PATENT ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

EPAS ID: PAT4372290

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	MERGER
EFFECTIVE DATE:	09/12/2016

CONVEYING PARTY DATA

Name	Execution Date
TOMEGAVAX, INC.	09/12/2016

RECEIVING PARTY DATA

Name:	VIR BIOTECHNOLOGY, INC.
Street Address:	4640 SW MACADAM AVENUE, SUITE 130A
City:	PORTLAND
State/Country:	OREGON
Postal Code:	97239

PROPERTY NUMBERS Total: 1

Property Type	Number
PCT Number:	US2015054067

CORRESPONDENCE DATA

Fax Number: (202)371-2540

Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.

Phone: 202-371-2600
Email: lmiller@skgf.com, ssmith@skgf.com, pcalvo@skgf.com
Correspondent Name: STERNE, KESSLER, GOLDSTEIN & FOX PLLC
Address Line 1: 1100 NEW YORK AVENUE, NW
Address Line 4: WASHINGTON, D.C. 20005

ATTORNEY DOCKET NUMBER:	3919.010PC02
NAME OF SUBMITTER:	PAUL A. CALVO
SIGNATURE:	/Paul A. Calvo 57913/
DATE SIGNED:	04/18/2017

Total Attachments: 71
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AGREEMENT AND PLAN OF MERGER

BY AND AMONG

VIR BIOTECHNOLOGY, INC.,

VIR MERGER SUB 1, INC.,

VIR MERGER SUB 2, INC.,

TOMEGAVAX, INC.

and

each of the shareholders of TOMEGAVAX, INC.

Dated as of September 12, 2016

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AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this "Agreement") is dated as of September 12, 2016, by and among Vir Biotechnology, Inc., a Delaware corporation ("Parent"), Vir Merger Sub 1, Inc., a Delaware corporation ("Merger Sub 1"), Vir Merger Sub 2, Inc., a Delaware corporation ("Merger Sub 2" and, together with Parent and Merger Sub 1, the "Parent Entities"), TomegaVax, Inc., a Delaware corporation (the "Company"), each of the shareholders of TomegaVax, Inc., party hereto (each, a "Company Stockholder", and, collectively, the "Company Stockholders") and Dr. Klaus Früh as the Stockholders' Representative hereunder (the "Stockholders' Representative").

WHEREAS, Parent, Merger Sub 1, Merger Sub 2 and the Company are hereby adopting a plan of reorganization providing for (a) the merger of Merger Sub 1 with and into the Company ("Merger One") with the Company being the surviving entity (as such, the "Merger One Surviving Entity"), in accordance with the General Corporation Law of the State of Delaware (the "DGCL") and (b) immediately following the consummation of Merger One, the merger of the Merger One Surviving Entity with and into Merger Sub 2 ("Merger Two") with Merger Sub 2 being the surviving entity (as such, the "Surviving Entity"), in accordance with the DGCL, and in each case, upon the terms and subject to the conditions set forth in this Agreement (the plan of reorganization, Merger One and Merger Two, collectively, the "Transactions");

WHEREAS, the board of directors of each of Parent, Merger Sub 1, Merger Sub 2 and the Company have approved and declared advisable this Agreement and the Transactions;

WHEREAS, to induce Parent, Merger Sub 1 and Merger Sub 2 to enter into this Agreement and to consummate the Transactions, the Company Stockholders have agreed to become party to this Agreement and to become bound to certain terms and conditions set forth herein expressly applicable to the Company Stockholders; and

WHEREAS, the Parties intend that the Transactions constitute an integrated plan of reorganization and are intended to qualify as a forward triangular merger under Section 368(a)(2)(D) of the Internal Revenue Code of 1986, as amended from time to time (the "Code").

NOW, THEREFORE, in consideration of the covenants, representations, warranties and mutual agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto (collectively, the "Parties") hereby agree as follows:

ARTICLE I
DEFINITIONS; INTERPRETATION

Section 1.1 Definitions. For the purposes of this Agreement, each of the following terms shall have the following respective meanings:

"Action" means any action, audit, arbitration, claim, demand, dispute, hearing, investigation, litigation, suit or other proceeding (whether civil, criminal, arbitral, administrative, investigative or informal).

"Affiliate" means, with respect to any Person, any other Person who directly or indirectly controls, is controlled by, or is under common control with, such Person. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by Contract or otherwise, and

the terms "controlled," "controlling," "controlled by" and "under common control with" have meanings correlative thereto.

"Aggregate Merger Consideration" means, collectively, Seven Million (7,000,000) shares of Parent A-2 Stock and all payments under the Win State Payment Letter.

"Assets" means all properties, assets and rights of every kind, nature and description whatsoever whether tangible or intangible, real, personal or mixed, wherever located.

"Benefit Plans" mean any "employee pension benefit plans" (as defined in Section 3(2) of ERISA), "employee welfare benefit plans" (as defined in Section 3(1) of ERISA) and all other bonus, commission, pension, profit sharing, deferred compensation, incentive compensation, stock ownership, stock purchase, stock option, stock appreciation, other forms of incentive compensation, phantom stock, equity-based retirement, vacation, severance, employment, change in control, disability, death benefit, hospitalization, medical, excess benefit, supplemental pension insurance, health, supplemental unemployment, payroll practice, fringe benefit, scholarship, sickness, accident, retention, individual employment, post-retirement compensation or other plan, agreement, policy, arrangement or understanding, whether written or oral (whether or not legally binding) providing benefits to any Employee, director, consultant or other service provider of the Company, or with respect to which the Company has or could have any Liability or obligation to contribute.

"Books and Records" means all books and records of the Company (including research and development reports, operating guides and manuals, financing and accounting records, programs, inventory lists, correspondence, account ledgers, minute books, stock ledgers, certificates of incorporation, bylaws, files, reports, and operating records of every kind).

"Business" means the business and operations conducted by the Company.

"Business Day" means any day other than a Saturday, Sunday or other day on which banks in New York, New York are required to be closed.

"Capital Stock" means any (a) capital stock; (b) shares, interests, participations, rights or other equivalents (however designated) of capital stock; (c) limited liability company, partnership or membership interests (whether general or limited); and (d) other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distribution of assets of, the issuing Person.

"Change in Control Payments" means any payments required to be made by the Company (whether currently or in the future) directly or indirectly based upon, arising out of or related to the execution of any of the Transaction Documents or the consummation of the Transactions (including any such payments to Employees or consultants, counterparties to Contracts, or Governmental Entities).

"Company Balance Sheet" means the consolidated balance sheet of the Company as of December 31, 2015.

"Company Common Stock" means the shares of common stock, par value $0.001 of the Company as defined in, and with the rights and privileges set forth in, the certificate of incorporation of the Company, as amended.

"Company Intellectual Property" means all Intellectual Property that is owned by the Company or used in or necessary or material to the conduct of the Business, including all Licensed Intellectual Property.

"Company License Agreements" means all licenses, sublicenses, consent to use agreements, settlements, coexistence agreements, covenants not to sue, waivers, releases, permissions and other Contracts, whether written or oral, relating to any Company Intellectual Property to which the Company is a party, beneficiary or otherwise bound.

"Company Material Adverse Effect" means any fact, event, circumstance or change that individually or in the aggregate when taken together with one or more other facts, events, circumstances or changes is or could reasonably be expected to be materially adverse to (a) the condition (financial or otherwise), business, revenue, profitability, Assets, Liabilities or results of operations of the Company, taken as a whole, or the Business or (b) the ability of the Company to perform its obligations under the Transaction Documents to which it is a party, but excluding any effect resulting from or relating to (x) general economic conditions or general effects on the industry in which the Business is primarily engaged (including as a result of an outbreak or escalation of hostilities or the declaration of a state of emergency or war) that does not disproportionately affect the Company, (y) any change or amendment to any Law that does not disproportionately affect the Company, or (z) any public announcement of the Transactions done in compliance with the terms of this Agreement

"Company Stock Rights" means any subscriptions, options, calls, warrants or any other rights, whether or not currently exercisable, (a) to acquire any shares of Capital Stock of the Company, or that (b) are or may become convertible into or exchangeable for any shares of Capital Stock of the Company, or for another Company Stock Right.

"Confidential Information" means all confidential or proprietary information related in any manner to the Company or the Business (including information of a business, technical, manufacturing, sales, legal, marketing, scientific or financial nature, historical and current financial statements, financial projections and budgets, tax returns and accountants' materials, historical, current and projected sales, capital spending budgets and plans, business plans, strategic plans, marketing and advertising plans, publications, client and customer and prospect lists and files, current and anticipated customer requirements, price lists, market studies, Contracts, the names and backgrounds of key personnel and personnel training techniques and materials).

"Consent" means any approval, consent, ratification, waiver, clearance or other authorization of, notice to or registration, qualification, designation, declaration or filing with any Person.

"Contract" means any contract, subcontract, indenture, note, bond, mortgage, instrument, lease, sublease, license, sublicense, Permit, purchase and sale order, and any amendment or modification thereto, or any other agreement, commitment, undertaking or binding arrangement or understanding, whether written or oral.

"Employee" means any current employee, officer or director of the Company.

"Employee Benefit Plan" means any Benefit Plan that the Company maintains, contributes to, or which is maintained by any other Person for the benefit of an Employee or other current or former service provider to the Company, or under which the Company has any Liability or potential Liability to any Employee or any other current or former service provider.

"Environmental Laws" means any Law relating to injury to, or the pollution or protection of, the environment (including any indoor area, surface or medium) or human health and safety.

"Environmental Liabilities" means any Losses (including natural resources damages, monitoring, investigatory, corrective or remedial obligations, and response and corrective action costs) that directly or indirectly (a) are incurred as a result of or arise out of (i) the existence or alleged existence of Hazardous Material in, on, over, under, at or emanating from any real property currently or formerly owned, leased or operated by the Company, (ii) the actual or alleged offsite transportation, treatment, storage or disposal of Hazardous Materials generated by the Company or (iii) the violation or alleged violation of any Environmental Law or (b) otherwise arise under any Environmental Laws.

"ERISA" means the Employee Retirement Income Security Act of 1974, and any Law related thereto.

"ERISA Affiliate" means any entity required to be aggregated in a controlled group or affiliated service group with the Company for purposes of ERISA or the Code (including under Section 414(b), (c), (m) or (o) of the Code or Section 4001 of ERISA), at any relevant time.

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

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

"FDCA" means the U.S. Food, Drug and Cosmetic Act of 1938, as it may be superseded or amended from time to time.

"Fully Diluted Shares" shall mean the aggregate number of shares of Company Common Stock that are issued and outstanding immediately prior to the Merger One Effective Time.

"Fundamental Representations" means the representations and warranties set forth in Sections 4.1, 4.2, 4.3(a)(i), 4.4, 4.16 and 11.14(b).

"GAAP" means generally accepted accounting principles effective in the United States as historically and consistently applied by the Company.

"General Representations" means the representations and warranties of the Company set forth in this Agreement, other than the Fundamental Representations.

"Governmental Entity" means any government or governmental or regulatory body thereof, or political subdivision thereof, whether domestic or foreign, federal, provincial, state, municipal or local, or any agency, instrumentality or authority thereof, or any court or arbitrator (public or private).

"Hazardous Materials" means any asbestos-containing materials, lead-based paint, mold, petroleum, petroleum products, petroleum constituents, polychlorinated biphenyls, urea formaldehyde, radon, radioactive materials, lead-based paint or other chemical, substance, material, waste, pollutant or contaminant regulated under any Environmental Laws.

"Income Tax" means any federal, state, local or foreign Tax based on, measured by or with respect to income, net worth or capital, including any interest, penalty or addition thereto.

"Income Tax Return" means a Tax Return (excluding an estimated Tax Return) with respect to Income Tax.

"Indebtedness" means, with respect to any Person, (a) indebtedness of such Person for borrowed money; (b) indebtedness evidenced by notes, debentures, bonds or other similar instruments, the payment for which such Person is responsible or liable; (c) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations of such Person, all obligations of such Person under any title retention agreement and all obligations of such Person secured by any Lien on any Asset of such Person (but, in the case of the Company, excluding trade accounts payable arising in the Ordinary Course of Business); (d) all obligations of such Person under leases required to be capitalized in accordance with GAAP; (e) all obligations of such Person for the reimbursement of any obligor on any letter of credit, surety bond, banker's acceptance or similar credit transaction; (f) all obligations of such Person under interest rate, currency swap or hedging transactions (valued at the termination value thereof); (g) all obligations of the type referred to in clauses (a) through (f) of any other Person, the payment for which such Person is responsible or liable, directly or indirectly, as obligor, guarantor, surety or otherwise, including guarantees of such obligations; (h) all obligations of the type referred to in clauses (a) through (g) of other Persons secured by (or for which the holder of such obligations has an existing right, contingent or otherwise, to be secured by) any Lien on any Asset of such Person (whether or not such obligation is assumed by such Person); and (i) all principal, accreted value, accrued and unpaid interest, prepayment and redemption premiums or penalties (if any), unpaid fees or expenses and other monetary obligations in respect of the obligations of the type referred to in clauses (a) through (h).

"Intellectual Property" means any and all of the following in any jurisdiction throughout the world which may now or in the future subsist: (i) patents, provisional and non-provisional patent applications, patent disclosures and all related continuation, continuation-in-part, divisional, reissue, re-examination, utility, model and design patents, patent and petty patent applications, patent and petty patent registrations and applications for patent and petty patent registrations, including the underlying inventions within all of the foregoing, and rights in designs, whether registered or unregistered; (ii) copyrights and works of authorship, whether or not copyrightable, and registrations, applications and renewals for registration of copyrights, including unregistered copyright, database rights and typography rights; (iii) trade secrets, know-how, inventions (whether or not patentable), discoveries, improvements, technology, business and technical information, databases, data compilations and collections, tools, methods, processes, techniques and other confidential and proprietary information and all rights therein; (iv) trademarks, mask works, service marks, trade dress, get up, brands, logos, slogans, certification marks, trade names, corporate names (whether or not registered) and other similar indicia of source or origin, including all variations, derivations, combinations, registrations and applications for registration or renewals of the foregoing and all goodwill associated therewith; (v) web site designs and Internet domain names and registrations and applications for registration or renewals thereof, all associated web addresses, URLs, websites and web pages, and all content and data thereon and relating thereto; (vi) computer programs, operating systems, applications, firmware and other code, including all source code, object code, application programming interfaces, data files, databases, protocols, specifications and other documentation thereof; (vii) all other intellectual and industrial property and proprietary rights; and (viii) all claims, causes of action and remedies, with respect to any of the foregoing, whether accruing before, on or after the date hereof, including all rights to and claims for damages, restitution and injunctive relief for infringement, dilution, misappropriation, violation, misuse, breach or default, with the right but no obligation to sue for such legal and equitable relief, and to collect, or otherwise recover, any such damages under the Laws of all jurisdictions.

"Knowledge" means, with respect to the Company, the actual knowledge, after reasonable inquiry, of any director or officer of the Company or of any other Person performing a similar function with respect to the Company.

"Law" means any domestic or foreign, federal, provincial, state or local statute, law, ordinance, rule, regulation, directive, Order, writ, injunction, judgment, administrative or judicial decision or

interpretation, treaty, decree or other requirement of any Governmental Entity, including under any Permit.

"Liability" means any direct or indirect liability or obligation (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether secured or unsecured, whether choate or inchoate, whether fixed or unfixed, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due).

"Licensed Intellectual Property" means all Intellectual Property in which the Company holds any rights or interests granted from other Persons pursuant to any Company License Agreement.

"Lien" means any claim, lien (statutory or otherwise), encumbrance, pledge, restriction, charge, instrument, license, preference, priority, security agreement, covenant, right of recovery, option, charge, hypothecation, easement, security interest, interest, right of way, encroachment, mortgage, deed of trust, imperfection of title, prior assignments, or other encumbrance or charge of any kind or nature whatsoever or any conditional sale or other title retention agreement or other Contract having substantially the same effect as any of the foregoing.

"Loss" means any direct or indirect judgment, Action, settlement, loss, damage, fee, fine, Liability, Lien, Tax, penalty, interest obligation, cost or expense (including costs of investigation and defense and attorney and other professional advisor and consulting fees and expenses).

"Material Contract" means each Contract listed or required to be listed on Schedule 4.10.

"Merger Consideration" means any portion of the Aggregrate Merger Consideration payable pursuant to this Agreement in accordance with Section 3.1(c).

"Merger One Certificate of Merger" means the certificate of merger, in the form prescribed by the DGCL, setting forth Merger One.

"Merger Two Certificate of Merger" means the certificate of merger, in the form prescribed by the DGCL, setting forth Merger Two.

"Non-Competition Agreement" means a non-competition agreement, in the form attached hereto as Exhibit D.

"OHSU License Agreement" means the Revised and Restated Master Exclusive License Agreement, dated as of June 22, 2012, between Oregon Health & Science University and the Company, as amended and modified and including all amendments and addendums thereto.

"Onami Indebtedness" means all Indebtedness of the Company owing to Oregon Nanoscience and Microtechnologies Institute.

"Onami Payoff Letter" means a payoff letter, in a form reasonable satisfactory to Parent, evidencing the payment, release and discharge of all Onami Indebtedness.

"Order" means any decree, injunction, ruling, judgment, assessment, consent or other order of or entered by any Governmental Entity.

"Ordinary Course of Business" means the ordinary course of business of the Company consistent with past custom and practice.

"Outstanding Share" means a share of Company Common Stock issued and outstanding immediately prior to the Merger One Effective Time.

"Parent A-1 Stock" means shares of Series A-1 Preferred Stock, par value $0.0001 of Parent as defined in, and with the rights and privileges set forth in, the certificate of incorporation of Parent, as may be amended.

