

## PATENT ASSIGNMENT COVER SHEET

Electronic Version v1.1  
 Stylesheet Version v1.2

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<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT	
<b>NATURE OF CONVEYANCE:</b>	ASSIGNMENT	
<b>CONVEYING PARTY DATA</b>		
	<b>Name</b>	<b>Execution Date</b>
	BIOPTIX DIAGNOSTICS, INC.	12/06/2017
<b>RECEIVING PARTY DATA</b>		
<b>Name:</b>	CARTERRA, INC.	
<b>Street Address:</b>	825 NORTH 300 WEST	
<b>Internal Address:</b>	SUITE C309	
<b>City:</b>	SALT LAKE CITY	
<b>State/Country:</b>	UTAH	
<b>Postal Code:</b>	84103	
<b>PROPERTY NUMBERS Total: 1</b>		
	<b>Property Type</b>	<b>Number</b>
	<b>Patent Number:</b>	8488120
<b>CORRESPONDENCE DATA</b>		
<b>Fax Number:</b>	(801)566-6633	
<i>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.</i>		
<b>Phone:</b>	8015666633	
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<b>Address Line 4:</b>	SANDY, UTAH 84070	
<b>ATTORNEY DOCKET NUMBER:</b>	02236-34958.CIP	
<b>NAME OF SUBMITTER:</b>	GARY P. OAKESON	
<b>SIGNATURE:</b>	/Gary P. Oakeson/	
<b>DATE SIGNED:</b>	01/18/2018	
<b>Total Attachments: 80</b>		
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## ASSET PURCHASE AGREEMENT

**THIS ASSET PURCHASE AGREEMENT** (this “*Agreement*”) is made and entered into effective as of December 6, 2017 (“*Effective Date*”), by and between **CARTERRA, INC.**, a Delaware corporation having a place of business at 825 North 300 West Suite C309, Salt Lake City, UT 84103 (“*Buyer*”), and **BIOPTIX DIAGNOSTICS, INC.**, a Delaware corporation having a place of business at 834-F South Perry Street, Suite 443, Castle Rock, CO 80104 (the “*Company*”). Buyer and the Company are referred to collectively herein as the “*Parties*” and individually as a “*Party*.”

### RECITALS

WHEREAS, the Company developed certain polarization based interferometric detector technology and sensor chip material coating technology (the “*Purchased Technology*”); and

WHEREAS, subject to the terms and conditions set forth herein, the Company desires to sell, assign, transfer and convey and deliver to Buyer and Buyer desires to purchase and acquire from the Company, all of the Company’s right, title and interest in and to the Purchased Assets (as defined below).

NOW, THEREFORE, in consideration of the premises and the mutual promises herein made, and in consideration of the representations, warranties and covenants herein contained, the Parties agree as follows.

### ARTICLE 1 CERTAIN DEFINITIONS

Unless the context otherwise requires, the terms defined in this Article shall have the meanings herein specified for all purposes of this Agreement, applicable to both the singular and plural forms of any of the terms defined herein. When a reference is made in this Agreement to Articles or Sections, such reference shall be to an Article or Section of this Agreement unless otherwise indicated. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.”

“**404pi Products**” means the existing inventory of 404pi label-free biosensor instruments and associated consumables and spare parts.

“**Affiliate**” means, with respect to a Party, any Person controlled by, controlling, or under common control with such Party. For the purposes of this definition, the word “control” (including, with correlative meaning, the terms “controlled by” or “under the common control with”) means the actual power, either directly or indirectly through one or more intermediaries, to direct or cause the direction of the management and policies of such Person, whether by the ownership of more than fifty percent (50%) of the voting stock of such Person, or by contract or otherwise.

“**Ancillary Agreements**” means the Patent Assignment.

“**Business Day**” means any day that is not a Saturday, Sunday or any other day on which banks are required or authorized by Law to be closed in the State of California.



**“Calendar Quarter”** means the respective periods of three consecutive calendar months ending on March 31, June 30, September 30 or December 31.

**“Claim”** means any claims, demands, actions, suits and causes of action, whether class, individual or otherwise in nature, in law or in equity.

**“Code”** means the Internal Revenue Code of 1986, as amended, and any applicable rules and regulations thereunder, and any successor to such statute, rules or regulations.

**“Confidential Information”** means any non-publicly available information concerning the Purchased Assets or the Parties which is furnished or made available by a Party to the other Party pursuant to or in respect of the terms of this Agreement and the Ancillary Agreements.

**“Consent”** means, with respect to any Person, any consent, approval, authorization, permission or waiver of, or registration, declaration or other action or filing with or exemption by such Person.

**“Contract”** means any legally binding written, oral or other agreement, contract, subcontract, lease, understanding, arrangement, instrument, note, option, warranty, purchase order, license, sublicense, insurance policy, benefit plan or legally binding commitment or undertaking of any nature, together with all amendments thereto.

**“Copyrights”** means copyrights and copyrightable works (including without limitation databases and other compilations of information, mask works and semiconductor chip rights), including all rights of authorship, use, publication, reproduction, distribution, performance, transformation, moral rights and rights of ownership of copyrightable works and all registrations, application for registration and renewals and extensions thereof, together with all other interests accruing by reason of international copyright, and applications, registrations, extensions and renewals in connection therewith.

**“Disclosure Schedule”** means the disclosure schedule delivered by the Company to Buyer on the date hereof and attached hereto, corresponding to the sections contained in ARTICLE 4 and certain other Articles herein and containing the information required to be disclosed pursuant to, and certain exceptions to, the representations and warranties in such Articles.

**“Earn-out Payment”** means any payment that becomes due and payable pursuant to Section 2.5(b)(i).

**“Governmental Authority”** means any national, international, federal, state, provincial or local government, or political subdivision thereof, or any multinational organization or any authority, agency or commission entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, any court or tribunal (or any department, bureau or division thereof, or any governmental arbitrator or arbitral body).

**“Intellectual Property”** means Patents, Trade Secrets, Trademarks, and Copyrights anywhere in the world and all legal rights, title, or interest in the following arising under Law,

whether or not filed, perfected, registered or recorded and whether now or later existing, filed, issued or acquired, including all renewals.

***“Know-How”*** means any data, results, technology, business or financial information or information of any type whatsoever, in any tangible or intangible form, including know-how, practices, techniques, methods, processes, inventions, developments, specifications, formulations, formulae, software, algorithms, marketing reports, expertise, technology, test data, manufacturing records, standard operating procedures.

***“Knowledge of the Company”*** means the actual knowledge of Mr. Michael Beeghley, CEO, and Mr. Jeffrey McGonegal, CFO, or directors of the Company and/or its Affiliates, after due and reasonable inquiry.

***“Law”*** means any foreign or domestic federal, state, municipal or local law, statute, code, ordinance, regulation, Order, rule, consent agreement, constitution, treaty or other requirement of any Governmental Authority.

***“Liability”*** means any liability, obligation or commitment of any kind or nature, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, disclosed or undisclosed, liquidated or unliquidated, or due or to become due.

***“Licensed IP Rights”*** means the non-exclusive licenses granted to each of Bridget Gordon and Slava Petropavlovskikh under the LLC Licenses for the limited purpose of permitting such counterparties to sell, support, or perform contract research services using that certain inventory of 404pi Products.

***“Lien”*** means any lien, mortgage, pledge, encumbrance, charge, security interest, adverse claim, liability, interest, charge, preference, priority, proxy, transfer restriction (other than restrictions under federal or state securities laws), encroachment, Tax, Order, community property interest, equitable interest, option, warrant or right of first refusal. For purposes of this definition, contractual obligations with third parties disclosed herein shall not be considered “Liens.”

***“LLC Licenses”*** means that certain Proposal for Purchase Agreement by and between the Company and Slava Petropavlovskikh, dated May 15, 2017, a copy of which is attached hereto as Exhibit B-1 and that certain Proposal for Purchase Agreement by and between the Company and Bridget Gordon, dated May 24, 2017, a copy of which is attached hereto as Exhibit B-2.

***“Losses”*** means all costs, obligations, damages, Liabilities, judgments, fines, penalties, costs, expenses (whether or not arising out of third-party claims), deficiencies, assessments, or other loss or expense, including all interest and penalties, and all amounts paid incident to any compromise or settlement of any action, all costs and expenses of investigating any such action and all reasonable attorneys’ fees and expenses and third-party expert or consulting fees and other reasonable amounts paid or incurred in connection therewith, but shall not include punitive damages except to the extent payable to a Third Party in connection with a Third Party Claim.

***“Net Sales”*** means, with respect to the Product in a country in the Territory, the gross amount invoiced for sales of the Product in such country by Buyer or any of its Affiliates or

licensees (other than distributors) from Third Parties ("**Gross Sales**"), less the following deductions, in each case (a) without duplication, (b) where applicable with respect to the Gross Sales invoiced and (c) as incurred in the ordinary course of business in type and amount consistent with good industry practice, as determined in accordance with, and as recorded in revenues under, US GAAP:

(i) sales returns and allowances actually paid, granted or accrued on the Product including trade, quantity, prompt pay and cash discounts and any other adjustments, including those granted on account of price adjustments or billing errors;

(ii) credits or allowances given or made for rejection or return of a previously sold Product or for rebates or retroactive price reductions;

(iii) to the extent not already deducted or excluded from the Gross Sales invoiced, taxes (including sales tax, consumption tax and value added tax), duties (including customs or excise duties) or other governmental charges levied on or measured by the billing amount for the Product as adjusted for rebates and refunds, which, for the avoidance of doubt, shall not include any tax, duty, or other charge imposed on or measured by net income (however denominated), or any franchise taxes, branch profits taxes, or similar tax;

(iv) charges for freight, packing, storage and insurance directly related to the distribution of the Product to the extent not already deducted or excluded from the Gross Sales invoiced;

(v) credits for allowances given or made for wastage replacement for the Product;

(vi) wholesaler and distributor administration fees;

(vii) non-affiliated brokers' or agents' commissions actually allowed; and

(viii) other similar or customary deductions taken in the ordinary course of business or in accordance with US GAAP.

Net Sales shall be determined in accordance with US GAAP. Sales between Buyer and its Affiliates and licensees shall be disregarded for purposes of calculating Net Sales except if such purchaser is an end user.

**"Net Selling Price"** means the Net Sales of Products divided by the total number of Products sold.

**"Order"** means any order, award, decision, injunction, judgment, ruling, decree, charge, writ, subpoena or verdict entered, issued, made or rendered by any Governmental Authority or arbitrator.

**"Organizational Documents"** means (a) any certificate or articles of incorporation, bylaws, certificate or articles of formation or organization, operating agreement or partnership agreement, (b) any documents comparable to those described in clause (a) as may be applicable pursuant to any Law and (c) any amendment or modification to any of the foregoing.

**“Representatives”** means any directors, officers, employees, investment bankers, financial advisors, attorneys, accountants or other advisors, agents or representatives of a Party.

**“Patent(s)”** means all patents (which shall include utility models, design patents, industrial designs, and priority rights), applications for patents, invention disclosures, provisional applications, substitutions, reissues, reexaminations, divisionals, renewals, revisions, extensions, provisionals, continuations and continuations-in-part, inventors’ certificates and other indices of invention ownership.

**“Patent Assignment”** means the Patent Assignment, substantially in the form attached hereto as Exhibit A.

**“Patent Files”** means, with regard to the Purchased Patents, the file histories for such Patents in the possession or control of the Company or any of its Affiliates.

**“Permit”** means any approval, license, franchise, Consent, exemption, permit, certificate, certificate of occupancy or Order issued by any Person.

**“Person”** means any individual, partnership, corporation, limited liability company, association, joint stock company, trust, joint venture, unincorporated organization, other business entity, or Governmental Authority.

**“Proceeding”** means any action, suit, arbitration, investigation or similar proceeding before a Governmental Authority.

**“Product”** means any instrument that incorporates an apparatus that is covered by a Valid Claim.

**“Purchased Patents”** means:

(a) all Patents that disclose or claim the composition of matter, manufacture or use of, or are otherwise related to the Purchased Technology including the Patents set forth on Schedule 4.6(a)(i);

(b) any and all provisionals, divisionals, continuations and continuations-in-part of the patents and patent applications referenced in the preceding subsection (a);

(c) all foreign patent applications associated with the patent applications referenced in the preceding subsections (a) and (b);

(d) all patents issued or issuing from the patent applications referenced in the preceding subsections (a) through (c); and

(e) reissues, reexaminations, restorations (including supplemental protection certificates) and extensions of any patent or patent application referenced in the preceding subsections (a) through (d).

**“Tax”** or **“Taxes”** means all forms of taxation imposed by any federal, state, provincial, local, foreign or other Governmental Authority, including income, franchise, property, sales, use, excise, employment, unemployment, payroll, social security, estimated, value added, ad valorem, transfer, recapture, withholding, health and other taxes of any kind, and any imposts, levies, tariffs, duties or other charges in the nature of a tax, in each case including any interest, penalties and additions thereto.

**“Tax Return”** means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

**“Territory”** means worldwide.

**“Third Party”** means any Person other than the Company or Buyer or an Affiliate of the Company or Buyer.

**“Trademark(s)”** means all trade names, logos, trademarks, trade dress and service marks and related registrations and applications, together with translations, adaptations, derivations and combinations thereof, and including any intent to use applications, supplemental registrations and any renewals or extensions, all other indicia of commercial source or origin, and all goodwill associated with any of the foregoing.

**“Trade Secrets”** means all trade secrets, confidential unpatented or unpatentable inventions, invention disclosures, processes, formulae, developments, discoveries, technology, product formulations, manufacturing processes, data, standard operating procedures, cell lines, biological materials, compounds, probes, sequences, technical information, methods, protocols, reagents, experiments, lab results, tests, concepts, ideas, research and development, business plans, strategies or other information, data or materials which in the reasonable business judgment of the owner thereof have value or confer a competitive advantage to such owner.

**“US GAAP”** means U.S. Generally Accepted Accounting Principles, as generally and consistently applied throughout the Party’s organization.

**“Valid Claim”** means (a) any claim of an issued and unexpired patent in the Purchased Patents, (as may be extended through supplementary protection certificate or patent term extension), which claim: (i) has not been revoked, held invalid or unenforceable by a patent office, court or other Governmental Authority of competent jurisdiction in a final and non-appealable judgment (or judgment from which no appeal was taken within the allowable time period) and (ii) has not been disclaimed, denied or admitted to be invalid or unenforceable through reissue, re-examination or disclaimer or otherwise or (b) any claim of a pending application in the Program Patents that has not been canceled, withdrawn, finally determined to be unallowable, or abandoned, provided that the applicable application has not been pending for more than five (5) years from the date of receipt of the initial action on the merits.

## ARTICLE 2 PURCHASE AND SALE

2.1 **Purchased Assets.** Subject to the terms and conditions of this Agreement, at the Closing, the Company shall sell, convey, transfer, assign and deliver to Buyer, and Buyer shall purchase and acquire from the Company, free and clear of all Liens, all of the Company's right, title and interest in and to all of the following (collectively, the "**Purchased Assets**");

(a) all Intellectual Property necessary or useful to the research, development, manufacture, promotion, offer for sale, sale or other distribution or exploitation of Products or the Purchased Technology, including: (i) the Purchased Patents, (ii) all Trademarks owned by the Company or used by the Company in its business ("**Purchased Trademarks**"); (iii) all Know-How (including software) necessary or useful to the research, development, manufacture, promotion, offer for sale, sale or other distribution or exploitation of Products or the Purchased Technology ("**Purchased Know-How**"); (iv) all Trade Secrets necessary or useful to the research, development, manufacture, promotion, offer for sale, sale or other distribution or exploitation of Products or the Purchased Technology ("**Purchased Trade Secrets**"), (v) all Copyrights necessary or useful to the research, development, manufacture, promotion, offer for sale, sale or other distribution or exploitation of Products or the Purchased Technology ("**Purchased Copyrights**"), (vi) all legal rights entitled by the original owner of such Intellectual Property and all rights of the Company to collect royalties under such Intellectual Property, to prosecute all existing Intellectual Property worldwide, to apply for additional registrations and/or applications for registration of Intellectual Property worldwide and to have all such registrations issued in the name of Buyer; and (vii) all right, title and interest the Company has to sue for past, present and future infringement of such Intellectual Property, including without limitation all right, title and interest the Company has in and to all causes of action and enforcement rights, whether known, unknown, currently pending, filed, or otherwise, in respect of the Intellectual Property, and all rights to pursue damages, injunctive relief and other remedies for past, current and future infringement of the Intellectual Property (collectively, the "**Purchased Intellectual Property**");

(b) all Patent Files and all other books and records (including laboratory notebooks and electronic records) relating to the Purchased Intellectual Property (the "**Purchased Books and Records**"); and

(c) all causes of action, claims, demands, deposits, warranties, guarantees, refunds, rights of recovery, rights of set off and other rights and privileges against Third Parties whether liquidated or unliquidated, fixed or contingent, choate or inchoate that are related to any of the foregoing.

2.2 **Excluded Assets.** Buyer shall not acquire pursuant hereto any assets or rights of any kind or nature, real or personal, tangible or intangible, other than as specifically set forth herein, subject in each case to the conditions and rights set forth herein, and the Company and its Affiliates shall retain all other assets (collectively, the "**Excluded Assets**"), including the following:

(a) all assets of the Company or any of its Affiliates that are not Purchased Assets;

- (b) all cash and cash equivalents;
- (c) all minute books, Organizational Documents, stock registers and such other books and records of the Company as pertaining to ownership, organization or existence of the Company;
- (d) all personnel, employment and medical records relating to the Company's employees and officers;
- (e) the LLC Licenses and any other Contracts entered into by and between the Company and any Third Parties;
- (f) all rights of the Company under this Agreement and the Ancillary Agreements;
- (g) the claims, remedies, rights, consideration or any other right related to any of the foregoing; and
- (h) all claims and counterclaims relating to Retained Liabilities or Excluded Assets.

2.3 **Retained Liabilities.** The Company shall retain all Liabilities of the Company and its Affiliates (such retained Liabilities, the "***Retained Liabilities***"), including the following:

- (a) all Liabilities arising out of or relating to the prosecution, ownership, operation, maintenance, sale, lease or use of the Purchased Assets prior to the Closing or facts, actions, omissions, circumstances or conditions existing, occurring or accruing prior to the Closing;
- (b) all Liabilities of the Company and its Affiliates under this Agreement and the Ancillary Agreements;
- (c) all Liabilities of the Company and its Affiliates relating to legal services, accounting services, financial advisory services, investment banking services or any other professional services performed in connection with this Agreement and the Ancillary Agreements;
- (d) all Liabilities arising from or related to any Claim, audit, hearing, investigation, or other Proceeding (whether civil, criminal, administrative, investigative, or informal and whether pending or threatened or having any other status) against the Company or any of its Affiliates pending or threatened or with respect to facts, actions, omissions, circumstances or conditions existing, occurring or accruing prior to the Closing Date;
- (e) all costs and expenses payable in connection with obtaining any Consents;
- (f) all Taxes of the Company or any of its Affiliates for any period;
- (g) all Liabilities relating to the Company's or any of its Affiliates' employees and officers, including any obligation to pay wages, bonuses, severance payments or benefits;

(h) all Liabilities under the LLC Licenses and all other Contracts entered into by and between the Company or any of its Affiliates and any Third Parties; and

(i) all Liabilities arising out of, relating to, or otherwise in respect of, the Excluded Assets.

2.4 **Purchase Price.** The aggregate consideration (the “**Purchase Price**”) for the Purchased Assets shall consist of (a) the amount set forth in Exhibit C (the “**Base Consideration**”) and (b) the right to receive the Earn-out Payments as and to the extent they become due pursuant to Section 2.5(b) below.

## 2.5 **Payments.**

(a) **Closing Payments.** On the Closing Date, Buyer shall pay the Base Consideration to the Company.

### (b) **Earn-out Payments.**

(i) Subject to Sections 2.5(b)(iii) and Buyer’s right of set-off as set forth herein and in Section 7.3, during the Earn-out Term (defined below), Buyer shall make quarterly payments to the Company (each, an “**Earn-out Payment**”) as set forth in Exhibit D. Notwithstanding the foregoing, Buyer shall receive a credit equivalent to the Base Consideration which it shall have the right to fully apply as a prepaid credit against any Earn-out Payments owed hereunder.

