

Michigan Angel Fund III, LLC	[●]	A number of shares equal to the product of (i) the Buyers' Allocation Number, multiplied by (ii) the quotient of (x) the applicable Buyer's Purchase Price, divided by (y) \$21,150,000, rounded to the nearest whole share.	A number of shares equal will be held in escrow equal to (i) two <i>multiplied</i> by (ii) the number of Initial Common Shares issued to such Buyer.	[●]
Harry M. Kraemer, Jr. and Julie M. Jansen Kraemer	[●]	A number of shares equal to the product of (i) the Buyers' Allocation Number, multiplied by (ii) the quotient of (x) the applicable Buyer's Purchase Price, divided by (y) \$21,150,000, rounded to the nearest whole share.	A number of shares equal will be held in escrow equal to (i) two <i>multiplied</i> by (ii) the number of Initial Common Shares issued to such Buyer.	[●]
Thomas J. Talerico Trust dated July 13, 2018	[●]	A number of shares equal to the product of (i) the Buyers' Allocation Number, multiplied by (ii) the quotient of (x) the applicable Buyer's Purchase Price, divided by (y) \$21,150,000, rounded to the nearest whole share.	A number of shares equal will be held in escrow equal to (i) two <i>multiplied</i> by (ii) the number of Initial Common Shares issued to such Buyer.	[●]
The Belle Michigan Impact Fund, LP	[●]	A number of shares equal to the product of (i) the Buyers' Allocation Number, multiplied by (ii) the quotient of (x) the applicable Buyer's Purchase Price, divided by (y) \$21,150,000, rounded to the nearest whole share.	A number of shares equal will be held in escrow equal to (i) two <i>multiplied</i> by (ii) the number of Initial Common Shares issued to such Buyer.	[●]
Belle Michigan Impact Fund Side Car, LP	[●]	A number of shares equal to the product of (i) the Buyers' Allocation Number, multiplied by (ii) the quotient of (x) the applicable Buyer's Purchase Price, divided by (y) \$21,150,000, rounded to the nearest whole share.	A number of shares equal will be held in escrow equal to (i) two <i>multiplied</i> by (ii) the number of Initial Common Shares issued to such Buyer.	[●]
Invest Detroit Foundation d/b/a First Capital Fund	[●]	A number of shares equal to the product of (i) the Buyers' Allocation Number, multiplied by (ii) the quotient of (x) the applicable Buyer's Purchase Price, divided by (y) \$21,150,000, rounded to the nearest whole share.	A number of shares equal will be held in escrow equal to (i) two <i>multiplied</i> by (ii) the number of Initial Common Shares issued to such Buyer.	[●]
Mina Sooch	[●]	A number of shares equal to the product of (i) the Buyers' Allocation Number, multiplied by (ii) the quotient of (x) the applicable Buyer's Purchase Price, divided by (y) \$21,150,000, rounded to the nearest whole share.	A number of shares equal will be held in escrow equal to (i) two <i>multiplied</i> by (ii) the number of Initial Common Shares issued to such Buyer.	[●]

Richard J. Rodgers	[●]	A number of shares equal to the product of (i) the Buyers' Allocation Number, multiplied by (ii) the quotient of (x) the applicable Buyer's Purchase Price, divided by (y) \$21,150,000, rounded to the nearest whole share.	A number of shares equal will be held in escrow equal to (i) two <i>multiplied</i> by (ii) the number of Initial Common Shares issued to such Buyer.	[●]
Alan R. Meyer	[●]	A number of shares equal to the product of (i) the Buyers' Allocation Number, multiplied by (ii) the quotient of (x) the applicable Buyer's Purchase Price, divided by (y) \$21,150,000, rounded to the nearest whole share.	A number of shares equal will be held in escrow equal to (i) two <i>multiplied</i> by (ii) the number of Initial Common Shares issued to such Buyer.	[●]
James S. Manuso	[●]	A number of shares equal to the product of (i) the Buyers' Allocation Number, multiplied by (ii) the quotient of (x) the applicable Buyer's Purchase Price, divided by (y) \$21,150,000, rounded to the nearest whole share.	A number of shares equal will be held in escrow equal to (i) two <i>multiplied</i> by (ii) the number of Initial Common Shares issued to such Buyer.	[●]
Sean Ainsworth	[●]	A number of shares equal to the product of (i) the Buyers' Allocation Number, multiplied by (ii) the quotient of (x) the applicable Buyer's Purchase Price, divided by (y) \$21,150,000, rounded to the nearest whole share.	A number of shares equal will be held in escrow equal to (i) two <i>multiplied</i> by (ii) the number of Initial Common Shares issued to such Buyer.	[●]
Cam Gallagher	[●]	A number of shares equal to the product of (i) the Buyers' Allocation Number, multiplied by (ii) the quotient of (x) the applicable Buyer's Purchase Price, divided by (y) \$21,150,000, rounded to the nearest whole share.	A number of shares equal will be held in escrow equal to (i) two <i>multiplied</i> by (ii) the number of Initial Common Shares issued to such Buyer.	[●]
TOTAL				\$21,150,000



EXHIBITS

Exhibit A	Form of Securities Escrow Agreement
Exhibit B-1	Form of Series A Warrants
Exhibit B-2	Form of Series B Warrants
Exhibit C	Form of Registration Rights Agreement
Exhibit D	Form of Capacity Notice
Exhibit E	Form of Irrevocable Transfer Agent Instructions
Exhibit F	Form of Secretary's Certificate
Exhibit G	Form of Officer's Certificate
Exhibit H	Form of Lock-Up Agreement
Exhibit I	Form of Leak-Out Agreement

SCHEDULES

Ocuphire Disclosure Schedules

Schedule 3(a)	Ocuphire Subsidiaries
Schedule 3(d)	No Conflicts
Schedule 3(e)	Consents
Schedule 3(k)	Absence of Certain Changes
Schedule 3(m)	Conduct of Business; Regulatory Permits
Schedule 3(o)	Transactions with Affiliates
Schedule 3(p)	Equity Capitalization
Schedule 3(q)	Indebtedness and Other Contracts
Schedule 3(r)	Absence of Litigation
Schedule 3(v)	Intellectual Property Rights
Schedule 3(z)	Internal Accounting
Schedule 3(ee)	FDA

Rexahn Disclosure Schedules

Schedule A1(e)	SEC Documents; Financial Statements
Schedule A1(h)	Sarbanes-Oxley Act; Internal Accounting Controls
Schedule A1(i)	Transactions with Affiliates and Employees
Schedule A1(j)	Equity Capitalization
Schedule A1(l)	Absence of Litigation
Schedule A1(k)	Compliance
Schedule A1(p)	Intellectual Property Rights
Schedule A1(s)	Registration Rights
Schedule A1(t)	Solvency
Schedule A1(w)	FDA
Schedule A1(hh)	Lock-Up Parties

ANNEX I

Rexahn represents and warrants to each of the Buyers that, as of the time of completion of the Merger on the Closing Date:

(a) Enforceability; Validity. This Agreement and the other Rexahn Transaction Documents have been duly executed and delivered by Rexahn, and constitute the legal, valid and binding obligations of Rexahn, enforceable against Rexahn in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies.

(b) Acknowledgment Regarding Buyer's Purchase of Securities. Rexahn acknowledges and agrees that each Buyer is acting solely in the capacity of an arm's length purchaser with respect to the Rexahn Transaction Documents and the transactions contemplated hereby and thereby and that no Buyer is (i) an officer or director of Rexahn or any of the Rexahn Subsidiaries, (ii) an "affiliate" of Rexahn or any of the Rexahn Subsidiaries (as defined in Rule 144) or (iii) to the knowledge of Rexahn, a "beneficial owner" of more than 10% of the Rexahn Common Stock (as defined for purposes of Rule 13d-3 of the 1934 Act). Rexahn further acknowledges that no Buyer is acting as a financial advisor or fiduciary of Rexahn or any of the Rexahn Subsidiaries (or in any similar capacity) with respect to the Rexahn Transaction Documents and the transactions contemplated hereby and thereby, and any advice given by a Buyer or any of its representatives or agents in connection with the Rexahn Transaction Documents and the transactions contemplated hereby and thereby is merely incidental to such Buyer's purchase of the Securities. Rexahn further represents to each Buyer that Rexahn's decision to enter into the Rexahn Transaction Documents has been based solely on the independent evaluation by Rexahn and its representatives.

