TERRAVIA HOLDINGS, INC.

FORM 10-Q
(Quarterly Report)

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Sector	Consumer Non-Cyclicals
Fiscal Year	12/31

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

(Mark One)

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended September 30, 2016

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the Transition Period from _____to _____

Commission File Number: 001-35189

TerraVia Holdings, Inc.

(Exact name of Registrant as specified in its charter)

Delaware	**33-1077078**
(State or Other Jurisdiction of Incorporation or Organization)	**(I.R.S. Employer Identification Number)**

TerraVia Holdings, Inc.
225 Gateway Boulevard
South San Francisco, CA 94080
(650) 780-4777
(Address and telephone number principal executive offices)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuance to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer.

Large accelerated filer	☐	Accelerated filer	☒
Non-accelerated filer	☐	Smaller reporting company	☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date

Class	**Outstanding at November 1, 2016**
Common Stock, $0.001 par value per share	90,203,008 shares

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Item 1. Financial Statements.

PART I: FINANCIAL INFORMATION

TERRAVIA HOLDINGS, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
In thousands, except share and per share amounts
Unaudited

	September 30, 2016	December 31, 2015
ASSETS		
Current assets:		
Cash and cash equivalents	$ 60,027	$ 46,966
Marketable securities available-for-sale	27,771	51,009
Accounts receivable, net	1,150	2,647
Inventories	3,915	3,212
Current assets of discontinued operations	—	13,389
Prepaid expenses and other current assets	1,566	1,721
Total current assets	94,429	118,944
Property, plant and equipment, net	23,962	25,996
Equity method investments	37,559	35,910
Noncurrent assets of discontinued operations	—	348
Other assets	1,151	774
Total assets	$ 157,101	$ 181,972
LIABILITIES, CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' DEFICIT		
Current liabilities:		
Accounts payable	$ 4,516	$ 4,951
Accrued liabilities	11,994	13,306
Deferred revenue	5,945	4,159
Current liabilities of discontinued operations	—	2,914
Total current liabilities	22,455	25,330
Deferred revenue	—	500
Convertible debt	191,651	202,015
Noncurrent liabilities of discontinued operations	—	26
Other liabilities	1,254	576
Total liabilities	215,360	228,447
Commitments and contingencies (Note 16)		
Convertible preferred stock, par value $0.001—5,000,000 shares authorized; 26,850 and zero shares issued and outstanding at September 30, 2016 and December 31, 2015, respectively	25,749	—
Stockholders' deficit:		
Common stock, par value $0.001—225,000,000 and 150,000,000 shares authorized at September 30, 2016 and December 31, 2015, respectively; 88,110,857 and 81,734,078 shares issued and outstanding at September 30, 2016 and December 31, 2015, respectively	88	82
Additional paid-in capital	616,099	585,679
Accumulated other comprehensive loss	(15,846)	(22,331)
Accumulated deficit	(684,349)	(609,905)
Total stockholders' deficit	(84,008)	(46,475)
Total liabilities, convertible preferred stock and stockholders' deficit	$ 157,101	$ 181,972

See accompanying notes to the unaudited condensed consolidated financial statements.

TERRAVIA HOLDINGS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
In thousands, except share and per share amounts
Unaudited

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
Revenues:				
Product revenues	$ 709	$ 2,251	$ 2,866	$ 7,977
Research and development programs	3,601	2,266	10,780	9,483
Total revenues	4,310	4,517	13,646	17,460
Costs and operating expenses:				
Cost of product revenues	884	2,411	3,038	7,775
Research and development	7,708	13,207	24,215	38,508
Sales, general and administrative	11,169	15,143	33,645	47,966
Restructuring charges	216	(21)	1,455	372
Total costs and operating expenses	19,977	30,740	62,353	94,621
Loss from continuing operations before other income (expense):	(15,667)	(26,223)	(48,707)	(77,161)
Other income (expense):				
Interest and other income, net	562	317	1,174	715
Interest expense	(3,460)	(3,540)	(10,427)	(10,623)
Debt conversion expense	(3,242)	—	(5,027)	—
Loss from equity method investments	(6,378)	(5,916)	(16,608)	(18,291)
Change in fair value of derivative liabilities	—	176	82	27
Total other expense, net	(12,518)	(8,963)	(30,806)	(28,172)
Loss from continuing operations before income taxes	(28,185)	(35,186)	(79,513)	(105,333)
Benefit from income taxes	(1,839)	—	(1,839)	—
Loss from continuing operations	(26,346)	(35,186)	(77,674)	(105,333)
Income (loss) from discontinued operations, net of tax	5,852	268	3,230	(1,421)
Net loss	$ (20,494)	$ (34,918)	$ (74,444)	$ (106,754)
Net income (loss) per share, basic and diluted:				
Continuing operations	$ (0.31)	$ (0.44)	$ (0.93)	$ (1.31)
Discontinued operations	0.07	0.01	0.04	(0.02)
Net loss per share, basic and diluted:	$ (0.24)	$ (0.43)	$ (0.89)	$ (1.33)
Weighted average number of common shares used in loss per share computation, basic and diluted	85,837,223	80,297,757	84,062,169	80,017,436

See accompanying notes to the unaudited condensed consolidated financial statements.

TERRAVIA HOLDINGS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS
In thousands
Unaudited

	Three Months Ended September 30,		Nine months ended September 30,	
	2016	2015	2016	2015
Net loss	$ (20,494)	$ (34,918)	$ (74,444)	$ (106,754)
Other comprehensive income (loss), net:				
Change in unrealized gain/loss on available-for-sale securities	(9)	16	6	206
Foreign currency translation adjustment	(243)	(8,305)	6,479	(12,560)
Other comprehensive income (loss)	(252)	(8,289)	6,485	(12,354)
Total comprehensive loss	$ (20,746)	$ (43,207)	$ (67,959)	$ (119,108)

See accompanying notes to the unaudited condensed consolidated financial statements.

TERRAVIA HOLDINGS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
In thousands
Unaudited

	Nine Months Ended September 30,	
	2016	**2015**
Operating activities:		
Net loss	$ (74,444)	$ (106,754)
Income (loss) from discontinued operations	3,230	(1,421)
Loss from continuing operations	(77,674)	(105,333)
Adjustments to reconcile loss from continuing operations to net cash used in operating activities:		
Depreciation and amortization	3,558	4,406
Non-cash benefit from income taxes	(1,839)	—
Net amortization of premiums on marketable securities	127	908
Amortization of debt discount and loan fees	1,969	1,900
Debt conversion expense	5,027	—
Warrant expense related to vesting of ADM Warrant	—	72
Provision for doubtful accounts	321	—
Non-cash restructuring charges	—	372
Stock-based compensation expense	8,961	11,533
Loss from equity method investments	16,608	17,896
Change in fair value of derivative liabilities	(82)	(27)
Changes in operating assets and liabilities:		
Accounts receivable	(1,530)	(2,970)
Inventories	(703)	2,252
Prepaid expenses and other assets	(184)	5
Accounts payable	(766)	(278)
Accrued liabilities	(1,151)	(1,651)
Deferred revenue	1,285	77
Other current and long-term liabilities	679	4,875
Net cash used in operating activities — continuing operations	(45,394)	(65,963)
Net cash used in operating activities — discontinued operations	(4,107)	(3,057)
Net cash used in operating activities	(49,501)	(69,020)
Investing activities:		
Purchases of property, plant and equipment	(1,488)	(942)
Proceeds from the sale of equipment	—	119
Purchases of marketable securities	(2,707)	(23,349)
Maturities of marketable securities	22,665	86,952
Proceeds from sales of marketable securities	3,331	31,277
Capital contributions to Solazyme Bunge JV	(7,798)	(19,494)
Restricted certificates of deposit	—	181
Net cash provided by investing activities — continuing operations	14,003	74,744
Net cash provided by (used in) investing activities — discontinued operations	19,065	(220)
Net cash provided by investing activities	33,068	74,524
Financing activities:		
Proceeds from the issuance of common stock	2,291	720
Proceeds from issuance of preferred stock, net of offering costs	27,044	—
Other	—	(38)
Net cash provided by financing activities	29,335	682
Effect of exchange rate changes on cash and cash equivalents	159	(633)
Net increase in cash and cash equivalents	13,061	5,553
Cash and cash equivalents — beginning of period	46,966	42,689
Cash and cash equivalents — end of period	$ 60,027	$ 48,242
Supplemental disclosures of cash flow information:		
Interest paid in cash, net of capitalized interest	$ 7,311	$ 7,438
Non-cash investing and financing activities:		
Unpaid closing costs on sale of discontinued operations	$ 228	$ —
Non-cash issuance of common stock options for offering costs	$ 335	$ —
Issuance of common stock to settle restructuring liabilities	$ 1,205	$ —
Exchange of convertible debt for common stock pursuant to inducement:		
Convertible debt exchanged	$ 12,671	$ —
Issuance of common stock	$ 16,298	$ —

See accompanying notes to the unaudited condensed consolidated financial statements.

TERRAVIA HOLDINGS, INC.
NOTES TO THE UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

1. THE COMPANY

Nature of Business —TerraVia Holdings, Inc. (the "Company") was incorporated in the State of Delaware on March 31, 2003. The Company produces food, nutrition and specialty ingredients from algae. In May 2016, the Company changed its name from "Solazyme, Inc." to "TerraVia Holdings, Inc.", and changed its Nasdaq ticker listing symbol from SZYM to TVIA.

The Company's proprietary technology uses microalgae to produce high-value triglyceride oils, proteins, fibers, micronutrients and other ingredients. The Company has developed and is commercializing products for food and nutrition ingredients, animal nutrition ingredients and specialty personal care applications and its products can replace or enhance products derived from the world's three existing oil sources: petroleum, plants and animal fats. The Company's technology platform harnesses the oil and protein-producing characteristics of microalgae and the Company is able to tailor the composition of its oils, powders and other bioproducts to address specific customer requirements. The Company uses standard fermentation equipment to convert sugars into the desired end product. By feeding plant-based sugars to the Company's proprietary microalgae in enclosed fermentation tanks, the Company is in effect utilizing "indirect photosynthesis."

The Company is involved in a highly competitive industry that is characterized by the risks of changing technologies, market conditions and regulatory requirements. Penetration into markets requires investment of considerable resources and continuous development efforts. The Company's future success depends upon several factors, including the technological quality, price, and performance of its products and services relative to those of its competitors, scaling up of production for commercial sale, ability to secure adequate project financing at appropriate terms, and the nature of regulation in its target markets.

Discontinued Operations — As further described in Note 3, on August 16, 2016 the Company sold its Algenist skincare business to TCP Algenist LLC, an affiliate of Tengram Capital Partners and Algenist Holdings, Inc. in exchange for $20.2 million in cash (before $1.4 million closing costs), 19.9% of the fully diluted equity of Algenist Holdings, Inc. and the assumption of substantially all of the liabilities related to the Algenist skincare business by Algenist Holdings, Inc . The Algenist skincare business was previously presented as an operating segment. The results of operations and financial position of Algenist have been presented as discontinued operations for all periods. Unless otherwise noted, the notes to the unaudited condensed consolidated financial statements pertain to continuing operations.

Liquidity —The Company has incurred substantial net losses since its inception; the Company incurred net losses of $74.4 million and $106.8 million during the nine months ended September 30, 2016 and 2015, respectively. Accumulated deficit was $684.3 million as of September 30, 2016 . Net cash used in operating activities was $49.5 million and $69.0 million during the nine months ended September 30, 2016 and 2015, respectively. Cash and cash equivalents and marketable securities available for sale were $87.8 million as of September 30, 2016 .

The Company is an emerging growth company with a limited operating history. The Company is relatively early in commercializing its food, nutrition and specialty ingredient products. To date, a substantial portion of revenues has consisted of funding from third party collaborative research agreements and government grants. The Company has generated limited revenues from commercial sales.

Net losses may continue as the Company ramps up manufacturing capacity and builds out its product pipeline. The Company expects to incur additional costs and expenses related to the continued development and expansion of its business, including research and development, the operation of its facility in Peoria, Illinois ("Peoria Facility"), and the ramp up and operation of the commercial production facility in Brazil ("Solazyme Bunge JV") through its joint venture with Bunge Global Innovation, LLC (together with its affiliates, "Bunge").

The Company, along with its development and commercialization partners, needs to develop products successfully, cost effectively produce them in large quantities and market and sell such products profitably. The Company's failure to generate sufficient revenues, achieve adequate gross margins, control operating costs or raise sufficient additional funds may require it to modify, delay or abandon its planned operations, which could have a material adverse effect on the business, operating results, financial condition and ability to achieve intended business objectives. The Company may be required to seek additional funds through collaborations, public or private debt or equity financings or government programs, and may also seek to reduce expenses related to the Company's operations. There can be no assurance that any additional financing will be available or on acceptable terms.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES AND RECENT ACCOUNTING PRONOUNCEMENTS

Basis of Presentation **-** The accompanying unaudited interim condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") and include all adjustments necessary for the fair presentation of the Company's condensed consolidated financial position, results of operations and cash flows for the periods presented. The unaudited interim condensed consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries. All intercompany accounts and transactions have been eliminated in consolidation.

T he Solazyme Bunge JV is a variable interest entity ("VIE") that is 50.1% owned by the Company and 49.9% owned by Bunge. The Company determined that it was not required to consolidate the 50.1% ownership in this joint venture and, therefore, accounts for this joint venture under the equity method of accounting (see Note 12). The Company owns 19.9% of Algenist Holdings, Inc. which is accounted for under the equity method of accounting (see Note 3).

The unaudited interim condensed consolidated financial statements have been prepared on the same basis as the audited consolidated financial statements and, in the opinion of management, reflect all adjustments of a normal recurring nature considered necessary to present fairly the Company's interim financial information. Certain reclassifications and changes in presentation were made to the 2015 condensed consolidated financial statements to conform to the 2016 presentation.

The results of operations for the three and nine months ended September 30, 2016 are not necessarily indicative of the results that may be expected for the year ending December 31, 2016, or for other interim periods or future years.

These unaudited interim condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and notes thereto included in our Annual Report on Form 10-K for the year ended December 31, 2015, as filed with the United States Securities and Exchange Commission ("SEC") on March 15, 2016. The December 31, 2015 unaudited interim condensed consolidated balance sheet included herein was derived from the audited consolidated financial statements as of that date, but does not include all disclosures, including notes required by GAAP for complete financial statements.

Significant Accounting Policies – There have been no changes to the Company's significant accounting policies since the Company's Annual Report on Form 10-K for the year ended December 31, 2015.

Recently Adopted Accounting Standards — In April 2015, the FASB issued ASU 2015-03, *Simplifying the Presentation of Debt Issuance Costs* . The standard amends existing guidance to require the presentation of debt issuance costs in the balance sheet as a deduction from the carrying amount of the related debt liability instead of as an asset. The Company adopted ASU 2015-03 retrospectively in its fiscal quarter ended March 31, 2016. As a result of the retrospective adoption, the Company reclassified unamortized debt issuance costs of $0.5 million from other long-term assets to a reduction in convertible debt on the condensed consolidated balance sheet as of December 31, 2015.

Recent Accounting Pronouncements —In May 2014, the FASB issued Accounting Standards Update ("ASU") 2014-09, *Revenue from Contracts with Customers (Topic 606)* ("ASU 2014-09"), which supersedes the revenue recognition requirements in FASB ASC 605, *Revenue Recognition* . ASU 2014-09 is based on the principle that revenue is recognized to depict the transfer of goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. ASU 2014-09 also requires additional disclosure about the nature, amount, timing and uncertainty of revenue and cash flows arising from customer contracts, including significant judgments and changes in judgments and assets recognized from costs incurred to obtain or fulfill a contract. In addition, in March and April 2016, the FASB issued ASU No. 2016-08, *Revenue from Contracts with Customers (Topic 606)* and ASU No. 2016-10, *Revenue from Contracts with Customers (Topic 606),* which clarify the guidance in ASU 2014-09 and have the same effective date as the original standard. This guidance requires the recognition of revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration expected in exchange for those goods or services. In May 2016, the FASB issued ASU No. 2016-12, *Narrow Scope Improvements and Practical Expedients* , which provides for improvements to the guidance on collectability, noncash consideration and completed contracts, and provides a practical expedient for contract modifications upon adoption of the updated guidance under ASC 606. This new guidance is effective for interim and annual reporting periods beginning after December 15, 2017, and early adoption is permitted, but not before December 15, 2016, and are required to be adopted by taking either a full retrospective or a modified retrospective approach. The Company is currently assessing the potential impact of this new guidance on its consolidated financial statements.

In February 2016, the FASB issued ASU 2016-02, *Leases (Topic 842)* which, for operating leases, requires a lessee to recognize a right-of-use asset and a lease liability, initially measured at the present value of the lease payments, in its balance sheet. The standard also requires a lessee to recognize a single lease cost, calculated so that the cost of the lease is allocated over

the lease term, on a generally straight-line basis. The ASU is effective for public companies for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years. Early adoption is permitted. The Company is in the process of evaluating the impact of the adoption of this new guidance on its consolidated financial statements.

In March 2016, the FASB issued ASU 2016-09, *Compensation, Stock Compensation (Topic 718)* , a new standard simplifying certain aspects of accounting for share-based payments. The key provision of the new standard requires that excess tax benefits and shortfalls be recorded as income tax benefit or expense in the income statement, rather than in equity. The ASU is effective for public companies for fiscal years beginning after December 15, 2016, including interim periods within those fiscal years. Early adoption is permitted. The Company is in the process of evaluating the impact of the adoption of this new guidance on its consolidated financial statements.

3. SALE OF ALGENIST AND DISCONTINUED OPERATIONS

On August 16, 2016, the Company sold its Algenist skincare business to TCP Algenist LLC, an affiliate of Tengram Capital Partners and Algenist Holdings, Inc., in exchange for $18.8 million in cash, net of closing costs, 19.9% of the fully diluted equity of Algenist Holdings, Inc. and the assumption of substantially all of the liabilities related to the Algenist skincare business by Algenist Holdings, Inc.

The gain on the sale of Algenist was as follows (in thousands):

Cash received, net of closing costs	$ 18,836
19.9% interest in Algenist at fair value	1,600
	20,436
Net assets sold (primarily working capital)	(11,763)
Gain on sale of Algenist before income taxes	$ 8,673

The summary comparative financial results of the Algenist discontinued operations were as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
Total revenues	$ 2,204	$ 6,882	$ 13,674	$ 18,284
Costs and operating expenses:				
Cost of product revenues	936	2,159	4,724	5,826
Sales, general and administrative	2,233	4,453	12,525	13,879
Total costs and operating expenses	3,169	6,612	17,249	19,705
Income (loss) before other expense	(965)	270	(3,575)	(1,421)
Other expense	(17)	(2)	(29)	—
Gain on sale of Algenist	8,673	—	8,673	—
Income (loss) from discontinued operations before income taxes	7,691	$ 268	$ 5,069	$ (1,421)
Income tax provision	1,839	—	1,839	—
Income (loss) from discontinued operations	$ 5,852	$ 268	$ 3,230	$ (1,421)

Assets and liabilities related to Algenist presented as discontinued operations as of December 31, 2015 were as follows (in thousands):

Accounts receivable	$	1,941
Inventories		8,806
Prepaid expenses and other current assets		2,642
Current assets of discontinued operations	$	13,389
Property, plant and equipment, net	$	348
Accounts payable	$	2,065
Accrued liabilities		849
Current liabilities of discontinued operations	$	2,914
Noncurrent liabilities of discontinued operations	$	26

4. BASIC AND DILUTED NET LOSS PER SHARE

Basic net loss per share is computed by dividing the Company's net loss by the weighted-average number of common shares outstanding during the period. Diluted net loss per share is computed by giving effect to all potentially dilutive securities, including stock options, common stock issuable pursuant to the 2011 Employee Stock Purchase Plan, restricted stock, restricted stock units and common stock warrants. Basic and diluted net loss per share was the same for all periods presented as the inclusion of all potentially dilutive securities outstanding was anti-dilutive.

The following outstanding shares of potentially dilutive securities were excluded from the calculation of diluted net loss per share for the three and nine months ended September 30, 2016 and 2015, as their effect was anti-dilutive:

	September 30,	
	2016	2015
Options to purchase common stock	13,200,266	10,252,607
Restricted stock units	1,403,888	1,525,736
Warrants to purchase common stock	750,000	1,250,000
Shares of common stock to be issued upon conversion of Series A Preferred Stock	13,425,000	—
Shares of common stock to be issued upon conversion of convertible debt ("Notes")	17,320,971	18,790,996
Total	46,100,125	31,819,339

The table above does not reflect early conversion payment features of the Notes (see Notes 9 and 15) that may be settled, at the Company's election, in cash or, subject to satisfaction of certain conditions, in shares of the Company's common stock.

5. CHANGES IN ACCUMULATED OTHER COMPREHENSIVE LOSS

Changes in accumulated other comprehensive loss, by component, are as follows (in thousands):

	Foreign Currency Translation Adjustments	Change in Unrealized Gain/(Loss) on Available-For-Sale Securities	Total Accumulated Other Comprehensive Loss
Balance at December 31, 2015	$ (22,333)	$ 2	$ (22,331)
Other comprehensive income	6,479	6	6,485
Balance at September 30, 2016	$ (15,854)	$ 8	$ (15,846)

6. SEGMENT INFORMATION

As further described in Note 3, on August 16, 2016 the Company sold its Algenist skincare business to TCP Algenist LLC, an affiliate of Tengram Capital Partners and Algenist Holdings, Inc. in exchange for $20.2 million in cash (before $1.4 million closing costs), 19.9% of the fully diluted equity of Algenist Holdings, Inc. and the assumption of substantially all of the liabilities related to the Algenist skincare business by Algenist Holdings, Inc . As a result, all Algenist amounts have been included as discontinued operations for all periods presented, and Ingredients and Other is the sole operating segment. Prior to

the sale of Algenist, the Company had two operating segments for financial statement reporting purposes: Algenist and Ingredients and Other.

7. RESTRUCTURING CHARGES

In October 2015, the Company made a strategic decision to terminate its manufacturing agreements at the Archer Daniels Midland Company ("ADM") Clinton and American Natural Processors ("ANP") Galva facilities to better align the Company's immediate production assets with its operating strategy while minimizing production costs. As part of the Company's continuing strategy to focus its operations on targeted, higher-value product categories, the Company streamlined operations by reducing workforce by approximately 20% in January 2016. Restructuring activities for the nine months ended September 30, 2016 were as follows (in thousands):

	Liability as of December 31, 2015	2016 Expense	Deductions/Payments	Liability as of September 30, 2016
Other exit costs	$ 3,400	$ 254	$ (3,402)	$ 252
Employee termination costs	—	1,201	(1,175)	26
Total	$ 3,400	$ 1,455	$ (4,577)	$ 278

8. MARKETABLE SECURITIES AVAILABLE-FOR-SALE

Marketable securities classified as available-for-sale consisted of the following (in thousands):

	September 30, 2016			
	Amortized Cost	Gross Unrealized Gain	Gross Unrealized Loss	Fair Value
Corporate bonds	$ 16,404	$ 9	$ (6)	$ 16,407
Asset-backed securities	4,857	1	(3)	4,855
Government and agency securities	3,517	5	—	3,522
Mortgage-backed securities	2,195	8	(7)	2,196
Municipal bonds	790	1	—	791
Total	$ 27,763	$ 24	$ (16)	$ 27,771

	December 31, 2015			
	Amortized Cost	Gross Unrealized Gain	Gross Unrealized Loss	Fair Value
Corporate bonds	$ 25,608	$ 122	$ (73)	$ 25,657
Asset-backed securities	12,424	—	(31)	12,393
Mortgage-backed securities	4,800	2	(23)	4,779
Government and agency securities	5,705	16	(9)	5,712
Municipal bonds	2,470	—	(2)	2,468
Total	$ 51,007	$ 140	$ (138)	$ 51,009

The following table summarizes the amortized cost and fair value of the Company's marketable securities, classified by maturity as of September 30, 2016 and December 31, 2015 (in thousands):

	September 30, 2016		December 31, 2015	
	Amortized Cost	Fair Value	Amortized Cost	Fair Value
Marketable securities				
Due in 1 year or less	$ 17,372	$ 17,374	$ 17,783	$ 17,870
Due in 1-2 years	5,277	5,284	15,900	15,858
Due in 2-3 years	2,754	2,753	7,959	7,934
Due in 3-4 years	140	140	2,399	2,408
Due in 4-9 years	917	919	2,844	2,843
Due in 9-20 years	931	929	1,397	1,394
Due in 20-35 years	372	372	2,725	2,702
	$ 27,763	$ 27,771	$ 51,007	$ 51,009

Marketable securities classified as available-for-sale are carried at fair value as of September 30, 2016 and December 31, 2015 . Realized gains and losses from sales and maturities of marketable securities were not significant in the periods presented.

The aggregate fair value of available-for-sale securities with unrealized losses was $12.5 million as of September 30, 2016 . Gross unrealized losses on available-for-sale securities were $16,000 as of September 30, 2016 , and the Company believes the gross unrealized losses are temporary. In determining that the decline in fair value of these securities was temporary, the Company considered the length of time each security was in an unrealized loss position and the extent to which the fair value was less than cost. The Company had $2.5 million of available-for-sale securities which had been in a continuous loss position for more than 12 months as of September 30, 2016 . In addition, the Company intends to hold these securities. Hence it is not more likely than not that the Company will be required to sell these securities before the recovery of their amortized cost basis.

9. FAIR VALUE OF FINANCIAL INSTRUMENTS

Assets and liabilities recorded at fair value in the consolidated financial statements are categorized based upon the level of judgment associated with the inputs used to measure their fair value. Hierarchical levels that are directly related to the amount of subjectivity associated with the inputs to the valuation of these assets or liabilities are as follows:

- Level 1—Observable inputs, such as quoted prices in active markets for identical assets or liabilities.
- Level 2—Observable inputs other than Level 1 prices, such as quoted prices for similar assets or liabilities, quoted prices in markets that are not active, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.
- Level 3—Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities. Level 3 assets and liabilities include those whose fair value measurements are determined using pricing models, discounted cash flow methodologies or similar valuation techniques and significant management judgment or estimation.

The following tables present the Company's financial instruments that were measured at fair value on a recurring basis as of September 30, 2016 and December 31, 2015 by level within the fair value hierarchy (in thousands):

	September 30, 2016			
	Level 1	Level 2	Level 3	Total
Financial Assets				
Cash equivalents	$ —	$ 4,689	$ —	$ 4,689
Marketable securities:				
Corporate bonds	—	16,407	—	16,407
Asset-backed securities	—	4,855	—	4,855
Government and agency securities	2,477	1,045	—	3,522
Mortgage-backed securities	—	2,196	—	2,196
Municipal bonds	—	791	—	791
	2,477	25,294	—	27,771
Total	$ 2,477	$ 29,983	$ —	$ 32,460
Financial Liabilities				
Fair value of early conversion feature of convertible debt	$ —	$ —	$ —	$ —

	December 31, 2015			
	Level 1	Level 2	Level 3	Total
Financial Assets				
Cash equivalents	$ 3	$ 18,900	$ —	$ 18,903
Marketable securities:				
Corporate bonds	—	25,657	—	25,657
Asset-backed securities	—	12,393	—	12,393
Mortgage-backed securities	—	4,779	—	4,779
Government and agency securities	3,722	1,990	—	5,712
Municipal bonds	—	2,468	—	2,468
	3,722	47,287	—	51,009
Total	$ 3,725	$ 66,187	$ —	$ 69,912
Financial Liabilities				
Fair value of early conversion feature of convertible debt	$ —	$ —	$ 82	$ 82

Cash Equivalents and Marketable Securities – Cash equivalents and marketable securities classified within Level 2 of the fair value hierarchy are valued based on other observable inputs, including broker or dealer quotations or alternative pricing sources. When quoted prices in active markets for identical assets or liabilities are not available, the Company relies on non-binding quotes, which are based on proprietary valuation models of independent pricing services. These models generally use inputs such as observable market data, quoted market prices for similar instruments, historical pricing trends of a security as relative to its peers and internal assumptions of the independent pricing services. The Company corroborates the reasonableness of non-binding quotes received from the independent pricing services by comparing them to quotes of identical or similar instruments from other pricing sources. During the three and nine months ended September 30, 2016 and 2015 , the Company did not record impairment charges related to its cash equivalents and marketable securities, and the Company did not have any transfers between Level 1, Level 2 and Level 3 of the fair value hierarchy.

As of September 30, 2016 and December 31, 2015, the carrying values of the Company's accounts receivables and secured and unsecured debt obligations, excluding the Notes, approximated their fair values. The Company has estimated the fair value of the Notes to be $104.1 million at September 30, 2016 , compared to a carrying value of $191.7 million . These estimates are based upon Level 2 inputs using the market price of the Notes derived from actual trades quoted from Bloomberg using a midmarket pricing convention (the midpoint price between bid and ask prices).

10. INVENTORIES

Inventories consisted of the following (in thousands):

	September 30, 2016	December 31, 2015
Raw materials	$ 23	$ 180
Work in process	789	1,301
Finished goods	3,103	1,731
Total inventories	$ 3,915	$ 3,212

11. PROPERTY, PLANT AND EQUIPMENT—NET

Property, plant and equipment—net consisted of the following (in thousands):

	September 30, 2016	December 31, 2015
Plant equipment	$ 25,233	$ 24,824
Building and improvements	5,811	5,810
Lab equipment	7,491	7,495
Leasehold improvements	2,602	1,866
Computer equipment and software	3,968	3,988
Furniture and fixtures	566	539
Land	430	430
Automobiles	194	194
Construction in progress	312	258
Total	46,607	45,404
Less: accumulated depreciation and amortization	(22,645)	(19,408)
Property, plant and equipment—net	$ 23,962	$ 25,996

12. INVESTMENT IN EQUITY METHOD INVESTMENTS

Solazyme Bunge JV

Background and Operations

In April 2012, the Company and Bunge formed the Solazyme Bunge JV to build, own and operate the Solazyme Bunge JV Plant, a commercial-scale renewable algae oils production facility adjacent to Bunge's Moema sugarcane mill in Brazil, leveraging the Company's technology. The Solazyme Bunge JV is 50.1% owned by the Company and 49.9% owned by Bunge and is governed by a six member board of directors, three from each investor.

The Solazyme Bunge JV's operational focus from inception to date has been primarily to support the construction, ramp up and optimization of the commercial-scale production facility. While the Solazyme Bunge JV has incurred significant losses to date, the Company believes that long-term profitability will drive positive cash flows sufficient for the Company to recover its investment in the Solazyme Bunge JV.

In October 2015, the Company and Bunge entered into an amended and restated joint venture agreement to expand the Solazyme Bunge JV to add a worldwide focus on human food and animal nutrition. Also in October 2015, the Company and Bunge entered into an amended and restated Development Agreement under which the Company granted to the Solazyme Bunge JV a worldwide royalty-bearing, field-limited license to all of its technology that is necessary or useful for the manufacture of certain algae oil products. Concurrently with the entry into such agreements, the Company and the Solazyme Bunge JV entered into two funded research programs targeted at completing the development of additional products for the Solazyme Bunge JV. Pursuant to these agreements:

Solazyme Bunge JV will:

- continue to use the Company's proprietary technology to produce a range of algae-based oils and products from cane sugar through microbe-based catalysis;
- pay the Company a royalty for certain products sold by the joint venture; and
- pay the Company a technology maintenance fee in recognition of the Company's ongoing research investment in technology.

The Company will:

- provide sales, marketing and application development for certain oils and technical expertise in regard to the implementation of its technology;
- provide access to the Company's proprietary technology for the production of certain oils and structuring fats for the food and animal nutrition markets; and
- retain co-primary sales rights for certain products.

Bunge will:

- continue to provide cane sugar feedstock and utilities to the Solazyme Bunge JV Plant from Bunge's adjacent sugar cane processing mill;
- provide sales, marketing and application development for certain food oils and will also provide oil processing, global distribution and logistics;
- serve as the primary sales channel for some of the joint venture's products, with the Company as an additional sales channel, in each case in exchange for a distribution fee; and
- continue to provide working capital to the Solazyme Bunge JV through a revolving loan facility.

The Company contributed $7.8 million and $19.5 million to the Solazyme Bunge JV in the nine months ended September 30, 2016 and 2015 , respectively. The Company also contributed $2.7 million and $5.5 million to the Solazyme Bunge JV in the nine months ended September 30, 2016 and 2015 , respectively, through a reduction in the Company’s receivables due from the Solazyme Bunge JV.

Equity Accounting

The Company accounts for its interest in the Solazyme Bunge JV under the equity method of accounting. The Company's equity investment in the Solazyme Bunge JV was $36.0 million and $35.9 million as of September 30, 2016 and December 31, 2015, respectively. During the nine months ended September 30, 2016 and 2015, the Company recognized $16.6 million and $18.3 million of losses, respectively, related to its equity method investment in the Solazyme Bunge JV.

The Company has determined that the Solazyme Bunge JV is a VIE based on the insufficiency of each party’s equity investment at risk to absorb losses and the Company’s share of the respective expected losses of the Solazyme Bunge JV. The optimization and ramping up of the Solazyme Bunge JV Plant is the activity of the Solazyme Bunge JV that most significantly impacts its current economic performance. Although the Company has the obligation to absorb losses and the right to receive benefits of the Solazyme Bunge JV that could potentially be significant to the Solazyme Bunge JV, each of the Company and Bunge has equally shared decision–making powers over certain significant activities of the Solazyme Bunge JV, including those related to the construction, optimization and ramping up of the Solazyme Bunge JV. Therefore, as of September 30, 2016 , the Company does not consider itself to be the Solazyme Bunge JV’s primary beneficiary, and as such has not consolidated the financial results of the Solazyme Bunge JV. Consolidation may be required in the future due to changes in events and circumstances impacting the power to direct the activities that most significantly affect the Solazyme Bunge JV’s economic performance. The Company will continue to reassess its potential designation as the primary beneficiary of the Solazyme Bunge JV.

The following table summarizes the carrying amounts of the assets and liabilities included in the Company's consolidated balance sheets and the maximum loss exposure related to the Company's interest in the Solazyme Bunge JV as of September 30, 2016 and December 31, 2015 (in thousands):

	As of September 30, 2016				
	Assets			Liabilities	
	Accounts Receivable	Unbilled Revenues	Investments in Unconsolidated Joint Ventures	Loan Guarantee	Maximum Exposure to Loss [1]
Equity investment - Solazyme Bunge JV	$ 12	$ 563	$ 35,959	$ —	$ 47,703

	As of December 31, 2015				
	Assets			Liabilities	
	Accounts Receivable	Unbilled Revenues	Investments in Unconsolidated Joint Ventures	Loan Guarantee	Maximum Exposure to Loss [2]
Equity investment - Solazyme Bunge JV	$ 12	$ 839	$ 35,910	$ —	$ 45,692

[1] Includes maximum exposure to loss attributable to the Company's bank guarantee required to be provided for the Solazyme Bunge JV of $10.9 million and non-cancelable purchase obligations of $0.3 million (based on the exchange rate at September 30, 2016).
[2] Includes maximum exposure to loss attributable to the Company's bank guarantee required to be provided for the Solazyme Bunge JV of $8.9 million (based on the exchange rate at December 31, 2015).

The Company may be required to contribute additional capital to the Solazyme Bunge JV which would increase the Company's maximum exposure to loss. These future contribution amounts cannot be quantified at this time.

Summarized Financial Information

Summarized information on the Solazyme Bunge JV's balance sheets and income statements as of September 30, 2016 and December 31, 2015, and for the three and nine months ended September 30, 2016 and 2015 respectively, was as follows (in thousands):

	As of September 30, 2016	As of December 31, 2015
Current assets	$ 13,829	$ 5,654
Property, plant and equipment, net	114,991	100,755
Recoverable taxes [1]	20,852	16,144
Total assets	$ 149,672	$ 122,553
Current liabilities	$ 41,929	$ 23,009
Noncurrent liabilities	42,966	43,054
JV's partners' capital, net	64,777	56,490
Total liabilities and partners' capital, net	$ 149,672	$ 122,553

[1] Recoverable taxes are comprised of value-added taxes paid upon the acquisition of property, plant and equipment items and other goods and services, and other transactional taxes which can be recovered in cash or as compensation against income taxes or other taxes owed by the Solazyme Bunge JV in Brazil. The realization of these recoverable tax payments could take in excess of five years.

	Three months ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
Net sales	$ 2,495	$ 953	$ 5,491	$ 1,611
Net losses	$ (12,357)	$ (11,435)	$ (32,036)	$ (34,610)

During 2013, the Solazyme Bunge JV entered into a loan agreement with the Brazilian Development Bank ("BNDES" or "BNDES Loan") under which it could borrow up to $75.4 million (based on the exchange rate as of September 30, 2016).

Outstanding borrowings were $55.6 million and $53.4 million as of September 30, 2016 and December 31, 2015, respectively. The Company has provided a bank guarantee equal to 14.39% of the total amount available under the BNDES Loan and may be required to provide a corporate guarantee equal to 35.71% of the total amount available under the BNDES Loan (with the total amount covered by the guarantees not to exceed the Company's ownership percentage in the Solazyme Bunge JV). The BNDES funding has supported the construction of the Solazyme Bunge JV's production facility. The term of the BNDES Loan is eight years and the loan has an average interest rate of approximately 4.0% per annum. As of September 30, 2016 , the Company's bank guarantee was in place and the corporate guarantee was not in place. The fees incurred on the cancelable bank guarantee were not material during the three and nine months ended September 30, 2016 and 2015.

Impairment Assessment

The Company assessed the recoverability of its equity investment in the Solazyme Bunge JV as of December 31, 2015 using a discounted cash flow analysis. Based upon such analysis, the Company expects to recover the carrying amount of its equity investment and concluded that its equity investment was not impaired. The Company is not aware of any events since that assessment was done that would indicate its equity investment was impaired as of September 30, 2016 .

The process of evaluating the potential impairment is subjective and requires significant estimates and assumptions. The Company's estimated future cash flows are based on assumptions that are consistent with its annual planning process and include estimates for revenue and operating margins and future economic and market conditions. Actual future results may differ significantly from those estimates. Changes in assumptions or circumstances could result in an impairment in the period the change occurs and in future years. Management's conclusion that its equity investment was not impaired as of December 31, 2015 was based upon the following critical estimates and assumptions:

- No significant adverse change in the regulatory or economic environment in Brazil or other countries, as applicable
- No significant difficulties as production increases from minimal capacity to full capacity over the next several years
- Sales mix of products currently commercially produced and sold to existing customers as well as certain oil products for food and animal nutrition markets under development and expected to be commercialized in 2016 and 2017
- Average selling prices based on current contracted prices and at or above market prices for comparable products
- Additional capital investment to increase plant capacity for new products and process improvements of approximately $50 million in total
- Increased fermentation and recovery efficiencies over the next 5 years based on strain and process improvements
- Reduction to production costs based on ramp up of production volume to an aggregate maximum plant capacity in line with sales volume
- Discount rate of approximately 14%

In order for the Solazyme Bunge JV to achieve sufficient cash flows to enable the Company to fully recover its equity investment, the Solazyme Bunge JV must:

- Increase production volumes by:
  - Optimizing plant throughput
  - Improving lipid and oil content output
  - Increasing final recovery yields
- Maintain access to low-cost cane sugar feedstock and power
- Commercialize and sell its high value products

The estimates used for cash flow forecasts required significant exercise of judgment and are subject to change in future reporting periods as facts and circumstances change. Additionally, the Company may make changes to its business plan that could result in changes to the expected cash flows. As a result, it is possible that impairments may be required in future reporting periods.

Algenist Holdings, Inc.

As further described in Note 3, on August 16, 2016 the Company sold its Algenist skincare business to TCP Algenist LLC, an affiliate of Tengram Capital Partners and Algenist Holdings, Inc. in exchange for $20.2 million in cash (before $1.4 million closing costs), 19.9% of the fully diluted equity of Algenist Holdings, Inc. and the assumption of substantially all of the liabilities related to the Algenist skincare business by Algenist Holdings, Inc . The Company recognized the 19.9% ownership interest in Algenist Holdings, Inc. at fair value on the date of closing of the transaction. After the sale, the Company considers that it has sufficient influence over Algenist Holdings, Inc. to require equity accounting. Hence the Company recognizes its proportionate share of the earnings (losses) of Algenist Holdings, Inc. under the equity method of accounting within results of continuing operations.

The Company's investment in Algenist Holdings, Inc. included in equity method investment assets on the condensed consolidated balance sheet was $1.6 million as of September 30, 2016 , and the Company's equity income from its investment in Algenist Holdings, Inc. for the period from August 16, 2016 to September 30, 2016 was de minimis.

13. ACCRUED LIABILITIES

Accrued liabilities consisted of the following (in thousands):

	September 30, 2016	December 31, 2015
Accrued compensation and related liabilities	$ 4,737	$ 5,614
Accrued interest	4,168	3,495
Accrued restructuring costs	278	3,400
Other accrued liabilities	2,811	797
Total accrued liabilities	$ 11,994	$ 13,306

14. COLLABORATIVE RESEARCH AND DEVELOPMENT AGREEMENTS, DISTRIBUTION AGREEMENTS, AND LICENSES

The Company has entered into multiple joint research and development agreements with Unilever, which expanded its research and development efforts. In September 2013, the Company and Unilever entered into a commercial supply agreement for at least 10,000 MT of the Company's algae oil. In May 2014, Unilever announced the initial introduction of the Company's sustainable algae oil into one of its biggest soap brands, Lux.

In March 2016, the Company entered into a multi-year global supply agreement with Unilever, which includes a broad portfolio of its algae oils for Unilever to purchase. Production of these oils will take place at the Solazyme Bunge JV facility in Brazil and pricing terms are based upon variable production cost plus a defined contribution margin. The agreement contains certain minimum and maximum sales volumes and is subject to other terms and conditions. Unilever is a strategic development partner and customer for the Company. The Company intends to continue managing the strategic relationship with Unilever and has assigned the rights and responsibilities to deliver against the current supply agreement to the Solazyme Bunge JV, and accordingly revenue related to the Unilever supply agreement was recognized by the Solazyme Bunge JV in the three and nine months ended September 30, 2016 . The Company expects to formalize the assignment agreement with the Solazyme Bunge JV.

15. DEBT

A summary of the Company's debt as of September 30, 2016 and December 31, 2015 was as follows (in thousands):

	September 30, 2016	December 31, 2015
Convertible debt:		
2018 Notes	$ 50,389	$ 61,632
2019 Notes	148,072	149,500
Total debt	198,461	211,132
Add:		
Fair value of embedded derivative	—	82
Less:		
Unamortized debt discount	(6,498)	(8,749)
Debt issuance costs	(312)	(450)
Long-term portion of debt	$ 191,651	$ 202,015

The Company was in compliance with all debt covenants as of September 30, 2016 and December 31, 2015.

Convertible Senior Subordinated Notes -2018 Notes —As of September 30, 2016 , the Company had $50.4 million aggregate principal amount outstanding of 6.00% Convertible Senior Subordinated Notes due 2018 ("2018 Notes"). The 2018 Notes bear interest at a fixed rate of 6.00% per year, payable semiannually in arrears on August 1 and February 1 of each year. The 2018 Notes are convertible into the Company's common stock and may be settled as described below. The 2018 Notes will mature on February 1, 2018, unless earlier repurchased or converted. The Company may not redeem the 2018 Notes prior to maturity.

The 2018 Notes are convertible at the option of the holders at any time prior to the close of business on the scheduled trading day immediately preceding February 1, 2018 into shares of the Company's common stock at the then-applicable conversion rate. The conversion rate is initially 121.1240 shares of common stock per $1,000 principal amount of 2018 Notes (equivalent to an initial conversion price of approximately $8.26 per share of common stock). With respect to any conversion prior to November 1, 2016 (other than conversions in connection with certain fundamental changes where the Company may be required to increase the conversion rate as described below), in addition to the shares deliverable upon conversion, holders are entitled to receive an early conversion payment equal to $83.33 per $1,000 principal amount of 2018 Notes surrendered for conversion that may be settled, at the Company's election, in cash or, subject to satisfaction of certain conditions, in shares of the Company's common stock.

Convertible Senior Subordinated Notes - 2019 Notes — As of September 30, 2016 , the Company had $148.1 million aggregate principal amount outstanding of 5.00% Convertible Senior Subordinated Notes due 2019 ("2019 Notes"). The 2019 Notes bear interest at a fixed rate of 5.00% per year, payable semiannually in arrears on April 1 and October 1 of each year. The 2019 Notes are convertible into the Company's common stock and may be settled early as described below. The 2019 Notes will mature on October 1, 2019, unless earlier repurchased or converted. The Company may not redeem the 2019 Notes prior to maturity.

The 2019 Notes are convertible at the option of the holders on any day prior to and including the scheduled trading day prior to October 1, 2019. The 2019 Notes will initially be convertible at a conversion rate of 75.7576 shares of the Company's Common Stock per $1,000 principal amount of 2019 Notes (equivalent to an initial conversion price of $13.20 per share of the Company's Common Stock), subject to adjustment upon the occurrence of certain events. With respect to any conversion prior to January 1, 2018 (other than conversions in connection with certain fundamental changes where the Company may be required to increase the conversion rate as described below), in addition to the shares deliverable upon conversion, holders are entitled to receive an early conversion payment equal to $83.33 per $1,000 principal amount of 2019 Notes surrendered for conversion that may be settled, at the Company's election, in cash or shares of the Company's common stock.

Debt Conversion —During the nine months ended September 30, 2016 , the Company exchanged 2018 and 2019 Notes totaling approximately $12.7 million by issuing 3,459,567 new shares (including 1,544,039 inducement shares) of the Company's common stock. The Company recorded a non-cash debt conversion expense of approximately $3.2 million and $5.0 million related to the exchange in the three and nine months ended September 30, 2016 , respectively. As of September 30, 2016 accrued liabilities included accrued debt conversion liabilities of $1.1 million for the exchange of Notes that were agreed to as of September 30, 2016 , and Notes payable was reduced by $3.8 million when the final transaction settled in October 2016.

SVB Standby Letter of Credit and Loan and Security Agreement —In the second quarter of 2016, the Company and Silicon Valley Bank entered into an agreement ("SVB Agreement") that provides for a $12.9 million letter of credit facility (the "Facility") denominated in U.S. dollars or a foreign currency. On April 29, 2016, Silicon Valley Bank issued a standby letter of credit ("SVB SLOC") to support a bank guarantee issued on behalf of the Company to BNDES in connection with the loan agreement entered into in 2013 between BNDES and the Solazyme Bunge JV. The SVB SLOC is being supported by a bank confirmation issued by the Bank of Nova Scotia (the "Scotia Bank Confirmation") on behalf of Silicon Valley Bank. The Company is required to pay fees of 1.5% and 0.7% of the collateral per annum related to the SVB SLOC and the Scotia Bank Confirmation, respectively. The Company is also required to pay a fee of 1.99% of the collateral per annum for the issuance of the bank guarantee to BNDES. The Company is subject to customary events of default under the SVB Agreement. The Company has not recorded any liability for this guarantee as of September 30, 2016 , as the probability of performance is considered to be not sufficient to justify a liability.