(ii) The Earn-Out Term shall commence on the Effective Date and continue until the earlier of (A) the total payments made by Buyer pursuant to Section 2.5(b)(i) reaches the amount set forth in Exhibit E, (B) there are no longer any Valid Claims covering the Products or (C) this Agreement has been terminated for any reason (the “**Earn-Out Term**”).

(iii) Buyer may deduct from any Earn-out Payments payable to Company under Section 2.5(b)(i) fifty percent (50%) of all consideration paid and documented to Company, by Buyer, its Affiliate(s) or licensee(s) for any rights to Third Party Intellectual Property necessary to use the Valid Claims under the Patent Assignment required for the manufacture, use or sale of any Products in the Territory; provided, however, that under no circumstances shall any Earn-out Payments to the Company be reduced as a result of this Section 2.5(b)(iii) to less than fifty percent (50%) of what would otherwise have been due. Buyer may carry forward to subsequent Calendar Quarters any deductions that it was not able to deduct as a result of the foregoing proviso.

(iv) Within forty-five (45) days after the end of each Calendar Quarter during the Earn-Out Term, Buyer shall provide the Company with a report that contains the following information for the applicable Calendar Quarter (A) Net Sales of the Product in the Territory (B) a calculation of the Earn-out Payment due on such sales. Concurrent with the delivery of the applicable quarterly report, Buyer shall pay all royalties due to Company pursuant to Section 2.5(b)(i), with respect to such Calendar Quarter.



(v) For Net Sales outside the United States received in a currency other than United States dollars, the rate of exchange to be used in computing the amount of currency equivalent in United States dollars shall be made at the rate of exchange published in the *Wall Street Journal, Western Edition* on the last Business Day of the applicable Calendar Quarter.

2.6 Withholding. Buyer shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to the Company or any other Person such amounts as Buyer is required to deduct and withhold under the Code, or any tax Law, with respect to the making of such payment. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of whom such deduction and withholding was made.

2.7 Extinguishment of Company Debts. Within one hundred and twenty (120) days following the Closing Date, the Company shall extinguish any and all material debt and other material Liabilities of the Company that are due and owing or otherwise outstanding and payable as of the Closing Date (the “**Closing Debt Payments**”).

2.8 Closing. The closing of the transactions contemplated by this Agreement (the “**Closing**”) shall take place at the offices of Latham & Watkins, 12670 High Bluff Drive San Diego, CA 92130, on the date hereof or such other date within five (5) Business Days from the date hereof, as may be mutually agreed upon by the Parties (the “**Closing Date**”). All transactions contemplated herein to occur on and as of the Closing Date shall be deemed to have occurred simultaneously and to be effective as of 12:01 a.m. on the Closing Date.

2.9 Nontransferable Assets. This Agreement shall not constitute an agreement or attempted agreement to transfer, sublease, sublicense or assign any privilege, right or interest in any Purchased Asset or any claim, right or benefit arising thereunder or resulting therefrom, if an attempted assignment thereof without the Consent required or necessary of a Third Party would constitute a breach or violation thereof or affect adversely the rights of Buyer thereunder. If a Consent of a Third Party which is required in order to assign any interest in a Purchased Asset has not been obtained prior to the date of this Agreement, or if an attempted assignment would be or for some reason is ineffective or would adversely affect the ability of the Company to convey its interest in a Purchased Asset to Buyer as set forth herein, then the Company shall use its best efforts, and Buyer will cooperate with the Company to the extent commercially reasonable, to obtain promptly such Consents. Pending receipt of such Consent, the Company shall hold any asset that has not been transferred or assigned for the benefit of Buyer, and the Parties shall cooperate with each other in any reasonable and lawful arrangements designed to provide to Buyer the benefits of use of such asset that it would have obtained had the asset been conveyed to Buyer at the Closing.

2.10 LLC Licenses. Buyer hereby grants to the Company a non-exclusive, limited, revocable, non-transferable, royalty-free license under the Purchased Intellectual Property and any Sublicensee Improvements thereto (without the right to sublicense, except to the counterparties of the LLC Licenses) to (a) perform contract research services using the 404pi Products which are in inventory as of the Closing, (b) to offer for sale, sell and support any 404pi Products which are in inventory as of the Closing and (c) to offer for sale, sell and support any

consumables used in connection with such 404pi Products; provided, that the Company's rights under the license granted in this Section 2.10 may be exercised solely by the current counterparties of the LLC Licenses pursuant to the terms therein and provided further that this license shall be co-terminus with the LLC Licenses. The Company agrees and acknowledges that the license granted in this Section 2.10 is provided on an "as is" basis with no warranty of any kind. Buyer acknowledges and agrees that it is taking its right to the Purchased Assets subject to the license granted in this Section 2.10 and the Licensed IP Rights previously granted under the LLC Licenses. The Company shall not (a) assign or permit any counter party to the LLC License to assign the LLC License to any third party, (b) expand the scope of the Licensed IP Rights granted under the LLC Licenses, (c) amend or modify or waive any rights under the LLC License, nor (d) enter into a new or superseding agreements with respect to the subject matter of the LLC Licenses without the express prior written consent of Buyer.

2.11 Employees. No Company employees or officers or any Liabilities relating thereto shall be transferred to Buyer as a result of the transactions contemplated by this Agreement and any Ancillary Agreement. Notwithstanding the foregoing, at any time before or after the Closing, Buyer shall have the right, but not the obligation, to contact and/or solicit for hire one or more former employees of the Company and/or its Affiliates and Company hereby agrees, upon written request by Buyer, to reasonably assist Buyer in connection with the foregoing.

### ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to the Company that the following statements are correct and complete as of the date hereof.

3.1 Organization of Buyer. Buyer is duly organized, validly existing, and in good standing under the Laws of the State of Delaware.

3.2 Authorization of Transaction. Buyer has full power and authority to execute and deliver this Agreement and the Ancillary Agreements to which it is a party and to perform its obligations hereunder and thereunder. The execution and delivery by Buyer of this Agreement and the Ancillary Agreements to which it is a party and the performance by Buyer of the transactions contemplated hereby and thereby have been duly approved by all requisite corporate or other applicable action of Buyer, as the case may be. Assuming the due authorization, execution and delivery of this Agreement by the Company, this Agreement constitutes the valid and legally binding obligation of Buyer, enforceable against it in accordance with the terms of this Agreement, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors generally and by the availability of equitable remedies. Assuming the due authorization, execution and delivery by the other parties thereto, upon the execution and delivery by Buyer of each Ancillary Agreement to which it is a party, such Ancillary Agreement will constitute the valid and legally binding obligation of Buyer, enforceable against it in accordance with the terms of such Ancillary Agreement, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors generally and by the availability of equitable remedies. Buyer is not required to give any notice to, make any filing with, or obtain any Consent of any Governmental

Authority in order to consummate the transactions contemplated by this Agreement or the Ancillary Agreements to which Buyer is a party.

3.3 Non-contravention. Neither the execution nor the delivery of this Agreement nor the Ancillary Agreements to which Buyer is a party, nor the consummation of the transactions contemplated hereby and thereby, will (a) violate or conflict with any Law or Order to which Buyer is subject or (b) violate any provision of the Organizational Documents of Buyer.

3.4 No Other Representations. BUYER MAKES NO REPRESENTATION OR WARRANTY OTHER THAN AS SET FORTH IN THIS ARTICLE 3, WHETHER EXPRESS OR IMPLIED INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ALL SUCH WARRANTIES ARE EXPRESSLY DISCLAIMED.

#### ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to Buyer that the following statements are correct and complete as of the date hereof, except as set forth in the Disclosure Schedule.

4.1 Organization, Qualification, and Power. The Company is duly organized, validly existing, and in good standing under the Laws of the State of Delaware. The Company is duly authorized to conduct its business and is in good standing under the Laws of each jurisdiction where such qualification is required except where the failure to be so qualified would not have a material impact on the Company or the Purchased Assets. The Company has the full corporate power and authority and all Permits necessary to carry on the businesses in which it is engaged and to own, lease and use the properties owned, leased and used by it. The Company is not in default under or in violation of any material provision of its Organizational Documents.

4.2 Authority; Binding Nature of Agreements. The Company has full power and authority to execute and deliver this Agreement and the Ancillary Agreements to which it is a party and to perform its obligations hereunder and thereunder. The execution and delivery by the Company of this Agreement and the Ancillary Agreements to which it is a party and the performance by the Company of the transactions contemplated hereby and thereby have been duly approved by all requisite corporate or other applicable action of the Company. Assuming the due authorization, execution and delivery of this Agreement by Buyer, this Agreement constitutes the valid and legally binding obligation of the Company, enforceable against it in accordance with the terms of this Agreement, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors generally and by the availability of equitable remedies. Assuming the due authorization, execution and delivery by the other parties thereto, upon the execution and delivery by the Company of each Ancillary Agreement to which it is a party, such Ancillary Agreement will constitute the valid and legally binding obligation of the Company, enforceable against it in accordance with the terms of such Ancillary Agreement, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors generally and by the availability of equitable remedies.

4.3 Non-contravention. Neither the execution and delivery of this Agreement nor the Ancillary Agreements to which the Company is a party, nor the consummation of the transactions contemplated hereby or thereby, will (a) violate or conflict with any Law or Order to which the Company is subject, (b) violate or conflict with any provision of the Organizational Documents of the Company, or (c) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice, Consent or payment under any Contract, Permit, instrument or other arrangement to which any of the Purchased Assets is subject (or result in the imposition of any Lien upon any of the Purchased Assets). The Company is not required to give any notice to, make any filing with, or obtain any Consent or Permit of any Governmental Authority or other Person in order to consummate the transactions contemplated by this Agreement or the Ancillary Agreements.

4.4 Broker's Fees. The Company has no Liability to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated by this Agreement or any Ancillary Agreement. If, despite the foregoing, the Company is obligated to pay any such fees or commissions, the Company shall be solely responsible for payment of such fees and commissions.

4.5 Assets. The Company has good and marketable title to, or a valid leasehold interest or license in, the Purchased Assets, free and clear of all Liens. The Purchased Assets include all property and assets owned or controlled by or licensed to the Company and its Affiliates in connection with the research, development, manufacture, promotion, offer for sale, sale or other distribution or exploitation of Products or of the Purchased Technology.

4.6 Intellectual Property.

(a) Schedule 4.6(a) of the Disclosure Schedule sets forth a complete and accurate list of all material Purchased Intellectual Property and such list includes and generally separately sets forth the following: (i) Purchased Patents, (ii) Purchased Trademarks that are registered (including any applications) with a Governmental Authority, (iii) Purchased Copyrights that are registered (including any applications) with a Governmental Authority, (iv) software included in the Purchased Know-How, indicating for each of the foregoing (i) through (iii) (whenever applicable) the (A) applicable jurisdiction of registration or filed application, (B) registration number, publication number and/or application number, and (C) dates of filing, publication, issuance and renewal. None of the Purchased Intellectual Property set forth on Schedule 4.6(a)(i) – (iii) of the Disclosure Schedule have been abandoned (except as stated therein), and such Purchased Intellectual Property has been and continues to be timely prosecuted. All necessary maintenance fees, annuities and renewals for such Purchased Intellectual Property have been timely paid to continue all such rights in effect, and none of such Purchased Intellectual Property have expired, lapsed, been declared invalid (in whole or in part), or declared unenforceable by any Governmental Authority (except as stated therein).

(b) Except as disclosed on Schedule 4.6(b), the Company is the sole and exclusive owner of all right, title and interest in and to the Purchased Intellectual Property, free and clear of all Liens, including ownership of pending and accrued causes of action for infringement and misappropriation and has the sole and exclusive right to bring actions for infringement or misappropriation of any Purchased Intellectual Property. The Company has not

(i) transferred ownership of the Purchased Intellectual Property, (ii) granted a license to or right to use, or authorized the retention of any rights to use or joint ownership of, any Purchased Intellectual Property to any other Person, except for (A) the Licensed IP Rights granted under the LLC Licenses, (B) non-exclusive use licenses granted to customers in the ordinary course of business, and (C) non-exclusive, non-transferrable, irrevocable, paid-up licenses to DARPA, NIH, NSF, and the U.S. Air Force with respect to federal research grants received by the Company from these federal agencies, which licenses give each respective federal agency the right to practice or have practiced for or on behalf of the United States any invention subject to the applicable grant throughout the world, or (iii) abandoned or permitted the Purchased Intellectual Property to enter into the public domain. The Purchased Intellectual Property is free of all payment obligations and other Liens and is not subject to any Orders or limitations or restrictions on use or otherwise.

(c) The Company has the right to assign its right, title and interest in the Purchased Intellectual Property to Buyer as set forth in this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby. Immediately after the Closing, Buyer will be the sole owner of all right, title and interest in and to the Purchased Intellectual Property, and will have valid rights to use, license and transfer the Purchased Intellectual Property in the same manner and on the same terms that the Company had immediately prior to the Closing. Neither the execution, delivery or performance of the Agreement nor the consummation of the transactions contemplated hereby will: (i) contravene, conflict with or result in any limitation on the Company's right, title or interest in or to any of the Purchased Intellectual Property (except as contemplated by this Agreement); (ii) result in the release, disclosure or delivery of any Purchased Intellectual Property by or to any escrow agent or other Person; or (iii) cause the grant, assignment or transfer to any other Person of any license or other right or interest under, to or in any of the Purchased Intellectual Property (except as contemplated by this Agreement).

(d) The Company has not licensed or otherwise granted rights in or to any of the Purchased Intellectual Property to any Person except for the Licensed IP Rights granted under the LLC Licenses. The Company does not possess and has never possessed any licenses, or options to obtain a license, to any Intellectual Property or Know-How that is owned or controlled by any Person other than the Company and that is necessary or useful to the research, development, manufacture, promotion, offer for sale, sale or other distribution or exploitation of Products or of the Purchased Technology.

(e) To the Knowledge of the Company, no Person has violated, infringed, misappropriated or unlawfully used any of the Purchased Intellectual Property. Immediately after the Closing, the Buyer will have sole right to bring actions for infringement or misappropriation of the Purchased Intellectual Property. The Company has not commenced or threatened any Proceeding, or asserted any allegation or claim, against any Person for infringement, misappropriation or other violation of the Purchased Intellectual Property.

(f) Neither the Company nor any of its Affiliates have received notice of, nor is a party to, any pending Proceeding or any allegation or claim in which any Person alleges that the research, development, manufacture, promotion, offer for sale, sale or other distribution or exploitation of Products or of the Purchased Technology by the Company or any of its Affiliates exploitation of the Purchased Intellectual Property has infringed, misappropriated or otherwise

violated any Person's Intellectual Property or Know-How or constitutes unfair competition or trade practices under the Laws of any jurisdiction.

(g) With respect to the Purchased Intellectual Property, no Proceeding is pending or, to the Knowledge of the Company, is threatened that challenges the validity, enforceability, inventorship, patentability, claim construction, use or ownership of or the Company's right to grant a license or other right to the item and, to the Knowledge of the Company, no valid basis exists for a challenge to the validity, enforceability, inventorship, patentability, claim construction, use or ownership of the item, which challenge is more likely than not to be successful.

(h) The Company has taken commercially reasonable steps to protect and preserve the Purchased Intellectual Property and other material Confidential Information included in the Purchased Assets. All current and past employees, consultants and independent contractors of the Company have entered into written agreements that provide the Company with protection of the Purchased Intellectual Property or other Confidential Information included in the Purchased Assets. Each current or former employee of, or consultant or independent contractor to, the Company, who has contributed to the creation or development of any Purchased Intellectual Property (each a "**Contributor**") has assigned or licensed (including by application of applicable Law) to the Company any and all rights that such Person may have had to such Purchased Intellectual Property and the Purchased Know-How. Without limiting the foregoing, no Contributor owns, or has any right, claim, interest or option (including the right to further remuneration or consideration) with respect to, any Purchased Intellectual Property. No Contributor has made any assertions in writing to the Company or any of its Affiliates with respect to any alleged ownership of, or any right, claim, interest or option with respect to, any Purchased Intellectual Property, or has threatened any such assertion, and neither the execution of this Agreement, nor the consummation of the transactions contemplated by this Agreement, will provide any Contributor with any such right, claim, interest or option.

#### 4.7 Contracts.

(a) The Company is not a party to any currently in-force Contract that prohibits or restricts the exploitation of the Purchased Intellectual Property, or that restricts in any manner the use, transfer or licensing thereof by the Company or may affect the validity or enforceability of the Purchased Intellectual Property, nor does the Company have any current Liabilities or based upon the Knowledge of the Company the potential for future Liabilities under any Contract (including any expired or terminated Contract) that would prohibit or restrict the exploitation of the Purchased Intellectual Property, or that would restrict in any manner the use, transfer or licensing thereof by the Company or may affect the validity or enforceability of the Purchased Intellectual Property.

(b) The Company is not and has not been a party to a Contract that was in-force during any portion of the last three years preceding the date hereof and that prohibited or restricted the exploitation of the Purchased Intellectual Property, or that restricted in any manner the use, transfer or licensing thereof by the Company or affected the validity or enforceability of the Purchased Intellectual Property. The Company has delivered or has made available to Buyer a correct and complete copy of each such Contract requested by Buyer.

4.8 Affiliates. No Affiliate of the Company (other than the LLC Licenses) has any right, title or interest in any Purchased Assets, the Purchased Technology, the Product or any other assets that relate to, or were used or generated in connection with the research, development, manufacture, promotion, offer for sale, sale or other distribution or exploitation of Products or of the Purchased Technology.

4.9 Disclosure. Buyer has been provided access to accurate and complete copies of all documents referred to on the Disclosure Schedule. As used throughout this Agreement the term “delivered to Buyer” and/or “made available” shall include providing an accessible copy via email to the Chief Executive Officer of the Buyer by the close of business at 5:00 p.m. Pacific Time two days prior to the date hereof. All information and data provided by or on behalf of the Company to Buyer on or before the date hereof in contemplation of this Agreement was and is true and accurate and complete in all material respects, and the Company has not disclosed, failed to disclose, or cause to be disclosed, any material information or data that would reasonably be expected to cause the information and data that has been disclosed to be misleading in any material respect.

4.10 Absence of Liabilities. Except as disclosed in Schedule 4.10, as of the Effective Date, based upon the Knowledge of the Company, there are no Liabilities related to the Company except such Liabilities that are not, in the aggregate, in an amount greater than \$50,000.

4.11 Litigation. As of the Effective Date, there is no suit, claim, action, investigation or proceeding pending or, to the Knowledge of the Company, threatened against the Company, that relates to the Purchased Assets which challenges or seeks to prevent or enjoin the transactions contemplated by this Agreement.

4.12 No Other Representations. COMPANY MAKES NO REPRESENTATION OR WARRANTY OTHER THAN AS SET FORTH IN THIS ARTICLE 4, WHETHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ALL SUCH WARRANTIES ARE EXPRESSLY DISCLAIMED.

4.13 EXPIRATION OF WARRANTIES. THE REPRESENTATIONS AND WARRANTIES MADE BY COMPANY UNDER ARTICLE 4 SHALL EXPIRE AT THE END OF THE EARN-OUT TERM.

## ARTICLE 5 ADDITIONAL COVENANTS

5.1 General. In case any further action is necessary to carry out the purposes of this Agreement or any Ancillary Agreement, each of the Parties will take such further action (including the execution and delivery of such further instruments and documents) as the other Party may reasonably request.

5.2 Confidentiality. The Company agrees not to and to cause its Affiliates not to disclose or use any Confidential Information except as may be required in order to perform their respective obligations under this Agreement or any Ancillary Agreement or the LLC Licenses or

except as may be required under applicable Law. In the event that the Company is requested or required pursuant to written or oral question or request for information or documents in any legal proceeding, interrogatory, subpoena, civil investigation demand, or similar process to disclose any Confidential Information, the Company will notify Buyer promptly of the request or requirement so that Buyer may seek an appropriate protective order or waive compliance with the provisions of this Section 5.2. If, in the absence of a protective order or the receipt of a waiver hereunder, the Company is, on the advice of counsel, compelled to disclose any Confidential Information, the Company may disclose such Confidential Information; provided, however, that the Company shall use its reasonable efforts to obtain, at the request of Buyer, an order or other assurance that confidential treatment will be accorded to such portion of the Confidential Information required to be disclosed as Buyer shall designate. The foregoing provisions shall not apply to any Confidential Information that is generally available to the public immediately prior to the time of the Company's disclosure unless such Confidential Information is so available due to the unauthorized actions of the Company. The Company shall treat and hold as confidential all of the terms and conditions of this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby; provided, however, that the Company may disclose such information to its legal counsel, accountants, or other advisors on an as-needed basis so long as any such Person is bound by a written agreement with confidentiality obligation at least as protective of the Confidential Information as the obligation set forth in this Section 5.2.