(c) No Integrated Offering. None of Rexahn, the Rexahn Subsidiaries their affiliates, nor any Person acting on their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would require registration of the issuance of any of the Securities under the 1933 Act, whether through integration with prior offerings or otherwise, or cause this offering of the Securities to require approval of stockholders of Rexahn for purposes of the 1933 Act or any applicable stockholder approval provisions, including, without limitation, under the rules and regulations of any exchange or automated quotation system on which any of the securities of Rexahn are listed or designated for quotation. None of Rexahn, the Rexahn Subsidiaries, their affiliates nor any Person acting on their behalf will take any action or steps that would require registration of the issuance of any of the Securities under the 1933 Act or cause the offering of any of the Securities to be integrated with other offerings for purposes of any such applicable stockholder approval provisions.

(d) Application of Takeover Protections; Rights Agreement. Rexahn and its board of directors have taken all necessary action, if any, in order to render inapplicable any stockholder rights plan or similar arrangement relating to accumulations of beneficial ownership of Rexahn Common Stock or a change in control of Rexahn or any of the Rexahn Subsidiaries.

(e) SEC Documents; Financial Statements. Except as disclosed in Schedule A1(e), during the two (2) years prior to the date of completion of the Merger, Rexahn has timely filed all reports, schedules, forms, statements and other documents required to be filed by it with the SEC pursuant to the reporting requirements of the 1934 Act (all of the foregoing filed prior to the date of completion of the Merger or prior to the Closing Date, and all exhibits included therein and financial statements, notes and schedules thereto and documents incorporated by reference therein, but excluding the Form S-4, being hereinafter referred to as the “**SEC Documents**”). Rexahn has delivered to the Buyers or their respective representatives true, correct and complete copies of the SEC Documents not available on the EDGAR system. As of their respective filing dates, the SEC Documents complied in all material respects with the requirements of the 1934 Act applicable to Rexahn and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents, and none of the SEC Documents, at the time they were filed with the SEC, 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 the light of the circumstances under which they were made, not misleading. As of the effective date of the Final Form S-4, including any amendments thereto, the Final Form S-4, other than the sections of the Final Form S-4 titled “Risk Factors – Risks Related to Ocuphire,” “Ocuphire Business,” “Ocuphire Management’s Discussion and Analysis of Financial Condition and Results of Operations,” “Related Party Transactions of Directors and Executive Officers of the Combined Company – Ocuphire Transactions” and “Principal Stockholders of Ocuphire,” did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. As of their respective filing dates, the financial statements of Rexahn included in the SEC Documents complied as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto. As of the date hereof and as of the effective date of the Final Form S-4 and any amendment thereto, the financial statements of Rexahn included in the Final Form S-4 comply and complied, as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto. Such financial statements have been prepared in accordance with GAAP (except (i) as may be otherwise indicated in such financial statements or the notes thereto, or (ii) in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed or summary statements) and fairly present in all material respects the financial position of Rexahn and the Rexahn Subsidiaries as of the dates thereof and the results of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments which will not be material, either individually or in the aggregate). No other information provided by or on behalf of Rexahn to any of the Buyers which is not included in the SEC Documents (including, without limitation, information referred to in Section 2(d) of this Agreement or in the disclosure schedules to this Agreement), when taken together with all of the information provided by or on behalf of Rexahn to any of the Buyers, the SEC Documents, the Final Form S-4 and the Executed Merger Agreement (including the schedules thereto) contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein, in light of the circumstance under which they are or were made, not misleading. As of the date of this Agreement, and except for the transactions contemplated by the Executed Merger Agreement and this Agreement or as otherwise disclosed pursuant to the Parent Disclosure Schedule (as defined in the Executed Merger Agreement) or the disclosure schedules to this Agreement, no event, liability, development or circumstance had occurred or existed, or was contemplated to occur with respect to Rexahn, the Rexahn Subsidiaries or their respective business, properties, prospects, operations or financial condition, that would have been required to be disclosed by Rexahn under applicable securities laws on a registration statement on Form S-1 filed with the SEC relating to an issuance and sale by Rexahn of its Rexahn Common Stock and which had not been publicly announced as of the date of this Agreement.

(f) No Undisclosed Events, Liabilities, Developments or Circumstances. As of (i) the date of this Agreement and (ii) except as would not have or reasonably be expected to result in a Rexahn Material Adverse Effect, the date of completion of the Merger, no event, liability, development or circumstance has occurred or exists, or is contemplated to occur with respect to Rexahn, the Rexahn Subsidiaries or their respective business, properties, prospects, operations or financial condition, that would be required to be disclosed by Rexahn under applicable securities laws on a registration statement on Form S-1 filed with the SEC relating to an issuance and sale by Rexahn of its Rexahn Common Stock and which has not been publicly announced.

(g) Regulatory Permits. Rexahn and each of the Rexahn Subsidiaries possess all certificates, authorizations and permits issued by the appropriate foreign, federal or state regulatory authorities necessary to conduct their respective businesses, except where the failure to possess such certificates, authorizations or permits would not have, individually or in the aggregate, a Rexahn Material Adverse Effect, and as of (i) the date of this Agreement and (ii) except as would not have or reasonably be expected to result in a Rexahn Material Adverse Effect, the date of completion of the Merger, neither Rexahn nor any such Rexahn Subsidiary has received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit.

(h) Sarbanes-Oxley Act; Internal Accounting Controls. Rexahn is in compliance with any and all applicable requirements of the Sarbanes-Oxley Act of 2002, as amended, that are effective as of the of completion of the Merger, and any and all applicable rules and regulations promulgated by the SEC thereunder that are effective as of the date of completion of the Merger. As of (i) the date of this Agreement and (ii) except as would not have or reasonably be expected to result in a Rexahn Material Adverse Effect, the date of completion of the Merger, Rexahn and each of the Rexahn Subsidiaries maintain a system of internal accounting controls sufficient 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 financial statements in conformity with GAAP and applicable law, and to maintain asset and liability accountability, (iii) access to assets or incurrence of liabilities is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets and liabilities is compared with the existing assets and liabilities at reasonable intervals and appropriate action is taken with respect to any difference. As of (i) the date of this Agreement and (ii) except as would not have or reasonably be expected to result in a Rexahn Material Adverse Effect, the date of completion of the Merger, Rexahn maintains disclosure controls and procedures (as such term is defined in Rule 13a-15 under the 1934 Act) that are effective in ensuring that information required to be disclosed by Rexahn in the reports that it files or submits under the 1934 Act is recorded, processed, summarized and reported, within the time periods specified in the rules and forms of the SEC, including, without limitation, controls and procedures designed to ensure that information required to be disclosed by Rexahn in the reports that it files or submits under the 1934 Act is accumulated and communicated to Rexahn's management, including its principal executive officer or officers and its principal financial officer or officers, as appropriate, to allow timely decisions regarding required disclosure. As of (i) the date of this Agreement and (ii) except as would not have or reasonably be expected to result in a Rexahn Material Adverse Effect, the date of completion of the Merger, during the twelve months prior to the date of this Agreement and the date of completion of the Merger, as applicable, neither Rexahn nor any of the Rexahn Subsidiaries has received any notice or correspondence from any accountant relating to any material weakness in any part of the system of internal accounting controls of Rexahn or any of the Rexahn Subsidiaries.

(i) Transactions With Affiliates and Employees. As of (i) the date of this Agreement and (ii) the date of completion of the Merger, except as set forth in Schedule A1(i), none of the officers, directors or employees of Rexahn or any of the Rexahn Subsidiaries is presently a party to any transaction with Rexahn or any of the Rexahn Subsidiaries (other than for ordinary course services as employees, officers or directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any such officer, director or employee or, to the knowledge of Rexahn or any of the Rexahn Subsidiaries, any corporation, partnership, trust or other Person in which any such officer, director, or employee has a substantial interest or is an employee, officer, director, trustee or partner.