Under the SVB Agreement, the Company is subject to financial covenants and covenants related to our 2018 Notes and 2019 Notes, as well as customary negative covenants. The SVB Agreement also contains certain customary representations and warranties, affirmative covenants and provisions relating to events of default.

16. COMMITMENTS AND CONTINGENCIES

Legal Matters

Securities Class Action Litigation

In June 2015, a securities class action complaint entitled Norfolk County Retirement System v. Solazyme, Inc. et al. was filed against the Company, its then CEO, Jonathan Wolfson, its CFO/COO, Tyler Painter, certain of its current and former directors, and the underwriters of its March 2014 equity and debt offerings, Goldman, Sachs & Co., Inc. and Morgan Stanley & Co. LLC, in the U.S. District Court for the Northern District of California (the "Securities Class Action"). The complaint asserts claims for alleged violations of Sections 11, 12(a)(2), and 15 of the Securities Act of 1933, as well as Sections 10(b) and 20(a) of the Securities Exchange Act of 1934. The complaint seeks unspecified damages on behalf of a purported class that would comprise all individuals who acquired the Company's securities (i) between February 27, 2014 and November 5, 2014 and (ii) pursuant and/or traceable to the Company's public equity and debt offerings in March 2014. The complaint alleges that investors were misled by statements made during that period about the construction progress, development, and production capacity associated with the production facility located in Brazil owned by the Company's joint venture, Solazyme Bunge Produtos Renovaveis Ltda. An amended complaint was filed in December 2015. The Company filed a Motion to Dismiss the action in February 2016 that was heard in May 2016. The Company believes the complaint lacks merit, and intends to defend itself vigorously.

Derivative Litigation

In July 2015, a complaint entitled Jim Bertonis, derivatively on behalf of Solazyme, Inc. v. Jonathan Wolfson et al. was filed in the Superior Court of California, County of San Mateo. In May 2016, a second, related derivative complaint, captioned Ben Wang, derivatively on behalf of Solazyme, Inc. v. Jonathan Wolfson et al, was filed in the same court. Both actions have been consolidated going forward as In re TerraVia Holdings, Inc. f/k/a Solazyme, Inc. Shareholder Litigation (the "State Derivative Action"). The complaints seek unspecified damages, purportedly on behalf of the Company, from certain of its current and former directors and officers. The complaints assert claims against these defendants for breach of fiduciary duty, unjust enrichment, and aiding and abetting. The complaints allege that these defendants are liable for making allegedly false and misleading statements and omitting certain material facts in the Company's securities filings and other public disclosures. The State Derivative Action is based on substantially the same facts as the Securities Class Action described above. The State Derivative Action is presently stayed by court order through January 1, 2017. Based on a review of the plaintiffs' allegations, the Company believes that the plaintiffs have not demonstrated standing to sue on its behalf.

In August 2015, a complaint entitled Gregory M. Miller, derivatively on behalf of Solazyme, Inc. v. Jonathan S. Wolfson et al. was filed in the U.S. District Court for the Northern District of California (the "Federal Derivative Action"). The complaint seeks unspecified damages, purportedly on behalf of the Company from certain of its current and former directors and officers. The complaint asserts claims against these defendants for breach of fiduciary duty and aiding and abetting. The complaint alleges that these defendants are liable for making allegedly false and misleading statements and omitting certain material facts in the Company's securities filings and other public disclosures. The Federal Derivative Action is based on substantially the same facts as the Securities Class Action and the State Derivative Action described above. The Federal Derivative Action is presently stayed pending resolution of the motion to dismiss in the Securities Class Action. Based on a review of the plaintiffs' allegations, the Company believes that the plaintiff has not demonstrated standing to sue on its behalf.

Roquette Frères, S.A.

In September 2013, an arbitration (the "Roquette Arbitration") was initiated with Roquette Frères, S.A. ("Roquette") in connection with the dissolution of a joint venture between the Company and Roquette known as Solazyme Roquette Nutritionals L.L.C. ("SRN"). The Company sought a declaration that, in accordance with the terms of the joint venture agreement between the parties, the Company should be assigned all improvements made by or on behalf of SRN to the Company's intellectual property. In February 2015 the arbitration panel released its decision, ordering, inter alia, the assignment to the Company of (i) all SRN patent applications, (ii) all SRN know-how related to high lipid algae flour and high protein algae powder and (iii) all Roquette patent applications filed since November 2010 relating to algae food and food ingredients, as well as methods for making and using them. In addition, the arbitration panel ordered Roquette to pay to the Company $2.3 million in legal costs and fees. The arbitration award was confirmed by order of the U.S. District Court for the District of Delaware in December 2015. Roquette has appealed the confirmation of the arbitration award to the U.S. Court of Appeals for the Third Circuit. Pending this appeal, the confirmation of the arbitration award was stayed by the U.S. District Court for the District of Delaware in January 2016 by an order wherein the Court granted not only a stay but also enjoined Roquette from pursuing any further commercialization of any technology arguably within the ambit of the arbitral decision, including the sale of products. The appeal was heard by the Third Circuit in September 2016 and the Company expects a decision by the end of 2016.

In November 2014, Roquette filed an action against the Company in U.S. District Court for the District of Delaware for declaratory judgment related to the Roquette Arbitration. Roquette sought a declaration that (i) the arbitrators in the Roquette Arbitration exceeded their authority by failing to render a timely arbitration award, (ii) any award issued by the arbitrators is void and (iii) all intangible assets of SRN should be assigned jointly to Roquette and the Company. Other than seeking its attorney fees and costs in the action, Roquette did not make any monetary claims against the Company. The Company filed an Answer to the Complaint in January 2015, denying substantially all of Roquette's claims and all of its prayers for relief.

In February 2015 Roquette filed a second action against the Company in U.S. District Court for the District of Delaware for declaratory judgment related to the Roquette Arbitration. Roquette sought a declaration that (A) the order of the arbitrators in the Roquette Arbitration for more discovery and new hearings was unenforceable and (B) in the alternative, the proposed new discovery and hearings concerned an issue that was outside the scope of the arbitration. Other than seeking its attorney fees and costs in the action, Roquette did not make any monetary claims against the Company. The two Delaware actions were consolidated in February 2015. The Company filed its Answer to the second Complaint in February 2015, denying all claims made in the Complaint and all related prayers for relief. In addition, the Company cross-claimed for (x) confirmation of the arbitration award, (y) an order compelling Roquette to comply with the arbitration award and (z) damages for misappropriation of the Company's trade secrets, misuse of the Company's confidential information and breach of contract. In April 2015 Roquette filed motions for summary judgment in each of the two declaratory judgment actions commenced by Roquette and a motion to vacate the award rendered in the Roquette Arbitration, which included counterclaims alleging the Company misused

certain Roquette trade secrets. The summary judgment motions made by Roquette were denied by the court in December 2015. All further proceedings under the declaratory actions have been stayed pending the Third Circuit appeal described above.

The Company may be involved, from time to time, in additional legal proceedings and claims arising in the ordinary course of its business. Such matters are subject to many uncertainties and outcomes are not predictable with assurance. The Company accrues amounts, to the extent they can be reasonably estimated, that it believes are adequate to address any liabilities related to legal proceedings and other loss contingencies that the Company believes will result in a probable loss. While there can be no assurances as to the ultimate outcome of any legal proceeding or other loss contingencies involving the Company, management does not believe any pending matters individually and in the aggregate will be resolved in a manner that would have a material effect on the Company's consolidated financial position, results of operations or cash flows.

17. STOCK-BASED COMPENSATION

The following table summarizes the components and classification of stock-based compensation expense related to stock options, restricted stock units and awards and the 2011 ESPP for the three and nine months ended September 30, 2016 and 2015 (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
Stock options	$ 2,550	$ 2,354	$ 6,185	$ 7,554
RSUs	967	1,061	2,987	3,913
ESPP	34	(160)	(211)	66
Stock-based compensation expense	$ 3,551	$ 3,255	$ 8,961	$ 11,533
Research and development	$ 682	$ 1,011	$ 1,983	$ 3,595
Sales, general and administrative	2,869	2,244	6,978	7,938
Stock-based compensation expense	$ 3,551	$ 3,255	$ 8,961	$ 11,533

18. CONVERTIBLE PREFERRED STOCK

In March 2016, the Company issued 27,850 shares of Convertible Preferred Stock for cash proceeds of $27.1 million , net of issuance costs of $0.8 million . Shares of the Series A Preferred Stock are convertible at the option of the holders into shares of the Company's common stock, at an initial conversion price of $2.00 per share, subject to customary adjustments in the event of stock splits and certain other changes to the Company's capitalization. In July 2016, one of the holders of preferred stock converted 1,000 shares of Convertible Preferred Stock into 500,000 shares of the Company's common stock. This transaction resulted in an increase to common stock and additional paid in capital, and a decrease to convertible preferred stock of approximately $1.0 million . The Company has classified the convertible preferred stock as temporary equity in the condensed consolidated balance sheet as of September 30, 2016 due to the existence of certain change in control provisions that are not solely within the Company's control.

The convertible preferred stock contains the following terms and conditions:

- *Dividends* . The holders are entitled to participate equally and ratably with the Company's common stock in all dividends and distributions on an as-converted basis, subject to certain customary exceptions. The Preferred Stock will also rank senior to the Company's common stock.
- *Liquidation Preference* . In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company or certain change of control transactions, each holder will be entitled to receive a liquidation preference before any distribution or payment is made to holders of the Company's common stock or any other security that ranks junior to the Preferred Stock.
- *Voting Rights*. Holders will be entitled to vote together as a single class with the holders of the Company's common Stock on all matters submitted for a vote by holders of the Company's common stock, with each such holder of Preferred Stock being entitled to cast a number of votes equal to the number of whole shares of the Company's common stock issuable upon conversion of such Preferred Stock.

- *Board Representation* . For so long the outstanding shares of Preferred Stock represent at least 5.0% of the Company's outstanding voting power on an as-converted basis, the holders will have the right to designate a nominee for election to the Company's Board of Directors, subject to certain exceptions.
- *Protective Provisions* . For so long as at least 1,392 shares of Preferred Stock remain outstanding, the Company may not, without the approval of the holders of at least two-thirds of the then outstanding shares of Preferred Stock: (i) amend any provision of the Certificate of Designations or the Company's Amended and Restated Certificate of Incorporation or bylaws so as to adversely affect the rights, preferences or privileges of the Preferred Stock; or (ii) declare or pay any divided on the Company's common stock, subject to certain customary exceptions. In addition, for so long as at least 11,140 shares of Preferred Stock remain outstanding, the Company may not, without the approval of the holders of at least two-thirds of the then outstanding shares of Preferred Stock, create, authorize or issue any equity securities senior to the Preferred Stock.
- *Mandatory Conversion* . The Company can require the conversion of the outstanding shares of Preferred Stock if either the trading price of the Company's common stock is greater than three times the conversion price before the third anniversary of the Initial Closing or is greater than four times the conversion price thereafter, subject to certain customary conditions.
- *Transfer Restrictions* . No holder of any shares of Preferred Stock may transfer such shares except to an affiliate of such holder or the Company. If the transfer is to an affiliate, such affiliate must become a party to the Registration Rights Agreements. In addition, if such affiliate would beneficially own five percent or more of the Company's aggregate voting power after giving effect to the transfer, they must enter into a customary standstill agreement.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.

Forward-Looking Statements

The following discussion and analysis should be read together with our unaudited interim condensed consolidated financial statements and the other financial information appearing elsewhere in this Quarterly Report on Form 10-Q. This discussion contains forward-looking statements reflecting our current expectations and involves risks and uncertainties. In some cases, you can identify forward-looking statements by terminology such as "may," "will," "should," "expect," "plan," "anticipate," "believe," "estimate," "predict," "intend," "potential" or "continue" or the negative of these terms or other comparable terminology. For example, statements regarding our strategy and expectations as to future financial and operating performance and focus, future selling prices and margins for our products, attributes and performance of our products, manufacturing capacity, expense levels, liquidity sources and our expectations regarding certain legal matters are forward-looking statements. Our actual results and the timing of events may differ materially from those discussed in our forward-looking statements as a result of various factors, including those discussed below and those discussed in the section entitled "Risk Factors" included in this Quarterly Report on Form 10-Q and in our other filings with the Securities and Exchange Commission (SEC).

Overview

We are a food, nutrition and specialty ingredients company that harnesses the power of algae, the origin of all plants. Our innovative platform uses microalgae to produce high-value triglyceride oils, proteins, fibers, micronutrients and other ingredients. The inherent flexibility of our technology platform and the broad usage of these materials across multiple industries allow us to approach a wide range of customers across myriad end markets. We have streamlined our strategy to focus on food, nutrition and specialty ingredient products and began to more broadly commercialize these products in 2015, and in May 2016, we changed our name from "Solazyme, Inc." to "TerraVia Holdings, Inc.", and changed our Nasdaq ticker listing symbol from SZYM to TVIA. With the transition to the TerraVia brand and our refined focus on food, nutrition and specialty ingredients, we announced in March 2016 our intention to attract a new CEO with proven industry experience in food and nutrition to drive commercial growth. On August 8, 2016, we announced the appointment of Apu Mody as our Chief Executive Officer, effective upon the commencement of his employment with TerraVia, which occurred on August 22, 2016. Additionally, in August 2016, we sold our Algenist skincare brand, a transaction in line with our strategy to focus efforts on core growth engines in food, nutrition and specialty ingredients.

The unique composition of our oils, powders and other algae-derived products address specific customer requirements. We are commercializing high-value oils and powder products with companies that primarily use them as ingredients. We have developed and are commercializing products for specialty food ingredients, animal nutrition ingredients, consumer food products and specialty personal care ingredients. Over our history, we have also invested in and developed products, technology

and market opportunities in the industrials area, which includes fuels, industrial oils, and the oilfield/Encapso ® business. In line with our strategy to focus our commercial efforts on food and specialty personal care ingredients, we expect to pursue strategic alternatives for the industrials business and our objective will be to identify partners who have the operational capabilities needed to realize the potential of those businesses.

Our food oils are formulated to offer a variety of functional benefits such as enhanced structuring capabilities and stability while providing robust formulation and process flexibility. These food oils have the potential to improve upon conventionally utilized specialty fats and oils and our high oleic algae oil has received an FDA generally recognized as safe (GRAS) "No Questions" letter. Currently, these oils are commercially available in our AlgaWise ® branded food oil platform and in our consumer culinary oil Thrive® brand. In addition, we have developed novel methods of preparing powdered forms of triglyceride oils and vegan proteins, and our powdered ingredients are composed of unmodified whole algae cells. AlgaVia ® Lipid Powder (commonly known as whole algae flour) and AlgaVia ® Protein (commonly known as whole algae protein) are whole algae ingredients that can improve the nutritional profile of foods and beverages. AlgaVia ® Lipid Powder is a new fat source that allows for the reduction or replacement of dairy fats, oils, and eggs. AlgaVia ® Protein is a new vegan source of protein that is free of known allergens and gluten. Both AlgaVia ® Lipid Powder and Protein can be used across a range of applications such as beverages (ready-to-drink and powdered), bakery, snacks, bars, dressings, sauces and frozen desserts and each ingredient received a FDA GRAS "No Questions" letter. In May 2016, we and Bunge announced that we launched a native, whole algae DHA, docosahexaenoic acid, a long chain omega-3 fatty acid as a sustainable specialty feed ingredient, prioritizing the aquaculture market.

Our manufacturing process is compatible with commercial-scale, widely-available fermentation and oil recovery equipment. We operate our lab and pilot fermentation and recovery equipment as scaled-down versions of our large commercial engineering designs, such as those used to perform development work under certain agreements with strategic partners and to fulfill commercial supply agreements. We have scaled up our technology platform and have successfully operated at lab (5-15 liter), pilot (600-1,000 liter), demonstration/small commercial (120,000 liter) and large commercial (approximately 500,000 liter and above) fermenter scale.

On August 16, 2016 we sold our Algenist skincare business to TCP Algenist LLC, an affiliate of Tengram Capital Partners and Algenist Holdings, Inc. Upon closing, we received approximately $18.8 million in cash, net of closing costs and a 19.9% ownership interest in Algenist Holdings Inc., which will be accounted for under the equity method. We expect to supply active ingredients formulated in the Algenist product line to Algenist. We have presented the historical results of Algenist as discontinued operations for all periods presented in this filing.

Critical Accounting Policies and Estimates

Critical accounting policies are those accounting policies that management believes are important to the portrayal of our financial condition and results and require management's most difficult, subjective or complex judgments, often as a result of the need to make estimates about the effect of matters that are inherently uncertain. Our 2015 Annual Report on Form 10-K includes a description of certain critical accounting policies, including those with respect to revenue recognition, inventories, stock-based compensation and income taxes. There have been no material changes to the Company's critical accounting policies described in the Company's 2015 Annual Report on Form 10-K.

Results of Operations

Comparison of Three Months Ended September 30, 2016 and 2015

Revenues

	Three Months Ended September 30,		
	2016	2015	$ Change
	(In thousands)		
Revenues:			
Product revenues	$ 709	$ 2,251	$ (1,542)
Research and development programs	3,601	2,266	1,335
Total revenues	$ 4,310	$ 4,517	$ (207)

Prior to the three months ended September 30, 2016, we had two reportable segments for financial statement reporting purposes: 1) Algenist, and 2) Ingredients and Other. The Algenist segment included sales of our Algenist® brand skin and personal care products. The Ingredients and Other segment includes sales of our food, nutrition and specialty ingredients; and also includes sales of our Industrial oils, Encapso ® product, and fuel blend sales related to our fuels marketing and commercial

development programs. Following the sale of our Algenist segment, we have a single operating segment, whose results are discussed in the following sections.

Product Revenues and Cost of Product Revenues

Product revenues and cost of product revenues for the three months ended September 30, 2016 and 2015 were as follows:

	Three Months Ended September 30,		
	2016	2015	Change
	(In thousands)		
Product revenues	$ 709	$ 2,251	$ (1,542)
Cost of product revenues	884	2,411	(1,527)
Gross margin (loss)	$ (175)	$ (160)	$ (15)
Gross margin %	(25)%	(7)%	(18)%

Product revenues decreased $1.5 million in the three months ended September 30, 2016 compared to the same period last year primarily due to decreased revenues related to our fuels marketing and commercial development program, Encapso ® and industrial oil products, in line with our strategy to focus on high value oil and powder product sales.

During scale-up of the manufacturing process at the Archer Daniels Midland Company Clinton and American Natural Processors Galva facilities in 2015, and in our Peoria facility in 2016, certain production costs were charged to research and development and selling, general and administrative expenses in line with applicable accounting standards. Gross margins would have been lower in 2015 and 2016 if such production costs had been charged to cost of product revenues.

Production volumes have not fully covered fixed costs at our production facilities in the periods presented, and the gross margin was negative 25% in the three months ended September 30, 2016 compared to a negative 7% gross margin in the same period last year, primarily due to changes in product mix.

We plan to focus on our production at the Solazyme Bunge JV facility and at our Peoria facility in the immediate future and believe this strategic decision will better align our immediate production assets with our operating strategy while minimizing production costs.

Research and Development Programs Revenue

We are currently engaged in development activities with multiple strategic partners and the Solazyme Bunge JV, and we expect funded program revenue to remain an important indication of strategic commitment from partners and a source of future customers. While we expect funded program revenue to comprise a significant portion of overall revenue for the foreseeable future, we expect the rate of growth in product revenues to be greater as our focus shifts to commercialization of our products. Our revenues from development agreements with the Solazyme Bunge JV and strategic partners fluctuate due to timing and terms of the development work performed and achievement of contract milestones defined in these agreements. Revenues from research and development programs of $3.6 million increased by $1.3 million in the three months ended September 30, 2016 compared to the same period last year , primarily due to a new agreement that was established in 2015 with the Solazyme Bunge JV.

Operating Expenses

	Three Months Ended September 30,		
	2016	2015	$ Change
	(In thousands)		
Operating expenses:			
Research and development	$ 7,708	$ 13,207	$ (5,499)
Sales, general and administrative	11,169	15,143	(3,974)
Restructuring charges	216	(21)	237
Total operating expenses	$ 19,093	$ 28,329	$ (9,236)

In October 2015, we made a strategic decision to terminate our manufacturing agreements at the ADM Clinton and American Natural Processors (ANP) Galva facilities. Certain scale-up production costs related to operations at the Clinton/Galva and Peoria facilities focused on process development associated with the manufacturing scale-up at the facilities in 2015 were charged to research and development costs. In addition, unallocated fixed costs for the Clinton/Galva facilities were charged to selling, general and administrative expenses when facilities were not operating at full capacity.

Research and Development Expenses

Research and development expenses decreased $5.5 million in the three months ended September 30, 2016 compared to the same period last year, due primarily to decreases in scale-up production costs related to operations at the Clinton/Galva facilities of $1.9 million and Peoria of $0.6 million, personnel-related costs of $1.6 million, product development, process development costs, and other costs of $0.6 million and consumable and supply costs of $0.4 million as a result of cost cutting measures. Personnel-related costs include non-cash stock-based compensation expense of $0.7 million in the three months ended September 30, 2016 compared to $1.0 million in the same period last year.

Sales, General and Administrative Expenses

Sales, general and administrative expenses decreased $4.0 million in the three months ended September 30, 2016 compared to the same period last year primarily due to decreased fixed third-party facilities costs associated with the Clinton/Galva facilities of $2.6 million, lower personnel-related costs of $0.5 million, sales and marketing costs of $0.5 million and litigation costs of $0.2 million. Personnel-related costs include non-cash stock-based compensation expense of $2.9 million in the three months ended September 30, 2016 compared to $2.2 million in the same period last year.

We plan to continue to invest in commercialization of our high value products within the food, nutrition and specialty ingredients markets, which may increase our overall selling, general and administrative expense, but expect personnel-related expenses to be lower than in 2015 as a result of a reduction in workforce and other cost-cutting measures we implemented.

Other Expense, net

	Three Months Ended September 30,		
	2016	2015	$ Change
	(In thousands)		
Interest and other income, net	$ 562	$ 317	$ 245
Interest expense	(3,460)	(3,540)	80
Debt conversion expense	(3,242)	—	(3,242)
Loss from equity method investments	(6,378)	(5,916)	(462)
Change in fair value of derivative liabilities	—	176	(176)
Total other expense, net	$ (12,518)	$ (8,963)	$ (3,555)

Debt Conversion Expense

In the three months ended September 30, 2016, we exchanged 6.00% Convertible Senior Subordinated Notes due 2018 totaling approximately $7.1 million by issuing 1,813,814 new shares (including 739,053 inducement shares) of our common stock. We recorded a non-cash non-operating charge of approximately $3.2 million related to the exchange agreement in the three months ended September 30, 2016 .

Loss From Equity Method Investments

Loss from the Solazyme Bunge JV equity method investments increased to $6.4 million in the three months ended September 30, 2016 compared to $5.9 million in the same period last year. We expect the loss from our equity method investment to decrease as the Solazyme Bunge JV continues optimization of the Solazyme Bunge JV Plant and works toward high volume commercial-scale production.

Results of Operations

Comparison of Nine Months Ended September 30, 2016 and 2015

Revenues

	Nine Months Ended September 30,		
	2016	2015	$ Change
	(In thousands)		
Revenues:			
Product revenues	$ 2,866	$ 7,977	$ (5,111)
Research and development programs	10,780	9,483	1,297
Total revenues	$ 13,646	$ 17,460	$ (3,814)

Product Revenues and Cost of Product Revenues

Product revenues and cost of product revenues for the nine months ended September 30, 2016 and 2015 were as follows:

	Nine Months Ended September 30,		
	2016	2015	Change
	(In thousands)		
Product revenues	$ 2,866	$ 7,977	$ (5,111)
Cost of product revenues	3,038	7,775	(4,737)
Gross margin	$ (172)	$ 202	$ (374)
Gross margin %	(6)%	3%	(9)%

Product revenues decreased $5.1 million in the nine months ended September 30, 2016 compared to the same period last year primarily due to decreased revenues from our fuels marketing and commercial development program, Encapso ® and industrial oil products, in line with our strategy to focus on high value oil and powder product sales.

During scale-up of the manufacturing process at the Archer Daniels Midland Company Clinton and American Natural Processors Galva facilities in 2015, and in our Peoria facility in 2016, certain production costs were charged to research and development and selling, general and administrative expenses in line with applicable accounting standards. Gross margins would have been lower in 2015 and 2016 if such production costs had been charged to cost of product revenues.

Our gross margin was negative 6% in the nine months ended September 30, 2016 compared to a 3% gross margin in the same period last year, primarily due to changes in product mix.

We plan to focus on our production at the Solazyme Bunge JV facility and at our Peoria facility in the immediate future and believe this strategic decision will better align our immediate production assets with our operating strategy while minimizing production costs.

We plan to focus on our production at the Solazyme Bunge JV facility and at our Peoria facility in the immediate future and believe this strategic decision will better align our immediate production assets with our operating strategy while minimizing production costs.

Research and Development Programs Revenue

Revenues from research and development programs increased $1.3 million in the nine months ended September 30, 2016 compared to the same period last year , primarily due to a new agreement that was established in 2015 with the Solazyme Bunge JV.

Operating Expenses

	Nine Months Ended September 30,		
	2016	2015	$ Change
	(In thousands)		
Operating expenses:			
Research and development	$ 24,215	$ 38,508	$ (14,293)
Sales, general and administrative	33,645	47,966	(14,321)
Restructuring charges	1,455	372	1,083
Total operating expenses	$ 59,315	$ 86,846	$ (27,531)

In October 2015, we made a strategic decision to terminate our manufacturing agreements at the ADM Clinton and American Natural Processors (ANP) Galva facilities. Certain scale-up production costs related to operations at the Clinton/Galva and Peoria facilities focused on process development associated with the manufacturing scale-up at the facilities in 2015 were charged to research and development costs. In addition, unallocated fixed costs for the Clinton/Galva facilities were charged to selling, general and administrative expenses when facilities were not operating at full capacity.

Research and Development Expenses

Research and development expenses decreased $14.3 million in the nine months ended September 30, 2016 compared to the same period last year, due primarily to decreased personnel-related costs of $5.8 million, product development, process development, and other costs of $3.6 million, scale-up production costs related to operations at the Clinton/Galva facilities of $2.7 million, and consumable supply costs of $0.9 million. Personnel-related costs include non-cash stock-based compensation expense of $2.0 million in the nine months ended September 30, 2016 compared to $3.6 million in the same period last year.

Sales, General and Administrative Expenses

Sales, general and administrative expenses decreased $14.3 million in the nine months ended September 30, 2016 compared to the same period last year primarily due to decreased fixed third-party facilities costs associated with the Clinton/Galva facilities of $9.9 million and decreased personnel-related costs of $3.6 million. Personnel-related costs include non-cash stock-based compensation expense of $7.0 million in the nine months ended September 30, 2016 compared to $7.9 million in the same period last year.

Other Expense, net

	Nine Months Ended September 30,		
	2016	2015	$ Change
	(In thousands)		
Interest and other income, net	$ 1,174	$ 715	$ 459
Interest expense	(10,427)	(10,623)	196
Debt conversion expense	(5,027)	—	(5,027)
Loss from equity method investments	(16,608)	(18,291)	1,683
Change in fair value of derivative liabilities	82	27	55
Total other expense, net	$ (30,806)	$ (28,172)	$ (2,634)

Debt Conversion Expense

During the nine months ended September 30, 2016 we exchanged 2018 and 2019 Notes totaling approximately $12.7 million by issuing 3,459,567 new shares (including 1,544,039 inducement shares) of our common stock. We recorded a non-cash non-operating charge of approximately $5.0 million related to the exchange agreement in the nine months ended September 30, 2016 .

Loss from Equity Method Investment

Loss from equity method investments decreased to $16.6 million in the nine months ended September 30, 2016 compared to $18.3 million in the same period last year, primarily due to an increase in the Solazyme Bunge JV revenue, and changes in the Brazilian real compared to the United States dollar.

Liquidity and Capital Resources

Total cash and cash equivalents and marketable securities available-for-sale were:

	September 30, 2016	December 31, 2015
	(In thousands)	
Cash and cash equivalents	$ 60,027	$ 46,966
Marketable securities available-for-sale	27,771	51,009
Total cash and cash equivalents and marketable securities	$ 87,798	$ 97,975

Cash, cash equivalents and marketable securities decreased by $10.2 million in the nine months ended September 30, 2016 , primarily due to cash used in operating activities of $49.5 million and $7.8 million of capital contributed to the Solazyme Bunge JV, partially offset by net proceeds from issuance of convertible preferred stock of approximately $27.0 million , and net proceeds from the sale of Algenist of $19.1 million .

The following table shows a summary of our cash flows for the periods indicated:

	Nine Months Ended September 30,	
	2016	2015
	(In thousands)	
Net cash used in operating activities — continuing operations	$ (45,394)	$ (65,963)
Net cash provided by investing activities — continuing operations	14,003	74,744
Net cash provided by financing activities — continuing operations	29,335	682

Liquidity

We are an emerging growth company with a limited operating history. In line with our strategy to focus our efforts on core growth in food, nutrition and specialty ingredients, we sold our Algenist skincare business in August 2016. To date, a substantial portion of our revenues has consisted of funding from third party collaborative research agreements and government grants. We are relatively early in commercializing our food, nutrition and specialty ingredient products, and have generated limited revenues from commercial sales, with historic positive gross margins principally derived from the commercial sale of skin and personal care products through the Algenist business, which we recently sold, and negative gross margins on certain other commercial product sales. We expect the rate of growth in product revenues to be greater than the rate of growth in research and development program revenues, as we shift our focus to commercialization of our products in the food, nutrition and specialty personal care ingredient markets.

Net losses may continue as we ramp up manufacturing capacity and build out our product pipeline. We expect to incur additional costs and expenses related to the continued development and expansion of our business, including research and development, the operation of our Peoria Facility and the ramp up and operation of the Solazyme Bunge JV Plant in Brazil.

We, along with our development and commercialization partners, need to develop products successfully, cost effectively produce them in large quantities and market and sell such products profitably. Our failure to generate sufficient revenues, achieve positive gross margins, control operating costs, or raise sufficient additional funds may require us to modify, delay or abandon our planned operations, which could have a material adverse effect on the business, operating results, financial condition and ability to achieve intended business objectives. We may be required to seek additional funds through collaborations, public or private debt or equity financings or government programs, and may also seek to reduce expenses related to our operations. There can be no assurance that any financing will be available or on acceptable terms.

We believe that our current cash, cash equivalents, marketable securities and revenue from product sales will be sufficient to fund our current operations for at least the next 12 months. However, our liquidity assumptions may prove to be wrong, and we could utilize our available financial resources sooner than we currently expect. We may elect to raise additional funds within this period of time through public or private debt or equity financings and/or additional collaborations.

Cash Flows from Operating Activities from Continuing Operations

Cash used in operating activities from continuing operations was $45.4 million in the nine months ended September 30, 2016 , primarily due to a loss of $77.7 million offset by non-cash charges. Non-cash charges included a $37.6 million loss from equity method investments, debt conversion expense, stock-based compensation, depreciation and amortization, net amortization of premiums on marketable securities and debt discount and loan fee amortization.

Cash used in operating activities from continuing operations was $66.0 million in the nine months ended September 30, 2015 primarily due to a loss of $105.3 million , offset by aggregate non-cash charges of $37.1 million .

Cash Flows from Investing Activities

Cash provided by investing activities from continuing operations was $14.0 million in the nine months ended September 30, 2016 , primarily due to $23.3 million net proceeds from marketable securities, partially offset by $7.8 million of cash contributed to the Solazyme Bunge JV.

In the nine months ended September 30, 2015 , cash provided by investing activities from continuing operations was $74.7 million , primarily due to $94.9 million of net marketable securities maturities, partially offset by $19.5 million of cash contributed to the Solazyme Bunge JV.

Cash Flows from Financing Activities

Cash provided by financing activities was $29.3 million in the nine months ended September 30, 2016 , primarily due to net proceeds received of $27.0 million from the convertible preferred stock issuance in March 2016.

In the nine months ended September 30, 2015 , cash provided by financing activities was $0.7 million , primarily due to proceeds received from common stock issuances pursuant to our equity plans.

BNDES Loan

In April 2012, we entered into the Solazyme Bunge JV, which is jointly capitalized by us and Bunge and which operates an oil production facility in Brazil. Through September 30, 2016 we contributed $108.4 million in capital to the Solazyme Bunge JV, and we may need to contribute additional capital to this project. In February 2013, the Solazyme Bunge JV entered a loan agreement with the Brazilian Development Bank (BNDES) under which it could borrow up to R$245.7 million (approximately USD $75.4 million based on the exchange rate as of September 30, 2016). As of September 30, 2016 , approximately $55.6 million was outstanding under the BNDES loan based on the exchange rate as of September 30, 2016 . We have provided a bank guarantee equal to 14.39% of the total amount available under the BNDES Loan and may be required to provide a corporate guarantee equal to 35.71% of the total amount available under the BNDES Loan (with the total amount covered by the guarantees not to exceed our ownership percentage in the Solazyme Bunge JV). We expect to evaluate the optimal amount of Solazyme Bunge JV-related capital expenditures that we agree to fund on a case-by-case basis. These events may require us to access additional capital through equity or debt offerings. If we are unable to access additional capital, our growth may be limited due to the inability to build out additional manufacturing capacity.

SVB Letter of Credit and Loan and Security Agreement

In the second quarter of 2016, we entered into an agreement with Silicon Valley Bank that provides for a $12.9 million letter of credit facility (the “Facility”) for letters of credit denominated in U.S. dollars or a foreign currency. On April 29, 2016, Silicon Valley Bank issued a standby letter of credit (“SVB SLOC”) to support the bank guarantee issued on our behalf to BNDES in connection with the loan agreement entered into in 2013 between BNDES and the Solazyme Bunge JV. The SVB SLOC is being supported by a bank confirmation issued by the Bank of Nova Scotia (the “Scotia Bank Confirmation”) on behalf of Silicon Valley Bank.

Contractual Obligations and Commitments

There have been no significant changes to the Company’s contractual obligations and commitments since the Company’s Annual Report on Form 10-K for the year ended December 31, 2015.

Off-Balance Sheet Arrangements

For information on variable interest entities and guarantees, refer to Note 12 in the accompanying notes to our unaudited interim condensed consolidated financial statements.

Recent Accounting Pronouncements

Refer to Note 2 in the accompanying notes to our unaudited interim condensed consolidated financial statements for a discussion of recent accounting pronouncements.

Item 3. Quantitative and Qualitative Disclosures about Market Risk.

We are exposed to financial market risks, primarily changes in interest rates, currency exchange rates and commodity prices. All of the potential changes noted below are based on sensitivity analyses performed on our financial positions as of September 30, 2016 . Actual results may differ materially.

Interest Rate Risk

Our exposure to market risk for changes in interest rates relates primarily to our investment portfolio and our outstanding debt obligations. We generally invest our cash in investments with short maturities or with frequent interest reset terms. Accordingly, our interest income fluctuates with short-term market conditions. As of September 30, 2016 , our investment portfolio consisted primarily of corporate debt obligations, U.S. government agency securities, asset-backed and mortgaged-backed securities, municipal bonds and money market funds, which are held for working capital purposes. We believe we do not have material exposure to changes in fair value as a result of changes in interest rates. Our marketable securities were comprised primarily of fixed-term securities as of September 30, 2016 . Due to the short-term nature of these instruments, we do not believe that there would be a significant negative impact to our condensed consolidated financial position or results of operations as a result of interest rate fluctuations in the financial markets. Our outstanding debt as of September 30, 2016 consists of fixed-rate debt, and therefore, is not subject to fluctuations in market interest rates.

Foreign Currency Risk

Our operations include manufacturing and sales activities primarily in the United States, as well as research activities primarily in the United States. We are actively expanding outside the United States, in particular in Brazil through our Solazyme Bunge JV. As we expand internationally, our results of operations and cash flows will become increasingly subject to fluctuations due to changes in foreign currency exchange rates. For example, our operations in Brazil and/or potential expansion elsewhere in Latin America or increasing Euro denominated product sales to European distributors, will result in our use of currencies other than the U.S. dollar. In addition, the local currency is the functional currency of our Brazil subsidiary and the Solazyme Bunge JV (an unconsolidated joint venture). The assets and liabilities of the Brazil subsidiary are translated from its functional currency to U.S. dollars at the exchange rate in effect at the balance sheet date, with resulting foreign currency translation adjustments recorded in accumulated other comprehensive income (loss) in the condensed consolidated statements of comprehensive loss. The assets and liabilities of the Solazyme Bunge JV are also translated to U.S. dollars similar to our Brazil subsidiary, and we adjust our investment in the Solazyme Bunge JV and cumulative translation adjustment in equity for our ownership portion of the cumulative translation gain or loss recognized on the Solazyme Bunge JV's financial statements. As a result, our comprehensive income (loss), cash flows and expenses are subject to fluctuations due to changes in foreign currency exchange rates. In periods when the U.S. dollar declines in value as compared to the foreign currencies in which we incur expenses, our foreign-currency based expenses increase when translated into U.S. dollars. A hypothetical 10% adverse change in foreign currency exchange rate would have had a $1.2 million impact on our net loss for the nine months ended September 30, 2016 . We have not hedged our foreign currency since the exposure has not been material to our historical operating results. Although substantially all of our sales are currently denominated in U.S. dollars, future fluctuations in the value of the U.S. dollar may affect the price competitiveness of our products outside the United States. We may consider hedging our foreign currency risk as we continue to expand internationally.

Commodity Price Risk

Our exposure to market risk for changes in commodity prices currently relates primarily to our purchases of plant sugar feedstock. A hypothetical 10% change in the cost of plant sugar feedstock would have had approximately a $0.3 million impact on our share of loss from equity method investment in the Solazyme Bunge JV for the nine months ended September 30, 2016 . We have not historically hedged the price volatility of plant sugar feedstock. Also, fluctuations in the prices of petroleum or certain plant oils may also impact our business to the extent our products compete with petroleum or plant-oil-derived products. In the future, we may manage our exposure to these risks by hedging the price volatility of such products, principally through futures contracts, and entering into joint venture agreements that would enable us to obtain secure access to feedstock. See also

“Risk Factors-Risks Related to Our Business and Industry," A decline in the price of petroleum and petroleum-based products, plant oils or other commodities may reduce demand for our products and may otherwise adversely affect our business.

Item 4. Controls and Procedures.

Our management, including our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures as of September 30, 2016 . The term “disclosure controls and procedures,” as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, means controls and other procedures of a company that are designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable, and not absolute, assurance of achieving the desired objectives. In reaching a reasonable level of assurance, management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of September 30, 2016 at the reasonable assurance level.

Changes in Internal Control Over Financial Reporting

There was no change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) that occurred during the quarterly period ended September 30, 2016 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II: OTHER INFORMATION

Item 1. Legal Proceedings.

We may be involved, from time to time, in legal proceedings and claims arising in the course of our business. Such matters are subject to many uncertainties and there can be no assurance that such legal proceedings will not have a material adverse effect on our business, results of operations, financial position or cash flows. The information relating to "Legal Matters" set forth under Note 16 - Commitments and Contingencies of the notes to the unaudited interim condensed consolidated financial statements of this Quarterly Report on Form 10-Q is incorporated into this item by reference.

Item 1A. Risk Factors.

You should carefully consider the risks and uncertainties described below before investing in our securities. Additional risks and uncertainties not presently known to us or that our management currently deems immaterial also may impair our business operations. If any of the risks described below were to occur, our business, financial condition, operating results, and cash flows could be materially adversely affected. In such an event, the trading price of our common stock could decline and you could lose all or part of your investment. In assessing these risks and uncertainties, you should also refer to the other information contained in this Report, including our consolidated financial statements and related notes. The risks and uncertainties discussed below also include forward-looking statements, and our actual results may differ substantially from those discussed in these forward-looking statements. See Management's Discussion and Analysis of Financial Condition and Results of Operations-Forward-Looking Statements.

Risks Related to Our Business and Industry

We have a limited operating history and have incurred significant losses to date, anticipate continuing to incur losses and may never achieve or sustain profitability.

We are an emerging growth company with a limited operating history. We only recently began commercializing our products. To date, a substantial portion of our revenues has consisted of funding from third party collaborative research agreements and government grants. We have generated only limited revenues from commercial sales, the majority of which have been derived from sales of our skin and personal care products through our Algenist business, which we sold to a third party in August 2016. We expect a significant portion of our future revenues to come from commercial sales in food, nutrition, and specialty personal care ingredients.

We have incurred substantial net losses since our inception, including a net loss of $74.4 million during the nine months ended September 30, 2016 . We expect these losses may continue as we ramp up our manufacturing capacity and build out our product pipeline. As of September 30, 2016 , we had an accumulated deficit of $684.3 million . We expect to incur additional costs and expenses related to the continued development and expansion of our business, including research and development, the operation of our Peoria facility, the ramp up and operation of the Solazyme Bunge JV production facility (described below) and, potentially, other commercial facilities. As a result, our annual and quarterly operating losses may continue.

We, along with our development and commercialization partners, will need to develop products successfully, cost effectively produce them in large quantities, and market and sell them profitably. If we fail to become profitable, or if we are unable to fund our continuing losses, we may be unable to continue our business operations. There can be no assurance that we will ever achieve or sustain profitability.

We have generated limited revenues from the sale of our products, and our business may fail if we are not able to successfully commercialize these products.

We have had only limited product revenues to date, with historic positive gross margins principally derived from the commercial sale of skin and personal care products through our Algenist business, which we sold to a third party in August 2016, and negative gross margins on certain other commercial product sales. Sales of our ingredients and other products have not historically generated positive gross margins. If we are not successful in replacing sales of Algenist products with sales of our other products at acceptable prices, further advancing our existing commercial arrangements with strategic partners, developing new arrangements, ramping up or otherwise increasing our manufacturing capacity and securing reliable access to sufficient volumes of low-cost feedstock, we will be unable to generate meaningful revenues from our products. We are subject to the substantial risk of failure facing businesses seeking to develop products based on a new technology.

Certain factors that could, alone or in combination, prevent us from successfully commercializing our products include:

- our ability to secure reliable access to sufficient volumes of low-cost feedstock;
- our ability to achieve commercial-scale production of our products on a cost-effective basis and in a timely manner;
- our ability to secure consistent and reliable supplies of power and steam for production facilities;
- technical or operational challenges with our manufacturing processes or with development, scaling up or ramping production of new products that we are not able to overcome;
- our ability to consistently manufacture our products within specifications;
- our ability to establish and maintain successful relationships with development, feedstock, manufacturing and commercialization partners;
- our ability to gain market acceptance of our products with customers and maintain customer relationships;
- our ability to sell our products at an acceptable price;
- our ability to manage our growth;
- our ability to meet applicable regulatory requirements for the production, distribution and sale of our products and to comply with applicable laws and regulations;
- actions of direct and indirect competitors that may seek to enter the markets in which we expect to compete or that may seek to impose barriers to one or more markets that we intend to target; and
- public concerns about the ethical, legal, environmental and social ramifications of the use of targeted recombinant technology, land use and the potential diversion of resources from food production.

The production of our microalgae-based products requires fermentable feedstock. The inability to obtain feedstock in sufficient quantities or in a timely and cost-effective manner may limit our ability to produce our products.

A critical component of the production of our microalgae-based products is access to feedstock in sufficient quantities and at an acceptable price to enable commercial production and sale. Other than as described below, we currently purchase feedstock, such as sugarcane-based sucrose and corn-based dextrose, for the production of our products at prevailing market prices.

We do not have any long-term supply agreements or other guaranteed access to feedstock other than for the supply of feedstock to Solazyme Bunge Produtos Renováveis Ltda. ("Solazyme Bunge Renewable Oils" or the "Solazyme Bunge JV") by our partner, Bunge Global Innovation, LLC and certain of its affiliates ("Bunge"), pursuant to our joint venture arrangement that includes a feedstock supply agreement. As we scale our production, we anticipate that the production of our microalgae-based products will require large volumes of feedstock, and we may not be able to contract with feedstock producers to secure sufficient quantities of feedstock at reasonable costs or at all. For example, sugarcane-based sucrose for the Solazyme Bunge JV facility in Moema, Brazil is being provided by Bunge. Sugar and corn are traded as commodities and are subject to price volatility. While we may seek to manage our exposure to fluctuations in the price of sugar and corn-based dextrose by entering into hedging transactions directly or through our joint venture arrangement, we may not be successful in doing so. If we cannot access feedstock in the quantities we need at acceptable prices, we may not be able to successfully commercialize our food ingredients, chemicals, encapsulated lubricant and other products, and our business will suffer. If we do not succeed in entering into long-term supply contracts when necessary or successfully hedge against our exposure to fluctuations in the price of feedstock, our costs and profit margins may fluctuate from period to period as we will remain subject to prevailing market prices.

Although our plan is to enter into partnerships, such as the Solazyme Bunge JV, with feedstock providers to supply the feedstock necessary to produce our products, we cannot predict the future availability or price of such feedstock or be sure that our feedstock partners will be able to supply such feedstock in sufficient quantities or in a timely manner. The prices of feedstock depend on numerous factors outside of our or our partners' control, including weather conditions, government programs and regulations, changes in global demand, rising or falling commodities and equities markets, and availability of credit to producers. Crop yields and sugar content depend on weather conditions such as rainfall and temperature. Variable weather conditions have historically caused volatility in feedstock crop prices due to crop failures or reduced harvests. For example, excessive rainfall can adversely affect the supply of feedstock available for the production of our products by reducing the sucrose content of feedstock and limiting growers' ability to harvest. Crop disease and pestilence can also occur

from time to time and can adversely affect feedstock crop growth, potentially rendering useless or unusable all or a substantial portion of affected harvests. The limited amount of time during which feedstock crops keep their sugar content after harvest poses a risk of spoilage. Also, the fact that many feedstock crops are not themselves traded commodities limits our ability to substitute supply in the event of such an occurrence. If our ability to obtain feedstock crops is adversely affected by these or other conditions, our ability to produce our products will be impaired, and our business will be adversely affected. In the near term we believe Brazilian sugarcane-based sucrose will be an important feedstock for us. Along with the risks described above, Brazilian sugarcane prices may also increase due to, among other things, changes in the criteria set by the Conselho dos Produtores de Cana, Açúcar e Álcool (Council of Sugarcane, Sugar and Ethanol Producers), known as Consecana. Consecana is an industry association of producers of sugarcane, sugar and ethanol that sets market terms and prices for general supply, lease and partnership agreements and may change such prices and terms from time to time. Moreover, Brazil has a developed industry for producing ethanol from sugarcane, and if we have manufacturing operations in Brazil that do not have a partner providing the sugarcane feedstock, such as Bunge as part of the Solazyme Bunge JV, we will need to compete for sugarcane feedstock with ethanol producers. Such changes and competition could result in higher sugarcane prices and/or a significant decrease in the volume of sugarcane available for the production of our products, which could adversely affect our business and results of operations.

We have entered into, and plan to enter into, other arrangements with feedstock producers to co-locate production at their existing mills, and if we are not able to complete and execute on these arrangements in a timely manner and on terms favorable to us, our business will be adversely affected.