"Parent A-2 Stock" means shares of Series A-2 Preferred Stock, par value $0.0001 of Parent as defined in, and with the rights and privileges set forth in, the certificate of incorporation of Parent, as may be amended.

"Parent Entity Material Adverse Effect" means, with respect to any Parent Entity, a material adverse effect on the ability of such Parent Entity to consummate the Transactions in a timely manner, perform its obligations under any of the Transaction Documents, obtain financing or sufficiently capitalize any Parent Entity.

"Parent Indemnified Parties" means (a) Parent, Merger Sub 1, Merger Sub 2 and their respective Affiliates, and all of their respective stockholders, partners, members and Representatives, and (b) from and after the Closing, the Company.

"Parent Stockholders Agreements" means, collectively, (i) the Investors' Rights Agreement, (ii) the Right of First Refusal and Co-Sale Agreement, and (iii) the Voting Agreement, in each case by and among Parent and one or more stockholders of Parent.

"Per Share Percentage" means the quotient of (i) 7,000,000 divided by (ii) the number of Fully Diluted Shares.

"Per Win State Percentage" means the quotient of (i) the amount of any Win State Payment divided by (ii) the number of Fully Diluted Shares.

"Permits" means all filings, franchises, permits, approvals, certificates, licenses, agreements, waivers, quotas, authorizations and similar rights with or issued by a Governmental Entity.

"Person" means an individual, partnership, corporation, joint venture, association, limited liability company, joint stock company, trust, joint venture, unincorporated organization, Governmental Entity or any other entity.

"Post-Closing Tax Period" means any Tax Period or portion thereof beginning after the Closing Date, including the portion of any Straddle Period beginning the day after the Closing Date.

"Pre-Closing Straddle Period" means the portion of any Straddle Period ending on the Closing Date.

"Pre-Closing Tax Period" means any Tax Period or portion thereof ending on or before the Closing Date, including the Pre-Closing Straddle Period.

"Prior Practice" means the prior practices of the Company applicable to the preparation of Tax Returns, including all elections, accounting methods and conventions.

"Regulatory Documents" means any and all regulatory submissions (whether completed or in process) to any Governmental Entity anywhere in the world submitted by the Company, including all

annual reports, adverse event reports, and other adverse event submission tracking information, and amendments and supplements to any of the foregoing, including, without limitation, any IND. For purposes herein, "IND" means any Investigational New Drug Application (as described in 21 C.F.R. § 312) filed with the FDA to initiate the conduct of human clinical trials pursuant to the FDCA and the regulations promulgated thereunder.

"Related Party" means any (i) Affiliate of the Company, (ii) officer or director of the Company or any such Affiliate, (iii) any ancestor, sibling, descendant or spouse of any of such Related Party, or (iv) any Person in which any Related Party has or has had a direct or indirect economic interest (other than an economic intereset of less than 1% of the outstanding voting stock of a publicly traded corporation).

"Representative" means, with respect to any Person, such Person's directors, officers, employees, representatives, attorneys, auditors, accountants, agents, consultants or other representatives.

"Required Permits" means all material authorizations, licenses, permits, certificates, approvals, exemptions, consents, confirmations, orders, registrations, product registrations, concessions, franchises, waivers and clearances of an Governmental Entity (including all authorizations under the Food, Drug and Cosmetic Act, the Public Health Services Act and the Controlled Substances Act, and the regulations of the FDA and the United States Drug Enforcement Agency promulgated thereunder) necessary for the Company to use, test, manufacture, distribute, own, lease and operate their Assets.

"Securities Act" means the Securities Act of 1933.

"Straddle Period" means any Tax Period beginning before the Closing Date and ending after the Closing Date.

"Subsidiary" means, with respect to any Person, any corporation, limited liability company, partnership, association or other business entity of which (i) if a corporation or a limited liability company (with voting securities), a majority of the total voting power of shares of stock or interest entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (ii) if a limited liability company (without voting securities), partnership, association or other business entity, a majority of the partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of that Person or a combination thereof. A Person or Persons shall be deemed to have a majority ownership interest in a limited liability company, partnership, association or other business entity if such Person or Persons shall be allocated a majority of limited liability company, partnership, association or other business entity gains or losses or shall be or control any managing director or general partner of such limited liability company, partnership, association or other business entity.

"Tax Agreement" means any Tax sharing, Tax indemnity or Tax allocation agreement or similar Contract.

"Tax Law" means any Law related to Taxes.

"Tax Period" or "Taxable Period" means any period prescribed by any Governmental Entity for which a Tax Return is required to be filed or a Tax is required to be paid.

"Tax Proceeding" means any Action related to or involving Taxes.

"Tax Refund" means any refund or credit of Taxes of the Company for any Pre-Closing Tax Period.

"Tax Return" means any report, return, declaration, claim for refund or other information or statement or schedule relating to Taxes supplied or required to be supplied by the Company, including any schedules or attachments thereto and any amendments thereof.

"Taxes" means, with respect to any Person, (i) all federal, state, local, county, foreign and other taxes, assessments, duties or other government fees and charges, including any income, alternative or add-on minimum tax, estimated gross income, gross receipts, sales, use, ad valorem, value added, transfer, escheat, capital, stock, franchise, profits, license, registration, recording, documentary, intangibles, conveyancing, gains, withholding, payroll, employment, social security (or similar), unemployment, disability, excise, severance, stamp, occupation, premium, property (real and personal), environmental or windfall profit tax, or custom duty, together with any interest, penalty, addition to tax or additional amount imposed by any Governmental Entity responsible for the imposition of any such tax whether such Tax is disputed or not; (ii) any Liability for payment of amounts described in clause (i) as a result of transferee liability, of being (or ceasing to be) a member of any affiliated group as defined in Section 1504 of the Code, or being a member of any any analogous combined, consolidated or unitary group defined under state, local or foreign Tax Law (or being included (or required to be included) in any Tax Return relating thereto), or otherwise through operation of Law; or (iii) any Liability for payment of amounts described in clause (i) or (ii) as a result of any Contract.

"Transaction Documents" means this Agreement, the Non-Competition Agreements, the Consulting Agreements and all other agreements, instruments and certificates contemplated hereby or thereby to which any Party is a party.

"Transfer Taxes" means all federal, state, local, foreign and other stamp, transfer, documentary, sales and use, value added, registration and other such Taxes and fees (including any penalties and interest) applicable to, imposed upon or arising out of the Transactions.

"Treasury Regulations" means the U.S. treasury regulations promulgated under the Code.

"Ultimate Cap" means $7,000,000 plus the aggregate amount of Win State Payments actually received by the Company Stockholders pursuant to the Win State Payment Letter.

"Win State Payment" means any payment pursuant to the Win State Payment Letter.

"Win State Payment Letter" means the Win State Payment Letter, in the form of Exhibit E hereto, providing for the payment of up to thirty million dollars ($30,000,000) subject to the achievement of the milestones and the satisfaction of the conditions set forth therein.

Section 1.2 Additional Defined Terms.

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

Agreement	**Preamble**
Appraisal Share(s)	**Section 3.1(d)**
Certificates	**Section 3.4(a)**
Closing	**Section 2.3**
Closing Date	**Section 2.3**
COBRA	**Section 4.19(e)**

Code	**Recitals**
Company	**Preamble**
Company Stockholder(s)	**Preamble**
Consulting Agreement(s)	**Section 7.2(i)**
DGCL	**Recitals**
Dispose	**Section 10.5(a)**
EMA	**Section 4.21(a)**
Financial Statements	**Section 4.5**
Indemnified Party	**Section 9.3(a)**
Indemnifying Party	**Section 9.3(a)**
Leased Real Property	**Section 4.8(b)**
Letter of Transmittal	**Section 3.4(a)**
Lost Share Affidavit	**Section 3.4(b)**
Merger One	**Recitals**
Merger One Effective Time	**Section 2.1**
Merger One Surviving Entity	**Recitals**
Merger One Surviving Entity Common Shares	**Section 3.1(a)**
Merger Sub 1	**Preamble**
Merger Sub 2	**Preamble**
Merger Sub 1 Shares	**Section 3.1(a)**
Merger Two	**Recitals**
Merger Two Effective Time	**Section 2.2**
Minimum Claim Amount	**Section 9.4(a)**
Parent	**Preamble**
Parent Entities	**Preamble**
Parties	**Recitals**
Pre-Closing Tax Proceeding	**Section 10.5(a)**
Pre-Closing Tax Return Amendment	**Section 10.1(c)**
Released Person	**Section 11.14(c)**
Releasing Person	**Section 11.14(c)**
Registered Company IP	**Section 4.9(a)**
Required Third-Party Deliveries	**Section 7.2(f)**
Reviewable Return	**Section 10.1(d)**
Selected Accounting Firm	**Section 10.1(d)**
Stockholders' Representative	**Preamble**
Surviving Entity	**Recitals**
Third Party Claim	**Section 9.3(a)**
Threshold Amount	**Section 9.4(a)**
Transactions	**Recitals**

Section 1.3 Interpretation.

(a) The words, "herein," "hereto," "hereof" and words of similar import refer to this Agreement as a whole and not to any particular Article, Section or paragraph hereof. All instances of the words "include," "includes" or "including" in this Agreement shall be deemed to mean "including without limitation." Any reference to any Law will be deemed also to refer to such Law and all rules and regulations promulgated thereunder, in each case as amended, modified, codified, replaced or reenacted, in whole or in part. Any reference to an Article, Section, Exhibit, Appendix or Schedule is to the articles, sections, exhibits, appendices or schedules, if any, of and to this Agreement unless otherwise specified.

(b) References to $ will be references to United States Dollars, and with respect to any Contract, obligation, Liability, claim or document that is contemplated by this Agreement but denominated in currency other than United States Dollars, the amounts described in such Contract, obligation, Liability, claim or document will be deemed to be converted into United States Dollars for purposes of this Agreement as of the applicable date of determination.

(c) A reference to any Person in this Agreement or any other agreement or document shall include such Person's predecessors-in-interest, successors and permitted assigns.

(d) Each accounting term used herein that is not specifically defined herein shall have the meaning given to it under U.S. GAAP.

(e) The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

(f) Whenever this Agreement requires the disclosure of a Contract or the delivery of a Contract to Parent, that disclosure requirement or delivery requirement, as applicable, shall also require the disclosure or delivery of each and every amendment, extension, exhibit, attachment, schedule, addendum, appendix, statement of work, change order and any other similar instrument or document relating to that Contract.

(g) The Parties are each represented by legal counsel and have participated jointly in the negotiation and drafting of the Transaction Documents to which they are a party. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, 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.

(h) The principles of interpretation set forth in this Section 1.3 shall apply equally to all Transaction Documents.

ARTICLE II
THE MERGERS; CLOSING

Section 2.1 Merger One. Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the DGCL, at the Merger One Effective Time, Merger One shall be consummated with Merger Sub 1 being merged with and into the Company. As a result of Merger One, the separate corporate existence of Merger Sub 1 shall cease, and the Company shall continue as the Merger One Surviving Entity, with such effects as set forth in the DGCL. For purposes of this Agreement, the "Merger One Effective Time" shall mean the time at which the Merger One Certificate of Merger has been duly filed in the Office of the Secretary of State of Delaware and has become effective in accordance with the DGCL, or at such later time as may be agreed by the Parties in writing and specified in the Merger One Certificate of Merger.

Section 2.2 Merger Two. Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the DGCL, at the Merger Two Effective Time, Merger Two shall be consummated with Merger One Surviving Entity being merged with and into the Merger Sub 2. As a result of Merger Two, the separate corporate existence of the Merger One Surviving Entity shall cease, and Merger Sub 2 shall continue as the Surviving Entity, with such effects as set forth in the DGCL. For purposes of this Agreement, the "Merger Two Effective Time" shall mean the time at which the Merger Two Certificate of Merger has been duly filed in the Office of the Secretary of State of Delaware and has become effective in accordance with the DGCL, or at such later time as may be agreed by the Parties in

writing and specified in the Merger Two Certificate of Merger, which, in either case, shall be as promptly as practicable after the Merger One Effective Time (and in no event prior to the Merger One Effective Time).

Section 2.3 Closing. The closing of the Transactions (the "Closing") shall occur on the third (3^{rd}) Business Day after the fulfillment or valid waiver of all conditions set forth in Article VII (other than those conditions which by their terms are to be satisfied at the Closing, but subject to such satisfaction or valid waiver at such time), and shall take place at the offices of Proskauer Rose LLP, One International Place, Boston, MA 02110, or at such other time and place as the Parties may mutually agree to in writing (the date on which the Closing occurs, the "Closing Date").

Section 2.4 Certificate of Incorporation, By-laws, Officers and Directors of the Merger One Surviving Entity.

(a) At the Merger One Effective Time, by virtue of Merger One, the certificate of incorporation of the Company, as the Merger One Surviving Entity, shall be amended to read in its entirety as set forth on Exhibit A, until thereafter amended in accordance with applicable Law.

(b) At the Merger One Effective Time, the by-laws of the Company shall be amended to read in their entirety as set forth on Exhibit B, until thereafter amended in accordance with applicable Law, the certificate of incorporation of the Merger One Surviving Entity and such by-laws.

(c) The directors of Merger Sub 1 immediately prior to the Merger One Effective Time shall be the directors of the Merger One Surviving Entity until the earlier of their resignation or removal or until their respective successors are duly elected and qualified, as the case may be.

(d) The officers of Merger Sub 1 immediately prior to the Merger One Effective Time shall be the officers of the Merger One Surviving Entity, each to hold office until the earlier of their resignation or removal or until their respective successors are duly elected and qualified, as the case may be.

Section 2.5 Certificate of Incorporation, By-laws, Officers and Directors of the Surviving Entity.

(a) At the Merger Two Effective Time, (i) the certificate of incorporation and by-laws of Merger Sub 2, as the Surviving Entity, shall be the certificate of incorporation and the by-laws of Merger Sub 2, as in effective immediately prior to Merger Two, until thereafter amended in accordance with applicable Law, and (ii) the Surviving Entity shall be renamed "TomegaVax, Inc."

(b) The directors and officers of Merger Sub 2 immediately prior to the Merger Two Effective Time shall remain the directors and officers, respectively, of the Surviving Entity until the earlier of their resignation or removal or until their respective successors are duly elected and qualified, as the case may be.

Section 2.6 Tax Consequences. The Parties intend that Merger One and Merger Two constitute an integrated plan of reorganization and are intended to qualify as a forward triangular merger under Section 368(a)(2)(D) of the Code, and that this Agreement be, and is hereby adopted as, a plan of reorganization for the purposes of Sections 354 and 361 of the Code.

ARTICLE III
EFFECT OF THE MERGERS; EXCHANGE AND PAYMENT

Section 3.1 Effect of Merger One.

(a) Conversion of Merger Sub 1 Shares. At the Merger One Effective Time, by virtue of Merger One and without any further action on the part of Parent, Merger Sub 1 or the Company, each issued and outstanding share of capital stock of Merger Sub 1 ("Merger Sub 1 Shares") shall be converted into and become one fully paid and nonassessable share of common stock, par value $0.001 per share, of the Merger One Surviving Entity ("Merger One Surviving Entity Common Shares"). Each certificate representing Merger Sub 1 Shares shall at the Merger One Effective Time represent an equal number of shares of Merger One Surviving Entity Common Shares.

(b) Cancellation of Treasury Shares of the Company. All shares of Company Common Stock that are owned by the Company as treasury shares automatically shall be cancelled and shall cease to exist and no consideration shall be delivered in exchange therefor.

(c) Conversion of Company Common Stock. Each share of Company Common Stock that is issued and outstanding immediately prior to the Merger One Effective Time (other than any shares of Company Common Stock to be cancelled pursuant to Section 3.1(b) and any Appraisal Shares) shall be cancelled and extinguished and be converted into the right to receive the Per Share Percentage of the Parent A-2 Stock and the Per Win State Percentage of the Win State Payment Letter, subject to the terms and conditions set forth herein, including, without limitation, the obligation to execute and deliver the Letter of Transmittal in accordance with Section 3.4(a). The number of shares of Parent A-2 Stock to be issued to each Company Stockholder, and the Per Win State Percentage of any Win State Payment payable to each Company Stockholder, is as set forth on Exhibit F attached hereto.

(d) Appraisal Shares. Notwithstanding any provision of this Agreement to the contrary, each Outstanding Share held by a Company Stockholder who has not voted in favor of the Transactions, consented thereto in writing, or entered into or become bound by this Agreement and who has properly demanded appraisal for such shares in accordance with all of the relevant provisions of the DGCL (each share an "Appraisal Share"), shall not be converted into or represent a right to receive payments under Section 3.1(c). Holders of Appraisal Shares shall be entitled only to such rights as are granted by the applicable provisions of the DGCL; provided, however, that any holder of Appraisal Shares who, after the Merger One Effective Time, withdraws the demand for appraisal or loses the right of appraisal shall be deemed to be entitled, as of the Merger One Effective Time, to receive the amounts payable with respect to such Appraisal Shares under Section 3.1(c), as applicable, subject to the terms of this Article III.

Section 3.2 Effect of Merger Two. At the Merger Two Effective Time, by virtue of Merger Two and without any further action on the part of Parent, Merger Sub 2 or the Merger One Surviving Entity, all shares of capital stock of the Merger One Surviving Entity, whether issued and outstanding or owned by the Merger One Surviving Entity as treasury shares, shall cease to exist and no consideration shall be delivered in exchange therefor.

Section 3.3 Closing Actions. At the Closing, Parent will (a) authorize and reserve for issuance the Aggregate Merger Consideration; and (b) pay, or cause to be paid, the Onami Indebtedness by wire transfer of immediately available funds to the account as specified in Onami Payoff Letter.

Section 3.4 Exchange of Certificates; Payment Procedures.