(j) Equity Capitalization. 7,607 shares of Rexahn's issued and outstanding Rexahn Common Stock on the date of this Agreement are owned by Persons who are "affiliates" (as defined in Rule 405 of the 1933 Act) of Rexahn or any of the Rexahn Subsidiaries. (i) Except as disclosed in Schedule A1(j)(i) hereto, none of Rexahn's or any Rexahn Subsidiary's capital stock is subject to preemptive rights or any other similar rights or any liens or encumbrances suffered or permitted by Rexahn or any Rexahn Subsidiary; (ii) except as disclosed above in Section 4(i) or as otherwise set forth in Schedule A1(j)(ii), as of the date of this Agreement, there are no other outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any capital stock of Rexahn or any of the Rexahn Subsidiaries, or contracts, commitments, understandings or arrangements by which Rexahn or any of the Rexahn Subsidiaries is or may become bound to issue additional capital stock of Rexahn or any of the Rexahn Subsidiaries or options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any capital stock of Rexahn or any of the Rexahn Subsidiaries; (iii) except as disclosed in Schedule A1(j)(iii), there are no outstanding debt securities, notes, credit agreements, credit facilities or other agreements, documents or instruments evidencing Indebtedness of Rexahn or any of the Rexahn Subsidiaries or by which Rexahn or any of the Rexahn Subsidiaries is or may become bound; (iv) except as disclosed in Schedule A1(j)(iv), there are no financing statements securing obligations in any amounts filed in connection with Rexahn or any of the Rexahn Subsidiaries; (v), except as disclosed in Schedule A1(j)(v), there are no agreements or arrangements (other than pursuant to the Registration Rights Agreement) under which Rexahn or any of the Rexahn Subsidiaries is obligated to register the sale of any of their securities under the 1933 Act; (vi) except as disclosed in Schedule A1(j)(vi), there are no outstanding securities or instruments of Rexahn or any of the Rexahn Subsidiaries which contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which Rexahn or any of the Rexahn Subsidiaries is or may become bound to redeem a security of Rexahn or any of the Rexahn Subsidiaries; (vii) except as disclosed in Schedule A1(j)(vii), there are no securities or instruments containing anti-dilution or similar provisions that will be triggered by the issuance of the Securities; (viii) except as disclosed in Schedule A1(j)(viii), neither Rexahn nor any Rexahn Subsidiary has any stock appreciation rights or "phantom stock" plans or agreements or any similar plan or agreement; and (ix) neither Rexahn nor any of the Rexahn Subsidiaries have any liabilities or obligations required to be disclosed in the SEC Documents which are not so disclosed in the SEC Documents, other than those incurred in the ordinary course of Rexahn's or the Rexahn Subsidiaries' respective businesses and which, individually or in the aggregate, do not or could not have a Rexahn Material Adverse Effect. True, correct and complete copies of the Rexahn Certificate of Incorporation and Rexahn Bylaws, and the terms of all securities convertible into, or exercisable or exchangeable for, Rexahn Common Stock and the material rights of the holders thereof in respect thereto have heretofore been filed as part of the SEC Documents.

(k) Compliance. Except as set forth in Schedule A1(k), neither Rexahn nor any Rexahn Subsidiary: (i) is in default under or in violation of (and no event has occurred that has not been waived that, with notice or lapse of time or both, would result in a default by Rexahn or any Rexahn Subsidiary under), nor has Rexahn or any Rexahn Subsidiary received notice of a claim that it is in default under or that it is in violation of, any indenture, loan or credit agreement or any other agreement or instrument to which it is a party or by which it or any of its properties is bound (whether or not such default or violation has been waived), (ii) is in violation of any judgment, decree, or order of any court, arbitrator or other governmental authority or (iii) is or has been in violation of any statute, rule, ordinance or regulation of any governmental authority, including without limitation all foreign, federal, state and local laws relating to taxes, environmental protection, occupational health and safety, product quality and safety and employment and labor matters, except in each case as would not have or reasonably be expected to result in a Rexahn Material Adverse Effect.

(l) Absence of Litigation. As of (i) the date of this Agreement and (ii) except as would not have or reasonably be expected to result in a Rexahn Material Adverse Effect, the date of completion of the Merger, there is no action, suit, proceeding, inquiry or investigation before or by the Principal Market, any court, public board, government agency, self-regulatory organization or body pending or, to the knowledge of Rexahn, threatened against or affecting Rexahn or any of the Rexahn Subsidiaries, the Rexahn Common Stock or any of the Rexahn Subsidiary's capital stock or any of Rexahn's or any of the Rexahn Subsidiaries' officers or directors, whether of a civil or criminal nature or otherwise, in their capacities as such, except as set forth in Schedule A1(l). The matters set forth in Schedule A1(l) would not reasonably be expected to have a Rexahn Material Adverse Effect.

(m) Insurance. As of (i) the date of this Agreement and (ii) except as would not have or reasonably be expected to result in a Rexahn Material Adverse Effect, the date of completion of the Merger, Rexahn and any of the Rexahn Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as management of Rexahn believes to be prudent and customary in the businesses in which Rexahn and the Rexahn Subsidiaries are engaged. Neither Rexahn nor any such Rexahn Subsidiary has been refused any insurance coverage sought or applied for and neither Rexahn nor any such Rexahn Subsidiary has any reason to believe that it will be unable to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Rexahn Material Adverse Effect.

(n) Employee Relations. Neither Rexahn nor any of the Rexahn Subsidiaries is a party to any collective bargaining agreement or employs any member of a union. Rexahn and the Rexahn Subsidiaries believe that their relations with their respective employees are good. As of (i) the date of this Agreement and (ii) except as would not have or reasonably be expected to result in a Rexahn Material Adverse Effect, the date of completion of the Merger, no executive officer (as defined in Rule 501(f) promulgated under the 1933 Act) or other key employee of Rexahn or any of the Rexahn Subsidiaries has notified Rexahn or any such Rexahn Subsidiary that such officer intends to leave Rexahn or any such Rexahn Subsidiary or otherwise terminate such officer's employment with Rexahn or any such Rexahn Subsidiary. As of (i) the date of this Agreement and (ii) except as would not have or reasonably be expected to result in a Rexahn Material Adverse Effect, the date of completion of the Merger, no executive officer or other key employee of Rexahn or any of the Rexahn Subsidiaries is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement, non-competition agreement, or any other contract or agreement or any restrictive covenant, and the continued employment of each such executive officer or other key employee (as the case may be) does not subject Rexahn or any of the Rexahn Subsidiaries to any liability with respect to any of the foregoing matters. Rexahn and the Rexahn Subsidiaries are in compliance with all federal, state, local and foreign laws and regulations respecting labor, employment and employment practices and benefits, terms and conditions of employment and wages and hours, except where failure to be in compliance would not, either individually or in the aggregate, reasonably be expected to result in a Rexahn Material Adverse Effect.

(o) Title. As of (i) the date of this Agreement and (ii) except as would not have or reasonably be expected to result in a Rexahn Material Adverse Effect, the date of completion of the Merger, Rexahn and the Rexahn Subsidiaries have good and marketable title in fee simple to all real property and good and marketable title to all personal property owned by them which is material to the business of Rexahn and the Rexahn Subsidiaries, in each case free and clear of all liens, encumbrances and defects except such as do not materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by Rexahn and any of the Rexahn Subsidiaries. Any real property and facilities held under lease by Rexahn or any of the Rexahn Subsidiaries are held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not interfere with the use made and proposed to be made of such property and buildings by Rexahn or any of the Rexahn Subsidiaries.

(p) Intellectual Property Rights. As of (i) the date of this Agreement and (ii) except as would not be material to Rexahn and the Rexahn Subsidiaries, the date of completion of the Merger, Rexahn and the Rexahn Subsidiaries own or possess adequate Intellectual Property Rights necessary to conduct their respective businesses as now conducted and as presently proposed to be conducted. Each of patents owned by Rexahn or any of the Rexahn Subsidiaries as of the date of the Agreement is listed on Schedule A1(p)(i). As of (i) the date of this Agreement and (ii) except as would not have or reasonably be expected to result in a Rexahn Material Adverse Effect, the date of completion of the Merger, except as set forth in Schedule A1(p)(ii), none of the Rexahn's or any of the Rexahn Subsidiaries' Intellectual Property Rights have expired, terminated or been abandoned. As of (i) the date of this Agreement and (ii) except as would not have or reasonably be expected to be material to Rexahn and the Rexahn Subsidiaries, the date of completion of the Merger, Rexahn has no knowledge of any infringement by Rexahn or any of the Rexahn Subsidiaries of Intellectual Property Rights of others. As of (i) the date of this Agreement and (ii) except as would not be material to Rexahn and the Rexahn Subsidiaries, the date of completion of the Merger, there is no claim, action or proceeding being made or brought, or to the knowledge of Rexahn or the Rexahn Subsidiaries, being threatened, against Rexahn or any of the Rexahn Subsidiaries regarding their Intellectual Property Rights. As of (i) the date of this Agreement and (ii) except as would not be material to Rexahn and the Rexahn Subsidiaries, the date of completion of the Merger, neither Rexahn nor any of the Rexahn Subsidiaries is aware of any facts or circumstances which might give rise to any of the foregoing infringements or claims, actions or proceedings. Rexahn and the Rexahn Subsidiaries have taken reasonable security measures to protect the secrecy, confidentiality and value of all of their Intellectual Property Rights.