In April 2012, we entered into a Joint Venture Agreement with Bunge, forming the Solazyme Bunge JV, which is doing business as Solazyme Bunge Renewable Oils. The Joint Venture Agreement was amended in October 2013 and again in October 2015 to expand the field and product portfolio. The Solazyme Bunge JV produces microalgae-based products in Brazil using our proprietary technology and sugarcane feedstock provided by Bunge. The Solazyme Bunge JV's production facility is located adjacent to a sugarcane processing mill in Brazil that is owned by Bunge. The acquisition of the facility site by the Solazyme Bunge JV from Bunge has been completed. The purchase of any additional land by the Solazyme Bunge JV would be complex, subject to multiple approvals from governmental authorities and take time to complete. The construction of the Solazyme Bunge JV's production facility began in June 2012, and the first commercial product from the Solazyme Bunge JV production facility was produced in the second quarter of 2014. Manufacturing operations and processes continue to be optimized as the facility is ramped up. In addition, we have entered into a series of research and development agreements with Bunge and with the Solazyme Bunge JV to, among other things, develop additional products for the Solazyme Bunge JV. The current funded projects extend through December 2018. We intend to continue to expand our manufacturing capacity by entering into additional agreements with feedstock producers that require them to invest some or all of the capital needed to build new production facilities to produce our products. In return, we expect to share in profits anticipated to be realized from the sale of these products.

Due to the termination of certain contracts relating to third party manufacturing facilities in the United States, some customers that previously had received our products from such facilities may need to qualify products that are now to be produced at the Solazyme Bunge JV production facility. A failure by the products manufactured at the Solazyme Bunge JV facility to qualify or otherwise meet the requirements of our customers would adversely affect our business.

There can be no assurance that a sufficient number of other sugar or other feedstock mill owners will accept the opportunity to partner with us for the production of our microalgae-based products. Reluctance on the part of mill owners may be caused, for example, by their failure to understand our technology or product opportunities or their belief that greater economic benefits can be achieved from partnering with others. Mill owners may also be reluctant or unable to obtain needed capital; alternatively, if mill owners are able to obtain debt financing, we may be required to provide a guarantee. Limitations in the credit markets, such as those experienced in the most recent economic downturn or historically in developing nations as a result of government monetary policies designed in response to very high rates of inflation, would impede or prevent this kind of financing and could adversely affect our ability to develop the production capacity needed to allow us to grow our business. Mill owners may also be limited by existing contractual obligations with other third parties, liability, health and safety concerns and additional maintenance, training, operating and other ongoing expenses.

Even if additional feedstock partners are willing to co-locate our production at their mills, they may do so only on economic terms that place more of the cost, or confer less of the economic return, on us than we currently anticipate. If we are not successful in negotiations with mill owners, our cost of securing additional manufacturing capacity may be higher than anticipated in terms of up-front costs, capital expenditure or lost future returns, and we may not gain the manufacturing capacity that we need to grow our business.

Our pursuit of new product opportunities may not be technologically feasible or cost effective, which would limit our ability to expand our product line and sources of revenues.

We have committed, and intend to continue to commit, substantial resources, alone or with collaboration partners, to the development and analysis of new oils and other microalgae-based products by applying classical and recombinant technology to our microalgae strains. There is no guarantee that we will be successful in creating new oil profiles, or other microalgae-based products, that we, our customers, our partners or their customers desire. There are significant technological hurdles in successfully applying recombinant and other technology to microalgae, and if we are unsuccessful at developing microalgae strains that produce desirable oils and other microalgae-based products, the number and size of the markets we will be able to address will be limited, our expected profit margins could be reduced and the potential profitability of our business could be compromised.

The successful development of our business depends on our ability to efficiently and cost-effectively produce microalgae-based products at large commercial scale.

Two of the significant drivers of our production costs are the level of productivity and conversion yield of our microalgae strains. For example, with respect to oil, productivity is principally a function of the amount of oil that can be obtained from a given volume over a particular time period. Conversion yield refers to the amount of the desired oil that can be produced from a fixed amount of feedstock. We may not be able to meet our currently expected production cost profile as we ramp up large commercial manufacturing facilities. If we cannot do so, our business could be materially and adversely affected.

Production of both current and future oils and other microalgae-based products will require that our technology and processes be scalable from laboratory, pilot and demonstration projects to large commercial-scale production. We have limited experience constructing, ramping up or managing large, commercial-scale manufacturing facilities. We may not have identified all of the factors that could affect our manufacturing processes. Our technology may not perform as expected when applied at large commercial scale, or we may encounter operational challenges for which we are unable to identify a workable solution. For example, contamination in the production process, equipment failure or accidents, problems with consistent and reliable plant utilities, human error, issues arising from process modifications to reduce costs and adjust product specifications, and other similar challenges could decrease process efficiency, create delays and increase our costs. To date we have employed our technology using fermenters with a capacity of up to approximately 625,000 liters. However, we still need to demonstrate that we can reach our target cost structure, including the achievement of target yields and productivities at approximately 625,000 liter scale in Brazil. We may not be able to scale up our production in a timely manner, on commercially reasonable terms, or at all. If we are unable to manufacture products at a large commercial scale, our ability to commercialize our technology will be adversely affected, and, with respect to any products that we do bring to market, we may not be able to achieve and maintain an acceptable production cost profile, which would adversely affect our ability to reach, maintain and increase the profitability of our business.

We rely in part on third parties for the production and processing of our products. If these parties do not produce and process our products at a satisfactory quality, in a timely manner, in sufficient quantities and at an acceptable cost, our development and commercialization efforts could be delayed or otherwise negatively impacted.

Other than our Peoria facility, we do not wholly own facilities that can produce and process our products other than at small scale. As such, we rely, and we expect to continue to rely, at least partially, on third parties (including partners and contract manufacturers) for the production and processing of our products. We currently have only one manufacturing arrangement for large-scale commercial fermentation: an agreement for the manufacture of certain products by the Solazyme Bunge JV pursuant to a joint venture arrangement. We also have the ability to do smaller-scale commercial fermentation at our Peoria facility.

In addition, we have manufacturing agreements relating to other aspects of our production process. Our current and anticipated future dependence upon our partners and contract manufacturers for the production and processing of our products may adversely affect our ability to develop products on a timely and competitive basis. The failure of any of our counterparties, including the Solazyme Bunge JV, to provide acceptable products could delay the development and commercialization of our products. We or our partners will need to enter into additional agreements for the commercial development, manufacturing and sale of our products. There can be no assurance that we or our partners can do so on favorable terms, if at all. Even if we reach agreements with manufacturing partners to produce and process our products, initially the partners will be unfamiliar with our technology and production processes. We cannot be sure that the partners will have or develop the operational expertise needed to run the equipment and processes required to manufacture our products. Further, we may have limited control over the amount or timing of resources that any partner is able or willing to devote to production and processing of our products.

To date, our products have been produced and processed in quantities sufficient for our development work and initial commercial sales. Even if there is demand for our products at commercial scale, we or our partners may not be able to

successfully increase the production capacity for any of our products in a timely or economic manner or at all. In addition, to the extent we are relying on contract manufacturers to produce and process our products, we cannot be sure that such contract manufacturers will have capacity available when we need their services, that they will be willing to dedicate a portion of their production and/or processing capacity to our products or that we will be able to reach acceptable price and other terms with them for the provision of their production and/or processing services. If we, our partners or our contract manufacturers are unable to increase the production capacity for a product when and as needed, the commercial launch of that product may be delayed, or there may be a shortage of supply, which could limit sales, cause us to lose customers and sales opportunities and impair the growth of our business.

In addition, if a facility or the equipment in a facility that produces and/or processes our products is significantly damaged, destroyed or otherwise becomes unavailable, we or our partners may be unable to replace the manufacturing capacity quickly or cost effectively. The inability to enter into manufacturing agreements, the damage or destruction of a facility upon which we or our partners rely for manufacturing or any other delays in obtaining supply would delay or prevent us and/or our partners from further developing and commercializing our products.

We may experience significant delays and/or cost overruns in financing, designing, constructing and ramping up large commercial manufacturing facilities, which could result in harm to our business and prospects.

In order to meet our financial requirements for manufacturing facilities, we may have to raise additional funds and may be unable to do so in a timely manner, in sufficient amounts and on terms that are favorable to us, if at all. If we fail to raise sufficient funds, our ability to ramp up the Solazyme Bunge JV production facility or construct additional manufacturing facilities could be significantly limited. If this happens, we may be forced to delay the commercialization of our products and we will not be able to successfully execute our business plan, which would harm our business.

Manufacturing operations have begun at the Solazyme Bunge JV production facility adjacent to Bunge's Moema sugarcane mill in Brazil. The first products from the Solazyme Bunge JV production facility were produced in the second quarter of 2014, and manufacturing operations at the facility are in the process of being optimized and ramped up. We do not expect the facility to reach target nameplate capacity in the near term as the Solazyme Bunge JV continues to optimize manufacturing operations and focuses production on high margin products, and additional capital expenditures may be required to reach nameplate capacity depending on the product mix produced at the Solazyme Bunge JV production facility. Under the joint venture agreements, Bunge has agreed to provide feedstock as well as utility services to the Solazyme Bunge JV production facility. The production facility has experienced, and may continue to experience, intermittent supply of power and steam from Bunge. Bunge and the Solazyme Bunge JV have completed a number of power and steam improvement projects, including the construction of an electrical grid tie-in and the tie-in and activation of a second steam boiler. The Solazyme Bunge JV continues to evaluate the performance of these projects and may take additional actions in the future to further improve power and steam reliability, if necessary. Without consistent and reliable supplies of power and steam to the production facility, production yields will be lower, the ramp up and optimization of the Solazyme Bunge JV production facility will be delayed, our costs will increase and our business and results of operations will be adversely affected.

In February 2013, the Solazyme Bunge JV entered into a loan agreement with the Brazilian Development Bank ("BNDES") ("JV BNDES Loan") for project financing. Funds borrowed under the loan agreement have supported the production facility in Brazil, including a portion of the construction costs of the facility. In April 2016, a standby letter of credit was issued by Silicon Valley Bank ("SVB SLOC") in favor of Itaú Unibanco S.A. ("Itaú"). The SVB SLOC supports a bank guarantee issued by Itaú on our behalf to BNDES in connection with the JV BNDES Loan and is supported by a $12.9 million letter of credit facility we entered into with Silicon Valley Bank in June 2016 ("SVB Facility").

In addition, we may be required to provide a corporate guarantee of a portion of the JV BNDES Loan (in an amount that, when added to the amount supported by our bank guarantee, does not exceed our ownership percentage in the Solazyme Bunge JV). Negotiating the terms of the corporate guarantee documentation may take longer than anticipated and may contain terms that are not favorable to us. The Solazyme Bunge JV may in the future seek additional financing and may not be able to raise sufficient additional funds on favorable terms, if at all. If the Solazyme Bunge JV is unable to secure additional financing, we will be required to fund our portion of the Solazyme Bunge JV's capital requirements either from existing sources or seek additional financing. The acquisition of the facility site by the Solazyme Bunge JV from Bunge has been completed. The purchase of any additional land by the Solazyme Bunge JV would be complex, subject to multiple approvals of governmental authorities and take time to complete.

We may need to construct, or otherwise secure access to, and fund, additional capacity greater than what we currently have as we continue to commercialize our products. Some of our customers may ultimately require that we acquire access to additional production facilities in order to diversify our manufacturing base. We expect to bring online additional facilities in the future. Although we intend to enter into arrangements with third parties to meet our capacity targets, it is possible that we will need to construct our own facility or facilities to meet a portion or all of these targets. We have limited experience in the construction of commercial production facilities and, if we decide to construct our own facility, we will need to secure necessary funding, complete design and other plans needed for the construction of such facility and secure the requisite permits, licenses and other governmental approvals, and we may not be successful in doing so. The construction of any such facility would have to be completed on a timely basis and within an acceptable budget. In addition, there may be delays related to the acquisition of facility sites, which could delay the development and commercialization of our products, as well as delays in deliveries of materials for the construction of such manufacturing facilities in more remote locations. Any facility, whether owned by a third party or by us, must perform as designed once it is operational. If we encounter significant delays, cost overruns, engineering or utility problems, equipment damage, accidents, equipment supply constraints or other serious challenges in bringing any of these facilities online, we may be unable to meet our production goals in the time frame we have planned. In addition, we have limited experience in the management of manufacturing operations at large scale. We may not be successful in producing the amount and quality of oil or other microalgae-based products we anticipate in the facilities and our results of operations may suffer as a result. We have limited experience producing our products at commercial scale, and we will not succeed if we cannot maintain or decrease our production costs and effectively scale our technology and manufacturing processes.

We face financial risk associated with ramping up production to reduce our per-unit production costs. To reduce per-unit production costs, we must increase production to achieve economies of scale. However, if we do not sell production output in a timely manner or in sufficient volumes at sufficient prices, our investment in production will harm our cash position and generate losses. Due to decreases in the prices of petroleum and certain plant oils, on which products competitive with our own depend, we have determined not to manufacture certain of our products because the production and sale of such products at a loss would adversely affect our business. Therefore, we expect the time required to ramp up the Solazyme Bunge JV production facility and to achieve positive cash flows at such facility will be more than we previously anticipated. Further delays would materially adversely affect our business.

Our transition to a food, nutrition and specialty ingredients company may not go as planned.

We recently changed our name from Solazyme, Inc. to TerraVia Holdings, Inc. and sold Algenist, our skin care business, to a third party. We are focusing on the commercialization of food ingredients, consumer food brands, animal nutrition and specialty personal care ingredients. In connection with this transition, we plan to reallocate capital and management attention away from activities in industrial products, including fuels, chemicals and oil field services, and we are currently seeking strategic alternatives with respect to these businesses. We may not succeed in finding a strategic alternative that we believe appropriately values these businesses. We and our management may spend more resources than anticipated in evaluating strategic alternatives or continuing these businesses, which could negatively impact our overall business. Moreover, the minority interest we have in the Algenist business, which may not be successful, may lose some or all of its value.

In addition, we have appointed a new chief executive officer and our former chief executive officer has become our executive chairman of the board. The transition to a new chief executive officer may require more management and board attention than we anticipate, which could distract our management team and have a negative impact on our business results.

If we fail to maintain and successfully manage our existing, or enter into new, strategic collaborations, we may not be able to develop and commercialize many of our products and achieve or sustain profitability.

Our ability to enter into, maintain and manage collaborations in our target markets is important to the success of our business. We currently have joint venture, research and development, supply and/or distribution agreements with various strategic partners. We currently rely on our partners, in part, for manufacturing, sales and marketing services and intend to continue to do so for the foreseeable future, and we intend to enter into other strategic collaborations to produce, market and sell other products we develop. However, we may not be successful in entering into collaborative arrangements with third parties for the production, sale and marketing of other products. Any failure to enter into collaborative arrangements on favorable terms could delay or hinder our ability to develop and commercialize our products and could increase our costs of development and commercialization.

In the food, animal nutrition and chemicals markets, we have entered into a joint venture arrangement with Bunge that is focused on the manufacture of products in Brazil and development agreements with various other partners. In addition, we have entered into a commercial supply agreement with Unilever for specialty personal care ingredients. There can be no

guarantee that we can successfully manage these strategic collaborations. Moreover, the exclusivity provisions of certain strategic arrangements limit our ability to otherwise commercialize our products.

Pursuant to the agreements described above and similar arrangements that we may enter into in the future, we may have limited or no control over the amount or timing of resources that any partner is able or willing to devote to our products or collaborative efforts. Any of our partners may fail to perform their obligations as expected. These partners may breach or terminate their agreements with us or otherwise fail to conduct their collaborative activities successfully and in a timely manner. Further, our partners may not develop products arising out of our arrangements or devote sufficient resources to the development, manufacture, marketing, or sale of our products. Dependence on collaborative arrangements will also subject us to other risks, including:

- we may be required to relinquish important rights, including intellectual property, marketing and distribution rights;
- we may disagree with our partners as to rights to intellectual property we develop, or their research programs or commercialization activities;
- we may have lower revenues than if we were to market and distribute such products ourselves;
- a partner could separately develop and market a competing product either independently or in collaboration with others, including our competitors;
- a partner could divest assets that are critical to our or our joint venture's operations to a third party that is less willing to cooperate with us or is less incentivized or able to manage such assets in a way that helps us achieve our operational and financial goals;
- our partners could become unable or less willing to expend their resources on research and development, commercialization efforts or the maintenance or supply of production services due to general market conditions, their financial condition or other circumstances beyond our control;
- we may be unable to manage multiple simultaneous partnerships or collaborations; and
- our partners may operate in countries where their operations could be adversely affected by changes in the local regulatory environment or by political unrest.

Moreover, disagreements with a partner or former partner could develop, and any conflict with a partner or former partner could reduce our ability to enter into future collaboration agreements and negatively impact our relationships with one or more existing partners. If any of these events occurs, or if we fail to maintain our agreements with our partners, we may not be able to commercialize our existing and potential products, grow our business or generate sufficient revenues to support our operations. In addition, disagreements with a partner or former partner could result in disputes or litigation. Formal dispute resolution and litigation can require substantial time and resources, and the resolution of disputes and litigation may result in settlements or judgments that have a materially adverse impact on our results of operations or our financial condition. We are currently engaged in legal proceedings with our former partner Roquette Frères, S.A. ("Roquette"). For additional information regarding the Roquette proceedings, see Note 16 - Commitments and Contingencies of the notes to the unaudited interim condensed consolidated financial statements.

Additionally, our business could be negatively impacted if any of our partners undergoes a change of control or were to otherwise assign the rights or obligations under any of our agreements to a competitor of ours or to a third party who is not willing to work with us on the same terms or commit the same resources as the current partner.

Our relationship with our strategic partner Bunge may not prove successful.

We have entered into a joint venture with Bunge that is focused on the production of certain microalgae-based products in Brazil. In connection with the establishment of the Solazyme Bunge JV, we entered into a development agreement and other agreements with Bunge and the Solazyme Bunge JV. Since originally establishing the Solazyme Bunge JV, we have expanded the products and fields in which the joint venture is operating.

Our ability to generate value from the Solazyme Bunge JV depends on, among other things, our ability to work cooperatively with Bunge and the Solazyme Bunge JV for the commercialization of the Solazyme Bunge JV's products. We may not be able to do so. For example, under the joint venture agreements, Bunge has agreed to provide feedstock as well as utility services to the Solazyme Bunge JV production facility.

In addition, Bunge has announced that it is actively pursuing strategic alternatives for its Brazilian sugarcane business, which could involve the divestment, in whole or in part, of the assets of such business. While a new controlling entity would remain subject to the terms of the feedstock and utility supply agreements, that entity may be less willing to cooperate with us or the Solazyme Bunge JV, which may adversely affect the development and commercialization of the Solazyme Bunge JV's products.

We and Bunge each provide various administrative services to the Solazyme Bunge JV, and Bunge also provides working capital to the Solazyme Bunge JV through a revolving loan facility. Bunge does not have previous experience working with our technology, and we cannot be sure that the Solazyme Bunge JV will be successful in commercializing its products. In addition, there may be delays or cost overruns in connection with the ramp up and optimization of the Solazyme Bunge JV production facility. There may also be delays in our negotiation of the corporate guarantee in connection with the JV BNDES Loan. In addition, we will be required to maintain the required license, granted by the Sao Paulo State Environmental Department, to operate the production facility. Any negative event with respect to these issues would delay the development and commercialization of the Solazyme Bunge JV products. Furthermore, the agreements governing our partnership are complex and cover a range of future activities, and disputes may arise between us and Bunge that could delay the ramp up of the Solazyme Bunge JV facility, the expansion of the Solazyme Bunge JV's capacity and/or the development and commercialization of the Solazyme Bunge JV's products or cause the dissolution of the Solazyme Bunge JV.

Our joint venture with Roquette has been dissolved. We are currently in litigation with Roquette and we may have other disputes with Roquette related to the joint venture's business.

In 2010, we entered into a 50/50 joint venture with Roquette Frères, S.A. ("Roquette"). As part of this relationship, we and Roquette formed Solazyme Roquette Nutritionals, LLC ("SRN") through which both we and Roquette agreed to pursue certain opportunities in microalgae-based products for the food, nutraceuticals and animal feed markets. In June 2013, we and Roquette agreed to dissolve SRN and in July 2013, SRN was dissolved. As a result of the dissolution, the joint venture and operating agreement between us and Roquette, and the license agreement, whereby we licensed to SRN certain of our intellectual property, automatically terminated.

We and Roquette engaged in an arbitration proceeding concerning the proper assignment of the intellectual property of SRN. In February 2015 the arbitration panel awarded all such intellectual property to us, and this award was confirmed by the U.S. District Court for the District of Delaware in December 2015. In addition, Roquette commenced two separate actions in the U.S. District Court for the District of Delaware for declarations that, among other things, the arbitrators exceeded their authority by failing to render a timely arbitration award and as a result any orders or awards issued by the arbitrators are void. Summary judgment in these matters requested by Roquette was denied by the U.S. District Court for the District of Delaware in December 2015. We have counterclaimed for damages for misappropriation of trade secrets, misuse of confidential information and breach of contract. In turn Roquette has counterclaimed that we have misused certain Roquette trade secrets. The proceedings are ongoing. See Note 16 - Commitments and Contingencies of the notes to the unaudited interim condensed consolidated financial statements for more information regarding our proceedings with Roquette. We cannot be sure that other disputes will not arise between us and Roquette related to the joint venture's business. Such disagreements and disputes are costly, time-consuming to resolve and distracting to our management.

Disputes regarding our intellectual property rights, and the rights of others (including Roquette) to manufacture and sell the products included in the SRN joint venture could delay or negatively impact our commercialization of products in the markets SRN was targeting. Any such disputes could be costly, time-consuming to resolve and distracting to our management. In addition, if our commercialization in these markets is delayed or unsuccessful, our financial results could be negatively impacted.

We cannot be sure that our products will meet necessary standards or be approved or accepted by customers in our target markets.

If we are unable to convince our potential customers or end users of our products that we are a reliable supplier, that our products are comparable or superior to the products that they currently use, or that the use of our products is otherwise beneficial to them, we will not be successful in entering our target markets and our business will be adversely affected.

In the food and nutrition market and in the animal nutrition market, our food ingredients and products will compete with oils and other food ingredients currently in use. Potential customers may not perceive a benefit to microalgae-based ingredients as compared to existing ingredients or may be otherwise unwilling to adopt their use. In addition, our branded food product is marketed directly to potential consumers, but we cannot be sure that consumers will continue to be attracted to our brand, be attracted to our new brands or products, or purchase our products on an ongoing basis. As a result, our branded products may not be successful, distribution partners may decide to discontinue marketing our products and our business will be adversely affected. If consumer packaged goods companies do not accept our food ingredients as ingredients for their

finished products, or if end customers are unwilling to purchase finished products made using our products, we will not be successful in competing in the nutrition market and our business will be adversely affected. Customers in the nutrition market also may require lengthy and complex qualification procedures with respect to our products, our manufacturing capabilities, regulatory issues and other matters. Likewise, in the animal nutrition market, if customers are not willing to integrate our products into their animal nutrition products, our business will be adversely affected.

In the chemicals market, the potential customers for our or the Solazyme Bunge JV's products are generally companies that have well-developed manufacturing processes and arrangements with suppliers for the chemical components of their products and may resist changing these processes and components. These potential customers frequently impose lengthy and complex product qualification procedures on their suppliers, influenced by consumer preference, manufacturing considerations, supplier operating history, regulatory issues, product liability and other factors, many of which are unknown to, or not well understood by, us. Satisfying these processes may take many months or years.

In the oil field services market, our Encapso ® product competes with incumbent drilling lubricants and other specialty lubricants. Potential customers may be reluctant to adopt an algae-based product because of their unfamiliarity with our technology. Our Encapso ® product has been subjected only to a limited number of on-site drilling trials, and certain customers may require further data and operating history prior to committing to purchase.

We have entered into a limited number of binding, definitive commercial supply agreements. We also periodically enter into non-binding letters of intent with third parties regarding purchase of our products, but these agreements do not unconditionally obligate the other party to purchase any quantities of any products at this time. There can be no assurance that non-binding letters of intent will lead to unconditional definitive agreements to purchase our products.

We have limited experience in structuring arrangements with customers for the purchase of our microalgae-based products, and we may not be successful in this essential aspect of our business.

We expect that our customers will include large companies that sell food products, nutrition products, specialty personal care products and chemical products, as well as large users of lubricants for oil field operations and other applications. Because we have only recently begun to commercialize ingredients for specialty personal care products, lubricants for oil field operations and our own food and food ingredient products, and are still in the process of developing products and ingredients for the food, nutrition, specialty personal care and chemicals, oil field services and other markets, we have limited experience operating in our customers' industries and interacting with the customers that we intend to target. Developing the necessary expertise may take longer than we expect and will require that we expand and improve our sales and marketing capability, which could be costly. These activities could delay our ability to capitalize on the opportunities that we believe our technology and products present, and may prevent us from successfully commercializing our products. Further, we ultimately aim to sell large amounts of our products, and this will require that we effectively negotiate and manage contracts for these purchase and sale relationships. The companies with which we aim to have arrangements are generally much larger than we are and have substantially longer operating histories and more experience in their industries than we have. As a result, we may not succeed in establishing relationships with these companies and, if we do, we may not be effective in negotiating or managing the terms of such relationships, which could adversely affect our future results of operations.

We may be subject to product liability claims and other claims of our customers, partners and third parties.

The design, development, production and sale of our products involve an inherent risk of product liability claims and the associated adverse publicity. Because some of our ultimate products in each of our target markets are used by consumers, and because use of those ultimate products may cause injury to those consumers and damage to property, we are subject to a risk of claims for such injuries and damages, claims from consumer packaged goods companies for the costs of removing finished products containing one or more of our ingredients from the market and costs to remove our branded food products from the market. In addition, we may be named directly in product liability suits relating to our products or third-party products integrating our products, even for defects resulting from errors of our partners, contract manufacturers or other third parties working with our products. These claims could be brought by various parties, including customers who are purchasing products directly from us or other users who purchase products from our customers or partners. We could also be named as co-parties in product liability suits that are brought against manufacturing partners that produce our products.

In addition, our customers, partners and third parties may bring suits against us alleging damages for the failure of our products to meet stated claims, specifications, warranties or other requirements. Any such suits, even if not successful, could be costly, disrupt the attention of our management and damage our negotiations with other partners and/or customers. Although we often seek to limit our product liability in our contracts, such limits may not be enforceable or may be subject to exceptions. Our current product liability and umbrella insurance for our business may be inadequate to cover all potential liability claims. Insurance coverage is expensive and may be difficult to obtain. Also, insurance coverage may not be available in the future on acceptable terms and may not be sufficient to cover potential claims. We cannot be sure that our contract manufacturers or

manufacturing partners who produce our ultimate products will have adequate insurance coverage to cover against potential claims. If we experience a large insured loss, it may exceed our coverage limits, or our insurance carrier may decline to further cover us or may raise our insurance rates to unacceptable levels, any of which could impair our financial position and potentially cause us to go out of business.

We will face risks associated with our international business in developing countries and elsewhere.

For the foreseeable future, our business plan will likely subject us to risks associated with essential manufacturing, sales and operations in developing countries. We have limited experience to date manufacturing and selling internationally and such expansion will require us to make significant expenditures, including the hiring of local employees and establishing facilities, in advance of generating any revenue. The economies of many of the countries in which we or our joint ventures operate or will operate have been characterized by frequent and occasionally extensive government intervention and unstable economic cycles.

In addition, in Brazil, where the Solazyme Bunge JV is located, there are restrictions on the foreign ownership of land, which may affect the Solazyme Bunge JV's ownership rights in the facility site or in any additional land purchased.

International business operations are subject to local legal, political, regulatory and social requirements and economic conditions and our business, financial performance and prospects may be adversely affected by, among others, the following factors:

- political, economic, diplomatic or social instability;
- land reform movements;
- tariffs, export or import restrictions, restrictions on remittances abroad or repatriation of profits, duties or taxes that limit our ability to move our products out of these countries or interfere with the import of essential materials into these countries;
- inflation, changing interest rates and exchange controls;
- tax burden and policies;
- delays or failures in securing licenses, permits or other governmental approvals necessary to build and operate facilities and use our microalgae strains to produce products;
- the imposition of limitations on products or processes and the production or sale of those products or processes;
- uncertainties relating to foreign laws, including labor laws, regulations and restrictions, and legal proceedings;
- foreign ownership rules and changes in regard thereto;
- an inability, or reduced ability, to protect our intellectual property, including any effect of compulsory licensing imposed by government action;
- successful compliance with U.S. and foreign laws that regulate the conduct of business abroad, including the Foreign Corrupt Practices Act;
- insufficient investment in developing countries in public infrastructure, including transportation infrastructure, and disruption of transportation and logistics services; and
- difficulties and costs of staffing and managing foreign operations.

These and other factors could have a material adverse impact on our results of operations and financial condition.

Our international operations may expose us to the risk of fluctuation in currency exchange rates and rates of foreign inflation, which could adversely affect our results of operations.

We currently incur some costs and expenses in Euros and Brazilian Reals and expect in the future to incur additional expenses in these and other foreign currencies, and also derive a portion of our revenues in the local currencies of customers throughout the world. As a result, our revenues and results of operations are subject to foreign exchange fluctuations, which we may not be able to manage successfully. During the past few decades, the Brazilian currency in particular has faced frequent and substantial exchange rate fluctuations in relation to the U.S. dollar and other foreign currencies. For example, the value of the Brazilian Real has fluctuated significantly against the U.S. dollar over the past few years. There can be no assurance that the Real or the Euro will not significantly appreciate or depreciate against the U.S. dollar in the future. We bear the risk that the

rate of inflation in the foreign countries where we incur costs and expenses or the decline in value of the U.S. dollar compared to those foreign currencies will increase our costs as expressed in U.S. dollars. Future measures by foreign governments to control inflation, including interest rate adjustments, intervention in the foreign exchange market and changes to the fixed value of their currencies, may trigger increases in inflation. We may not be able to adjust the prices of our products to offset the effects of inflation on our cost structure, which could increase our costs and reduce our net operating margins. If we do not successfully manage these risks through hedging or other mechanisms, our revenues and results of operations could be adversely affected.

We may encounter difficulties managing our growth, and we will need to properly prioritize our efforts in our target markets as our business grows. If we are unable to do so, our business, financial condition and results of operations may be adversely affected.

Our business has encountered periods of rapid growth. Rapid growth places a strain on our human and capital resources. If we grow too rapidly or if our headcount or other aspects of our operating structure become misaligned with our strategy, we may need to reduce headcount or other operating costs. For example, in December 2014, as part of an adjustment to our operating and expense strategy related to the ramping up of the Solazyme Bunge JV production facility, we announced the intention to decrease operating expenses through a reduction in workforce and other cost-cutting measures. See the risk factor titled "We may experience significant delays and/or cost overruns in financing, designing, constructing and ramping up large commercial manufacturing facilities, which could result in harm to our business and prospects" above for more information. In addition, in January 2016, as part of our continuing strategy to focus operations on targeted, higher-value product categories, we streamlined operations by reducing our workforce. Such reductions in workforce can have an adverse effect on our business.

Furthermore, we intend to conduct our business internationally and anticipate business operations in the United States, Europe, Latin America and elsewhere. These diversified, global operations place increased demands on our limited resources and may require us to expand the capabilities of our administrative and operational resources and will require us to attract, train, manage and retain qualified management, technicians, scientists and other personnel. As our operations expand domestically and internationally, we will need to continue to manage multiple locations and additional relationships with various customers, partners, suppliers and other third parties across several product categories and markets.

Our business has taken place across several target markets: food and nutrition, skin and personal care, fuels and chemicals, and oil field services. We will be required to prioritize our limited financial and managerial resources as we pursue particular development and commercialization efforts in our target markets. Any resources we expend on one or more of these efforts could be at the expense of other potentially profitable opportunities. If we focus our efforts and resources on one or more of these markets and they do not lead to commercially viable products, our revenues, financial condition and results of operations could be adversely affected. Furthermore, as our operations grow, the simultaneous management of development, production and commercialization across our target markets will become increasingly complex and may result in less than optimal allocation of management and other administrative resources, increase our operating expenses and harm our operating results.

Our ability to effectively manage our operations, growth and various projects across our target markets will require us to make additional investments in our infrastructure to continue to improve our operational, financial and management controls and our reporting systems and procedures and to attract and retain sufficient numbers of talented employees, which we may be unable to do effectively. We may be unable to successfully manage our expenses in the future, which may negatively impact our gross margins or operating margins in any particular quarter.

In addition, we may not be able to improve our management information and control systems, including our internal control over financial reporting, to a level necessary to manage our growth and we may discover deficiencies in existing systems and controls that we may not be able to remediate in an efficient or timely manner.

We are involved, and may become involved in the future, in legal proceedings that, if adversely adjudicated or settled, could adversely affect our financial results.

We, and certain of our officers and directors, are involved, and may be involved in the future, in legal proceedings and claims arising in the course of our business. Such matters are subject to many uncertainties and there can be no assurance that such legal proceedings will not have a material adverse effect on our business, results of operations, financial position or cash flows. See Note 16 - Commitments and Contingencies of the notes to the unaudited interim condensed consolidated financial statements of this report for a description of the material legal proceedings in which we are currently engaged.

We cannot predict the outcome of any legal proceeding in which we are engaged. Moreover, any conclusion of legal proceedings in a manner adverse to us could have an adverse effect on our financial condition and business. Even if we are successful in litigation, we could incur substantial costs, suffer a significant adverse impact on our reputation and divert management's attention and resources from other priorities, including the execution of business plans and strategies that are important to our ability to grow our business, any of which could have an adverse effect on our business. Legal proceedings may result in significant legal expenses, settlement costs or damage awards that are not covered by, or exceed the limits of, our liability insurance, which could adversely impact our financial condition, results of operations or cash flow.

Our success depends in part on recruiting and retaining key personnel and, if we fail to do so, it may be more difficult for us to execute our business strategy.

Our success depends on our continued ability to attract, retain and motivate highly qualified management, business development, manufacturing and scientific personnel and directors, and on our ability to develop and maintain important relationships with leading academic institutions and scientists. We are dependent upon a number of key members of our senior management, including executive, manufacturing, business development and scientific personnel, and on our directors. If any of such persons left, our business could be harmed. All of our employees and directors are at-will and may resign at any time. The loss of the services of one or more of our key employees, or directors could delay or have an impact on the successful commercialization of our products. We do not maintain any key man insurance. Competition for qualified personnel in the biotechnology field is intense, particularly in the San Francisco Bay Area. We may not be able to attract and retain qualified personnel on acceptable terms given the competition for such personnel. In addition, the restructurings that we implemented in December 2014 and January 2016 could have an adverse impact on our ability to retain and recruit qualified personnel. If we are unsuccessful in our recruitment efforts, we may be unable to execute our strategy.

We may not be able to meet applicable regulatory requirements for the sale of our microalgae-based products and the operation of production facilities, and, even if requirements are met, complying on an ongoing basis with the numerous regulatory requirements applicable to our various product categories and facilities will be time-consuming and costly.

Our food and nutrition products are subject to regulation by various government agencies, including the U.S. Food and Drug Administration ("FDA"), state and local agencies and similar agencies outside the United States. In the U.S., food ingredients are regulated either as food additives or as substances generally recognized as safe, or GRAS. A GRAS self-determination can be made with respect to a substance by its manufacturer upon the receipt of an opinion from a panel of qualified experts who determine that the substance is GRAS for its intended conditions of use. A GRAS Notice for one algae oil was submitted to the FDA in June 2011, and a "no questions" letter was received from the FDA in June 2012. A GRAS Notice for each of whole algae flour and whole algae protein was submitted to the FDA, and a "no questions" letter was received from the FDA in 2013 for whole algae flour, in 2014 for whole algae protein and in 2015 for our second algae oil, an oleic algae oil. If the FDA were to disagree with the conclusions in future GRAS Notices, they could ask that the products be voluntarily withdrawn from the market or could initiate legal action to halt their sale. Such actions by the FDA could have an adverse effect on our business, financial condition, and results of our operations. Food ingredients that are not GRAS are regulated as food additives and require FDA approval prior to commercialization. The food additive petition process is generally expensive and time consuming, with approval, if secured, taking years. In Brazil, we submitted applications to the Brazilian Health Surveillance Agency ("ANVISA") for approval of various food products. We received food approval with no restrictions for our whole algae flour in July 2015. In Canada, we received a Letter of No Objection for whole algae flour in February 2016. Other products may or may not be approved in the future. Any significant delay or disapproval of our food products by ANVISA, Health Canada or other government agencies in these or other countries would adversely affect our food and nutrition business in these and other countries.

The sale of ingredients for use in animal feed is regulated by agencies including the FDA's Center for Veterinary Medicine. Regulatory requirements for suitability must be met by providing data from studies, which may cause delays and the incursion of additional costs. Any significant delay or disapproval by government agencies of our animal nutrition products would have an adverse effect on our business.

Our chemical products may be subject to government regulation in our target markets. In the United States, the EPA administers the Toxic Substances Control Act ("TSCA"), which regulates the commercial registration, distribution, and use of chemicals. TSCA requires us to comply with the Microbial Commercial Activity Notice ("MCAN") process to manufacture and distribute products made from our recombinant microalgae strains. An MCAN is not required for non-recombinant strains. To date, we have filed MCANs for certain of our recombinant microalgae strains, all of which have been dropped from review. Our subsequent filing of Notices of Commencement ("NOC") relating to previously filed MCANs allows us to commercially use these strains. We expect to file additional MCANs in the future.

Before we can manufacture or distribute significant volumes of a chemical, we need to determine whether that chemical is listed in the TSCA inventory. If the substance is listed, then manufacture or distribution can commence immediately. If not, then a pre-manufacture notice ("PMN") must be filed with the EPA for a review period of up to 90 days excluding extensions. We have filed PMNs for certain of our products and expect to file additional PMNs in the future. Some of the products we produce or plan to produce are already on the TSCA inventory due to our successful PMN submissions and filed NOCs. Others are not yet listed. We may not be able to expediently receive approval from the EPA to list the chemicals we would like to make on the TSCA inventory, resulting in delays or significant increases in testing requirements. A similar program exists in the European Union, called REACH (Registration, Evaluation, Authorization, and Restriction of Chemical Substances). We are required to register some of our products with the European Commission, and this process could cause delays or significant costs. We have determined that some of our algae oils are exempt from REACH registration requirements. To the extent that other geographies, such as Brazil, may rely on the TSCA or REACH for chemical registration in their geographies, delays with the U.S. or European authorities may subsequently delay entry into these markets as well. Furthermore, other geographies may have their own chemical inventory requirements, which may delay entry into these markets, irrespective of U.S. or European approval.

Changes in regulatory requirements, laws and policies, or evolving interpretations of existing regulatory requirements, laws and policies, may result in increased compliance costs, delays, capital expenditures and other financial obligations that could adversely affect our business or financial results.

We expect to encounter regulations in most if not all of the countries in which we may seek to sell our products, and we cannot be sure that we will be able to obtain necessary approvals in a timely manner or at all. If our products do not meet applicable regulatory requirements in a particular country or at all, then we may not be able to commercialize them and our business will be adversely affected. The various regulatory schemes applicable to our products will continue to apply following initial approval for sale. Monitoring regulatory changes and ensuring our ongoing compliance with applicable requirements is time-consuming and may affect our results of operations. If we fail to comply with such requirements on an ongoing basis, we may be subject to fines or other penalties, or may be prevented from selling our products, and our business may be harmed.

The construction and operation of our, our partners' or our joint ventures' production facilities are likely to require government approvals. If we are not able to obtain or maintain the necessary approvals in a timely manner or at all, our business will be adversely affected. In February 2014, the Sao Paulo State Environmental Department granted a license to operate the Solazyme Bunge JV facility, which was necessary to begin commercial production.

We may incur significant costs complying with environmental, health and safety laws and regulations, and failure to comply with these laws and regulations could expose us to significant liabilities.

We use hazardous chemicals and radioactive and biological materials in our business and are subject to a variety of federal, state, local and international laws and regulations governing, among other matters, the use, generation, manufacture, transportation, storage, handling, disposal of, and human exposure to, these materials both in the U.S. and outside the U.S., including regulation by governmental regulatory agencies, such as the Occupational Safety and Health Administration and the EPA. We have incurred, and will continue to incur, capital and operating expenditures and other costs in the ordinary course of our business in complying with these laws and regulations.

Although we have implemented safety procedures for handling and disposing of these materials and waste products in an effort to comply with these laws and regulations, we cannot be sure that our safety measures will be compliant or capable of eliminating the risk of injury or contamination from the generation, manufacturing, use, storage, transportation, handling, disposal of, and human exposure to, hazardous materials. Failure to comply with environmental, health and safety laws could subject us to liability and resulting damages. There can be no assurance that violations of environmental, health and safety laws will not occur as a result of human error, accident, equipment failure or other causes. Compliance with applicable environmental laws and regulations may be expensive, and the failure to comply with past, present, or future laws could result in the imposition of fines, regulatory oversight costs, third party property damage, product liability and personal injury claims, investigation and remediation costs, the suspension of production, or a cessation of operations, and our liability may exceed our total assets. Liability under environmental laws, such as the Comprehensive Environmental Response Compensation and Liability Act in the United States, can impose liability for the full amount of damages, without regard to comparative fault for the investigation and cleanup of contamination and impacts to human health and for damages to natural resources. Contamination at properties we own and operate, and at properties to which we send hazardous materials, may result in liability for us under environmental laws and regulations.

Our business and operations will be affected by other new environmental, health and safety laws and regulations, which may affect our research and development and manufacturing programs, and environmental laws could become more stringent over time, requiring us to change our operations, or resulting in greater compliance costs and increasing risks and penalties

associated with violations, which could impair our research, development or production efforts and harm our business. The costs of complying with environmental, health and safety laws and regulations, and any claims concerning noncompliance, or liability with respect to contamination in the future could have a material adverse effect on our financial condition or operating results.

We may face risks relating to the use of our targeted recombinant microalgae strains, and if we are not able to meet applicable regulatory requirements for the use of these strains or if we face material ethical, legal and social concerns about our use of targeted recombinant technology, our business could be adversely affected.

The use of microorganisms designed using targeted recombinant technology, such as some of our microalgae strains, is subject to laws and regulations in many states and countries, some of which are new and still evolving and interpreted by fact specific application. In the U.S. the EPA regulates the commercial use of microorganisms designed using targeted recombinant technology as well as potential products derived from them.

We expect to encounter regulations of microorganisms designed using targeted recombinant technology in most if not all of the countries in which we may seek to establish manufacturing operations, and the scope and nature of these regulations will likely be different from country to country. For example, in the U.S., when used in an industrial process, our microalgae strains designed using targeted recombinant technology may be considered new chemicals under the TSCA, administered by the EPA. We will be required to comply with the EPA's process. In Brazil, microorganisms designed using targeted recombinant technology are regulated by the National Biosafety Technical Commission, or CTNBio. In March 2013, we submitted an application for approval from CTNBio to use a specific microalgae strain designed using targeted recombinant technology in a contained environment in order to use these microalgae for research and development and commercial production purposes in any facilities we establish in Brazil. We obtained approval for this application from CTNBio in October 2013, and we have since received several approvals related to additional applications we had submitted. In February 2014, CTNBio granted a CQB (Certificate of Quality in Biosafety) to the Solazyme Bunge JV facility for activities including industrial production, import and export, disposal and storage of our key production organisms. If we cannot meet the applicable requirements in countries in which we intend to produce microalgae-based products, or if it takes longer than anticipated to obtain such approvals, our business could be adversely affected.

The subject of organisms designed using targeted recombinant technology has received negative publicity, which has aroused public debate. Public attitudes about the safety and environmental hazards of, and ethical concerns over, genetic research and microorganisms designed using targeted recombinant technology could influence public acceptance of our technology and products. In addition, shifting public attitudes regarding, and potential changes to laws governing, ownership of genetic material could harm our intellectual property rights with respect to our genetic material and discourage collaborators from supporting, developing, or commercializing our products, processes and technologies. Governmental reaction to negative publicity concerning organisms designed using targeted recombinant technology could result in greater government regulation of or trade restrictions on imports of genetic research and derivative products. If we and/or our collaborators are not able to overcome the ethical, legal, and social concerns relating to the use of targeted recombinant technology, our products and processes may not be accepted or we could face increased expenses, delays or other impediments to their commercialization.

We expect to face competition for our food and nutrition, animal nutrition and specialty personal care ingredients and products from other companies in these fields, many of whom have greater resources and experience than we do. If we cannot compete effectively against these companies or their products, we may not be successful in selling our ingredients or products or further growing our business.

We expect that our food, nutrition, animal nutrition and specialty personal care ingredients and products will compete with providers in both the specialty, mass food ingredient and animal nutrition markets. Many of these companies, such as Cargill, Incorporated, Monsanto Company, Syngenta AG and Roquette Frères, S.A., are substantially larger than we are, have well-developed distribution systems and networks for their products, and valuable historical relationships with the potential customers and distributors we hope to serve and have substantially greater resources than we do. We may also compete with companies seeking to produce food, nutrition and animal nutrition products based on renewable oils, including DSM Food Specialties and DuPont Nutrition & Health. Our success in the development of food, nutrition and animal nutrition products will depend on our ability to effectively compete with established companies and successfully commercialize our products. We believe the primary competitive factors in the food, nutrition, animal nutrition and specialty personal care ingredient and product markets are product performance, cost-in-use, sustainability, and availability of supply.

We expect to face competition for our products in the chemicals markets from providers of products based on petroleum, plant oils and animal fats and from other companies seeking to provide alternatives to these products, many of whom have greater resources and experience than we do. If we cannot compete effectively against these companies or products, our business could be harmed and certain of our strategic alternatives could be adversely impacted.

In the chemical market, we will compete with the established providers of oils currently used in chemical products. Producers of these incumbent products include global oil companies, including those selling agricultural products such as palm oil, palm kernel oil, castor bean oil and sunflower oil, large international chemical companies and other companies specializing in specific products or essential oils. We may also compete in one or more of these markets with manufacturers of other products such as highly refined petrochemicals, synthetic polymers and other petroleum-based fluids and lubricants as well as new market entrants offering renewable products.

We believe the primary competitive factors in the chemicals market are product price, product performance, sustainability, availability of supply and compatibility of products with existing infrastructure.

The oil companies, large chemical companies and well-established agricultural products companies with whom we expect to compete are much larger than we are, have, in most cases, well-developed distribution systems and networks for their products, have valuable historical relationships with the potential customers we are seeking to serve and have much more extensive sales and marketing programs in place to promote their products. Some of our competitors may use their influence to impede the development and acceptance of our products. Our limited resources relative to many of our competitors may cause us to fail to anticipate or respond adequately to new developments and other competitive pressures. In the nascent markets for renewable chemicals, it is difficult to predict which, if any, market entrants will be successful, and we may lose market share to competitors producing new or existing renewable products. If we are unsuccessful in competing in the chemicals markets, our business could be harmed and certain of our strategic alternatives could be adversely impacted.