5.3 Purchase Price Allocation. Buyer will use reasonable efforts to prepare a schedule setting forth the allocation of the Purchase Price within thirty (30) days following the Closing (the "**Allocation**"). Buyer and the Company shall report the transaction hereunder consistently with the Allocation for all federal, state, local and applicable foreign Tax purposes, and shall take no position inconsistent with the Allocation on any Tax Return or before any Tax authority unless required to do so pursuant to a final determination within the meaning of Section 1313 of the Code.

5.4 Audit Rights. Once per calendar year following the Closing and until one year after the Earn-out Term, the Company or its designee shall have the right to retain and cause an independent, certified public accountant reasonably acceptable to Buyer to conduct an audit of relevant records of Buyer, its Affiliates and licensees in order to confirm Net Sales of any Product and the amount of Earn-out Payments payable during the prior twelve-month period pursuant to Section 2.5. Such audits may be conducted during normal business hours at the headquarter offices of Buyer upon reasonable prior written notice to such Party. Buyer shall include, in any relevant agreement with its Affiliates and licensees that have the right to sell Products, such audit rights in favor of the Company. The Company shall bear the full cost of such audit unless such audit properly discloses that the Earn-out Payments that have been underpaid exceeds by ten percent (10%) of the aggregate Earn-out Payments that were owed during the applicable period, in which case, Buyer shall bear the full cost of such audit. Buyer shall remit any undisputed underpayment of Earn-out Payments in accordance with Section 2.5. Any over-payment of Earn-out Payments may be recovered by Buyer on demand or by deducting the amount thereof from any future Earn-out Payments.

5.5 Development Plan. Within ninety (90) days after the Closing Date and within ninety (90) days of the first and second anniversary thereof, Buyer (either directly or through



agents, Affiliates and/or licensees) shall prepare and disclose to the Company a brief summary of a forward-looking, annual development plan for the development, commercialization, sale and other exploitation of the Purchased Technology and any Product incorporating the same (each, an “**Annual Development Plan**”). The Company shall treat each such Annual Development Plan as Buyer’s Confidential Information. If requested by Buyer, the Company shall discuss with Buyer regarding the Annual Development Plan and answer any questions Buyer may have regarding the contemplated development, commercialization and other exploitation of the Purchased Technology and any Product incorporating the same. Notwithstanding the foregoing, Buyer shall have the right to modify its Development Plan at any time.

#### 5.6 Improvements.

(a) All improvements, modifications, or derivative works, in each case made after the Closing Date, of or resulting from the Purchased Technology, the Purchased Intellectual Property, or the subject matter described or claimed therein or covered thereby (collectively, “**Improvements**”) created or developed by Buyer shall be owned solely and exclusive by Buyer. No rights or licenses, express or implied, are granted hereunder by Buyer in or to such Improvements made by it or any of its Affiliates. Buyer shall not have any obligation to provide the Company or any of its Affiliates with any such Improvement or tangible embodiment thereof.

(b) All Improvements created or developed by the Company or any of its Affiliates or the counterparties to the LLC Licenses shall be owned solely and exclusively by Buyer. The Company hereby assigns, and shall cause its Affiliates and the counterparties to the LLC Licenses to assign, to Buyer all of the Company’s and such other Person’s right, title and interest in and to any Improvements, provided that any Improvements created or developed by Bridget Gordon and Slava Petropavlovskikh while exercising their rights under the LLC Licenses (“**Sublicensee Improvements**”) shall be subject to the license set forth in Section 2.10.

5.7 Trademark Usage. After the Closing, the Company and its Affiliates shall cease any and all use of Purchased Trademarks.

### ARTICLE 6 THE CLOSING

6.1 Company Deliverables. At the Closing, the Company shall deliver, or cause to be delivered, the following to Buyer:

- (a) all of the Purchased Assets;
- (b) duly executed signature pages to this Agreement and each of the Ancillary Agreements; and
- (c) the Consents set forth on Schedule 6.1(c).

6.2 Buyer Deliverables. At the Closing, Buyer shall deliver, or cause to be delivered, the following to the Company:

(a) duly executed signature pages to this Agreement and each of the Ancillary Agreements; and

(b) the Base Consideration.

6.3 Delivery Method for Purchased Books and Records. As part of Company's obligations under Section 6.1, the Company shall deliver, via electronic transmission or load and leave procedures, or such other format mutually agreed upon by the Parties, all Purchased Books and Records that can be reasonably collected through good faith effort of the Company. If Company or Buyer discover at any time after the Closing that the Company or its Affiliates possess or controls copies of any Purchased Books and Records, Company agrees to promptly, and at no additional cost, to provide Buyer, via electronic transmission or load and leave procedures, or such other format mutually agreed upon by the Parties with such copies.

## ARTICLE 7 INDEMNITY; LIMITATION OF LIABILITY

7.1 Indemnification by the Company. Subject to the terms and conditions of this ARTICLE 7, from and after the Closing, the Company shall indemnify and hold harmless Buyer, its Affiliates and their respective Representatives, successors and assigns (the "***Buyer Indemnitees***") from and against, and shall compensate and reimburse the Buyer Indemnitees for, all Losses that any Buyer Indemnitee may suffer, incur, or otherwise become subject to, directly or indirectly, resulting from or arising out of a Third Party Claim in connection with (a) any breach or inaccuracy of any representation or warranty made by the Company in this Agreement, in any Ancillary Agreement, or in any other certificate or instrument that is executed and delivered by the Company to Buyer, without duplication, for purposes of determining (i) whether a breach or inaccuracy of any such representation has occurred and (ii) the amount of Losses resulting from, arising out of or relating to any such breach or inaccuracy, (b) the use of or the research, development, manufacture, commercialization, use or sale of the Purchased Technology or Products by or on behalf of the Company, its Affiliates or Representatives or licensees prior to the Closing Date (or after the Closing Date in connection with the LLC Licenses), (c) any breach of, or failure to perform, any covenant, agreement or obligation, on the part of the Company, in this Agreement or in any Ancillary Agreement, (d) the Retained Liabilities, (e) any Excluded Asset, (f) the failure to comply with any bulk transfer law or similar Law in connection with the transactions contemplated hereby, (g) the exercise of the licenses granted under Section 2.10, the exercise of the Licensed IP Rights granted under the LLC Agreements or the conduct of any activities contemplated thereunder, including the performance of contract research services using the 404pi Products and/or sales of 404pi Products; and (h) any Proceeding relating to any breach or alleged breach, Liability or matter of the type referred to in clauses (a) through (g) of this sentence (including any Proceeding commenced for the purpose of enforcing any of its rights under this ARTICLE 7). The right to indemnification of the Buyer Indemnitees, including payment of any Losses, will not be affected by any investigation conducted with respect to, or any knowledge acquired (or capable of being acquired) by Buyer or any other Buyer Indemnitee at any time.

7.2 Indemnification by Buyer. Subject to the terms and conditions of this ARTICLE 7, from and after the Closing, Buyer will indemnify and hold harmless the Company, its Affiliates, and their respective Representatives, successors and assigns (the "***Company Indemnitees***") from

and against, and shall compensate and reimburse the Company Indemnitees for, all Losses that any Company Indemnitee may suffer, incur, or otherwise become subject to, directly or indirectly, resulting from or arising out of a Third Party Claim in connection with (a) any breach or inaccuracy of any representation or warranty made by Buyer in this Agreement, in any Ancillary Agreement, or in any other certificate or instrument that is executed and delivered by Buyer to the Company, without duplication, for purposes of determining the amount of Losses (but not for purposes of determining whether there is a breach or inaccuracy) or (b) any breach of, or failure to perform, any covenant, agreement or obligation, on the part of Buyer, in this Agreement or in any Ancillary Agreement. The right to indemnification of the Company Indemnitees, including payment of any Losses, will not be affected by any investigation conducted with respect to, or any knowledge acquired (or capable of being acquired) by the Company or any other Company Indemnitee at any time.

7.3 Indemnification Procedure. The Buyer Indemnitees shall be entitled to, and may seek payment of, any indemnification obligations payable pursuant to this ARTICLE 7 or any Losses incurred by Buyer Indemnitees as a result of any breach of any representation, warranty or covenant of Company, by set-off against any Earn-out Payment that has been earned but not yet paid, or by making a claim directly against Company.

7.4 Third-Party Claims.

(a) If a Third Party initiates a Claim or Proceeding (a “**Third-Party Claim**”) against either a Buyer Indemnitee or a Company Indemnitee (the “**Indemnified Party**”) with respect to any matter that the Indemnified Party shall be entitled to make a claim against the other Party (the “**Indemnifying Party**”) under this ARTICLE 7, then the Indemnified Party must promptly notify the Indemnifying Party in writing of the existence of such Third-Party Claim and must deliver copies of any documents served on the Indemnified Party with respect to the Third-Party Claim; provided, however, that any failure on the part of an Indemnified Party to so notify an Indemnifying Party shall not limit any of the obligations of the Indemnifying Party under this ARTICLE 7, except to the extent such failure materially prejudices the defense of such Proceeding.

(b) Upon receipt of the notice described in Section 7.4(a), the Indemnifying Party will have the right to defend the Indemnified Party against the Third-Party Claim with counsel reasonably satisfactory to the Indemnified Party, provided, that (i) 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 its indemnification obligations hereunder and unconditionally confirms in writing and that it will pay all amounts that the Indemnified Party becomes obligated to pay in respect of such Third-Party Claim, (ii) the Third-Party Claim involves only money damages and does not seek an injunction or other equitable relief, (iii) settlement of, or an adverse judgment with respect to, the Third-Party Claim is not, in the reasonable good faith judgment of the Indemnified Party, likely to (A) restrict or limit the ability of the Indemnified Party to conduct its business and affairs in the ordinary course of business consistent with past practices, (B) establish a precedential custom or practice adverse to the continuing business interests or the reputation of the Indemnified Party, or (C) not provide a full release for the Indemnified Party from the Third Party Claim, and (iv) the Indemnifying Party conducts the defense of the Third-Party Claim actively and diligently; and provided, further, that, notwithstanding anything in this Agreement to the contrary, Buyer shall

have the sole right to control the defense of any Third Party Claim involving or pertaining to any Purchased Intellectual Property or any Product. The Indemnifying Party will keep the Indemnified Party apprised of all material developments, including settlement offers, with respect to the Third-Party Claim and permit the Indemnified Party to participate in the defense of the Third-Party Claim. So long as the Indemnifying Party is conducting the defense of the Third-Party Claim in accordance with this Section 7.4(b), the Indemnifying Party will not be responsible for any attorneys' fees or other expenses incurred by the Indemnified Party regarding the Third-Party Claim.

(c) In the event that any of the conditions under Section 7.4(b) is or becomes unsatisfied, (i) the Indemnified Party may defend against, and consent to the entry of any judgment on or enter into any settlement with respect to, the Third-Party Claim in any manner it may reasonably deem appropriate, (ii) the Indemnifying Party will reimburse the Indemnified Party promptly and periodically for the costs of defending against the Third-Party Claim (including reasonable attorneys' fees and expenses for one counsel), and (iii) the Indemnifying Parties will remain responsible for any Losses the Indemnified Party may suffer resulting from, arising out of or caused by the Third-Party Claim to the extent provided in this ARTICLE 7.

7.5 LIMITATION OF LIABILITY. EXCEPT IN CASES OF FRAUD OR WITH RESPECT TO AN INDEMNIFICATION OBLIGATION HEREUNDER, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES IN CONNECTION WITH THIS AGREEMENT OR ANY ANCILLARY AGREEMENT, INCLUDING DAMAGES FOR LOST PROFITS OR LOST REVENUES REGARDLESS OF WHETHER THE OTHER PARTY HAS BEEN INFORMED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OR THE TYPE OF CLAIM, CONTRACT OR TORT (INCLUDING NEGLIGENCE).

7.6 Except in the event of fraud, the Company's maximum liability to Buyer under Section 7.1(a) for a breach of the Company warranties in Sections 4.6(e), (f), (g), and (h) shall not exceed the Purchase Price.

## ARTICLE 8 MISCELLANEOUS

8.1 Press Releases and Public Announcements. Each party agrees not to issue any press release or other public statement, whether oral or written, disclosing the existence of this Agreement or any information relating to this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, provided however, that neither party will be prevented from complying with any duty of disclosure it may have pursuant to law or governmental regulation.

8.2 No Third-Party Beneficiaries. Except with respect to the indemnified parties under Article 7, this Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

8.3 Entire Agreement. This Agreement (including the Ancillary Agreements and the documents referred to herein) constitutes the entire agreement between the Parties and supersedes

any other prior understandings, agreements, or representations by or among the Parties, written or oral, to the extent they relate in any way to the subject matter hereof.

8.4 Succession and Assignment. Neither this Agreement nor any right, interest or obligation hereunder may be assigned by any Party hereto without the prior written Consent of the other Party hereto (which Consent shall not be unreasonably withheld) and any attempt to do so will be void; provided however, such prior written Consent will not be required with respect to an assignment by either Party (a) to an Affiliate of such Party so long as such Party remains bound by the terms hereof, or (b) in connection with a merger, sale or transfer involving all or substantially all of the assets of such Party; provided further, such prior written Consent will not be required with respect to an assignment by Buyer in connection with a merger, sale or transfer involving all or substantially all of the Purchased Assets. This Agreement is binding upon, inures to the benefit of and is enforceable by the Parties hereto and their respective successors and permitted assigns.

8.5 Counterparts. This Agreement may be executed in one or more counterparts (including by means of facsimile or by .pdf, .tif, .gif, .peg or similar attachment to electronic mail), each of which shall be deemed an original but all of which together will constitute one and the same instrument.

8.6 Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

8.7 Notices. All notices, requests, demands, claims, and other communications hereunder will be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given (a) when delivered personally to the recipient, (b) when sent by electronic mail or facsimile, on the date of transmission to such recipient, provided that the recipient acknowledges receipt, (c) one Business Day after being sent to the recipient by national overnight courier service (charges prepaid), or (d) four Business Days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, and, in each case, addressed to the intended recipient as set forth below:

If to the Company:	BiOptix Diagnostics, Inc., 834-F South Perry Street, Suite 443 Castle Rock, CO 80104 Attn: Jeffrey McGonegal, CFO Email: jmcgonegal@venaxis.com
Copy (which shall not constitute notice) to:	Sichenzia Ross Ference Kesner LLP 1185 Avenue of the Americas, 37th Floor New York, NY 10036 Attn: Harvey Kesner Email: hkesner@srfklp.com
If to Buyer:	Carterra, Inc. 825 North 300 West, Suite C309 Salt Lake City, UT 84103

Attn: Josh Eckman  
Email: jeckman@carterra-bio.com

Copy (which shall not constitute notice) to: Latham & Watkins LLP  
12670 High Bluff Drive  
San Diego, CA 92130  
Attn: Steven T. Chinowsky, Esq.  
Facsimile: (858) 523-5450  
Email: [steven.chinowsky@lw.com](mailto:steven.chinowsky@lw.com)

Either Party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other Party notice in the manner herein set forth.

#### 8.8 Governing Law; Dispute Resolution.

(a) This Agreement shall be governed by and construed in accordance with the domestic Laws of the State of New York, without giving effect to any choice or conflict of Law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the Laws of any other jurisdiction other than the State of New York. Each of the Parties irrevocably consents to the exclusive jurisdiction and venue of the federal and state courts located in San Diego, California, in connection with any matter based upon or arising out of this Agreement or the transactions contemplated hereby and agrees that process may be served upon it in any manner authorized by the laws of the State of California for such Persons and waives and covenants not to assert or plead any objection which it might otherwise have to such jurisdiction and such process.

(b) The Parties expressly acknowledge and agree any dispute, controversy, or claim arising out of or in any way relating to this Agreement, including but not limited to any valid amendments or modifications to this Agreement and any related agreements, whether sounding in contract, tort, or any other theory of liability, including but not limited to alleged fraud or misrepresentation and claims based upon a federal or state statute (collectively, a “**Dispute**”), shall be resolved exclusively in accordance with the provisions of this Section 8.8(b) and Section 8.8(c). In the event of any Dispute between the Parties, prior to any Party commencing arbitration in accordance with Section 8.8(c), the complaining Party shall first promptly provide a written explanation of the Dispute and designate a representative for purposes of Dispute resolution, delivered in accordance with the notice provisions of Section 8.7. Upon receipt of the complaining Party’s Dispute notice, the receiving Party shall respond in writing to state its position with respect to the Dispute and designate its own representative for purposes of Dispute resolution. The Parties’ respective Representatives shall then promptly meet in person or speak telephonically in a good-faith attempt to resolve the Dispute. If, within 45 days of the date of the complaining Party’s notice of Dispute, (i) the Parties are unable to resolve the Dispute via discussions between their designated Representatives, or (ii) the Parties’ designated Representatives do not engage in good-faith discussions for any reason, then either Party may commence arbitration proceedings in accordance with Section 8.8(c).

(c) Any Dispute that is referred to arbitration proceedings under this Agreement shall be finally resolved by binding arbitration administered by the American Arbitration Association (“AAA”) under its Commercial Arbitration Rules (the “**Rules**”), subject to the following modifications and additional provisions. The Dispute resolution procedures set forth in Sections 8.8(b) and 8.8(c) are the sole and exclusive means for resolving a Dispute, and neither Party shall commence any proceeding (including but not limited to a court action in any jurisdiction) relating to a Dispute other than in accordance with Sections 8.8(b) and 8.8(c):

(i) The arbitration shall be conducted before a single arbitrator to be selected by mutual agreement of the Parties. If the Parties are unable to agree upon a single arbitrator, each Party shall submit a list of three arbitrators in ranked order to AAA, and shall submit to AAA’s selection of a single arbitrator from the collective lists provided by the Parties.

(ii) The arbitration and any hearings relating thereto shall take place in San Diego, California, subject to the Parties’ mutual agreement to a different location.

(iii) Each Party shall bear its own fees and expenses with respect to the arbitration and any Proceeding related thereto, and the Parties shall share equally the fees and expenses of AAA and the arbitrator unless the arbitrator’s award provides for a different allocation of such fees and expenses pursuant to the Rules.

(iv) The arbitrator’s judgment and award shall be final and binding, subject to the following: (A) the arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq., pursuant to which, judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof; and (B) the Parties agree that an appeal from the arbitrator’s judgment may be taken under the AAA’s Optional Appellate Arbitration Rules, such appeal to be conducted at the place of the original arbitration unless otherwise agreed by the Parties.

8.9 Amendments and Waivers. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by Buyer and the Company. No waiver by any Party of any provision of this Agreement or any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be valid unless the same shall be in writing and signed by the Party making such waiver nor shall such waiver be deemed to 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.

8.10 Transfer Taxes. All transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) imposed in connection with this Agreement and the Ancillary Agreements (“**Transfer Taxes**”) will be borne and paid when due by Buyer, and Buyer will prepare or cause to be prepared and cause to be timely filed all necessary Tax Returns and other documentation with respect to all such Transfer Taxes.

8.11 Injunctive Relief. The Parties hereby agree that in the event of breach of this Agreement, damages would be difficult, if not impossible, to ascertain, and that irreparable

damage would occur 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, in addition to and without limiting any other remedy or right it may have, Buyer and the Company shall be entitled to seek an injunction or other equitable relief in any court of competent jurisdiction, without any necessity of proving damages or any requirement for the posting of a bond or other security, enjoining any such breach and enforcing specifically the terms and provisions. The Parties hereby waive any and all defenses they may have on the ground of lack of jurisdiction or competence of the court to grant such an injunction or other equitable relief.

8.12 Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

8.13 Expenses. Except as otherwise provided herein, each Party will bear its own costs and expenses (including legal fees and expenses) incurred in connection with this Agreement, the Ancillary Agreements and the transactions contemplated hereby and thereby.

8.14 Construction. The Parties have participated jointly in the negotiation and drafting of this Agreement. 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 of the provisions of this Agreement. Any reference to any Law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

8.15 Incorporation of Disclosure Schedule. The Exhibits, Disclosure Schedule and other schedules identified in this Agreement are incorporated herein by reference and made a part hereof.

\* \* \*



IN WITNESS WHEREOF, the Parties hereto have executed this Asset Purchase Agreement as of the date first above written.