(a) Payment Procedures. Prior to the Merger One Effective Time, the Company shall cause each Company Stockholder entitled to receive any Merger Consideration under Section 3.1(c) to be provided with (i) a letter of transmittal in the form attached hereto as Exhibit C (the "Letter of Transmittal"), (ii) instructions for effecting the surrender of the certificates evidencing Outstanding Shares (the "Certificates") and (iii) a form of Lost Share Affidavit. Upon surrender of such Certificates (other than Certificates representing Outstanding Shares to be cancelled pursuant to Section 3.1(b) and any Appraisal Shares) or the submission of a Lost Share Affidavit, together with (x) a Letter of Transmittal duly executed and completed in accordance with its terms and (y) duly executed joinders to each of the Parent Stockholders Agreements, in each case, to the reasonable satisfaction of Parent, as soon as reasonably practicable thereafter, Parent shall issue to the former holder of such Certificate(s) the number of shares of Parent A-2 Stock equal to the number of Outstanding Shares evidenced by such Certificates(s) multiplied by the Per Share Percentage, pursuant to Section 3.1(c), and the Certificate(s) so surrendered shall be cancelled. Parent shall also pay to the former holder of such Certificate(s) the portion of any Win State Payment equal to the number of Outstanding Shares evidenced by such holder's Certificate(s) multiplied by the Per Win State Percentage. Any Win State Payment will be paid pursuant to the terms of the Win State Payment Letter. Until surrendered as contemplated by this Section 3.4(a) accompanied by a Letter of Transmittal duly executed and completed in accordance with its terms, each Certificate shall be deemed at all times from and after the Merger One Effective Time to represent only the right to receive the consideration under Section 3.1(c), that becomes issuable with respect to the Outstanding Shares represented by such Certificates.

(b) Lost Certificates. If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed (the "Lost Share Affidavit"), and, if required by Parent, the posting by such Person of a bond or surety in such reasonable amount as Parent may direct as indemnity against any claim that may be made against it with respect to such Certificate, Parent will deliver in exchange for such lost, stolen or destroyed Certificate (other than Certificates representing Outstanding Shares to be cancelled pursuant to Section 3.1(b) and any Appraisal Shares) the consideration under Section 3.1(c) that becomes issuable with respect to the applicable Outstanding Shares represented thereby.

(c) No Further Ownership Rights in Company Common Stock. From and after the Merger One Effective Time, the share transfer books of the Company shall be closed and there shall be no further registration of transfers on the share transfer books of the Merger One Surviving Entity of the Company Common Stock that was outstanding immediately prior to the Merger One Effective Time. If, after the Merger One Effective Time, Certificates are presented to Parent, along with the duly executed and completed Letter of Transmittal, for any reason, they shall be cancelled and Parent shall then pay any consideration owing under Section 3.1(c), as applicable.

(d) Withholding Rights. Parent shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to any Company Stockholder such amounts as it is required to deduct and withhold with respect to the making of such payment under the Code and the Treasury Regulations, or any provision of state, local or foreign Tax Law. To the extent that amounts are so withheld by Parent, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Company Stockholder in respect of which such deduction and withholding was made by Parent.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES CONCERNING THE COMPANY

As a material inducement to the Parent Entities to enter into this Agreement and the other Transaction Documents and to consummate the Transactions, the Company hereby represents and warrants to the Parent Entities, as of the date hereof and as of the Closing Date, as follows:

Section 4.1 Organization.

(a) The Company is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware. The Company does not have any Subsidiaries. The Company has all requisite power and authority to own, lease and operate its properties and to carry on the Business. Except as set forth on Schedule 4.1(a), the Company is duly qualified or licensed to do business and is in good standing as a foreign organization in each jurisdiction listed on Schedule 4.1(a), which constitute all of the jurisdictions in which the conduct of its business or the ownership, leasing, holding or use of its properties makes such qualification necessary, except such other jurisdictions where the failure to be so qualified or licensed or in good standing would not reasonably be expected to have a Company Material Adverse Effect. The Company has delivered to Parent a true and correct copy of the articles of incorporation and by-laws (or other organizational documents) of the Company, each as amended to date and in full force and effect. The Company has not violated any provision of its articles of incorporation or by-laws (or other organizational documents). The Company has not conducted any business under or otherwise used for any purpose in any jurisdiction any fictitious name, assumed name, trade name or other name.

(b) The Company (i) does not, directly or indirectly, own any Capital Stock or other security of or other interest in, any other Person, and (ii) is not, directly or indirectly, a party to, member of or participant in any partnership, joint venture or similar business entity.

Section 4.2 Authority. The Company has all requisite corporate power and authority to enter into each of the Transaction Documents to which it is or will be a party and to consummate the Transactions. This Agreement has been, and each of the other Transaction Documents to which the Company is a party will be at the Closing, duly executed and delivered by the Company, and, assuming the due authorization, execution and delivery by the other Parties hereto and thereto (other than the Company), this Agreement constitutes, and in the case of the other Transaction Documents to which the Company is a party they will at Closing constitute, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as such enforceability may be subject to applicable bankruptcy, reorganization, insolvency, moratorium and similar Laws affecting the enforcement of creditors' rights generally and by general principles of equity.

Section 4.3 No Conflict.

(a) Except as set forth on Schedule 4.3(a), the execution, delivery and performance by the Company of the Transaction Documents to which it is a party, and the consummation of the Transactions, do not and will not (x) materially conflict with or result in any material violation of or material default under (with or without notice or lapse of time, or both), (y) give rise to a right of termination, cancellation, modification or acceleration of any material Liability or loss of any material benefit under, or (z) result in the imposition or creation of any material Lien upon any of the Assets of the Company under any (i) provision of the articles of incorporation, by-laws or any other organizational documents of the Company, (ii) Material Contract or (iii) Law.

(b) Except as set forth on Schedule 4.3(b), no material Consent or material Order is required by, or with respect to, the Company in connection with the execution and delivery of the Transaction Documents to which the Company is a party or the consummation of the Transactions.

Section 4.4 Capital Structure.

(a) The authorized Capital Stock of the Company consists solely of (i) 45,000,000 shares of Company Common Stock, of which 8,367,439 are issued and outstanding, and (ii) 25,000,000 share of preferred stock, none of which are issued and outstanding. Subject to the accuracy of the representations and warranties in Section 11.14 of this Agreement, the shares of Company Common Stock are held of record and beneficially by the Persons with the addresses and in the amounts set forth on Schedule 4.4(a), and each such Person has good and marketable title to the number of shares of Company Common Stock set forth opposite their name on Schedule 4.4(a), free and clear of any Liens. All shares of the outstanding Capital Stock of the Company (i) have been duly authorized and validly issued and are fully paid, non-assessable and not subject to preemptive rights or similar rights, and (ii) except as set forth on Schedule 4.4(a)(ii), have been offered, sold, issued and delivered in all material respects in compliance with all Laws. There are no declared or accrued but unpaid dividends with respect to any shares of Company Common Stock.

(b) Except as set forth on Schedule 4.4(b), there are no outstanding (i) Company Stock Rights, (ii) Contracts obligating the Company to grant, extend, accelerate the vesting of, change the price of, otherwise amend or enter into any Company Stock Right, or (iii) obligations of the Company to repurchase, redeem or otherwise acquire any outstanding Capital Stock of the Company or any Company Stock Rights.

(c) Except for the agreements listed on Schedule 4.4(c), there are no voting trusts, proxies or other Contracts with respect to the Capital Stock of the Company, including Contracts relating to the registration, sale or transfer (including agreements relating to rights of first refusal, "co-sale" rights or "drag-along" rights) thereof. Upon consummation of Merger One, Parent shall own all of the shares of Company Common Stock, free and clear of any Liens, except Liens imposed by any Parent Entity. The execution and delivery of the Transaction Documents to which the Company is a party and the consummation of the Transactions do not implicate any rights or obligations that have not been complied with or waived.

Section 4.5 Financial Statements. Attached to Schedule 4.5(a) are copies, which copies are correct and complete, of (i) the consolidated balance sheets and statements of operations and comprehensive income, cash flows and stockholders' equity of the Company as of and for the fiscal years ending December 31, 2015 and December 31, 2014, and (ii) the consolidated balance sheet and the related statements of income and cash flows for the six-month period beginning on January 1, 2016 and ended on June 30, 2016, (the financial statements referred to in items (i) and (ii), including the related notes and schedules thereto, the "Financial Statements"). The Financial Statements have been prepared from the books and records of the Company and in accordance with GAAP applied on a consistent basis throughout the periods indicated and consistent with each other, except for the absence of footnotes in the case of the unaudited interim Financial Statements. The Financial Statements fairly present, in all material respects, the consolidated financial position, results of operations and cash flows of the Company as of the dates and for the periods indicated therein, subject, in the case of the unaudited interim Financial Statements, to normal year-end adjustments that are not material in amount or significance. All projections, estimates, financial plans or budgets previously delivered or made available to the Parent Entities were based upon good faith reasonable assumptions in light of all material facts and circumstances at the time made.

Section 4.6 Liabilities.

(a) Except as set forth on Schedule 4.6(a), the Company does not have any Liability, except (i) non-monetary obligations to perform under Contracts to which it is a party, (ii) Liabilities specifically reflected in, fully reserved against or otherwise described in the Company Balance Sheet, and (iii) Liabilities (other than Indebtedness) of a similar nature to those set forth on the Company Balance Sheet arising after the Balance Sheet Date in the Ordinary Course of Business that do not directly or indirectly result from, arise out of or relate to any breach of Contract, breach of warranty, tort, infringement or violation of Law.

(b) All outstanding accounts payable of the Company (i) have been recorded on the accounting books and records of the Company and (ii) represent valid obligations arising from bona fide purchases of Assets or services that have been delivered to the Company. The Company does not have any material"off balance sheet arrangements" (as such term is defined in Item 303(a)(4) of Regulation S-K promulgated under the Exchange Act).

Section 4.7 Restrictions on Business Activities. Except as set forth on Schedule 4.7, there is no Contract or Order that does or could reasonably be expected to prohibit or otherwise limit: (a) any business practice of the Company or any of its Affiliates; (b) any acquisition of Assets by the Company or any of its Affiliates; (c) the conduct of business by the Company or any of its Affiliates; or (d) the freedom of the Company or any of its Affiliates to engage in any line of business or to compete or do business with any Person. Without limiting the generality of the foregoing, the Company (x) is not restricted from selling, licensing or otherwise providing any of its services or products to customers or potential customers or any class of customers, in any geographic area, during any period of time, or in any segment of the market, (y) has not granted any Person exclusive rights to sell, license or otherwise provide any of the Company's or any of its Affiliates' services or products in any geographic area or with respect to any customers or potential customers or any class of customers during any period of time or in any segment of the market and (z) has not entered into any Contract that will bind any Parent Entity or any of their Affiliates with respect to the Parent Entities' or any of the Parent Entities' Affiliates' own customers, products or services.

Section 4.8 Real Property; Assets.

(a) The Company does not own and has never owned, in full or in part, any real property.

(b) Schedule 4.8(b) contains a true and complete list of all leases and subleases and any other occupancy agreements (including a brief description of the leased premises and its location) entered into by, or binding on, the Company, whether as lessor or lessee, together with all modifications and amendments thereto, including, without limitation, leases or subleases of, or any other occupancy agreements relating to, real property (collectively, the "Leased Real Property"). Each of the leases, subleases and occupancy agreements is a legal, valid and binding obligation of the Company, and to the Knowledge of the Company, each other party thereto, enforceable in accordance with its terms and is in full force and effect, and there are no defaults thereunder by the Company, or to the Knowledge of the Company, any other party thereto. The Company enjoys peaceful and undisturbed possession under each such lease, sublease and occupance agreement. Except as set forth in Schedule 4.8(b), the Leased Real Property is in good condition and repair, ordinary wear and tear excepted, and has been maintained in a manner consistent with generally accepted industry practice.

(c) Except as set forth in Schedule 4.8(c), all of the Company's tangible personal property is in good working condition and repair, ordinary wear and tear excepted, and has been

maintained in a manner consistent with generally accepted industry practice. All such tangible personal property is free from material defects, is adequate to conduct the Business as presently conducted and proposed to be conducted and no material repairs, replacements or regularly scheduled maintenance relating thereto has been delayed or deferred.

(d) The Company has good and valid title to, or, in the case of leased Assets, valid leasehold interests in, all Assets, used or held for use in the Business, free and clear of any Liens, except (a) as reflected in the Financial Statements, and (b) Liens for ad valorem Taxes not yet due and payable. All Assets owned or leased by the Company (i) are adequate for the conduct of the Business and (ii) are in good operating condition, subject to normal wear and tear, and reasonably fit and usable for the purposes for which they are being used.

Section 4.9 Intellectual Property.

(a) Schedule 4.9(a) sets forth a true, complete and accurate list of all Company Intellectual Property that is subject to any issuance, registration, application or other filing by, to or with any Governmental Entity or authorized private registrar in any jurisdiction, including registered trademarks, domain names and copyrights, issued and reissued patents and pending applications for any of the foregoing ("Registered Company IP"), specifying as to each, as applicable, a description of such Registered Company IP; the Person who is the registered owner of such Registered Company IP; the jurisdiction by or in which it has been issued or registered or in which an application for such issuance or registration has been filed; the registration or application number; and the registration or application date. The ownership of the entire right, title and interest in Registered Company IP is recorded with the applicable Governmental Entity solely in the name of the Company or, with respect to Licensed Intellectual Property, the Company's licensor. The Registered Company IP has been duly filed for, applied for, registered, prosecuted and maintained (as applicable) in accordance with applicable Law and are in compliance with all legal requirements (including payment of filing, registration, examination and maintenance fees and proofs of working or use, as applicable). No opposition, cancellation, reexamination, invalidation or other Action is pending challenging the extent, validity, enforceability or ownership (by the Company or, with respect to Licensed Intellectual Property, its licensee) of any Registered Company IP. To the Knowledge of the Company, there is no potentially interfering patent or patent application of any third party that would affect the Company's, the Surviving Entity's or their Affiliate's use of the Registered Company IP. Neither the Registered Company IP owned by the Company nor, to the Knowledge of the Company, the Registered Company IP licensed by the Company is subject to any outstanding order, decree, judgment, or stipulation, or has been challenged or threatened and, to the Knowledge of the Company, no Registered Company IP is being infringed by others. No litigation (or other proceeding in or before an arbitral body) relating to or challenging the scope, validity or enforceability of any of the Company Intellectual Property is pending or threatened, nor is there any basis for any such litigation or proceeding. The Registered Company IP owned by the Company and, to the Knowledge of the Company, the Registered Company IP licensed by the Company are, valid, enforceable, subsisting and in full force and effect.

(b) Schedule 4.9(b) contains a true, correct and accurate list of all trademarks and copyrights that are not Registered Company IP, including in each case, a brief description of such trademark and copyright and specifying its owner. The Company owns exclusively or has adequate rights to use all Company Intellectual Property in the manner in which the Company Intellectual Property is currently being used, and is currently contemplated to be used without any infringement of, the Intellectual Property of any Person.

(c) Schedule 4.9(c) sets forth a true, complete and accurate list of all Company License Agreements, specifying as to each whether (i) the Company is granted a license,

sublicense, release or covenant not to sue under any Intellectual Property, or (ii) the Company grants to a third party a license, sublicense, release or covenant not to sue under any Company Intellectual Property. The Company has made available to Parent true, accurate and complete copies of each of the Company License Agreements (or, where an Company License Agreement is an oral agreement, an accurate and complete written description of such Company License Agreement), in each case, as amended or otherwise modified and in effect. Each Company License Agreement is a legal, valid and binding obligation of the Company, and to the Knowledge of the Company, each other party thereto, and is currently in effect and enforceable against the Company, and to the Knowledge of the Company, each other party thereto, in accordance with its terms. No party to any Company License Agreement is in breach or default thereunder and no event has occurred which with notice or lapse of time would constitute such a breach or default or permit termination thereunder. The Company has not received any written or oral notice of default from any third party with respect to any Company License Agreement. The Company has not given any written or oral notice of default to any third party with respect to any Company License Agreement within the last thirty-six (36) months. The execution, delivery and performance of this Agreement and the Company's obligations hereunder will not result in such a default. There is no Contract affecting, or that will materially affect (including as a result of the consummation of the transactions contemplated hereunder), the use by the Surviving Entity or its Affiliates of the Company Intellectual Property.

(d) The operations of the Company and the Business do not and have not infringe(d), misappropriate(d) or otherwise violate(d) the Intellectual Property of any Person. The use of the Company Intellectual Property after the Closing in the same manner as conducted by the Company immediately prior to the date of hereof will not infringe, misappropriate or otherwise violate the Intellectual Property of any Person and the Company does not have Knowledge of any actual or threatened claim or assertion to the contrary. The Company has not received any communication, claim, charge, complaint, demand or notice alleging that the Company, or any use of Company Intellectual Property by any Person, has violated, misappropriated, diluted or infringed or will violate, misappropriate, dilute or infringe any Intellectual Property of any other Person, nor is there any basis therefor. The Company has not sought or received any written opinion of patent counsel prepared at the Company's request that concerns infringement, validity or enforceability of any Person's patent. To the Knowledge of the Company, no Person is violating, infringing upon, diluting or misusing any Company Intellectual Property in any manner and there are no pending claims brought or threatened in writing by the Company against any Person with respect to any Company Intellectual Property or use thereof.

(e) To the Knowledge of the Company, no Person has infringed, misappropriated or otherwise violated the Company Intellectual Property. The Company has not filed or threatened any claims alleging that a third party has infringed, misappropriated or otherwise violated any Company Intellectual Property.

(f) Except as set forth on Schedule 4.9(f), the Company has not entered into any Contract granting any Person, (i) the right to bring infringement actions with respect to, or otherwise to enforce rights with respect to, any of the Company Intellectual Property or (ii) the right to control the prosecution of any of the Company Intellectual Property.