We expect to face competition in the oil field services market.

We expect that our Encapso ® product will compete with incumbent drilling lubricant products that are marketed by larger companies with significantly greater resources and experience. Such competitors compete vigorously on fluids performance and price. These companies have broad product and service offerings in addition to their drilling fluids. These larger companies may attempt to compete by offering discounts to customers to use multiple products and services, some of which we do not offer. We may also compete with regional companies that compete on price, performance and local relationships. Our success in this target market will depend on our ability to effectively compete with these established companies. If we are unable to do so effectively, our business could be harmed and certain of our strategic alternatives could be adversely impacted.

A decline in the price of petroleum and petroleum-based products, plant oils or other commodities may reduce demand for our products and may otherwise adversely affect our business.

We anticipate that many of our oils will be marketed as alternatives to corresponding products based on petroleum and plant oils. When the price of any of these oils falls, as they have recently, we may be unable to produce algae oils or other products that are cost-effective alternatives to their petroleum or plant oil-based counterparts. Declining oil prices, or the perception of a future decline in oil prices, may adversely affect the prices we can obtain from our potential customers or prevent potential customers from entering into agreements with us to buy our products. During sustained periods of lower oil prices we may be unable to sell our products, which could materially and adversely affect our operating results. For example, in part as a result of the recent drop in the prices of petroleum and certain plant oils, the ramp up of the Solazyme Bunge JV's production facility in Brazil will be slower than, and the mix of products manufactured in that facility will be different from, what we previously anticipated as production will be focused primarily on higher margin products.

Prices of plant oils have experienced significant volatility, and this volatility is expected to persist. If prices for plant oils remain at low levels, there may be less demand for oil alternatives, which could reduce demand for our products and harm our business. The prices of commodities that serve as food ingredients have also been volatile. To the extent that the prices of these commodities decline and remain at lower levels for extended periods of time, the demand for our food, nutrition and specialty personal care ingredients and products may be reduced, and our ability to successfully compete in this market may be harmed.

Our information technology systems, processes and sites may suffer a significant breach or disruption that may adversely affect our ability to conduct our business.

Our information technology systems, some of which are dependent on services provided by third parties, provide critical data and services for internal and external users, including procurement and inventory management, transaction

processing, financial, commercial and operational data, human resources management, legal and tax compliance information and other information and processes necessary to operate and manage our business. Our information technology and infrastructure may experience attacks by hackers, breaches or other failures or disruptions that could compromise our systems and the information stored there. While we have implemented security measures and disaster recovery plans designed to protect the security and continuity of our networks and critical systems, these measures may not adequately prevent adverse events such as breaches or failures from occurring or mitigate their severity if they do occur. If our information technology systems are breached, damaged or fail to function properly due to any number of causes, such as security breaches or cyber-based attacks, systems implementation difficulties, catastrophic events or power outages, and our security, contingency or disaster recovery plans do not effectively mitigate these occurrences on a timely basis, we may experience a material disruption in our ability to manage our business operations. We may also be subject to legal claims or proceedings, liability under laws that protect the privacy of personal information, potential regulatory penalties and damage to our reputation. The occurrence of any of these events may adversely impact our business, results of operations and financial condition, as well as our competitive position.

Our facilities in California are located near an earthquake fault, and an earthquake or other natural disaster or resource shortage could disrupt our operations.

Important documents and records, such as hard copies of our laboratory books and records for our products and some of our manufacturing operations, are located in our corporate headquarters in South San Francisco, California, near active earthquake zones. In the event of a natural disaster, such as an earthquake, drought or flood, or localized extended outages of critical utilities or transportation systems, we do not have a formal business continuity or disaster recovery plan, and could therefore experience a significant business interruption. In addition, California from time to time has experienced shortages of water, electric power and natural gas. Future shortages and conservation measures could disrupt our operations and could result in additional expense. Although we maintain business interruption insurance coverage, we do not maintain earthquake or flood coverage.

Risks Related to Our Intellectual Property

Our competitive position depends on our ability to effectively obtain and enforce patents related to our products, manufacturing components and manufacturing processes. If we or our licensors fail to adequately protect this intellectual property, our ability and/or our partners' ability to commercialize products could suffer.

Our success depends in part on our ability to obtain and maintain patent protection sufficient to prevent others from utilizing our manufacturing components, manufacturing processes or marketing our products, as well as to successfully defend and enforce our patents against infringement by others. In order to protect our products, manufacturing components and manufacturing processes from unauthorized use by third parties, we must hold patent rights that cover our products, manufacturing components and manufacturing processes.

The patent position of biotechnology and bio-industrial companies can be highly uncertain because obtaining and determining the scope of patent rights involves complex legal and factual questions. The standards applied by the U.S. Patent and Trademark Office and foreign patent offices in granting patents are different and not always applied uniformly or predictably. There is no uniform worldwide policy regarding patentable subject matter, the scope of claims allowable in biotechnology and bio-industrial patents, or the formal requirements to obtain such patents. Consequently, patents may not issue from our pending patent applications. Furthermore, in the process of seeking patent protection or even after a patent is granted, we could become subject to expensive and protracted proceedings, including patent interference, opposition, post-grant review and re-examination proceedings, which could invalidate or narrow the scope of our patent rights. As such, we do not know nor can we predict the scope and/or breadth of patent protection that we might obtain on our products and technology.

Changes either in patent laws or in interpretations of patent laws in the United States and other countries may diminish the value of our intellectual property rights. In the U.S., depending on the decisions and actions taken by the U.S. Congress, the federal courts, and the U.S. Patent and Trademark Office, the laws and regulations governing patents could change in unpredictable ways that could weaken our ability to obtain new patents or to enforce our existing patents and patents that we might obtain in the future. In foreign jurisdictions, depending on the decisions and actions taken by the foreign government, the judicial system of the jurisdiction, and its patent office, the laws and regulations governing patents could change in unpredictable ways that could weaken our ability to obtain new patents or to enforce our existing patents or patents that we might obtain in the future.

The America Invents Act ("AIA"), which was signed into law on September 16, 2011, brought a number of changes to the U.S. patent system and affects the way patents are prosecuted, challenged and litigated. Among the changes that went into effect on September 16, 2012, one of the most significant involves the implementation of a reformed post-grant review system.

Other changes, which went into effect on March 16, 2013, include the transition from a "first-to-invent" to "first-to-file" system that attempts to harmonize the laws of the U.S. with the laws of most of the world. Lack of precedential interpretation of the new provisions of the AIA through specific cases or through guidelines promulgated by the U.S. Patent and Trademark Office and the lack of binding precedent from the courts increase the uncertainty of the impact of the AIA. Together, these changes may increase the costs of prosecution and enforcement of U.S. patents. While it is currently unclear what impact these changes will have on the operation of our business, they may favor companies able to dedicate more resources to patent filings and challenges.

Risks associated with enforcing our intellectual property rights in the United States and elsewhere.

If we were to initiate legal proceedings against a third party to enforce a patent claiming one of our technologies, the defendant could counterclaim that our patent is invalid and/or unenforceable or assert that the patent does not cover its manufacturing processes, manufacturing components or products. Proving patent infringement may be difficult, especially where it is possible to manufacture a product by multiple processes or when a patented process is performed by multiple parties. Patent litigation is also costly, time-consuming and distracting to our management. Furthermore, in patent litigation in the United States or elsewhere, defendant counterclaims alleging both invalidity and unenforceability are commonplace. Although we believe that we have conducted our patent prosecution in accordance with the duty of candor and in good faith, the outcome following legal assertions of invalidity and unenforceability during patent litigation is unpredictable. With respect to the validity of our patent rights, we cannot be certain, for example, that there is no invalidating prior art, of which we and the patent examiner were unaware during prosecution. If a defendant were to prevail on a legal assertion of invalidity and/or unenforceability, we would not be able to exclude others from practicing the inventions claimed therein. Such a loss of patent protection could have a material adverse effect on our business. Defendant counterclaims of antitrust or other anti-competitive conduct are also commonplace.

Even if our patent rights are found to be valid and enforceable, patent claims that survive litigation may not cover commercially viable products or prevent competitors from importing or marketing products similar to our own, or using manufacturing processes or manufacturing components similar to our own.

Although we believe we have obtained valid assignments of patent rights from all inventors, if an inventor did not adequately assign their patent rights to us, a third party could obtain a license to the patent from such inventor. This could preclude us from enforcing the patent against such third party.

We may not be able to enforce our intellectual property rights throughout the world.

The laws of some foreign countries where we intend to produce and use our proprietary strains in collaboration with sugar mills or other feedstock suppliers do not protect intellectual property rights to the same extent as the laws of the United States. Many companies have encountered significant problems in protecting and defending intellectual property rights in certain foreign jurisdictions. The legal systems of certain countries, including Brazil, do not favor the enforcement of patents and other intellectual property protection, particularly those relating to biotechnology and/or bio-industrial technologies. This could make it difficult for us to stop the infringement of our patents or misappropriation of our intellectual property rights in these countries. Proceedings to enforce our patent rights in certain foreign jurisdictions are unpredictable and could result in substantial costs and divert our efforts and attention from other aspects of our business. Accordingly, our efforts to protect our intellectual property rights in such countries may be inadequate.

Third parties may misappropriate our proprietary strains, information, or trade secrets despite a contractual obligation not to do so.

Third parties (including joint venture, collaboration, development and feedstock partners and former partners, contract manufacturers, and other contractors and shipping agents) often have custody or control of our proprietary microbe strains. If our proprietary microbe strains were stolen, misappropriated or reverse engineered, they could be used by other parties who may be able to use our strains or reverse-engineered strains for their own commercial gain. It is difficult to prevent misappropriation or subsequent reverse engineering. In the event that our proprietary microbe strains are misappropriated, it could be difficult for us to challenge the misappropriation or prevent reverse engineering, especially in countries with limited legal and intellectual property protection.

Confidentiality agreements with employees and third parties may not prevent unauthorized disclosure of proprietary information and trade secrets.

In addition to patents, we rely on confidentiality agreements to protect our technical know-how and other proprietary information. Confidentiality agreements are used, for example, when we talk to potential strategic partners. In addition, each of our employees signed a confidentiality agreement upon joining our company. Nevertheless, there can be no guarantee that an

employee or an outside party will not make an unauthorized disclosure or use of our proprietary confidential information. This might happen intentionally or inadvertently. It is possible that a competitor will make use of such information, and that our competitive position will be compromised, in spite of any legal action we might take against persons making such unauthorized disclosures.

We also keep as trade secrets certain technical and proprietary information where we do not believe patent protection is appropriate, desirable or obtainable. However, trade secrets are difficult to protect. Although we use reasonable efforts to protect our trade secrets, our employees, consultants, contractors, outside scientific collaborators, partners, former partners and other advisors may unintentionally or willfully disclose our trade secrets to competitors or otherwise use misappropriated trade secrets to compete with us. It can be expensive and time consuming to enforce a claim that a third party illegally obtained and is using our trade secrets. Furthermore, the outcome of such claims is unpredictable. In addition, courts outside the United States may be less willing to or may not protect trade secrets. Moreover, our competitors may independently design around our intellectual property or develop equivalent knowledge, methods and know-how without misappropriating or otherwise violating our trade secret rights. Where a third party independently designs around our intellectual property or develops equivalent knowledge, methods and know-how without misappropriating or otherwise violating our trade secret rights, they may be able to seek patent protection for such equivalent knowledge, methods and know-how. This could prohibit us from practicing our trade secrets.

Claims by patent holders that our products or manufacturing processes infringe their patent rights could result in costly litigation or could require substantial time and money to resolve, whether or not we are successful, and an unfavorable outcome in these proceedings could have a material adverse effect on our business.

Our ability to commercialize our technology depends on our ability to develop, manufacture, market and sell our products without infringing the proprietary rights of patent holders or their authorized agents. An issued patent does not guarantee us the right to practice or utilize the patented inventions or commercialize the patented product. Third parties may have blocking patents that may prevent us from commercializing our patented products and utilizing our patented manufacturing components and manufacturing processes. In the event that we are made aware of blocking third party patents, we cannot be sure that licenses to the blocking third-party patents would be available or obtainable on terms favorable to us or at all.

Numerous U.S. and foreign issued patents and pending patent applications, which are owned by third parties, relate to (1) the production of bio-industrial products, including edible ingredients, oils, chemicals and drilling fluids, and (2) the use of microalgae strains, such as microalgae strains containing genes to alter their oil composition. As such, there could be existing valid patents that our manufacturing processes, manufacturing components, or products may inadvertently infringe. There could also be existing invalid or unenforceable patents that could nevertheless be asserted against us and would require expenditure of resources to defend against. In addition, there are pending patent applications that are currently unpublished and therefore unknown to us that may later result in issued patents that are infringed by our products, manufacturing processes or other aspects of our business.

We may be exposed to future litigation based on claims that our products, manufacturing processes or manufacturing components infringe the intellectual property rights of others. There is inevitable uncertainty in any litigation, including patent litigation. Defending against claims of patent infringement is costly and time consuming, regardless of the outcome. Thus, even if we were to ultimately prevail, or to settle at an early stage of litigation, such litigation could burden us with substantial unanticipated costs. Some of our competitors are larger than we are and have substantially greater resources. These competitors are, therefore, likely to be able to sustain the costs of complex patent litigation longer than we could. In addition, the costs and uncertainty associated with patent litigation could have a material adverse effect on our ability to continue our internal research and development programs, in-license needed technology, or enter into strategic partnerships that would help us commercialize our technologies. In addition, litigation or threatened litigation could result in significant demands on the time and attention of our management team, distracting them from the pursuit of other company business.

If a party successfully asserts a patent or other intellectual property rights against us, we might be barred from using certain of our manufacturing processes or manufacturing components, or from developing and commercializing related products. Injunctions against using specified processes or components, or prohibitions against commercializing specified products, could be imposed by a court or by a settlement agreement between us and a third party. In addition, we may be required to pay substantial damage awards to the third party, including treble or enhanced damages if we are found to have willfully infringed the third party's intellectual property rights. We may also be required to obtain a license from the third party in order to continue manufacturing and/or marketing the products that were found to infringe. It is possible that the necessary license will not be available to us on commercially acceptable terms, or at all. This could limit our ability to competitively commercialize some or all of our products.

During the course of any patent litigation, there could be public announcements of the results of hearings, rulings on motions, and other interim proceedings in the litigation. If securities analysts or investors regard these announcements as negative, the perceived value of our products, technology or intellectual property could be diminished. Accordingly, the market price of our common stock may decline.

We have received government funding in connection with the development of certain of our proprietary technologies, which could negatively affect our intellectual property rights in such technologies.

Some of our proprietary technology was developed with U.S. federal government funding. When new technologies are developed with U.S. government funding, the government obtains certain rights in any resulting patents, including a nonexclusive license authorizing the government to use the invention for non-commercial purposes. These rights may permit the government to disclose our confidential information to third parties and to exercise "march-in" rights to use or allow third parties to use our patented technology. The government can exercise its march-in rights if it determines that action is necessary because we fail to achieve practical application of the U.S. government-funded technology, because action is necessary to alleviate health or safety needs, to meet requirements of federal regulations, or to give preference to U.S. industry. In addition, U.S. government-funded inventions must be reported to the government and U.S. government funding must be disclosed in any resulting patent applications. In addition, our rights in such inventions are subject to government license rights and foreign manufacturing restrictions. Any exercise by the government of such rights could harm our competitive position or impact our operating results.

In addition, some of our technology was funded by a grant from the State of California. Inventions funded by this grant may be subject to forfeiture if we do not seek to patent or practically apply them. Any such forfeiture could have a materially adverse effect on our business. For proprietary technology developed with funding from the State of California, certain confidential information may be disclosed to third parties by the State of California. Our rights in such inventions are subject to State of California license and march-in rights. Any exercise by the State of California of such rights could harm our competitive position or impact our operating results.

Risks Related to Our Finances and Capital Requirements

Our financial results could vary significantly from quarter to quarter and are difficult to predict.

Our revenues and results of operations could vary significantly from quarter to quarter because of a variety of factors, many of which are outside of our control. As a result, comparing our results of operations on a period-to-period basis may not be meaningful. Factors that could cause our quarterly results of operations to fluctuate include:

- achievement, or failure to achieve, technology or product development milestones needed to allow us to enter target markets on a cost effective basis;
- delays or greater than anticipated expenses or time associated with the completion of new manufacturing facilities and the ramp up to nameplate capacity and optimization of production following completion of a new manufacturing facility;
- delays or greater than anticipated expenses associated with the provision of key support and/or operational services to manufacturing facilities;
- our capital requirements or capital requirements of our joint ventures;
- our ability to effectively manage larger working capital positions as we increase commercial production and distribution of our products;
- disruptions in the production process at any facility where we produce our products, including due to equipment failure or accidents;
- the timing, size and mix of sales to customers for our products;
- increases in price or decreases in availability of feedstocks such as sucrose from sugarcane and/or dextrose from corn;
- fluctuations in the price of, and demand for, products based on petroleum or other oils for which our products are alternatives;

- the unavailability of contract manufacturing capacity altogether or at anticipated cost;
- fluctuations in foreign currency exchange rates;
- seasonal production and sale of our products;
- the effects of competitive pricing pressures, including decreases in average selling prices of our products;
- unanticipated expenses associated with changes in governmental regulations and environmental, health and safety requirements;
- reductions or changes to existing regulations and policies that impact the chemical, food, nutrition, specialty personal care, or oil field services markets;
- departure of key employees;
- business interruptions, such as earthquakes and other natural disasters;
- our ability to integrate businesses that we may acquire;
- our ability to transition out of businesses that we may divest;
- risks associated with the international aspects of our business; and
- changes in general economic, industry and market conditions, both domestically and in foreign markets in which we operate.

Due to these factors and others the results of any quarterly or annual period may not meet our expectations or the expectations of our investors and may not be meaningful indications of our future performance.

We expect to require additional financing in the future and may not be able to obtain such financing on favorable terms, if at all, which could force us to delay, reduce or eliminate our research and development or commercialization activities.

To date, we have financed our operations primarily through our initial public offering, completed in June 2011, public and private placements of our equity and convertible debt securities, credit facilities, government grants and funding from strategic partners. In January 2013 we issued $125.0 million aggregate principal amount of convertible senior subordinated notes due 2018 (the "2018 Notes"). The 2018 Notes bear interest at a rate of 6.00% per year, payable in cash semi-annually. In April 2014 we issued 5,750,000 shares of our common stock and $149.5 million aggregate principal amount of convertible senior subordinated notes due 2019 (the "2019 Notes"). The 2019 Notes bear interest at a rate of 5.00% per year, payable in cash semi-annually. As of September 30, 2016 , approximately $50.4 million aggregate principal amount of the 2018 Notes was outstanding and approximately $148.1 million aggregate principal amount of the 2019 Notes was outstanding. In March 2016, we issued $27,850,000 aggregate principal amount of our Series A Convertible Preferred Stock. The terms of our Series A Convertible Preferred Stock are described in Note 4 in the accompanying notes to our unaudited interim condensed consolidated financial statements. In June 2016, we also entered into a loan and security agreement with SVB that provides for a $12.9 million letter of credit facility and supports the SVB SLOC issued by SVB in favor of Itaú in connection with the JV BNDES Loan.

While we plan to enter into relationships with partners or collaborators for them to provide some portion or all of the capital needed to build production facilities, we may determine that it is more advantageous for us to provide some portion or all of the financing for new production facilities. Some of our previous funding has come from government grants; however, our future ability to obtain government grants is uncertain due to the competitive bid process and other factors.

In addition, we expect to raise additional funds through public or private debt or equity financings to meet our capital requirements, including our portion of joint venture funding requirements. For example, if the Solazyme Bunge JV needs and is unable to secure additional financing, we will be required to fund our portion of the Solazyme Bunge JV's capital requirements from existing sources or seek additional financing. In addition, our working capital requirements and the working capital requirements of the Solazyme Bunge JV may increase as we and the Solazyme Bunge JV each increase production due to an increase in inventory and the manufacture of out-of-specification product during the ramp-up of commercial production.

Although we believe that our current cash, cash equivalents, marketable securities and revenue from product sales will be sufficient to fund our current operations for at least the next 12 months , our liquidity assumptions may prove to be wrong, and we could utilize our available financial resources sooner than we currently expect. We may not be able to raise sufficient additional funds on terms that are favorable to us, if at all. If we fail to raise sufficient funds and continue to incur losses, our

ability to fund our operations, take advantage of strategic opportunities, develop and commercialize products or technologies, or otherwise respond to competitive pressures could be significantly limited. If this happens, we may be forced to delay or terminate research and development programs or the commercialization of products resulting from our technologies, curtail or cease operations or obtain funds through collaborative and licensing arrangements that may require us to relinquish commercial rights, or grant licenses on terms that are not favorable to us. If adequate funds are not available, we will not be able to successfully execute our business plan or continue our business, and doubts may be raised regarding our ability to continue as a going concern.

Servicing our debt will require a significant amount of cash, and we may not have sufficient cash flow from our business to pay amounts due under our indebtedness.

As of September 30, 2016 , our total consolidated indebtedness was $198.5 million . Of our $198.5 million of indebtedness, none is currently secured. We also may be required to provide a corporate guarantee with respect to the portion of the JV BNDES loan that, when added to our bank guarantee, does not exceed our percentage ownership in the Solazyme Bunge JV.

Our ability to make scheduled payments of the principal of, to pay interest on or to refinance our indebtedness, including the 2018 Notes and the 2019 Notes, depends on our future performance, which is subject to economic, financial, competitive and other factors beyond our control. Our business may not continue to generate cash flow from operations in the future sufficient to service our debt and make necessary capital expenditures. If we are unable to generate such cash flow, we may be required to adopt one or more alternatives, such as selling assets, restructuring debt or obtaining additional equity capital on terms that may be onerous or highly dilutive. Our ability to refinance our indebtedness will depend on the capital markets and our financial condition at such time. We may not be able to engage in any of these activities or engage in these activities on desirable terms, which could result in a default on our debt obligations.

Despite our current debt levels, we may still incur substantially more debt or take other actions that would intensify the risks discussed above.

Despite our current consolidated debt levels, we and our subsidiaries may be able to incur substantial additional debt in the future, subject to the restrictions contained in our debt instruments, some of which may be secured debt. We are not restricted under the terms of the indentures governing the 2018 Notes and 2019 Notes from incurring additional debt, securing existing or future debt, recapitalizing our debt or taking a number of other actions that are not limited by the terms of the indentures governing the 2018 Notes and the 2019 Notes that could have the effect of diminishing our ability to make payments on the notes when due. The SVB Facility restricts our ability to incur additional indebtedness, including secured indebtedness, but if the facility matures or is repaid, we may not be subject to such restrictions under the terms of any subsequent indebtedness.

We have received government grant funding and entered contracts with government agencies, and may pursue government grant funding or contracts in the future. Our receipt of government funds through grants and contracts subjects us to additional regulatory oversight.

We have received government grants and have entered contracts with government agencies in the past. Activities funded by a government grant or pursuant to government contracts are subject to audits by government agencies. As part of an audit, these agencies may review our performance, cost structures and compliance with applicable laws, regulations and standards. Grant funds must be applied by us toward the research and development programs specified by the granting agency, rather than for all of our programs generally. If any of our grant-funded costs are found to be allocated improperly, the costs may not be reimbursed and any costs already reimbursed may have to be refunded. Accordingly, an audit could result in an adjustment to our revenues and results of operations. We are also subject to additional regulations based on our receipt of government grant funding and entry into government contracts. If we fail to comply with the requirements under our grants or contracts, we may face penalties or other negative consequences, and in such event we may not be awarded government funding or contracts in the future.

The sale of our Algenist business involves risks, and we may not be able to realize the anticipated benefits from the transaction, which could have a material adverse effect on our results of operations or financial condition.

On August 16, 2016, we closed the sale of our Algenist business to TCP Algenist LLC, a Delaware limited liability company (“Buyer”) and Algenist Holdings, Inc., a Delaware corporation (“Algenist Holdings”) in exchange for $20.2 million in cash (subject to working capital closing adjustments), 601,969 shares of common stock of Algenist Holdings (amounting to 19.9% of its outstanding capital stock) and the assumption of substantially all of the liabilities related to the Algenist business by Algenist Holdings (collectively, the “Transaction”). As part of the Transaction, we agreed to provide Algenist Holdings with

certain transition services following the closing of the Transaction, which could result in diversion of internal resources from our core businesses.

We also expect to continue to supply active ingredients formulated in the Algenist product line to Algenist Holdings. We may not, however, be able to realize the anticipated benefits from our minority holdings or this supply arrangement, as we do not control the Algenist business, including with respect to the operation of the business and the amount or timing of resources that Buyer devotes to the Algenist business or this supply arrangement. Our minority interest in the Algenist business and supply arrangement with Algenist Holdings may not provide us with a return on investment and our investment may lose some or all of its value.

In addition, under the terms of the sale agreement, subject to certain limitations, we agreed to indemnify Buyer and certain other parties against breaches of our representations, warranties or covenants in the sale agreement and other specified damages, and certain liabilities related to the Algenist business not expressly assumed by Algenist Holdings. If Buyer makes a claim for indemnification against us, we may incur expenses to contest or resolve the claim (including indemnifiable damages for third party claims, if adversely decided) that could adversely affect our financial results.

If we engage in any acquisitions, we will incur a variety of costs and may potentially face numerous risks that could adversely affect our business and operations.

If appropriate opportunities become available, we may seek to acquire additional businesses, assets, technologies or products to enhance our business. In connection with any acquisitions, we could issue additional equity or equity-linked securities such as the 2018 Notes or 2019 Notes, which would dilute our stockholders, incur substantial debt to fund the acquisitions, or assume significant liabilities.

Acquisitions involve numerous risks, including problems integrating the purchased operations, technologies or products, unanticipated costs and other liabilities, diversion of management's attention from our core businesses, adverse effects on existing business relationships with current and/or prospective collaborators, customers and/or suppliers, risks associated with entering markets in which we have no or limited prior experience and potential loss of key employees. Acquisitions may also require us to record goodwill and non-amortizable intangible assets that will be subject to impairment testing on a regular basis and potential periodic impairment charges, incur amortization expenses related to certain intangible assets, and incur write offs and restructuring and other related expenses, any of which could harm our operating results and financial condition. If we fail in our integration efforts with respect to any of our acquisitions and are unable to efficiently operate as a combined organization, our business and financial condition may be adversely affected.

Raising additional funds may cause dilution to our stockholders or require us to relinquish valuable rights.

If we elect to raise additional funds through equity offerings or offerings of equity-linked securities, our stockholders would likely experience dilution. Debt financing, if available, may subject us to restrictive covenants that could limit our flexibility in conducting future business activities. For example, the SVB Facility contains financial covenants that, if breached, would require us to secure our obligations thereunder. To the extent that we raise additional funds through collaboration and licensing arrangements, it may be necessary for us to share a portion of the margin from the sale of our products. We may also be required to relinquish or license on unfavorable terms our rights to technologies or products that we otherwise would seek to develop or commercialize ourselves.

If we fail to maintain an effective system of internal controls, we might not be able to report our financial results accurately or prevent fraud; in that case, our stockholders could lose confidence in our financial reporting, which would harm our business and could negatively impact the price of our stock.

Effective internal controls are necessary for us to provide reliable financial reports and prevent fraud. In addition, Section 404 of the Sarbanes-Oxley Act of 2002 requires us and our independent registered public accounting firm to evaluate and report on our internal control over financial reporting, and have our chief executive officer and chief financial officer certify as to the accuracy and completeness of our financial reports. The process of implementing our internal controls and complying with Section 404 is expensive and time consuming, and requires significant attention from management. We cannot be certain that these measures will ensure that we implement and maintain adequate controls over our financial processes and reporting in the future.

Our management has concluded that there were no material weaknesses in our internal controls over financial reporting as of September 30, 2016 . However, there can be no assurance that our controls over financial processes and reporting will be effective in the future or that material weaknesses or significant deficiencies in our internal controls will not be discovered in the future. Because of its inherent limitations, internal control over financial reporting may not prevent or detect fraud or misstatements. Failure to implement required new or improved controls, or difficulties encountered in their implementation,

could harm our results of operations or cause us to fail to meet our reporting obligations. If we or our independent registered public accounting firm discover a material weakness, the disclosure of that fact, even if quickly remedied, could reduce the market's confidence in our financial statements and harm our stock price.

Risks Relating to Securities Markets and Investment in Our Stock

The price of our common stock may be volatile.

Stock markets have experienced extreme volatility that has often been unrelated to the operating performance of particular companies. These broad market fluctuations may adversely affect the trading price of our common stock. In addition, the average daily trading volume of the securities of small companies, particularly small technology companies, can be very low. Limited trading volume of our stock may contribute to its volatility. Price declines in our common stock could result from general market and economic conditions and a variety of other factors, including any of the risk factors described in this report.

These broad market and industry factors may seriously harm the market price of our common stock, regardless of our operating performance. The market price of our common stock could also be affected by possible sales of our common stock by investors who view our convertible notes as a more attractive means of equity participation in us and by hedging or arbitrage trading activity that we expect involving our common stock.

The sale or issuance by us of substantial amounts of our common stock could adversely impact the trading price of our common stock.

A substantial number of shares of our common stock may be issued in connection with the exercise of options outstanding under our equity incentive plans, the vesting of restricted stock awards and restricted stock units, the exercise of outstanding warrants, the conversion of or exchange for outstanding 2018 Notes and 2019 Notes, and the conversion of our Series A preferred stock. See Note 4 in the accompanying notes to our unaudited interim condensed consolidated financial statements for additional information regarding the number of outstanding shares of potentially dilutive securities. Also see Note 15 in the accompanying notes to our unaudited interim condensed consolidated financial statements for information regarding the possible conversion of the 2018 Notes and 2019 Notes into shares of our common stock. In addition, we expect to issue additional shares under our equity incentive plans and employee stock purchase plan in the future. In the future, we may issue additional shares of common stock or other equity-linked securities to raise additional capital.

Any future sale or issuance of common stock could adversely impact the trading price of our common stock.

If the market price of our common stock were to cease to be quoted on a national exchange, the market price of our common stock and our reputation would be negatively impacted.

If we are unable to meet the stock price listing requirements of NASDAQ, including the requirement that our consolidated closing bid price not be below $1.00 per share for 30 consecutive business days, NASDAQ may issue a deficiency notice providing a 180 day compliance period prior to our common stock being subject to delisting from the NASDAQ Global Select Market. If our common stock were delisted from the NASDAQ Global Select Market, among other things, this could result in a number of negative implications, including reduced price and liquidity in our common stock as a result of the loss of market efficiencies associated with NASDAQ and the loss of federal preemption of state securities laws, as well as the potential loss of confidence by suppliers, customers and employees, the loss of institutional investor interest, the loss of the ability to raise future capital, less coverage by analysts, fewer business development opportunities and greater difficulty in obtaining financing. The threat of delisting may also lead to a "reverse split" to increase the per share price of our common stock.

Our certificate of incorporation, our bylaws and Delaware law contain provisions that could discourage another company from acquiring us and may prevent attempts by our stockholders to replace or remove our current management.

Provisions of Delaware law (where we are incorporated), our certificate of incorporation and bylaws may discourage, delay or prevent a merger or acquisition that stockholders may consider favorable, including transactions in which you might otherwise receive a premium for your shares. In addition, these provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace or remove our board of directors. These provisions include:

- authorizing the issuance of "blank check" preferred stock without any need for action by stockholders;
- requiring supermajority stockholder voting to effect certain amendments to our certificate of incorporation and bylaws;

- eliminating the ability of stockholders to call special meetings of stockholders;
- prohibiting stockholder action by written consent;
- establishing advance notice requirements for nominations for election to the board of directors or for proposing matters that can be acted on by stockholders at stockholder meetings; and
- dividing our board of directors into three classes so that only one third of our directors will be up for election in any given year.

In addition, we are subject to Section 203 of the Delaware General Corporation Law, which, under certain circumstances, may make it more difficult for a person who would be an "interested stockholder," as defined in Section 203, to effect various business combinations with us for a three-year period. Our certificate of incorporation and bylaws do not exclude us from the restrictions imposed under Section 203. These provisions could impede a merger, takeover or other business combination involving us or discourage a potential acquirer from making a tender offer for our common stock, which, under certain circumstances, could reduce the market price of our common stock.

We incur significant expenses as a result of being a public company.

As a public company, we incur significant additional legal, accounting and other expenses. For example, as a public company, we have adopted internal and disclosure controls and procedures and bear all of the internal and external costs of preparing and distributing periodic public reports in compliance with our obligations under applicable securities laws.

In addition, changing laws, regulations and standards relating to corporate governance and public disclosure, including the Sarbanes-Oxley Act of 2002 and related regulations implemented by the SEC and the NASDAQ-GS, create uncertainty for public companies, increasing legal and financial compliance costs and making some activities more time consuming. We evaluate and monitor developments with respect to new and proposed rules and cannot predict or estimate the amount of additional costs we may incur or the timing of such costs. These laws, regulations and standards are subject to varying interpretations, in many cases due to their lack of specificity, and, as a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies. This could result in continuing uncertainty regarding compliance matters and higher costs necessitated by ongoing revisions to disclosure and governance practices. We intend to invest resources to comply with evolving laws, regulations and standards, and this investment may result in increased general and administrative expenses and a diversion of management's time and attention from revenue-generating activities to compliance activities. If our efforts to comply with new laws, regulations and standards differ from the activities intended by regulatory or governing bodies due to ambiguities related to practice, regulatory authorities may initiate legal proceedings against us and our business may be harmed. These factors could also make it more difficult for us to attract and retain qualified members of our board of directors, particularly to serve on our audit committee and compensation committee, and attract and retain qualified executive officers. If these requirements divert our management's attention from other business concerns, they could have a material adverse effect on our business, financial condition and results of operations.

If securities or industry analysts do not continue to publish research or publish inaccurate or unfavorable research about our business, our stock price and trading volume could decline.

The trading market for our common stock depends in part on the research and reports that securities or industry analysts publish about us or our business. If securities or industry analysts do not continue coverage of our company, the trading price for our common stock would be negatively impacted. If one or more of the analysts who cover us downgrade our common stock or publish inaccurate or unfavorable research about our business, the price of our common stock would likely decline. If one or more of these analysts cease coverage of our company or fail to publish reports on us regularly, demand for our common stock could decrease, which might cause the price of our common stock and its trading volume to decline.

We do not anticipate paying cash dividends, and accordingly, stockholders must rely on stock appreciation for any return on their investment.

We do not anticipate paying cash dividends in the foreseeable future. As a result, only appreciation of the price of our common stock, which may never occur, would provide a return to stockholders. Our SVB Facility restricts our ability to pay cash dividends, and we may be subject to additional dividend restrictions under the terms of future indebtedness. Investors seeking cash dividends should not invest in our common stock.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

1. On August 22, 2016, pursuant to a retainer agreement with a firm that was providing assistance to the Company in connection with the search for a new Chief Executive Officer, we issued 2,083 shares of our common stock to the firm in partial payment for the search fee. All of these shares have fully vested. On August 22, 2016 we also granted to that same firm an option to purchase 83,333 shares of our common stock in partial payment for the search fee. The option has a term of seven years, is fully vested and has an exercise price of $2.62 per share, equal to the closing price of a share of our common stock on the day of grant.

2. On August 22, 2016, pursuant to a consulting agreement, we issued 30,992 shares of our common stock to a consulting firm in partial payment for consulting services. All of these shares have fully vested. The consultant is providing consulting services in the areas of finance and capital structure.

The issuances of securities described above were deemed to be exempt from registration under the Securities Act in reliance on Section 4(2) of the Securities Act as transactions by an issuer not involving a public offering. The recipients of securities in each such transaction represented their intention to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof and appropriate legends were affixed to the electronic records representing such securities in such transactions. All recipients received adequate information about us.

Item 3. Defaults Upon Senior Securities.

None.

Item 4. Mine Safety Disclosures.

Not applicable.

Item 5. Other Information.

None.

Item 6. Exhibits.

Exhibit Number	Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Filing Date	Exhibit	
2.1	Contribution Agreement, dated as of August 2, 2016 between TCP Algenist LLC, Algenist Holdings, Inc. and TerraVia Holdings, Inc.					X
10.1 §	Employment Agreement dated July 27, 2016, by and between TerraVia Holdings, Inc. and Apurva S. Mody					X
10.2	Sales Agreement dated August 8, 2016 by and between TerraVia Holdings, Inc. and Cowen and Company, LLC					X
31.1	Certification of the Chief Executive Officer, as required by Section 302 of the Sarbanes-Oxley Act of 2002					X
31.2	Certification of the Chief Financial Officer, as required by Section 302 of the Sarbanes-Oxley Act of 2002					X
32.1 *	Certification of the Chief Executive Officer and Chief Financial Officer, as required by Section 906 of the Sarbanes-Oxley Act of 2002					X
101	The following financial statements, formatted in XBRL: (i) Condensed Consolidated Balance Sheets as of September 30, 2016 and December 31, 2015, (ii) Condensed Consolidated Statements of Operations for the three and nine months ended September 30, 2016 and 2015; (iii) Condensed Consolidated Statements of Comprehensive Loss for the three and nine months ended September 30, 2016 and 2015 (iv) Condensed Consolidated Statements of Cash Flows for the nine months ended September 30, 2016 and 2015; and (v) Notes to Unaudited Condensed Consolidated Financial Statements.					X

* This certification shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liability of that Section, nor shall it be deemed incorporated by reference into any filing under the Securities Act of 1933, as amended or the Exchange Act of 1934, as amended.

§ Management contract or compensatory plan or arrangement.

SIGNATURES

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

TerraVia Holdings, Inc.

By: /s/ TYLER W. PAINTER

Tyler W. Painter

Chief Operating Officer and Chief Financial Officer

(Principal Financial and Accounting Officer and duly authorized signatory)

Date: November 4, 2016

CONTRIBUTION AGREEMENT

dated as of

August 2, 2016

between

TCP ALGENIST LLC,

ALGENIST HOLDINGS, INC.,

and

TERRAVIA HOLDINGS, INC.

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CONTRIBUTION AGREEMENT

AGREEMENT (this " **Agreement** ") dated as of August 2, 2016 between TCP Algenist LLC, a Delaware limited liability company (" **Buyer** "), Algenist Holdings, Inc., a Delaware corporation (" **the Company** ") and TerraVia Holdings, Inc., a Delaware corporation (" **Seller** ").

W I T N E S S E T H :

WHEREAS, Seller conducts a business that manufactures and sells skincare and cosmetics products under the Algenist brand (the " **Business** ");

WHEREAS, the Company desires to acquire substantially all of the assets and assume substantially all of the liabilities of the Business from Seller, and Seller desires to sell and contribute substantially all of the assets and transfer substantially all of the liabilities of the Business to the Company in exchange for cash and the issuance to Seller of shares of the Company's common stock, par value $0.001 per share (the " **Common Stock** "), upon the terms and subject to the conditions set forth herein;

WHEREAS, Seller is entering into this Agreement in connection with and as part of a single, integrated agreement with the Company and Buyer whereby the Company is, simultaneously with the transaction contemplated herein, raising capital by issuing shares of its Series A Convertible Preferred Stock, par value $0.001 per share (the " **Preferred Stock** "), to Buyer;

WHEREAS, the contribution of the assets of the Business by Seller and assumption of the liabilities of the Business by the Company, together with the issuance of Preferred Stock to Buyer, are collectively treated as a transaction that is intended to qualify as transfers to a controlled corporation under Section 351 of the Code;

WHEREAS, the Company, Buyer and Seller desire to enter into the Ancillary Agreements (as defined below), upon the terms and subject to the conditions set forth herein;

NOW THEREFORE, the parties hereto agree as follows:

ARTICLE 1
DEFINITIONS

Section 1.01 *Definitions* . The following terms, as used herein, have the following meanings:

" **Affiliate** " means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such other Person. For purposes of this definition, " **control** " when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms " **controlling** " and " **controlled** " have correlative meanings. For the avoidance of doubt, the Company shall not be considered an Affiliate of Seller.

" **Ancillary Agreements** " means the Assignment and Assumption Agreement, the Trademark Assignment Agreement, the Patent Assignment Agreement, the Copyright Assignment Agreement, the Domain Name Transfer Agreement, the Intellectual Property License Agreement, the Stockholders' Agreement, the Supply Agreement, the Transition Services Agreement and the Delayed Assets Assignment and Assumption Agreement.

" **Applicable Law** " means, with respect to any Person, any transnational, domestic or foreign federal, state or local law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, order, injunction, judgment, decree, ruling or other similar requirement enacted, adopted, promulgated or applied by a Governmental Authority that is binding upon or applicable to such Person, as amended unless expressly specified otherwise.

" **Base Working Capital** " means $10,896,000. Exhibit G shows the line items and adjustments used in determining Base Working Capital.

" **Business Day** " means a day, other than Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by Applicable Law to close.

" **Business Employee** " means each individual who is an employee of Seller and who (i) is currently based out of Seller's Glendale, California facility or (ii) spent at least 75% of his or her working hours dedicated to the Business in the six months ended June 30, 2016 (including any such employee who is on sick leave, military leave, vacation, holiday, short-term disability, maternity leave, parental leave, or other statutory or similar approved leave of absence).

" **Card Association** " means VISA Inc., VISA International, Inc. and VISA U.S.A., Inc., MasterCard International, Inc., MasterCard Inc., Discover Financial Services, LLC and any other payment card association, debit card network or similar entity having clearing, settlement, processing, facilitating, switching or oversight responsibilities, in

each case with whom a company may directly or indirectly (including through a contractual relationship with other entities (e.g., merchant acquirers)) have a sponsorship or similar agreement and any legal successor organizations or association of any of them.

" **Closing Date** " means the date of the Closing.

" **Closing Working Capital** " means the excess of (i) accounts receivable and inventory (excluding Delayed Assets), over (ii) returns reserve, accounts payable and accrued liabilities (excluding accrued liabilities for paid time off), in each case of the Business as of the Closing Date, calculated in accordance with the line items and adjustments used in determining the Base Working Capital, as such asset and liability accounts are set forth on the Closing Statement of Assets and Liabilities.

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

" **Computer Hardware** " means any computer hardware, equipment and peripherals of any kind and of any platform, including desktop and laptop personal computers, handheld computerized devices, servers, mid-range and mainframe computers, process control and distributed control systems, and all network and other communications and telecommunications equipment, to the extent included in the Purchased Assets.

" **Confidentiality Agreement** " means that certain Non-Disclosure Agreement dated as of February 8, 2016 between Tengram Capital Partners, L.P. and Seller.

" **Disabling Devices** " means computer software viruses, time bombs, logic bombs, Trojan horses, trap doors, back doors, ransomware, spyware, adware, scareware, or other computer instructions, intentional devices or techniques that are designed to threaten, infect, assault, vandalize, defraud, disrupt, damage, disable, maliciously encumber, hack into, incapacitate, infiltrate or slow or shut down a computer system or any component of such computer system, including any such device affecting system security or compromising or disclosing user data.

“ **Employee Benefit Plan** ” means each “ **employee benefit plan** ” (as such term is defined in ERISA in Section 3(3)), whether or not subject to ERISA, and any plan, arrangement, agreement, program, or policy, whether oral or written, funded or unfunded, insured or uninsured, registered or unregistered, that provides any employee benefit, fringe benefit, supplemental unemployment benefit, bonus, incentive, profit sharing, loan, severance, retention, termination, change of control, pension, supplemental pension, retirement, vacation or other paid or unpaid leave, stock option, stock purchase, stock appreciation, share unit, phantom stock or other equity based compensation, deferred compensation, health, welfare, medical, dental, disability, life insurance and any other employee or retiree benefit or compensatory payment, whether or not subject to ERISA or written or unwritten, in each case, (i) that is maintained, sponsored, contributed to or entered into by Seller or any ERISA Affiliate for the benefit of any current or former employee, officer, director or independent contractor of Seller or any of its Subsidiaries in relation to the Business, or the beneficiaries or dependents of any such individual, or (ii) under which Seller or any of its Subsidiaries may have any liability or contingent liability related to the Business or the Purchased Assets.

“ **Environmental Laws** ” means any Applicable Law that has as its principal purpose the protection of the environment.

“ **ERISA** ” means the Employee Retirement Income Security Act of 1974, as amended and the rules and regulations promulgated thereunder.

“ **ERISA Affiliate** ” of any entity means any other entity which, together with such entity, would be treated as a single employer under Section 414 of the Code.

“ **False Advertising Claim** ” means any claim, action, suit or other proceeding alleging false or deceptive advertising or similar business practice in connection with the packaging or marketing of any product sold by the Business, whether prior to or after the Closing.

“ **GAAP** ” means generally accepted accounting principles in the United States.

“ **Governmental Authority** ” means any transnational, domestic or foreign federal, state or local governmental, regulatory or administrative authority, department, court, agency or official, including any political subdivision thereof.

“ **Indebtedness** ” means, without duplication, with respect to any Person (i) all obligations of such Person for borrowed money or extensions of credit (including bank overdrafts and advances), (ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (iii) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, (iv) all obligations of such Person as lessee under any lease capitalized in accordance with GAAP, (v) all obligations of such Person for borrowed money or extensions of credit of others secured by a Lien (other than Permitted

Liens) on any asset of such Person, whether or not such obligations are assumed, (vi) all obligations of such Person, contingent or otherwise, directly or indirectly, guaranteeing any of the obligations described in clauses (i)-(v) above, of any other Person, (vii) all obligations of such Person to reimburse the issuer in respect of letters of credit or under performance or surety bonds, or other similar obligations, (viii) all obligations of such Person in respect of bankers' acceptances and under reverse repurchase agreements, and (ix) all obligations of such Person in respect of futures contracts, swaps and other similar obligations (determined on a net basis as if such contract or obligation was being terminated early on such date).

" **Intellectual Property** " means any and all (i) patents and patent applications (including all reissues, divisions, continuations, continuations-in-part, extensions and reexaminations thereof) registered or applied for in the United States and all other nations throughout the world and patentable inventions (collectively, " **Patents** "), (ii) trademarks, service marks, trade dress, logos, domain names, rights of publicity, trade names and corporate names (whether or not registered) in the United States and all other nations throughout the world, including all registrations and applications for registration of the foregoing and all goodwill associated therewith (collectively, " **Trademarks** "), (iii) copyrights (whether or not registered) and registrations and applications for registration thereof in the United States and all other nations throughout the world, including all moral rights, renewals, extensions, reversions or restorations associated with such copyrights, regardless of the medium of fixation or means of expression (collectively, " **Copyrights** "), (iv) know-how, confidential business information and trade secrets, including all product recipes and product formulations (collectively, " **Trade Secrets** "), (including, to the extent applicable to each case, (A) pricing and cost information, (B) business, corporate, operational and financial information, (C) business and marketing plans, (D) information related to customers, suppliers, and partners, (E) manufacturing and production processes and techniques, and (F) research and development information), (v) databases and data collections, (vi) any other similar type of proprietary intellectual property right and (vii) all rights to sue or recover and retain damages and costs and attorneys' fees for past, present and future infringement or misappropriation of any of the foregoing.