**BUYER:**

**Carterra, Inc.**

By: 

Name: Josh Eckman

Title: CEO

**COMPANY:**

**BiOptix Diagnostics, Inc.**

By: \_\_\_\_\_

Name: Jeffrey McGonegal

Title: CFO

IN WITNESS WHEREOF, the Parties hereto have executed this Asset Purchase Agreement as of the date first above written.

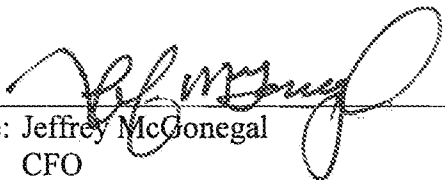
**BUYER:**

**Carterra, Inc.**

By: \_\_\_\_\_  
Name: Josh Eckman  
Title: CEO

**COMPANY:**

**BiOptix Diagnostics, Inc.**

By:  \_\_\_\_\_  
Name: Jeffrey McGonegal  
Title: CFO

## Exhibit A to the Asset Purchase Agreement

### **Patent Assignment**

This PATENT ASSIGNMENT AGREEMENT is dated as of December 6, 2017 (this “**Assignment**”) and is by and between **BIOPTIX DIAGNOSTICS, INC.**, a Delaware corporation having a place of business at 834-F South Perry Street, Suite 443, Castle Rock, CO 80104 (“**Assignor**”) and **CARTERRA, INC.**, a Delaware corporation having a place of business at 825 North 300 West Suite C309, Salt Lake City, UT 84013 (“**Assignee**”). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Purchase Agreement (as defined below).

WHEREAS, Assignor is the owner of the patents and patent applications identified on Appendix A (collectively, the “**Assigned Patents**”);

WHEREAS, Assignor and Assignee have entered into that certain Asset Purchase Agreement, dated December 6, 2017 (the “**Purchase Agreement**”), pursuant to which Assignor has agreed to sell, transfer, assign and deliver to Assignee, and Assignee has agreed to purchase, acquire, assume and accept from Assignor all of its right, title and interest in and to the Purchased Assets, all upon the terms and subject to the conditions set forth in the Purchase Agreement, which assets include the Assigned Patents; and

WHEREAS, this Assignment is being executed and delivered pursuant to Section 6.1(b) of the Purchase Agreement.

NOW, THEREFORE, in accordance with the Purchase Agreement and in consideration of the premises and the mutual agreements and covenants set forth in this Agreement and the Purchase Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereby agree as follows:

1. Assignment. Assignor hereby sells, conveys, transfers, assigns and delivers to Assignee all of Assignor’s right, title and interest throughout the world in, to and under, the Assigned Patents, including any continuation, continuation-in-part, divisional, extension, substitution, re-examination or reissue thereof or any legal equivalent in the United States or a foreign country for the full term or terms for which the same may be granted, including the right to claim priority in accordance with international treaties and conventions, the right to all income, royalties, damages and payments hereafter due or payable with respect to the Assigned Patents, the right to prosecute, maintain and defend the Assigned Patents before any public or private agency, office or registrar, and all claims, causes of action and rights to sue for past, present and future infringement or unconsented use of the Assigned Patents. The assignments contemplated herein are meant to be absolute assignments and not by way of security. Assignor hereby authorizes the Commissioner of Patents and Trademarks in the United States Patent and Trademark Office, and the corresponding entities or agencies in any applicable foreign countries or multinational authorities, to record Assignee as the assignee of all of Assignor’s right, title and

interest in, to and under the Assigned Patents and to deliver to Assignee, and to Assignee's attorneys, agents, successors or assigns, all official documents and communications.

2. No Third Party Beneficiaries. This Assignment is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein expressed or implied shall give or be construed to give to any person, other than the parties hereto and such successors and assigns, any legal or equitable rights hereunder.

3. Terms of Purchase Agreement; Conflicts. The scope, nature, and extent of the Purchased Assets are expressly set forth in the Purchase Agreement. Nothing contained herein changes, amends, extends, or alters (nor should it be deemed or construed as changing, amending, extending, or altering) the terms or conditions of the Purchase Agreement in any manner whatsoever. This instrument does not create or establish rights, liabilities or obligations not otherwise created or existing under or pursuant to the Purchase Agreement. The parties hereto acknowledge and agree that the representations, warranties, covenants, agreements, and indemnities contained in the Purchase Agreement will not be superseded hereby but will remain in full force and effect to the full extent provided therein. In the event of any conflict between the provisions of this Assignment (including the Appendix) and the provisions of the Purchase Agreement (including the Disclosure Schedule and Exhibits), the provisions of the Purchase Agreement shall control.

4. Governing Law. This Assignment, the negotiation, execution or performance of this Assignment shall be governed by and construed in accordance with the domestic Laws of the State of New York, without giving effect to any choice or conflict of Law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the Laws of any other jurisdiction other than the State of New York. Any disputes arising under or related hereto (whether for breach of contract, tortious conduct or otherwise) shall be resolved in accordance with Section 8.8 of the Purchase Agreement.

5. Entire Agreement. This Assignment, and the Appendix annexed hereto, and the Purchase Agreement, constitute the entire understanding among the parties hereto with respect to the subject matter hereof and thereof, and supersede all other understandings and negotiations with respect thereto. The parties agree to define their rights, liabilities, and obligations with respect to such understanding and the transactions contemplated hereby exclusively in contract pursuant to the express terms and provisions of the Purchase Agreement and this Assignment, and the parties hereto expressly disclaim that they are owed any duties or are entitled to any remedies not expressly set forth in this Assignment or the Purchase Agreement.


6. Counterparts. This Assignment may be executed in one or more counterparts (including by means of facsimile or by .pdf, .tif, .gif, .peg or similar attachment to electronic mail), each of which shall be deemed an original but all of which together will constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have duly executed this Assignment as of the date first written above.

**ASSIGNOR:**

**BiOptix Diagnostics, Inc.**

By:   
Name: Jeffrey McGonegal  
Title: CFO

**ASSIGNEE:**

**Carterra, Inc.**

By: \_\_\_\_\_  
Name: Josh Eckman  
Title: CEO

[SIGNATURE PAGE TO PATENT ASSIGNMENT AGREEMENT]

IN WITNESS WHEREOF, the parties have duly executed this Assignment as of the date first written above.

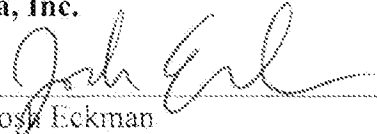
**ASSIGNOR:**

**BiOptix Diagnostics, Inc.**

By: \_\_\_\_\_  
Name: Jeffrey McGonegal  
Title: CFO

**ASSIGNEE:**

**Carterra, Inc.**

By:  \_\_\_\_\_  
Name: Josh Eckman  
Title: CEO

[SIGNATURE PAGE TO PATENT ASSIGNMENT AGREEMENT]

## Appendix A to the Patent Assignment

### ASSIGNED PATENTS

WSGR Ref. No.	Case Type	Country	Application Number	Filing Date	Patent Number	Issue Date	Title	Inventors	Status
32924-701.701	PCT	Canada	2,649,421	04/16/07			POLARIZATION BASED INTERFEROMETRIC DETECTOR	HALL, JOHN; PETROPAVLOVSKI KH, VIATCHESLAV (SLAVA); NILSEN, OYVIND	Allowed; Annuity due 04/16/18
32924-701.711	PCT	China (People's Republic)	200780018285.X	04/16/07	ZL200780018285.X	01/11/12	POLARIZATION BASED INTERFEROMETRIC DETECTOR	HALL, JOHN; PETROPAVLOVSKI KH, VIATCHESLAV (SLAVA); NILSEN, OYVIND	Granted; Annuity due 10/16/17
32924-701.611	PCT	European Patent Convention	7760723.2	04/16/07			POLARIZATION BASED INTERFEROMETRIC DETECTOR	HALL, JOHN; PETROPAVLOVSKI KH, VIATCHESLAV (SLAVA); NILSEN, OYVIND	Allowed; Grant Formalities done 03/17/17 Validated in FR, DE, CH and GB; Annuity due 10/16/17
32924-701.631	EPP	France	07760723.2	04/16/07			POLARIZATION BASED INTERFEROMETRIC DETECTOR	HALL, JOHN; PETROPAVLOVSKI KH, VIATCHESLAV (SLAVA); NILSEN, OYVIND	Published
32924-701.621	EPP	Germany	07760723.2	04/16/07			POLARIZATION BASED INTERFEROMETRIC DETECTOR	HALL, JOHN; PETROPAVLOVSKI KH, VIATCHESLAV (SLAVA); NILSEN, OYVIND	Published
32924-701.761	PCT	Japan	2009-506707	04/16/07			POLARIZATION BASED INTERFEROMETRIC DETECTOR	HALL, JOHN; PETROPAVLOVSKI KH, VIATCHESLAV (SLAVA); NILSEN, OYVIND	TO BE ABAND
32924-701.601	ORD	Patent Cooperation Treaty	US2007/06723	04/16/07			POLARIZATION BASED INTERFEROMETRIC DETECTOR	HALL, JOHN; PETROPAVLOVSKI KH, VIATCHESLAV (SLAVA); NILSEN, OYVIND	30 MO DONE
32924-701.653	EPP	Switzerland	07760723.2	04/16/07			POLARIZATION BASED INTERFEROMETRIC DETECTOR	HALL, JOHN; PETROPAVLOVSKI KH, VIATCHESLAV (SLAVA); NILSEN, OYVIND	Published
32924-701.641	EPP	United Kingdom	07760723.2	04/16/07			POLARIZATION BASED INTERFEROMETRIC DETECTOR	HALL, JOHN; PETROPAVLOVSKI KH, VIATCHESLAV (SLAVA); NILSEN, OYVIND	Published
32924-701.201	ORD	United States of America	11/379,026	04/17/06	7,233,396	06/19/07	POLARIZATION BASED INTERFEROMETRIC DETECTOR	HALL, JOHN; PETROPAVLOVSKI KH, VIATCHESLAV (SLAVA); NILSEN, OYVIND	ISSUED; 3rd Maintenance Fee due 12/19/18
32924-701.301	CON	United States of America	13/929,731	06/27/13	8,830,481	09/09/14	POLARIZATION BASED INTERFEROMETRIC DETECTOR	HALL, JOHN; PETROPAVLOVSKI KH, VIATCHESLAV (SLAVA); NILSEN, OYVIND	ISSUED; 1st Maintenance Fee due 03/09/18
32924-701.302	CON	United States of America	14/452,116	08/05/14			POLARIZATION BASED INTERFEROMETRIC DETECTOR	HALL, JOHN; PETROPAVLOVSKI KH, VIATCHESLAV (SLAVA); NILSEN, OYVIND	Abandoned
32924-701.501	CIP	United States of America	11/735,900	04/16/07	8,488,120	07/16/13	POLARIZATION BASED INTERFEROMETRIC DETECTOR	HALL, JOHN; PETROPAVLOVSKI KH, VIATCHESLAV (SLAVA); NILSEN, OYVIND	ISSUED; 2nd Maintenance Fee due 01/16/21

**Exhibit B to the Asset Purchase Agreement**

**LLC Licenses**



# CONFIDENTIAL

**BiOptix Diagnostics, Inc.  
Discussion Outline Potential Deal Points "Slava"  
May 15, 2017 (ver. 3)**

NOTE: Points are for discussion only and prior to becoming a commitment, would require negotiation and execution of purchase agreements. Either party may discontinue discussions / negotiations at any time by so notifying the other party. Summary proposal points for consideration regarding sale of selected BiOptix Diagnostics, Inc. ("Seller") business assets and operations.

**Proposal for Purchase Agreement to acquire BiOptix Diagnostics' inventory related assets, customer relationships, prospective customer relationships, etc.**

1. Purchaser would be Slava Petropavlovskikh or an entity to be established by Slava.
2. Seller will not object to Purchaser's use of a corporate or trade name including the name Bioptix.
3. Purchaser acquires such instruments and instrument related inventory as Purchaser desires for selling or use in servicing customers, except inventory as discussed at #7 and #13, below. The allocation of chip inventory will be mutually agreed to between the parties.
4. Purchaser acquires rights to customers and prospective customers, including data and any information generated from Seller's sales and marketing prospecting activities to the present. Such data would include any data currently available on Seller's Salesforce.com. data base
5. Seller agrees to use reasonable efforts to transfer at least one Salesforce.com license right to Purchaser.
6. Purchaser agrees to use reasonable and prudent business efforts to service current customers, including warranty obligations and claims. For avoidance of doubt, warranty coverage includes any obligations under Nebraska, Antidote and potential warranty matters associated with Garvan.
7. Purchaser and Seller agree as follows regarding customer service, support and warranty matters:
  - a. Purchaser and Seller shall mutually agree on a plan to communicate to all customers the transition plan of Purchaser taking over service and support.
  - b. For Nebraska, an instrument sale completed in early 2017, if Nebraska demands a modification or recession of the terms of their sale, given the proximity in time to the Seller's corporate business change, then at Seller's sole right to decide, such Nebraska sale may be rescinded or revised. The proceeds from the sale, held by Seller would be used to settle such settlement.
  - c. If, after the expiration of all remaining warranty obligations outstanding at closing of this agreement, there are net sale proceeds from the Nebraska sale net of any potential cash payment settlements for warranty or other claims from any customer existing at the closing of this agreement, the Seller and Purchaser would thereupon split 50/50 such remaining net Nebraska proceeds.
  - d. For avoidance of doubt, any cash paid by Seller for customer warranty or other claim settlements paid to customers by Seller, settled in Seller's sole reasonable

## CONFIDENTIAL

judgement, during the period from closing of this agreement to the expiration of any outstanding warranty obligations, shall be deducted from the net sale proceeds, before the 50/50 split.

- e. If a potential settlement with Nebraska results in their returning the instrument sold, the disposition of such unit shall be determined by Seller when and if it is to be returned.
8. Seller agrees to provide Purchaser with limited rights to IP and know-how to sell the inventory and support customers. Such IP rights would be limited to the sale and service of the existing customer base plus any new customers secured by Purchaser which are sold 404pi instruments from those in inventory or demo stock acquired by Purchaser under this agreement.
9. Purchaser would have right to access as needed computer data files currently stored on Seller's computer drives for the purpose of operating under the terms of this agreement. The data file access would extent at a minimum until the last of the current warranty obligations expire. Such access would include access to copy or extract information from Seller's current Web Site(s), excluding any proprietary corporate legal information.
10. Purchase price for inventory, demo stock and other rights under this agreement, would consist of and be payable to Seller based upon 12% of 404pi instrument sales revenue, subject to the floor that unless Seller agrees to a lower amount, the amount payable per instrument would not be less than \$7,500 per each new unit and \$4,000 per each demo or used unit, and 5% of any other service or consumable sales revenue. Amounts shall be payable to Seller as and when collected by Purchaser. A monthly detailed sales report by customer, item and amount shall be provided to Seller and payment remitted by Seller to Purchaser for the preceding month's sales activity, all remitted by the 15th of the subsequent month.
11. Other than as provided above no other liabilities or assets would be transferred to or assumed by Purchaser unless specifically agreed to in writing by the parties.
12. To facilitate Purchaser's ability operate under this agreement including servicing and fulfilling warranty obligations to customers, Seller shall provide \$18,000, in cash to Purchaser as start-up funding. Such funding shall not be required to be repaid. As consideration for this funding, Seller shall retain rights to Demo units numbered #6, #9 and #15, to use as Seller may determine, including establishing a CRO business or to be used in the support of exiting customer warranty obligations.
13. Purchaser agrees and acknowledges that Seller will be attempting to sell or license the IP rights, trade secrets and know how currently owned by Seller to third parties.

Terms agreed to:

Seller:

By: 

Name: Jeff McGohegal, CFO

Date: May 17, 2017

Purchaser:

By: 

Name: V. Petropavlovskikh

Date: May 17, 2017

PATENT

REEL: 045090 FRAME: 0710

## **CONFIDENTIAL**

**BiOptix Diagnostics, Inc.  
Discussion Outline Potential Deal Points – Bridget Gordon  
May 24, 2017 (ver. 1)**

NOTE: Points are for discussion only and prior to becoming a commitment, would require negotiation and execution of purchase agreements. Either party may discontinue discussions / negotiations at any time by so notifying the other party. Summary proposal points for consideration regarding sale of selected BiOptix Diagnostics, Inc. ("Seller") business assets and operations.

**Proposal for Purchase Agreement to acquire BiOptix Diagnostics' inventory related assets, limited customer and prospective customer relationships, etc.**

1. Purchaser would be Bridget Gordon or an entity to be established by Bridget.
2. Purchaser acquires such 404pi demo units numbered #6, #9 and #15 ("Demo units") and allocation of chip related inventory as to be mutually agreed to between the parties.
3. Purchaser shall use the 404pi units in connection with establishing a CRO business.
4. Purchaser acquires right to service and support customers and prospective customers with services normally associated with sales of chips and assay support.
5. Purchaser agrees to use reasonable and prudent business efforts to service current customers with sales of chips and assay support.
6. The parties shall mutually agree on a plan and timing to communicate to all customers the transition plan of Purchaser taking over chip sales and support
7. Seller agrees to provide Purchaser with rights to IP and process know-how, limited to the operational use with the 404pi Demo units in a CRO business and to use in producing and selling chips and to support customers with chip production and sales and provide assay support. Such right shall include rights to Seller's license to use "Scrubber" and the ability to use the Seller's Data Analysis software.
8. Purchaser would have right to access as needed computer data files currently stored on Seller's computer drives for the purpose of operating under the terms of this agreement. The data file access would extend at a minimum until the last of the current warranty obligations expire.
9. Purchase price for the Demo units, chip related inventory and other rights under this agreement, would consist of and be payable to Seller based upon 8% of the amount of sales from chip sales, 10% of the amount of sales of consulting services and 5% of sales and services generated from the CRO business performed using the Demo / 404pi units services, all with respect to activities associated with 404pi instruments ("Purchase Price"). Amounts shall be payable to Seller as and when collected by Purchaser. A quarterly detailed sales report by customer, item and amount shall be provided to Seller and payment remitted by Seller to Purchaser for the preceding quarter's sales activity, all remitted by the 15<sup>th</sup> of the subsequent month. Purchaser's obligations to Seller, will be considered to be satisfied once a cumulative total Purchase Price of \$50,000 has been paid by Purchaser to Seller. This Purchase Price is non-recourse and Seller's right to collect is limited to the sales and service activities as discussed above.
10. Seller agrees to facilitate Purchaser's assay support efforts to customers with current outstanding warranty periods: currently University of Nebraska, Antidote and Garvan. This support will be computed at \$100/ hour for each hour Purchaser provides non-billed

## CONFIDENTIAL

support to warranted customers, for up to 6 hours per month, limited to the period of the warranty and decreasing by 2 hours per month as each such customer's warranty expires. Such amount shall be settled as a deduction from the quarterly Purchase Price payable to Seller and any such warranty support amounts shall further reduce and be credited against the cumulative total Purchase Price total of \$50,000.

11. Other than as provided in this Agreement, no other liabilities or assets would be transferred to or assumed by Purchaser unless specifically agreed to in writing by the parties.
12. To facilitate Purchaser's ability operate under this agreement including servicing and fulfilling service obligations to customers, Seller shall provide \$7,000, in cash to Purchaser as start-up funding. Such funding shall not be required to be repaid.
13. Purchaser agrees that the 404pi units provided by Seller under this Agreement may not be sold or otherwise disposed of by Purchaser, without Seller's express written approval in advance. In the event such approval is granted and 404pi units are sold, the proceeds would be subject to the 10% fee as provided above. Seller, at Seller's sole discretion, has the right to decline approval for sale or disposal and require that any such 404pi units be returned to Seller.
14. Purchaser agrees and acknowledges that Seller is attempting to enter into a separate agreement for the sale and service of 404pi instruments with Slava Petropavlovskikh.
15. Purchaser agrees and acknowledges that Seller will be attempting to sell or license the IP rights, trade secrets and know how currently owned by Seller to third parties.

Terms agreed to:

Seller:

By: 

Name: Jeff McGonegal, CEO

Date: May 24, 2017

Purchaser:

By: 

Name: Bridget Gordon

Date: May 24, 2017

**Exhibit C to the Asset Purchase Agreement**

**Base Consideration**

Twenty-Five Thousand U.S. Dollars (\$25,000)

**Exhibit D to the Asset Purchase Agreement**

**Earn-out Payment for Section 2.5(b)(i)**

Each quarterly Earn-out Payment Buyer makes to Company shall be equivalent to the lesser of (A) Five Thousand Dollars per Product (excluding replacement products) sold to Third Parties in the Territory during such Calendar Quarter or (B) Two and One Half Percent (2.5%) of the Net Selling Price of the Products (excluding replacement products) sold to Third Parties in the Territory during such Calendar Quarter.