(g) The Company Intellectual Property is free and clear of all Liens. Except as set forth on Schedule 4.9(g), no Person other than the Company, including any current or former employee or consultant of the Company, has any proprietary, commercial or other interest in any of the Company Intellectual Property. Except as set forth on Schedule 4.9(g), the Company has not entered into or granted any, and there are no existing, agreements, options, commitments, or rights with, of or to any Person to acquire or obtain any rights to, any of the Company Intellectual Property.

(h) All employees, consultants, and independent contractors of the Company who contributed to the discovery or development of any of the subject matter of any Company Intellectual Property did so either (i) within the scope of their employment with the Company such that, in accordance with applicable Law, all rights to such developed subject matter became the exclusive property of the Company, or (ii) pursuant to Contracts assigning all rights to such developed subject matter to the Company. Except as set forth on Schedule 4.9(h), none of the Company's employees or consultants is obligated under any Contract (including licenses, covenants or commitments of any nature), or subject to any judgment, decree or order of any court or administrative agency, that would interfere with the use of such employee's or consultant's best efforts to promote the interests of the Company or that would conflict with the Company's business as conducted. It is not necessary to, and the Company does not, utilize any inventions or other Intellectual Property of the Company's employees or consultants (or people the Company currently intends to hire) made prior to their employment by the Company in connection with the conduct of the Business, other than those that have been assigned to the Company as contemplated by clause (ii) of the immediately preceding sentence and except for the technology covered by the OHSU License Agreement.

(i) The Company has taken commercially reasonable measures to protect its ownership of, and rights in, all Company Intellectual Property. Without limiting the foregoing, the Company has not made any of its trade secrets or other confidential or non-public proprietary information available to any other Person except pursuant to written agreements requiring such Person to maintain the confidentiality of such information.

(j) Except as set forth in Schedule 4.9(j)(i), no academic institution, academic or governmental research center or governmental authority (or to the Knowledge of Company, any Person working for or on behalf of any of the foregoing), has, or will be entitled to have, any right, title or interest (including any "march in" or co-ownership rights) in or to any Company Intellectual Property (including any claim or option to any of the foregoing). Except as set forth in Schedule 4.9(j)(ii), which specifies any such affected Registered Company IP, no funding, intellectual property, facilities, personnel or other resources of any governmental authority or university or other academic institution or academic or governmental research center has been used in connection with the conception, invention, reduction to practice, development or other creation of Registered Company IP.

(k) The Company has taken commercially reasonable efforts to maintain and protect the integrity, security and operation of its software, networks, databases, systems and websites (and all information transmitted thereby or stored therein), and there have been no violations of same. The Company has implemented commercially reasonable practices to ensure the physical and electronic protection of their information assets from unauthorized disclosure, use or modification. To the Knowledge of the Company, there has been no breach of security involving any information assets. All personal data and information used or maintained by the Company has been collected, maintained, used and transferred in accordance with all applicable laws (including all applicable privacy and data protection laws, rules and regulations of any application jurisdiction, including any jurisdiction where any data subject resides) and in accordance with the Company's applicable data protection and privacy procedures and policies. All such data protection and privacy principles and policies have been designed and administered in all material respects in accordance with all applicable laws. No Person has claimed in writing to the Company any compensation from, and no governmental or regulatory authority has made any allegation against, the Company for the loss of or unauthorized disclosure or transfer of personal data or information.

Section 4.10 Company Contracts.

(a) Schedule 4.10 sets forth each of the following Contracts to which the Company is a party or by which it or any of its Assets are bound:

(i) any Contract (or group of related agreements with the same party) for the lease of personal property from or to third parties providing for lease payments the remaining unpaid balance of which is in excess of $25,000;

(ii) any Contract (or group of related Contracts with the same party) for the purchase of products, materials or services under which the undelivered balance of such products and services is in excess of $25,000;

(iii) any Contract for the acquisition by the Company of any assets or interest in any operating business, whether by merger, stock purchase or asset purchase;

(iv) any Contract (or group of related Contracts with the same party) under which the Company has created, incurred, assumed or guaranteed (or may create, incur, assume or guarantee) Indebtedness the outstanding balance of which is more than $25,000;

(v) any Contract involving the Company's employees or independent contractors or consultants providing annual base compensation or annual service payments in excess of $25,000 or which is not terminable by the Company without penalty upon not less than 90 days' notice;

(vi) any Contract providing (contingently or otherwise) for any Change in Control Payment;

(vii) any Contract involving severance, "stay pay," accelerated vesting, or termination benefits with any officer or other employee of the Company or with any directors (in his or her capacity as such), independent contractors or consultants of the Company;

(viii) any Contract or plan, including any stock option plan, stock appreciation rights plan or stock purchase plan, any of the benefits of which will be increased, or the vesting of benefits of which will be accelerated, by the occurrence of any of the transactions contemplated by this Agreement or the value of any of the benefits of which will be calculated on the basis of any of the transactions contemplated by this Agreement;

(ix) any Contract relating to capital expenditures and involving future payments in excess of $25,000;

(x) any distribution, joint marketing, affiliate, joint venture, partnership, or development agreement;

(xi) any Contract relating to sharing of profits, losses, costs or liabilities of the Company with another Person or the payment of any royalty or milestones;

(xii) any Contract pursuant to which the Company has obtained or granted rights under any Intellectual Property, including any covenant not to enforce or assert and any other Contract under which the Company is a licensor or licensee of Intellectual Property;

(xiii) any Contract entered into by the Company in settlement of any Action or Proceeding or other dispute;

(xiv) any Contract with any Governmental Entity; and

(xv) any other Contract that (x) involves $50,000 or more, (y) is not cancelable by the Company without material penalty within 60 days or (z) is otherwise material to the Business.

(b) Each Material Contract is in full force and effect and is valid, binding and enforceable on the Company, and, to the Knowledge of the Company, each other party thereto, in accordance with its terms. The Company has not breached, violated or defaulted under, or received notice that it has breached, violated or defaulted under, in each case in any material respect, any of the terms or conditions of any Material Contract. The Company does not have Knowledge of any event or occurrence that would constitute such a breach, violation or default (with or without the lapse of time, giving of notice or both) or Knowledge of any material breach, violation or default by any third party. The Company has not incurred any material cost over-runs and has no reasonable basis to believe that it will incur any such cost over-runs. The Company has delivered to the Parent Entities correct and complete copies of all Material Contracts.

Section 4.11 Interested Party Transactions.

(a) Except as set forth on Schedule 4.11(a), no Related Party has or has had, directly or indirectly, (i) an economic interest in any Person that (x) furnished or sold, or furnishes or sells, services or products that the Company furnishes or sells, or proposes to furnish or sell, or (y) that purchases from or furnishes or sells to, the Company, any goods or services or (ii) a beneficial interest in any Contract to which the Company is a party or by which the Company or any of its Assets are bound.

(b) Except as set forth on Schedule 4.11(b), there are no receivables of the Company owed by any Related Party, other than advances to Employees in the Ordinary Course of Business for reimbursable business expenses (as determined in accordance with the Company's established employee reimbursement policies and consistent with past practice). No Company Stockholder nor any of their respective Affiliates has agreed to, or assumed, any obligation or duty to guaranty or otherwise assume or incur any Liability of the Company.

(c) Except as set forth on Schedule 4.11(c), the Company is not a party to a Contract with any Related Party.

Section 4.12 Compliance with Laws.

(a) Except as set forth on Schedule 4.12, the Company and all operations relating to the Business have been, and are, in compliance in all material respects with all Laws. The Company has not received any notice of or been charged with the violation of any Laws. To the Company's Knowledge, (i) no Employee has been convicted of, or pleaded guilty or no contest to, any felony, and (ii) neither the Company nor any Employee is under investigation with respect to the violation of any Laws and there are no facts or circumstances that could form the basis for any such violation. There is no pending, or to the Company's Knowledge anticipated, change in any Laws that if enacted would be reasonably likely to adversely affect the Company, their Assets or the Business.

(b) Neither the Company nor, to the Company's Knowledge, any of the Company's Representatives or Employees (i) has used or is using any corporate funds for, or otherwise directly or

indirectly made (x) any illegal contributions, gifts, entertainment or other unlawful expenses relating to political activity, or (y) unlawful payments to any foreign or domestic government officials or employees; (ii) has established or maintained, or is maintaining, any unlawful fund of corporate monies or other Assets; (iii) has made any bribe, unlawful rebate, payoff, influence payment, kickback or other unlawful payment of any nature; or (iv) has taken any action that has violated or would reasonably be expected to result in a failure to comply with or a violation of the FCPA; the OECD Convention on Combating Bribery of Foreign Public Officials in International Transactions, dated November 21, 1977; the standards established by the Financial Action Task Force on Money Laundering; the U.S. Department of Commerce's Export Administration Regulations; the U.S. Department of State's International Traffic in Arms Regulations; or any other Laws.

(c) The Company has been issued all material Permits used in or necessary to operate and conduct the Business and to hold any interest in their Assets, and all such Permits are in full force and effect. Neither the Company nor any Employee is in violation of any such Permit in any material respect and there is no condition or circumstance that could form the basis for any such default or violation. There is no Action pending or, to the Company's Knowledge, threatened relating to the suspension, revocation, modification or nonrenewal of any such Permits. None of such Permits will be impaired or in any way affected by the consummation of the Transactions.

(d) Notwithstanding the foregoing, this Section 4.12 shall not apply to Laws expressly covered elsewhere in this Agreement: Section 4.9 with respect to intellectual property matters, Section 4.17 with respect to compliance with Environmental Laws, Section 4.18 and Section 4.19 with respect to labor and employment matters and Section 4.20 with respect to compliance with Tax Law. The Company's representations and warranties in the Sections listed above are the Company's sole representations and warranties with respect to the subject matter thereof.

Section 4.13 Litigation. Except as set forth on Schedule 4.13, there is no Action pending or, to the Company's Knowledge, threatened against the Company, its Assets or, to the Company's Knowledge, Employees. To the Company's Knowledge, there is not any reasonable basis therefor. None of the Company, its Assets or the Business is subject to any Order. Schedule 4.13 sets forth all Actions settled or adjudicated during the past five years by (i) the Company or (ii) any Employee in connection with a matter involving the Company.

Section 4.14 Insurance. Schedule 4.14 sets forth all insurance policies and fidelity bonds covering the Assets, Business, operations and Employees of the Company, including the type of coverage, the carrier, the amount of coverage, the term and the annual premiums of such policies. There is no claim by the Company pending under any of such policies or bonds as to which coverage has been questioned, denied or disputed or that the Company has a reason to believe will be denied or disputed. There is no pending claim that could reasonably be expected to exceed the policy limits. All premiums due and payable under all such policies and bonds have been paid (or if installment payments are due, will be paid if incurred prior to the Closing) and the Company is otherwise in material compliance with the terms of each such policy and bond. The Company has no Knowledge of a threatened termination of, or premium increase with respect to, any of such policies or bonds, all of which will continue in full force and effect following consummation of the Transactions. Such policies and bonds are in amounts and provide coverages as required by applicable Governmental Entity, Law and all Contracts to which the Company is a party, and taken together, provide adequate insurance coverage for the Business. The Company has never maintained, established, sponsored, participated in or contributed to any self-insurance plan or program.

Section 4.15 Books and Records. The minute books and other similar records of the Company contain complete and accurate records of all material actions taken at all meetings of the stockholders,

board of directors, and each committee thereof of the Company, and of all written consents executed in lieu of the holding of any such meeting. The Books and Records accurately reflect in all material respects the Assets, Liabilities, Business, financial condition and results of operations of the Company, and have been and are maintained in compliance with all Laws.

Section 4.16 Brokers' and Finders' Fees. Except as set forth on Schedule 4.16, the Company has not incurred, and will not incur, directly or indirectly, any Liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with the Transaction Documents or any of the Transactions. The Company has previously delivered to the Parent Entities a copy of each Contract with respect to each item set forth on Schedule 4.16.

Section 4.17 Environmental Matters. Except as set forth on Schedule 4.17, (i) the Company has operated the Business and used the Leased Real Property at all times in material compliance with all applicable Environmental Laws; (ii) the Company used all formerly owned, leased or operated real property in material compliance with all applicable Environmental Laws; (iii) the Company has obtained, and is and has at all times been in material compliance with, all Permits required under applicable Environmental Laws; and (iv) there are no material Environmental Liabilities pending or, to the Company's Knowledge, threatened in connection with the the Company's present or past operation of the Business or the Assets.

Section 4.18 Employees; Labor Matters.

(a) Except as set forth on Schedule 4.18(a), (i) the Company is not a party to or bound by any collective bargaining agreement nor has any relationship with any labor organization; (ii) no executive or key Employee (x) has any present intention to terminate his or her employment, or (y) is a party to any confidentiality, non-competition, proprietary rights or other such Contract between such Person and any other Person besides the Company that would be material to the performance of such Person's employment duties, or the ability of the Company or Parent to conduct the Business; (iii) no labor organization or group of Employees has filed any representation petition or made any written or oral demand for recognition; (iv) no union organizing or decertification efforts are underway or, to the Company's Knowledge, threatened and no other question concerning representation exists; (v) no labor strike, work stoppage, slowdown, or other material labor dispute has occurred within the past twenty-four (24) months, and none is underway or, to the Company's Knowledge, threatened; (vi) there is no workman's compensation Liability, experience or matter; (vii) there is no employment-related charge, complaint, grievance, investigation, inquiry or obligation of any kind, pending or, to the Company's Knowledge, threatened in any forum, relating to an alleged violation or breach by the Company or Employee of any Law or Contract; and (viii) to the Company's Knowledge, no Employee or agent of the Company has committed any act or omission giving rise to material Liability for any violation or breach identified in subsection (vii) above.

(b) Except as set forth on Schedule 4.18(b), (i) there are no Contracts between the Company and any Employees and (ii) there are no written personnel policies, rules or procedures of the Company applicable to Employees.

(c) The Employees are properly classified under the Fair Labor Standards Act of 1938, as amended, and under all similar Laws applicable to such individuals. Persons currently engaged by the Company as consultants, contract laborers, independent contractors or other service providers, rather than employees, have been properly classified as such, are not entitled to any compensation or benefits to which regular, full-time employees are entitled under existing employment policies of the Company, and are currently engaged in accordance with all applicable Laws.

(d) The Company has fully and adequately reimbursed all Employees for all work-related expenses, as may be required under applicable Law.

Section 4.19 Employee Benefit and Compensation Plans.

(a) Schedule 4.19(a) sets forth a complete and accurate list of each Employee Benefit Plan. The Company has provided to the Parent Entities accurate and complete copies of each Employee Benefit Plan. The Employee Benefit Plans are in compliance with all Laws and have been administered in accordance with their terms and such Laws. Each Employee Benefit Plan that is intended to be qualified within the meaning of Section 401(a) of the Code has received a favorable determination letter as to its qualification, and nothing has occurred that would cause the loss of such favorable determination. No non-exempt "prohibited transaction," within the meaning of Section 4975 of the Code and Section 406 of ERISA, has occurred or is reasonably expected to occur with respect to any Employee Benefit Plan.

(b) Except as set forth on Schedule 4.19(b), neither the Company, nor any of their ERISA Affiliates has ever contributed to, contributes to, has ever been required to contribute to, or otherwise participated in or participates in or in any way, directly or indirectly, has any Liability with respect to any "employee pension benefit plan" (as such term is defined in Section 3(2) of ERISA) that is subject to Title IV of ERISA, any "multiemployer plan" (as such term is defined in Section 3(37) of ERISA), or any single employer pension plan (within the meaning of Section 4001(a)(15) of ERISA) which is subject to Sections 4063, 4064 or 4069 of ERISA.

(c) No event or condition has occurred in connection with which the Company or any of its ERISA Affiliates could be reasonably likely to be subject to any Liability, fine, excise tax or Lien with respect to any Employee Benefit Plan under ERISA, the Code, any other applicable Law or any Contract. There are no pending or, to the Company's Knowledge, threatened claims, suits, audits or investigations related to any Employee Benefit Plan (other than routine claims for benefits by employees or their dependents).

(d) Except as set forth on Schedule 4.19(d), the consummation of the Transactions (alone or in connection with any subsequent event, including a termination of employment) will not (i) accelerate the vesting or payment of any economic benefit provided or made available to any Employee or any other Person; (ii) increase the amount of any economic benefit provided or made available to any Employee or any other Person; or (iii) accelerate or increase the funding obligation of the Company with respect to any Employee Benefit Plan.

(e) The Company has complied with the health care continuation requirements of Part 6 of Subtitle B of Title I of ERISA ("COBRA"); and neither the Company nor any of their ERISA Affiliates has any obligations under any Employee Benefit Plan, or otherwise, to provide post-termination health or welfare benefits of any kind to any Employees (or any of their dependants), or any other Person, except as specifically required under COBRA.

(f) With respect to each Employee Benefit Plan, all required or recommended (in accordance with past practices) payments, premiums, contributions, distributions, reimbursements or accruals for all periods (or partial periods) ending on or prior to the Closing Date shall have been made or properly accrued. With respect to each Employee Benefit Plan that is funded mostly or partially through an insurance policy, none of the Company or any ERISA Affiliate has any Liability in the nature of retroactive rate adjustment, loss sharing arrangement or other actual or contingent Liability arising wholly or partially out of events occurring on or before the date of this Agreement or is reasonably expected to have such Liability with respect to periods through the Closing Date.

(g) The Company has no unfunded liabilities pursuant to any Employee Benefit Plan that is not intended to be qualified under Section 401(a) of the Code and is an employee pension benefit plan within the meaning of Section 3(2) of ERISA, a nonqualified deferred compensation plan or an excess benefit plan. Each Employee Benefit Plan that is a "nonqualified deferred compensation plan" (as defined under Section 409A(d)(1) of the Code) has been operated and administered in good faith compliance with Section 409A of the Code from its inception. Any amounts paid or payable pursuant to each Employee Benefit Plan subject to Section 409A is not includible in the gross income of a service recipient (within the meaning of Section 409A) until received by the service recipient and is not subject to interest or the additional tax imposed by Section 409A of the Code.