" **knowledge of Seller,** " " **Seller's knowledge** " or any other similar knowledge qualification in this Agreement means to the actual knowledge of the individual set forth in Section 1.01(a) of the Seller Disclosure Schedule.

" **Licensed Intellectual Property** " means all Intellectual Property owned by a third party and licensed to Seller or any of its Subsidiaries and included in the Purchased Assets.

" **Lien** " means, with respect to any property or asset, any mortgage, lien, pledge, charge, security interest or encumbrance in respect of such property or asset.

" **Material Adverse Effect** " means a material adverse effect on the financial condition, business, assets or results of operations of the Business, taken as a whole,

excluding any effect resulting from (i) changes in GAAP or changes in the regulatory accounting requirements applicable to any industry in which the Business operates, (ii) changes in the general economic or political conditions in the United States not having a materially disproportionate effect on the Business, (iii) changes (including changes of Applicable Law) or conditions generally affecting the industry in which the Business operates and not specifically relating to or having a materially disproportionate effect on the Business, (iv) acts of war, sabotage or terrorism or natural disasters not having a materially disproportionate effect on the Business relative to other participants in the industry in which the Business operates, (v) any failure by the Business to meet any projections, forecasts, estimates or predictions in respect of revenues, earnings or other financial or operating metrics for any period (it being understood that the facts or occurrences giving rise to such failure may be taken into account in determining whether there has been a Material Adverse Effect unless otherwise excluded under this definition), (vi) the announcement, pendency or consummation of the transactions contemplated by this Agreement, or (vii) any action taken (or omitted to be taken) at the request of the Company or Buyer.

" **Multi-Employer Plans** " means any Employee Benefit Plans within the meaning of Sections 3(37) or 4001(a)(3) of ERISA to which Seller or any ERISA Affiliate is required to contribute or participate in by reasons of a collective agreement or status and that are not maintained or administered by Seller or its ERISA Affiliates.

" **Owned Intellectual Property** " means all Intellectual Property owned by Seller or an Affiliate of Seller and included in the Purchased Assets.

" **Permits** " means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.

" **PCI Requirements** " means the rules, regulations, standards, policies, manuals and procedures of the Card Associations, including, with respect to the processing of credit card information, the Payment Card Industry Data Security Standards (PCI-DSS), in each case as applicable to the Business.

" **Person** " means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a Governmental Authority.

" **Post-Closing Tax Period** " means (i) any Tax period beginning after the Closing Date and (ii) with respect to a Tax period that begins on or before but ends after the Closing Date, the portion of such period beginning after the Closing Date.

" **Pre-Closing Tax Period** " means (i) any Tax Period ending on or before the Closing Date and (ii) with respect to a Tax Period that commences before but ends after the Closing Date, the portion of such period up to and including the Closing Date.

“ **Registered Intellectual Property** ” means any Intellectual Property that is issued, granted, or registered by or with any Governmental Authority or for which an application therefor has been filed with any Governmental Authority and included in the Purchased Assets.

“ **Seller Intellectual Property** ” means Owned Intellectual Property and Licensed Intellectual Property used exclusively in the Business.

“ **Software** ” means all computer software, including assemblers, applets, compilers, source code, object code, binary libraries, development tools, design tools, user interfaces, databases and data, in any form or format, however fixed, and all associated documentation.

“ **Statement Date** ” means March 31, 2016.

“ **Statement of Assets and Liabilities** ” means the unaudited statement of assets and liabilities of the Business dated as of the Statement Date, and included in the Financial Statements.

“ **Subsidiary** ” of any Person means any corporation, partnership, limited liability company, joint venture or other legal entity of which such Person owns, directly or indirectly, a majority of the stock or other equity interests the holders of which are generally entitled to vote for the election of or act as the board of directors or other governing body of such corporation or other legal entity, or of which such Person is a general partner or managing member. Notwithstanding the foregoing, solely for the purposes of ARTICLE 3 and Section 9.01, references to Seller’s Subsidiaries shall be deemed to refer only to such entities that hold any portion of the Purchased Assets or that participate in the conduct of the Business.

“ **Tax** ” means (i) any federal, state, local, or foreign income, gross receipts, license, payroll, employment excise, workers compensation, health insurance, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, escheat, equity securities, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, gains, registration, value added, ad valorem, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not, (ii) a liability for amounts of the type described in clause (i) as a result of Treasury Regulations Section 1.1502-6 or as a result of being a transferee or successor, or as a result of a contract or otherwise, or (iii) any penalties or fees for failure to file or late filing of any Tax Returns.

“ **Taxing Authority** ” means any Governmental Authority responsible for the imposition of any Tax.

“ **Tax Returns** ” 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.

“ **Title IV Plan** ” means an Employee Benefit Plan subject to Sections 412 of the Code or 302 of ERISA, or Title IV of ERISA, other than any Multiemployer Plan.

“ **Transferred Intellectual Property** ” means (a) those Patents listed in Section 3.15(a)(i) of the Seller Disclosure Schedule; (b) those Trademarks listed in Section 3.15(a)(ii) of the Seller Disclosure Schedule; (c) those Copyrights listed in Section 3.15(a)(iii) of the Seller Disclosure Schedule; (d) those Trade Secrets that are used (or held for use) exclusively in the conduct of the Business and owned by Seller as of the Closing Date; and (e) all rights to sue or recover and retain damages and costs and attorneys' fees for past, present and future infringement or misappropriation of any of the foregoing. For the avoidance of doubt, any intellectual property that is determined to be “ **Transferred Intellectual Property** ” (other than Registered Intellectual Property) after the Closing and that is transferred to the Company or any of its Subsidiaries pursuant to Section 2.06 hereof shall, from and after the date of such determination, be deemed to have been Transferred Intellectual Property for all purposes hereunder as of the Closing.

“ **Transferred Software** ” means the Software listed in Section 3.15(a)(iv) of the Seller Disclosure Schedule. For the avoidance of doubt, any software that is determined to be “ **Transferred Software** ” after the Closing and that is transferred to the Company or any of its Subsidiaries pursuant to Section 2.06 shall, from and after the date of such determination, be deemed to have been Transferred Software for all purposes hereunder as of the Closing.

“ **Working Capital Collar** ” means $544,800.

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

Term	Section
Accounting Referee	Section 2.07
Accounts Receivable	Section 2.01
Action	Section 3.09
Active Business Employee	Section 9.02
Agreement	Preamble
Allocation Statement	Section 2.07
Apportioned Tax Obligations	Section 8.01
Assignment and Assumption Agreement	Section 2.08
Assumed Liabilities	Section 2.03
Business	Recitals
Business Leases	Section 3.11

Term	Section
Buyer	Preamble
Buyer Indemnified Parties	Section 11.02
Cash Consideration	Section 2.07
Change	Section 7.05
Closing	Section 2.08
Closing Statement of Assets and Liabilities	Section 2.10(a)
Common Stock	Recitals
Company	Preamble
Company Benefit Plans	Section 9.04
Contracts	Section 2.01
Copyright Assignment Agreement	Section 2.08
Customer Information	Section 3.16
Damages	Section 11.02
Debt Consideration	Section 2.07
Delayed Assets	Section 2.01(c)
Delayed Assets Assignment and Assumption Agreement	Section 2.09
Delayed Closing	Section 2.09
Domain Name Transfer Agreement	Section 2.08
Excluded Assets	Section 2.02
Excluded Employees	Section 9.02
Excluded Liabilities	Section 2.04
Excluded Licenses	Section 2.02
FDA	Section 3.10
Field	Section 5.03
Final Working Capital	Section 2.11
Indemnified Party	Section 11.03
Indemnifying Party	Section 11.03
Intellectual Property License Agreement	Section 2.08
Intellectual Property Licenses	Section 3.15
Inventory	Section 2.01
Material Contracts	Section 3.08
Material Distributors	Section 3.22
Material Suppliers	Section 3.22
Opt-out Notifications	Section 3.16
Outbound Intellectual Property Licenses	Section 3.15
Patent Assignment Agreement	Section 2.08
Permitted Liens	Section 3.11
Petty Cash	Section 2.01
Post-Closing Tax Period	Section 8.01
Potential Contributor	Section 11.05(e)
Preferred Stock	Recitals

Term	Section
Purchase Price	Section 2.07
Purchased Assets	Section 2.01
Qualifying Offer	Section 9.02
Required Consents	Section 10.02(c)
Seller	Preamble
Seller Trademarks	Section 2.02
Stock Consideration	Section 2.07
Stockholders' Agreement	Section 2.08
Supply Agreement	Section 2.08
Taxing Authority	Section 1.01
Tax Benefit	Section 8.01
Third Party Claim	Section 11.03
Trademark Assignment Agreement	Section 2.08
Transfer Taxes	Section 8.01
Transferred Employees	Section 9.02
Transition Services Agreement	Section 2.08
Update Notice	Section 7.05
WARN Act	Section 7.04
Warranty Breach	Section 11.02

Section 1.02 *Other Definitional and Interpretative Provisions* . The words "hereof", "herein" and "hereunder" and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. References to Articles, Sections, Exhibits and Schedules are to Articles, Sections, Exhibits and Schedules of this Agreement unless otherwise specified. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein, shall have the meaning as defined in this Agreement. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation", whether or not they are in fact followed by those words or words of like import. "Writing", "written" and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder. References to any agreement or contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof. References to any Person include the successors and

permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively. References to "law", "laws" or to a particular statute or law shall be deemed also to include any and all Applicable Law.

ARTICLE 2
PURCHASE AND SALE

Section 2.01 *Purchase and Sale* . Except as otherwise provided below, upon the terms and subject to the conditions of this Agreement, the Company agrees to acquire from Seller and Seller agrees to sell, contribute, convey, transfer, assign and deliver, or cause to be sold, contributed, conveyed, transferred, assigned and delivered, to the Company at the Closing, free and clear of all Liens, other than Permitted Liens, all of Seller's right, title and interest in, to and under the assets, properties and business, of every kind and description, owned, held or used exclusively in the conduct of the Business as the same shall exist on the Closing Date (the " **Purchased Assets** "), including all right, title and interest of Seller in, to and under the following Purchased Assets to the extent owned, held or used exclusively in the conduct of the Business:

(a) the leases of, and other interests in, real property, in each case together with all buildings, fixtures and improvements erected thereon, including those listed on Section 3.11(a) of the Seller Disclosure Schedule;

(b) all personal property and interests therein, including furniture, office equipment and communications equipment, including those items listed on Section 3.11(b) of the Seller Disclosure Schedule;

(c) all raw materials, work-in-process, finished goods, supplies and other inventories, other than inventories described on Section 2.01(c) of the Seller Disclosure Schedule (" **Inventory** "); provided that inventories subject to the Distribution Letter described in Section 2.01(c) of the Seller Disclosure Schedule that remain unsold as of the date that is six months after the Closing Date (the " **Delayed Assets** ") shall constitute Inventory and Purchased Assets as of such date and shall be transferred to the Company pursuant to Section 2.09 hereof;

(d) all contracts, agreements, leases, commitments, sales and purchase orders and other instruments, including those listed on Section 3.08 of the Seller Disclosure Schedule (collectively, the " **Contracts** ");

(e) the Transferred Intellectual Property;

(f) all accounts, notes and other receivables, and any security, claim, remedy or other right related to any of the foregoing (" **Accounts Receivable** ");

(g) all prepaid expenses, including leases and rentals;

(h) all petty cash located at the operating facilities of the Business (" **Petty Cash** ");

(i) all rights, claims, credits, causes of action or rights of set-off against third parties exclusively relating to or arising from the Business, the Purchased Assets or the Assumed Liabilities, including unliquidated rights under manufacturers' and vendors' warranties;

(j) all licenses (not including licenses of Intellectual Property), permits or other governmental authorizations, other than the Excluded Licenses;

(k) all books, records, files and papers, whether in hard copy or computer format, including sales and promotional literature, manuals and data, sales and purchase correspondence, lists of current and former suppliers, personnel and employment records, and including any information (other than any income Tax returns of Seller) to the extent relating to any Tax imposed on the Purchased Assets or the Business and capable of being separately stated (provided that Seller may retain a copy of any such Tax information); and

(l) all goodwill associated with the Business or the Purchased Assets, together with the right to represent to third parties that the Company is the successor to the Business.

Section 2.02 *Excluded Assets* . Buyer and the Company expressly understand and agree that the following assets and properties of Seller (the " **Excluded Assets** ") shall be excluded from the Purchased Assets:

(a) all of the business, properties, assets, goodwill and rights of whatever kind and nature, real or personal, tangible or intangible, that are owned, leased or licensed by Seller or its Subsidiaries on the Closing Date and used or held for use in the operation or conduct of any business of Seller or its Subsidiaries other than the Business;

(b) all of Seller's bank accounts and cash and cash equivalents on hand and in banks, except for Petty Cash;

(c) inventories described on Section 2.01(c) of the Seller Disclosure Schedule; *provided* that the Delayed Assets shall cease to be Excluded Assets as of the date that is six months after the Closing Date and shall be transferred to the Company pursuant to Section 2.09 hereof;

(d) insurance policies relating to the Business and all claims, credits, causes of action or rights thereunder;

(e) all Software used or held for use by Seller or any of its Subsidiaries, other than the Transferred Software;

(f) except for (A) the Transferred Intellectual Property and (B) as otherwise expressly provided in the Ancillary Agreements, all rights relating to any Intellectual Property owned or licensed by Seller or any of its Subsidiaries ;

(g) all books, records, files and papers, whether in hard copy or computer format, prepared in connection with this Agreement or the transactions contemplated hereby and all minute books and corporate records of Seller and its Affiliates;

(h) the property and assets set forth on Section 2.02 of the Seller Disclosure Schedule;

(i) all rights of Seller arising under this Agreement, the Ancillary Agreements and the Common Stock;

(j) all rights, title and interest in the Employee Benefit Plans and the assets thereof;

(k) all rights, claims, credits, causes of action or rights of set-off against third parties exclusively relating to or arising from the Excluded Liabilities, including unliquidated rights under manufacturers' and vendors' warranties;

(l) all Tax Benefits allocated to Seller in accordance with the terms of Section 2.04(e);

(m) all Tax-related documents of Seller and its Affiliates (except to the extent relating to the Purchased Assets or the Business);

(n) all licenses and permits set forth on Section 2.02(n) of the Seller Disclosure Schedule (the " **Excluded Licenses** "); and

(o) any Purchased Assets sold or otherwise disposed of in the ordinary course of business and not in violation of any provisions of this Agreement during the period from the date hereof until the Closing Date.

Section 2.03 *Assumed Liabilities* . Upon the terms and subject to the conditions of this Agreement, the Company agrees, effective at the time of the Closing, to assume and pay, perform and discharge all debts, obligations, contracts and liabilities of Seller of any kind, character or description (whether known or unknown, accrued, absolute, contingent or otherwise) relating to or arising out of the Purchased Assets or the conduct of the Business, except for the Excluded Liabilities (the " **Assumed Liabilities** "), including the following:

(a) all liabilities set forth on the Statement of Assets and Liabilities and all liabilities incurred thereafter to the extent not satisfied prior to the Closing Date, including trade payables and capital lease obligations related to the Purchased Assets;

(b) all liabilities and obligations of Seller arising under the Contracts;

(c) all liabilities and obligations arising out of any action, suit, investigation or proceeding relating to or arising out of the Business or the Purchased Assets before any arbitrator or any Governmental Authority other than the matters identified on Section 2.04(g) of the Seller Disclosure Schedule;

(d) all liabilities and obligations relating to any products manufactured or sold by the Business on or prior to the Closing Date, including warranty obligations, liabilities relating to product marketing or packaging (except as set forth in Section 2.04(k)) and product liabilities; and

(e) all Apportioned Tax Obligations, Taxes and Transfer Taxes allocated to the Company under ARTICLE 8.

Section 2.04 *Excluded Liabilities* . Notwithstanding any provision in this Agreement or any other writing to the contrary, the Company is assuming only the Assumed Liabilities and is not assuming any other liability or obligation of Seller, whether presently in existence or arising hereafter. All such other liabilities and obligations shall be retained by and remain liabilities and obligations of Seller (all such liabilities and obligations not being assumed being herein referred to as the " **Excluded Liabilities** "), and Seller shall, and shall cause each of its Affiliates to, pay and satisfy in due course all Excluded Liabilities related to the Business that they are obligated to pay and satisfy. Notwithstanding any provision in this Agreement or any other writing to the contrary, Excluded Liabilities include:

(a) (i)(x) all liabilities and obligations of Seller, and (y) all liabilities associated with the Purchased Assets or the Business arising prior to Closing, in each case for Taxes (other than Apportioned Tax Obligations and Transfer Taxes allocated to the Company under ARTICLE 8), including any Taxes for a Pre-Closing Tax Period arising as a result of the operation of the Business or ownership of the Purchased Assets prior to the Closing, (ii) any Taxes (other than Transfer Taxes) that arise as a result of the sale and contribution of the Purchased Assets pursuant to this agreement, (iii) any Taxes of any nature arising as a result of any prepaid income or similar items relating to the operation of the Business or ownership of the Purchased Assets on or prior to the Closing Date and (iv) any Taxes of Seller or its Affiliates unrelated to the Business or the Purchased Assets which arise prior to the Closing;

(b) all Apportioned Tax Obligations allocated to Seller under ARTICLE 8;

(c) except to the extent expressly provided in Section 9.02, any liability to the extent (i) relating to any proceeding commenced or made by or on behalf of any current or former director, officer, employee, independent contractor or other service provider of Seller and its Subsidiaries arising out of or in connection with the conduct or any employment practice of Seller or its Subsidiaries, (ii) arising under or relating to any

Employee Benefit Plan (including any Employee Benefit Plan determined without regard for the words "related to the Business or the Purchased Assets" in clause (ii) of the definition thereof), or (iii) owed by Seller or its Subsidiaries to or on behalf of any current or former employee or service provider of Seller or its Subsidiaries (or the beneficiaries or dependents of any current or former employee or service provider of Seller or its Subsidiaries), bonuses and payroll or payroll-related liabilities, in each case, whether prior to, on or after the Closing Date;

(d) any liability or obligation that arises out of or relates to any Indebtedness of Seller and its Subsidiaries, except to the extent assumed pursuant to Section 2.03;

(e) any liability or obligation relating to an Excluded Asset;

(f) any fees and expenses of counsel, accountants, consultants and other advisers incurred by Seller or any of its Affiliates in connection with the negotiation, preparation, investigation and performance of this Agreement, the Ancillary Agreements and the transactions contemplated hereby and thereby;

(g) any liabilities in respect of any matter identified on Section 2.04(g) of the Seller Disclosure Schedule;

(h) any liabilities under Environmental Laws, to the extent arising out of or relating to facts, circumstances or conditions existing on or prior to the Closing;

(i) any trade accounts payable of Seller (i) to the extent not accounted for on the Closing Statement of Assets and Liabilities, or (ii) which constitute intercompany payables owing to Affiliates of Seller;

(j) the liabilities and obligations set forth in Section 2.04(j) of the Seller Disclosure Schedule; and

(k) any liabilities in respect of any False Advertising Claim that is filed or as to which a written threat is received by any party hereto from the date hereof through the date that is three months after the Closing Date, except to the extent that such False Advertising Claim relates to any marketing materials or activities (including on any website) or packaging that had been created or modified after the Closing Date.

Section 2.05 *Assignment of Contracts and Rights* . Anything in this Agreement to the contrary notwithstanding, this Agreement shall not constitute an agreement to assign any Purchased Asset or any claim or right or benefit arising thereunder or resulting therefrom if such assignment, without the consent of a third party, would constitute a breach or other contravention of such Purchased Asset. Seller, Buyer and the Company shall use their commercially reasonable efforts (but without any payment of money by Seller, Buyer or the Company) to obtain the consent of such third parties to any such Purchased Asset or any claim or right or any benefit arising thereunder for the assignment thereof to the Company as Buyer may request. Without limiting Seller's obligation to

deliver the Required Consents at Closing pursuant to Section 2.09, if such consent is not obtained, or if an attempted assignment thereof would be ineffective or would adversely affect the rights of Seller thereunder so that the Company would not in fact receive all such rights, Buyer and the Company acknowledge that Seller shall not thereby be in breach of this Section 2.05, and Seller and the Company shall cooperate in a mutually agreeable arrangement under which the Company would obtain the benefits and assume the obligations thereunder in accordance with this Agreement, including sub-contracting, sub-licensing, or sub-leasing to the Company, or under which Seller would enforce for the benefit of the Company, with the Company assuming Seller's obligations, any and all rights of Seller against a third party thereto; provided, that if the Company elects not to enter into such an arrangement, Seller shall nevertheless be deemed to have satisfied its obligations hereunder. Seller shall promptly pay to the Company when received all monies received by Seller under any Purchased Asset or any claim or right or any benefit arising thereunder, except to the extent the same represents an Excluded Asset.

Section 2.06 *Wrong Pocket Assets* . In the event that, at any time or from time to time for three years after the Closing Date, Seller, on the one hand, or the Company, on the other, shall become aware that it has received or otherwise possesses any asset that should belong to another Person pursuant to this Agreement, such Person shall promptly transfer, or cause to be transferred, such asset to the Person so entitled thereto. Prior to any such transfer, the Person receiving or possessing such asset shall hold such asset in trust for such other Person.

Section 2.07 *Purchase Price; Allocation of Purchase Price* .

(a) The purchase price for the Purchased Assets (including, for the avoidance of doubt, any Delayed Assets) (the " **Purchase Price** ") is $20,230,000 in cash (the " **Cash Consideration** "), the assumption of the Assumed Liabilities (the " **Debt Consideration** ") and 601,969 shares of Common Stock (the " **Stock Consideration** "). The Purchase Price shall be paid as provided in Section 2.08 and shall be subject to adjustment as provided in Section 2.11.

(b) As promptly as practicable after the Closing, but not later than 45 days, the Company shall deliver to Seller a statement (the " **Allocation Statement** "), allocating each of the Cash Consideration and Stock Consideration to each of the Purchased Assets in accordance with Applicable Law. If within 30 days after the delivery of the Allocation Statement Seller notifies the Company in writing that Seller objects to the allocation set forth in the Allocation Statement, Seller and the Company shall use commercially reasonable efforts to resolve such dispute within 15 days. In the event that Seller and the Company are unable to resolve such dispute within 15 days, Seller and the Company shall jointly retain a nationally recognized accounting firm (the " **Accounting Referee** ") to resolve the disputed items. Upon resolution of the disputed items, the allocation reflected on the Allocation Statement shall be adjusted to reflect such resolution. The

costs, fees and expenses of the Accounting Referee shall be borne equally by the Company and Seller.

(c) Seller and the Company agree to (i) be bound by the Allocation Statement and (ii) act in accordance with the Allocation Statement in the preparation, filing and audit of any Tax return, except as otherwise required by Applicable Law or a Taxing Authority.

(d) If an adjustment is made with respect to the Purchase Price pursuant to Section 2.11 or ARTICLE 11, the Allocation Statement shall be adjusted as mutually agreed by Buyer and Seller. In the event that an agreement is not reached within 15 days after the determination of Final Working Capital, any disputed items shall be resolved in the manner described in Section 2.07(b). Seller and the Company agree to file any additional information return required to be filed pursuant to Treasury Regulation Section 1.351-3 and to treat the Allocation Statement as adjusted in the manner described in Section 2.07(b).

Section 2.08 *Closing* . The closing (the " **Closing** ") of the purchase and sale of the Purchased Assets (other than the Delayed Assets) and the assumption of the Assumed Liabilities hereunder shall take place at the offices of Davis Polk & Wardwell LLP, 1600 El Camino Real, Menlo Park, California, as soon as possible, but in no event later than two Business Days, after satisfaction or, to the extent permissible, waiver by the party or parties entitled to the benefit of the conditions set forth in ARTICLE 10 (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or, to the extent permissible, waiver of those conditions at the Closing), or at such other time or place as Buyer and Seller may agree. At the Closing:

(a) Buyer shall pay to the Company by wire transfer to an account of the Company an amount in immediately available funds equal to the sum of the Cash Consideration, and $4,000,000.

(b) The Company shall issue and deliver to Buyer a stock certificate in Buyer's name representing 2,423,000 shares of Preferred Stock.

(c) The Company shall pay to Seller the Cash Consideration by wire transfer to an account of Seller designated by Seller, by notice to Buyer, which notice shall be delivered not later than two Business Days prior to the Closing Date.

(d) The Company shall issue and deliver to Seller a stock certificate in Seller's name representing the Stock Consideration.

(e) Seller and the Company shall enter into an " **Assignment and Assumption Agreement** " substantially in the form attached hereto as Exhibit A with respect to the Purchased Assets (other than the Delayed Assets), and, subject to the provisions hereof, Seller shall deliver to the Company such deeds, bills of sale, endorsements, consents, assignments and other good and sufficient instruments of conveyance and assignment as

the parties and their respective counsel shall deem reasonably necessary to vest in the Company all right, title and interest in, to and under the Purchased Assets (other than the Delayed Assets).

(f) Seller and the Company shall enter into a " **Trademark Assignment Agreement** " in substantially the form attached hereto as Exhibit B-1.

(g) Seller and the Company shall enter into a " **Patent Assignment Agreement** " in substantially the form attached hereto as Exhibit B-2.

(h) Seller and the Company shall enter into a " **Copyright Assignment Agreement** " in substantially the form attached hereto as Exhibit B-3.

(i) Seller and the Company shall enter into a " **Domain Name Transfer Agreement** " in substantially the form attached hereto as Exhibit B-4.

(j) Seller and the Company shall enter into an " **Intellectual Property License Agreement** " substantially in the form attached hereto as Exhibit C.

(k) Seller, Buyer and the Company shall enter into a " **Stockholders' Agreement** " substantially in the form attached hereto as Exhibit D.

(l) Seller and the Company shall enter into a " **Supply Agreement** " substantially in the form attached hereto as Exhibit E.

(m) Seller and the Company shall enter into a " **Transition Services Agreement** " substantially in the form attached hereto as Exhibit F.

Section 2.09 *Delayed Closing* . On the date that is six months following the Closing (or, if such date is not a Business Day, on the next Business Day thereafter), or at such other time as the Company and Seller may agree, Seller and the Company shall enter into an Assignment and Assumption Agreement substantially in the form attached hereto as Exhibit A with respect to the Delayed Assets (the " **Delayed Assets Assignment and Assumption Agreement** ", and, subject to the provisions hereof, Seller shall deliver to the Company such deeds, bills of sale, endorsements, consents, assignments and other good and sufficient instruments of conveyance and assignment as the parties and their respective counsel shall deem reasonably necessary to vest in the Company all right, title and interest in, to and under the Delayed Assets.

Section 2.10 *Closing Statement of Assets and Liabilities; Closing Working Capital Statement* .

(a) As promptly as practicable, but no later than forty-five (45) days, after the Closing Date, Buyer will cause to be prepared and delivered to Seller (i) the Closing Statement of Assets and Liabilities and (ii) a certificate setting forth Buyer's calculation

of Closing Working Capital based upon the Closing Statement of Assets and Liabilities (the " **Closing Working Capital Statement** "). The " **Closing Statement of Assets and Liabilities** " shall (x) fairly present the consolidated assets and liabilities of the Business as at the close of business on the Closing Date, (y) include line items substantially consistent with those in the Statement of Assets and Liabilities, and (z) be prepared in accordance with accounting policies and practices consistent with those used in the preparation of the Statement of Assets and Liabilities. The " **Closing Working Capital Statement** " shall (x) fairly present the asset and liability accounts of the Business presented therein as at the close of business on the Closing Date, (y) include line items and adjustments consistent with those in the calculation of the Base Working Capital, and (z) be prepared in accordance with accounting policies and practices consistent with those used in the calculation of the Base Working Capital.

(b) If Seller disagrees with Buyer's calculation of Closing Working Capital delivered pursuant to Section 2.10(a), Seller may, within thirty (30) days after delivery of the documents referred to in Section 2.10(a), deliver a notice to Buyer disagreeing with such calculation and that specifies Seller's calculation of such amount and in reasonable detail, Seller's grounds for such disagreement. Any such notice of disagreement shall specify those items or amounts as to which Seller disagrees, and Seller shall be deemed to have agreed with all other items and amounts contained in the Closing Statement of Assets and Liabilities and Closing Working Capital Statement delivered pursuant to Section 2.10(a).

(c) If a notice of disagreement shall be duly delivered pursuant to Section 2.10(b), Buyer and Seller shall, during the thirty (30) days following such delivery, use their commercially reasonable efforts to reach agreement on the disputed items or amounts in order to determine the amount of Closing Working Capital, which amount shall not be less than the amount thereof shown in Buyer's calculations delivered pursuant to Section 2.10(a) nor more than the amount thereof shown in Seller's calculations delivered pursuant to Section 2.10(b). If Buyer and Seller are unable to reach such agreement during such period, they shall promptly thereafter cause the Accounting Referee promptly to review this Agreement and the disputed items or amounts for the purpose of calculating Closing Working Capital. In making such calculation, the Accounting Referee shall consider only those items or amounts in the Closing Statement of Assets and Liabilities or Closing Working Capital Statement as to which Seller has disagreed. The Accounting Referee shall deliver to Buyer and Seller, as promptly as practicable but in any event within twenty-five (25) days, a report setting forth such calculation. Such report shall be final and binding upon Buyer and Seller. The cost of such review and report shall be borne (i) by Buyer if the difference between Final Working Capital and Closing Working Capital as set forth in Buyer's calculation of Closing Working Capital delivered pursuant to Section 2.10(a) is greater than the difference between Final Working Capital and Closing Working Capital as set forth in Seller's calculation of Closing Working Capital delivered pursuant to Section 2.11(b), (ii) by Seller if the first such difference is less than the second such difference and (iii) otherwise equally by Buyer and Seller.

(d) Buyer and Seller agree that they will, and agree to cause their respective independent accountants to, cooperate and assist in the preparation of the Closing Statement of Assets and Liabilities and the calculation of Closing Working Capital and in the conduct of the audits and reviews referred to in this Section 2.10, including making available to the extent necessary of books, records, work papers (to the extent in such party's possession or, with respect to Buyer, in the Company's possession) and personnel to the extent that they relate to the Closing Statement of Assets and Liabilities and Closing Working Capital Statement; provided, that such access shall be in a manner that does not interfere with the normal business operations of Buyer or Seller, as applicable.

(e) The provisions of this Section 2.10 and of Section 2.11 shall be the sole and definitive means of determining Final Working Capital and any adjustment related to such amount, and no amount used in such determination shall be subject to a claim for indemnity under ARTICLE 11.

Section 2.11 *Adjustment of Purchase Price* .

(a) If Final Working Capital is less than Base Working Capital minus the Working Capital Collar, an amount equal to the difference between the Final Working Capital and the Base Working Capital shall be paid to the Company in accordance with this Section 2.11. If Final Working Capital is greater than Base Working Capital plus the Working Capital Collar, an amount equal to the difference between the Final Working Capital and the Base Working Capital shall be paid to Seller by the Company in accordance with this Section 2.11. " **Final Working Capital** " means Closing Working Capital (i) as shown in the Closing Working Capital Statement delivered pursuant to Section 2.10(a) if no notice of disagreement with respect thereto is duly delivered pursuant to Section 2.10(b); or (ii) if such a notice of disagreement is delivered, (A) as agreed by Buyer and Seller pursuant to Section 2.10(c) or (B) in the absence of such agreement, as shown in the Accounting Referee's calculation delivered pursuant to Section 2.10(c); provided that in no event shall Final Working Capital be less than as set forth in the Closing Working Capital Statement or more than Seller's calculation of Closing Working Capital delivered pursuant to Section 2.10(b).

(b) Any payment to be made by the Company or Seller pursuant to Section 2.11(a) shall be made at a mutually convenient time and place within 10 days after Final Working Capital has been determined by delivery of a certified or official bank check payable to Seller or the Company, respectively, in immediately available funds or by causing such payments to be credited to such account as may be designated by Seller or the Company, as the case may be.

Section 2.12 *Tax Treatment* . The parties hereby agree that the sale and contribution of the Purchased Assets by Seller and transfer of Assumed Liabilities to the Company in exchange for the issuance to Seller of the Stock Consideration and the Cash Consideration and the related issuance of the Preferred Stock to Buyer constitutes a

transfer of property to the Company governed by Section 351 of the Code. Except as otherwise required by (i) a Taxing Authority or (ii) a determination within the meaning of Section 1313 of the Code, none of the parties will take a position inconsistent with the foregoing treatment for any income tax purposes.

Section 2.13 *Withholding* . The Company shall be entitled to deduct and withhold from any payment made pursuant to this Agreement in such amounts as are required to be deducted and withheld with respect to such payment under the Code, or any provision of applicable state, local or foreign Law. To the extent that amounts are so withheld, such withheld amounts (i) shall be remitted by the Company to the applicable Governmental Authority and (ii) shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such withholding was made.

ARTICLE 3
Representations and Warranties of Seller

Subject to Section 13.12, except as set forth in the Seller Disclosure Schedule, Seller represents and warrants to Buyer and the Company as of the date hereof and as of the Closing Date that:

Section 3.01 *Corporate Existence and Power* . Seller is a corporation duly incorporated, validly existing and in good standing under the laws of its jurisdiction of incorporation and has all corporate power to carry on the Business as now conducted. Section 3.01 of the Seller Disclosure Schedule sets forth each jurisdiction in which Seller is licensed or qualified to do business. Seller is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the ownership of the Purchased Assets or the operation of the Business as currently conducted makes such licensing or qualification necessary, except where the failure to obtain any such license or qualification is not material to the Purchased Assets or the Business.

Section 3.02 *Corporate Authorization* . The execution, delivery and performance by Seller of this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby are within Seller's corporate powers and have been duly authorized by all necessary corporate action on the part of Seller. This Agreement has been duly executed and delivered by Seller and, assuming the execution and delivery of this Agreement by the other parties hereto, constitutes a valid and binding agreement of Seller, enforceable against Seller in accordance with its terms (subject to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws affecting creditors' rights generally and general principles of equity). When each Ancillary Agreement to which Seller is or will be a party has been duly executed and delivered by Seller, such Ancillary Agreement will, assuming the execution and delivery of such Ancillary Agreement by the other parties thereto, constitute a valid and binding agreement of Seller, enforceable against

Seller in accordance with its terms (subject to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws affecting creditors' rights generally and general principles of equity).

Section 3.03 *Governmental Authorization* . The execution, delivery and performance by Seller of this Agreement and the Ancillary Agreements, and the consummation of the transactions contemplated hereby and thereby require no action by or in respect of, or filing with, any Governmental Authority.

Section 3.04 *Noncontravention* . The execution, delivery and performance by Seller of this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby do not and will not (i) violate the certificate of incorporation or bylaws of Seller, (ii) violate any Applicable Law in any material respect, (iii) assuming all Required Consents are obtained, constitute a default or an event that, with or without notice or lapse of time or both, would (x) constitute a default under or give rise to any right of notice, termination, cancellation, modification or acceleration of any right or obligation or to a loss of any benefit relating to the Business to which Seller is entitled under any provision of any material agreement or other material instrument binding upon Seller or to which any of the Purchased Assets or the Business are subject or (y) constitute a default under or give rise to any right of notice, termination, cancellation, modification or acceleration of any right or obligation or to a loss of any benefit relating to the Business to which Seller is entitled under any provision of any agreement or other instrument binding upon Seller or to which any of the Purchased Assets or the Business are subject, which, in the aggregate with any other such defaults or events, would be material to the Business or the Purchased Assets, or (iv) result in the creation or imposition of any Lien on any Purchased Asset, except for Permitted Liens.

Section 3.05 *Financial Statements* . The unaudited statement of assets and liabilities as of December 31, 2014 and December 31, 2015 and the related statement of operations for the years ended December 31, 2014 and December 31, 2015, as applicable, and the unaudited interim statement of assets and liabilities as of March 31, 2016 and the related unaudited interim statement of operations for the three months ended March 31, 2016 for the Business (the " **Financial Statements** ") are set forth on Section 3.05 of the Seller Disclosure Schedule. The Financial Statements have been derived from the historical financial statements of Seller and its Subsidiaries and fairly present the assets and liabilities of the Business. The Financial Statements (i) do not purport to represent or be indicative of what the results of operations of the Business will be in any future period or at any future date and (ii) have been prepared in good faith based on the assumptions set forth in Section 3.05 of the Seller Disclosure Schedule.

Section 3.06 *Absence of Certain Changes* .

(a) Since the Statement Date, the Business has been conducted in the ordinary course of business consistent with past practices. Since the Statement Date, and other than in the ordinary course of business consistent with past practice, there has not been, solely with respect to the Business:

(i) any event, occurrence, development or state of circumstances or facts that has had or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; or

(ii) any material damage, destruction or loss, or any material interruption in the use, of the Purchased Assets, taken as a whole, whether or not covered by insurance.

(b) From the Statement Date until the date hereof, there has not been any action taken by Seller that, if taken during the period from the date of this Agreement through the Closing Date without Buyer's consent, would have constituted a breach of Section 5.01.

Section 3.07 *No Undisclosed Material Liabilities* . There are no liabilities of the Business of any kind whatsoever, whether accrued, contingent, absolute, determined, determinable or otherwise, and there is no existing condition, situation or set of circumstances that could reasonably be expected to result in such a liability, other than:

(a) liabilities provided for in the Statement of Assets and Liabilities or disclosed in the notes thereto;

(b) Permitted Liens;

(c) Excluded Liabilities;

(d) liabilities disclosed in, related to or arising under any agreements, instruments or other matters disclosed in this Agreement or any Schedule hereto;

(e) liabilities incurred in the ordinary course of business since the Statement Date; and

(f) other undisclosed liabilities which, individually or in the aggregate, are not material to the Business or to the Purchased Assets.

Section 3.08 *Material Contracts* .

(a) Section 3.08 of the Seller Disclosure Schedule contains, as of the date hereof, a complete and correct list of each of the following contracts in effect on the date hereof, to the extent such contracts exclusively relate to the Business or the Purchased

Assets, or by which any of the Purchased Assets are bound or affected (all such contracts being " **Material Contracts** "):

(i) any lease (whether of real or personal property) providing for annual rentals of $100,000 or more that cannot be terminated on not more than 90 days' notice without payment by Seller of any material penalty;

(ii) any agreement for the purchase of materials, supplies, goods, services, equipment or other assets under which (A) Seller has made aggregate payments of $100,000 or more in any fiscal year since January 1, 2013 or (B) Seller has made aggregate payments of $250,000 or more in the period from January 1, 2013 to the date hereof;

(iii) each contract between Seller and significant retailers and distributors of the Business (determined by net revenue in excess of $250,000 (A) in the year ended December 31, 2015 or (B) during the three month period ended March 31, 2016);

(iv) any partnership, joint venture or other similar agreement or arrangement currently in effect;

(v) any agreement relating to the acquisition or disposition of any business (whether by merger, sale of stock, sale of assets or otherwise);

(vi) any agreement relating to indebtedness for borrowed money or the deferred purchase price of property (in either case, whether incurred, assumed, guaranteed or secured by any asset) other than trade payables outstanding more than 60 days after issuance of the invoice relating to such trade payable;

(vii) any contract with any Governmental Authority;

(viii) any contract that contains any fixed or indexed pricing, "most-favored nation" pricing or similar pricing terms or provisions regarding minimum volumes, volume discounts or rebates;

(ix) any agreement that limits the freedom of Seller to compete in any line of business or with any Person or in any area;

(x) any agreement with or for the benefit of any Affiliate of Seller; and

(xi) all other contracts that are material to the Purchased Assets or the operation of the Business and not previously disclosed pursuant to this Section 3.08(b).

(b) Each Material Contract is a valid and binding agreement of Seller and is in full force and effect, and none of Seller or, to the knowledge of Seller, any other party thereto is in default or breach in any material respect under the terms of any such

Contract or has provided or received any written notice or, to the knowledge of the Seller, any other notice, of any intention to terminate any Material Contract. No event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any Material Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any material right or material obligation or the loss of any material benefit thereunder. Complete and correct copies of each Material Contract (including all modifications, amendments and supplements thereto and waivers thereunder) have been made available to Buyer. There are no disputes pending or, to the knowledge of the Seller, threatened under any Contract which if adversely determined, in the aggregate, would be material to the Purchased Assets or the Business.

Section 3.09 *Litigation* . Except as set forth on Section 3.09 of the Seller Disclosure Schedule, there is no claim, action, suit, investigation or proceeding of any nature (civil, criminal, administrative, regulatory or otherwise, whether at law or in equity) (an " **Action** ") pending against, or to the knowledge of Seller, threatened against or affecting, the Business, the Purchased Assets or the Assumed Liabilities before any arbitrator or any Governmental Authority or which in any manner challenges or seeks to prevent, enjoin, alter or materially delay the transactions contemplated by this Agreement. No Action has been filed by or against Seller or, to the knowledge of Seller, otherwise initiated in connection with the Business since January 1, 2015.

Section 3.10 *Compliance with Laws and Court Orders; Permits* .

(a) Seller is not, and has not been since July 1, 2013, in violation of any Applicable Law relating to the Purchased Assets or the conduct of the Business, except for violations that would not reasonably be expected to be material to the Business or the Purchased Assets. There is no material judgment, decree, injunction, rule or order of any arbitrator or Governmental Authority outstanding against Seller relating to the Purchased Assets or the Business.

(b) To the extent relating to the Business and except as set forth on Section 3.10(b) of the Seller Disclosure Schedule, neither Seller, nor, to the knowledge of Seller, any of its manufacturers or co-packers has received or been subject to, in each case since July 1, 2013: (i) any United States Food and Drug Administration (" **FDA** ") Form 483s or equivalent report by inspectors or officials from any other Governmental Authority of any situation requiring correction of conditions or circumstances that are objectionable or otherwise contrary to Applicable Law; (ii) any FDA Notices of Adverse Findings or any equivalent written correspondence from any other Governmental Authority indicating a failure to comply with Applicable Law; or (iii) any warning letters or other written correspondence from the FDA or any other Governmental Authority in which the FDA or such other Governmental Authority asserting that the operations of the Business were not in compliance with Applicable Law.

(c) Except as set forth in Section 3.10(c) of the Seller Disclosure Schedule, the marketing, packaging, labeling and sale of products related to the Business by or on behalf of Seller currently complies, and since July 1, 2013 has complied, in all material respects with Applicable Law and applicable self-regulatory authority policies. As of the Closing Date, to the knowledge of Seller, all manufacturers that produce products for Seller in connection with the Business are in substantial compliance with all Applicable Law. To the knowledge of Seller, neither Seller nor any of its manufacturers has received any written notice or charge, which has not been complied with or withdrawn, by a Governmental Authority asserting any material violation of such requirements. Since July 1, 2013, Seller has not undertaken any product recall (whether voluntary or compulsory) related to the Business, and, to the knowledge of Seller, no product manufactured, marketed or sold by Seller related to the Business is subject to a recall required by any Governmental Authority, and Seller has no current plans to initiate a voluntary product recall related to the Business.

(d) Since July 1, 2013, Seller has complied in all material respects and, to the knowledge of Seller, its manufacturers and co-packers have complied in all material respects, with all other reporting requirements related to the Business as required by Applicable Law, including, but not limited to, all reporting requirements applicable to the Business. Neither Seller nor, to the knowledge of Seller, any of its manufacturers or co-packers has received since July 1, 2013 any notice or charge, which has not been complied with or withdrawn, by a Governmental Authority asserting any material violation of such requirements.

(e) To the knowledge of Seller, Seller has sufficient data to support the safety or performance claims made in the marketing materials of the Business, including labels and advertising.

(f) Since July 1, 2013, Seller has, and to the knowledge of Seller, its manufacturers and co-packers have, conducted all marketing and promotional activities of the Business in material compliance with all applicable requirements of relevant Governmental Authorities. Neither Seller, nor, to the knowledge of Seller, any of its manufacturers or co-packers, has received any written notice or charge, which has not been complied with or withdrawn, by a Governmental Authority asserting any material violation of such requirements relating to the Business. None of Seller, nor, to the knowledge of Seller, its manufacturers or co-packers, has been a defendant in any litigation relating to any claim for false advertising arising under the Lanham Act relating to the Business.

(g) Neither Seller, nor, to the knowledge of Seller, any of its employees, has been disqualified, debarred or voluntarily excluded by the FDA or any other Governmental Authority for any purpose, or has been charged with or convicted under United States federal law for conduct relating to the development or approval, or otherwise relating to the regulation, of any drug product under the Federal Food, Drug, and Cosmetic Act or any other Applicable Law or has made an untrue statement of a

material fact to any Governmental Authority (whether in any submission to such Governmental Authority or otherwise), or failed to disclose a material fact required to be disclosed to any Governmental Authority, in each case relating to the Business. Neither Seller, nor, to the knowledge of Seller, any of its employees, has received any written notice to such effect.

(h) All material Permits required for Seller to conduct the Business as currently conducted or for the ownership and use of the Purchased Assets have been obtained by Seller and are valid and in full force and effect. Section 3.10(h) of the Seller Disclosure Schedule lists all material Permits issued to Seller that are related to the conduct of the Business as currently conducted or the ownership of the Purchased Assets, including the names of the Permits and their respective dates of issuance and expiration. All fees and charges with respect to such Permits as of the date hereof have been paid in full; and no event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any Permit set forth in Section 3.10(h) of the Seller Disclosure Schedule.

Section 3.11 *Properties* .

(a) Seller does not own any real property used in the Business. Section 3.11(a) of the Seller Disclosure Schedule sets forth each lease, sublease or other agreement pursuant to which Seller uses real property primarily in the Business as currently conducted (together with all rights, title and interest of Seller in and to leasehold improvements relating thereto, including, but not limited to, security deposits, reserves or prepaid rents paid in connection therewith, collectively, the " **Business Leases** "). Seller has valid leasehold interests in all such real property pursuant to the Business Leases, which interests are not subject to any Liens other than Permitted Liens. With respect to each Business Lease:

(i) Such Business Lease is valid, binding, enforceable and in full force and effect, and Seller enjoys peaceful and undisturbed possession of the leased real property;

(ii) Seller is not in material breach or default under such Business Lease, and no event has occurred or circumstance exists that, with the delivery of notice, passage of time or both, would constitute such a material breach or default, and Seller has paid all rent due and payable under such Business Lease;

(iii) Seller has not received nor given any notice of any default or event that, with notice or lapse of time, or both, would constitute a default by Seller under any of the Business Leases and, to the knowledge of Seller, no other party is in default thereof, and no party to any Business Lease has exercised any termination rights with respect thereto; and

(iv) Seller has not subleased, assigned or otherwise granted to any Person the right to use or occupy such leased real property covered by a Business Lease or any portion thereof.

(b) Section 3.11(b) of the Seller Disclosure Schedule sets forth a list of the principal equipment, furniture, fixtures, computers, and other personal property used or held for use primarily in the Business, which Seller owns, leases or subleases, and any Liens thereon. Seller has good title to, or in the case of any leased personal property has valid leasehold interests in, (i) all personal property located in Seller's Glendale, California facility and (ii) any other personal property set forth in Section 3.11(b) of the Seller Disclosure Schedule, except, in the clause of clauses (i) and (ii) above, for personal property sold since the date of the Agreement in the ordinary course of business or where the failure to have such good title or valid leasehold interests would not be material to the Business, individually or in the aggregate.