(q) Environmental Laws. Rexahn and the Rexahn Subsidiaries (i) are in compliance with all Environmental Laws, (ii) have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses and (iii) are in compliance with all terms and conditions of any such permit, license or approval where, in each of the foregoing clauses (i), (ii) and (iii), the failure to so comply could be reasonably expected to have, individually or in the aggregate, a Rexahn Material Adverse Effect.

(r) Tax Status. Rexahn and each of the Rexahn Subsidiaries (i) has timely made or filed all foreign, federal and state income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has timely paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and (iii) has set aside on its books provision reasonably adequate for the payment of all taxes for periods subsequent to the periods to which such returns, reports or declarations apply. As of (i) the date of this Agreement and (ii) except as would not have or reasonably be expected to result in a Rexahn Material Adverse Effect, the date of completion of the Merger, there are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Rexahn and the Rexahn Subsidiaries know of no basis for any such claim.

(s) Registration Rights. Except as set forth on Schedule A1(s), other than each of the Buyers, no Person has any right to cause Rexahn or any Rexahn Subsidiary to effect the registration under the 1933 Act of any securities of Rexahn or any Rexahn Subsidiary.

(t) Solvency. Based on the consolidated financial condition of Rexahn as of the Closing Date, after giving effect to the receipt by Ocuphire of the proceeds from the sale of the Securities hereunder: (i) the fair saleable value of Rexahn's assets exceeds the amount that will be required to be paid on or in respect of Rexahn's existing debts and other liabilities (including known contingent liabilities) as they mature, (ii) Rexahn's assets do not constitute unreasonably small capital to carry on its business as now conducted and as proposed to be conducted including its capital needs taking into account the particular capital requirements of the business conducted by Rexahn, consolidated and projected capital requirements and capital availability thereof, and (iii) the current cash flow of Rexahn, together with the proceeds Rexahn would receive, were it to liquidate all of its assets, after taking into account all anticipated uses of the cash, would be sufficient to pay all amounts on or in respect of its liabilities when such amounts are required to be paid. Rexahn does not intend to incur debts beyond its ability to pay such debts as they mature (taking into account the timing and amounts of cash to be payable on or in respect of its debt). Rexahn has no knowledge of any facts or circumstances which lead it to believe that it will file for reorganization or liquidation under the bankruptcy or reorganization laws of any jurisdiction within one year from the Closing Date. Schedule A1(t) sets forth as of the date of completion of the Merger all outstanding secured and unsecured Indebtedness of Rexahn or any Rexahn Subsidiary, or for which Rexahn or any Rexahn Subsidiary has commitments. For the purposes of this Section 4, "Indebtedness" means (x) any liabilities for borrowed money or amounts owed in excess of \$50,000 (other than trade account payables and accrued expenses incurred in the ordinary course of business), (y) all guaranties, endorsements and other contingent obligations in respect of indebtedness of others, whether or not the same are or should be reflected in Rexahn's consolidated balance sheet (or the notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business; and (z) the present value of any lease payments in excess of \$50,000 due under leases required to be capitalized in accordance with GAAP. Neither Rexahn nor any Rexahn Subsidiary is in default with respect to any Indebtedness.

(u) Acknowledgment Regarding Buyer's Trading Activity. Rexahn acknowledges and agrees that, except as set forth in the Leak-Out Agreements, (i) none of the Buyers has been asked to agree, nor has any Buyer agreed, to desist from purchasing or selling, long and/or short, securities of Rexahn, or "derivative" securities based on securities issued by Rexahn or to hold the Securities for any specified term; (ii) any Buyer, and counter-parties in "derivative" transactions to which any such Buyer is a party, directly or indirectly, presently may have a "short" position in the Rexahn Common Stock and (iii) each Buyer shall not be deemed to have any affiliation with or control over any arm's length counter-party in any "derivative" transaction. Rexahn further understands and acknowledges that (a) one or more Buyers may engage in hedging and/or trading activities at various times during the period that the Securities are outstanding, including, without limitation, during the periods that the value of the Warrant Shares are being determined and (b) such hedging and/or trading activities, if any, can reduce the value of the existing stockholders' equity interest in Rexahn both at and after the time the hedging and/or trading activities are being conducted. Rexahn acknowledges that such aforementioned hedging and/or trading activities do not constitute a breach of this Agreement, the Warrants or any of the documents executed in connection herewith.

(v) Manipulation of Price. Rexahn has not, and to its knowledge no one acting on its behalf has, (i) taken, directly or indirectly, any action designed to cause or to result, or that could reasonably be expected to cause or result, in the stabilization or manipulation of the price of any security of Rexahn to facilitate the sale or resale of any of the Securities, (ii) other than the Placement Agent, sold, bid for, purchased, or paid any compensation for soliciting purchases of, any of the Securities, or (iii) other than the Placement Agent, paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of Rexahn.

(w) FDA. As to each Pharmaceutical Product subject to the jurisdiction of the FDA under the FDCA that is manufactured, packaged, labeled, tested, distributed, sold, and/or marketed by Rexahn or any of its Rexahn, such Pharmaceutical Product is being manufactured, packaged, labeled, tested, distributed, sold and/or marketed by Rexahn in compliance with all applicable requirements under FDCA and similar laws, rules and regulations relating to registration, investigational use, premarket clearance, licensure, or application approval, good manufacturing practices, good laboratory practices, good clinical practices, product listing, quotas, labeling, advertising, record keeping and filing of reports, except where the failure to be in compliance would not have a Rexahn Material Adverse Effect. There is no pending, completed or, to Rexahn's knowledge, threatened, action (including any lawsuit, arbitration, or legal or administrative or regulatory proceeding, charge, complaint, or investigation) against Rexahn or any of its Rexahn Subsidiaries, and none of Rexahn or any of its Rexahn Subsidiaries has received any notice, warning letter or other communication from the FDA or any other governmental entity, which (i) contests the premarket clearance, licensure, registration, or approval of, the uses of, the distribution of, the manufacturing or packaging of, the testing of, the sale of, or the labeling and promotion of any Pharmaceutical Product, (ii) withdraws its approval of, requests the recall, suspension, or seizure of, or withdraws or orders the withdrawal of advertising or sales promotional materials relating to, any Pharmaceutical Product, (iii) imposes a clinical hold on any clinical investigation by Rexahn or any of its Rexahn Subsidiaries, (iv) enjoins production at any facility of Rexahn or any of its Rexahn Subsidiaries, (v) enters or proposes to enter into a consent decree of permanent injunction with Rexahn or any of its Rexahn Subsidiaries, or (vi) otherwise alleges any violation of any laws, rules or regulations by Rexahn or any of its Rexahn Subsidiaries, and which, either individually or in the aggregate, would have a Rexahn Material Adverse Effect. The properties, business and operations of Rexahn have been and are being conducted in all material respects in accordance with all applicable laws, rules and regulations of the FDA. As of (i) the date of this Agreement and (ii) except as would not have or reasonably be expected to result in a Rexahn Material Adverse Effect, the date of completion of the Merger, except as set forth on Schedule A1(w) or as disclosed in the SEC Documents, Rexahn has not been informed by the FDA that the FDA will prohibit the marketing, sale, license or use in the United States of any product proposed to be developed, produced or marketed by Rexahn nor has the FDA expressed any concern as to approving or clearing for marketing any product being developed or proposed to be developed by Rexahn.

(x) U.S. Real Property Holding Corporation. Neither Rexahn nor any of the Rexahn Subsidiaries is, or has ever been, and so long as any of the Securities are held by any of the Buyers, shall become, a U.S. real property holding corporation within the meaning of Section 897 of the Internal Revenue Code of 1986, as amended, and Rexahn and each Rexahn Subsidiary shall so certify upon any Buyer's request.

(y) Eligibility for Registration. Rexahn is eligible to register the Warrant Shares for resale by the Buyers using Form S-3 promulgated under the 1933 Act.

(z) Transfer Taxes. On the Closing Date, all stock transfer or other taxes (other than income or similar taxes) which are required to be paid in connection with the issuance, sale and transfer of the Securities to be sold to each Buyer hereunder will be, or will have been, fully paid or provided for by Rexahn, and all laws imposing such taxes will be or will have been complied with.

(aa) Bank Holding Company Act. Neither Rexahn nor any of the Rexahn Subsidiaries or affiliates is subject to BHCA and to regulation by the Board of Governors of the Federal Reserve. Neither Rexahn nor any of the Rexahn Subsidiaries or affiliates owns or controls, directly or indirectly, five percent (5%) or more of the outstanding shares of any class of voting securities or twenty-five percent (25%) or more of the total equity of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve. Neither Rexahn nor any of the Rexahn Subsidiaries or affiliates exercises a controlling influence over the management or policies of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve.