(h) Each individual who performs services for the Company but is not treated as an employee for federal Income Tax purposes by the Company is not an employee for any purpose including for tax withholding purposes or Employee Benefit Plan purposes.

(i) Except as set forth on Schedule 4.19(i), the Company is not a party to any Contract or plan that has resulted or would result, separately or in the aggregate, in the payment of any "excess parachute payments" within the meaning of Section 280G of the Code in connection with the Transactions.

Section 4.20 Tax Matters. Except as set forth on Schedule 4.20,

(a) The Company has duly and timely filed or caused to be duly and timely filed, or shall duly and timely file or cause to be duly and timely filed, all Tax Returns that are required to be filed by, or with respect to, the Company on or prior to the Closing Date (taking into account any applicable extension of time within which to file) and all such Tax Returns are or will be complete, true and accurate in all material respects. All Taxes of the Company that are due and payable on or prior to the Closing Date have been (or will be) duly and timely paid on or prior to the Closing Date or, where not yet due and payable, an adequate provision for such Taxes has been made in the Financial Statements in accordance with GAAP.

(b) The Company (A) is not currently the subject of an audit or other examination relating to the Taxes of the Company by the Tax authorities of any jurisdiction, (B) has not received any written notices from any Tax authority that such an audit or examination is contemplated or pending, (C) has not entered into a written Contract or waiver extending any statute of limitations relating to the payment or collection of Taxes that has not expired and (D) is not contesting any Tax Liability of the Company before any Governmental Entity.

(c) All Taxes that the Company is (or was) required by Law to withhold or collect have been duly withheld or collected, and have been paid over to the proper authorities to the extent due and payable.

(d) Neither the Company nor any of its Subsidiaries has been a "United States real property holding corporation" as defined in Section 897(c)(2) of the Code within the applicable period, within the meaning of Treasury Regulations Section 1.897-2(c).

(e) No Governmental Entity in a jurisdiction in which the Company does not file Tax Returns has made a written claim that the Company is or may be required to file Tax Returns in, or is or may be subject to Tax by, that jurisdiction.

(f) No claim or deficiency for any Taxes has been asserted against the Company that has not been resolved or paid in full. There are no Liens for Taxes upon the Assets of the Company (other than Taxes not yet due and payable).

(g) The Company (A) has not been a member of an affiliated or similar group filing a consolidated, combined, unitary or similar Income Tax Return, other than the affiliated group of which the Company is the common parent corporation, and (B) has no Liability for the Taxes of any Person (other than the Company) under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or foreign Law), as a transferee or successor, by Contract, or otherwise.

(h) The Company will not be required to include any item of income in, or exclude any item of deduction from, taxable income for any Taxable Period (or portion thereof) ending after the Closing Date as a result of any (A) change in method of accounting for a Pre-Closing Tax Period, (B) "closing agreement" as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or foreign Law) executed on or prior to the Closing Date, (C) intercompany transactions or any excess loss account described in Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provision of state, local or foreign Law), (D) installment sale or open transaction disposition made on or prior to the Closing Date, or (E) prepaid amount received on or prior to the Closing Date.

(i) Neither the Company nor any of its Subsidiaries was a distributing corporation or a controlled corporation in a transaction intended to be governed by Section 355 of the Code.

(j) The Company (A) has not requested a Tax ruling from any Governmental Entity, (B) has not been the subject of a Tax ruling with any Governmental Entity that has or will have continuing effect after the Closing Date, (B) has not engaged in, or been a party to any "reportable transactions" within the meaning of Treasury Regulations Section 1.6011-4(b), and (C) is not a party to, or bound by, or has any obligation to any Governmental Entity or other Person under any Tax Agreement.

(k) No power of attorney has been granted with respect to any matter relating to Taxes of the Company.

Section 4.21 Regulatory.

(a) The studies, tests and preclinical and clinical trials conducted by or on behalf of the Company have been and are being conducted in all material respects in accordance with (i) all experimental protocols, procedures and controls pursuant to accepted professional and scientific standards for products or product candidates comparable to those being developed by the Company and (ii) all applicable Laws, including, where appropriate, the applicable and then-current requirements of Good Laboratory Practices, Good Clinical Practices and Good Manufacturing Practices and applicable regulations and guidance that relate to the proper conduct of clinical studies and requirements relating to the protection of human subjects (including "Informed Consent" as such term is defined under applicable laws in the United States and equivalent applicable laws in other jurisdictions) and applicable Laws governing the privacy of patient medical records and other personal information, data and biological specimens. The descriptions of, protocols for, and data and other results of, the studies, tests and trials conducted by or on behalf of the Company that have been furnished or made available to the Parent are true, accurate and complete in all material respects. No studies, tests or trials have been conducted by any Person, the results of which reasonably call into question the results or safety of the studies, tests and trials conducted or as presently proposed to be conducted by or on behalf of the Company. The Company

has not received any written notices or correspondence from the FDA, European Medicines Agency (the "EMA"), any other Governmental Entity in any jurisdiction or any Institutional Review Board or comparable authority requiring the termination, suspension or material modification of any studies, tests or preclinical or clinical trials conducted by or on behalf of the Company.

(b) Schedule 4.21(b) contains a true, complete and accurate list of all Required Permits from the FDA, EMA or other Governmental Entity in any jurisdiction held by the Company, and all such Required Permits are (a) in full force and effect, (b) validly registered and on file with applicable Governmental Entities, (c) in compliance with all formal material filing and maintenance requirements, and (d) in good standing, valid and enforceable. The Company possesses all Required Permits from the appropriate Governmental Entities necessary to conduct its business as now conducted and as presently proposed to be conducted, including all such Required Permits required by any Governmental Entities engaged in the regulation of pharmaceuticals or biohazardous materials in any applicable jurisdiction. The Company has not received written notice of proceedings relating to the suspension, modification, revocation or cancellation of any such Required Permit. All applications, submissions, information, claims, reports and statistics, and other data derived therefrom, submitted by the Company in connection with any and all requests for a Required Permit of the FDA, EMA or other Governmental Entity, when submitted to the FDA, EMA or other Governmental Entity, were true, complete and correct in all material respects (provided such representation is only given as to the Company's Knowledge with respect to information obtained by the Company from Persons other than the Company' employees and consultants) as of the date of submission and any legally necessary or required updates, changes, corrections or modifications to such applications, submissions, information, claims, reports or statistics have been submitted to the FDA, EMA and other Governmental Entity. Neither the Company nor any of its officers, employees or agents has made an untrue or misleading statement of a material fact or fraudulent statement to the FDA, EMA or any other Governmental Entity, failed to disclose a material fact required to be disclosed to the FDA, EMA or any other Governmental Entity, or committed an act, made a statement, or failed to make a statement, including with respect to any scientific data or information, that, at the time such disclosure was made or failure to disclose occurred, would reasonably be expected to provide a basis for any Governmental Entity or any other governmental authority to invoke the FDA policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities", as set forth in 56 Fed. Reg. 46191 (September 10, 1991), or any similar policy.

(c) Schedule 4.21(c) contains a complete and accurate list of all Regulatory Documents prepared or filed by the Company.

(d) Neither the Company nor any of its officers, employees, agents or contractors has been or have used any employee or consultant who has been excluded or debarred by any Governmental Entity or subject to any disqualifications, exclusions or sanctions by the FDA or any other Governmental Entity or professional body, or, to the Company's Knowledge, was or is the subject of debarment proceedings by a Governmental Entity. Neither the Company nor, to the Company's Knowledge, any of its officers, employees or agents has been convicted of any crime or engaged in any conduct for which debarment is mandated by 21 U.S.C. § 335a(a), or any similar Law of any Governmental Entity, or permitted by 21 U.S.C. § 335a(b), or any similar Law of any Governmental Entity, or exclusion under 42 U.S.C. § 1320a-7 or any similar Law of any Governmental Entity.

Section 4.22 Accuracy of Statements. No representation or warranty of the Company contained in this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances under which they were made.

Section 4.23 No Other Representations or Warranties. Except for the representations and warranties contained this ARTICLE IV (including the related portions of the Disclosure Schedules), neither the Company nor any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of the Company. Without limiting the generality of the foregoing, neither the Company nor any other person has made or makes any representation or warranty with respect to any projections, estimates or budgets of future revenues, future results of operations, future cash flows or future financial condition of the Company.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF THE PARENT ENTITIES

Each Parent Entity represents and warrants to the Company and Company Stockholders, as of the date hereof, as follows:

Section 5.1 Organization. Such Parent Entity is a corporation duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization. Such Parent Entity has all requisite power and authority to own, lease and operate its properties and to carry on its business and is duly qualified or licensed to do business and is in good standing as a foreign corporation or partnership in each jurisdiction in which the conduct of its business or the ownership, leasing, holding or use of its properties makes such qualification necessary, except such jurisdictions where the failure to be so qualified or licensed or in good standing would not individually or in the aggregate reasonably be expected to have a Parent Entity Material Adverse Effect.

Section 5.2 Authority. Such Parent Entity has all requisite power and authority to enter into the Transaction Documents to which it is a party and to consummate the Transactions. The execution, delivery and performance of the Transaction Documents to which such Parent Entity is a party and the consummation of the Transactions have been duly authorized by all necessary action on the part of such Parent Entity. This Agreement has been, and each of the other Transaction Documents to which such Parent Entity is a party will be at the Closing, duly executed and delivered by such Parent Entity and, assuming the due authorization, execution and delivery by the other parties hereto and thereto, this Agreement constitutes, and in the case of the other Transaction Documents they will at Closing constitute, valid and binding obligations of such Parent Entity, enforceable against such Parent Entity in accordance with their respective terms, except as such enforceability may be subject to applicable bankruptcy, reorganization, insolvency, moratorium and similar Laws affecting the enforcement of creditors' rights generally and by general principles of equity.

Section 5.3 No Conflict. The execution, delivery and performance by such Parent Entity of the Transaction Documents to which it is a party, and the consummation of the Transactions, do not and will not (a) conflict with or result in any violation of or default under (with or without notice or lapse of time, or both), (b) give rise to a right of termination, cancellation, modification or acceleration of any material Liability or loss of any material benefit under, or (c) result in the imposition or creation of any material Lien upon any of the Assets of such Parent Entity under any (i) provision of the articles of incorporation or by-laws of such Parent Entity, or (ii) any Law, except, in the case of clause (ii), for such conflicts, violations or defaults as would not individually or in the aggregate reasonably be expected to have a Parent Entity Material Adverse Effect.

Section 5.4 Consents. No Consent or Order is required by or with respect to such Parent Entity in connection with the execution and delivery of the Transaction Documents by such Parent Entity or the consummation by such Parent Entity of the Transactions except for (i) filings and notices required under applicable securities Laws; and (ii) such other Consents that if not obtained or made would not individually or in the aggregate reasonably be expected to have a Parent Entity Material Adverse Effect.

Section 5.5 Litigation. There is no Action of any nature pending or, to the knowledge of such Parent Entity, threatened against any Parent Entity that could individually or in the aggregate reasonably be expected to have a Parent Entity Material Adverse Effect. Such Parent Entity is not subject to any outstanding Order that could individually or in the aggregate reasonably be expected to have a Parent Entity Material Adverse Effect.

Section 5.6 Capitalization. As of the date of Closing, the authorized capital stock of Parent consists of: (i) 45,000,000 shares of common stock, par value $0.0001, 5,100,000 of which are issued and outstanding; (ii) 25,000,000 Parent A-1 Stock, par value $0.0001, none of which are issued and outstanding; and (iii) 7,000,000 Parent A-2 Stock, par value $0.0001, none of which are issued and outstanding and all of which will be issued in connection with Merger One and Merger Two. The common stock of Parent and the Parent A-1 Stock were issued in compliance with all federal and state securities laws and, when issued, duly authorized, validly issued, fully paid and nonassessable. A true, correct, and complete copy of Parent's Certificate of Incorporation, incuding all amendments and designations thereto, is attached as Exhibit G to this Agreement.

Section 5.7 Issuance of Merger Consideration. The shares of Parent A-2 Stock to be issued hereunder as Merger Consideration will be duly authorized, validly issued, fully paid, free of all Liens (other than Liens imposed by the Company Stockholders, if any, and the Parent Stockholders Agreement) and nonassessable when issued on the Closing Date.

Section 5.8 Securities Law Compliance. The shares of Parent A-1 Stock issued and outstanding, and, subject to the accuracy of the Company Stockholders representations and warranties in set forth in Section 11.14(b), the shares of Parent A-2 Stock contemplated to be issued pursuant to this Agreement, are or will be, as applicable, issued in compliance with all applicable federal and state securities laws and the issuance thereof is or will be exempt from the registration requirements of Section 5 of the Securities Act.

Section 5.9 Brokers' and Finders' Fees. No Parent Entity has incurred, or will incur, directly or indirectly, any Liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with the Transaction Documents or the Transactions.

Section 5.10 No Significant Operations. Since its formation through the date hereof, Parent has not undertaken any significant operations other than in connection with the negotation of this Agreement and the financing of the transactions contemplated hereby.

ARTICLE VI
INTENTIONALLY OMITTED

ARTICLE VII
CONDITIONS TO CLOSE

Section 7.1 Conditions to All Parties' Obligations. The obligations of the Parties to consummate the Transactions contemplated by this Agreement are subject to the satisfaction (or waiver by each of the Company and Parent, in each case, in its sole discretion) of the following conditions as of the Closing Date: (i) except for any pending Action directly or indirectly initiated by the party asserting its right not to consummate the Transactions, no Action before any court or Governmental Entity having jurisdiction over the Company will be pending wherein an unfavorable Order would prevent the performance of this Agreement or the consummation of any of the Transactions, declare unlawful the Transactions or cause such Transactions, and (ii) prior to or concurrently with the Closing, Parent shall consummate the sale of shares of Parent A-1 Stock to investors in the amount of not less than $5 million.

Section 7.2 Conditions to the Parent Entities' Obligations. The obligation of the Parent Entities to consummate the transactions contemplated by this Agreement is subject to the satisfaction (or waiver by Parent in its sole discretion) of the following conditions as of the Closing Date:

(a) The representations and warranties of the Company set forth in Article IV and of the Company Stockholders set forth in Section 11.14(b) (i) that are qualified as to or by materiality or similar qualifiers will be true and correct in all respects as of the Closing Date as if made anew as of such date (except to the extent any such representation and warranty expressly relates to an earlier date (in which case such representation or warranty shall be true and correct in all respects as of such earlier date)), (ii) that are Fundamental Representations will be true and correct in all respects as of the Closing Date as if made anew as of such date (except to the extent any such representation and warranty expressly relates to an earlier date (in which case such representation or warranty shall be true and correct in all respects as of such earlier date)), and (iii) that are not qualified as to or by materiality or similar qualifiers will be true and correct in all material respects as of the Closing Date as if made anew as of such date (except to the extent any such representation and warranty expressly relates to an earlier date (in which case such representation or warranty shall be true and correct in all material respects as of such earlier date));

(b) The Company shall have performed and complied in all material respects with all covenants and obligations under this Agreement required to be performanced and complied with by the Company prior to or as of the Closing.

(c) There shall not have occurred any Company Material Adverse Effect;

(d) Each of the individuals listed on Schedule 7.2(d) shall have entered and delivered to Parent a Non-Competition Agreement with Parent.

(e) The Company shall have delivered to Parent an acknowledgment from each of the employees and consultants set forth on Schedule 7.2(e), in forms acceptable to Parent providing for the assignment and/or confirmation of the assignment and/or waiver of all Company Intellectual Property developed by such employee or consultant to the Company, effective prior to the Closing.

(f) The Company shall have delivered to Parent the notices, consents, modifications, waivers and approvals described on Schedule 7.2(f) with respect to the Contracts set forth therein, in each case, in a form reasonably acceptable to Parent (collectively, the "Required Third-Party Deliveries").

(g) Parent shall have recevied a duly executed and enforceable Onami Payoff Letter.

(h) Parent shall have received the following.

(i) a certificate of the Company executed by a duly authorized officer thereof, dated the Closing Date, stating that the conditions specified in Sections 7.2(a) and (b) have been satisfied;

(ii) a properly executed statement satisfying the requirements of Treasury Regulations Sections 1.897-2(h) and 1.1445-2(c)(3) in a form reasonably acceptable to Parent; and

(i) Parent shall have received executed Consulting Agreements with each of Dr. Klaus Früh, Ph.D., Dr. Louis J. Picker, M.D., Dr. Jay A. Nelson, Ph.D., Dr. Scott Hansen, Ph.D. and Dr. Larry Corey, M.D., (each, a "Consulting Agreement", and collectively, the "Consulting Agreements") in each case, in a form reasonably acceptable to Parent, and each such Consulting Agreement shall be in full force and effect.

Section 7.3 Conditions to the Company's and Company Stockholders' Obligations. The obligations of the Company and the Company Stockholders to consummate the transactions contemplated by this Agreement are subject to the satisfaction (or waiver by the Company in its sole discretion) of the following conditions as of the Closing Date:

(a) The representations and warranties of the Parent Entities set forth in Article V will be true and correct at and as of the Closing Date as if made anew as of such date (except to the extent any such representation and warranty expressly relates to an earlier date (in which case as of such earlier date)), except for any failure of such representations and warranties to be true and correct that has not had a material adverse effect on the ability of the Parent Entities to consummate the transactions contemplated hereby;

(b) Each of the Parent Entities shall have performed and complied in all material respects with all covenants and obligations under this Agreement required to be performanced and complied with by such Parent Entity prior to or as of the Closing; and

(c) The Company shall have received a certificate of Parent executed by a duly authorized officer thereof, dated the Closing Date, stating that the conditions specified in Sections 7.3(a) and (b) have been satisfied;

(d) There shall not have been any amendments to the Parent's Certificate of Incorporation or any designations thereto; and

(e) Parent shall have satisfied, or shall in connection with the Closing satisfy, in full, the Liabilities set forth on Schedule 7.3(e).