(c) No Purchased Asset is subject to any Lien, except:

(i) Liens disclosed on Section 3.11(b) of the Seller Disclosure Schedule;

(ii) Liens disclosed in the Statement of Assets and Liabilities or notes thereto or securing liabilities reflected on the Statement of Assets and Liabilities or notes thereto;

(iii) Liens for taxes, assessments and similar charges that are not yet due or are being contested in good faith;

(iv) mechanic's, materialman's, carrier's, repairer's and other similar Liens arising or incurred in the ordinary course of business or that are not yet due and payable or are being contested in good faith and which are not, individually or in the aggregate, material to the Business or the Purchased Assets;

(v) Liens incurred in the ordinary course of business since the Statement Date which are not, individually or in the aggregate, material to the Business or the Purchased Assets (clauses (i)- (v) of this Section 3.11(b) are, collectively, the " **Permitted Liens** ").

Section 3.12 *Sufficiency Of And Title To The Purchased Assets* .

(a) The buildings, structures, furniture, fixtures, equipment and other items of tangible personal property included in the Purchased Assets and material to the Business are structurally sound, are in good operating condition and repair, and are adequate for the uses to which they are being put, and none of the buildings, structures, furniture, fixtures, equipment and other items of tangible personal property is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost. The Purchased Assets constitute all of the property and assets

used or held for use by Seller exclusively in the Business and, together with the rights to be acquired by the Company under the Ancillary Agreements, are sufficient for the conduct of the Business as currently conducted. None of the Excluded Assets are material to the Business, other than the Delayed Assets and assets that are the subject of or are held in connection with the Ancillary Agreements.

(b) Upon consummation of the transactions contemplated hereby (including obtaining the Required Consents), the Company will have acquired good and marketable title in and to, or a valid leasehold interest in, each of the Purchased Assets, free and clear of all Liens, except for Permitted Liens.

Section 3.13 *Products* .

(a) Each of the products produced or sold by Seller in connection with the Business is, and at all times up to and including the sale thereof has been, (i) in compliance in all material respects with Applicable Laws and (ii) fit for the ordinary purposes for which it is intended to be used. All Inventory is of a quality usable and salable in the ordinary course of business consistent with past practice, except for obsolete, damaged, defective or slow-moving items that have been written off or written down to fair market value or for which adequate reserves have been established. All Inventory is owned by Seller free and clear of all Liens other than Permitted Liens, and except as set forth in Section 3.13 of the Seller Disclosure Schedule, no Inventory is held on a consignment basis.

(b) Since July 1, 2013, each product manufactured, sold, leased or delivered by Seller in connection with the Business has been in compliance in all material respects with all applicable contractual commitments and all express and implied warranties, and, to the knowledge of Seller, Seller has no material liability (i) arising out of an injury to persons or property as a result of ownership, use or possession of any products manufactured, sold, leased or delivered by Seller in connection with the Business, or (ii) for replacement or repair thereof or other damages in connection therewith. No product manufactured or sold by Seller in connection with the Business since the Statement Date is subject to any agreement or understanding, written or oral, providing for the granting of credit to any customer of Seller (other than pursuant to standard purchase terms) with amounts owed to Seller representing Accounts Receivable reflected on the Statement of Assets and Liabilities or arising after the date thereof. Except as set forth on Section 3.13(b) of the Seller Disclosure Schedule, Seller has provided no express warranties covering the products manufactured or sold by Seller in connection with the Business.

(c) Since January 1, 2015, Seller has not experienced any returns of products of the Business, other than in the ordinary course of business. There are no material claims against Seller to return any product of the Business by reason of alleged over-shipments, defective product or otherwise, and there is no product of the Business in the hands of customers under an understanding that such merchandise would be returnable, in each case except in the ordinary course of business. Section 3.13(c) of the Seller Disclosure

Schedule sets forth a true and correct listing of the aggregate dollar amount of sales returns, chargebacks, discounts and allowances for the Material Distributors during each of (i) the year ended December 31, 2014, (ii) the year ended December 31, 2015, and (iii) the three months ended March 31, 2016.

Section 3.14 *Certain Commercial Activities* . Since January 1, 2015, Seller has not intentionally engaged or participated in, solely with respect to the Business, (i) any activity of the type sometimes referred to as "trade loading" or "channel stuffing **,** " (ii) any practice that is intended to or would have the effect of accelerating to prior fiscal periods the collection of any Accounts Receivable that would otherwise reasonably be expected (based on past practice) to be made by Seller or the Business in subsequent fiscal periods, (iii) any practice that is intended to or would have the effect of postponing to subsequent fiscal periods any accounts payable that would otherwise reasonably be expected (based on past practice) to be made by Seller or the Business in prior fiscal periods. In addition, since the Statement Date, Seller has not intentionally engaged or participated in, solely with respect to the Business, (A) the sale or marketing of any products at a greater discount from listed prices customarily offered for such product, other than pursuant to a promotion of a nature previously used in the ordinary course of business for such product; or (B) the sale of any gift cards at a price less than the face value thereof. In each case, except to the extent that such breach of this Section 3.14 would not, individually or in the aggregate, have a Material Adverse Effect on the Business.

Section 3.15 *Intellectual Property* .

(a) Section 3.15(a) of the Seller Disclosure Schedule sets forth a complete and accurate list, as of the date hereof, of each of the following as used by Seller exclusively in the conduct of the Business: (i) Patents, (ii) registered and material unregistered Trademarks, (iii) registered and material unregistered Copyrights, (iv) Internet domain names and (v) customs recordations. Seller owns, free and clear of all Liens (other than Permitted Liens), all such Intellectual Property, and each item of Registered Intellectual Property is subsisting, valid and enforceable. All of the foregoing Intellectual Property, in the aggregate and taken together with the Intellectual Property to be licensed to the Company pursuant to the Intellectual Property License Agreement, is adequate and sufficient for the conduct of the Business as currently conducted.

(b) With respect to Trademarks required to be listed in Section 3.15(a)(ii) of the Seller Disclosure Schedule for which a registration has been issued or application for registration has been filed, each application therefor, affidavit of use relating thereto, and registration thereof, was true and accurate in all respects when filed or issued, as applicable. Each such Trademark has been and continues to be valid in the country in which such Trademark is registered on all of the goods or in connection with all of the services identified in the applicable registration. Seller has not taken any action (or failed to take any action), conducted its business, or used or enforced any such Trademark, in

each case in a manner that would result in the abandonment, cancellation, forfeiture, relinquishment, or unenforceability of any such Trademark and Seller has taken reasonable steps to protect Seller's rights in and to each such Trademark and to prevent the unauthorized use thereof by any other Person. With regard to such Trademarks, no filing with nor payment to any trademark registrar is required to be made within ninety (90) days of the date of Closing.

(c) With respect to Patents required to be listed in Section 3.15(a)(i) of the Seller Disclosure Schedule, all inventors, including current or former employees of Seller and its Affiliates, are appropriately named as inventors on any issued Patent or pending Patent application. All prior art, the non-disclosure of which would invalidate any Patent or, in connection with a Patent application prevent the issuance of a Patent covering all claims contained therein, has been disclosed in such Patent application.

(d) With respect to domain names required to be listed in Section 3.15(a)(iv) of the Seller Disclosure Schedule, the disclosure sets forth the domain name registrar therefor, the name of the administrative and technical contacts, and the true and accurate expiration date of such registration.

(e) No Owned Intellectual Property is subject to any outstanding judgment, injunction, order, decree or agreement restricting the use thereof by Seller or any Subsidiary of Seller or restricting the licensing thereof by Seller or any Subsidiary of Seller to any Person.

(f) There is no pending, or, to the knowledge of Seller, threatened, opposition, interference or cancellation proceeding before any Governmental Authority in any jurisdiction against any registrations or applications relating to any Owned Intellectual Property.

(g) (i) Section 3.15(g)(i) of the Seller Disclosure Schedule sets forth a list, as of the date hereof, of material Licensed Intellectual Property. (ii) Section 3.15(g)(ii) of the Seller Disclosure Schedule contains a complete and accurate list of all material licenses, sublicenses, agreements and other rights granted by Seller to any third party with respect to any Owned Intellectual Property (" **Outbound Intellectual Property Licenses** " and, collectively with Licensed Intellectual Property, " **Intellectual Property Licenses** "). Other than rights in Owned Intellectual Property arising under an Intellectual Property License disclosed in Section 3.15(g)(ii) of the Seller Disclosure Schedule, no Person has any rights in or to any Owned Intellectual Property, including through grant of any option, license, assignment or agreement of any kind. Except for any item of Licensed Intellectual Property that is in the public domain, the Seller has used such Licensed Intellectual Property solely pursuant to an effective agreement or instrument with the applicable third party.

(h) All Intellectual Property Licenses are valid and enforceable, and the Seller and each Subsidiary has performed in all material respects all obligations imposed upon it under such Intellectual Property Licenses. Neither the Seller nor any Subsidiary is, and,

to the knowledge of the Seller, no other party thereto, is in breach of or default of any Intellectual Property License in any respect nor, to the knowledge of the Seller, is there any event which with notice or lapse of time or both would constitute a default thereunder, and there are no notices of any disputes or disagreements with respect to any Intellectual Property Licenses.

(i) The conduct of the Business as currently conducted does not infringe, misappropriate or otherwise violate the Intellectual Property of any Person.

(j) No written, or to the knowledge of the Seller, other claims are pending or, to the knowledge of Seller, threatened, against Seller or any Subsidiary or Affiliate thereof by any Person (i) with respect to the ownership, validity, enforceability, effectiveness or use in its business of any Owned Intellectual Property, (ii) contesting the right of Seller to use any of its products, processes or services currently or previously used by Seller, or (iii) alleging infringement, misappropriation or violation of the Intellectual Property rights of any other Person in any material respect.

(k) Except as to matters that would not reasonably be expected to have a Material Adverse Effect, the consummation of the transactions contemplated by this Agreement will not impair any right of Buyer to own or use any Seller Intellectual Property and, immediately after the Closing, Buyer will have all, right, title and interest in and to all Seller Intellectual Property on identical terms and conditions as enjoyed by Seller immediately prior thereto.

(l) Seller has the right to bring actions against any Person that is infringing any Owned Intellectual Property and to retain for itself any damages recovered in any such action. Seller has not entered into any agreement granting any third party the right to bring infringement actions or otherwise to enforce rights with respect to the Owned Intellectual Property.

(m) Seller has taken commercially reasonable measures to maintain in confidence all Trade Secrets owned by Seller and its Subsidiaries and included in the Purchased Assets, including the adoption and implementation of administrative, physical and electronic security measures and controls consistent with prevailing industry practices. To the knowledge of Seller, (i) there has been no misappropriation of any such Trade Secrets by any Person, and (ii) no such Trade Secrets have been used by, disclosed to or discovered by any Person except pursuant to valid and appropriate non-disclosure, assignment or license agreements that have not been breached.

Section 3.16 *Privacy And Data Protection* .

(a) Seller has not collected, received or used any information, including, without limitation, non-public personally identifiable and/or financial information, from customers or other Persons (" **Customer Information** ") in an unlawful manner, or in a

manner that in any way violates the privacy rights of its customers or users of any of its websites under Applicable Law.

(b) Seller and each Subsidiary are and for the past three years have been in compliance with all applicable PCI Requirements.

(c) Seller has complete and accurate records, in all material respects, of all Persons who have notified Seller of such Person's election not to receive any electronic communications or solicitations (" **Opt-out Notifications** ") from Seller. Seller has complied in all material respects with all such Opt-out Notifications.

Section 3.17 *Information Technology* .

(a) Seller has in place and maintains in effect reasonably adequate redundancy and disaster recovery plans, procedures and facilities appropriate for the nature of the risks associated with its Business.

(b) All material Software that is exclusively used in or held for exclusive use in the Business is in machine readable form and is in good working condition. Such Software (i) contains no Disabling Devices; and (ii) other than those errors and defects in such Software that were timely remedied, and which did not, individually or in the aggregate, cause Seller, any of its Subsidiaries or any customer to suffer any material harm, such Software has not suffered from any material or recurring malfunctions.

(c) No material Software that is part of the Owned Intellectual Property is licensed to third parties, including Affiliates or Subsidiaries of Seller.

(d) Seller possesses a current, accurate and complete copy of the source code to all material Software comprising Owned Intellectual Property.

(e) Neither this Agreement, nor the transactions contemplated hereby, will result in (i) any third party being granted rights or access to, or the placement in or release from escrow, of any source code for any material Computer Software comprising Owned Intellectual Property or (ii) Seller granting to any third party any right, title or interest to or with respect to any such Computer Software. Seller has not provided nor is it obligated under any agreement to which it is a party to provide the source code for any of such Computer Software to any other Person. Seller has not expressly authorized any other Person to reverse engineer, disassemble or decompile any of its software to create such source code.

(f) The Computer Hardware that, individually or in the aggregate, is material to the Business and is included in the Purchased Assets does not contain any Disabling Devices.

Section 3.18 *Finders' Fees* . Except for Rothschild Inc., whose fees will be paid by Seller, there is no investment banker, broker, finder or other intermediary that has been retained by or is authorized to act on behalf of Seller who might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement.

Section 3.19 *Taxes* .

(a) All income and other material Tax Returns (including Forms W-2 and 1099) required to be filed with respect to the Purchased Assets or Business have been timely filed. Each such Tax Return was correct and complete in all material respects. All material Taxes with respect to the Purchased Assets or Business (whether or not shown on any Tax Return) that are due and payable have been timely paid. Seller is not currently the beneficiary of any extension of time with respect to the Purchased Assets or Business within which to file any Tax Return, nor has Seller made any request for such extensions that is currently pending. No claim has ever been made by an authority in a jurisdiction where Seller does not file Tax Returns that it is or may be subject to taxation by that jurisdiction with respect to the Purchased Assets or Business. There are no Liens (other than Permitted Liens) on any of the Purchased Assets that arose in connection with any failure (or alleged failure) to pay any Tax. Seller has withheld and paid all material Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder, or other third party relating to the Purchased Assets or Business.

(b) No deficiency assessment with respect to or proposed adjustment of Seller's Taxes with respect to the Purchased Assets is pending. There is no action, dispute, audit, or claim concerning any Tax of Seller with respect to the Purchased Assets or Business either (i) claimed or raised by any authority in writing or (ii) as to which Seller has knowledge.

(c) No power of attorney is currently in force with respect to any tax matter relating to the Purchased Assets or Business that would be binding with respect to the Purchased Assets or the Business after closing.

(d) There is no outstanding waiver of any statute of limitations in respect of Taxes or agreement to extend the time with respect to a Tax assessment or deficiency relating to the Purchased Assets or Business, nor has Seller requested such waivers or extensions.

(e) None of the Purchased Assets are treated as owned by any other person other than Seller under Code Section 168.

(f) Seller does not have any, and to Seller's knowledge there is no, obligation to pay any Taxes of another person imposed in connection with the Purchased Assets or the Business as a result of Treasury Regulations 1.1502-6 (or any similar provision of state, local, or foreign law), or as a result of being a transferee or successor, or as a result

of a contract (excluding contracts executed in the ordinary course of business that customarily include Tax provisions but do not primarily relate to Taxes), or otherwise.

(g) With respect to the Business and the Purchased Assets, there are no prepaid amounts received on or prior to the date hereof but not included in taxable income as of the date hereof.

(h) Seller is not a party to any Tax allocation, Tax sharing or similar agreement with respect to the Purchased Assets or the Business.

Section 3.20 *Environmental Compliance* . Except as to matters that would not reasonably be expected to have a Material Adverse Effect:

(a) (i) no written notice, order, request for information, complaint or penalty has been received by Seller, and (ii) there are no judicial, administrative or other actions, suits or proceedings pending or threatened, in the case of each of (i) and (ii), which allege a violation of any Environmental Law and relate to the Purchased Assets or the Business; and

(b) Seller has obtained or caused to be obtained all environmental permits necessary for Seller's operation of the Purchased Assets or the Business to comply with all applicable Environmental Laws (as in effect on the dates this representation is made), all such permits are in full force and effect as of the Closing Date, and Seller is in compliance with the terms of such permits and, with respect to the operation of the Purchased Assets and the Business by Seller, with all other applicable Environmental Laws (as in effect on the dates this representation is made). With respect to any such permits, Seller has used, or will use prior to the Closing Date, commercially reasonable efforts to facilitate transferability of the same, and to the knowledge of Seller, there exists no condition, event or circumstance that would reasonably be expected to prevent or impede the transferability of the same, and has not received any written notice regarding any material adverse change in the status or terms and conditions of the same.

Section 3.21 *Accounts Receivable* . The Accounts Receivable reflected on the Statement of Assets and Liabilities and the Accounts Receivable arising from the date thereof to the date hereof (a) have arisen from bona fide transactions entered into by Seller involving the sale of goods or the rendering of services in the ordinary course of business consistent with past practice; and (b) constitute only valid, undisputed claims of Seller not subject to claims of set-off or other defenses or counterclaims other than normal cash discounts accrued and product returns reserved in the ordinary course of business consistent with past practice.

Section 3.22 *Customers And Suppliers* .

(a) Section 3.22(a) of the Seller Disclosure Schedule sets forth with respect to the Business (i) the top ten retailers and distributors for each of the two most recent fiscal years and for the three months ended March 31, 2016 (collectively, the " **Material Distributors** ") and (ii) the net revenues in respect of each Material Distributors during such periods. Except as set forth in Section 3.08(b), as of the date hereof, Seller has not received any written notice that any of the Material Distributors has ceased, or intends to cease after the Closing, to distribute the goods of the Business or to otherwise terminate or materially reduce its relationship with the Business, and as of the date hereof, to the knowledge of Seller, none of the Material Distributors intends to do any of the foregoing.

(b) Section 3.22(b) of the Seller Disclosure Schedule sets forth with respect to the Business (i) the top ten suppliers for each of the two most recent fiscal years and for the three months ended March 31, 2016 (collectively, the " **Material Suppliers** "); and (ii) the amount of purchases from each Material Supplier during such periods. As of the date hereof, Seller has not received any written notice that any Material Supplier has ceased or intends to cease to supply goods or services to the Business or to otherwise terminate or materially reduce its relationship with the Business, and as of the date hereof, to the knowledge of Seller, none of the Material Suppliers intends to do any of the foregoing.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF BUYER

Except as set forth in the Buyer Disclosure Schedule, Buyer represents and warrants to Seller as of the date hereof and as of the Closing Date that:

Section 4.01 *Corporate Existence and Power* . Each of Buyer and the Company is a corporation duly incorporated, validly existing and in good standing under the laws of its jurisdiction of incorporation and has all corporate powers required to carry on its business as now conducted.

Section 4.02 *Corporate Authorization* . The execution, delivery and performance by Buyer and the Company of this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby are within the corporate powers of Buyer and the Company, as applicable, and have been duly authorized by all necessary corporate action on the part of Buyer and the Company, as applicable. This Agreement and the Ancillary Agreements constitute valid and binding agreements of Buyer and the Company, as applicable, enforceable against Buyer or the Company, as the case may be, in accordance with their terms (subject to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws affecting creditors' rights generally and general principles of equity).

Section 4.03 *Governmental Authorization* . The execution, delivery and performance by each of Buyer and the Company of this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby require no action by or in respect of, or filing with, any Governmental Authority.

Section 4.04 *Noncontravention* . The execution, delivery and performance by Buyer and the Company of this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby do not and will not (i) violate the certificate of incorporation or bylaws of the Company or Buyer or (ii) violate any Applicable Law.

Section 4.05 *The Company* .

(a) The Company has been formed exclusively for the purpose of entering into this Agreement and consummating the transactions contemplated hereby. The Company has conducted no other business. The assets, liabilities and other obligations of the Company immediately prior to the Closing are listed on Section 4.05 of the Buyer Disclosure Schedule.

(b) A true and correct copy of the certificate of incorporation and by-laws of the Company are attached hereto as Exhibit H. Buyer has made available to Seller a complete and accurate records of all meetings and other corporate actions taken by the board of directors of the Company and any committee thereof and by the Company's stockholders since the Company's inception. Section 4.05(b) of the Buyer Disclosure Schedule sets forth each agreement and contract to which the Company is a party.

Section 4.06 *Capitalization* . Immediately following the Closing, the authorized capital stock of the Company shall consist of 2,423,000 shares of Preferred Stock and 3,577,000 shares of Common Stock. Immediately following the Closing, all of the shares of Preferred Stock and the shares of Common Stock constituting the Stock Consideration shall have been duly authorized and validly issued, fully paid and nonassessable and free of preemptive rights.

(a) Except as set forth in this Section 4.06, there are no outstanding (i) shares of capital stock or voting securities of the Company, (ii) securities of the Company convertible into or exchangeable for shares of capital stock or voting securities of the Company or (iii) options or other rights to acquire from the Company or other obligation of the Company to issue, any capital stock, voting securities or securities convertible into or exchangeable for capital stock or voting securities of the Company (the items in clauses (i), (ii) and (iii) being referred to collectively as the " **Company Securities** "). There are no outstanding obligations of the Company to repurchase, redeem or otherwise acquire any of the Company Securities. Other than the Stockholder Agreement, there are no voting trusts, proxies, or other agreements or understandings with respect to the voting stock of the Company or any other matters involving any securities of the Company,

including with respect to the registration, sale or transfer (including agreements relating to rights of first refusal, co-sale rights or " **drag-along** " rights) of any the Company's capital stock, to which the Company is a party, by which the Company is bound, or of which the Company or Buyer has knowledge.

Section 4.07 *Finders' Fees* . There is no investment banker, broker, finder or other intermediary that has been retained by or is authorized to act on behalf of Buyer who might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement.

Section 4.08 *Inspections; No Other Representations* . Buyer is an informed and sophisticated purchaser, and has engaged expert advisors, experienced in the evaluation and purchase of property and assets such as the Purchased Assets as contemplated hereunder. Buyer acknowledges that Seller has given Buyer complete and open access to the key employees and facilities of the Business. Buyer acknowledges and agrees that the Purchased Assets are sold "as is" and Buyer agrees on behalf of itself and the Company to accept the Purchased Assets and the Business in the condition they are in on the Closing Date without reliance upon any express or implied representations or warranties of any nature made by or on behalf of or imputed to Seller, except as expressly set forth in this Agreement. Without limiting the generality of the foregoing, Buyer and the Company acknowledge that Seller makes no representation or warranty with respect to any projections, estimates or budgets delivered to or made available to Buyer of future revenues, future results of operations (or any component thereof), future cash flows or future financial condition (or any component thereof) of the Business or the future business and operations of the Business.

ARTICLE 5
Covenants of Seller

Seller agrees that:

Section 5.01 *Conduct of the Business* . From the date hereof until the Closing Date, Seller shall conduct the Business in the ordinary course of business and shall use its commercially reasonable efforts to (i) maintain satisfactory relationships with the customers, suppliers, and others having material business relationships with the Business, (ii) maintain in effect all material foreign, federal, state and local licenses, permits, consents, approvals and authorizations of the Business, and (iii) keep available the services of the Transferring Employees. Without limiting the generality of the foregoing, from the date hereof until the Closing Date, except as expressly set forth or contemplated by this Agreement or the Ancillary Agreements, disclosed on Section 5.01 of the Seller Disclosure Schedule, or approved by Buyer (which consent will not be unreasonably withheld, conditioned or delayed), Seller will not, solely with respect to the Business:

(a) incur any capital expenditures, except for (i) those contemplated by the capital expenditures budget previously provided to Buyer prior to the date hereof and (ii) any unbudgeted capital expenditures not to exceed $50,000 individually or $100,000 in the aggregate;

(b) acquire (by merger, consolidation, acquisition of stock or assets or otherwise), directly or indirectly, any assets, securities, properties, interests or businesses for the conduct of the Business, other than in the ordinary course of business;

(c) sell, lease, transfer, or otherwise dispose of any Purchased Assets or incur or suffer any Liens other than Permitted Liens with respect to any Purchased Assets, except (i) pursuant to existing contracts or commitments or (ii) otherwise in the ordinary course of business consistent with past practice;

(d) cancel any material debts or claims or amend, terminate or waive any material rights under any Material Contract;

(e) accelerate, terminate, materially modify or cancel any Material Contract;

(f) incur, assume or guarantee any indebtedness for borrowed money in connection with the Business except unsecured current obligations and liabilities incurred in the ordinary course of business consistent with past practice;

(g) adopt, amend, modify or terminate any Employee Benefit Plan except as required by Applicable Law, or accelerate the payment or vesting of amounts or benefits or amounts payable or to become payable under any Employee Benefit Plan, or fail to make any required contribution to any Employee Benefit Plan;

(h) grant any increase in the compensation or benefits of any current or former director, manager, officer, employee, independent contractor or other service provider of Seller or any of its Subsidiaries outside the ordinary course of business, or extend an offer of employment to, or hire, any employee or officer providing annual compensation in excess of $100,000 or terminate any such employee or officer;

(i) enter into any agreement or arrangement that limits or otherwise restricts in any material respect the conduct of the Business or any successor thereto or that, after the Closing Date, would reasonably be expected to limit or restrict in any material respect the Company from engaging or competing in any line of business;

(j) enter into any Contract that would be a Material Contract, other than purchase orders executed in connection with currently effective Contracts;

(k) change the methods of accounting or accounting practice by Seller, except as required by changes in GAAP as agreed to by its independent public accountants;

(l) materially change its cash management policies, practices and procedures with respect to collection of Accounts Receivable, inventory control, prepayment of

expenses, payment of trade accounts payable, accrual of other expenses, deferral of revenue and acceptance of customer deposits;

(m) settle, or offer or propose to settle, (i) any material litigation, investigation, arbitration, proceeding or other claim involving or against the Business or (ii) any litigation, arbitration, proceeding or dispute that relates to the transactions contemplated hereby;

(n) make, revoke or amend any material Tax election, execute any waiver or extend any restrictions on assessment or collection of any Tax, or enter into or make any amendment to any agreement or settlement with any Tax authority, in each case, if such action would adversely impact the Company, the Purchased Assets or the Business after the Closing; or

(o) agree or commit to do any of the foregoing.

Section 5.02 *Access to Information* . From the date hereof until the Closing Date, Seller will (i) give Buyer, its counsel, financial advisors, auditors and other authorized representatives reasonable access to the offices, properties, books and records of Seller relating to the Business, (ii) furnish to Buyer, its counsel, financial advisors, auditors and other authorized representatives such financial and operating data and other information relating to the Business as such Persons may reasonably request and (iii) instruct the employees, counsel and financial advisors of Seller to cooperate with Buyer in its investigation of the Business. Any investigation pursuant to this Section shall be conducted in such manner as not to interfere unreasonably with the conduct of the business of Seller. Notwithstanding the foregoing, Buyer shall not have access to personnel records of Seller relating to individual performance or evaluation records, medical histories or other information which in Seller's good faith opinion is sensitive or the disclosure of which could subject Seller to risk of liability.

(a) For a period of five years after the Closing, Seller shall, upon reasonable notice, afford reasonable access to Buyer, the Company and their respective agents to its properties, books, records, employees and auditors to the extent necessary or useful for Buyer or the Company in connection with any audit, investigation, dispute or litigation or any other reasonable business purpose relating to the Business or the Purchased Assets (including preparation of the Allocation Statement); provided that any such access by Buyer or the Company shall not unreasonably interfere with the conduct of the business of Seller. Buyer or the Company, as applicable, shall bear all of the out-of-pocket costs and expenses (including attorneys' fees, but excluding reimbursement for general overhead, salaries and employee benefits) reasonably incurred in connection with the foregoing.

Section 5.03 *Non-competition; Non-solicitation* .

(a) For a period of four years commencing on the Closing Date (the " **Restricted Period** "), Seller shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, (i) engage as a principal or for its own account or solely or jointly with others, or as stockholders in any corporation or joint stock association, or otherwise own an interest in, manage or operate any business that, directly or through its Affiliates or third parties, markets or sells products in the skincare or cosmetics fields (the " **Field** ") anywhere in the world (the " **Territory** "), or (ii) induce or encourage any material client, customer, supplier or licensor of the Business (including any existing or former client or customer of Seller and any Person that becomes a client or customer of the Business after Closing), or any other Person who has a material business relationship with the Business, to terminate or modify any such relationship. Notwithstanding the foregoing, (i) Seller may own, directly or indirectly, solely as an investment, securities of any Person if Seller is not a controlling Person of, or a member of a group which controls, such Person and does not, directly or indirectly, own 5% or more of any class of securities of such Person, (ii) nothing in this Section 5.03(a) shall be applicable (A) to any Person or any of its Affiliates (other than Seller and its Subsidiaries) that acquires an interest in Seller or any of its Subsidiaries after the date of this Agreement or (B) to any Person as of and following such time that such Person ceases to be a Subsidiary or Affiliate of Seller, (iii) Seller may sell any ingredient of Seller other than Alguronic Acid (as defined in the Patent Assignment Agreement), including triglyceride oils, bioproduct and whole cell algae, to any Person for any use, and (iv) Seller may market and sell, or partner with a third party to market and sell, currently existing inventory of the EverDeep line of products previously marketed and sold by Seller.

(b) During the three years following the Closing, Seller, on the one hand, and Buyer and the Company, on the other hand, shall not, and shall cause their respective Subsidiaries not to, directly or indirectly, solicit any person who is a Transferred Employee or who is an employee of Seller as of immediately following the Closing, respectively, or encourage any such employee to leave such employment, except pursuant to a general solicitation which is not directed specifically to any such employees; provided, that nothing in this Section 5.03(b) shall prevent any party or any of its Subsidiaries from soliciting (i) any employee of any party whose employment has been terminated by such party or (ii) any employee who responds to a general solicitation not directed specifically at such Person (such as, without limitation, newspaper advertisements or participation at job fairs).

(c) The parties acknowledge that a breach or threatened breach of this Section 5.03 would give rise to irreparable harm, for which monetary damages may not be an adequate remedy, and hereby agree that in the event of a breach or a threatened breach by a party hereto of any such obligations, any other party shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to seek equitable relief, including a temporary restraining order, an injunction, specific

performance and any other relief that may be available from a court of competent jurisdiction.

(d) The parties hereto acknowledge that the restrictions contained in this Section 5.03 are reasonable and necessary to protect the legitimate interests of the parties hereto and constitute a material inducement to enter into this Agreement and consummate the transactions contemplated by this Agreement. In the event that any covenant contained in this Section 5.03 should ever be adjudicated to exceed the time, geographic, product or service or other limitations permitted by Applicable Law in any jurisdiction, then any court is expressly empowered to reform such covenant, and such covenant shall be deemed reformed, in such jurisdiction to the maximum time, geographic, product or service or other limitations permitted by Applicable Law. The covenants contained in this Section 5.03 and each provision hereof are severable and distinct covenants and provisions. The invalidity or unenforceability of any such covenant or provision as written shall not invalidate or render unenforceable the remaining covenants or provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such covenant or provision in any other jurisdiction.

Section 5.04 *Confidentiality* . For two years from and after the Closing, Seller shall, and shall cause its respective Affiliates to, hold, and shall use its reasonable best efforts to cause its or their respective representatives to hold, in confidence any and all information, whether written or oral, concerning the Purchased Assets or the Business; provided, that with respect to any Trade Secret included in the Transferred Intellectual Property, the foregoing obligations shall instead survive until the first date, if ever, that such Trade Secret ceases to be a trade secret under Applicable Law; provided, further, that the foregoing obligations in this Section 5.04 will terminate with respect to any information to the extent that Seller can show that such information (a) is generally available to and known by the public before the date hereof; (b) is generally available to and known by the public through no fault of Seller, any of its Affiliates or their respective representatives; or (c) is lawfully acquired by Seller, any of its Affiliates or their respective representatives from and after the Closing from sources which are not prohibited from disclosing such information by a legal, contractual or fiduciary obligation. If Seller or any of its Affiliates or their respective representatives are compelled to disclose any information by judicial or administrative process or by other requirements of Applicable Law, Seller shall promptly notify the Company in writing and cooperate with the Company, at the Company's expense, to appropriately protect against or limit the scope of such disclosure. In such event, Seller shall disclose only that portion of such information which Seller is advised by its counsel in writing is legally required to be disclosed. Notwithstanding the foregoing Seller shall not be restricted from using such information to provide services to the Company pursuant to any applicable agreement between Seller and the Company.

Section 5.05 *No Negotiation* . Seller will not, nor will Seller permit or authorize, as applicable, any of its respective Affiliates, directors, officers, stockholders, employees,

agents, consultants and other advisors and representatives to solicit, initiate, encourage, knowingly facilitate, or entertain any inquiry or the making of any proposal or offer, enter into, continue or otherwise participate in any discussions or negotiations, or enter into any contract, furnish to any Person any non-public information or grant any Person access to its properties, books, contracts, personnel and records, or approve or recommend, or propose to approve or recommend, or execute or enter into, any letter of intent, agreement in principle, merger agreement, acquisition agreement, option agreement or other similar agreement or propose, whether publicly or to any director or securityholder, or agree to do any of the foregoing for the purpose of encouraging or facilitating any proposal, offer, discussions or negotiations; in each case regarding any transaction to acquire all or substantially all of the Purchased Assets or the Business, whether by merger, purchase of assets, license or otherwise, other than with Buyer. Seller will immediately cease and cause to be terminated any such negotiations, discussion or contracts (other than with Buyer) that are the subject of clauses (a) or (b) above and will immediately cease providing and secure the return of any non-public information and terminate any access of the type referenced in clause (c) above.

ARTICLE 6
COVENANTS OF BUYER

Buyer agrees that:

Section 6.01 *Confidentiality* . Prior to the Closing, all confidential documents and information concerning Seller or the Business furnished in connection with the transaction contemplated hereby shall be subject to the Confidentiality Agreement, which shall remain in full force and effect in accordance with its terms.

Section 6.02 *Access* . For a period of five years after the Closing, the Company shall, upon reasonable notice, afford reasonable access to its properties, books, records, employees and auditors to the extent necessary to permit Seller to determine any matter relating to its rights and obligations hereunder or to any period ending on or before the Closing Date; provided that any such access by Seller shall not unreasonably interfere with the conduct of the business of the Company.

ARTICLE 7
COVENANTS OF BUYER, SELLER AND THE COMPANY

Buyer, the Company and Seller agree that:

Section 7.01 *Efforts; Further Assurance* .

(a) Subject to the terms and conditions of this Agreement, Buyer, the Company and Seller will use their commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable under Applicable Law to consummate the transactions contemplated by this Agreement, including (i) preparing and filing as promptly as practicable with any Governmental Authority or other third party all documentation to effect all necessary filings, notices, petitions, statements, registrations, submissions of information, applications and other documents and (ii) obtaining and maintaining all approvals, consents, registrations, permits, authorizations and other confirmations required to be obtained from any Governmental Authority or other third party that are necessary, proper or advisable to consummate the transactions contemplated by this Agreement, including without limitation the consents listed on Section 7.01(a) of the Seller Disclosure Schedule; provided that the parties hereto understand and agree that the commercially reasonable efforts of any party hereto shall not be deemed to include (i) entering into any settlement, undertaking, consent decree, stipulation or agreement with any Governmental Authority in connection with the transactions contemplated hereby; (ii) divesting or otherwise holding separate (including by establishing a trust or otherwise), or taking any other action (or otherwise agreeing to do any of the foregoing) with respect to the Business or the Purchased Assets or any assets or business of Buyer, the Company or any of their Affiliates; (iii) making payments to unaffiliated third parties (except as set forth in this Agreement), incurring non-de minimis liabilities (including any guarantees or other non-monetary security) to unaffiliated third parties or granting any non-de minimis concessions or accommodations (financial or otherwise) unless the other party agrees to reimburse and make whole such party to its reasonable satisfaction for such liabilities, concessions or accommodations requested to be made by the other party, (iv) violating any Applicable Law, or (v) initiating any litigation or arbitration. Seller, the Company and Buyer agree to execute and deliver such other documents, certificates, agreements and other writings and to take such other actions as may be necessary or desirable in order to consummate or implement expeditiously the transactions contemplated by this Agreement and to vest in the Company good title to the Purchased Assets.

(b) Seller, the Company and Buyer agree to negotiate in good faith to finalize the exhibits and Statements of Work to the Transition Services Agreement as promptly as practicable after the date hereof.

Section 7.02 *Certain Filings* . Seller and Buyer shall cooperate with one another (i) in determining whether any action by or in respect of, or filing with, any Governmental Authority is required, or any actions, consents, approvals or waivers are required to be obtained from parties to any material contracts, in connection with the consummation of the transactions contemplated by this Agreement and (ii) in taking such actions or making any such filings, furnishing information required in connection therewith and seeking timely to obtain any such actions, consents, approvals or waivers.

Section 7.03 *Public Announcements* . No party shall issue any press release or make any public statement with respect to this Agreement or the transactions contemplated hereby without the prior written consent of the other party hereto, except for any press releases and public statements the making of which may be required by Applicable Law or any listing agreement with any national securities exchange.

Section 7.04 *WARN Act* . Buyer and the Company shall assume all obligations and liabilities for the provision of notice or payment in lieu of notice or any applicable penalties under the Worker Adjustment and Retraining Notification Act (the " **WARN Act** ") or any similar state or local law arising as a result of the transactions contemplated by this Agreement with respect to the Business Employees. Buyer and the Company hereby jointly and severally indemnify Seller and its Affiliates against and agree to hold each of them harmless from any and all Damages incurred or suffered by Seller or any of its Affiliates with respect to WARN or any similar state or local law arising as a result of the transactions contemplated by this Agreement with respect to the Business Employees.

Section 7.05 *Notification* .

(a) Each of Seller and Buyer will give prompt notice to the other (an " **Update Notice** ") of (a) the occurrence, or non-occurrence, of any event (a " **Change** ") that such party acquires knowledge of, the occurrence or non-occurrence of which would reasonably be expected to have a Material Adverse Effect, in each case at any time from and after the date of this Agreement until the Closing, and (b) any failure to comply with or timely satisfy any covenant, condition or agreement to be complied with or satisfied by such party under this Agreement that such party acquires knowledge of. No notification pursuant to this Section 7.05(a) will be deemed to amend or supplement the Seller Disclosure Schedule, prevent or cure any misrepresentation, breach of warranty or breach of covenant, or limit or otherwise affect any rights or remedies available to the party receiving notice, including pursuant to ARTICLE 11.

(b) Not fewer than three (3) Business Days prior to the Closing, Seller will deliver to Buyer a supplement to Section 3.08 of the Seller Disclosure Schedule, which will identify those contracts entered into by Seller after the date of this Agreement not in violation of the terms hereof that would have constituted a " **Material Contract** " if such contracts had been in effect as of the date hereof, and such Contracts identified on such supplement to Section 3.08 of the Seller Disclosure Schedule will be deemed " **Material Contracts** " for all purposes hereof so long as such Contracts were entered into in accordance with the terms hereof.

Section 7.06 *Trademarks* . After the Closing, the Company shall not use any Trademark of Seller other than any Trademark included in the Transferred Intellectual Property.

ARTICLE 8
TAX MATTERS

Section 8.01 *Tax Cooperation; Allocation of Taxes* .

(a) Buyer, the Company and Seller agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance relating to the Business and the Purchased Assets (including access to books and records) as is reasonably necessary for the filing of all Tax returns, the making of any election relating to Taxes, the preparation for any audit by any taxing authority, and the prosecution or defense of any claim, suit or proceeding relating to any Tax. The Company and Seller shall retain all books and records with respect to Taxes pertaining to the Purchased Assets for a period of at least seven years following the Closing Date. Seller, the Company and Buyer shall cooperate with each other in the conduct of any audit or other proceeding relating to Taxes involving the Purchased Assets or the Business.

(b) All real property taxes, personal property taxes and similar ad valorem obligations levied with respect to the Purchased Assets or the Business for a taxable period which includes (but does not end on) the Closing Date (collectively, the " **Apportioned Tax Obligations** ") shall be allocated between the Pre-Closing Tax Period and the Post-Closing Tax Period based on the number of days of such taxable period included in the Pre-Closing Tax Period and the number of days of such taxable period included in the Post-Closing Tax Period. Seller shall be liable for the proportionate amount of such Taxes that is attributable to the Pre-Closing Tax Period. The Company shall be liable for the proportionate amount of such Taxes that is attributable to the Post-Closing Tax Period. Any prepayments by Seller prior to Closing relating to Apportioned Tax Obligations shall be applied to, and reduce, the portion of the Apportioned Tax Obligation allocated to the Pre Closing Tax Period. If the prepayment described above shall exceed the portion of the Apportioned Tax Obligation allocated to the Pre Closing Tax Period then the excess shall be considered an overpayment subject to Section 8.01(e).

(c) All excise, sales, use, value added, registration stamp, recording, documentary, conveyancing, franchise, property, transfer, gains and similar Taxes, levies, charges and fees and related Tax Return preparation and filing costs (collectively, " **Transfer Taxes** ") incurred in connection with the transactions contemplated by this Agreement shall be borne by Buyer. Buyer, the Company and Seller shall cooperate in providing each other with any appropriate resale exemption certifications and other similar documentation.

(d) Apportioned Tax Obligations and Transfer Taxes shall be timely paid, and all applicable filings, reports and returns shall be filed, as provided by Applicable Law. The paying party shall be entitled to reimbursement from the non-paying party in accordance with Section 8.01(b) or Section 8.01(c), as the case may be. Upon payment of any such Apportioned Tax Obligation or Transfer Tax, the paying party shall present a

statement to the non-paying party setting forth the amount of reimbursement to which the paying party is entitled under Section 8.01(b) or Section 8.01(c), as the case may be together with such supporting evidence as is reasonably necessary to calculate the amount to be reimbursed. The non-paying party shall make such reimbursement promptly but in no event later than 10 days after the presentation of such statement.

(e) The Company shall promptly pay to Seller an amount equal to any refund or overpayment credit (including any interest paid or credited with respect thereto) received by the Company or any of its Affiliates (other than Seller) in connection with the Purchased Assets or the Business relating to any Pre-Closing Tax Period, less any Taxes and applicable costs and expenses incurred in connection with the receipt of such refund or overpayment credit (which, with respect to a taxable period that includes (but does not end on) the Closing Date, shall be determined in a manner consistent with Section 8.01(b)). If the amount of any refund or credit of Taxes that was paid to Seller is subsequently disallowed or reduced by any Governmental Authority, then Seller shall promptly pay to the Company the amount of such Taxes incurred as a result of such disallowed or reduced refund or credit.

(f) Seller, at its own expense, shall prepare, and with the Company's cooperation, timely file all Tax Returns of the Seller (other than income tax returns) relating to the Purchased Assets and the Business in respect of all taxable periods ending on or before the Closing Date for which Tax Returns have not been filed as of the Closing Date. The Tax Returns referred to in the preceding sentence shall be prepared in manner consistent with past practice. An exact copy of any such Tax Return filed by the Seller and relating solely to the Purchased Assets or the Business, and evidence of payment of such Taxes, shall be provided to the Company promptly after such Tax Return is filed. The Company shall prepare and timely file all returns with respect to Taxes relating to the Purchased Assets or the Business for the taxable period beginning before and ending after the Closing Date.

(g) After the Closing, none of Seller or its Affiliates shall file a Tax Return or an amended return (or otherwise change such Tax Returns or make or change an election relating thereto) with respect to taxable periods or portions thereof ending on or before the Closing without the written consent of the Company (which consent shall not be unreasonably withheld, conditioned or delayed) if such action would adversely affect the Company, the Business or the Purchased Assets after the Closing.

(h) To the extent permitted by Applicable Law, the parties agree that any indemnification payments (and/or payments or adjustments) made with respect to this Agreement shall be treated for all Tax purposes as an adjustment to the purchase price.

(i) In the event that a dispute arises between Seller and the Company as to the amount of Taxes or indemnification or any matter relating to Taxes attributable to the Business or the Purchased Assets the parties shall attempt in good faith to resolve such dispute, and any agreed upon amount shall be paid to the appropriate party. If such dispute is not resolved thirty (30) calendar days thereafter, the parties shall submit the

dispute to an independent accounting firm mutually chosen by the Company and Seller for resolution, which resolution shall be final, conclusive and binding on the parties. Notwithstanding anything in the Agreement to the contrary, the fees and expenses of the independent accounting firm in resolving this dispute shall be borne equally by Seller and the Company.

ARTICLE 9
EMPLOYEE BENEFITS

Section 9.01 *Employee Benefit Plan Representations* . Seller hereby represents and warrants to Buyer and the Company that:

(a) Section 9.01(a) of the Seller Disclosure Schedule contains a correct and complete list identifying each material Employee Benefit Plan. With respect to each material Employee Benefit Plan, (i) current and complete copies of such Employee Benefit Plan has been made available to Buyer, if written, or a description of such Employee Benefit Plan, if not written and (ii) to the extent applicable to such Employee Benefit Plan, the following documents have been made available to Buyer: all trust agreements, insurance policies or other funding arrangements; the most recent Form 5500 (including all schedules thereto) required to have been filed with the Internal Revenue Service and all schedules thereto; the most recent Internal Revenue Service determination letter, all current employee handbooks or manuals; all current summary plan descriptions; all material communications received from or sent to the Internal Revenue Service or the Department of Labor (including a written description of any oral communication) within the last calendar year; and all amendments and modifications to any such document.

(b) None of Seller, any of its ERISA Affiliates or any predecessor thereof does, or in the past six years did, sponsor, maintain or contribute to any Title IV Plan.

(c) None of Seller, any of its ERISA Affiliates or any predecessor thereof contributes to, or has in the past six years contributed to, any Multi-Employer Plan.

(d) Each Employee Benefit Plan is, and has been, established and administered in material compliance with the terms of such Employee Benefit Plan (including the terms of any documents in respect of such Employee Benefit Plan) and all Applicable Laws.

(e) Neither Seller nor any of its Subsidiaries maintains, sponsors, contributes or has any obligation to contribute to, or has any liability or would reasonably be expected to have any liability with respect to, any Employee Benefit Plan providing health or life insurance or other welfare-type benefits for former, current or future retired or terminated employees or service providers (or any spouse or other dependent thereof) other than as mandated by the group health plan continuation coverage requirements of Part 6 of

Subtitle B of Title I of ERISA and Section 4980B of the Code, and of any similar state legal requirement.

(f) Except as set forth in Section 9.01(f) of the Seller Disclosure Schedule, the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements (either alone or in combination with another event) will not (i) entitle any Business Employee to severance pay, change in control payments or any other payment, or (ii) accelerate the time of payment or vesting, or increase the amount of compensation due any such individual.

(g) Neither Seller nor any of its Subsidiaries has a legally binding plan or commitment to create any additional Employee Benefit Plan or to modify or change any existing Employee Benefit Plan with respect to the Business Employees that would be reasonably expected to result in material liability to the Company, except as may be required by Applicable Law.