(b b) No Additional Agreements. Neither Rexahn nor any of the Rexahn Subsidiaries have any agreement or understanding with any Buyer with respect to the transactions contemplated by the Rexahn Transaction Documents other than as specified in the Rexahn Transaction Documents.

(cc) Disclosure. Except for discussions specifically regarding the offer and sale of the Securities, Rexahn confirms that neither it nor any other Person acting on its behalf has provided any of the Buyers or their agents or counsel with any information that constitutes or could reasonably be expected to constitute material, non-public information concerning Ocuphire, the Ocuphire Subsidiaries, Rexahn or any of the Rexahn Subsidiaries, other than the existence of the transactions contemplated by this Agreement and the other Rexahn Transaction Documents. Rexahn understands and confirms that each of the Buyers will rely on the foregoing representations in effecting transactions in securities of Rexahn. All disclosure provided to the Buyers regarding Rexahn and the Rexahn Subsidiaries, their businesses and the transactions contemplated hereby, including the schedules to this Agreement, furnished by or on behalf of Rexahn or any of the Rexahn Subsidiaries when taken together with all of the information provided by or on behalf of Rexahn to any of the Buyers, the SEC Documents, the Final Form S-4 and the Executed Merger Agreement (including the schedules thereto), is true and correct and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. All of the written information furnished after the date of completion of the Merger by or on behalf of Rexahn or any of the Rexahn Subsidiaries to you pursuant to or in connection with this Agreement and the other Rexahn Transaction Documents, taken as a whole, will be true and correct in all material respects as of the date on which such information is so provided and will not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they are made, not misleading. Each press release issued by Rexahn or any of the Rexahn Subsidiaries during the twelve (12) months preceding the date of this Agreement did not at the time of release contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. No event or circumstance has occurred or information exists with respect to Rexahn or any of the Rexahn Subsidiaries or its or their business, properties, liabilities, prospects, operations (including results thereof) or conditions (financial or otherwise), which, under applicable law, rule or regulation, requires public disclosure at or before the date of completion of the Merger or announcement by Rexahn but which has not been so publicly disclosed. Rexahn acknowledges and agrees that no Buyer makes or has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 2.

(dd) Stock Option Plans. Each stock option granted by Rexahn was granted (i) in accordance with the terms of the applicable Rexahn stock option plan and (ii) with an exercise price at least equal to the fair market value of the Rexahn Common Stock on the date such stock option would be considered granted under GAAP and applicable law. No stock option granted under Rexahn's stock option plan has been backdated. Rexahn has not knowingly granted, and there is no and has been no Rexahn policy or practice to knowingly grant, stock options prior to, or otherwise knowingly coordinate the grant of stock options with, the release or other public announcement of material information regarding Rexahn or the Rexahn Subsidiaries or their financial results or prospects.

(ee) No Disqualification Events. With respect to Regulation D Securities to be offered and sold hereunder, as of the date of this Agreement, none of Rexahn, any of its predecessors, any affiliated issuer, any director, executive officer, other officer of Rexahn participating in the offering hereunder, any beneficial owner of 20% or more of Rexahn's outstanding voting equity securities, calculated on the basis of voting power, nor any promoter (as that term is defined in Rule 405 under the 1933 Act) connected with Rexahn in any capacity at the time of sale (each, a "**Rexahn Covered Person**" and, together, "**Rexahn Covered Persons**") is subject to a Disqualification Event, except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3). Rexahn has exercised reasonable care to determine whether any Rexahn Covered Person is subject to a Disqualification Event. Rexahn has complied, to the extent applicable, with its disclosure obligations under Rule 506(e), and has furnished to the Buyers a copy of any disclosures provided thereunder.

(ff) Other Covered Persons. Rexahn is not aware of any Person (other than the Placement Agent) that has been or will be paid (directly or indirectly) remuneration for solicitation of Buyers or potential purchasers in connection with the sale of any Regulation D Securities.

(gg) Investment Company Status. Neither Rexahn nor any of the Rexahn Subsidiaries, upon consummation of the sale of the Securities, and for so long as any Buyer holds any Securities, will not be an "investment company," an affiliate of an "investment company," a company controlled by an "investment company" or an "affiliated person" of, or "promoter" or "principal underwriter" for, an "investment company" as such terms are defined in the Investment Company Act of 1940, as amended.

(hh) Lock-Up Parties. The Persons identified on Schedule A1(hh) set forth all Persons that will be subject to Section 16 of the 1934 Act immediately following the consummation of the Merger.

REXAHN PHARMACEUTICALS, INC.

[•], 2020

Rexahn Pharmaceuticals, Inc.

[] []
Telephone: []
Facsimile: []
Attention: []
E-mail: []

Re: Rexahn Pharmaceuticals, Inc. - Lock-Up Agreement

Dear Sirs:

This Lock-Up Agreement is being delivered to you in connection with the Securities Purchase Agreement (the "**Securities Purchase Agreement**"), dated as of June 17, 2020 by and among Ocuphire Pharma, Inc. ("**Ocuphire**"), Rexahn Pharmaceuticals, Inc. to be renamed Ocuphire Pharma, Inc. ("**Rexahn**") and the investors party thereto (the "**Buyers**"), with respect to the issuance of (i) shares of Ocuphire's common stock, [•] par value per share (the "**Ocuphire Common Stock**"), and (ii) two series of warrants (the "**Warrants**"), which Warrants will be exercisable to purchase shares of Rexahn's common stock, par value \$0.0001 per share (the "**Rexahn Common Stock**," and together with the Ocuphire Common Stock, the "**Common Stock**"). Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Securities Purchase Agreement.

In order to induce the Buyers to enter into the Securities Purchase Agreement, the undersigned agrees that, commencing on the date hereof and ending on the date that is ninety (90) calendar days after the earliest of (x) such time as all of the Registrable Securities may be sold without restriction or limitation pursuant to Rule 144 and without the requirement to be in compliance with Rule 144(c)(1), (y) the one (1) year anniversary of the Closing Date, and (z) the date that the Initial Registration Statement (as defined in the Registration Rights Agreement) has been declared effective by the Securities and Exchange Commission; *provided that*, this clause (z) shall only apply if there are no Cutback Shares (as defined in the Registration Rights Agreement) arising from the Initial Registration Statement, the undersigned will not, and will cause all affiliates (as defined in Rule 144 promulgated under the 1933 Act) of the undersigned or any person in privity with the undersigned or any affiliate of the undersigned not to, (A) sell, offer to sell, contract or agree to sell, hypothecate, pledge, grant any option to purchase, make any short sale or otherwise dispose of or agree to dispose of, directly or indirectly, any shares of Common Stock or Common Stock Equivalents, or establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Securities and Exchange Act of 1934, as amended, and the rules and regulations of the Securities and Exchange Commission promulgated thereunder with respect to any shares of Common Stock or Common Stock Equivalents owned directly by the undersigned (including holding as a custodian) or with respect to which the undersigned has beneficial ownership within the rules and regulations of the Securities and Exchange Commission (collectively, the "**Undersigned's Shares**"), or (B) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any of the Undersigned's Shares, whether any such transaction described in clause (A) or (B) above is to be settled by delivery of shares of Common Stock or other securities, in cash or otherwise, (C) make any demand for or exercise any right or cause to be filed a registration statement, including any amendments thereto, with respect to the registration of any shares of Common Stock or Common Stock Equivalents or (D) publicly disclose the intention to do any of the foregoing.

The foregoing restriction is expressly agreed to preclude the undersigned, and any affiliate of the undersigned and any person in privity with the undersigned or any affiliate of the undersigned, from engaging in any hedging or other transaction which is designed to or which reasonably could be expected to lead to or result in a sale or disposition of the Undersigned's Shares even if the Undersigned's Shares would be disposed of by someone other than the undersigned. Such prohibited hedging or other transactions would include, without limitation, any short sale or any purchase, sale or grant of any right (including, without limitation, any put or call option) with respect to any of the Undersigned's Shares or with respect to any security that includes, relates to, or derives any significant part of its value from the Undersigned's Shares.

Notwithstanding the foregoing, the undersigned may transfer the Undersigned's Shares (i) as a *bona fide* gift or gifts, provided that the donee or donees thereof agree to be bound in writing by the restrictions set forth herein or (ii) to any trust for the direct or indirect benefit of the undersigned or the immediate family of the undersigned, provided that the trustee of the trust agrees to be bound in writing by the restrictions set forth herein, and provided further that any such transfer shall not involve a disposition for value.