ARTICLE VIII
INTENTIONALLY OMITTED

ARTICLE IX
INDEMNITY

Section 9.1 Survival. The representations and warranties of the Parties contained herein shall survive the Closing until the date that is 18 months following the Closing Date, except for each of the Fundamental Representations which shall survive the Closing until the date that is 60 months following the Closing Date, and except for the representations and warranties set forth in Section 4.20 which shall survive the Closing until the earlier of the expiration of the applicable statute of limitations and the date that is 75 months following the Closing Date. No Party shall have any Liability with respect to claims in connection with the breach of any representation or warranty contained herein that is first asserted after the expiration of such representation or warranty pursuant to the preceding sentence. The covenants contained herein shall survive the Closing in accordance with their respective terms.

Section 9.2 Indemnification.

(a) Subject to this ARTICLE IX, following the Closing, the Company Stockholders, severally and not jointly according to each Company Stockholder's pro-rata share of the Merger Consideration (as set forth on Exhibit F), shall indemnify, reimburse and make whole each Parent Indemnified Party from and against any and all Losses incurred or suffered by any Parent Indemnified Party directly or indirectly based upon, arising out of, or related or attributable to:

(i) any breach of any of the representations or warranties of the Company contained in this Agreement or in any certificate, agreement or other document delivered by the Company pursuant to this Agreement;

(ii) any breach or failure to perform by the Company of any covenant or agreement in this Agreement or in any certificate, agreement or other document delivered by the Company pursuant to this Agreement;

(iii) any brokerage or finder's fees or commissions or any similar payments, or any claims therefor by any Person having acted or claiming to have acted, directly or indirectly, as a broker, finder, consultant, agent or financial advisor for the Company or Company Stockholder in connection with any of the Transactions; or

(iv) any Loss arising out of or related to or attributable to (i) any Taxes (or the non-payment thereof) of the Company for any Pre-Closing Tax Period (other than Taxes for which adequate provision was made in the Financial Statements in accordance with GAAP) or attributable to amounts payable under any Transaction Document, or (ii) any Taxes of any Person for a Pre-Closing Tax Period for which the Company is liable under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or federal Law), as a transferee or successor, under any Contract, or otherwise.

(b) Subject to this ARTICLE IX, following the Closing, each Company Stockholder shall indemnify, reimburse and make whole each Parent Indemnified Party from and against any and all Losses incurred or suffered by any Parent Indemnified Party directly or indirectly based upon, arising out of, or related or attributable to:

(i) any breach of any of the representations or warranties of such Company Stockholder contained in this Agreement or in any certificate, agreement or other document delivered by such Company Stockholder pursuant to this Agreement; or

(ii) any breach or failure to perform by such Company Stockholder of any covenant or agreement in this Agreement or in any certificate, agreement or other document delivered by such Company Stockholder pursuant to this Agreement.

(c) Subject to this ARTICLE IX, following the Closing, the Parent Entities, shall indemnify, reimburse and make whole each Company Stockholder from and against any and all Losses incurred or suffered by such Company Stockholder directly or indirectly based upon, arising out of, or related or attributable to:

(i) any breach of any of the representations or warranties of any of the Parent Entities contained in this Agreement or in any certificate, agreement or other document delivered by the Parent Entities pursuant to this Agreement; and

(ii) any breach or failure to perform by any of the Parent Entities of any covenant or agreement in this Agreement or in any certificate, agreement or other document delivered by the Company pursuant to this Agreement.

The right to indemnification or any other remedy based on representations, warranties, covenants and agreements in the Transaction Documents shall not be affected by any investigation, inquiry or examination conducted at any time, or any knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Closing. The waiver of any condition based on the accuracy of any representation or warranty will not affect the right to indemnification of other remedy based on such representation or warranty.

Section 9.3 Proceedings.

(a) The party making a claim under this ARTICLE IX is referred to as the "Indemnified Party" and the party against whom such claims are asserted under this ARTICLE IX is referred to as the "Indemnifying Party." Any Indemnified Party shall promptly give notice to the Indemnifying Party of the assertion of its claim for indemnity, including the commencement of any Action by any third party in respect of which indemnity may be sought (a "Third Party Claim"). The failure by an Indemnified Party to give such notice shall not relieve the Indemnifying Party from its obligations hereunder, except to the extent such notice was given after expiration of the survival periods set forth in Section 9.1, or except to the extent such failure shall have materially and adversely prejudiced the Indemnifying Party.

(b) The Indemnifying Party will notify the Indemnified Party as soon as practicable whether the Indemnifying Party disputes its liability to the Indemnified Party with respect to the claim described in a notice delivered pursuant to Section 9.3(a). Unless the nature of the Third Party Claim creates an ethical conflict or otherwise makes it inadvisable for the same counsel to represent the Indemnified Party and the Indemnifying Party, the Indemnifying Party shall have the right to defend against any Third Party Claim, at its sole cost and expense, with counsel of its choice satisfactory to the Indemnified Party, so long as (i) the Indemnifying Party notifies the Indemnified Party in writing (within 15 days after the Indemnified Party has given notice of the Third Party Claim) that the Indemnifying Party will indemnify the Indemnified Party from and against all Losses based upon, arising out of or relating to the Third Party Claim, (ii) the Indemnifying Party provides the Indemnified Party with evidence reasonably acceptable to the Indemnified Party that the Indemnifying Party will have the financial resources to defend against the Third Party Claim and fulfill the Indemnifying Party's indemnification obligations hereunder, (iii) the Third Party Claim involves only a claim for money damages and no other relief, (iv) the Indemnifying Party conducts the defense of the Third Party Claim actively and diligently, and (v) the Indemnifying Party gives due regard and consideration to the continuing or prospective business relationship between the Indemnified Party and its employees, customers, suppliers and other business partners. The Indemnifying Party shall not compromise or settle such Action without the written consent of the Indemnified Party, unless such settlement is solely for money damages and the Indemnifying Party assumes in writing the obligation to pay all such damages. The Indemnified Party may, at its own cost, participate in the investigation, trial and defense of any Third Party Claim defended by the Indemnifying Party and any appeal arising therefrom. Whether or not the Indemnifying Party chooses to defend or prosecute any Third Party Claim, all of the Parties hereto shall cooperate in the defense or prosecution thereof.

(c) In the event of a conflict between the provisions of this Section 9.3 and the provisions of Article X, the provisions of Article X shall control.

(d) As further described in Section 11.14(d), in the event of a claim for indemnification pursuant to Section 9.2(a), all notices to be delivered to an Indemnifying Party shall be deemed delivered to such Indemnifying Party if such notice is delivered to the Stockholders' Representative.

Section 9.4 Limitations.

(a) The Parent Indemnified Parties shall be entitled to indemnification under this Article IX

(i) with respect to the breach of a General Representation to the extent that any Losses claimed by the Parent Indemnified Parties, as applicable, with respect to such breach exceeds $5,000 ("Minimum Claim Amount"), subject to the Threshold Amount set forth in Section 9.4(a)(ii);

(ii) with respect to the breach of a General Representation to the extent that the cumulative amount of the Losses claimed by the Parent Indemnified Parties that satisfy the Minimum Claim Amount exceeds $210,000 (the "Threshold Amount") in the aggregate, and the Parent Indemnified Parties shall be entitled to indemnification hereunder for the amount of Losses in excess of the Threshold Amount;

(iii) the maximum amount of Losses for which the Parent Indemnified Parties shall be entitled to indemnification with respect to breaches of General Representations shall be $1,800,000;

(iv) the maximum amount of Losses for which the Parent Indemnified Parties shall be entitled to indemnification under this Article IX shall be the Ultimate Cap; and

(v) the maximum amount of Losses for which any individual Company Stockholder shall be liable to the Parent Indemnified Parties under this Article IX shall be the amount of the Ultimate Cap received by such Company Stockholder.

For the avoidance of doubt, any claims for indemnification with respect to the breach of a Fundamental Representation shall not be subject to the Miminum Claim Amount or the Threshold Amount.

(b) Payments by an Indemnifying Party pursuant to Section 9.2(a) or Section 9.2(b) in respect of any Loss shall be limited to the amount of any liability or damage that remains after deducting therefrom any insurance proceeds and any indemnity, contribution or other similar payment actually received by the Indemnified Party in respect of any such claim, less any related costs and expenses, including any Taxes thereon and the aggregate cost of pursuing any related insurance claims and any related increases in insurance premiums or other chargebacks (it being agreed that neither party shall have any obligation to seek to recover any insurance proceeds in connection with making a claim under this ARTICLE IX and that, promptly after the realization of any insurance proceeds, indemnity, contribution or other similar payment, the Indemnified Party shall reimburse the Indemnifying Party for such reduction in Losses for which the Indemnified Party was indemnified prior to the realization of reduction of such Losses).

(c) Payments by an Indemnifying Party pursuant to Section 9.2(a) or Section 9.2(b) in respect of any Loss shall be reduced by an amount equal to any Tax benefit actually realized as a result of such Loss by the Indemnified Party.

(d) Each Indemnified Party shall take, and cause its Affiliates to take, all reasonable steps to mitigate any Loss upon becoming aware of any event or circumstance that would be reasonably expected to, or does, give rise thereto, under applicable law.

(e) For purposes of determining whether there has been any inaccuracy or breach of any representation, warranty, covenant or agreement (other than with respect to inaccuracies or breaches of the Fundamental Representations and the representations and warranties set forth in Section 4.5 and Section 4.22) and the amount of any Losses that are the subject matter of a claim for indemnification under this Article IX, each representation, warranty, covenant and agreement contained in this Agreement shall be read without regard and without giving effect to any materiality, Company Material Adverse Effect, dollar threshold, knowledge qualification or other similar qualification contained in such representation, warranty or covenant or agreement.

(f) No Person shall be liable for any claim for indemnification hereunder unless written notice of a claim for indemnification is delivered by the Person seeking indemnification to the Person from whom indemnification is sought before the applicable survival date set forth in Section 9.1, in which case the representation, warranty or covenant on which the claim is based shall survive as to such claim until such claim has been finally resolved. All notices given pursuant hereto shall set forth with reasonable specificity (to the extent available) the basis for such indemnification claim.

Section 9.5 Fraud; Equitable Remedies. Notwithstanding anything to the contrary in this Agreement, the limitations and thresholds set forth in this Article IX shall not apply with respect to fraud or any equitable remedy, including a preliminary or permanent injunction or specific performance. However, no Company Stockholder shall be liable for fraud committed by any other Company Stockholder in such Person's role as such.

Section 9.6 Adjustment. The Parties agree that any indemnification payments made pursuant to this Article IX shall be treated for Tax purposes as an adjustment to the Aggregate Merger Consideration, unless otherwise required by applicable Law.

Section 9.7 Payment of Losses. A Company Stockholder may, at its election, satisfy in whole or in part any Losses for which such Company Stockholder is liable to a Parent Indemnified Party hereunder in the form of shares of Parent A-2 Stock, with each such share valued at the Series A-2 Liquidation Amount of such share as set forth in the Parent's Certificate of Incorporation. If such Company Stockholder does not make such election and satisfy all such Losses for which such Company Stockholder is liable to a Parent Indemnified Party hereunder within 90 days of a final resolution (either by agreement between Parent and the Stockholders' Representative or pursuant to a final, non-appealable order) of such claim, then Parent shall have the right, but not the obligation, at its sole election, to cancel shares of Parent A-2 Stock held by such Company Stockholder in order to satisfy all such Losses, and each Company Stockholder hereby irrevocably constitutes and appoints Parent, with full power of substitition, the true and lawful attorney-in-fact and agent of such Company Stockholder, to execute, deliver, record and effectuate such cancellation of shares of Parent A-2 Stock in accordance with the foregoing, provided, that in no event shall any Company Stockholder pay, or Parent receive or cancel, a number of shares of Parent A-2 Stock pursuant to this Section 9.7 such that the Transactions would no longer qualify as a forward triangular merger under Section 368(a)(2)(D) of the Code. The foregoing power of attorney granted by each Company Stockholder shall be deemed to be coupled with an interest, shall be irrevocable, shall survive and not be effected by the dissolution, bankruptcy or legal disability of any Company Stockholder and shall extend to such Company Stockholder's successors and assigns.

Section 9.8 Exclusive Remedies. Subject to Section 11.7, Parent, on behalf of itself and each Parent Indemnified Party, acknowledges and agrees that their sole and exclusive remedy with respect to

any and all claims (other than claims arising from fraud) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in this Article IX. In furtherance of the foregoing, Parent, on behalf of itself and each Parent Indemnified Party, hereby waives, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against any Company Stockholder or their Affiliates and each of their respective Representatives arising under or based upon any Law, except pursuant to the indemnification provisions set forth in this Article IX. Nothing in this Section 9.8 shall limit any Parent Indemnified Party's right to seek and obtain any equitable relief to which any it shall be entitled or to seek any remedy on account of any Company Stockholder's fraud.

ARTICLE X
TAX MATTERS

Section 10.1 Filing Tax Returns; Payment of Taxes.

(a) The Company shall timely prepare and file, or cause to be timely prepared and filed, in each case at its sole expense, all Tax Returns that are required to be filed by or with respect to the income, assets, properties and operations of the Company for Pre-Closing Tax Periods that are due after the date of this Agreement and on or before the Closing Date. Such Tax Returns shall be prepared in a manner consistent with Prior Practice. The Company shall provide each such Tax Return to Parent for its review, comment and consent to filing, which shall not be unreasonably conditioned, withheld or delayed, no less than 30 days prior to the due date for filing such Tax Return (including extensions). The Company shall make such revisions to such Tax Returns as are reasonably requested by Parent so long as such revisions are in compliance with Prior Practice (unless otherwise advisable or required by applicable Law). For purposes of this Section 10.1(a), the Stockholders' Representative shall direct and control the Company.

(b) From and after the Closing Date, Parent and the Surviving Entity shall prepare and file or cause to be prepared and filed all Tax Returns of the Company with respect to the income, assets, properties and operations of the Company for all Pre-Closing Tax Periods that are required to be filed after the Closing Date, including for those jurisidctions and Governmental Entities that permit or require a short-period Tax Return for the period ending on the Closing Date. Company Stockholders shall cooperate fully and promptly in connection with the preparation and filing of such Tax Returns. The Stockholders' Representative shall be given a reasonable opportunity to review such Income Tax Returns that include a Straddle Period and the Surviving Entity shall make such revisions to such Income Tax Returns as are reasonably requested by the Stockholders' Representative, but only to the extent that such revisions are necessary to cause such Income Tax Return to be prepared in compliance with Prior Practice (unless otherwise advisable or required by applicable Law). An amount equal to the amount of Taxes shown to be due on a Tax Return that is allocable to the Pre-Closing Tax Period shall be paid to Parent by the Company Stockholders within 15 days prior to the filing of any such Tax Return to extent that it exceeds the provision for such Taxes, if any, in the Financial Statements.

(c) The Surviving Entity shall not amend, refile or otherwise modify any Tax Return relating to any Pre-Closing Tax Period (a "Pre-Closing Tax Return Amendment") without the consent of the Stockholders' Representative, such consent not to be unreasonably withheld, conditioned or delayed, unless (i) required by applicable Law, (ii) the Surviving Entity establishes to the reasonable satisfaction of the Stockholders' Representative that the original Tax Return includes a material error; (iii) to take advantage of a Tax penalty holiday available in the relevant jurisdiction; or (iv) the Pre-Closing Tax Return Amendment otherwise is not material. The Stockholders' Representative may request the

filing of any Pre-Closing Tax Return Amendment attributable to a Pre-Closing Tax Period; provided, that the Surviving Entity shall not be required to file any such Pre-Closing Tax Return Amendment unless the Stockholders' Representative establishes to the reasonable satisfaction of Parent that the original Tax Return includes a material error.

(d) To the extent that Parent or the Stockholders' Representative dispute any item on a Tax Return that it has the right to review, comment on or approve pursuant to preceding provisions of this Sections 10.1 (a "Reviewable Return"), the Parties shall attempt in good faith to resolve all of the matters in dispute prior to the filing of the applicable Reviewable Return; provided, that if the Parties cannot resolve any such dispute, the party responsible for preparing such Tax Return shall file such Tax Return regardless of the continuing dispute. Within 10 days after the filing of such Reviewable Return, the Parties shall submit any matters remaining in dispute thereafter to a nationally recognized and accredited accounting firm (such firm, the "Selected Accounting Firm") for resolution. The Selected Accounting Firm shall be given reasonable access to all relevant records of the Parties relating to the matters in dispute, and the Stockholders' Representative and Parent shall be afforded an opportunity to present to the Selected Accounting Firm any material relating to the resolution of the matters in dispute and to discuss such matters with the Selected Accounting Firm; provided, that any submissions, presentations or any other correspondence shall be provided to the Selected Accounting Firm and the other party simultaneously and the Selected Accounting Firm shall hold no ex-parte discussions or conferences with any party. To the extent that the amount of Taxes that should have been shown to be due on the applicable Reviewable Return allocable to the Pre-Closing Tax Period, as determined by the Selected Accounting Firm, differs from the amount borne by Company Stockholders, (i) Company Stockholders or Parent, as the case may be, shall pay the other Party the amount of such difference and (ii) Parent shall, after the Closing Date and in its reasonable discretion, prepare and file an amended Reviewable Return, as applicable, if any. The fees and expenses of the Selected Accounting Firm pursuant to this Section 10.1(d) shall be apportioned by the Selected Accounting Firm between Company Stockholders on the one hand and Parent and the Surviving Entity on the other hand, equitably based on (1) the merits of each claim made and position taken by each party, (2) which party's claims and positions were upheld by the Selected Accounting Firm, and (3) the relative amounts of the claims and positions of each party that were upheld by the Selected Accounting Firm. Any fees and expenses of the Selected Accounting Firm that Company Stockholders are required to pay pursuant to this Section 10.1(d) shall be paid by the Stockholders' Representative on behalf of Company Stockholders.