(h) Neither Seller nor any of its Subsidiaries are party or subject to, or currently negotiating, any collective bargaining agreement, and there are no labor unions or other organizations representing, purporting to represent, or attempting to represent any Business Employee. Within the past three years, there has not occurred or been threatened any strike, slowdown, picketing, work stoppage, concerted refusal to work overtime, or other similar labor activity with respect to any Business Employee and, to the knowledge of Sellers, no event has occurred or circumstance exists that would reasonably be expected to provide the basis of any strike, slowdown, picketing, work stoppage, concerted refusal to work overtime, or other similar labor activity. There are no employment disputes currently subject to any grievance procedure, arbitration, litigation or other proceeding with respect to the Business Employees. There are no pending or, to the knowledge of Seller, threatened filings of any unfair labor practice charges or certification petitions regarding representation of Business Employees at the National Labor Relations Board or other similar agencies.

Section 9.02 *Employees and Offers of Employment* .

(a) Section 9.02(a) of the Seller Disclosure Schedule sets forth a list of the names, titles, date of hire or appointment and current base salary, commissions, bonus opportunity, accrued and unused paid time off, wage rates or other compensation of all Business Employees. To the knowledge of Seller, no Business Employee has any plans to terminate employment with Seller.

(b) Effective as of the Closing Date, Seller shall terminate all of the Transferred Employees immediately prior to Closing and shall pay all such employees (or applicable Governmental Body) any amounts due to such employees earned on or prior to the Closing Date for accrued wages, any other benefits, employment taxes and any other claims and obligations related to employment. No more than two (2) Business Days prior to the Closing Date, Buyer shall, or shall cause an Affiliate of Buyer to, offer

employment with the Company to all active Business Employees listed on Section 9.02(b) of the Seller Disclosure Schedule, with such employment to be effective on the Closing Date. For purposes of this Section 9.02(b)the term " **active Business Employee** " shall mean any Business Employee who, on the Closing Date, is actively employed by Seller or who is on short-term disability leave, authorized leave of absence, leave required by Applicable Law, military service or lay-off with recall rights as of the Closing Date (such inactive employees shall be offered employment by the Company as of the date they return to active employment), but shall exclude any other inactive or former employee including any Person who has been on long-term disability leave or unauthorized leave of absence or who has terminated his or her employment, retired or died on or before the Closing Date. For 12 months following the Closing Date, each such offer by the Company shall provide for (i) a base salary (or base wages) and annualized cash bonus opportunity, in the aggregate, no less favorable than the base salary (or base wages) and annualized cash bonus opportunity provided to such employee immediately prior to the Closing, and (ii) benefits that are substantially comparable in the aggregate to the benefits provided to such employee immediately prior to the Closing, other than equity compensation and severance arrangements (such offer, a " **Qualifying Offer** "). The Business Employees who accept and commence employment with the Company are hereinafter collectively referred to as the " **Transferred Employees.** " Seller will not take, and will cause each of its subsidiaries not to take, any action which would impede, hinder, interfere or otherwise compete with the Company's effort to hire any Transferred Employees. The Company shall not assume responsibility for any Transferred Employee until such employee commences employment with the Company. Those active Business Employees who receive and reject such offer of employment, and all current or former directors, independent contractors, and all other employees of Seller and its Subsidiaries, other than Business Employees, are referred to herein as " **Excluded Employees.** "

Section 9.03 *Seller's Employee Benefit Plans* .

(a) Notwithstanding anything to the contrary contained in this Agreement, Seller and its ERISA Affiliates shall remain and be responsible for any and all liabilities or obligations or claims in respect of (i) all Transferred Employees and their beneficiaries and dependents arising on or before the Closing Date, except as expressly set forth in Section 9.04(b), (ii) all Employee Benefit Plans, whether arising before, on or after the Closing Date, except as expressly set forth in Section 9.04(b) and (iii) all Excluded Employees and their beneficiaries and dependents, whether arising before, on or after the Closing Date; provided, that Buyer shall reimburse Seller for any severance benefits paid to any active Business Employee listed on Section 9.02(a) of the Seller Disclosure Schedule to whom the Company does not extend a Qualifying Offer, does not become a Transferred Employee, and whose employment is terminated by Seller within the 30 day period beginning on and including the Closing Date. Without limiting the generality of the foregoing and except as otherwise expressly set forth herein, Seller and its ERISA Affiliates shall remain solely responsible for (A) all liabilities or obligations or claims arising out of the consummation of the transactions contemplated hereby, including, without limitation, change of control, sale bonus, stay bonus, retention bonus, severance

and similar obligations under any Employee Benefit Plan maintained, entered into, or contributed to by Seller or its Subsidiaries and (B) any and all liabilities, obligations or claims described in Section 4890B of the Code (or similar state law) which, in all cases, are or may become payable prior to or in connection with the consummation of the transactions contemplated by this Agreement. For purposes of this Section 9.03, a claim for welfare benefits shall be deemed to have been incurred when (x) with respect to medical or dental benefits, the medical or dental services giving rise to such claims are performed and (y) with respect to life, disability or accidental death or dismemberment, or workers' compensation benefits, when the event, condition or illness giving to such claim occurs. Neither Buyer, the Company, nor any of their respective Affiliates shall have any liability with respect to any of the foregoing. Except as expressly set forth herein, no assets of any Employee Benefit Plan shall be transferred to the Company or any of its Affiliates or to any plan of the Company or any of its Affiliates.

Section 9.04 *Company Benefit Plans* .

(a) Effective as of the Closing Date, each Transferred Employee shall cease to participate in and accrue benefits under the Employee Benefit Plans, and each Transferred Employee shall commence participation in the Company's employee benefit plans (" **Company Benefit Plans** "). Where service with the Company is a relevant criterion for each Transferred Employee for purposes of eligibility for membership in and entitlement to benefits (other than benefit accrual) under the Company Benefit Plans, the Company Benefit Plans shall recognize each Transferred Employee's period of service with Seller to the same extent recognized by the applicable Employee Benefit Plan (except to the extent that it would result in any duplication of benefits for the same period of service).

(b) The Company shall be responsible, in accordance with the terms of the applicable Company Benefit Plans, for any and all benefits accrued or claims incurred by the Transferred Employees (and their eligible spouses, beneficiaries and dependents) on and after the Closing Date, including any liabilities and obligations under an Employee Benefit Plan that is a bonus plan or arrangement or any vacation plans, arrangements, or policies.

(c) The Company will, using commercially reasonable efforts, waive, or cause to be waived, any pre-existing medical condition or other restriction that would prevent immediate and full participation of any Transferred Employee in the Company Benefit Plans. In addition, where the benefits provided under a Company Benefit Plan are subject to a deductible in respect of the benefits provided to an individual during a certain period of time, the Company shall, using commercially reasonable efforts, take into account the amount of any corresponding deductible which has already been paid by the applicable Transferred Employee during such period and prior to the Closing Date under the corresponding Employee Benefit Plan to the same extent as such amounts had been recognized under such plan, for the purpose of determining the amount of the deductible

to be paid by the Transferred Employee under the Company Benefit Plan after the Closing Date.

(d) Pursuant to the " **Standard Procedure** " provided in section 4 of Revenue Procedure 2004-53, 2004-34 I.R.B. 320, (i) Buyer and Seller shall report on a predecessor/successor basis as set forth therein, (ii) Seller and its Subsidiaries will not be relieved from filing a W-2 with respect to any active Business Employees including the Transferred Employees, and (iii) the Company will undertake to file (or cause to be filed) a Form W-2 for each Transferred Employee with respect to the portion of the year during which such Transferred Employee is employed by the Company or an Affiliate thereof that includes the Closing Date, excluding the portion of such year that such Transferred Employee was employed by Seller or its Subsidiaries.

(e) To the extent permitted by Applicable Law and contract, Seller and its Subsidiaries shall provide the Company with certain relevant information, as reasonably requested by the Company, with respect to the Transferred Employees to assist in effecting their employment by the Company or an Affiliate thereof following the Closing Date in an orderly fashion.

Section 9.05 *No Third Party Beneficiaries* . No provision of this Article shall create any third party beneficiary or other rights in any employee or former employee (including any beneficiary or dependent thereof) of Seller or of any of its Subsidiaries in respect of continued employment (or resumed employment) with either the Company or the Business or any of their Affiliates and no provision of this ARTICLE 9 shall create any such rights in any such Persons in respect of any benefits that may be provided, directly or indirectly, under any Employee Benefit Plan or any plan or arrangement which may be established by the Company or any of its Affiliates. No provision of this Agreement shall constitute a limitation on rights to amend, modify or terminate after the Closing Date any such plans or arrangements of the Company or any of its Affiliates.

ARTICLE 10
CONDITIONS TO CLOSING

Section 10.01 *Conditions to Obligations of Buyer and Seller* . The obligations of Buyer and Seller to consummate the Closing are subject to the satisfaction of the following condition:

(a) No provision of any Applicable Law shall prohibit the consummation of the Closing.

Section 10.02 *Conditions to Obligation of Buyer* . The obligation of Buyer to consummate the Closing is subject to the satisfaction of the following further conditions:

(a) (i) Seller shall have performed in all material respects all of its obligations hereunder required to be performed by it on or prior to the Closing Date, (ii) the representations and warranties of Seller contained in this Agreement and in any certificate or other writing delivered by Seller pursuant hereto (disregarding all materiality and Material Adverse Effect qualifications contained therein) shall be true and correct at and as of the Closing Date as if made at and as of such date (other than representations and warranties that by their terms address matters only as of another specified time, which shall be true and correct only as of such time), with, in the case of this clause (ii), only such exceptions as have not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and (iii) Buyer shall have received a certificate signed by an authorized officer of Seller to the foregoing effect.

(b) Seller shall have executed and delivered to Buyer and the Company each of the Ancillary Agreements.

(c) Seller shall have received the consents, authorizations, or approvals set forth in Section 10.02(c) of the Seller Disclosure Schedule (the " **Required Consents** "), in each case in form and substance reasonably satisfactory to Buyer, and no such consent, authorization or approval shall have been revoked.

(d) Buyer shall have received all documents it may reasonably request relating to the existence of Seller and the authority of Seller for the execution of this Agreement, all in form and substance reasonably satisfactory to Buyer.

(e) Seller shall have provided to the Company a certification in form and content reasonably acceptable to the Company, dated as of the Closing Date, executed by Seller stating, under penalty of perjury, Seller's United States taxpayer identification number and that Seller is not a foreign person, pursuant to Code Section 1445(b)(2).

(f) Seller shall have provided to the Company a properly executed IRS Form W-9.

(g) Seller shall have provided to the Company payoff letters, UCC-3 termination statements and other customary releases, duly executed by the secured party, terminating any Liens (other than Permitted Liens) on the Purchased Assets.

(h) Seller shall have provided to the Company such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Buyer, as may be required to give effect to this Agreement.

Section 10.03 *Conditions to Obligation of Seller* . The obligation of Seller to consummate the Closing is subject to the satisfaction of the following further conditions:

(a) (i) Buyer and the Company shall have performed in all material respects all of their obligations hereunder required to be performed by them at or prior to the Closing Date, (ii) the representations and warranties of Buyer contained in the first sentence of

Section 4.05(b) and in Section 4.06 of this Agreement shall be true and correct as of the Closing Date as if made at and as of such time, (iii) all other representations and warranties of Buyer contained in this Agreement and in any certificate or other writing delivered by Buyer or the Company pursuant hereto (disregarding all materiality and Material Adverse Effect qualifications contained therein) shall be true and correct at and as of the Closing Date as if made at and as of such date (other than representations and warranties that by their terms address matters only as of another specified time, which shall be true and correct only as of such time), with, in the case of this clause (iii), only such exceptions as have not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and (iv) Seller shall have received a certificate signed by an authorized officer of Buyer to the foregoing effect.

(b) Buyer and the Company, as applicable, shall have executed and delivered to Seller each of the Ancillary Agreements.

(c) Seller shall have received all documents it may reasonably request relating to the existence of Buyer and the Company and the authority of Buyer and the Company to execute this Agreement, all in form and substance reasonably satisfactory to Seller.

ARTICLE 11
SURVIVAL; INDEMNIFICATION

Section 11.01 *Survival* . The representations and warranties of the parties hereto contained in this Agreement shall survive the Closing until the 18-month anniversary of the Closing Date; provided that the representations and warranties contained in (a) Section 3.01, Section 3.02, Section 3.18, Section 4.01, Section 4.02, and Section 4.07 shall survive indefinitely, (b) Section 3.19 shall survive until the expiration of the relevant statutes of limitations plus 60 days and (c) Section 3.15 shall survive until the two year anniversary of the Closing Date (such representations and warranties, the " **Specified Representations** "). The covenants and agreements of the parties hereto contained in this Agreement to be performed after the Closing shall survive the Closing indefinitely or for the shorter period explicitly specified therein, except that for such covenants and agreements that survive for such shorter period, breaches thereof shall survive indefinitely or until the latest date permitted by law. Notwithstanding the preceding sentences, any breach of covenant, agreement, representation or warranty in respect of which indemnity may be sought under this Agreement shall survive the time at which it would otherwise terminate pursuant to the preceding sentence, if notice of the inaccuracy thereof giving rise to such right of indemnity shall have been given to the party against whom such indemnity may be sought prior to such time.

Section 11.02 *Indemnification* .

(a) Effective at and after the Closing, Seller hereby indemnifies the Company, Buyer and their respective Affiliates (the " **Buyer Indemnified Parties** ") against and

agrees to hold each of them harmless from, and shall pay and reimburse each of them for, any and all damages, losses, expenses, liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines or costs of whatever kind (including the cost of enforcing any right to indemnification hereunder, the cost of collecting any amounts available under insurance coverage, and, solely with respect to any Third Party Claims, reasonable expenses of investigation and reasonable attorneys' fees and expenses and any consequential or punitive damages actually awarded to a third party) (" **Damages** ") incurred or suffered by the Buyer Indemnified Parties based upon, arising out of, or by reason of:

(i) any misrepresentation or breach of warranty of Seller (each such misrepresentation and breach of warranty a " **Warranty Breach** ") pursuant to this Agreement;

(ii) any breach or non-fulfillment of any covenant or agreement made or to be performed by Seller pursuant to this Agreement; or

(iii) any Excluded Liability or Excluded Asset;

(iv) any matter disclosed on Section 11.02(a)(iv) of the Seller Disclosure Schedule.

provided, that with respect to indemnification by Seller for Warranty Breaches pursuant to Section 11.02(a)(i) (other than Warranty Breaches with respect to Specified Representations), (A) Seller shall not be liable unless the aggregate amount of Damages with respect to such Warranty Breaches exceeds $300,000, and then only to the extent of such excess, and (B) Seller's aggregate liability for all such Warranty Breaches shall not exceed $3,000,000; and further provided, that Seller's aggregate liability for all indemnification claims pursuant to Section 11.02(a)(i) shall not exceed the amount of the Cash Consideration.

(b) Effective at and after the Closing, the Company shall indemnify Seller and its Affiliates against and agree to hold each of them harmless from any and all Damages incurred or suffered by Seller or any of its Affiliates arising out of:

(i) any misrepresentation or breach of warranty of Buyer relating to the Company pursuant to this Agreement;

(ii) any breach or non-fulfillment of any covenant or agreement made or to be performed by the Company pursuant to this Agreement; or

(iii) any Assumed Liability.

(c) Effective at and after the Closing, Buyer shall indemnify Seller and its Affiliates against and agree to hold each of them harmless from any and all Damages incurred or suffered by Seller or any of its Affiliates arising out of:

(i) any misrepresentation or breach of a representation or warranty of Buyer (other than misrepresentations or breaches of representations or warranties described in Section 11.02(b)(i)); or

(ii) any breach or non-fulfillment of any covenant or agreement made or to be performed by Buyer pursuant to this Agreement.

provided, that with respect to indemnification by Seller for any misrepresentation or breach of warranty of the Company (other than with respect to Specified Representations), Buyer and the Company's aggregate liability for all such misrepresentations or breaches shall not exceed $3,000,000; and further provided, that Buyer and the Company's aggregate liability for all indemnification claims pursuant to Section 11.02(b)(i) and Section 11.02(c)(i) of this Agreement shall not exceed the amount of the Cash Consideration.

(d) Buyer and Seller agree to treat any indemnity payments made pursuant to this ARTICLE 11 as an adjustment to the Purchase Price for income Tax purposes.

(e) In no event shall an Indemnified Party be permitted to make a claim for indemnification under Section 11.03 or Section 11.04 (as the case may be) unless such claim is first made pursuant to this Agreement on or before the expiration of the survival of the subject representation, warranty or covenant giving rise to such claim.

Section 11.03 *Third Party Claim Procedures* .

(a) The party seeking indemnification under Section 11.02 (the " **Indemnified Party** ") agrees to give prompt notice in writing to the party against whom indemnity is to be sought (the " **Indemnifying Party** ") of the assertion of any claim or the commencement of any suit, action or proceeding by any third party (" **Third Party Claim** ") in respect of which indemnity may be sought under such Section. Such notice shall set forth in reasonable detail such Third Party Claim and the basis for indemnification (taking into account the information then available to the Indemnified Party). The failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of its obligations hereunder, except to the extent such failure shall have adversely prejudiced the Indemnifying Party.

(b) The Indemnifying Party shall be entitled to participate in the defense of any Third Party Claim and, subject to the limitations set forth in this Section, shall be entitled to control and appoint lead counsel for such defense, in each case at its own expense; provided, however, that (i) the Indemnifying Party may only assume control of such defense if (A) it acknowledges in writing to the Indemnified Party that any damages, fines, costs or other liabilities that may be assessed against the Indemnified Party in connection with such Third Party Claim constitute Damages for which the Indemnified Party shall be indemnified pursuant to Section 11.02, subject to the limitations otherwise set forth therein, and (B) 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.

(c) The Indemnifying Party shall not be entitled to assume or maintain control of the defense of any Third Party Claim and shall pay the fees and expenses of counsel retained by the Indemnified Party if (i) the Third Party Claim relates to or arises in connection with any criminal proceeding, action, indictment, allegation or investigation, (ii) the Indemnified Party reasonably believes an adverse determination with respect to the Third Party Claim would be materially detrimental to the reputation or future business prospects of the Indemnified Party or any of its affiliates, (iii) the Third Party Claim seeks an injunction or equitable relief against the Indemnified Party or any of its affiliates, (iv) the Indemnifying Party has failed or is failing to reasonably prosecute or defend the Third Party Claim, or (v) in the case of a Third Party Claim relating to Taxes, the Third Party Claim also relates to a taxable period or portion thereof beginning after the Closing Date.

(d) If the Indemnifying Party shall assume the control of the defense of any Third Party Claim in accordance with the provisions of this Section 11.03, the Indemnifying Party shall obtain the prior written consent of the Indemnified Party before entering into any settlement of such Third Party Claim (which consent shall not be unreasonably withheld, conditioned or delayed); provided no prior consent shall be required from the Indemnified Party in respect of settlement, compromise or discharge of such Third Party Claim if the settlement, compromise or discharge expressly and unconditionally releases the Indemnified Party and its affiliates from all liabilities and obligations with respect to such Third Party Claim and the settlement does not impose injunctive or other equitable relief against the Indemnified Party or any of its affiliates and, in the case of Tax matters, would not adversely affect the Company, the Business or the Purchased Assets after the Closing.

(e) In circumstances where the Indemnifying Party is controlling the defense of a Third Party Claim in accordance with paragraphs (b) and (c) above, the Indemnified Party shall be entitled to participate in the defense of any Third Party Claim and to employ separate counsel of its choice for such purpose, in which case the fees and expenses of such separate counsel shall be borne by the Indemnified Party; provided that in such event the Indemnifying Party shall pay the fees and expenses of such separate counsel (i) incurred by the Indemnified Party prior to the date the Indemnifying Party assumes control of the defense of the Third Party Claim or (ii) if the Indemnified Party reasonably concludes that representation of both the Indemnifying Party and the Indemnified Party by the same counsel would create a conflict of interest.

(f) If the Indemnifying Party does not assume the control of the defense of a Third Party Claim in accordance with the provisions of this Section 11.03, the Indemnified Party shall obtain the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld, conditioned or delayed) before entering into

any settlement of such Third Party Claim of any matter for which indemnification is required.

(g) Each party shall fully cooperate, and cause their respective affiliates to fully cooperate, in the defense, prosecution or settlement, as applicable, of any Third Party Claim and any Action that relates to an Excluded Liability, which cooperation shall include furnishing or causing to be furnished such records, information and testimony, and attending such conferences, discovery proceedings, hearings, trials or appeals, as may be reasonably requested in connection therewith, and, in connection with the settlement of any False Advertising Claim that relates to an Excluded Liability, removing or modifying any marketing materials, marketing activities or packaging of a product sold by the Business as reasonably required in connection with such settlement.

(h) Notwithstanding anything to the contrary set forth in this ARTICLE 11, Seller shall have exclusive authority and control over the investigation, prosecution, defense and appeal of any matters that solely relate to Excluded Liabilities.

Section 11.04 *Direct Claim Procedures* . In the event an Indemnified Party has a claim for indemnity under Section 11.02 against an Indemnifying Party, the Indemnified Party agrees to give prompt notice in writing of such claim to the Indemnifying Party. Such notice shall set forth in reasonable detail such claim and the basis for indemnification (taking into account the information then available to the Indemnified Party). The failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of its obligations hereunder, except to the extent such failure shall have prejudiced the Indemnifying Party. If the Indemnifying Party does not notify the Indemnified Party within 30 days following the receipt of a notice with respect to any such claim that the Indemnifying Party disputes its indemnity obligation to the Indemnified Party for any Damages with respect to such claim, such Damages shall be conclusively deemed a liability of the Indemnifying Party and the Indemnifying Party shall promptly pay to the Indemnified Party any and all Damages arising out of such claim. If the Indemnifying Party has timely disputed its indemnity obligation for any Damages with respect to such claim, the parties shall proceed in good faith to negotiate a resolution of such dispute and, if not resolved through negotiations, such dispute shall be resolved by litigation in an appropriate court of jurisdiction determined pursuant to Section 13.06.

Section 11.05 *Calculation of Damages* .

(a) The amount of any Damages payable under Section 11.02 by the Indemnifying Party shall be net of any (i) amounts recovered or recoverable by the Indemnified Party under applicable insurance policies, net of any premium increases, or from any other Person alleged to be responsible therefor and (ii) Tax Benefit realized by the Indemnified Party arising from the incurrence or payment of any such Damages in the taxable year the loss resulting in such Damages is incurred or the Damages are paid or any prior year. No Indemnified Party shall have any obligation to pursue recovery under

any insurance policies or indemnity, contribution or other similar contracts. The Indemnifying Party shall have the right to be informed of all such efforts. If the Indemnified Party receives any amounts under applicable insurance policies, or from any other Person alleged to be responsible for any Damages, subsequent to an indemnification payment by the Indemnifying Party, then such Indemnified Party shall promptly reimburse the Indemnifying Party for any payment made or expense incurred by such Indemnifying Party in connection with providing such indemnification payment up to the amount received by the Indemnified Party, net of any expenses incurred by such Indemnified Party in collecting such amount.

(b) For the purposes of clause Section 11.02(a) above only, " **Tax Benefit** " means, with respect to any event for which an indemnification payment is made under Section 11.02, the net Tax benefit actually realized as a result of the Damages incurred by the Indemnified Party, less any costs or expenses incurred in connection with the receipt of such Tax benefits. An Indemnified Party shall be deemed to have " **actually realized** " a net Tax benefit to the extent that, and at such time as, the amount of Taxes paid by it and its Affiliates is reduced below the amount of Taxes that such Persons would have been required to pay but for the applicable Damages taking into account taxes imposed on the Tax Benefits. In computing the amount of any Tax Benefit, an Indemnified Party and its Affiliates shall be deemed to recognize all other items of income, gain, loss, deduction or credit before recognizing any items arising from the incurrence or payment of any Loss for which indemnification is provided under this ARTICLE 11. If the Indemnified Party or any of its Affiliates actually realize any Tax Benefits subsequent to an indemnification payment by the Indemnifying Party in the taxable year the loss resulting in such Damages is incurred or the Damages are paid or any prior year, then such Indemnified Party shall promptly pay to the Indemnifying Party the amount of such Tax Benefits.

(c) The Indemnifying Party shall not be liable under Section 11.02 for any (i) Damages relating to any matter to the extent that (A) there is included in the Closing Statement of Assets and Liabilities a specific liability or reserve relating to such matter, or (B) the Indemnified Party had otherwise been compensated for such matter pursuant to the Purchase Price adjustment under Section 2.11; (ii) consequential or punitive Damages unless actually awarded in a Third Party Claim; (iii) Damages for lost profits; (iv) Damages that arise, or are increased, as a result of a change in Applicable Law (including but not limited to Tax laws) after the Closing Date; or (v) Damages for Taxes attributable to Post-Closing Tax Periods (other than Damages related to (x) Taxes which are Excluded Liabilities, or (y) breaches of representations contained in Section 3.19(c), Section 3.19(g) or Section 3.19(h)). For the avoidance of doubt, Damages for Taxes attributable to Post-Closing Tax Periods shall not include any interest or penalty imposed with respect to any Taxes arising in a Pre-Closing Tax Period.

(d) Each Indemnified Party shall use commercially reasonable efforts to mitigate in accordance with Applicable Law any loss for which such Indemnified Party seeks indemnification under this Agreement. If such Indemnified Party mitigates its loss after the Indemnifying Party has paid the Indemnified Party under any indemnification

provision of this Agreement in respect of that loss, the Indemnified Party must notify the Indemnifying Party and pay to the Indemnifying Party the extent of the value of the benefit to the Indemnified Party of that mitigation (less the Indemnified Party's reasonable costs of mitigation) within two Business Days after the benefit is received. Without limiting the foregoing, Buyer and the Company shall, and shall cause their respective affiliates to, use commercially reasonable efforts to mitigate in accordance with Applicable Law any Damages incurred by any of them in connection with any False Advertising Claim that relates to an Excluded Liability.

(e) For all purposes of this ARTICLE 11 only, once it has been established that there has been any breach of any representation or warranty, or any breach of any covenant or agreement, when calculating the amount of Damages resulting from such breach of any representation, warranty, covenant or agreement, any Material Adverse Effect or other materiality qualifier contained in any such representation or warranty will be disregarded.

(f) Notwithstanding the limitations on indemnification set forth in Section 11.02, such limitations shall not apply in the event of fraud by the Indemnifying Party.

(g) If the Indemnified Party receives any payment from an Indemnifying Party in respect of any Damages pursuant to Section 11.02 and the Indemnified Party could have recovered all or a part of such Damages from a third party (a " **Potential Contributor** ") based on the underlying Claim asserted against the Indemnifying Party, the Indemnified Party shall assign such of its rights to proceed against the Potential Contributor as are necessary to permit the Indemnifying Party to recover from the Potential Contributor the amount of such payment; provided that the Indemnified Party shall not be required to assign any right to proceed against a Potential Contributor if the Indemnified Party reasonably determines that such assignment would be materially detrimental to its reputation or future business prospects.

Section 11.06 *Exclusivity* . Except as specifically set forth in this Agreement, effective as of the Closing, each of Seller, on the one hand, and Buyer and the Company, on the other hand, hereto waive, on behalf of themselves and their Affiliates, any rights and claims such party may have against the Buyer and the Company, on the one hand, or the Seller, on the other hand, whether in law or in equity, relating to the Business or the transactions contemplated hereby, other than in the event of fraud. Except as specifically set forth in this Agreement, the rights and claims waived include claims for contribution or other rights of recovery arising out of or relating to any Environmental Law (whether now or hereinafter in effect), claims for breach of contract, breach of representation or warranty, negligent misrepresentation and all other claims for breach of duty. After the Closing, Section 7.04 and this ARTICLE 11 will provide the exclusive remedy for any claim of misrepresentation, breach of warranty, covenant or other agreement arising out of this Agreement or the transactions contemplated hereby (except as set forth in Section 2.11, Section 5.02, Section 6.02, with respect to breaches of the covenants contained in Section 7.06, or with respect to remedies pursuant to any claim of misrepresentation,

breach of warranty, covenant or other agreement arising out of the Ancillary Agreements).

ARTICLE 12
TERMINATION

Section 12.01 *Grounds for Termination* . This Agreement may be terminated at any time prior to the Closing:

(a) by mutual written agreement of Seller and Buyer;

(b) by either Seller or Buyer if the Closing shall not have been consummated on or before November 30, 2016; provided, that the right to terminate this Agreement pursuant to this Section 12.01(b) shall not be available to any party whose breach of any provision of this Agreement results in the failure of the Closing to be consummated by such time; or

(c) by either Seller or Buyer if there shall be any Applicable Law that makes consummation of the transactions contemplated hereby illegal or otherwise prohibited or if consummation of the transactions contemplated hereby would violate any nonappealable final order, decree or judgment of any Governmental Authority having competent jurisdiction.

The party desiring to terminate this Agreement pursuant to Section 12.01(b) or Section 12.01(c) shall give notice of such termination to the other parties.

Section 12.02 *Effect of Termination* . If this Agreement is terminated as permitted by Section 12.01, such termination shall be without liability of the terminating party (or any stockholder, director, officer, employee, agent, consultant or representative of such party) to any other party to this Agreement; provided that if such termination shall result from the willful (i) failure of either party to fulfill a condition to the performance of the obligations of the other party, (ii) failure to perform a covenant of this Agreement or (iii) breach by either party hereto of any representation or warranty or agreement contained herein, such party shall be fully liable for any and all Damages incurred or suffered by the other party as a result of such failure or breach. The provisions of Section 5.04, Section 6.01, Section 13.01, Section 13.04, Section 13.05 and Section 13.06 shall survive any termination hereof pursuant to Section 12.01.

ARTICLE 13
Miscellaneous

Section 13.01 *Notices* . All notices, requests and other communications to any party hereunder shall be in writing (including facsimile transmission and e-mail

transmission, so long as a receipt of such e-mail is requested and received) and shall be given,

if to Buyer, to:

TCP Algenist LLC
c/o Tengram Capital Partners
15 Riverside Avenue, First Floor
Westport, CT 06880
Attention: Richard D. Gersten and Andrew Tarshis
Facsimile No.: 203.454.6998
E-mail: rgersten@tengramcapital.com; atarshis@tengramcapital.com

with a copy to:
Morrison Cohen, LLP
909 Third Avenue
New York, NY 10022
Attention: David A. Scherl and Anthony M. Saur.
Facsimile No.: (212) 735.8708
E-mail: dscherl@morrisoncohen.com and amsaur@morrisoncohen.com

if to the Company, to:

Algenist Holdings, Inc.
c/o Tengram Capital Partners
15 Riverside Avenue, First Floor
Westport, CT 06880
Attention: Richard D. Gersten and Andrew Tarshis
Facsimile No.: 203.454.6998
E-mail: rgersten@tengramcapital.com; atarshis@tengramcapital.com

with a copy to:
Morrison Cohen, LLP
909 Third Avenue
New York, NY 10022
Attention: David A. Scherl and Anthony M. Saur.
Facsimile No.: (212) 735.8708
E-mail: dscherl@morrisoncohen.com and amsaur@morrisoncohen.com

if to Seller, to:
TerraVia Holdings, Inc.
225 Gateway Boulevard
South San Francisco, CA 94080
Attention: General Counsel
Facsimile No.: (650) 989-6700
E-mail: pquinlan@terravia.com

with a copy to:

Davis Polk & Wardwell LLP
1600 El Camino Real
Menlo Park, CA 94025
Attention: Alan F. Denenberg
Facsimile No.: (650) 752-3604
E-mail: alan.denenberg@davispolk.com

or such other address or facsimile number as such party may hereafter specify for the purpose by notice to the other parties hereto. All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. in the place of receipt and such day is a Business Day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed not to have been received until the next succeeding Business Day in the place of receipt.

Section 13.02 *Amendments and Waivers* . Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by each party to this Agreement, or in the case of a waiver, by the party against whom the waiver is to be effective.

(a) No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

Section 13.03 *Expenses* . Except as otherwise provided herein, all costs and expenses incurred in connection with this Agreement shall be paid by the party incurring such cost or expense. After the Closing, the Company shall pay the reasonable and documented expenses of Buyer incurred in connection with this Agreement, not to exceed $850,000.

Section 13.04 *Successors and Assigns* . The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided that no party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of each other party hereto.

Section 13.05 *Governing Law* . This Agreement shall be governed by and construed in accordance with the law of the State of New York, without regard to the conflicts of law rules of such state.

Section 13.06 *Jurisdiction* . The parties hereto agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or

in connection with, this Agreement or the transactions contemplated hereby shall be brought in the United States District Court for the Southern District of New York or any New York State court sitting in New York City, so long as one of such courts shall have subject matter jurisdiction over such suit, action or proceeding, and that any cause of action arising out of this Agreement shall be deemed to have arisen from a transaction of business in the State of New York, and each of the parties hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 13.01 shall be deemed effective service of process on such party.

Section 13.07 *WAIVER OF JURY TRIAL* . EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 13.08 *Counterparts; Effectiveness; Third Party Beneficiaries* . This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by all of the other parties hereto. Until and unless each party has received a counterpart hereof signed by the other party hereto, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication). No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations, or liabilities hereunder upon any Person other than the parties hereto and their respective successors and assigns.

Section 13.09 *Entire Agreement* . This Agreement, the Ancillary Agreements and the Confidentiality Agreement constitute the entire agreement between the parties with respect to the subject matter of this Agreement and supersede all prior agreements and understandings, both oral and written, among the parties with respect to the subject matter of this Agreement.

Section 13.10 *Bulk Sales Laws* . Buyer, the Company and Seller each hereby waive compliance by Seller with the provisions of the " **bulk sales,** " " **bulk transfer** " or similar laws of any state. Seller shall indemnify and hold harmless the Company against

any and all liabilities that may be enacted by third parties against the Company as a result of such noncompliance.

Section 13.11 *Severability* . If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other Governmental Authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

Section 13.12 *Disclosure Schedules* . Seller has set forth information on the Seller Disclosure Schedule in a section thereof that corresponds to the section of this Agreement to which it relates. A matter set forth in one section of a Schedule need not be set forth in any other section so long as its relevance to such other section of the Schedule or section of the Agreement is reasonably apparent on the face of the information disclosed therein to the Person to which such disclosure is being made. The parties acknowledge and agree that (i) the Schedules to this Agreement may include certain items and information solely for informational purposes for the convenience of Buyer and (ii) the disclosure by Seller of any matter in the Schedules shall not be deemed to constitute an acknowledgment by Seller that the matter is required to be disclosed by the terms of this Agreement or that the matter is material.

Section 13.13 *Specific Performance* . The parties hereto agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement or to enforce specifically the performance of the terms and provisions hereof, in addition to any other remedy to which they are entitled at law or in equity.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

TCP ALGENIST LLC

By: /s/ Richard Gersten
Name: Richard Gersten
Title: President

ALGENIST HOLDINGS, INC.

By: /s/ Richard Gersten
Name: Richard Gersten
Title: President

TERRAVIA HOLDINGS, INC.

By: /s/ Jonathan Wolfson
Name: Jonathan Wolfson
Title: Chairman & CEO

[TerraVia logo]
July 27, 2016

Apurva S. Mody

Dear Apurva,

TerraVia Holdings, Inc. (the "Company") is pleased to offer you employment as Chief Executive Officer (the "CEO") of the Company on the terms set forth in this offer letter, contingent on my completing references and receiving formal approval from TerraVia's Compensation Committee.

As CEO, you will have all of the duties, authority and responsibilities customarily associated with such position at similar companies. You will report to the TerraVia Board of Directors (the "Board") and while you are the CEO the Company will nominate you, and support your nomination, as a TerraVia director at any election of directors TerraVia may have.

Your annualized base salary will be $600,000, paid every two weeks according to our normal payroll schedule and subject to standard deductions and withholding. Your annual target bonus will be equal to 70% of your base salary. Your actual bonus, if any, will be between 0% and 200% of your base salary, as determined by the TerraVia Compensation Committee, in its reasonable discretion, based upon its good faith evaluation of your performance, TerraVia's performance, and any other relevant considerations. In lieu of a 2016 bonus, a commitment and true-up payment ("CTP") equal to 70% of the total amount of base salary received in 2016 will be paid to you contemporaneously with 2016 bonus payments made to the TerraVia executive team. You must be employed through the bonus payment date in order to be eligible for any such annual bonus or CTP. Your base salary and target bonus will be reviewed on an annual basis by the Compensation Committee.

TerraVia will also reimburse legal expenses of up to $10,000 you incur for your attorney to review this letter, associated documents and your employment terms hereunder.

You will not be required to relocate to the San Francisco area for up to fifteen (15) months from your commencement date. To assist with your relocation, TerraVia will reimburse you for up to $250,000 in relocation expenses (including but not limited to realtor commission and closing costs for the sale of your current home, house hunting trips, closing costs for the purchase of a home in the San Francisco area, costs of p acking, moving, insurance, and storage of all household goods etc.). In the event that you voluntarily leave TerraVia within twelve (12) months of your relocation without Good Reason as defined in plan documents, you agree to repay the full gross amount of the reimbursed expenses within thirty (30) days of your departure, and TerraVia agrees to make corresponding adjustments to whatever W-2 and other tax forms may be implicated. In addition, TerraVia will pay to you for your commuting expenses (such as temporary housing, related expenses and travel) $7,000 per month in a lump sum on or before the tenth (10th) day of the month for up to fifteen (15) months (thus a maximum of $105,000), subject to all tax withholdings, payable until your relocation to the San Francisco area. Please consult your tax advisor regarding the tax consequences of the relocation reimbursements and commuter expense payments, as TerraVia makes no representations regarding the taxation of these payments.

As an employee, you are eligible to receive the employee benefits provided to other senior executives of the Company as listed in TerraVia's benefit summary, a copy of which has been provided to you separately and is incorporated by reference herein . You should note that TerraVia may modify benefits from time to time as it deems necessary for all senior executive employees generally. Notwithstanding the foregoing, you will be entitled to at least four (4) weeks of paid time off each year, or such greater amount as Company policy may permit.

Subject to the approval of the TerraVia Compensation Committee, you will be granted a stock option to purchase 1,500,000 shares of TerraVia common stock, at a per share exercise price equal to the per share fair market value of the common stock on the date of grant, pursuant to the TerraVia 2011 Equity Incentive Plan, which is incorporated by reference herein (the "Plan"). The term of such stock option will be 10 years, subject to earlier expiration in the event of the termination of your service with TerraVia. Such stock option will vest and be exercisable as to 250,000 shares on your employment commencement date, 25% of the remaining 1,250,000 shares covered by the option (312,500 shares) on the first year anniversary of your employment commencement date and the remaining 75% of the shares (937,500 shares) will vest in 36 equal monthly installments, with the first monthly installment vesting 1 month following the first year anniversary of your employment commencement date, as long as you remain employed by TerraVia. Such stock option will be subject to the provisions of the Plan and the applicable form of stock option agreement thereunder.

In addition, subject to the approval of the TerraVia Compensation Committee, you will be granted restricted stock units ("RSUs") covering 300,000 shares of TerraVia common stock, pursuant to the Plan. Such grant will vest as to 50,000 RSUs on your employment commencement date, 25% of the remaining 250,000 RSUs (62,500 RSUs) approximately one year after your employment commencement date, with the remaining 75% of the RSUs (187,500 RSUs) vesting in 6 equal installments of 31,250 RSUs semi-annually thereafter, as long as you remain employed by TerraVia. Such RSU grant will be subject to the provisions of the Plan and the applicable form of restricted stock unit agreement thereunder.

Your employment with TerraVia is for no specified period and constitutes at-will employment. As a result, you are free to resign at any time, for any reason or for no reason. Similarly, TerraVia is free to conclude its employment relationship with you at any time, with or without cause for any lawful reason, and with or without notice. Notwithstanding the foregoing, you are eligible for the TerraVia Executive Severance and Change in Control Plan, a copy of which has been provided to you separately and is incorporated by reference herein. Your participation in that plan will be as a Group A participant.

For purposes of federal immigration law, you will be required to provide to TerraVia documentary evidence of your identity and eligibility for employment in the United States. Such documentation must be provided to us within 3 business days of your date of hire.

We ask that, if you have not already done so, you disclose to us any and all agreements relating to your prior employment that may affect your eligibility to be employed by TerraVia or limit the manner in which you may be employed. It is our understanding that any such agreements will not prevent you from performing the duties of your position and you represent that such is the case.

You agree that, during the term of your employment with TerraVia, you will not engage in any other employment, occupation, consulting or other business activity directly related to the business in which TerraVia is now involved or becomes involved during the term of your employment, nor will you engage in any other activities that conflict with your obligations to TerraVia. Similarly, you agree not to bring any third party confidential information to TerraVia, including that of any former employers.

As a condition of your employment, you are also required to sign and comply with a Proprietary Information and Inventions Agreement ("Inventions Agreement"), which requires, among other provisions, the assignment of patent rights to any invention made during your employment at TerraVia, and non-disclosure of TerraVia proprietary information. Please note that we must receive your signed Inventions Agreement before you commence work for TerraVia.

TerraVia will enter into its standard Indemnification Agreement for executive officers with you, which is incorporated by reference herein. Furthermore, during your service as an officer of TerraVia, you will be covered by TerraVia's directors and officers (D&O) liability insurance as in effect from time to time to the same extent as other covered individuals.

You hereby authorize TerraVia to use, reuse, and to grant others the right to use and reuse in a non-disparaging manner your name, and biographical information, as well as any photograph, likeness (including caricature), and voice recording generated during your employment with TerraVia that relates to TerraVia, and any reproduction or simulation thereof, in any media now known or hereafter developed (including, but not limited to film, video and digital or other electronic media), both during and after your employment, for whatever lawful and appropriate purposes TerraVia reasonably and in good faith deems necessary for its business.

It is important that you agree with us that this offer letter and the documents incorporated by reference herein constitutes the entire statement with respect to the terms of your employment at TerraVia and that there are no oral agreements or understandings or any other written agreements that directly or indirectly affect the employment relationship between us and you. If there are any, please do not sign this letter until you have consulted with me and the parties have either modified this letter to state those understandings or agreed that there are no such understandings or agreements.

We are very excited about having you join the TerraVia team and hope you will find this to be a challenging, exciting and enjoyable work environment. To indicate your acceptance of our offer, please sign and date this letter agreement in the space provided below and return it to me along with the signed Inventions Agreement. This offer shall expire on July 31, 2016 if not accepted prior to such date. We understand that your expected employment commencement date is August 22, 2016. If you have any questions regarding this letter agreement, feel free to contact me.

Sincerely,

/s/ Jonathan Wolfson
Jonathan Wolfson
Chairman and Chief Executive Officer

Accepted and agreed:

__/s/ Apurva S. Mody _____
Apurva S. Mody

Date: _____

TERRAVIA HOLDINGS, INC.

$25,000,000

COMMON STOCK

SALES AGREEMENT

August 8, 2016

Cowen and Company, LLC
599 Lexington Avenue
New York, NY 10022

Ladies and Gentlemen:

TerraVia Holdings, Inc. (the " **Company** "), confirms its agreement (this " **Agreement** ") with Cowen and Company, LLC (" **Cowen** "), as follows:

1. Issuance and Sale of Shares . The Company agrees that, from time to time during the term of this Agreement, on the terms and subject to the conditions set forth herein, it may issue and sell through Cowen, acting as agent and/or principal, shares (the " **Placement Shares** ") of the Company's common stock, par value $0.001 per share (the " **Common Stock** "), having an aggregate offering price of up to $25,000,000. Notwithstanding anything to the contrary contained herein, the parties hereto agree that compliance with the limitation set forth in this Section 1 on the number of shares of Common Stock issued and sold under this Agreement shall be the sole responsibility of the Company, and Cowen shall have no obligation in connection with such compliance. The issuance and sale of Common Stock through Cowen will be effected pursuant to the Registration Statement (as defined below) filed by the Company and declared effective by the Securities and Exchange Commission (the " **Commission** "), although nothing in this Agreement shall be construed as requiring the Company to use the Registration Statement (as defined below) to issue the Common Stock.

The Company has filed, in accordance with the provisions of the Securities Act of 1933, as amended, and the rules and regulations thereunder (collectively, the " **Securities Act** "), with the Commission a registration statement on Form S-3 (File No. 333-212448), including a base prospectus, relating to certain securities, including the Common Stock, to be issued from time to time by the Company, and which incorporates by reference documents that the Company has filed or will file in accordance with the provisions of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (collectively, the " **Exchange Act** "). The Company has prepared a prospectus supplement specifically relating to the Placement Shares (the " **Prospectus Supplement** ") to the base prospectus included as part of such registration statement. The Company has furnished to Cowen, for use by Cowen, copies of the prospectus included as part of such registration statement, as supplemented by the Prospectus Supplement, relating to the Placement Shares. Except where the context otherwise requires, such registration statement, as amended when it became effective, including all documents filed as part thereof or incorporated by reference therein, and including any information contained in a Prospectus (as defined below) subsequently filed with the Commission pursuant to Rule 424(b) under the Securities Act or deemed to be a part of such registration statement pursuant to Rule 430B or 462(b) of the Securities Act, is herein called the " **Registration Statement.** " The base prospectus, including all documents incorporated therein by reference, included in the Registration Statement, as it may be supplemented by the Prospectus Supplement, in the form in which such base prospectus and/or Prospectus Supplement have most recently been filed by the Company with the Commission pursuant to Rule 424(b) under the Securities Act, together with any "issuer free writing prospectus," as defined in Rule 433 of the Securities Act regulations (" **Rule 433** "), relating to the Placement Shares that (i) is required to be filed with the Commission by the Company or (ii) is exempt from filing pursuant to Rule 433(d)(5)(i), in each case in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company's records pursuant to Rule 433(g), is herein called the " **Prospectus** ." Any reference herein to the Registration Statement, the Prospectus or any amendment or supplement thereto shall be deemed to refer to and include the documents incorporated by reference therein, and any reference herein to the terms "amend," "amendment" or "supplement" with respect to the Registration Statement or the Prospectus shall be deemed to refer to and include the filing after the execution hereof of any document with the Commission deemed to be incorporated by reference therein. For purposes of this Agreement, all references to the Registration Statement, the Prospectus or to any amendment or supplement thereto shall be deemed to include any copy filed with the Commission pursuant to the Electronic Data Gathering Analysis and Retrieval System (" **EDGAR** ").

2. Placements . Each time that the Company wishes to issue and sell the Placement Shares hereunder (each, a " **Placement** "), it will notify Cowen by email notice (or other method mutually agreed to in writing by the parties) (a " **Placement Notice** ") containing the parameters in accordance with which it desires the Placement Shares to be sold, which shall at a minimum include the number of shares of Placement Shares to be issued, the time period during which sales are requested to be made, any limitation on the number of Placement Shares that may be sold in any one Trading Day (as defined in Section 3) and any minimum price below which sales may not be made, a form of which containing such minimum sales parameters necessary is attached hereto as **Schedule 1** . The Placement Notice shall originate from any of the individuals from the Company set forth on **Schedule 2** (with a copy to each of the other individuals from the Company listed on such schedule), and shall be addressed to each of the individuals from Cowen set forth on **Schedule 2** , as such **Schedule 2** may be amended from time to time. The Placement Notice shall be effective upon receipt by Cowen unless and until (i) in accordance with the notice requirements set forth in Section 4, Cowen declines to accept the terms contained therein for any reason, in its sole discretion, (ii) the entire amount of the Placement Shares have been sold, (iii) in accordance with the notice requirements set forth in Section 4, the Company suspends or terminates the Placement Notice for any reason, in its sole discretion, (iv) the Company issues a subsequent Placement Notice with parameters superseding those on the earlier dated Placement Notice, or (v) the Agreement has been terminated under the provisions of **Section 11** . The amount of any discount, commission or other compensation to be paid by the Company to Cowen in connection with the sale of the Placement Shares shall be calculated in accordance with the terms set forth in **Schedule 3 .** It is expressly acknowledged and agreed that neither the Company nor Cowen will have any obligation whatsoever with respect to a Placement or any Placement Shares unless and until the Company delivers a Placement Notice to Cowen and Cowen does not decline such Placement Notice pursuant to the terms set forth above, and then only upon the terms specified therein and herein. In the event of a conflict between the terms of this Agreement and the terms of a Placement Notice, the terms of the Placement Notice will control.