**Exhibit E to the Asset Purchase Agreement**

**Earn-out Payment Limit for Section 2.5(b)(ii)(A)**

Two Million Seven Hundred and Fifty Thousand U.S. Dollars (\$2,750,000)

**SCHEDULES<sup>1</sup>**  
**provided pursuant to the**  
**ASSET PURCHASE AGREEMENT**  
**dated as of December 6, 2017**  
**by and between**  
**Carterra, Inc.**  
**and**  
**Bioptix Diagnostics, Inc.**

In connection with that certain Asset Purchase Agreement (the “**Agreement**”), dated as of December 6, 2017 by and among BiOptix Diagnostics, Inc., a Delaware corporation (the “**Company**”), and Carterra, Inc., a Delaware corporation (the “**Buyer**”), the Company hereby delivers this Schedule of Disclosures / Exceptions (the “**Schedule**”) to the Company’s representations and warranties given in the Agreement. This Schedule and the information and disclosures contained herein are intended only to qualify and limit the representations and warranties of the Company contained in the Agreement, and shall not be deemed to expand in any way the scope or effect of any of such representations or warranties. The section numbers in this Schedule correspond to the section numbers in the Agreement to which the information and disclosures contained herein relate. References to any document do not purport to be complete and are qualified in their entirety by the document itself. Capitalized terms used but not defined herein shall have the same meanings given them in the Agreement.

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<sup>1</sup> The headings contained in these Schedules are for reference purposes only and shall not affect in any way the meaning or interpretation of these Schedules or the Asset Purchase Agreement dated as of December 6, 2017 by and between Carterra, Inc. and Bioptix Diagnostics, Inc.



## Schedule 4.6(a). *Purchased Intellectual Property*

### (i) Purchased Patents

WSGR Ref. No.	Case Type	Country	Application Number	Filing Date	Patent Number	Issue Date	Title	Inventors	Status
32924-701.701	PCT	Canada	2,649,421	04/16/07			POLARIZATION BASED INTERFEROMETRIC DETECTOR	HALL, JOHN; PETROPAVLOVSKIKH, VIATCHESLAV (SLAVA); NILSEN, OYVIND	Allowed; Annuity due 04/16/18
32924-701.711	PCT	China (People's Republic)	200780018285.X	04/16/07	ZL200780018285.X	01/11/12	POLARIZATION BASED INTERFEROMETRIC DETECTOR	HALL, JOHN; PETROPAVLOVSKIKH, VIATCHESLAV (SLAVA); NILSEN, OYVIND	Granted; Annuity due 10/16/17
32924-701.611	PCT	European Patent Convention	7760723.2	04/16/07			POLARIZATION BASED INTERFEROMETRIC DETECTOR	HALL, JOHN; PETROPAVLOVSKIKH, VIATCHESLAV (SLAVA); NILSEN, OYVIND	Allowed; Grant Formalities done 03/17/17 Validated in FR, DE, CH and GB; Annuity due 10/16/17
32924-701.631	EPP	France	07760723.2	04/16/07			POLARIZATION BASED INTERFEROMETRIC DETECTOR	HALL, JOHN; PETROPAVLOVSKIKH, VIATCHESLAV (SLAVA); NILSEN, OYVIND	Published
32924-701.621	EPP	Germany	07760723.2	04/16/07			POLARIZATION BASED INTERFEROMETRIC DETECTOR	HALL, JOHN; PETROPAVLOVSKIKH, VIATCHESLAV (SLAVA); NILSEN, OYVIND	Published
32924-701.761	PCT	Japan	2009-506707	04/16/07			POLARIZATION BASED INTERFEROMETRIC DETECTOR	HALL, JOHN; PETROPAVLOVSKIKH, VIATCHESLAV (SLAVA); NILSEN, OYVIND	TO BE ABAND
32924-701.601	ORD	Patent Cooperation Treaty	US2007/66723	04/16/07			POLARIZATION BASED INTERFEROMETRIC DETECTOR	HALL, JOHN; PETROPAVLOVSKIKH, VIATCHESLAV (SLAVA); NILSEN, OYVIND	30 MO DONE
32924-701.653	EPP	Switzerland	07760723.2	04/16/07			POLARIZATION BASED INTERFEROMETRIC DETECTOR	HALL, JOHN; PETROPAVLOVSKIKH, VIATCHESLAV (SLAVA); NILSEN, OYVIND	Published
32924-701.641	EPP	United Kingdom	07760723.2	04/16/07			POLARIZATION BASED INTERFEROMETRIC DETECTOR	HALL, JOHN; PETROPAVLOVSKIKH, VIATCHESLAV (SLAVA); NILSEN, OYVIND	Published
32924-701.201	ORD	United States of America	11/379,026	04/17/06	7,233,396	06/19/07	POLARIZATION BASED INTERFEROMETRIC DETECTOR	HALL, JOHN; PETROPAVLOVSKIKH, VIATCHESLAV (SLAVA); NILSEN, OYVIND	ISSUED; 3rd Maintenance Fee due 12/19/18
32924-701.301	CON	United States of America	13/929,731	06/27/13	8,830,481	09/09/14	POLARIZATION BASED INTERFEROMETRIC DETECTOR	HALL, JOHN; PETROPAVLOVSKIKH, VIATCHESLAV (SLAVA); NILSEN, OYVIND	ISSUED; 1st Maintenance Fee due 03/09/18
32924-701.302	CON	United States of America	13/452,316	06/05/14			POLARIZATION BASED INTERFEROMETRIC DETECTOR	HALL, JOHN; PETROPAVLOVSKIKH, VIATCHESLAV (SLAVA); NILSEN, OYVIND	Abandoned
32924-701.501	CIP	United States of America	11/735,900	04/16/07	8,488,120	07/16/13	POLARIZATION BASED INTERFEROMETRIC DETECTOR	HALL, JOHN; PETROPAVLOVSKIKH, VIATCHESLAV (SLAVA); NILSEN, OYVIND	ISSUED; 2nd Maintenance Fee due 01/16/21

**(ii) Purchased Trademarks that are registered (including any applications) with a Governmental Authority**

Mark	Country	Appln. No.	Status
BIOPTIX & design	United States	77695988	Abandoned

**(iii) Purchased Copyrights that are registered (including any applications) with a Governmental Authority**

None

**(iv) Software included in the Purchased Know-How**

- 404pi Instrument Control Software.
- 2x 2010b Matlab licenses. Bought outright, no ongoing fee.
- SolidWorks.
- Scrubber. BiOptix has a site license & we sell/give a license with the purchase of a 404pi.
- TeamViewer Version 8. (Open Source)
- Red Gate Software. One-time purchase, and no longer receiving support or upgrades.
- wkhtmltopdf (LGPL license). (Open Source)
- AT91LIB library. (Open Source)
- NI Measurement Studio 2013. 1 developer license, one-time purchase.
- Old Visual Studio 2010 Professional licenses. Not in use, 2015 "Community" edition is free for teams of less than 3-5 developers.
- PDF converter. (Open Source)
- AlgLib and Numerical Recipes code for the analysis tool.

**Schedule 4.6(b). *Purchased Intellectual Property Of Which Company Is Not The Sole And Exclusive Owner Or To Which The Company Has Granted A License***

1. Bioptix Diagnostics, Inc. Discussion Outline Potential Deal Points – Bridget Gordon, dated May 24, 2017 (ver. 1). (This version of the agreement was the final agreement executed.)
2. Bioptix Diagnostics, Inc. Discussion Outline Potential Deal Points “Slava”, dated May 15, 2017 (ver. 3). (This version of the agreement was the final agreement executed.)

**Schedule 4.10. *Absence of Liabilities***

The Company has warranty obligations for two customers' warranty periods (University of Nebraska, Antidote) which expire early in the first quarter of 2018. Such obligations are included in Retained Liabilities.

The Company will incur legal costs in conjunction with this transaction. Legal fees associated with this transaction will be paid by the Company at or after Closing. Such amounts are included in Retained Liabilities.

**Schedule 6.1(c). *Consents***

Attached

**RIOT BLOCKCHAIN, INC.**  
(f/k/a **BIOPTIX, INC.**)  
(a Nevada corporation)

**BIOPTIX DIAGNOSTICS, INC.**  
(a Delaware corporation)

Joint Written Consent  
of the Sole Stockholder and  
Unanimous Written Consents of the  
Boards of Directors

In Lieu of a Meeting

The undersigned, constituting: (i) the holder of all of the voting power of BiOptix Diagnostics, Inc., a Delaware corporation ("BDI"), and (ii) all of the members of the Board of Directors (the "Board") of Riot Blockchain, Inc., a Nevada corporation (the "Corporation"), DO HEREBY CONSENT to the taking of the following actions in lieu of a joint meeting, duly called and held, and do hereby adopt the following resolutions by signing their written consent (this "**Consent**") thereto as of the last date stated below pursuant to Section 78.315 of the Nevada Revised Statutes (the "NRS") and Article IV, Section 9 of the By-Laws of the Corporation, and NRS 78.320 and Article V, Section 9 of the By-Laws of the Corporation.

Furthermore, the undersigned being all of the members of the Board of Directors (the "Board") of BiOptix Diagnostics, Inc., a Delaware corporation (the "Corporation"), hereby consent to and adopt, pursuant to Section 141(t) of the Delaware General Corporation Law, as amended, the following resolutions to the same extent and with the same force and effect as if these resolutions had been duly authorized and adopted at a meeting of the Board duly held and convened at which all directors were present and acting throughout:

#### **Asset Purchase Agreement**

**WHEREAS**, the Boards have determined that it is in the best interests of the Corporation, its shareholders and BDI to proceed on a sale of certain assets associated with the activities of BDI; and

**WHEREAS**, in connection with such a sale, the Board had previously authorized and approved management to proceed to negotiate an agreement under terms as generally described in a letter of intent reviewed by the Boards; and

**WHEREAS**, the Boards deem it advisable and in the best interest of BDI and the Corporation to enter into the Asset Purchase Agreement, substantially in the form attached hereto as Exhibit A (the "Agreement").

#### **NOW, THEREFORE, BE IT**

**RESOLVED**, that the Boards hereby approve the terms of the Agreement, substantially in the form attached hereto as Exhibit A; and it is further

**RESOLVED**, that each of the proper officers of the Corporation is hereby authorized, empowered and directed in the name of and on behalf of the Corporation to execute and deliver any such agreements

or filings and transfer any required assets as provided under the Agreement, as may be needed to accomplish the above actions; and it is further

**RESOLVED**, that each of the proper officers of BDI is hereby authorized, empowered and directed in the name of and on behalf of BDI to execute and deliver any such agreements or filings as may be needed to accomplish the above actions; and it is further

**RESOLVED**, that this Consent of the Boards may be executed in counterparts, and when each director has executed at least one of such counterparts, these resolutions shall be deemed adopted and in full force and effect as of the last date stated below; and it is further

**RESOLVED**, that the action taken by this Consent shall have the same force and effect as if taken at a meeting of the Board, duly called.

#### **Omnibus**

**RESOLVED**, that each of the proper officers of the Corporation (and of BDI) is hereby authorized to perform all such acts and to execute and deliver all such related agreements, documents and instruments, in the name and on behalf of the Corporation and BDI, as such officers shall deem necessary, appropriate or advisable to effectuate the intent and purposes of the foregoing resolutions, such determination to be conclusively evidenced by the performance of each such act and the execution and delivery of each such agreement, document and instrument; and all actions previously taken by any officer of the Corporation and BDI in connection with the foregoing resolutions are hereby adopted, ratified, confirmed and approved in all respects as the acts and deeds of the Corporation and BDI; and be it further

**RESOLVED**, that the Corporation's (and BDI's) Secretary be, and he hereby is, directed to cause a copy of this Written Consent to be inserted into the minute book of the Corporation; and be it further

**RESOLVED**, that, any actions taken by such officers prior to the date of the foregoing resolutions adopted hereby, that are within the authority conferred thereby, are hereby ratified, confirmed and approved as the acts and deeds of the Corporation and BDI; and be it further

**RESOLVED**, that this Consent shall be deemed to be fully executed and delivered when each of the undersigned has executed at least one counterpart, but not necessarily the same counterpart, hereof.

*[Signature page follows]*

IN WITNESS WHEREOF, the undersigned, being the members of the Board of Directors of the Corporation, consent hereto in writing as of December 4, 2017, and direct that this instrument be filed with the minutes of proceedings of the Board of Directors of the Corporation.



John R. O'Rourke

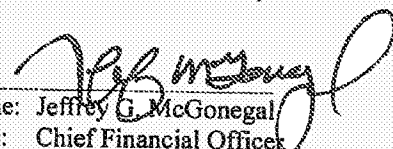
Andrew Kaplan

Eric So

Jason Les

Riot Blockchain, Inc., holder of all of the voting power of  
**BIOPTIX DIAGNOSTICS, INC.**

By:



Name: Jeffrey G. McGonegal

Title: Chief Financial Officer

IN WITNESS WHEREOF, the undersigned, being the members of the Board of Directors of the Bioptix Diagnostics, Inc. consent hereto in writing as of December 4, 2017, and direct that this instrument be filed with the minutes of proceedings of the Board of Directors of BDI.



John R. O'Rourke



Jeffrey G. McGonegal



IN WITNESS WHEREOF, the undersigned, being the members of the Board of Directors of the Corporation, consent hereto in writing as of December 4, 2017, and direct that this instrument be filed with the minutes of proceedings of the Board of Directors of the Corporation.

\_\_\_\_\_  
John R. O'Rourke

\_\_\_\_\_  
Andrew Kaplan

  
\_\_\_\_\_  
Eric So

\_\_\_\_\_  
Jason Les

Riot Blockchain, Inc., holder of all of the voting power of  
**BIOPTIX DIAGNOSTICS, INC.**

By: 

Name: Jeffrey G. McGonegal

Title: Chief Financial Officer

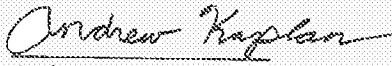
IN WITNESS WHEREOF, the undersigned, being the members of the Board of Directors of the Bioptix Diagnostics, Inc. consent hereto in writing as of December 4, 2017, and direct that this instrument be filed with the minutes of proceedings of the Board of Directors of BDI.

\_\_\_\_\_  
John R. O'Rourke

  
\_\_\_\_\_  
Jeffrey G. McGonegal

IN WITNESS WHEREOF, the undersigned, being the members of the Board of Directors of the Corporation, consent hereto in writing as of December 4, 2017, and direct that this instrument be filed with the minutes of proceedings of the Board of Directors of the Corporation.

\_\_\_\_\_  
John R. O'Rourke

  
\_\_\_\_\_  
Andrew Kaplan

\_\_\_\_\_  
Eric So

\_\_\_\_\_  
Jason Les

Riot Blockchain, Inc., holder of all of the voting power of  
**BIOPTIX DIAGNOSTICS, INC.**

By:   
Name: Jeffrey G. McGonegal  
Title: Chief Financial Officer

IN WITNESS WHEREOF, the undersigned, being the members of the Board of Directors of the Bioptix Diagnostics, Inc. consent hereto in writing as of December 4, 2017, and direct that this instrument be filed with the minutes of proceedings of the Board of Directors of BDI.

\_\_\_\_\_  
John R. O'Rourke


  
\_\_\_\_\_  
Jeffrey G. McGonegal

**IN WITNESS WHEREOF**, the undersigned, being the members of the Board of Directors of the Corporation, consent hereto in writing as of December 4, 2017, and direct that this instrument be filed with the minutes of proceedings of the Board of Directors of the Corporation.

\_\_\_\_\_  
John R. O'Rourke

\_\_\_\_\_  
Andrew Kaplan

\_\_\_\_\_  
Eric So

  
\_\_\_\_\_  
Jason Les

Riot Blockchain, Inc., holder of all of the voting power of  
**BIOPTIX DIAGNOSTICS, INC.**

By:   
Name: Jeffrey G. McGonegal  
Title: Chief Financial Officer

**IN WITNESS WHEREOF**, the undersigned, being the members of the Board of Directors of the Bioptix Diagnostics, Inc. consent hereto in writing as of December 4, 2017, and direct that this instrument be filed with the minutes of proceedings of the Board of Directors of BDI.

\_\_\_\_\_  
John R. O'Rourke

  
\_\_\_\_\_  
Jeffrey G. McGonegal

## EXHIBIT A

### ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "***Agreement***") is made and entered into effective as of October \_\_, 2017 ("***Effective Date***"), by and between CARTERRA, INC., a Delaware corporation having a place of business at 825 North 300 West Suite C309, Salt Lake City, UT 84103 ("***Buyer***"), and BIOPTIX DIAGNOSTICS, INC., a Delaware corporation having a place of business at 834-F South Perry Street, Suite 443, Castle Rock, CO 80104 (the "***Company***"). Buyer and the Company are referred to collectively herein as the "***Parties***" and individually as a "***Party***."

### RECITALS

WHEREAS, the Company developed certain polarization based interferometric detector technology and sensor chip material coating technology (the "***Purchased Technology***"); and

WHEREAS, subject to the terms and conditions set forth herein, the Company desires to sell, assign, transfer and convey and deliver to Buyer and Buyer desires to purchase and acquire from the Company, all of the Company's right, title and interest in and to the Purchased Assets (as defined below).

NOW, THEREFORE, in consideration of the premises and the mutual promises herein made, and in consideration of the representations, warranties and covenants herein contained, the Parties agree as follows.

### ARTICLE 1 CERTAIN DEFINITIONS

Unless the context otherwise requires, the terms defined in this Article shall have the meanings herein specified for all purposes of this Agreement, applicable to both the singular and plural forms of any of the terms defined herein. When a reference is made in this Agreement to Articles or Sections, such reference shall be to an Article or Section of this Agreement unless otherwise indicated. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation."

"***404pi Products***" means the existing inventory of 404pi label-free biosensor instruments and associated consumables and spare parts.

"***Affiliate***" means, with respect to a Party, any Person controlled by, controlling, or under common control with such Party. For the purposes of this definition, the word "control" (including, with correlative meaning, the terms "controlled by" or "under the common control with") means the actual power, either directly or indirectly through one or more intermediaries, to direct or cause the direction of the management and policies of such Person, whether by the ownership of more than fifty percent (50%) of the voting stock of such Person, or by contract or otherwise.

"***Ancillary Agreements***" means the Patent Assignment.

"***Business Day***" means any day that is not a Saturday, Sunday or any other day on which banks are required or authorized by Law to be closed in the State of California.

***"Calendar Quarter"*** means the respective periods of three consecutive calendar months ending on March 31, June 30, September 30 or December 31.

***"Claim"*** means any claims, demands, actions, suits and causes of action, whether class, individual or otherwise in nature, in law or in equity.

***"Code"*** means the Internal Revenue Code of 1986, as amended, and any applicable rules and regulations thereunder, and any successor to such statute, rules or regulations.

***"Confidential Information"*** means any non-publicly available information concerning the Purchased Assets or the Parties which is furnished or made available by a Party to the other Party pursuant to or in respect of the terms of this Agreement and the Ancillary Agreements.

***"Consent"*** means, with respect to any Person, any consent, approval, authorization, permission or waiver of, or registration, declaration or other action or filing with or exemption by such Person.

***"Contract"*** means any legally binding written, oral or other agreement, contract, subcontract, lease, understanding, arrangement, instrument, note, option, warranty, purchase order, license, sublicense, insurance policy, benefit plan or legally binding commitment or undertaking of any nature, together with all amendments thereto.

***"Copyrights"*** means copyrights and copyrightable works (including without limitation databases and other compilations of information, mask works and semiconductor chip rights), including all rights of authorship, use, publication, reproduction, distribution, performance, transformation, moral rights and rights of ownership of copyrightable works and all registrations, application for registration and renewals and extensions thereof, together with all other interests accruing by reason of international copyright, and applications, registrations, extensions and renewals in connection therewith.

***"Disclosure Schedule"*** means the disclosure schedule delivered by the Company to Buyer on the date hereof and attached hereto, corresponding to the sections contained in ARTICLE 4 and certain other Articles herein and containing the information required to be disclosed pursuant to, and certain exceptions to, the representations and warranties in such Articles.