Section 10.2 Proration of Taxes. For purposes of this Agreement, in the case of any Straddle Period: (a) the Taxes of the Company that are imposed on a periodic basis and not based on income or receipts (e.g., property Taxes) attributable to any Pre-Closing Tax Period included in the Straddle Period shall be equal to the product of such Taxes attributable to the entire Straddle Period and a fraction, the numerator of which is the number of days in the Pre-Closing Straddle Period included in the Straddle Period and the denominator of which is the total number of days in such Straddle Period, and the amount of such Taxes attributable to any Post-Closing Tax Period included in the Straddle Period shall be the excess of the amount of the Taxes for the Straddle Period over the amount of Taxes attributable to the Pre-Closing Straddle Period included in such Straddle Period; provided, that if the amount of periodic Taxes imposed for such Straddle Period reflects different rates of Tax imposed or different exemptions, allowances or deductions for different periods within such Straddle Period, the formula described in the preceding clause shall be applied separately with respect to each such period within the Straddle Period; and (b), the Taxes of the Company (other than those described in clause (a)) attributable to the Pre-Closing Tax Period shall be determined by assuming that the taxable year or period ended on the Closing Date, except that exemptions, allowances or deductions shall be prorated on the basis of the number of days in the annual period elapsed through the Closing Date as compared to the number of days in the annual period elapsing after the Closing Date.

Section 10.3 Cooperation on Tax Matters. Parent, the Surviving Entity and the Stockholders' Representative shall cooperate with each other and with each other's Representatives as and to the extent reasonably requested by the other Party, in connection with Tax matters relating to the Company including: (i) preparation and filing of Tax Returns (including any extensions thereto), (ii) the examination of Tax Returns, and (iii) any Tax Proceeding. Any information or documents provided under this Section 10.3 shall be kept confidential by the Party receiving the information or documents, except as may otherwise be necessary in connection with the filing of Tax Returns or any administrative or judicial proceedings relating to Taxes, or as required by applicable Law.

Section 10.4 Refunds.

(a) Any Tax Refund shall be paid to the Stockholders' Representative for the benefit of Company Stockholders except to the extent any such Tax Refund results from or is attributable to a net operating loss or other Tax attributes of Parent, the Surviving Entity or any of their Affiliates generated in or otherwise attributable to a Post-Closing Tax Period, which, in each case, shall be for the account of Parent. Any Tax Refund payable pursuant to this Section 10.4 shall be reduced (i) by any amounts then owing by Company Stockholders or Stockholders' Representative to any Parent Indemnified Party, (ii) for any Taxes imposed on the Surviving Entity in connection with the payment of such Tax Refund (including the "employer" portion of any employment Taxes payable and any federal Taxes that may be due thereon), and (iii) to the extent any such Tax Refund must be paid to any other Person pursuant to an agreement entered into by the Company or any of its Affiliate before the Closing. The Stockholders' Representative, upon the request of any Parent Indemnified Party, shall repay to such Parent Indemnified Party the amount paid over pursuant to this Section 10.4 (plus any penalties, interest or other charges imposed by the relevent Governmental Entity) in the event that such Parent Indemnified Party is required to repay such refund to such Governmental Entity.

(b) Any refunds or credits of the Company for any Straddle Period, to the extent allocable to the portion of such Tax Period beginning after the Closing Date pursuant to this Section 10.4, shall be for the benefit of Parent and the Company.

Section 10.5 Audits and Contests with Respect to Taxes.

(a) Parent shall control all Tax Proceedings for all Tax Periods, including any Pre-Closing Tax Periods. With respect to all Tax Proceedings that may give rise to a claim for indemnification under Article IX or this Article X (a "Pre-Closing Tax Proceeding"), if the resolution of such Pre-Closing Tax Proceeding would reasonably be expected to result in a claim for material indemnification under Article IX or this Article X, Parent shall: (i) consult in good faith with the Stockholders' Representative before taking any action in connection with the Pre-Closing Tax Proceeding that might result in liability to Company Stockholders under this Article X, (ii) consult in good faith with the Stockholders' Representative and offer the Stockholders' Representative a reasonable opportunity to comment and approve before submitting to any Governmental Entity any written materials prepared or furnished in connection with such Pre-Closing Tax Proceeding to the extent such materials concern matters in the Pre-Closing Tax Proceeding that might result in payment in Article IX, (iii) conduct the Pre-Closing Tax Proceeding diligently and in good faith, and (iv) not pay, discharge, settle, compromise, litigate, or otherwise dispose (collectively, "Dispose") of any item subject to such Pre-Closing Tax Proceeding without obtaining the prior written consent of the Stockholders' Representative, which consent shall not be unreasonably withheld, conditioned or delayed.

(b) If a dispute arises in connection with the conduct or resolution of a Pre-Closing Tax Proceeding in accordance with clause (a) above, Parent and the Stockholders' Representative shall attempt in good faith to resolve such dispute with respect to such disposition within 30 days of the

date on which such dispute arises and any matters remaining in dispute at the end of such period shall be submitted to the Selected Accounting Firm for resolution, and the provisions set forth in Section 10.1(d) shall apply; provided, that the Selected Accounting Firm shall (i) be requested to resolve any such dispute expeditiously and, in any event, within 30 days, (ii) consider the effect any resolution of such dispute could have on the taxable income (or loss) of Parent, the Surviving Entity or its Subsidiaries Parties or any of their Affiliates after the Closing Date, and (iii) not be authorized to resolve any matter in a manner that would require Parent or the Surviving Entity or its Subsidiaries to initiate or defend litigation in a court proceeding with respect to the Tax matters at issue unless the Stockholders' Representative on behalf of the Company Stockholders agrees to indemnify, defend and hold Parent and Surviving Entity harmless from such litigation. Notwithstanding anything in this Article X to the contrary, if the alternative (as decided by the Selected Accounting Firm) to the disposition of any Tax Proceeding proposed by a Parent Indemnified Party is for Parent, the Surviving Entity or its Subsidiaries or any of their Affiliates to initiate or defend litigation in a court proceeding with respect to the Tax matters at issue, the Parent Indemnified Parties shall be authorized to Dispose of the Tax Proceeding with the Stockholders' Representative's prior written consent, which will not be unreasonably withheld, conditioned or delayed.

Section 10.6 Tax Sharing Agreements. All Tax Agreements (other than those agreements the continuation of which Parent has consented to) involving the Company shall be terminated as of the Closing Date and, after the Closing Date, the Company shall not be bound thereby or have any liability thereunder.

Section 10.7 Transfer Taxes. All Transfer Taxes and any third party expenses incurred in filing all related and necessary Tax Returns, in each case if any, shall be borne 50% by the Company Stockholders and 50% by Parent. The Stockholders' Representative shall file all necessary Tax Returns and other documentation with respect to all such Transfer Taxes, and, if required, Parent shall, and shall cause its Affiliates to, join in the execution of any such Tax Returns and other documentation.

ARTICLE XI
MISCELLANEOUS

Section 11.1 Entire Agreement. This Agreement, any terms expressly incorporated into this Agreement, the schedules and exhibits to this Agreement, and the other Transaction Documents, contain the entire agreement among the Parties with respect to the Transactions and supersede all prior agreements or understandings among the Parties with respect to the subject matter hereof and thereof. In the event of any inconsistency between the statement in the body of this Agreement and those in the Appendices, Exhibits and Disclosure Schedules to this Agreement (other than an exception expressly set forth as such in the Disclosure Schedules with respect to a specifically identified representation or warranty), the statements in the body of this Agreement will control.

Section 11.2 Notices. Any notice, request, demand or other communication required to be given pursuant to this Agreement by any Party shall be in writing and shall be validly given or made to the applicable Party if served personally, certified or registered, postage prepaid, return receipt requested, sent by electronic mail, receipt confirmed. If the notice, request, demand or other communication is served personally, service shall be conclusively deemed made at the time of service. If the notice, request, demand or other communication is sent by electronic mail, service shall be conclusively deemed made the first Business Day following successful transmission or upon confirmation of receipt from the recipient. If the notice, request, demand or other communication is given by mail, service shall be conclusively deemed made four (4) Business Days after deposit in the United States mail, addressed to the applicable Party to whom the notice, request, demand or other communication is to be given. Notices

shall be provided to the following addresses (any of which may be changed upon like notice to the other Parties):

If to any Parent Entity (including, for the avoidance of doubt, the Surviving Entity), to:

Vir Biotechnology, Inc.
c/o TomegaVax, Inc.
4640 SW Macadam Avenue
Suite 130A
Portland, OR 97239
Telephone: (503) 341-1697
Attention: President

with a required copy to (which will not constitute notice to such Parent Entity):

Proskauer Rose LLP
One International Place
Boston, MA 02110
Email: osolomon@proskauer.com
Attention: Ori Solomon

If to the Stockholders' Representative, to:

Dr. Klaus Früh
505 NW 185th Avenue
Beaverton, OR 97006
Telephone: (503) 418-2735
Email: fruehk@tomegavax.com

with a copy to (which will not constitute notice to the Stockholders' Representative):

Tonkon Torp LLP
1600 Pioneer Tower
888 S.W. Fifth Ave
Portland, OR 97204
Telephone: (503) 802-2023
Email: david.forman@tonkon.com
Attention: David Copley Forman

In the case of any notice to be delivered to any Company Stockholder, notice shall be deemed to have been given to such Company Stockholder if given to the Stockholders' Representative.

Section 11.3 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any counterpart or other signature delivered by facsimile shall be deemed for all purposes as being good and valid execution and delivery of this Agreement by that Party.

Section 11.4 Amendments and Waivers. No modification, amendment or waiver of any provision of, or consent required by, this Agreement, nor any consent to any departure from the terms of this Agreement, shall be effective unless it is in writing and signed by Parent, the Company (solely if

prior to the Closing), the Surviving Entity (solely if after the Closing) and the Stockholders' Representative. Any modification, amendment, waiver or consent shall be effective only in the specific instance and for the purpose for which it is given and shall not extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

Section 11.5 Assignment. This Agreement and the rights and obligations under this Agreement shall not be assignable or transferable by any Party to this Agreement without the prior written consent of the other Party to this Agreement; provided that Parent may unilaterally assign all or any of its rights to (a) an Affiliate of Parent, provided that Parent controls such Affiliate, and, (b) following the Closing, to any successor-in-interest to Parent or any Person acquiring all or substantially all of the Business; provided, that no such assignment shall relieve Parent of any of its obligations under this Agreement.

Section 11.6 Severability. It is the desire and intent of the Parties to this Agreement that the provisions of this Agreement shall be enforced to the fullest extent permissible under the Laws and public policies applied in each jurisdiction in which enforcement is sought. Accordingly, if any particular provision of this Agreement shall be adjudicated to be invalid or unenforceable, the provision shall be deemed amended to delete therefrom the portion adjudicated to be invalid or unenforceable, with the deletion to apply only with respect to the operation of the provision in the particular jurisdiction in which the adjudication is made.

Section 11.7 Specific Enforcement. The Parties agree that irreparable damage would occur and that the Parties would not have any adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, this being (subject to Section 9.8) in addition to any other remedy to which they are entitled at law or in equity.

Section 11.8 Governing Law. This Agreement and all claims or causes of action (whether in contract, tort or otherwise) that may be based upon, arise out of, or relate to any Transaction Document or the negotiation, execution or performance hereof or thereof (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with any Transaction Document or as an inducement to enter into any Transaction Document) shall be governed by, enforced in accordance with and interpreted under the Laws of the State of Delaware, without reference to applicable principles of conflicts of Laws that would require the application of the Law of any other jurisdiction.

Section 11.9 Consent to Jurisdiction; Jury Trial Waiver.

(a) Each Party hereby (i) irrevocably submits to the exclusive jurisdiction of the Delaware Court of Chancery in the State of Delaware for the purpose of any Action that may be based upon, arise out of or relate to any Transaction Document or the negotiation, execution or performance thereof (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with any Transaction Document or as an inducement to enter into any Transaction Document), (ii) waives to the extent not prohibited by applicable Law, and agrees not to assert by way of motion, as a defense or otherwise, in any such Action, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its Assets are exempt or immune from attachment or execution, that any such Action brought in one of the above-named courts is improper, or that the Transaction Documents or the subject matter thereof may not be enforced in or by such court, (iii) agrees not to commence any Action that may be based upon, arise out of or relate to any Transaction

Document other than before one of the above-named courts nor to make any motion or take any other action seeking or intending to cause the transfer or removal of any such Action to any court other than one of the above-named courts whether on the grounds of inconvenient forum or otherwise, and (iv) consents to service of process in any such Action in any manner permitted by applicable Law, and agrees that service of process by registered or certified mail, return receipt requested, at its address specified pursuant to Section 11.2 is reasonably calculated to give actual notice.

(b) TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW THAT CANNOT BE WAIVED, EACH PARTY HEREBY WAIVES AND COVENANTS THAT IT WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE) ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ACTION ARISING OUT OF OR BASED UPON ANY TRANSACTION DOCUMENT OR THE SUBJECT MATTER THEREOF OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE TRANSACTIONS, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING. ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 11.9(B) WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF EACH SUCH PARTY TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

Section 11.10 Attorneys' Fees. If there are any Actions arising out of or relating to any Transaction Document or the Transactions, including any Actions to enforce any terms or conditions of any Transaction Document, the prevailing Party shall be entitled to recover from the other Party all court costs, fees and expenses relating to such Action, including reasonable attorneys' fees.

Section 11.11 Settlement Negotiations. If any dispute occurs pertaining to or arising from any Transaction Document, and the Parties mutually determine to engage in any settlement negotiations with respect to such dispute, all of the communications in connection with such settlement negotiations, oral and written, between the Parties and their Representatives, and among the Parties and any settlement officer, mediator or other third party acting in a similar capacity, shall be confidential and inadmissible in any Actions and shall be treated as compromise and settlement negotiations and occurring in the course of mediation for the purposes of the federal and state rules of evidence.

Section 11.12 Delays or Omissions. No delay or omission to exercise any right, power or remedy accruing to any Party, upon any breach, default or noncompliance by any other Party under this Agreement, shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such breach, default or noncompliance, or any acquiescence therein, or of or in any similar breach, default or noncompliance thereafter occurring. It is further agreed that any Consent of any kind or character on any Party's part of any breach, default or noncompliance under this Agreement, or any waiver on such Party's part of any provisions or conditions of the Agreement must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement, or otherwise afforded to any Party, shall be cumulative and not alternative.

Section 11.13 Disclosure Schedules. The Disclosure Schedule shall be arranged in paragraphs corresponding to the lettered and numbered sections contained in this Agreement and may include sections not specifically referenced in the text of the section. If an item is disclosed in one section of the Disclosure Schedule, it shall be deemed to have been disclosed in any other section of the Disclosure Schedule to the extent the content and context of such disclosure makes it reasonably apparent, when read in the context of such other sections, that such disclosure is applicable to such other sections. The disclosure of information in the Disclosure Schedule shall not be construed as an admission that any such information is material to the business or operations of the Company. None of the disclosures contained in the Disclosure Schedule are intended to constitute, and shall not be construed as constituting, representations or warranties except as and to the extent specifically provided in this Agreement, nor shall

any of the disclosures in the Disclosure Schedule be deemed to expand in any way the scope or effect of the representations and warranties made by the Company in this Agreement. From time to time prior to the Closing, the Company shall have the right to supplement or amend the Disclosure Schedules with respect to any matter hereafter arising after the delivery of the Schedules pursuant to this Agreement that, if existing or occurring prior to the date of this Agreement, would have been required to be set forth or described in such Schedules. No such supplement or amendment shall have any effect on the satisfaction of the condition to closing set forth in Section 7.2(a); provided, however, if the Closing shall occur, then Parent, for itself and on behalf of each Parent Indemnified Party, shall be deemed to have waived any right or claim pursuant to the terms of this Agreement or otherwise, including pursuant to ARTICLE IX, with respect to any and all matters disclosed pursuant to any such supplement or amendment at or prior to the Closing.

Section 11.14 Company Stockholders.

(a) Approval of Transactions. Each Company Stockholder, by executing and delivering this Agreement, hereby acknowledges that they have reviewed this Agreement and such other information as they believe necessary to make an informed decision about entering into this Agreement, and hereby authorizes, approves and adopts in all respects the entry of the Company into this Agreement and the consummation of the Transactions and other matters comtemplated herein, and hereby agrees that the execution and delivery hereof by the Company Stockholders shall be deemed in all respects to be the written consent of such Company Stockholders in lieu of a meeting thereof in accordance with Section 228 of the DGCL.

(b) Representations. Each Company Stockholder, solely as to itself, hereby represents and warrants to the Parent Entities as follows:

(i) Such Company Stockholder has all requisite power and authority to enter into this Agreement.

(ii) This Agreement has been duly executed and delivered by such Company Stockholder, and, assuming the due authorization, execution and delivery by the Parent Entities, this Agreement constitutes valid and binding obligations of such Company Stockholder, enforceable against each such Company Stockholder in accordance with its terms, except as such enforceability may be subject to applicable bankruptcy, reorganization, insolvency, moratorium and similar Laws affecting the enforcement of creditors' rights generally and by general principles of equity.