For purposes of this Lock-Up Agreement, "immediate family" shall mean any relationship by blood, marriage or adoption, not more remote than first cousin. The undersigned now has, and, except as contemplated by the immediately preceding sentence, for the duration of this Lock-Up Agreement will have, good and marketable title to the Undersigned's Shares, free and clear of all liens, encumbrances, and claims whatsoever. The undersigned also agrees and consents to the entry of stop transfer instructions with Rexahn's transfer agent (the "**Transfer Agent**") and registrar against the transfer of the Undersigned's Shares except in compliance with the foregoing restrictions.

In order to enforce this covenant, Rexahn shall impose irrevocable stop-transfer instructions preventing the Transfer Agent from effecting any actions in violation of this Lock-Up Agreement.

The undersigned acknowledges that the execution, delivery and performance of this Lock-Up Agreement is a material inducement to each Buyer to complete the transactions contemplated by the Securities Purchase Agreement and that Rexahn shall be entitled to specific performance of the undersigned's obligations hereunder. The undersigned hereby represents that the undersigned has the power and authority to execute, deliver and perform this Lock-Up Agreement, that the undersigned has received adequate consideration therefor and that the undersigned will indirectly benefit from the closing of the transactions contemplated by the Securities Purchase Agreement.

The undersigned understands and agrees that this Lock-Up Agreement is irrevocable and shall be binding upon the undersigned's heirs, legal representatives, successors, and assigns.

This Lock-Up Agreement may be executed in two counterparts, each of which shall be deemed an original but both of which shall be considered one and the same instrument.

This Lock-Up Agreement will be governed by and construed in accordance with the laws of the State of New York, without giving effect to any choice of law or conflicting provision or rule (whether of the State of New York, or any other jurisdiction) that would cause the laws of any jurisdiction other than the State of New York to be applied. In furtherance of the foregoing, the internal laws of the State of New York will control the interpretation and construction of this Lock-Up Agreement, even if under such jurisdiction's choice of law or conflict of law analysis, the substantive law of some other jurisdiction would ordinarily apply.

[Remainder of page intentionally left blank]

Very truly yours,

Exact Name of Stockholder

Authorized Signature

Title

Agreed to and Acknowledged:

REXAHN PHARMACEUTICALS, INC.

By: _____

Name:

Title:

OCUPHIRE PHARMA, INC.

By: _____

Name:

Title:

LEAK-OUT AGREEMENT

_____, 2020

This agreement (the "**Leak-Out Agreement**") is being delivered to you in connection with an understanding by and between Rexahn Pharmaceuticals, Inc., a Delaware corporation to be renamed Ocuphire Pharma, Inc. (the "**Company**"), and the person or persons named on the signature pages hereto (collectively, the "**Holder**").

Reference is hereby made to (i) the Securities Purchase Agreement (the "**Securities Purchase Agreement**"), dated June 17, 2020, by and among the Company, Ocuphire Pharma, Inc., a Delaware corporation ("**Ocuphire Private Company**"), the Holder and the other investors listed on the signature pages attached thereto (such other investors, the "**Other Holders**") in connection with the offering, pursuant to which (x) Ocuphire Private Company has agreed to issue to the Holder shares of common stock, \$0.0001 par value per share, of Ocuphire Private Company (the "**Ocuphire Private Common Shares**") and (y) the Company has agreed to issue, following the closing of the transactions contemplated by the Merger Agreement (as defined below), Series A Warrants and Series B Warrants (collectively, the "**Warrants**" and together with the Ocuphire Private Common Shares, the "**Securities**") which each will be exercisable to purchase shares of the Company's common stock, par value \$0.0001 per share (the "**Common Stock**") and (ii) that certain Agreement and Plan of Merger and Reorganization by and among the Company, Razor Merger Sub, Inc., a Delaware corporation and wholly-owned subsidiary of the Company ("**Merger Sub**"), and Ocuphire Private Company, dated as of June 17, 2020 (the "**Merger Agreement**"), pursuant to which Merger Sub will merge with and into Ocuphire Private Company, with Ocuphire Private Company surviving the merger as a wholly-owned subsidiary of the Company.

This Leak-Out Agreement shall only become effective from the date that the Holder executes this Agreement and the Company or its agent has notified the Holder in writing that each Other Holder executed an agreement (collectively, the "**Other Leak-Out Agreements**") regarding such Other Holder's trading with terms that are no less restrictive than the terms contained herein; provided, however, that this Leak-Out Agreement shall not become effective prior to the closing of the transactions contemplated by the Merger Agreement.

The Holder agrees solely with the Company that from the Closing Date and ending on the earlier to occur of (i) the exercise in its entirety by the Holder of its Series B Warrant after the earliest to occur of (x) the Maximum Eligibility Number (as defined in the Series B Warrant) of the Series B Warrant has been determined based on a Reset Price (as defined in the Series B Warrant) equal to the Reset Floor Price (as defined in the Series B Warrant), (y) the date of waiver of all future Reset Date(s), if any, pursuant to the first proviso set forth in the definition of "Reset Date" in Section 18 (mm) of the Series B Warrant and (z) the Reservation Date (as defined in the Warrants) and (ii) at 4:00 pm (New York City time) on the tenth (10th) Trading Day immediately following the Reservation Date, inclusive (such period, the "**Restricted Period**"), neither the Holder, nor any affiliate of the Holder which (x) had or has knowledge of the transactions contemplated by the Securities Purchase Agreement, (y) has or shares discretion relating to the Holder's investments or trading or information concerning the Holder's investments, including in respect of the Securities, or (z) is subject to such Holder's review or input concerning such affiliate's investments or trading, collectively, shall sell, dispose or otherwise transfer, directly or indirectly, (including, without limitation, any sales, short sales, swaps or any derivative transactions that would be equivalent to any sales or short positions) on any Trading Day during the Restricted Period (any such date, a "**Date of Determination**"), any securities issued and issuable pursuant to any of the Transaction Documents (as defined in the Securities Purchase Agreement) (collectively, the "**Restricted Securities**"), in an amount representing more than ___%¹ of the trading volume of Common Stock as reported by Bloomberg, LP on each applicable Date of Determination. For the avoidance of doubt, the Restricted Securities shall not include any securities of the Company acquired other than pursuant to the Transaction Documents.

¹ Pro rata portion of 30% among investors executing Leak-Out Agreements, based on Subscription Amount

Notwithstanding anything herein to the contrary, during the Restricted Period, the Holder may, directly or indirectly, sell or transfer all, but not less than all, of any Restricted Securities to any Person (an "Assignee") in a transaction which does not need to be reported on the consolidated tape on the Principal Market (as defined in the Series B Warrant), without complying with (or otherwise limited by) the restrictions set forth in this Leak-Out Agreement; provided, that as a condition to any such sale or transfer an authorized signatory of the Company and such Assignee duly execute and deliver a leak-out agreement in the form of this Leak-Out Agreement.

Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Leak-Out Agreement must be in writing and shall be given in accordance with the terms of the Securities Purchase Agreement.

This Leak-Out Agreement together with the Transaction Documents (as defined in the Securities Purchase Agreement) constitute the entire agreement among the parties hereto with respect to the subject matter hereof and supersede all prior negotiations, letters and understandings relating to the subject matter hereof and are fully binding on the parties hereto.

This Leak-Out Agreement may be executed simultaneously in any number of counterparts. Each counterpart shall be deemed to be an original, and all such counterparts shall constitute one and the same instrument. This Leak-Out Agreement may be executed and accepted by facsimile or PDF signature and any such signature shall be of the same force and effect as an original signature.

The terms of this Leak-Out Agreement shall be binding upon and shall inure to the benefit of each of the parties hereto and their respective successors and assigns.

This Leak-Out Agreement may not be amended or modified except in writing signed by each of the parties hereto.

All questions concerning the construction, validity, enforcement and interpretation of this Leak-Out Agreement shall be governed by Section 10(a) of the Securities Purchase Agreement.

Each party hereto acknowledges that, in view of the uniqueness of the transactions contemplated by this Leak-Out Agreement, the other party or parties hereto may not have an adequate remedy at law for money damages in the event that this Leak-Out Agreement has not been performed in accordance with its terms, and therefore agrees that such other party or parties shall be entitled to seek specific enforcement of the terms hereof in addition to any other remedy it may seek, at law or in equity.