***"Earn-out Payment"*** means any payment that becomes due and payable pursuant to Section 2.5(b)(i).

***"Governmental Authority"*** means any national, international, federal, state, provincial or local government, or political subdivision thereof, or any multinational organization or any authority, agency or commission entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, any court or tribunal (or any department, bureau or division thereof, or any governmental arbitrator or arbitral body).

***"Intellectual Property"*** means Patents, Trade Secrets, Trademarks, and Copyrights anywhere in the world and all legal rights, title, or interest in the following arising under Law, whether or not filed, perfected, registered or recorded and whether now or later existing, filed, issued or acquired, including all renewals.

***"Know-How"*** means any data, results, technology, business or financial information or information of any type whatsoever, in any tangible or intangible form, including know-how, practices, techniques, methods, processes, inventions, developments, specifications,

formulations, formulae, software, algorithms, marketing reports, expertise, technology, test data, manufacturing records, standard operating procedures.

***“Knowledge of the Company”*** means the actual knowledge of Mr. Michael Beeghley, CEO, and Mr. Jeffrey McGonegal, CFO, or directors of the Company and/or its Affiliates, after due and reasonable inquiry.

***“Law”*** means any foreign or domestic federal, state, municipal or local law, statute, code, ordinance, regulation, Order, rule, consent agreement, constitution, treaty or other requirement of any Governmental Authority.

***“Liability”*** means any liability, obligation or commitment of any kind or nature, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, disclosed or undisclosed, liquidated or unliquidated, or due or to become due.

***“Licensed IP Rights”*** means the non-exclusive licenses granted to each of Bridget Gordon and Slava Petropavlovskikh under the LLC Licenses for the limited purpose of permitting such counterparties to sell, support, or perform contract research services using that certain inventory of 404pi Products.

***“Lien”*** means any lien, mortgage, pledge, encumbrance, charge, security interest, adverse claim, liability, interest, charge, preference, priority, proxy, transfer restriction (other than restrictions under federal or state securities laws), encroachment, Tax, Order, community property interest, equitable interest, option, warrant or right of first refusal. For purposes of this definition, contractual obligations with third parties disclosed herein shall not be considered “Liens.”

***“LLC Licenses”*** means that certain Proposal for Purchase Agreement by and between the Company and Slava Petropavlovskikh, dated May 15, 2017, a copy of which is attached hereto as Exhibit B-1 and that certain Proposal for Purchase Agreement by and between the Company and Bridget Gordon, dated May 24, 2017, a copy of which is attached hereto as Exhibit B-2.

***“Losses”*** means all costs, obligations, damages, Liabilities, judgments, fines, penalties, costs, expenses (whether or not arising out of third-party claims), deficiencies, assessments, or other loss or expense, including all interest and penalties, and all amounts paid incident to any compromise or settlement of any action, all costs and expenses of investigating any such action and all reasonable attorneys’ fees and expenses and third-party expert or consulting fees and other reasonable amounts paid or incurred in connection therewith, but shall not include punitive damages except to the extent payable to a Third Party in connection with a Third Party Claim.

***“Net Sales”*** means, with respect to the Product in a country in the Territory, the gross amount invoiced for sales of the Product in such country by Buyer or any of its Affiliates or licensees (other than distributors) from Third Parties (***“Gross Sales”***), less the following deductions, in each case (a) without duplication, (b) where applicable with respect to the Gross Sales invoiced and (c) as incurred in the ordinary course of business in type and amount consistent with good industry practice, as determined in accordance with, and as recorded in revenues under, US GAAP:

(i) sales returns and allowances actually paid, granted or accrued on the Product including trade, quantity, prompt pay and cash discounts and any other adjustments, including those granted on account of price adjustments or billing errors;

(ii) credits or allowances given or made for rejection or return of a previously sold Product or for rebates or retroactive price reductions;

(iii) to the extent not already deducted or excluded from the Gross Sales invoiced, taxes (including sales tax, consumption tax and value added tax), duties (including customs or excise duties) or other governmental charges levied on or measured by the billing amount for the Product as adjusted for rebates and refunds, which, for the avoidance of doubt, shall not include any tax, duty, or other charge imposed on or measured by net income (however denominated), or any franchise taxes, branch profits taxes, or similar tax;

(iv) charges for freight, packing, storage and insurance directly related to the distribution of the Product to the extent not already deducted or excluded from the Gross Sales invoiced;

(v) credits for allowances given or made for wastage replacement for the Product;

(vi) wholesaler and distributor administration fees;

(vii) non-affiliated brokers' or agents' commissions actually allowed; and

(viii) other similar or customary deductions taken in the ordinary course of business or in accordance with US GAAP.

Net Sales shall be determined in accordance with US GAAP. Sales between Buyer and its Affiliates and licensees shall be disregarded for purposes of calculating Net Sales except if such purchaser is an end user.

***"Net Selling Price"*** means the Net Sales of Products divided by the total number of Products sold.

***"Order"*** means any order, award, decision, injunction, judgment, ruling, decree, charge, writ, subpoena or verdict entered, issued, made or rendered by any Governmental Authority or arbitrator.

***"Organizational Documents"*** means (a) any certificate or articles of incorporation, bylaws, certificate or articles of formation or organization, operating agreement or partnership agreement, (b) any documents comparable to those described in clause (a) as may be applicable pursuant to any Law and (c) any amendment or modification to any of the foregoing.

***"Representatives"*** means any directors, officers, employees, investment bankers, financial advisors, attorneys, accountants or other advisors, agents or representatives of a Party.

***"Patent(s)"*** means all patents (which shall include utility models, design patents, industrial designs, and priority rights), applications for patents, invention disclosures, provisional applications, substitutions, reissues, reexaminations, divisionals, renewals, revisions, extensions, provisionals, continuations and continuations-in-part, inventors' certificates and other indices of invention ownership.

***"Patent Assignment"*** means the Patent Assignment, substantially in the form attached hereto as Exhibit A.

**"Patent Files"** means, with regard to the Purchased Patents, the file histories for such Patents in the possession or control of the Company or any of its Affiliates.

**"Permit"** means any approval, license, franchise, Consent, exemption, permit, certificate, certificate of occupancy or Order issued by any Person.

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

**"Proceeding"** means any action, suit, arbitration, investigation or similar proceeding before a Governmental Authority.

**"Product"** means any instrument that incorporates an apparatus that is covered by a Valid Claim.

**"Purchased Patents"** means:

(a) all Patents that disclose or claim the composition of matter, manufacture or use of, or are otherwise related to the Purchased Technology including the Patents set forth on Schedule 4.6(a)(i);

(b) any and all provisionals, divisionals, continuations and continuations-in-part of the patents and patent applications referenced in the preceding subsection (a);

(c) all foreign patent applications associated with the patent applications referenced in the preceding subsections (a) and (b);

(d) all patents issued or issuing from the patent applications referenced in the preceding subsections (a) through (c); and

(e) reissues, reexaminations, restorations (including supplemental protection certificates) and extensions of any patent or patent application referenced in the preceding subsections (a) through (d).

**"Tax"** or **"Taxes"** means all forms of taxation imposed by any federal, state, provincial, local, foreign or other Governmental Authority, including income, franchise, property, sales, use, excise, employment, unemployment, payroll, social security, estimated, value added, ad valorem, transfer, recapture, withholding, health and other taxes of any kind, and any imposts, levies, tariffs, duties or other charges in the nature of a tax, in each case including any interest, penalties and additions thereto.

**"Tax Return"** means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

**"Territory"** means worldwide.

**"Third Party"** means any Person other than the Company or Buyer or an Affiliate of the Company or Buyer.



**"Trademark(s)"** means all trade names, logos, trademarks, trade dress and service marks and related registrations and applications, together with translations, adaptations, derivations and combinations thereof, and including any intent to use applications, supplemental registrations and any renewals or extensions, all other indicia of commercial source or origin, and all goodwill associated with any of the foregoing.

**"Trade Secrets"** means all trade secrets, confidential unpatented or unpatentable inventions, invention disclosures, processes, formulae, developments, discoveries, technology, product formulations, manufacturing processes, data, standard operating procedures, cell lines, biological materials, compounds, probes, sequences, technical information, methods, protocols, reagents, experiments, lab results, tests, concepts, ideas, research and development, business plans, strategies or other information, data or materials which in the reasonable business judgment of the owner thereof have value or confer a competitive advantage to such owner.

**"US GAAP"** means U.S. Generally Accepted Accounting Principles, as generally and consistently applied throughout the Party's organization.

**"Valid Claim"** means (a) any claim of an issued and unexpired patent in the Purchased Patents, (as may be extended through supplementary protection certificate or patent term extension), which claim: (i) has not been revoked, held invalid or unenforceable by a patent office, court or other Governmental Authority of competent jurisdiction in a final and non-appealable judgment (or judgment from which no appeal was taken within the allowable time period) and (ii) has not been disclaimed, denied or admitted to be invalid or unenforceable through reissue, re-examination or disclaimer or otherwise or (b) any claim of a pending application in the Program Patents that has not been canceled, withdrawn, finally determined to be unallowable, or abandoned, provided that the applicable application has not been pending for more than five (5) years from the date of receipt of the initial action on the merits.

## ARTICLE 2 PURCHASE AND SALE

2.1 **Purchased Assets.** Subject to the terms and conditions of this Agreement, at the Closing, the Company shall sell, convey, transfer, assign and deliver to Buyer, and Buyer shall purchase and acquire from the Company, free and clear of all Liens, all of the Company's right, title and interest in and to all of the following (collectively, the **"Purchased Assets"**):

(a) all Intellectual Property necessary or useful to the research, development, manufacture, promotion, offer for sale, sale or other distribution or exploitation of Products or the Purchased Technology, including: (i) the Purchased Patents, (ii) all Trademarks owned by the Company or used by the Company in its business (**"Purchased Trademarks"**); (iii) all Know-How (including software) necessary or useful to the research, development, manufacture, promotion, offer for sale, sale or other distribution or exploitation of Products or the Purchased Technology (**"Purchased Know-How"**); (iv) all Trade Secrets necessary or useful to the research, development, manufacture, promotion, offer for sale, sale or other distribution or exploitation of Products or the Purchased Technology (**"Purchased Trade Secrets"**), (v) all Copyrights necessary or useful to the research, development, manufacture, promotion, offer for sale, sale or other distribution or exploitation of Products or the Purchased Technology (**"Purchased Copyrights"**), (vi) all legal rights entitled by the original owner of such Intellectual Property and all rights of the Company to collect royalties under such Intellectual Property, to prosecute all existing Intellectual

Property worldwide, to apply for additional registrations and/or applications for registration of Intellectual Property worldwide and to have all such registrations issued in the name of Buyer; and (vii) all right, title and interest the Company has to sue for past, present and future infringement of such Intellectual Property, including without limitation all right, title and interest the Company has in and to all causes of action and enforcement rights, whether known, unknown, currently pending, filed, or otherwise, in respect of the Intellectual Property, and all rights to pursue damages, injunctive relief and other remedies for past, current and future infringement of the Intellectual Property (collectively, the "**Purchased Intellectual Property**");

(b) all Patent Files and all other books and records (including laboratory notebooks and electronic records) relating to the Purchased Intellectual Property (the "**Purchased Books and Records**"); and

(c) all causes of action, claims, demands, deposits, warranties, guarantees, refunds, rights of recovery, rights of set off and other rights and privileges against Third Parties whether liquidated or unliquidated, fixed or contingent, choate or inchoate that are related to any of the foregoing.

2.2 **Excluded Assets.** Buyer shall not acquire pursuant hereto any assets or rights of any kind or nature, real or personal, tangible or intangible, other than as specifically set forth herein, subject in each case to the conditions and rights set forth herein, and the Company and its Affiliates shall retain all other assets (collectively, the "**Excluded Assets**"), including the following:

(a) all assets of the Company or any of its Affiliates that are not Purchased Assets;

(b) all cash and cash equivalents;

(c) all minute books, Organizational Documents, stock registers and such other books and records of the Company as pertaining to ownership, organization or existence of the Company;

(d) all personnel, employment and medical records relating to the Company's employees and officers;

(e) the LLC Licenses and any other Contracts entered into by and between the Company and any Third Parties;

(f) all rights of the Company under this Agreement and the Ancillary Agreements;

(g) the claims, remedies, rights, consideration or any other right related to any of the foregoing; and

(h) all claims and counterclaims relating to Retained Liabilities or Excluded Assets.

**2.3 Retained Liabilities.** The Company shall retain all Liabilities of the Company and its Affiliates (such retained Liabilities, the "***Retained Liabilities***"), including the following:

(a) all Liabilities arising out of or relating to the prosecution, ownership, operation, maintenance, sale, lease or use of the Purchased Assets prior to the Closing or facts, actions, omissions, circumstances or conditions existing, occurring or accruing prior to the Closing;

(b) all Liabilities of the Company and its Affiliates under this Agreement and the Ancillary Agreements;

(c) all Liabilities of the Company and its Affiliates relating to legal services, accounting services, financial advisory services, investment banking services or any other professional services performed in connection with this Agreement and the Ancillary Agreements;

(d) all Liabilities arising from or related to any Claim, audit, hearing, investigation, or other Proceeding (whether civil, criminal, administrative, investigative, or informal and whether pending or threatened or having any other status) against the Company or any of its Affiliates pending or threatened or with respect to facts, actions, omissions, circumstances or conditions existing, occurring or accruing prior to the Closing Date;

(e) all costs and expenses payable in connection with obtaining any Consents;

(f) all Taxes of the Company or any of its Affiliates for any period;

(g) all Liabilities relating to the Company's or any of its Affiliates' employees and officers, including any obligation to pay wages, bonuses, severance payments or benefits;

(h) all Liabilities under the LLC Licenses and all other Contracts entered into by and between the Company or any of its Affiliates and any Third Parties; and

(i) all Liabilities arising out of, relating to, or otherwise in respect of, the Excluded Assets.

**2.4 Purchase Price.** The aggregate consideration (the "***Purchase Price***") for the Purchased Assets shall consist of (a) the amount set forth in Exhibit C (the "***Base Consideration***") and (b) the right to receive the Earn-out Payments as and to the extent they become due pursuant to Section 2.5(b) below.

**2.5 Payments.**

(a) **Closing Payments.** On the Closing Date, Buyer shall pay the Base Consideration to the Company.

(b) **Earn-out Payments.**

(i) Subject to Sections 2.5(b)(iii) and Buyer's right of set-off as set forth herein and in Section 7.3, during the Earn-out Term (defined below), Buyer shall make quarterly payments to the Company (each, an "***Earn-out Payment***") as set forth in Exhibit

D. Notwithstanding the foregoing, Buyer shall receive a credit equivalent to the Base Consideration which it shall have the right to fully apply as a prepaid credit against any Earn-out Payments owed hereunder.

(ii) The Earn-Out Term shall commence on the Effective Date and continue until the earlier of (A) the total payments made by Buyer pursuant to Section 2.5(b)(i) reaches the amount set forth in Exhibit E, (B) there are no longer any Valid Claims covering the Products or (C) this Agreement has been terminated for any reason (the "**Earn-Out Term**").

(iii) Buyer may deduct from any Earn-out Payments payable to Company under Section 2.5(b)(i) fifty percent (50%) of all consideration paid and documented to Company, by Buyer, its Affiliate(s) or licensee(s) for any rights to Third Party Intellectual Property necessary to use the Valid Claims under the Patent Assignment required for the manufacture, use or sale of any Products in the Territory; provided, however, that under no circumstances shall any Earn-out Payments to the Company be reduced as a result of this Section 2.5(b)(iii) to less than fifty percent (50%) of what would otherwise have been due. Buyer may carry forward to subsequent Calendar Quarters any deductions that it was not able to deduct as a result of the foregoing proviso.

(iv) Within forty-five (45) days after the end of each Calendar Quarter during the Earn-Out Term, Buyer shall provide the Company with a report that contains the following information for the applicable Calendar Quarter (A) Net Sales of the Product in the Territory (B) a calculation of the Earn-out Payment due on such sales. Concurrent with the delivery of the applicable quarterly report, Buyer shall pay all royalties due to Company pursuant to Section 2.5(b)(i), with respect to such Calendar Quarter.

(v) For Net Sales outside the United States received in a currency other than United States dollars, the rate of exchange to be used in computing the amount of currency equivalent in United States dollars shall be made at the rate of exchange published in the *Wall Street Journal, Western Edition* on the last Business Day of the applicable Calendar Quarter.

2.6 Withholding. Buyer shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to the Company or any other Person such amounts as Buyer is required to deduct and withhold under the Code, or any tax Law, with respect to the making of such payment. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of whom such deduction and withholding was made.

2.7 Extinguishment of Company Debts. Within one hundred and twenty (120) days following the Closing Date, the Company shall extinguish any and all material debt and other material Liabilities of the Company that are due and owing or otherwise outstanding and payable as of the Closing Date (the "**Closing Debt Payments**").

2.8 Closing. The closing of the transactions contemplated by this Agreement (the "**Closing**") shall take place at the offices of Latham & Watkins, 12670 High Bluff Drive

San Diego, CA 92130, on the date hereof or such other date within five (5) Business Days from the date hereof, as may be mutually agreed upon by the Parties (the "Closing Date"). All transactions contemplated herein to occur on and as of the Closing Date shall be deemed to have occurred simultaneously and to be effective as of 12:01 a.m. on the Closing Date.

2.9 Nontransferable Assets. This Agreement shall not constitute an agreement or attempted agreement to transfer, sublease, sublicense or assign any privilege, right or interest in any Purchased Asset or any claim, right or benefit arising thereunder or resulting therefrom, if an attempted assignment thereof without the Consent required or necessary of a Third Party would constitute a breach or violation thereof or affect adversely the rights of Buyer thereunder. If a Consent of a Third Party which is required in order to assign any interest in a Purchased Asset has not been obtained prior to the date of this Agreement, or if an attempted assignment would be or for some reason is ineffective or would adversely affect the ability of the Company to convey its interest in a Purchased Asset to Buyer as set forth herein, then the Company shall use its best efforts, and Buyer will cooperate with the Company to the extent commercially reasonable, to obtain promptly such Consents. Pending receipt of such Consent, the Company shall hold any asset that has not been transferred or assigned for the benefit of Buyer, and the Parties shall cooperate with each other in any reasonable and lawful arrangements designed to provide to Buyer the benefits of use of such asset that it would have obtained had the asset been conveyed to Buyer at the Closing.

2.10 LLC Licenses. Buyer hereby grants to the Company a non-exclusive, limited, revocable, non-transferable, royalty-free license under the Purchased Intellectual Property and any Sublicensee Improvements thereto (without the right to sublicense, except to the counterparties of the LLC Licenses) to (a) perform contract research services using the 404pi Products which are in inventory as of the Closing, (b) to offer for sale, sell and support any 404pi Products which are in inventory as of the Closing and (c) to offer for sale, sell and support any consumables used in connection with such 404pi Products; provided, that the Company's rights under the license granted in this Section 2.10 may be exercised solely by the current counterparties of the LLC Licenses pursuant to the terms therein and provided further that this license shall be co-terminus with the LLC Licenses. The Company agrees and acknowledges that the license granted in this Section 2.10 is provided on an "as is" basis with no warranty of any kind. Buyer acknowledges and agrees that it is taking its right to the Purchased Assets subject to the license granted in this Section 2.10 and the Licensed IP Rights previously granted under the LLC Licenses. The Company shall not (a) assign or permit any counter party to the LLC License to assign the LLC License to any third party, (b) expand the scope of the Licensed IP Rights granted under the LLC Licenses, (c) amend or modify or waive any rights under the LLC License, nor (d) enter into a new or superseding agreements with respect to the subject matter of the LLC Licenses without the express prior written consent of Buyer.

2.11 Employees. No Company employees or officers or any Liabilities relating thereto shall be transferred to Buyer as a result of the transactions contemplated by this Agreement and any Ancillary Agreement. Notwithstanding the foregoing, at any time before or after the Closing, Buyer shall have the right, but not the obligation, to contact and/or solicit for hire one or more former employees of the Company and/or its Affiliates and Company hereby agrees, upon written request by Buyer, to reasonably assist Buyer in connection with the foregoing.

ARTICLE 3  
REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to the Company that the following statements are correct and complete as of the date hereof.

3.1 Organization of Buyer. Buyer is duly organized, validly existing, and in good standing under the Laws of the State of Delaware.