(iii) Such Company Stockholder owns beneficially and of record, free and clear of any Liens and has full power and authority to deliver and convey to Parent free and clear of any Liens, the Company Common Stock set forth opposite his, her or its name on Schedule 4.4(a). Other than the Company Common Stock set forth opposite such Company Stockholder's name on Schedule 4.4(a), such Company Stockholder holds no other Capital Stock of the Company. The Company Common Stock set forth opposite such Company Stockholder's name on Schedule 4.4(a) are not subject to any Contract restricting or relating to the voting, transfer or disposition of such Company Common Stock, except under the Company's Investor Rights Agreement, Shareholders Agreement, and Voting Agreement.

(iv) Such Company Stockholder confirms that that it is not relying on any communication (written or oral) of Parent or any of its Affiliates, as investment advice or as a recommendation to approve the Transactions and accept shares of Parent A-2 Stock as consideration in the Transactions. It is understood that information and explanations related to the terms and conditions of the shares of Parent A-2 Stock provided to the Company and such Company Stockholder by Parent or any

of its Affiliates shall not be considered investment advice or a recommendation to invest in the shares of Parent A-2 Stock, and that neither Parent nor any of its Affiliates is acting or has acted as an advisor to the Company or such Company Stockholder in deciding to invest in the shares of Parent A-2 Stock. Such Company Stockholder acknowledges that neither Parent nor any of its Affiliates has made any representation regarding the proper characterization of the shares of Parent A-2 Stock for purposes of determining such Company Stockholders's authority to invest in the shares of Parent A-2 Stock.

(v) Such Company Stockholder is familiar with the business and financial condition and operations of Parent and the proposed business and projected financial expectations of Parent after the Transactions. Such Company Stockholders has had access to such information concerning Parent and the shares of Parent A-2 Stock as it deems necessary to enable it to make an informed investment decision concerning the issuance of the shares of Parent A-2 Stock as consideration in the Transactions.

(vi) Such Company Stockholder has sufficient knowledge and experience in financial and business matters to evaluate and understand the merits and risks of approving the transactions contemplated by this Agreement and to make an investment decision with respect to the receipt of the Parent A-2 Stock and the Win State Payment Letter.

(vii) Such Company Stockholder understands that no federal or state agency has passed upon the merits or risks of an investment in the shares of Parent A-2 Stock or made any finding or determination concerning the fairness or advisability of this investment.

(viii) Such Company Stockholder confirms that Parent has not (i) given any guarantee or representation as to the potential success, return, effect or benefit (either legal, regulatory, tax, financial, accounting or otherwise) of an of investment in the shares of Parent A-2 Stock or (ii) made any representation to such Company Stockholders regarding the legality of an investment in the shares of Parent A-2 Stock under applicable legal investment or similar laws or regulations. In deciding to approve the Transactions and accept the shares of Parent A-2 Stock as consideration therefor, such Company Stockholder is not relying on the advice or recommendations of Parent and such Company Stockholder has made its own independent decision that the investment in the shares of Parent A-2 Stock is suitable and appropriate for such Company Stockholder.

(ix) Such Company Stockholder agrees to furnish any additional information reasonably requested by Parent to assure compliance with U.S. federal and state securities laws in connection with the issuance of the shares of Parent A-2 Stock.

(x) Such Company Stockholder is not subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) – (viii) under the Securities Act.

(c) Release. Effective as of the Merger One Effective Time, each Company Stockholder, on behalf of itself and its, his or her Representatives, heirs, affiliates, successors and assigns (each, a "Releasing Person"), releases and discharges the Company, each of their respective current and former affiliates and each of the respective Representatives, successors and assigns of each of the foregoing (each, a "Released Person"), from any and all from all Actions, causes of action, covenants, debts, torts, damages and any and all claims, defenses, offsets, judgments, demands and liabilities whatsoever, of every name and nature, both at Law and in equity, known or unknown, suspected or unsuspected, accrued or unaccrued, which have been or could have been asserted against any Released Person, which any Releasing Person has or ever had, which arise out of or in any way relate to events, circumstances or actions occurring, existing or taken prior to or as of the Closing in respect of matters relating to the Company; provided, that the Parties acknowledge and agree that this Section 11.14(c) does

not apply to and shall not constitute a release of (i) any rights or obligations arising under this Agreement or any of the Transaction Documents, including the payment of the Merger Consideration; (ii) wages, benefits or other amounts payable for to such Releasing Person for services as an employee of the Company prior to the Closing; or (iii) the OHSU License Agreement, the Confidentiality Agreements entered into among Parent, the Company, and OHSU in connection with the transactions contemplated by this Agreement, any sponsored research agreement between OHSU and the Company, or the Lease Agreement, dated as of April 23, 2012, as amended, between OHSU and the Company.

(d) Stockholders' Representative.

(i) Each Company Stockholder and the Company hereby designates and appoints, authorizes and empowers Dr. Klaus Früh to act as the Stockholders' Representative (and each successor appointed in accordance with Section 11.14(d)(iii)) and to perform all such acts, on behalf of such Company Stockholder, as are required, authorized or contemplated by the Transaction Documents and the Transactions, which will include the power and authority to (i) execute and deliver all documents necessary or desirable to carry out the intent of the Transaction Documents and the Transactions; (ii) serve as the named party with respect to any claim for indemnification by any Parent Indemnified Party and to resolve such claims as the Stockholders' Representative in its sole good faith discretion deems appropriate; (iii) give and receive any and all notices pursuant to any Transaction Document; (iv) grant any consent or approval under any Transaction Document; (v) make all other elections or decisions contemplated by any Transaction Document; (vi) approve waivers, clarifications or post-Closing modifications to any Transaction Document which do not materially and adversely affect the rights of any Company Stockholder disproportionately to the other Company Stockholder; (vii) resolve or otherwise defend any Parent Indemnified Party as described herein, acting in good faith, including, (A) to resolve a disputed claim for indemnification asserted by any such Parent Indemnified Party pursuant to Article IX, and (B) to defend any such Parent Indemnified Party from any Loss under Article IX, including, where appropriate, retaining legal counsel or other advisors in furtherance of that defense; and (viii) perform each such act and thing whatsoever the Stockholders' Representative may be or is required to do, or which the Stockholders' Representative in its sole good faith discretion determines is desirable to do, pursuant to or to carry out the intent of the Transaction Documents. The Stockholder Representative will promtly notify the Company Stockholders of any action taken or notice received under this Section 11.14(d)(i).

(ii) The grant of authority provided for in this Section 11.14: (i) is coupled with an interest and is being granted, in part, as an inducement to the Company and the Parent Entities to enter into this Agreement and will be irrevocable and survive the death, incompetency, bankruptcy or liquidation of any Company Stockholder and will be binding on any successor thereto; and (ii) subject to this Section 11.14, may be exercised by the Stockholders' Representative acting by signing as the Stockholders' Representative of any Company Stockholder.

(iii) If the Stockholders' Representative or its heirs or personal representatives, as the case may be, advise the Company Stockholders that it is unavailable to perform his duties hereunder, within three (3) Business Days of notice of such advice, an alternative Stockholders' Representative will be appointed by the majority vote of the Company Stockholders based on the portion of the Merger Consideration they are each entitled to receive. Any references in this Agreement to the Stockholders' Representative shall be deemed to include any duly appointed successor Stockholders' Representative.

(iv) The Stockholders' Representative will not be entitled to any fee, commission or other compensation for the performance of its services hereunder. However, the Stockholders' Representative shall be entitled to retain counsel and to incur such expenses (including

court costs and reasonable attorneys' fees and expenses) as the Stockholders' Representative deems to be necessary or appropriate in connection with the performance of their obligations under this Agreement, and all such fees and expenses incurred by the Stockholders' Representative shall be borne by the Company Stockholders pro rata based on the portion of the Merger Consideration they are each entitled to receive.

(v) In dealing with this Agreement and any instruments, agreements or documents relating hereto, and in exercising or failing to exercise all or any of the powers conferred upon the Stockholders' Representative hereunder or thereunder, (i) the Stockholders' Representative will not assume any, and will incur no, liability whatsoever to any Company Stockholder because of any error in judgment or other act or omission performed or omitted hereunder or in connection with this Agreement; and (ii) the Stockholders' Representative will be entitled to rely on the advice of counsel, public accountants or other independent experts experienced in the matter at issue, and any error in judgment or other act or omission of Stockholders' Representative pursuant to such advice will not subject the Stockholders' Representative to liability to any other Company Stockholder.

(vi) The Parent Entities may conclusively and absolutely rely, without inquiry, and until the receipt of written notice of a change of the Stockholders' Representative under Section 11.2, may continue to rely, without inquiry, upon the actions of the Stockholders' Representative as the actions of each Company Stockholder in all matters referred to in this Section 11.14. Each Company Stockholder hereby authorizes the other Parties hereto to disregard any notice delivered or other action taken by any Company Stockholder pursuant to this Agreement except for the Stockholders' Representative.

(vii) The Company Stockholders hereby agree to indemnify the Stockholders' Representative (in its capacity as such) against, and to hold the Stockholders' Representative (in its capacity as such) harmless from, any and all liabilities, claims, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of whatever kind which may at any time be imposed upon, incurred by or asserted against the Stockholders' Representative in such capacity in any way relating to or arising out of the Stockholders' Representative's action or failure to take action pursuant to this Agreement or in connection herewith in such capacity; provided, however, that no Company Stockholder shall be liable for the payment of any portion of such liabilities, claims, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting solely from the gross negligence or intentional misconduct of the Stockholders' Representative or any violation by the Stockholders' Representative of his or its obligations under this Agreement. The agreements in this Section 11.14(d) shall survive termination of this Agreement.

(e) Public Announcements. Without the prior written consent of Parent, no Company Stockholder shall issue any press releases or make any other public statements with respect to the Transactions, except as may be required by Law. In the event that a Company Stockholder is required by Law or court process to make any such disclosure, such Company Stockholder shall notify Parent prior to making such disclosure and shall use its commercially reasonable efforts to give Parent an opportunity to comment on such disclosure.

(f) Confidentiality. Each Company Stockholder shall, and shall cause its Affiliates and its and their respective Representatives to, except as required by applicable law (i) treat and hold confidential all Confidential Information, (ii) refrain from disclosing any Confidential Information to any Persons other than their Representatives who agree to be bound by the provisions of this Section 11.14(f) and (iii) refrain from using any of the Confidential Information except as necessary to perform their obligations under this Agreement and the other Transaction Documents to which such Company Stockholder is a party or as permitted to be used by OHSU under the OHSU License

Agreement. At the request of Parent, each Company Stockholder shall deliver promptly to Parent (or destroy at the request and option of Parent) all tangible embodiments (and all copies) of Confidential Information in such Company Stockholder's possession or in the possession of any of such Company Stockholder's Representatives, except for Confidential Information OHSU is permitted to have under the OHSU License Agreement

(g) Approval of Termination of Company Shareholders Agreement, Investor Rights Agreement, Voting Agreement and Stock Incentive Plan. Each Company Stockholder, by executing and delivering this Agreement, hereby authorizes and approves in all respects the termination of, to the extent such Company Stockholder is a party thereto and effective simultaneous with the consummation of the Transactions contemplated by this Agreement, (i) that certain Shareholders Agreement, dated March 17, 2011, among Klaus Früh, Ulrich Koszinowski, Jay A. Nelson, Louis Picker, and Scott Hansen, as Initial Shareholders, and TomegaVax, Inc.; (ii) that certain Investor Rights Agreement, dated May 21, 2012, effective as of June 22, 2012, between TomegaVax, Inc. and Oregon Health & Science University; (iii) that certain Voting Agreement, dated January 29, 2016, among TomegaVax, Inc. and Klaus Früh, Ulrich Koszinowski, Jay A. Nelson, Louis Picker, Scott Hansen, Michael Tippie, Ronald B. Moss, Colin Powers, Michael Jarvis, Alignment Ventures, Thomas Evans, LLC, and OHSU as Stockholders; and (iv) the TomegaVax, Inc. 2015 Stock Incentive Plan.

Section 11.15 Appraisal Shares. Parent, on behalf of the Company, will take all actions necessary to comply with Section 262 of the DGCL with respect to any appraisal rights which may arise in connection with the Transactions.

IN WITNESS WHEREOF, each of the Parties to this Agreement has caused this Agreement to be duly executed and delivered as of the day and year first above written.

PARENT:

VIR BIOTECHNOLOGY, INC.

By: _____
Name: Robert T. Nelsen
Title: President

MERGER SUB 1:

VIR MERGER SUB 1, INC.

By: _____
Name: Robert T. Nelsen
Title: President

MERGER SUB 2:

VIR MERGER SUB 2, INC.

By: _____
Name: Robert T. Nelsen
Title: President

COMPANY:

TOMEGAVAX, INC.

By: _____
Name:
Title:

IN WITNESS WHEREOF, each of the Parties to this Agreement has caused this Agreement to be duly executed and delivered as of the day and year first above written.

PARENT:

VIR BIOTECHNOLOGY, INC.

By: _____
Name:
Title:

MERGER SUB 1:

VIR MERGER SUB 1, INC.

By: _____
Name:
Title:

MERGER SUB 2:

VIR MERGER SUB 2, INC.

By: _____
Name:
Title:

COMPANY:

TOMEGAVAX, INC.

By: _____
Name: Klaus Früh
Title: President

COMPANY STOCKHOLDERS:

Eric Bruening

Klaus Früh

Scott Hansen

Michael Jarvis

Ulrich Koszinowski

Ronald B. Moss

Robert More

Jay A. Nelson

Louis Picker

Colin Powers

Michael Tippie

COMPANY STOCKHOLDERS:

Eric Bruening

Klaus Früh

Scott Hansen

Michael Jarvis

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Ronald B. Moss

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Colin Powers

Michael Tippie

COMPANY STOCKHOLDERS:

Eric Bruening

Klaus Früh

Scott Hansen

Michael Jarvis

7/27/2016

Ulrich Koszinowski

Ronald B. Moss

Robert More

Jay A. Nelson

Louis Picker

Colin Powers

Michael Tippie

COMPANY STOCKHOLDERS:

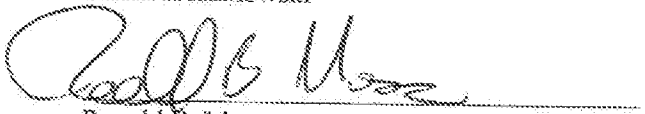
Eric Bruening

Klaus Früh

Scott Hansen

Michael Jarvis

Ulrich Koszinowski



Ronald B. Moss

Robert More

Jay A. Nelson

Louis Picker

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Ulrich Koszinowski

Ronald B. Moss

Robert More

Jay A. Nelson

Louis Pickett

Colin Powers

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COMPANY STOCKHOLDERS:

Eric Bruening

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Louis Picker

Colin Powers

Michael Tippie

THOMAS EVANS, LLC

By: _____
Name: Thomas Evans
Title: Owner

ALIGNMENT VENTURES, LLC

By: _____
Name:
Title:

OREGON HEALTH & SCIENCE UNIVERSITY

By: _____
Name: Lawrence J. Furnstahl
Title: Executive Vice President &
Chief Financial Officer

THOMAS EVANS, LLC

By: _____
Name: Thomas Evans
Title:

ALIGNMENT VENTURES, LLC

By: _____
Name: R.S. DuFresne, Jr.
Title: Partner

OREGON HEALTH & SCIENCE UNIVERSITY

By: _____
Name:
Title:

THOMAS EVANS, LLC

By: _____
Name: Thomas Evans
Title:

ALIGNMENT VENTURES, LLC

By: _____
Name:
Title:

OREGON HEALTH & SCIENCE UNIVERSITY

By: _____
Name: Lawrence J. Fuimstahl
Title: Executive Vice President &
Chief Financial Officer

EXHIBIT A
Certificate of Incorporation of the Merger One Surviving Entity

[See attached]

CERTIFICATE OF MERGER

MERGING

VIR MERGER SUB 1, INC.

WITH AND INTO

TOMEGAVAX, INC.

Pursuant to the provisions of Section 251(c) of the General Corporation Law of the State of Delaware (the "DGCL"), TomegaVax, Inc., a Delaware corporation, does hereby certify the following information relating to the merger (the "Merger") of Vir Merger Sub 1, Inc., a Delaware corporation, with and into TomegaVax, Inc.

FIRST: The name and state of incorporation of each of the constituent corporations is:

Name:	**State of Incorporation:**
Vir Merger Sub 1, Inc.	Delaware
TomegaVax, Inc.	Delaware

SECOND: An Agreement and Plan of Merger, dated as of September 12, 2016 (the "Merger Agreement") merging Vir Merger Sub 1, Inc. with and into TomegaVax, Inc., setting forth the terms and conditions of the Merger has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with the requirements of subsection (c) of Section 251 of the DGCL.

THIRD: The name of the surviving corporation is TomegaVax, Inc. (the "Surviving Corporation").

FOURTH: The Certificate of Incorporation of TomegaVax, Inc., as in effect immediately prior to the Merger shall be amended and restated in its entirety as attached to this Certificate of Merger as Exhibit A, and as so amended and restated, shall constitute the Certificate of Incorporation of the Surviving Corporation until amended and changed pursuant to the provisions of the DGCL.

FIFTH: An executed copy of the Merger Agreement is on file at the office of the Surviving Corporation located at 4640 SW Macadam Avenue Suite 130A Portland, OR 97239.

SIXTH: A copy of the Merger Agreement will be furnished by the Surviving Corporation, on request and without cost, to any stockholder of the constituent corporations.

SEVENTH: The Merger shall be effective upon the filing of this Certificate of Merger.

[Signature Page to Follow]

IN WITNESS WHEREOF, the undersigned has caused this Certificate of Merger to be duly executed by its authorized officer.

Dated: September 12, 2016

TOMEGAVAX, INC.

By: _____

Name: Klaus Früh

Title: President

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