The obligations of the Holder under this Leak-Out Agreement are several and not joint with the obligations of any Other Holder, and the Holder shall not be responsible in any way for the performance of the obligations of any Other Holder under any such Other Leak-Out Agreement. Nothing contained herein, in this Leak-Out Agreement or in any other agreement, and no action taken by the Holder pursuant hereto, shall be deemed to constitute the Holder and Other Holders as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Holder and the Other Holders are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by this Leak-Out Agreement or any Other Leak-Out Agreement and the Company acknowledges that the Holder and the Other Holders are not acting in concert or as a group with respect to such obligations or the transactions contemplated by this Leak-Out Agreement or any Other Leak-Out Agreement. The Company and the Holder confirm that the Holder has independently participated in the negotiation of the transactions contemplated hereby with the advice of its own counsel and advisors. The Holder shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Leak-Out Agreement, and it shall not be necessary for any Other Holder to be joined as an additional party in any proceeding for such purpose.

The Company hereby represents and warrants as of the date hereof and covenants and agrees from and after the date hereof that none of the terms offered to any Other Holder with respect to any restrictions on the sale of shares of Common Stock substantially in the form of this Leak-Out Agreement (or any amendment, modification, waiver or release thereof) (each a "**Leak-Out Document**"), is or will be more favorable to such Other Holder than those of the Holder and this Leak-Out Agreement (other than the reimbursement of legal fees). If, and whenever on or after the date hereof, the Company enters into a Leak-Out Document with terms that are materially different from this Leak-Out Agreement, then (i) the Company shall provide notice thereof to the Holder promptly following the occurrence thereof and (ii) the terms and conditions of this Leak-Out Agreement shall be, without any further action by the Holder or the Company, automatically amended and modified in an economically and legally equivalent manner such that the Holder shall receive the benefit of the more favorable terms and/or conditions (as the case may be) set forth in such Leak-Out Document, provided that upon written notice to the Company at any time the Holder may elect not to accept the benefit of any such amended or modified term or condition, in which event the term or condition contained in this Leak-Out Agreement shall apply to the Holder as it was in effect immediately prior to such amendment or modification as if such amendment or modification never occurred with respect to the Holder. The provisions of this paragraph shall apply similarly and equally to each Leak-Out Document.

[The remainder of the page is intentionally left blank]

The parties hereto have executed this Leak-Out Agreement as of the date first set forth above.

Sincerely,

REXAHN PHARMACEUTICALS, INC.

By: _____
Name:
Title:

Agreed to and Accepted:

“HOLDER”

By: _____
Name:
Title:



Rexahn and Ocuphire Enter into Definitive Merger Agreement

Transaction to Create a Nasdaq-listed Biopharmaceutical Company Focused on Advancing Ocuphire's Late-Stage Clinical Pipeline of Ophthalmic Drug Candidates

\$21.15 Million Investment Committed by Institutional Healthcare and Accredited Investors

ROCKVILLE, MD and FARMINGTON HILLS, MI – June 17, 2020 - Rexahn Pharmaceuticals, Inc. (NasdaqCM: REXN) and Ocuphire Pharma, Inc., a privately-held clinical-stage ophthalmic biopharmaceutical company focused on developing and commercializing therapies for the treatment of eye disorders, today announced the companies have entered into a definitive merger agreement under which Ocuphire will merge with a wholly-owned subsidiary of Rexahn in an all-stock transaction. Following closing, which is expected to occur in the second half of 2020, the combined company will change its name to Ocuphire Pharma, Inc. and is expected to trade on the Nasdaq Capital Market under the ticker symbol "OCUP." The combined company will focus on the advancement of its pipeline of ophthalmic drug candidates.

Certain institutional healthcare and other accredited investors, including certain Ocuphire directors and executives, have also committed to invest \$21.15 million in a private placement that will close immediately prior to the closing of the merger, assuming the satisfaction or waiver of customary closing conditions. Investors in this pre-merger financing will receive Ocuphire common stock prior to closing, which will convert into Rexahn common stock upon closing of the merger. Additionally, following the closing of the merger, Rexahn will issue to these investors warrants to purchase shares of Rexahn common stock and, potentially, additional shares of Rexahn common stock.

"After completing a comprehensive review of multiple strategic alternatives, we determined that the proposed merger with Ocuphire would provide the best opportunity for Rexahn shareholders moving forward," said Douglas J. Swirsky, President and Chief Executive Officer of Rexahn. "The decision by our management and board to choose Ocuphire to be our merger partner will allow our shareholders to participate in a dynamic company with a robust pipeline, backed by a sizeable commitment from institutional investors to continue the development of multiple drug candidates in a growing ophthalmic market."

Ocuphire has built a pipeline of multiple product candidates with demonstrated clinical activity that target high value markets. Its lead product candidate, Nyxol® Eye Drops ("Nyxol"), is a once-daily eye drop formulation of phentolamine mesylate designed to reduce pupil diameter and improve visual acuity. Nyxol is being developed to treat dim light or night vision disturbances, pharmacologically-induced mydriasis, and presbyopia. Ocuphire's second product candidate, APX3330, is a twice-a-day oral tablet, designed to target multiple pathways relevant to retinal diseases, such as diabetic retinopathy and diabetic macular edema. Ocuphire plans to initiate two Phase 3 registration trials and two Phase 2 trials across four indications in the second half of 2020, expecting top-line results to read out as early as the first quarter of 2021 and throughout the remainder of 2021.

“This merger is transformative for Ocuphire as we look to advance our late-clinical stage small molecule ophthalmic pipeline, with multiple Phase 3 and Phase 2 clinical data catalysts expected in 2021” said Mina Sooch, President and CEO of Ocuphire. “We believe the target product profiles of our two product candidates, Nyxol and APX3330, collectively studied in 18 clinical trials and each with large market potentials, creates an opportunity for Ocuphire to become a leading ophthalmic company focused on improving vision and clarity.”

About the Proposed Transaction

Under the terms of the merger agreement, subject to the satisfaction or waiver of customary closing conditions, including (i) the receipt of the required approval of the Ocuphire stockholders and Rexahn stockholders, (ii) the closing of the pre-merger financing and (iii) Rexahn having a minimum amount of net cash at closing, Ocuphire will merge with a wholly-owned subsidiary of Rexahn, with Ocuphire surviving the merger as a wholly-owned subsidiary of Rexahn.

Upon completion of the merger, Ocuphire stockholders will receive newly issued shares of Rexahn common stock pursuant to an exchange ratio formula set forth in the merger agreement. Under the terms of the merger agreement, immediately following the consummation of the merger, Rexahn’s then-current stockholders would own approximately 14.3% of the combined company’s common stock, and the former Ocuphire securityholders would own approximately 85.7% of the combined company’s common stock, in each case calculated on a fully-diluted basis, assuming Rexahn’s net cash balance at closing is between \$3.2 million and \$6.0 million. The exchange ratio formula in the merger agreement is subject to adjustment for every \$100,000 that Rexahn’s actual net cash balance at closing is less than \$3.2 million or more than \$6.0 million. Based on Rexahn’s current estimates, Rexahn believes that it is reasonably likely to deliver significantly less than \$3.2 million at closing. If, for example, Rexahn’s actual net cash balance at closing is \$0, which is the minimum amount of net cash that Rexahn is required to deliver at closing, then immediately following the consummation of the merger, Rexahn’s then-current stockholders would own approximately 11.2% of the combined company’s common stock, and the former Ocuphire securityholders would own approximately 88.8% of the combined company’s common stock, in each case calculated on a fully-diluted basis. Under the terms of the merger agreement, Rexahn’s stockholders’ ownership percentage in the combined company is subject to a floor of 9.1% regardless of Rexahn’s actual net cash balance at closing, assuming Ocuphire waives the minimum net cash requirement at closing. These ownership percentages give effect to the shares of Ocuphire common stock that will be issued to investors in the pre-merger financing prior to the closing of the merger, but do not account for any additional shares of Rexahn common stock that may be issued following the closing or the warrants issuable to investors after closing. As a result, Ocuphire securityholders and holders of Rexahn common stock could own less of the combined company than currently contemplated.

In addition, immediately prior to the closing of the merger, Rexahn stockholders of record will be issued contingent value rights representing the right to receive, during the 15-year period after the closing of the merger, (i) 90% of payments received by the combined company pursuant to its licensing agreements with BioSense Global LLC and Zhejiang HaiChang Biotechnology Co., Ltd., and (ii) 75% of the proceeds received by the combined company from the monetization of Rexahn’s existing intellectual property during the 10-year period after the closing of the merger, in each case, less certain permitted deductions.

The merger agreement has been unanimously approved by the boards of directors of each company. Following the merger, Mina Sooch will be appointed to serve as the post-merger combined company’s president and chief executive officer. The board of directors for the post-merger combined company will be comprised of seven directors, one of whom will be Richard Rodgers, a current member of the Rexahn board of directors, and the remaining six directors will include existing Ocuphire board members and an additional director designated by Ocuphire.