3.2 Authorization of Transaction. Buyer has full power and authority to execute and deliver this Agreement and the Ancillary Agreements to which it is a party and to perform its obligations hereunder and thereunder. The execution and delivery by Buyer of this Agreement and the Ancillary Agreements to which it is a party and the performance by Buyer of the transactions contemplated hereby and thereby have been duly approved by all requisite corporate or other applicable action of Buyer, as the case may be. Assuming the due authorization, execution and delivery of this Agreement by the Company, this Agreement constitutes the valid and legally binding obligation of Buyer, enforceable against it in accordance with the terms of this Agreement, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors generally and by the availability of equitable remedies. Assuming the due authorization, execution and delivery by the other parties thereto, upon the execution and delivery by Buyer of each Ancillary Agreement to which it is a party, such Ancillary Agreement will constitute the valid and legally binding obligation of Buyer, enforceable against it in accordance with the terms of such Ancillary Agreement, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors generally and by the availability of equitable remedies. Buyer is not required to give any notice to, make any filing with, or obtain any Consent of any Governmental Authority in order to consummate the transactions contemplated by this Agreement or the Ancillary Agreements to which Buyer is a party.

3.3 Non-contravention. Neither the execution nor the delivery of this Agreement nor the Ancillary Agreements to which Buyer is a party, nor the consummation of the transactions contemplated hereby and thereby, will (a) violate or conflict with any Law or Order to which Buyer is subject or (b) violate any provision of the Organizational Documents of Buyer.

3.4 No Other Representations. BUYER MAKES NO REPRESENTATION OR WARRANTY OTHER THAN AS SET FORTH IN THIS ARTICLE 3, WHETHER EXPRESS OR IMPLIED INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ALL SUCH WARRANTIES ARE EXPRESSLY DISCLAIMED.

ARTICLE 4  
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to Buyer that the following statements are correct and complete as of the date hereof, except as set forth in the Disclosure Schedule.

4.1 Organization, Qualification, and Power. The Company is duly organized, validly existing, and in good standing under the Laws of the State of Delaware. The Company is duly authorized to conduct its business and is in good standing under the Laws of each jurisdiction

where such qualification is required except where the failure to be so qualified would not have a material impact on the Company or the Purchased Assets. The Company has the full corporate power and authority and all Permits necessary to carry on the businesses in which it is engaged and to own, lease and use the properties owned, leased and used by it. The Company is not in default under or in violation of any material provision of its Organizational Documents.

4.2 Authority; Binding Nature of Agreements. The Company has full power and authority to execute and deliver this Agreement and the Ancillary Agreements to which it is a party and to perform its obligations hereunder and thereunder. The execution and delivery by the Company of this Agreement and the Ancillary Agreements to which it is a party and the performance by the Company of the transactions contemplated hereby and thereby have been duly approved by all requisite corporate or other applicable action of the Company. Assuming the due authorization, execution and delivery of this Agreement by Buyer, this Agreement constitutes the valid and legally binding obligation of the Company, enforceable against it in accordance with the terms of this Agreement, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors generally and by the availability of equitable remedies. Assuming the due authorization, execution and delivery by the other parties thereto, upon the execution and delivery by the Company of each Ancillary Agreement to which it is a party, such Ancillary Agreement will constitute the valid and legally binding obligation of the Company, enforceable against it in accordance with the terms of such Ancillary Agreement, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors generally and by the availability of equitable remedies.

4.3 Non-contravention. Neither the execution and delivery of this Agreement nor the Ancillary Agreements to which the Company is a party, nor the consummation of the transactions contemplated hereby or thereby, will (a) violate or conflict with any Law or Order to which the Company is subject, (b) violate or conflict with any provision of the Organizational Documents of the Company, or (c) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice, Consent or payment under any Contract, Permit, instrument or other arrangement to which any of the Purchased Assets is subject (or result in the imposition of any Lien upon any of the Purchased Assets). The Company is not required to give any notice to, make any filing with, or obtain any Consent or Permit of any Governmental Authority or other Person in order to consummate the transactions contemplated by this Agreement or the Ancillary Agreements.

4.4 Broker's Fees. The Company has no Liability to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated by this Agreement or any Ancillary Agreement. If, despite the foregoing, the Company is obligated to pay any such fees or commissions, the Company shall be solely responsible for payment of such fees and commissions.

4.5 Assets. The Company has good and marketable title to, or a valid leasehold interest or license in, the Purchased Assets, free and clear of all Liens. The Purchased Assets include all property and assets owned or controlled by or licensed to the Company and its Affiliates in connection with the research, development, manufacture, promotion, offer for sale, sale or other distribution or exploitation of Products or of the Purchased Technology.



#### 4.6 Intellectual Property.

(a) Schedule 4.6(a) of the Disclosure Schedule sets forth a complete and accurate list of all material Purchased Intellectual Property and such list includes and generally separately sets forth the following: (i) Purchased Patents, (ii) Purchased Trademarks that are registered (including any applications) with a Governmental Authority, (iii) Purchased Copyrights that are registered (including any applications) with a Governmental Authority, (iv) software included in the Purchased Know-How, indicating for each of the foregoing (i) through (iii) (whenever applicable) the (A) applicable jurisdiction of registration or filed application, (B) registration number, publication number and/or application number, and (C) dates of filing, publication, issuance and renewal. None of the Purchased Intellectual Property set forth on Schedule 4.6(a)(i) – (iii) of the Disclosure Schedule have been abandoned (except as stated therein), and such Purchased Intellectual Property has been and continues to be timely prosecuted. All necessary maintenance fees, annuities and renewals for such Purchased Intellectual Property have been timely paid to continue all such rights in effect, and none of such Purchased Intellectual Property have expired, lapsed, been declared invalid (in whole or in part), or declared unenforceable by any Governmental Authority (except as stated therein).

(b) Except as disclosed on Schedule 4.6(b), the Company is the sole and exclusive owner of all right, title and interest in and to the Purchased Intellectual Property, free and clear of all Liens, including ownership of pending and accrued causes of action for infringement and misappropriation and has the sole and exclusive right to bring actions for infringement or misappropriation of any Purchased Intellectual Property. The Company has not (i) transferred ownership of the Purchased Intellectual Property, (ii) granted a license to or right to use, or authorized the retention of any rights to use or joint ownership of, any Purchased Intellectual Property to any other Person, except for (A) the Licensed IP Rights granted under the LLC Licenses, (B) non-exclusive use licenses granted to customers in the ordinary course of business, and (C) non-exclusive, non-transferrable, irrevocable, paid-up licenses to DARPA, NIH, NSF, and the U.S. Air Force with respect to federal research grants received by the Company from these federal agencies, which licenses give each respective federal agency the right to practice or have practiced for or on behalf of the United States any invention subject to the applicable grant throughout the world, or (iii) abandoned or permitted the Purchased Intellectual Property to enter into the public domain. The Purchased Intellectual Property is free of all payment obligations and other Liens and is not subject to any Orders or limitations or restrictions on use or otherwise.

(c) The Company has the right to assign its right, title and interest in the Purchased Intellectual Property to Buyer as set forth in this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby. Immediately after the Closing, Buyer will be the sole owner of all right, title and interest in and to the Purchased Intellectual Property, and will have valid rights to use, license and transfer the Purchased Intellectual Property in the same manner and on the same terms that the Company had immediately prior to the Closing. Neither the execution, delivery or performance of the Agreement nor the consummation of the transactions contemplated hereby will: (i) contravene, conflict with or result in any limitation on the Company's right, title or interest in or to any of the Purchased Intellectual Property (except as contemplated by this Agreement); (ii) result in the release, disclosure or delivery of any Purchased Intellectual Property by or to any escrow agent or other Person; or (iii) cause the grant, assignment



or transfer to any other Person of any license or other right or interest under, to or in any of the Purchased Intellectual Property (except as contemplated by this Agreement).

(d) The Company has not licensed or otherwise granted rights in or to any of the Purchased Intellectual Property to any Person except for the Licensed IP Rights granted under the LLC Licenses. The Company does not possess and has never possessed any licenses, or options to obtain a license, to any Intellectual Property or Know-How that is owned or controlled by any Person other than the Company and that is necessary or useful to the research, development, manufacture, promotion, offer for sale, sale or other distribution or exploitation of Products or of the Purchased Technology.

(e) To the Knowledge of the Company, no Person has violated, infringed, misappropriated or unlawfully used any of the Purchased Intellectual Property. Immediately after the Closing, the Buyer will have sole right to bring actions for infringement or misappropriation of the Purchased Intellectual Property. The Company has not commenced or threatened any Proceeding, or asserted any allegation or claim, against any Person for infringement, misappropriation or other violation of the Purchased Intellectual Property.

(f) Neither the Company nor any of its Affiliates have received notice of, nor is a party to, any pending Proceeding or any allegation or claim in which any Person alleges that the research, development, manufacture, promotion, offer for sale, sale or other distribution or exploitation of Products or of the Purchased Technology by the Company or any of its Affiliates exploitation of the Purchased Intellectual Property has infringed, misappropriated or otherwise violated any Person's Intellectual Property or Know-How or constitutes unfair competition or trade practices under the Laws of any jurisdiction.

(g) With respect to the Purchased Intellectual Property, no Proceeding is pending or, to the Knowledge of the Company, is threatened that challenges the validity, enforceability, inventorship, patentability, claim construction, use or ownership of or the Company's right to grant a license or other right to the item and, to the Knowledge of the Company, no valid basis exists for a challenge to the validity, enforceability, inventorship, patentability, claim construction, use or ownership of the item, which challenge is more likely than not to be successful.

(h) The Company has taken commercially reasonable steps to protect and preserve the Purchased Intellectual Property and other material Confidential Information included in the Purchased Assets. All current and past employees, consultants and independent contractors of the Company have entered into written agreements that provide the Company with protection of the Purchased Intellectual Property or other Confidential Information included in the Purchased Assets. Each current or former employee of, or consultant or independent contractor to, the Company, who has contributed to the creation or development of any Purchased Intellectual Property (each a "**Contributor**") has assigned or licensed (including by application of applicable Law) to the Company any and all rights that such Person may have had to such Purchased Intellectual Property and the Purchased Know-How. Without limiting the foregoing, no Contributor owns, or has any right, claim, interest or option (including the right to further remuneration or consideration) with respect to, any Purchased Intellectual Property. No Contributor has made any assertions in writing to the Company or any of its Affiliates with respect to any alleged ownership of, or any right, claim, interest or option with respect to, any Purchased

Intellectual Property, or has threatened any such assertion, and neither the execution of this Agreement, nor the consummation of the transactions contemplated by this Agreement, will provide any Contributor with any such right, claim, interest or option.

#### 4.7 Contracts.

(a) The Company is not a party to any currently in-force Contract that prohibits or restricts the exploitation of the Purchased Intellectual Property, or that restricts in any manner the use, transfer or licensing thereof by the Company or may affect the validity or enforceability of the Purchased Intellectual Property, nor does the Company have any current Liabilities or based upon the Knowledge of the Company the potential for future Liabilities under any Contract (including any expired or terminated Contract) that would prohibit or restrict the exploitation of the Purchased Intellectual Property, or that would restrict in any manner the use, transfer or licensing thereof by the Company or may affect the validity or enforceability of the Purchased Intellectual Property.

(b) The Company is not and has not been a party to a Contract that was in-force during any portion of the last three years preceding the date hereof and that prohibited or restricted the exploitation of the Purchased Intellectual Property, or that restricted in any manner the use, transfer or licensing thereof by the Company or affected the validity or enforceability of the Purchased Intellectual Property. The Company has delivered or has made available to Buyer a correct and complete copy of each such Contract requested by Buyer.

4.8 Affiliates. No Affiliate of the Company (other than the LLC Licenses) has any right, title or interest in any Purchased Assets, the Purchased Technology, the Product or any other assets that relate to, or were used or generated in connection with the research, development, manufacture, promotion, offer for sale, sale or other distribution or exploitation of Products or of the Purchased Technology.

4.9 Disclosure. Buyer has been provided access to accurate and complete copies of all documents referred to on the Disclosure Schedule. As used throughout this Agreement the term "delivered to Buyer" and/or "made available" shall include providing an accessible copy via email to the Chief Executive Officer of the Buyer by the close of business at 5:00 p.m. Pacific Time two days prior to the date hereof. All information and data provided by or on behalf of the Company to Buyer on or before the date hereof in contemplation of this Agreement was and is true and accurate and complete in all material respects, and the Company has not disclosed, failed to disclose, or cause to be disclosed, any material information or data that would reasonably be expected to cause the information and data that has been disclosed to be misleading in any material respect.

4.10 Absence of Liabilities. Except as disclosed in Schedule 4.10, as of the Effective Date, based upon the Knowledge of the Company, there are no Liabilities related to the Company except such Liabilities that are not, in the aggregate, in an amount greater than \$50,000.

4.11 Litigation. As of the Effective Date, there is no suit, claim, action, investigation or proceeding pending or, to the Knowledge of the Company, threatened against the Company, that relates to the Purchased Assets which challenges or seeks to prevent or enjoin the transactions contemplated by this Agreement.

4.12 No Other Representations. COMPANY MAKES NO REPRESENTATION OR WARRANTY OTHER THAN AS SET FORTH IN THIS ARTICLE 4, WHETHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ALL SUCH WARRANTIES ARE EXPRESSLY DISCLAIMED.

4.13 EXPIRATION OF WARRANTIES. THE REPRESENTATIONS AND WARRANTIES MADE BY COMPANY UNDER ARTICLE 4 SHALL EXPIRE AT THE END OF THE EARN-OUT TERM.

## ARTICLE 5 ADDITIONAL COVENANTS

5.1 General. In case any further action is necessary to carry out the purposes of this Agreement or any Ancillary Agreement, each of the Parties will take such further action (including the execution and delivery of such further instruments and documents) as the other Party may reasonably request.

5.2 Confidentiality. The Company agrees not to and to cause its Affiliates not to disclose or use any Confidential Information except as may be required in order to perform their respective obligations under this Agreement or any Ancillary Agreement or the LLC Licenses or except as may be required under applicable Law. In the event that the Company is requested or required pursuant to written or oral question or request for information or documents in any legal proceeding, interrogatory, subpoena, civil investigation demand, or similar process to disclose any Confidential Information, the Company will notify Buyer promptly of the request or requirement so that Buyer may seek an appropriate protective order or waive compliance with the provisions of this Section 5.2. If, in the absence of a protective order or the receipt of a waiver hereunder, the Company is, on the advice of counsel, compelled to disclose any Confidential Information, the Company may disclose such Confidential Information; provided, however, that the Company shall use its reasonable efforts to obtain, at the request of Buyer, an order or other assurance that confidential treatment will be accorded to such portion of the Confidential Information required to be disclosed as Buyer shall designate. The foregoing provisions shall not apply to any Confidential Information that is generally available to the public immediately prior to the time of the Company's disclosure unless such Confidential Information is so available due to the unauthorized actions of the Company. The Company shall treat and hold as confidential all of the terms and conditions of this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby; provided, however, that the Company may disclose such information to its legal counsel, accountants, or other advisors on an as-needed basis so long as any such Person is bound by a written agreement with confidentiality obligation at least as protective of the Confidential Information as the obligation set forth in this Section 5.2.

5.3 Purchase Price Allocation. Buyer will use reasonable efforts to prepare a schedule setting forth the allocation of the Purchase Price within thirty (30) days following the Closing (the "Allocation"). Buyer and the Company shall report the transaction hereunder consistently with the Allocation for all federal, state, local and applicable foreign Tax purposes, and shall take no position inconsistent with the Allocation on any Tax Return or before any Tax authority unless required to do so pursuant to a final determination within the meaning of Section 1313 of the Code.

5.4 Audit Rights. Once per calendar year following the Closing and until one year after the Earn-out Term, the Company or its designee shall have the right to retain and cause an independent, certified public accountant reasonably acceptable to Buyer to conduct an audit of relevant records of Buyer, its Affiliates and licensees in order to confirm Net Sales of any Product and the amount of Earn-out Payments payable during the prior twelve-month period pursuant to Section 2.5. Such audits may be conducted during normal business hours at the headquarter offices of Buyer upon reasonable prior written notice to such Party. Buyer shall include, in any relevant agreement with its Affiliates and licensees that have the right to sell Products, such audit rights in favor of the Company. The Company shall bear the full cost of such audit unless such audit properly discloses that the Earn-out Payments that have been underpaid exceeds by ten percent (10%) of the aggregate Earn-out Payments that were owed during the applicable period, in which case, Buyer shall bear the full cost of such audit. Buyer shall remit any undisputed underpayment of Earn-out Payments in accordance with Section 2.5. Any over-payment of Earn-out Payments may be recovered by Buyer on demand or by deducting the amount thereof from any future Earn-out Payments.

5.5 Development Plan. Within ninety (90) days after the Closing Date and within ninety (90) days of the first and second anniversary thereof, Buyer (either directly or through agents, Affiliates and/or licensees) shall prepare and disclose to the Company a brief summary of a forward-looking, annual development plan for the development, commercialization, sale and other exploitation of the Purchased Technology and any Product incorporating the same (each, an "**Annual Development Plan**"). The Company shall treat each such Annual Development Plan as Buyer's Confidential Information. If requested by Buyer, the Company shall discuss with Buyer regarding the Annual Development Plan and answer any questions Buyer may have regarding the contemplated development, commercialization and other exploitation of the Purchased Technology and any Product incorporating the same. Notwithstanding the foregoing, Buyer shall have the right to modify its Development Plan at any time.

5.6 Improvements.

(a) All improvements, modifications, or derivative works, in each case made after the Closing Date, of or resulting from the Purchased Technology, the Purchased Intellectual Property, or the subject matter described or claimed therein or covered thereby (collectively, "**Improvements**") created or developed by Buyer shall be owned solely and exclusive by Buyer. No rights or licenses, express or implied, are granted hereunder by Buyer in or to such Improvements made by it or any of its Affiliates. Buyer shall not have any obligation to provide the Company or any of its Affiliates with any such Improvement or tangible embodiment thereof.

(b) All Improvements created or developed by the Company or any of its Affiliates or the counterparties to the LLC Licenses shall be owned solely and exclusively by Buyer. The Company hereby assigns, and shall cause its Affiliates and the counterparties to the LLC Licenses to assign, to Buyer all of the Company's and such other Person's right, title and interest in and to any Improvements, provided that any Improvements created or developed by Bridget Gordon and Slava Petropavlovskikh while exercising their rights under the LLC Licenses ("**Sublicensee Improvements**") shall be subject to the license set forth in Section 2.10.

5.7 Trademark Usage. After the Closing, the Company and its Affiliates shall cease any and all use of Purchased Trademarks.

## ARTICLE 6 THE CLOSING

6.1 Company Deliverables. At the Closing, the Company shall deliver, or cause to be delivered, the following to Buyer:

- (a) all of the Purchased Assets;
- (b) duly executed signature pages to this Agreement and each of the Ancillary Agreements; and
- (c) the Consents set forth on Schedule 6.1(c).

6.2 Buyer Deliverables. At the Closing, Buyer shall deliver, or cause to be delivered, the following to the Company:

- (a) duly executed signature pages to this Agreement and each of the Ancillary Agreements; and
- (b) the Base Consideration.

6.3 Delivery Method for Purchased Books and Records. As part of Company's obligations under Section 6.1, the Company shall deliver, via electronic transmission or load and leave procedures, or such other format mutually agreed upon by the Parties, all Purchased Books and Records that can be reasonably collected through good faith effort of the Company. If Company or Buyer discover at any time after the Closing that the Company or its Affiliates possess or controls copies of any Purchased Books and Records, Company agrees to promptly, and at no additional cost, to provide Buyer, via electronic transmission or load and leave procedures, or such other format mutually agreed upon by the Parties with such copies.

## ARTICLE 7 INDEMNITY; LIMITATION OF LIABILITY

7.1 Indemnification by the Company. Subject to the terms and conditions of this ARTICLE 7, from and after the Closing, the Company shall indemnify and hold harmless Buyer, its Affiliates and their respective Representatives, successors and assigns (the "Buyer Indemnitees") from and against, and shall compensate and reimburse the Buyer Indemnitees for, all Losses that any Buyer Indemnitee may suffer, incur, or otherwise become subject to, directly or indirectly, resulting from or arising out of a Third Party Claim in connection with (a) any breach or inaccuracy of any representation or warranty made by the Company in this Agreement, in any Ancillary Agreement, or in any other certificate or instrument that is executed and delivered by the Company to Buyer, without duplication, for purposes of determining (i) whether a breach or inaccuracy of any such representation has occurred and (ii) the amount of Losses resulting from, arising out of or relating to any such breach or inaccuracy, (b) the use of or the research, development, manufacture, commercialization, use or sale of the Purchased Technology or Products by or on behalf of the Company, its Affiliates or Representatives or licensees prior to the

Closing Date (or after the Closing Date in connection with the LLC Licenses), (c) any breach of, or failure to perform, any covenant, agreement or obligation, on the part of the Company, in this Agreement or in any Ancillary Agreement, (d) the Retained Liabilities, (e) any Excluded Asset, (f) the failure to comply with any bulk transfer law or similar Law in connection with the transactions contemplated hereby, (g) the exercise of the licenses granted under Section 2.10, the exercise of the Licensed IP Rights granted under the LLC Agreements or the conduct of any activities contemplated thereunder, including the performance of contract research services using the 404pi Products and/or sales of 404pi Products; and (h) any Proceeding relating to any breach or alleged breach, Liability or matter of the type referred to in clauses (a) through (g) of this sentence (including any Proceeding commenced for the purpose of enforcing any of its rights under this ARTICLE 7). The right to indemnification of the Buyer Indemnitees, including payment of any Losses, will not be affected by any investigation conducted with respect to, or any knowledge acquired (or capable of being acquired) by Buyer or any other Buyer Indemnitee at any time.

7.2 Indemnification by Buyer. Subject to the terms and conditions of this ARTICLE 7, from and after the Closing, Buyer will indemnify and hold harmless the Company, its Affiliates, and their respective Representatives, successors and assigns (the "Company Indemnitees") from and against, and shall compensate and reimburse the Company Indemnitees for, all Losses that any Company Indemnitee may suffer, incur, or otherwise become subject to, directly or indirectly, resulting from or arising out of a Third Party Claim in connection with (a) any breach or inaccuracy of any representation or warranty made by Buyer in this Agreement, in any Ancillary Agreement, or in any other certificate or instrument that is executed and delivered by Buyer to the Company, without duplication, for purposes of determining the amount of Losses (but not for purposes of determining whether there is a breach or inaccuracy) or (b) any breach of, or failure to perform, any covenant, agreement or obligation, on the part of Buyer, in this Agreement or in any Ancillary Agreement. The right to indemnification of the Company Indemnitees, including payment of any Losses, will not be affected by any investigation conducted with respect to, or any knowledge acquired (or capable of being acquired) by the Company or any other Company Indemnitee at any time.

7.3 Indemnification Procedure. The Buyer Indemnitees shall be entitled to, and may seek payment of, any indemnification obligations payable pursuant to this ARTICLE 7 or any Losses incurred by Buyer Indemnitees as a result of any breach of any representation, warranty or covenant of Company, by set-off against any Earn-out Payment that has been earned but not yet paid, or by making a claim directly against Company.

7.4 Third-Party Claims.

(a) If a Third Party initiates a Claim or Proceeding (a "Third-Party Claim") against either a Buyer Indemnitee or a Company Indemnitee (the "Indemnified Party") with respect to any matter that the Indemnified Party shall be entitled to make a claim against the other Party (the "Indemnifying Party") under this ARTICLE 7, then the Indemnified Party must promptly notify the Indemnifying Party in writing of the existence of such Third-Party Claim and must deliver copies of any documents served on the Indemnified Party with respect to the Third-Party Claim; provided, however, that any failure on the part of an Indemnified Party to so notify an Indemnifying Party shall not limit any of the obligations of the Indemnifying Party under this ARTICLE 7, except to the extent such failure materially prejudices the defense of such Proceeding.

(b) Upon receipt of the notice described in Section 7.4(a), the Indemnifying Party will have the right to defend the Indemnified Party against the Third-Party Claim with counsel reasonably satisfactory to the Indemnified Party, provided, that (i) 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 its indemnification obligations hereunder and unconditionally confirms in writing and that it will pay all amounts that the Indemnified Party becomes obligated to pay in respect of such Third-Party Claim, (ii) the Third-Party Claim involves only money damages and does not seek an injunction or other equitable relief, (iii) settlement of, or an adverse judgment with respect to, the Third-Party Claim is not, in the reasonable good faith judgment of the Indemnified Party, likely to (A) restrict or limit the ability of the Indemnified Party to conduct its business and affairs in the ordinary course of business consistent with past practices, (B) establish a precedential custom or practice adverse to the continuing business interests or the reputation of the Indemnified Party, or (C) not provide a full release for the Indemnified Party from the Third Party Claim, and (iv) the Indemnifying Party conducts the defense of the Third-Party Claim actively and diligently; and provided, further, that, notwithstanding anything in this Agreement to the contrary, Buyer shall have the sole right to control the defense of any Third Party Claim involving or pertaining to any Purchased Intellectual Property or any Product. The Indemnifying Party will keep the Indemnified Party apprised of all material developments, including settlement offers, with respect to the Third-Party Claim and permit the Indemnified Party to participate in the defense of the Third-Party Claim. So long as the Indemnifying Party is conducting the defense of the Third-Party Claim in accordance with this Section 7.4(b), the Indemnifying Party will not be responsible for any attorneys' fees or other expenses incurred by the Indemnified Party regarding the Third-Party Claim.

(c) In the event that any of the conditions under Section 7.4(b) is or becomes unsatisfied, (i) the Indemnified Party may defend against, and consent to the entry of any judgment on or enter into any settlement with respect to, the Third-Party Claim in any manner it may reasonably deem appropriate, (ii) the Indemnifying Party will reimburse the Indemnified Party promptly and periodically for the costs of defending against the Third-Party Claim (including reasonable attorneys' fees and expenses for one counsel), and (iii) the Indemnifying Parties will remain responsible for any Losses the Indemnified Party may suffer resulting from, arising out of or caused by the Third-Party Claim to the extent provided in this ARTICLE 7.

**7.5 LIMITATION OF LIABILITY.** EXCEPT IN CASES OF FRAUD OR WITH RESPECT TO AN INDEMNIFICATION OBLIGATION HEREUNDER, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES IN CONNECTION WITH THIS AGREEMENT OR ANY ANCILLARY AGREEMENT, INCLUDING DAMAGES FOR LOST PROFITS OR LOST REVENUES REGARDLESS OF WHETHER THE OTHER PARTY HAS BEEN INFORMED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OR THE TYPE OF CLAIM, CONTRACT OR TORT (INCLUDING NEGLIGENCE).



7.6 Except in the event of fraud, the Company's maximum liability to Buyer under Section 7.1(a) for a breach of the Company warranties in Sections 4.6(e), (f), (g), and (h) shall not exceed the Purchase Price.

## ARTICLE 8 MISCELLANEOUS

8.1 Press Releases and Public Announcements. Each party agrees not to issue any press release or other public statement, whether oral or written, disclosing the existence of this Agreement or any information relating to this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, provided however, that neither party will be prevented from complying with any duty of disclosure it may have pursuant to law or governmental regulation.

8.2 No Third-Party Beneficiaries. Except with respect to the indemnified parties under Article 7, this Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

8.3 Entire Agreement. This Agreement (including the Ancillary Agreements and the documents referred to herein) constitutes the entire agreement between the Parties and supersedes any other prior understandings, agreements, or representations by or among the Parties, written or oral, to the extent they relate in any way to the subject matter hereof.

8.4 Succession and Assignment. Neither this Agreement nor any right, interest or obligation hereunder may be assigned by any Party hereto without the prior written Consent of the other Party hereto (which Consent shall not be unreasonably withheld) and any attempt to do so will be void; provided however, such prior written Consent will not be required with respect to an assignment by either Party (a) to an Affiliate of such Party so long as such Party remains bound by the terms hereof, or (b) in connection with a merger, sale or transfer involving all or substantially all of the assets of such Party; provided further, such prior written Consent will not be required with respect to an assignment by Buyer in connection with a merger, sale or transfer involving all or substantially all of the Purchased Assets. This Agreement is binding upon, inures to the benefit of and is enforceable by the Parties hereto and their respective successors and permitted assigns.

8.5 Counterparts. This Agreement may be executed in one or more counterparts (including by means of facsimile or by .pdf, .tif, .gif, .peg or similar attachment to electronic mail), each of which shall be deemed an original but all of which together will constitute one and the same instrument.

8.6 Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

8.7 Notices. All notices, requests, demands, claims, and other communications hereunder will be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given (a) when delivered personally to the recipient, (b) when sent by electronic mail or facsimile, on the date of transmission to such recipient, provided that the recipient acknowledges receipt, (c) one Business Day after being sent to the recipient by national overnight courier service (charges prepaid), or (d) four Business Days after being mailed



to the recipient by certified or registered mail, return receipt requested and postage prepaid, and, in each case, addressed to the intended recipient as set forth below:

If to the Company:	BiOptix Diagnostics, Inc., 834-F South Perry Street, Suite 443 Castle Rock, CO 80104 Attn: Jeffrey McGonegal, CFO Email: <a href="mailto:jmcgonegal@venaxis.com">jmcgonegal@venaxis.com</a>
Copy (which shall not constitute notice) to:	Sichenzia Ross Ference Kesner LLP 1185 Avenue of the Americas, 37th Floor New York, NY 10036 Attn: Harvey Kesner Email: <a href="mailto:hkesner@srfklp.com">hkesner@srfklp.com</a>
If to Buyer:	Carterra, Inc. 825 North 300 West, Suite C309 Salt Lake City, UT 84103 Attn: Josh Eckman Email: <a href="mailto:jeckman@carterra-bio.com">jeckman@carterra-bio.com</a>
Copy (which shall not constitute notice) to:	Latham & Watkins LLP 12670 High Bluff Drive San Diego, CA 92130 Attn: Steven T. Chinowsky, Esq. Facsimile: (858) 523-5450 Email: <a href="mailto:steven.chinowsky@lw.com">steven.chinowsky@lw.com</a>

Either Party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other Party notice in the manner herein set forth.

#### 8.8 Governing Law; Dispute Resolution.

(a) This Agreement shall be governed by and construed in accordance with the domestic Laws of the State of New York, without giving effect to any choice or conflict of Law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the Laws of any other jurisdiction other than the State of New York. Each of the Parties irrevocably consents to the exclusive jurisdiction and venue of the federal and state courts located in San Diego, California, in connection with any matter based upon or arising out of this Agreement or the transactions contemplated hereby and agrees that process may be served upon it in any manner authorized by the laws of the State of California for such Persons and waives and covenants not to assert or plead any objection which it might otherwise have to such jurisdiction and such process.

(b) The Parties expressly acknowledge and agree any dispute, controversy, or claim arising out of or in any way relating to this Agreement, including but not limited to any valid amendments or modifications to this Agreement and any related agreements, whether sounding in

contract, tort, or any other theory of liability, including but not limited to alleged fraud or misrepresentation and claims based upon a federal or state statute (collectively, a "**Dispute**"), shall be resolved exclusively in accordance with the provisions of this Section 8.8(b) and Section 8.8(c). In the event of any Dispute between the Parties, prior to any Party commencing arbitration in accordance with Section 8.8(c), the complaining Party shall first promptly provide a written explanation of the Dispute and designate a representative for purposes of Dispute resolution, delivered in accordance with the notice provisions of Section 8.7. Upon receipt of the complaining Party's Dispute notice, the receiving Party shall respond in writing to state its position with respect to the Dispute and designate its own representative for purposes of Dispute resolution. The Parties' respective Representatives shall then promptly meet in person or speak telephonically in a good-faith attempt to resolve the Dispute. If, within 45 days of the date of the complaining Party's notice of Dispute, (i) the Parties are unable to resolve the Dispute via discussions between their designated Representatives, or (ii) the Parties' designated Representatives do not engage in good-faith discussions for any reason, then either Party may commence arbitration proceedings in accordance with Section 8.8(c).

(c) Any Dispute that is referred to arbitration proceedings under this Agreement shall be finally resolved by binding arbitration administered by the American Arbitration Association ("**AAA**") under its Commercial Arbitration Rules (the "**Rules**"), subject to the following modifications and additional provisions. The Dispute resolution procedures set forth in Sections 8.8(b) and 8.8(c) are the sole and exclusive means for resolving a Dispute, and neither Party shall commence any proceeding (including but not limited to a court action in any jurisdiction) relating to a Dispute other than in accordance with Sections 8.8(b) and 8.8(c):

(i) The arbitration shall be conducted before a single arbitrator to be selected by mutual agreement of the Parties. If the Parties are unable to agree upon a single arbitrator, each Party shall submit a list of three arbitrators in ranked order to AAA, and shall submit to AAA's selection of a single arbitrator from the collective lists provided by the Parties.

(ii) The arbitration and any hearings relating thereto shall take place in San Diego, California, subject to the Parties' mutual agreement to a different location.

(iii) Each Party shall bear its own fees and expenses with respect to the arbitration and any Proceeding related thereto, and the Parties shall share equally the fees and expenses of AAA and the arbitrator unless the arbitrator's award provides for a different allocation of such fees and expenses pursuant to the Rules.

(iv) The arbitrator's judgment and award shall be final and binding, subject to the following: (A) the arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq., pursuant to which, judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof; and (B) the Parties agree that an appeal from the arbitrator's judgment may be taken under the AAA's Optional Appellate Arbitration Rules, such appeal to be conducted at the place of the original arbitration unless otherwise agreed by the Parties.

8.9 Amendments and Waivers. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by Buyer and the Company. No waiver by any Party of any provision of this Agreement or any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be valid unless the same shall be in writing and signed by the Party making such waiver nor shall such waiver be deemed to 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.

8.10 Transfer Taxes. All transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) imposed in connection with this Agreement and the Ancillary Agreements ("***Transfer Taxes***") will be borne and paid when due by Buyer, and Buyer will prepare or cause to be prepared and cause to be timely filed all necessary Tax Returns and other documentation with respect to all such Transfer Taxes.

8.11 Injunctive Relief. The Parties hereby agree that in the event of breach of this Agreement, damages would be difficult, if not impossible, to ascertain, and that irreparable damage would occur 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, in addition to and without limiting any other remedy or right it may have, Buyer and the Company shall be entitled to seek an injunction or other equitable relief in any court of competent jurisdiction, without any necessity of proving damages or any requirement for the posting of a bond or other security, enjoining any such breach and enforcing specifically the terms and provisions. The Parties hereby waive any and all defenses they may have on the ground of lack of jurisdiction or competence of the court to grant such an injunction or other equitable relief.

8.12 Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

8.13 Expenses. Except as otherwise provided herein, each Party will bear its own costs and expenses (including legal fees and expenses) incurred in connection with this Agreement, the Ancillary Agreements and the transactions contemplated hereby and thereby.

8.14 Construction. The Parties have participated jointly in the negotiation and drafting of this Agreement. 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 of the provisions of this Agreement. Any reference to any Law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

8.15 Incorporation of Disclosure Schedule. The Exhibits, Disclosure Schedule and other schedules identified in this Agreement are incorporated herein by reference and made a part hereof.

\* \* \*

IN WITNESS WHEREOF, the Parties hereto have executed this Asset Purchase Agreement as of the date first above written.

**BUYER:**

**Carterra, Inc.**

By: \_\_\_\_\_  
Name: Josh Eckman  
Title: CEO

**COMPANY:**

**BiOptix Diagnostics, Inc.**

By: \_\_\_\_\_  
Name: Jeffrey McGonegal  
Title: CFO

## Exhibit A to the Asset Purchase Agreement

### **Patent Assignment**

This PATENT ASSIGNMENT AGREEMENT is dated as of October \_\_, 2017 (this "Assignment") and is by and between **BIOPTIX DIAGNOSTICS, INC.**, a Delaware corporation having a place of business at 834-F South Perry Street, Suite 443, Castle Rock, CO 80104 ("Assignor") and **CARTERRA, INC.**, a Delaware corporation having a place of business at 825 North 300 West Suite C309, Salt Lake City, UT 84013 ("Assignee"). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Purchase Agreement (as defined below).

WHEREAS, Assignor is the owner of the patents and patent applications identified on Appendix A (collectively, the "Assigned Patents");

WHEREAS, Assignor and Assignee have entered into that certain Asset Purchase Agreement, dated October \_\_, 2017 (the "Purchase Agreement"), pursuant to which Assignor has agreed to sell, transfer, assign and deliver to Assignee, and Assignee has agreed to purchase, acquire, assume and accept from Assignor all of its right, title and interest in and to the Purchased Assets, all upon the terms and subject to the conditions set forth in the Purchase Agreement, which assets include the Assigned Patents; and

WHEREAS, this Assignment is being executed and delivered pursuant to Section 6.1(b) of the Purchase Agreement.

NOW, THEREFORE, in accordance with the Purchase Agreement and in consideration of the premises and the mutual agreements and covenants set forth in this Agreement and the Purchase Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereby agree as follows:

1. Assignment. Assignor hereby sells, conveys, transfers, assigns and delivers to Assignee all of Assignor's right, title and interest throughout the world in, to and under, the Assigned Patents, including any continuation, continuation-in-part, divisional, extension, substitution, re-examination or reissue thereof or any legal equivalent in the United States or a foreign country for the full term or terms for which the same may be granted, including the right to claim priority in accordance with international treaties and conventions, the right to all income, royalties, damages and payments hereafter due or payable with respect to the Assigned Patents, the right to prosecute, maintain and defend the Assigned Patents before any public or private agency, office or registrar, and all claims, causes of action and rights to sue for past, present and future infringement or unconsented use of the Assigned Patents. The assignments contemplated herein are meant to be absolute assignments and not by way of security. Assignor hereby authorizes the Commissioner of Patents and Trademarks in the United States Patent and Trademark Office, and the corresponding entities or agencies in any applicable foreign countries or multinational authorities, to record Assignee as the assignee of all of Assignor's right, title and interest in, to and under the Assigned Patents and to deliver to Assignee, and to Assignee's attorneys, agents, successors or assigns, all official documents and communications.

2. No Third Party Beneficiaries. This Assignment is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein expressed or implied shall give or be construed to give to any person, other than the parties hereto and such successors and assigns, any legal or equitable rights hereunder.

3. Terms of Purchase Agreement; Conflicts. The scope, nature, and extent of the Purchased Assets are expressly set forth in the Purchase Agreement. Nothing contained herein changes, amends, extends, or alters (nor should it be deemed or construed as changing, amending, extending, or altering) the terms or conditions of the Purchase Agreement in any manner whatsoever. This instrument does not create or establish rights, liabilities or obligations not otherwise created or existing under or pursuant to the Purchase Agreement. The parties hereto acknowledge and agree that the representations, warranties, covenants, agreements, and indemnities contained in the Purchase Agreement will not be superseded hereby but will remain in full force and effect to the full extent provided therein. In the event of any conflict between the provisions of this Assignment (including the Appendix) and the provisions of the Purchase Agreement (including the Disclosure Schedule and Exhibits), the provisions of the Purchase Agreement shall control.

4. Governing Law. This Assignment, the negotiation, execution or performance of this Assignment shall be governed by and construed in accordance with the domestic Laws of the State of New York, without giving effect to any choice or conflict of Law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the Laws of any other jurisdiction other than the State of New York. Any disputes arising under or related hereto (whether for breach of contract, tortious conduct or otherwise) shall be resolved in accordance with Section 8.8 of the Purchase Agreement.

5. Entire Agreement. This Assignment, and the Appendix annexed hereto, and the Purchase Agreement, constitute the entire understanding among the parties hereto with respect to the subject matter hereof and thereof, and supersede all other understandings and negotiations with respect thereto. The parties agree to define their rights, liabilities, and obligations with respect to such understanding and the transactions contemplated hereby exclusively in contract pursuant to the express terms and provisions of the Purchase Agreement and this Assignment, and the parties hereto expressly disclaim that they are owed any duties or are entitled to any remedies not expressly set forth in this Assignment or the Purchase Agreement.

6. Counterparts. This Assignment may be executed in one or more counterparts (including by means of facsimile or by .pdf, .tif, .gif, .peg or similar attachment to electronic mail), each of which shall be deemed an original but all of which together will constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have duly executed this Assignment as of the date first written above.

**ASSIGNOR:**

**BiOptix Diagnostics, Inc.**

By: \_\_\_\_\_  
Name: Jeffrey McGonegal  
Title: CFO

**ASSIGNEE:**

**Carterra, Inc.**

By: \_\_\_\_\_  
Name: Josh Eckman  
Title: CEO