Oppenheimer & Co. Inc. is acting as financial advisor to Rexahn for the merger transaction, and Hogan Lovells US LLP is serving as legal counsel to Rexahn.

Cantor Fitzgerald & Co. and Canaccord Genuity LLC are acting as co-lead placement agents and financial advisors to Ocuphire in connection with the private placement, and Honigman LLP is serving as legal counsel to Ocuphire.

About Ocuphire Pharma, Inc.

Ocuphire is a privately-held, clinical-stage ophthalmic biopharmaceutical company focused on developing and commercializing therapies for the treatment of several eye disorders. Ocuphire's pipeline currently includes two small-molecule product candidates targeting front and back of the eye indications. The company's lead product candidate, Nyxol® Eye Drops, is a once-daily preservative-free eye drop formulation of phentolamine mesylate, a non-selective alpha-1 and alpha-2 adrenergic antagonist designed to reduce pupil size, and is being developed for several indications, including dim light or night vision disturbances, pharmacologically-induced mydriasis, and presbyopia. Ocuphire's second product candidate, APX3330, is a twice-a-day oral tablet, designed to inhibit angiogenesis and inflammation pathways relevant to retinal and choroidal vascular diseases, such as diabetic retinopathy and diabetic macular edema. As part of its strategy, Ocuphire will continue to explore opportunities to acquire additional ophthalmic assets and to seek strategic partners for late stage development, regulatory preparation and commercialization of drugs in key global markets. Please visit www.clinicaltrials.gov to learn more about Ocuphire's recent Phase 2 clinical trials. For more information, please visit www.ocuphire.com.

About Rexahn Pharmaceuticals, Inc.

Rexahn Pharmaceuticals Inc. (NasdaqCM: REXN) is a biotechnology company that has been focused on the development of innovative therapies to improve patient outcomes in cancers that are difficult to treat. For additional information, please visit www.rexahn.com.

Important Additional Information Will be Filed with the SEC

In connection with the proposed transaction between Rexahn and Ocuphire, the parties intend to file relevant materials with the SEC, including a registration statement on Form S-4 that will contain a combined proxy statement/prospectus/information statement. **INVESTORS AND STOCKHOLDERS OF REXAHN AND OCUPHIRE ARE URGED TO READ THESE MATERIALS CAREFULLY AND IN THEIR ENTIRETY WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT REXAHN, OCUPHIRE, THE PROPOSED MERGER AND RELATED MATTERS.** Investors and stockholders will be able to obtain free copies of the proxy statement/prospectus/information statement and other documents filed by Rexahn with the SEC (when they become available) through the website maintained by the SEC at www.sec.gov. In addition, investors and stockholders will be able to obtain free copies of the proxy statement/prospectus/information statement and other documents filed by Rexahn with the SEC by contacting Rexahn by written request to: Rexahn Pharmaceuticals, Inc., 15245 Shady Grove Road, Suite 455, Rockville, Maryland, 20850, Attention: Corporate Secretary. Investors and stockholders are urged to read the proxy statement/prospectus/information statement and the other relevant materials when they become available before making any voting or investment decision with respect to the proposed transaction.

No Offer or Solicitation

This communication shall not constitute an offer to sell, the solicitation of an offer to sell or an offer to buy or the solicitation of an offer to buy any securities, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. No offer of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended.

Participants in the Solicitation

Rexahn and its directors and executive officers, and Ocuphire and its directors and executive officers may be deemed to be participants in the solicitation of proxies from the stockholders of Rexahn in connection with the proposed merger under the rules of the SEC. Information regarding the special interests of these directors and executive officers in the proposed merger will be included in the proxy statement/prospectus/information statement referred to above. Additional information about Rexahn's directors and executive officers is included in Rexahn's Annual Report on Form 10-K for the fiscal year ended December 31, 2019, filed with the SEC on February 21, 2020, as amended on April 29, 2020, and in subsequent documents filed with the SEC, including the proxy statement/prospectus/information statement referred to above. Additional information regarding the persons who may be deemed participants in the proxy solicitations and a description of their direct and indirect interests in the proposed merger, by security holdings or otherwise, will also be included in the proxy statement/prospectus/information statement and other relevant materials to be filed with the SEC when they become available. These documents are available free of charge at the SEC website (www.sec.gov) and from the Corporate Secretary of Rexahn at the address above.

Important Cautionary Statements about Forward Looking Statements

This press release contains forward-looking statements (including within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended, and Section 27A of the Securities Act of 1933, as amended) concerning Rexahn, Ocuphire, the proposed merger, the contingent value rights, the pre-merger financing and other matters, including without limitation: statements relating to the satisfaction of the conditions to and consummation of the proposed merger, the expected timing of the consummation of the proposed merger and the expected ownership percentages of the combined company, Rexahn's and Ocuphire's respective businesses, the strategy of the combined company, future operations, advancement of its product candidates and product pipeline, clinical development of the combined company's product candidates, including expectations regarding timing of initiation and results of clinical trials of the combined company, the ability of Rexahn to remain listed on the Nasdaq Stock Market, the completion of any financing and the receipt of any payments under the contingent value rights. These statements may discuss goals, intentions and expectations as to future plans, trends, events, results of operations or financial condition, or otherwise, based on current beliefs of the management of Rexahn and Ocuphire, as well as assumptions made by, and information currently available to, management. Forward-looking statements generally include statements that are predictive in nature and depend upon or refer to future events or conditions, and include words such as "may," "will," "should," "would," "expect," "anticipate," "plan," "likely," "believe," "estimate," "project," "intend," or the negative of these terms and other similar expressions. Statements that are not historical facts are forward-looking statements. Forward-looking statements are based on current beliefs and assumptions that are subject to risks and uncertainties and are not guarantees of future performance.

Actual results could differ materially from those contained in any forward-looking statement as a result of various factors, including, without limitation: (i) the risk that the conditions to the closing are not satisfied, including the failure to obtain stockholder approval for the proposed merger in a timely manner or at all; (ii) uncertainties as to the timing of the consummation of the proposed merger and the ability of each of Rexahn and Ocuphire to consummate the proposed merger, including completing the pre-merger financing; (iii) risks related to Rexahn's ability to correctly estimate its expected net cash at closing and estimate and manage its operating expenses and its expenses associated with the proposed merger pending closing; (iv) risks related to the calculation of the estimated warrant liability of Rexahn's net cash amount being impacted by the trading price of a share of Rexahn common stock on Nasdaq on the calculation date and its impact on Rexahn's expected net cash at closing; (v) Rexahn's ability to meet the minimum net cash requirement at closing; (vi) risks related to Rexahn's continued listing on the Nasdaq Capital Market until closing of the proposed merger; (vii) risks related to the failure or delay in obtaining required approvals from any governmental or quasi-governmental entity necessary to consummate the proposed merger; (viii) the risk that as a result of adjustments to the exchange ratio, Rexahn stockholders or Ocuphire stockholders could own less of the combined company than is currently anticipated; (ix) risks related to the market price of Rexahn common stock relative to the exchange ratio; (x) the risk that the conditions to payment under the contingent value rights will not be met and that the contingent value rights may otherwise never deliver any value to Rexahn stockholders; (xi) risks associated with the possible failure to realize certain anticipated benefits of the proposed merger, including with respect to future financial and operating results; (xii) the ability of Rexahn or Ocuphire to protect their respective intellectual property rights; (xiii) competitive responses to the merger and changes in expected or existing competition; (xiv) unexpected costs, charges or expenses resulting from the proposed merger; (xv) potential adverse reactions or changes to business relationships resulting from the announcement or completion of the proposed merger; (xvi) the success and timing of regulatory submissions and pre-clinical and clinical trials; (xvii) regulatory requirements or developments; (xviii) changes to clinical trial designs and regulatory pathways; (xix) changes in capital resource requirements; (xx) risks related to the inability of the combined company to obtain sufficient additional capital to continue to advance its product candidates and its preclinical programs; (xxi) legislative, regulatory, political and economic developments, and (xxii) the effects of COVID-19 on clinical programs and business operations.

The foregoing review of important factors that could cause actual events to differ from expectations should not be construed as exhaustive and should be read in conjunction with statements that are included herein and elsewhere, including the risk factors included in Rexahn's most recent Annual Report on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K filed with the SEC. Neither Rexahn nor Ocuphire can give assurance that the conditions to the merger will be satisfied. You should not place undue reliance on these forward-looking statements, which are made only as of the date hereof or as of the dates indicated in the forward-looking statements. Except as required by applicable law, neither Rexahn nor Ocuphire undertakes any obligation to revise or update any forward-looking statement, or to make any other forward-looking statements, whether as a result of new information, future events or otherwise. _

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