3. Sale of Placement Shares by Cowen. Subject to the terms and conditions herein set forth, upon the Company's delivery of a Placement Notice, and unless the sale of the Placement Shares described therein has been declined, suspended, or otherwise terminated in accordance with the terms of this Agreement, Cowen, for the period specified in the Placement Notice, will use its commercially reasonable efforts consistent with its normal trading and sales practices and applicable state and federal laws, rules and regulations and the rules of the Nasdaq Stock Market LLC (" **Nasdaq** ") to sell such Placement Shares up to the amount specified, and otherwise in accordance with the terms of such Placement Notice. Cowen will provide written confirmation to the Company (including by email correspondence to each of the individuals of the Company set forth on Schedule 2, if receipt of such correspondence is actually acknowledged by any of the individuals to whom the notice is sent, other than via auto-reply) no later than the opening of the Trading Day (as defined below) immediately following the Trading Day on which it has made sales of Placement Shares hereunder setting forth the number of Placement Shares sold on such day, the volume-weighted average price of the Placement Shares sold, and the Net Proceeds (as defined below) payable to the Company. Subject to the terms of a Placement Notice, Cowen may sell Placement Shares by any method permitted by law deemed to be an "at the market" offering as defined in Rule 415 of the Securities Act, including without limitation sales made through Nasdaq, on any other existing trading market for the Common Stock or to or through a market maker. If expressly authorized by the Company in a Placement Notice, Cowen may also sell Placement Shares in negotiated transactions. Notwithstanding the provisions of Section 6(ii), Cowen shall not purchase Placement Shares for its own account as principal unless expressly authorized to do so by the Company in a Placement Notice. The Company acknowledges and agrees that (i) there can be no assurance that Cowen will be successful in selling Placement Shares, and (ii) Cowen will incur no liability or obligation to the Company or any other person or entity if it does not sell Placement Shares for any reason other than a failure by Cowen to use its commercially reasonable efforts consistent with its normal trading and sales practices to sell such Placement Shares as required under this Section 3 . For the purposes hereof, " **Trading Day** " means any day on which the Company's Common Stock is purchased and sold on the principal market on which the Common Stock is listed or quoted.

4. Suspension of Sales .

(a) The Company or Cowen may, upon notice to the other party in writing (including by email correspondence to each of the individuals of the other party set forth on **Schedule 2** , if receipt of such correspondence is actually acknowledged by any of the individuals to whom the notice is sent, other than via auto-reply) or by telephone (confirmed immediately by verifiable facsimile transmission or email correspondence to each of the individuals of the other party set forth on **Schedule 2**), suspend any sale of Placement Shares; *provided, however* , that such suspension shall not affect or impair either party's obligations with respect to any Placement Shares sold hereunder prior to the receipt of such notice. Each of the parties agrees that no such notice under this Section 4 shall be effective against the other unless it is made to one of the individuals named on **Schedule 2** hereto, as such schedule may be amended from time to time.

(b) Notwithstanding any other provision of this Agreement, during any period in which the Company is in possession of material non-public information, the Company and Cowen agree that (i) no sale of Placement Shares will take place, (ii) the Company shall not request the sale of any Placement Shares, and (iii) Cowen shall not be obligated to sell or offer to sell any Placement Shares.

5. Settlement.

(a) Settlement of Placement Shares . Unless otherwise specified in the applicable Placement Notice, settlement for sales of Placement Shares will occur on the third (3 rd) Trading Day (or such earlier day as is industry practice for regular-way trading) following the date on which such sales are made (each, a " **Settlement Date** " and the first such settlement date, the " **First Delivery Date** "). The amount of proceeds to be delivered to the Company on a Settlement Date against receipt of the Placement Shares sold (the " **Net Proceeds** ") will be equal to the aggregate sales price received by Cowen at which such Placement Shares were sold, after deduction for (i) Cowen's commission, discount or other compensation for such sales payable by the Company pursuant to Section 2 hereof, (ii) any other amounts due and payable by the Company to Cowen hereunder pursuant to Section 7(g) (Expenses) hereof, and (iii) any transaction fees imposed by any governmental or self-regulatory organization in respect of such sales.

(b) Delivery of Placement Shares . On or before each Settlement Date, the Company will, or will cause its transfer agent to, electronically transfer the Placement Shares being sold by crediting Cowen's or its designee's account (provided Cowen shall have given the Company written notice of such designee at least one Trading Day prior to the Settlement Date) at The Depository Trust Company through its Deposit and Withdrawal at Custodian System or by such other means of delivery as may be mutually agreed upon by the parties hereto which in all cases shall be freely tradeable, transferable, registered shares in good deliverable form. On each Settlement Date, Cowen will deliver the related Net Proceeds in same day funds to an account designated by the Company on, or prior to, the Settlement Date. Cowen will be responsible for providing DWAC instructions or instructions for delivery by other means with regard to the transfer of Placement Shares being sold. The Company agrees that if the Company, or its transfer agent (if applicable), defaults in its obligation to deliver duly authorized Placement Shares on a Settlement Date (other than as a result of a failure by Cowen to provide instructions for delivery) , the Company agrees that in addition to and in no way limiting the rights and obligations set forth in Section 9(a) (Indemnification and Contribution) hereto, it will (i) hold Cowen harmless against any loss, claim, damage, or reasonable, documented expense (including reasonable legal fees and expenses), as incurred, arising out of or in connection with such default by the Company and (ii) pay to Cowen (without duplication) any commission, discount, or other compensation to which it would otherwise have been entitled absent such default.

6. Representations and Warranties of the Company . The Company represents and warrants to, and agrees with, Cowen that as of the date of this Agreement, each Representation Date (as defined in Section 7(m)), each date on which a Placement Notice is given, and any date on which Placement Shares are sold hereunder:

(a) Compliance with Registration Requirements . The Registration Statement and any Rule 462(b) Registration Statement have been declared effective by the Commission under the Securities Act. The Company has complied to the Commission's satisfaction with all requests of the Commission for additional or supplemental information. No stop order suspending the effectiveness of the Registration Statement or any Rule 462(b) Registration Statement is in effect and no proceedings for such purpose have been instituted or are pending or, to the knowledge of the Company, contemplated or threatened by the Commission. The Company meets the requirements for use of Form S-3 under the Securities Act. The sale of the Placement Shares hereunder meets the requirements of General Instruction I.B.1 of Form S-3.

(b) No Misstatement or Omission . The Prospectus when filed complied and, as amended or supplemented, if applicable, will comply in all material respects with the Securities Act. Each of the Registration Statement, any Rule 462(b) Registration Statement, the Prospectus and any post-effective amendments or supplements thereto, at the time it became effective or its date, as applicable, complied and as of each of the Settlement Dates, if any, will comply in all material respects with the Securities Act and did not and, as of each Settlement Date, if any, will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. The Prospectus, as amended or supplemented, as of its date, did not and, as of each of the Settlement Dates, if any, will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The representations and warranties set forth in the two immediately preceding sentences do not apply to statements in or omissions from the Registration Statement, any Rule 462(b) Registration Statement, or any post-effective amendment thereto, or the Prospectus, or any amendments or supplements thereto, made in reliance upon and in conformity with information relating to Cowen furnished to the Company in writing by Cowen expressly for use therein. There are no contracts or other documents required to be described in the Prospectus or to be filed as exhibits to the Registration Statement which have not been described or filed as required.

(c) Offering Materials Furnished to Cowen . The Company has delivered to Cowen one complete copy of the Registration Statement and a copy of each consent and certificate of experts filed as a part thereof, and conformed copies of the Registration Statement (without exhibits) and the Prospectus, as amended or supplemented, in such quantities and at such places as Cowen has reasonably requested.

(d) Not an Ineligible Issuer . The Company currently is not an "ineligible issuer," as defined in Rule 405 of the rules and regulation of the Commission. The Company agrees to notify Cowen promptly upon the Company becoming an "ineligible issuer."

(e) Distribution of Offering Material By the Company . The Company has not distributed and will not distribute, prior to the completion of Cowen's distribution of the Placement Shares, any offering material in connection with the offering and sale of the Placement Shares other than the Prospectus or the Registration Statement or any free writing prospectus (as defined in Rule 405 under the Securities Act) reviewed and consented to by Cowen.

(f) The Sales Agreement . This Agreement has been duly authorized, executed and delivered by, and is a valid and binding agreement of, the Company, enforceable against the Company in accordance with its terms, except as rights to indemnification hereunder may be limited by applicable law and except as the enforcement hereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors or by general equitable principles.

(g) Authorization of the Common Stock . The Placement Shares are duly authorized for issuance and sale pursuant to this Agreement and, when issued and delivered by the Company against payment therefor pursuant to this Agreement, will be validly issued, fully paid and nonassessable.

(h) No Applicable Registration or Other Similar Rights . There are no persons with registration or other similar rights to have any equity or debt securities registered for sale under the Registration Statement or included in the offering contemplated by this Agreement, except for such rights as have been duly waived.

(i) No Material Adverse Change . Except as otherwise disclosed in the Prospectus, subsequent to the respective dates as of which information is given in the Prospectus: (i) there has been no material adverse change in the condition, financial or otherwise, or in the results of operations or business of the Company and its subsidiaries, taken as a whole (any such change is called a " **Material Adverse Change** "); (ii) the Company and its subsidiaries, considered as one entity, have not incurred any material liability or obligation, indirect, direct or contingent, not in the ordinary course of business nor entered into any material transaction or agreement not in the ordinary course of business: and (iii) there has been no dividend or distribution of any kind declared, paid or made by the Company or, except for regular quarterly dividends publicly announced by the Company or dividends paid to the Company or other subsidiaries, by any of its subsidiaries on any class of capital stock or repurchase or redemption by the Company or any of its subsidiaries of any class of capital stock.

(j) Independent Accountants . Deloitte & Touche LLP, who has expressed its opinion with respect to the financial statements (which term as used in this Agreement includes the related notes thereto) and supporting schedules filed with the Commission or incorporated by reference as a part of the Registration Statement and included in the Prospectus, is an independent registered public accounting firm as required by the Securities Act and the Public Company Accounting Oversight Board.

(k) Preparation of the Financial Statements . The financial statements filed with the Commission as a part of or incorporated by reference in the Registration Statement and included in the Prospectus present fairly the consolidated financial position of the Company and its subsidiaries as of and at the dates indicated and the results of their operations and cash flows for the periods specified. The supporting schedules included in or incorporated in the Registration Statement present fairly the information required to be stated therein. Such financial statements and supporting schedules have been prepared in conformity with generally accepted accounting principles as applied in the United States applied on a consistent basis throughout the periods involved, except as may be expressly stated in the related notes thereto. No other financial statements or supporting schedules are required to be included in or incorporated in the Registration Statement.

(l) eXtensible Business Reporting Language . The interactive data in eXtensible Business Reporting Language included or incorporated by reference in the each Registration Statement fairly presents the information called for in all material respects and has been prepared in accordance with the Commission's rules and guidelines applicable thereto.

(m) Incorporation and Good Standing of the Company and its Subsidiaries . The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of Delaware, with corporate power and authority to own, lease and operate its properties and conduct its business as described in the Prospectus, and to enter into and perform its obligations under this Agreement, and is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property requires such qualification; each subsidiary of the Company has been duly organized and is validly existing as a corporate entity in good standing under the laws of its jurisdiction of organization with corporate power and authority to own, lease and operate its properties and conduct its business as described in the Prospectus, and is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property requires such qualification; and, in each case of the Company and each of its subsidiaries, except to the extent that the failure to be so qualified or be in such good standing would not result in a Material Adverse Change.

(n) Capital Stock Matters . The Company has an authorized capitalization as set forth in the Prospectus and all of the issued shares of capital stock of the Company have been duly and validly authorized and issued and are fully paid and non-assessable and conform to the description of the Common Stock contained in the Prospectus; and all of the issued shares of capital stock of each subsidiary of the Company have been duly and validly authorized and issued, are fully paid and non-assessable and (except for directors' qualifying shares) are owned directly or indirectly by the Company, free and clear of all liens, encumbrances, equities or claims, except to the extent that it would not have a material adverse effect on the Company and its subsidiaries, taken as a whole.

(o) Non-Contravention of Existing Instruments; No Further Authorizations or Approvals Required . The issue and sale of the Placement Shares and the performance by the Company of its obligations under this Agreement and the consummation of the transactions herein contemplated will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, result in the creation or imposition of a lien, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of the property or assets of the Company or any of its subsidiaries is subject, (ii) result in any violation of the provisions of the Certificate of Incorporation or By-laws of the Company or (iii) result in any violation of any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the properties or assets of the Company or any of its subsidiaries or any of their properties, except, with respect to clauses (i) and (iii), for such conflicts, breaches, violations or defaults as would not reasonably be expected to result in a Material Adverse Change. No consent, approval, authorization or other order of, or registration or filing with, any court or other governmental or regulatory authority or agency, is required for the Company's execution, delivery and performance of this Agreement and consummation of the transactions contemplated hereby and by the Prospectus, except such as have been obtained or made by the Company and are in full force and effect under the Securities Act and such consents, approvals, authorizations, orders, registrations or qualifications as may be required under state securities or Blue Sky laws in connection with the issuance and sale of the Placement Shares, applicable state securities or blue sky laws and from Nasdaq or the Financial Industry Regulatory Authority (" **FINRA** ").

(p) No Material Actions or Proceedings . Except as disclosed in the Prospectus, there are no legal or governmental proceedings pending or, to the Company's knowledge, threatened to which the Company or any of its subsidiaries is or may be a party or of which any property of the Company or any of its subsidiaries is or may be the subject, which, if determined adversely to the Company or its subsidiaries, would result in a Material Adverse Change. No material labor dispute with the employees of the Company or any of its subsidiaries exists, except as described in the Prospectus, or, to the Company's knowledge, is imminent.

(q) All Necessary Permits, etc . The Company and each subsidiary possess all certificates, authorizations and permits issued by the appropriate federal, state or foreign regulatory authorities necessary to conduct their respective businesses, other than those the failure to possess or own would not result in a Material Adverse Change and neither the Company nor any of its subsidiaries has received any notice of proceedings relating to the revocation or modification of, or non-compliance with, any such certificate, authorization or permit which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would result in a Material Adverse Change, except as described in the Prospectus.

(r) Tax Law Compliance . The Company and each of its subsidiaries have filed all federal, state, local and foreign tax returns required to be filed or have requested extensions thereof (except where the failure to file would not, individually or in the aggregate, result in a Material Adverse Change) and have paid all taxes required to be paid thereon (except for cases in which the failure to pay would not result in a Material Adverse Change, or, except as currently being contested in good faith and for which reserves required by United States generally accepted accounting principles ("U.S. GAAP") have been created in the financial statements of the Company), and no tax deficiency has been determined adversely to the Company or any of its subsidiaries which has had (nor does the Company nor any of its subsidiaries have any notice or knowledge of any tax deficiency which could reasonably be expected to be determined adversely to the Company or its subsidiaries and which could reasonably be expected to result in) a Material Adverse Change.

(s) Company Not an "Investment Company ". The Company has been advised of the rules and requirements under the Investment Company Act of 1940, as amended (the " **Investment Company Act** "). The Company is not, and after receipt of payment for the Common Stock and the application of the proceeds thereof as described in the Prospectus will not be, an "investment company" within the meaning of Investment Company Act.

(t) Insurance . The Company and each of its subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which they are engaged; and neither the Company nor any of its subsidiaries has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not result in a Material Adverse Change, except as described in the Prospectus.

(u) No Price Stabilization or Manipulation . The Company has not taken and will not take, directly or indirectly, any action designed to or that might be reasonably expected to cause or result in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Placement Shares.

(v) Related Party Transactions . There are no business relationships or related-party transactions involving the Company or any subsidiary or any other person required to be described in the Prospectus which have not been described as required.

(w) Exchange Act Compliance . The documents incorporated or deemed to be incorporated by reference in the Prospectus, at the time they were or hereafter are filed with the Commission, complied and will comply in all material respects with the requirements of the Exchange Act, and, when read together with the other information in the Prospectus, at the Settlement Dates, will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(x) No Unlawful Contributions or Other Payments . Neither the Company nor any of its subsidiaries, nor, to the Company's knowledge, any director, officer, employee, agent or representative of the Company or of any of its subsidiaries or affiliates, has taken or will take any action in furtherance of an offer, payment, promise to pay, or authorization or approval of the payment or giving of money, property, gifts or anything else of value, directly or indirectly, to any "government official" (including any officer or employee of a government or government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office) to influence official action or secure an improper advantage, and the Company and its subsidiaries and affiliates have conducted their businesses in compliance with applicable anti-corruption laws, including without limitation, the Foreign Corrupt Practices Act of 1977, as amended; and have instituted and maintain and will continue to maintain policies and procedures designed to promote and achieve compliance with such laws and with the representation and warranty contained herein.

(y) Compliance with Money Laundering Laws . The operations of the Company and its subsidiaries are and, to the Company's knowledge, have been conducted at all times in material compliance with all applicable financial recordkeeping and reporting requirements including those of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the Bank Secrecy Act, as amended by Title III of the United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT ACT), and the applicable anti-money laundering statutes of jurisdictions where the Company and its subsidiaries conduct business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency having jurisdiction over the Company or any of its subsidiaries (collectively, the " **Money Laundering Laws** "), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(z) Compliance with OFAC . None of the Company, any of its subsidiaries or, to the knowledge of the Company, any director, officer, agent, employee or affiliate of the Company or any of its subsidiaries is currently subject to any U.S. sanctions administered by the Office of Foreign Office Control of the U.S. Department of the Treasury (" **OFAC** "); and the Company will not, directly or indirectly, use the proceeds of the offering of the Placement Shares

hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC.

(aa) Company's Accounting System . (r) The Company maintains a system of internal control over financial reporting (as such term is defined in Rule 13a-15(f) of the General Rules and Regulations under the Exchange Act (the " **Exchange Act Rules** ")) that complies with the requirements of the Exchange Act and has been designed by the Company's principal executive officer and principal financial officer, or under their supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with U.S. GAAP. The Company's internal control over financial reporting is effective and the Company is not aware of any material weaknesses in its internal control over financial reporting. Except as described in the Prospectus, since the end of the Company's most recent audited fiscal year, there has been no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

(bb) Disclosure Controls . The Company maintains disclosure controls and procedures (as such is defined in Rule 13a-15(e) of the Exchange Act Rules) that comply with the requirements of the Exchange Act; such disclosure controls and procedures have been designed to ensure that material information required to be disclosed by the Company in reports that it files or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Commission's rules and forms, including controls and procedures designed to ensure that such information is accumulated and communicated to the Company's management to allow timely decisions regarding disclosures. The Company has conducted evaluations of the effectiveness of its disclosure controls as required by Rule 13a-15 of the Exchange Act Rules.

(cc) Compliance with Environmental Laws . There has been no storage, generation, transportation, use, handling, treatment, Release or threat of Release of Hazardous Materials by, relating to or caused by the Company or any of its subsidiaries (or, to the knowledge of the Company and its subsidiaries, any other entity for whose acts or omissions the Company or any of its subsidiaries is or could reasonably be expected to be liable) at, on, under or from any property or facility now or previously owned, operated or leased by the Company or any of its subsidiaries, or at, on, under or from any other property or facility, in violation of any Environmental Laws (as defined below) and in a manner or amount or to a location that would reasonably be expected to result in any liability under any Environmental Law, except for any violation or liability which would not, individually or in the aggregate, have a material adverse effect. "Hazardous Materials" means any material, chemical, substance, waste, pollutant, contaminant, compound, mixture, or constituent thereof, in any form or amount, including petroleum (including crude oil or any fraction thereof) and petroleum products, natural gas liquids, friable asbestos and friable asbestos containing materials, naturally occurring radioactive materials, brine, and drilling mud, regulated by a governmental agency or which can give rise to liability under any Environmental Law. "Release" means any spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, dispersing, or migrating in, into or through the environment, or in, into from or through any building or structure. The Company and its subsidiaries (i) are, and at all prior times were, in compliance with any and all applicable federal, state, local and foreign laws, rules, regulations, requirements, decisions, judgments, decrees, orders and the common law relating to pollution or the protection of the environment, natural resources or human health or safety, including those relating to the generation, storage, treatment, use, handling, transportation, Release or threat of Release of Hazardous Materials (" **Environmental Laws** "), (ii) have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses and (iii) are, and at all prior times were, in compliance with all terms and conditions of any such permit, license or approval, except where such noncompliance with Environmental Laws, failure to receive required permits, licenses or other approvals or failure to comply with the terms and conditions of such permits, licenses or approvals would not, singly or in the aggregate, have a material adverse effect on the Company and its subsidiaries, taken as a whole. There are, and at all prior times were, no costs or liabilities associated with Environmental Laws (including, without limitation, any capital or operating expenditures required for cleanup, closure of properties or compliance with Environmental Laws or any permit, license or approval, any related constraints on operating activities and any potential liabilities to third parties) which would, singly or in the aggregate, have a material adverse effect on the Company and its subsidiaries, taken as a whole.

(dd) Intellectual Property. Except as disclosed in the Prospectus, the Company and its subsidiaries own or possess, or can acquire on reasonable terms, all material Intellectual Property (as defined below) currently employed by them in connection with the business now operated by them. To the Company's knowledge, (i) there is no infringement, misappropriation or violation by third parties of any such Intellectual Property; (ii) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others challenging the rights of the Company and its subsidiaries in or to any such Intellectual Property; (iii) the Intellectual Property owned by or, to the Company's knowledge, exclusively licensed to the Company and its subsidiaries have not been adjudged invalid or unenforceable, in whole or in part, and there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others challenging the validity, scope, or enforceability of any such Intellectual Property (except for proceedings before any governmental body or agency in the ordinary course relating to the registration of any such Intellectual Property); and (iv) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others that the Company or its subsidiaries infringe, misappropriate or otherwise violate any Intellectual Property or other proprietary rights of others, in each of (i) through (iv) above, except as would not reasonably be expected to have a material adverse effect on the Company. The term "Intellectual Property" as used herein means foreign, international and domestic patents and all patent rights associated therewith, and patent applications, inventions, registered and unregistered trademarks and service marks and all rights associated therewith, applications to register trademarks or service marks, trade names, trade dress, copyrights, applications to register copyrights, moral rights, mask works, applications to register mask works, know-how, trade secrets and all trade secret rights associated therewith, domain names, domain name applications and proprietary processes and other similar rights. The Company and its subsidiaries are not subject to any judgment, order, writ, injunction or decree of any court or any federal, state, local, foreign or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, or any arbitrator, nor has it entered into or is it a party to any agreement made in settlement of any pending or threatened litigation, which materially restricts or impairs their use of any Intellectual Property. The Company and its subsidiaries have taken reasonable and customary actions to protect their rights in confidential information and trade secrets and protect any confidential information provided to them by any other person. All founders, key employees and any other employees or contractors involved in the development Intellectual Property for the Company or any of its subsidiaries have signed confidentiality and invention assignment agreements (or have confidentiality and invention assignment provisions in other agreements) with the Company.

(ee) Listing . The Company is subject to and in compliance in all material respects with the reporting requirements of Section 13 or Section 15(d) of the Exchange Act. The Common Stock is registered pursuant to Section 12(b) or Section 12(g) of the Exchange Act and is listed on the Nasdaq, and the Company has taken no action designed to, or reasonably likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act or delisting the Common Stock from Nasdaq, nor has the Company received any notification that the Commission or Nasdaq is contemplating terminating such registration or listing.

(ff) Brokers . Except for Cowen, there is no broker, finder or other party that is entitled to receive from the Company any brokerage or finder's fee or other fee or commission as a result of any transactions contemplated by this Agreement.

(gg) No Outstanding Loans or Other Indebtedness . Except as described in the Prospectus, there are no outstanding loans, advances (except normal advances for business expenses in the ordinary course of business) or guarantees or indebtedness by the Company to or for the benefit of any of the officers or directors of the Company or any of the members of any of them.

(hh) No Reliance . The Company has not relied upon Cowen or legal counsel for Cowen for any legal, tax or accounting advice in connection with the offering and sale of the Placement Shares.

(ii) Cowen Purchases . The Company acknowledges and agrees that Cowen has informed the Company that Cowen may, to the extent permitted under the Securities Act and the Exchange Act, purchase and sell shares of Common Stock for its own account while this Agreement is in effect.

(jj) FINRA Exemption . To enable Cowen to rely on Rule 5110(b)(7)(C)(i) of FINRA, the Company represents that the Company (i) has a non-affiliate, public common equity float of at least $150 million or a non-affiliate, public common equity float of at least $100 million and annual trading volume of at least three million shares and (ii) has been subject to the Exchange Act reporting requirements for a period of at least 36 months.

(kk) Compliance with Laws . The Company has not been advised, and has no reason to believe, that it and each of its subsidiaries are not conducting business in compliance with all applicable laws, rules and regulations of the jurisdictions in which it is conducting business, except where failure to be so in compliance would not result in a Material Adverse Change.

Any certificate signed by an officer of the Company and delivered to Cowen or to counsel for Cowen shall be deemed to be a representation and warranty by the Company to Cowen as to the matters set forth therein.

The Company acknowledges that Cowen and, for purposes of the opinions to be delivered pursuant to Section 7 hereof, counsel to the Company and counsel to Cowen, will rely upon the accuracy and truthfulness of the foregoing representations and hereby consents to such reliance.

7. Covenants of the Company . The Company covenants and agrees with Cowen that:

(a) Registration Statement Amendments . After the date of this Agreement and during any period in which a Prospectus relating to any Placement Shares is required to be delivered by Cowen under the Securities Act (including in circumstances where such requirement may be satisfied pursuant to Rule 172 under the Securities Act), (i) the Company will notify Cowen promptly of the time when any subsequent amendment to the Registration Statement, other than documents incorporated by reference, has been filed with the Commission and/or has become effective or any subsequent supplement to the Prospectus has been filed and of any request by the Commission for any amendment or supplement to the Registration Statement or Prospectus or for additional information, (ii) the Company will prepare and file with the Commission, promptly upon Cowen's request, any amendments or supplements to the Registration Statement or Prospectus that, in Cowen's reasonable opinion, may be necessary or advisable in connection with the distribution of the Placement Shares by Cowen (*provided, however* , that the failure of Cowen to make such request shall not relieve the Company of any obligation or liability hereunder, or affect Cowen's right to rely on the representations and warranties made by the Company in this Agreement); (iii) the Company will not file any amendment or supplement to the Registration Statement or Prospectus, other than documents incorporated by reference, relating to the Placement Shares or a security convertible into the Placement Shares unless a copy thereof has been submitted to Cowen within a reasonable period of time before the filing and Cowen has not reasonably objected thereto (*provided, however* , that the failure of Cowen to make such objection shall not relieve the Company of any obligation or liability hereunder, or affect Cowen's right to rely on the representations and warranties made by the Company in this Agreement) and the Company will furnish to Cowen at the time of filing thereof a copy of any document that upon filing is deemed to be incorporated by reference into the Registration Statement or Prospectus, except for those documents available via EDGAR; and (iv) the Company will cause each amendment or supplement to the Prospectus, other than documents incorporated by reference, to be filed with the Commission as required pursuant to the applicable paragraph of Rule 424(b) of the Securities Act.

(b) Notice of Commission Stop Orders . The Company will advise Cowen, promptly after it receives notice or obtains knowledge thereof, of the issuance or threatened issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement, of the suspension of the qualification of the Placement Shares for offering or sale in any jurisdiction, or of the initiation or threatening of any proceeding for any such purpose; and it will promptly use its commercially reasonable efforts to prevent the issuance of any stop order or to obtain its withdrawal if such a stop order should be issued.

(c) Delivery of Prospectus; Subsequent Changes . During any period in which a Prospectus relating to the Placement Shares is required to be delivered by Cowen under the Securities Act with respect to a pending sale of the Placement Shares, (including in circumstances where such requirement may be satisfied pursuant to Rule 172 under the Securities Act), the Company will use its commercially reasonable efforts to comply with all requirements imposed upon it by the Securities Act, as from time to time in force, and to file on or before their respective due dates (taking into account any extensions available under the Exchange Act) all reports and any definitive proxy or information statements required to be filed by the Company with the Commission pursuant to Sections 13(a), 13(c), 14, 15(d) or any other provision of or under the Exchange Act. If during such period any event occurs as a result of which the Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances then existing, not misleading, or if during such period it is necessary to amend or supplement the Registration Statement or Prospectus to comply with the Securities Act, the Company will promptly notify Cowen to suspend the offering of Placement Shares during such period and the Company will promptly amend or supplement the Registration Statement or Prospectus (at the expense of the Company) so as to correct such statement or omission or effect such compliance; provided, however, that the Company may delay the filing of any amendment or supplement, if in the reasonable judgment of the Company, it is in the best interest of the Company.

(d) Listing of Placement Shares . During any period in which the Prospectus relating to the Placement Shares is required to be delivered by Cowen under the Securities Act with respect to a pending sale of the Placement Shares (including in circumstances where such requirement may be satisfied pursuant to Rule 172 under the Securities Act), the Company will use its commercially reasonable efforts to cause the Placement Shares to be listed on Nasdaq and to qualify the Placement Shares for sale under the securities laws of such jurisdictions as Cowen reasonably designates and to continue such qualifications in effect so long as required for the distribution of the Placement Shares; *provided, however,* that the Company shall not be required in connection therewith to qualify as a foreign corporation or dealer in securities or file a general consent to service of process in any jurisdiction.

(e) Delivery of Registration Statement and Prospectus . The Company will furnish to Cowen and its counsel (at the expense of the Company) copies of the Registration Statement, the Prospectus (including all documents incorporated by reference therein) and all amendments and supplements to the Registration Statement or Prospectus that are filed with the Commission during any period in which a Prospectus relating to the Placement Shares is required to be delivered under the Securities Act (including all documents filed with the Commission during such period that are deemed to be incorporated by reference therein), in each case as soon as reasonably practicable and in such quantities as Cowen may from time to time reasonably request and, at Cowen's request, will also furnish copies of the Prospectus to each exchange or market on which sales of the Placement Shares may be made; *provided, however,* that the Company shall not be required to furnish any document (other than the Prospectus) to Cowen to the extent such document is available on EDGAR.

(f) Earnings Statement . The Company will make generally available to its security holders as soon as practicable, but in any event not later than 15 months after the end of the Company's current fiscal quarter, an earnings statement (which need not be audited) complying with Section 11(a) of the Securities Act and the rules and regulations of the Commission thereunder (including, at the option of the Company, Rule 158 under the Securities Act).

(g) Expenses . The Company, whether or not the transactions contemplated hereunder are consummated or this Agreement is terminated, in accordance with the provisions of Section 11 hereunder, will pay the following expenses all incident to the performance of its obligations hereunder, including, but not limited to, expenses relating to (i) the preparation, printing and filing of the Registration Statement and each amendment and supplement thereto, of each Prospectus and of each amendment and supplement thereto, (ii) the preparation, issuance and delivery of the Placement Shares, (iii) the qualification of the Placement Shares under securities laws in accordance with the provisions of Section 7(d) of this Agreement, including filing fees (provided, however, that any fees or disbursements of counsel for Cowen in connection therewith shall be paid by Cowen except as set forth in (vii) below), (iv) the printing and delivery to Cowen of copies of the Prospectus and any amendments or supplements thereto, and of this Agreement, (v) the fees and expenses incurred in connection with the listing or qualification of the Placement Shares for trading on Nasdaq, (vi) the filing fees and expenses, if any, of the Commission, and, (vii) the reasonable fees and disbursements of Cowen's counsel in an amount not to exceed $50,000.

(h) Use of Proceeds . The Company will use the Net Proceeds as described in the Prospectus in the section entitled "Use of Proceeds."

(i) Notice of Other Sales . During the pendency of any Placement Notice given hereunder and through the final Settlement Date for any Placement Shares sold pursuant to such Placement Notice, the Company shall provide Cowen notice as promptly as reasonably possible before it offers to sell, contracts to sell, sells, grants any option to sell or otherwise disposes of any shares of Common Stock (other than Placement Shares offered pursuant to the provisions of this Agreement) or securities convertible into or exchangeable for Common Stock, warrants or any rights to purchase or acquire Common Stock; *provided* , that such notice shall not be required in connection with the (i) issuance, grant or sale of Common Stock, options to purchase shares of Common Stock or Common Stock issuable upon the exercise of options or other equity awards pursuant to any stock option, stock bonus or other stock plan or arrangement described in the Prospectus, (ii) the issuance of securities in connection with an acquisition, merger or sale or purchase of assets; (iii) the issuance or sale of Common Stock pursuant to any dividend reinvestment plan that the Company may adopt from time to time provided the implementation of such is disclosed to Cowen in advance; (iv) any shares of Common Stock issuable upon the exchange, conversion or redemption of securities or the exercise of warrants, options or other rights in effect or outstanding; or (v) the issuance of common stock in privately negotiated transactions to vendors, customers, investors, consultants, strategic partners or potential strategic partners.

(j) Change of Circumstances . The Company will, at any time during a fiscal quarter in which the Company intends to tender a Placement Notice or sell Placement Shares, advise Cowen promptly after it shall have received notice or obtained knowledge thereof, of any information or fact that would alter or affect in any material respect any opinion, certificate, letter or other document provided to Cowen pursuant to this Agreement.

(k) Due Diligence Cooperation . The Company will cooperate with any reasonable due diligence review conducted by Cowen or its agents in connection with the transactions contemplated hereby, including, without limitation, providing information and making available documents and senior corporate officers, during regular business hours and at the Company's principal offices, as Cowen may reasonably request.

(l) Required Filings Relating to Placement of Placement Shares . The Company agrees that on such dates as the Securities Act shall require, the Company will (i) file a prospectus supplement with the Commission under the applicable paragraph of Rule 424(b) under the Securities Act (each and every filing under Rule 424(b), a " **Filing Date** "), which prospectus supplement will set forth, within the relevant period, the amount of Placement Shares sold through Cowen, the Net Proceeds to the Company and the compensation payable by the Company to Cowen with respect to such Placement Shares, and (ii) deliver such number of copies of each such prospectus supplement to each exchange or market on which such sales were effected as may be required by the rules or regulations of such exchange or market. Notwithstanding the foregoing provisions, nothing herein shall be construed to restrict the Company's ability to file a registration statement under the Securities Act.

(m) Representation Dates; Certificate . On or prior to the First Delivery Date and each time the Company (i) files the Prospectus relating to the Placement Shares or amends or supplements the Registration Statement or the Prospectus relating to the Placement Shares (other than a prospectus supplement filed in accordance with Section 7(l) of this Agreement) by means of a post-effective amendment, sticker, or supplement but not by means of incorporation of document(s) by reference to the Registration Statement or the Prospectus relating to the Placement Shares; (ii) files an annual report on Form 10-K under the Exchange Act; (iii) files its quarterly reports on Form 10-Q under the Exchange Act; or (iv) files a report on Form 8-K containing amended financial information (other than an earnings release) under the Exchange Act (each date of filing of one or more of the documents referred to in clauses (i) through (iv) shall be a " **Representation Date** "); the Company shall furnish Cowen (but in the case of clause (iv) above only if (1) a Placement Notice is pending, and (2) Cowen reasonably determines that the information contained in such Form 8-K is material to a holder of Common Stock with a certificate, in the form attached hereto as Exhibit 7(m) within three (3) Trading Days of any Representation Date if requested by Cowen. The requirement to provide a certificate under this Section 7(m) shall be waived for any Representation Date occurring at a time at which no Placement Notice is pending, which waiver shall continue until the earlier to occur of the date the Company delivers a Placement Notice hereunder (which for such calendar quarter shall be considered a Representation Date) and the next occurring Representation Date; *provided* , *however* , that such waiver shall not apply for any Representation Date on which the Company files its annual report on Form 10-K. Notwithstanding the foregoing, if the Company subsequently decides to sell Placement Shares following a Representation Date when the Company relied on such waiver and did not provide Cowen with a certificate under this Section 7(m) , then before the Company delivers the Placement Notice or Cowen sells any Placement Shares, the Company shall provide Cowen with a certificate, in the form attached hereto as Exhibit 7(m) , dated the date of the Placement Notice.

(n) Legal Opinion . On or prior to the First Delivery Date, the Company shall cause to be furnished to Cowen a written opinion and negative assurance statement of Davis Polk & Wardwell LLP (" Company Counsel "), or other counsel reasonably satisfactory to Cowen, in form and substance satisfactory to Cowen and its counsel, dated the date that the opinion is required to be delivered, substantially similar to the form attached hereto as Exhibit 7(n)(i) , and within three (3) Trading Days of each Representation Date with respect to which the Company is obligated to deliver a certificate in the form attached hereto as Exhibit 7(m) for which no waiver is applicable, the Company shall cause to be furnished to Cowen a negative assurance statement of Company Counsel or other counsel reasonably satisfactory to Cowen, in form and substance satisfactory to Cowen and its counsel, dated the date that the negative assurance statement is required to be delivered, modified, as necessary, to relate to the Registration Statement and the Prospectus as then amended or supplemented; *provided, however* , the Company shall not be required to furnish any such statement if the Company does not intend to deliver a Placement Notice in such calendar quarter until such time as the Company delivers its next Placement Notice; *provided, further* , that the Company's obligation to have Company Counsel furnish a negative assurance statement is conditioned upon counsel to Cowen furnishing a negative assurance statement dated as of the same such date; *provided* , *however* , that in lieu of such statement for subsequent Representation Dates, counsel may furnish Cowen with a letter (a " **Reliance Letter** ") to the effect that Cowen may rely on a prior opinion or statement delivered under this Section 7(n) to the same extent as if it were dated the date of such letter (except that statements in such prior opinion or statement shall be deemed to relate to the Registration Statement and the Prospectus as amended or supplemented at such Representation Date).

(o) Comfort Letter . On or prior to the First Delivery Date and within three (3) Trading Days of each Representation Date with respect to which the Company is obligated to deliver a certificate in the form attached hereto as Exhibit 7(m) for which no waiver is applicable, the Company shall cause its independent accountants to furnish Cowen letter (the " **Comfort Letter** "), dated the date the Comfort Letter is delivered, in form and substance satisfactory to Cowen, (i) confirming that they are an independent registered public accounting firm within the meaning of the Securities Act and the PCAOB, (ii) stating, as of such date, the conclusions and findings of such firm with respect to the financial information and other matters ordinarily covered by accountants' "comfort letters" to Cowen in connection with registered public offerings (the first such letter, the " **Initial Comfort Letter** ") and (iii) updating the Initial Comfort Letter with any information that would have been included in the Initial Comfort Letter had it been given on such date and modified as necessary to relate to the Registration Statement and the Prospectus, as amended and supplemented to the date of such letter.

(p) Market Activities . The Company will not, directly or indirectly, (i) take any action designed to cause or result in, or that constitutes or might reasonably be expected to constitute, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Placement Shares or (ii) sell, bid for, or purchase the Placement Shares to be issued and sold pursuant to this Agreement, or pay anyone any compensation for soliciting purchases of the Placement Shares other than Cowen; provided, however, that the Company may bid for and purchase shares of its Common Stock in accordance with Rule 10b-18 under the Exchange Act.

(q) Insurance . The Company and its subsidiaries shall maintain, or cause to be maintained, insurance in such amounts and covering such risks as is reasonable and customary for the business for which it is engaged.

(r) Compliance with Laws . The Company and each of its subsidiaries shall maintain, or cause to be maintained, all material environmental permits, licenses and other authorizations required by federal, state and local law in order to conduct their businesses as described in the Prospectus, and the Company and each of its subsidiaries shall conduct their businesses, or cause their businesses to be conducted, in substantial compliance with such permits, licenses and authorizations and with applicable environmental laws, except where the failure to maintain or be in compliance with such permits, licenses and authorizations could not reasonably be expected to result in a Material Adverse Change.

(s) Investment Company Act . The Company will conduct its affairs in such a manner so as to reasonably ensure that neither it nor its subsidiaries will be or become, at any time prior to the termination of this Agreement, an "investment company," as such term is defined in the Investment Company Act, assuming no change in the Commission's current interpretation as to entities that are not considered an investment company.

(t) Securities Act and Exchange Act . The Company will use its best efforts to comply with all requirements imposed upon it by the Securities Act and the Exchange Act as from time to time in force, so far as necessary to permit the continuance of sales of, or dealings in, the Placement Shares as contemplated by the provisions hereof and the Prospectus.

(u) No Offer to Sell . Other than the Prospectus or a free writing prospectus (as defined in Rule 405 under the Securities Act) approved in advance by the Company and Cowen in its capacity as principal or agent hereunder, neither Cowen nor the Company (including its agents and representatives, other than Cowen in its capacity as such) will make, use, prepare, authorize, approve or refer to any written communication (as defined in Rule 405 under the Securities Act), required to be filed with the Commission, that constitutes an offer to sell or solicitation of an offer to buy Common Stock hereunder

(v) Sarbanes-Oxley Act . The Company and its subsidiaries will use their best efforts to comply with all effective applicable provisions of the Sarbanes-Oxley Act.

8. Conditions to Cowen's Obligations . The obligations of Cowen hereunder with respect to a Placement will be subject to the continuing accuracy and completeness of the representations and warranties made by the Company herein, to the due performance by the Company of its obligations hereunder, to the completion by Cowen of a due diligence review satisfactory to Cowen in its reasonable judgment, and to the continuing satisfaction (or waiver by Cowen in its sole discretion) of the following additional conditions:

(a) Registration Statement Effective . The Registration Statement shall be effective and shall be available for (i) all sales of Placement Shares issued pursuant to all prior Placement Notices and (ii) the sale of all Placement Shares contemplated to be issued by any Placement Notice.

(b) No Material Notices . None of the following events shall have occurred and be continuing: (i) receipt by the Company or any of its subsidiaries of any request for additional information from the Commission or any other federal or state governmental authority during the period of effectiveness of the Registration Statement, the response to which would require any post-effective amendments or supplements to the Registration Statement or the Prospectus; (ii) the issuance by the Commission or any other federal or state governmental authority of any stop order suspending the effectiveness of the Registration Statement or the initiation of any proceedings for that purpose; (iii) receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Placement Shares for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; or (iv) the occurrence of any event that makes any material statement made in the Registration Statement or the Prospectus or any material document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires the making of any changes in the Registration Statement, related Prospectus or such documents so that, in the case of the Registration Statement, it will not contain any materially untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading and, that in the case of the Prospectus, it will not contain any materially untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(c) No Misstatement or Material Omission . Cowen shall not have advised the Company that the Registration Statement or Prospectus, or any amendment or supplement thereto, contains an untrue statement of fact that in Cowen's reasonable opinion is material, or omits to state a fact that in Cowen's opinion is material and is required to be stated therein or is necessary to make the statements therein not misleading.

(d) Material Changes . Except as contemplated in the Prospectus, or disclosed in the Company's reports filed with the Commission, there shall not have been any material adverse change, on a consolidated basis, in the authorized capital stock of the Company or any Material Adverse Change or any development that could reasonably be expected to result in a Material Adverse Change, or any downgrading in or withdrawal of the rating assigned to any of the Company's securities (other than asset backed securities) by any rating organization or a public announcement by any rating organization that it has under surveillance or review its rating of any of the Company's securities (other than asset backed securities), the effect of which, in the case of any such action by a rating organization described above, in the reasonable judgment of Cowen (without relieving the Company of any obligation or liability it may otherwise have), is so material as to make it impracticable or inadvisable to proceed with the offering of the Placement Shares on the terms and in the manner contemplated in the Prospectus.

(e) Company Counsel Legal Opinion . Cowen shall have received the opinions of Company Counsel required to be delivered pursuant to Section 7(n) on or before the date on which such delivery of such opinion is required pursuant to Section 7(n) .

(f) Cowen Counsel Legal Opinion . Cowen shall have received from Duane Morris LLP, counsel for Cowen, such opinion or opinions, on or before the date on which the delivery of the Company Counsel legal opinion is required pursuant to Section 7(n) , with respect to such matters as Cowen may reasonably require, and the Company shall have furnished to such counsel such documents as they request for enabling them to pass upon such matters.

(g) Comfort Letter . Cowen shall have received the Comfort Letter required to be delivered pursuant to Section 7(o) on or before the date on which such delivery of such Comfort Letter is required pursuant to Section 7(o) .

(h) Representation Certificate . Cowen shall have received the certificate required to be delivered pursuant to Section 7(m) on or before the date on which delivery of such certificate is required pursuant to Section 7(m) .

(i) Secretary's Certificate . On or prior to the First Delivery Date, Cowen shall have received a certificate, signed on behalf of the Company by its corporate Secretary, in form and substance satisfactory to Cowen and its counsel.

(j) No Suspension . Trading in the Common Stock shall not have been suspended on Nasdaq.

(k) Other Materials . On each date on which the Company is required to deliver a certificate pursuant to Section 7(m) , the Company shall have furnished to Cowen such appropriate further information, certificates and documents as Cowen may have reasonably requested. All such opinions, certificates, letters and other documents shall have been in compliance with the provisions hereof. The Company will furnish Cowen with such conformed copies of such opinions, certificates, letters and other documents as Cowen shall have reasonably requested.

(l) Securities Act Filings Made . All filings with the Commission required by Rule 424 under the Securities Act to have been filed prior to the issuance of any Placement Notice hereunder shall have been made within the applicable time period prescribed for such filing by Rule 424.

(m) Approval for Listing . The Placement Shares shall either have been (i) approved for listing on Nasdaq, subject only to notice of issuance, or (ii) the Company shall have filed an application for listing of the Placement Shares on Nasdaq at, or prior to, the issuance of any Placement Notice.

(n) No Termination Event . There shall not have occurred any event that would permit Cowen to terminate this Agreement pursuant to Section 11(a) .

9. Indemnification and Contribution .

(a) Company Indemnification . The Company agrees to indemnify and hold harmless Cowen, the directors, officers, partners, employees and agents of Cowen and each person, if any, who (i) controls Cowen within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, or (ii) is controlled by or is under common control with Cowen (a " **Cowen Affiliate** ") from and against any and all losses, claims, liabilities, expenses and damages (including, but not limited to, any and all reasonable investigative, legal and other expenses incurred in connection with, and any and all amounts paid in settlement (in accordance with Section 9(c)) of, any action, suit or proceeding between any of the indemnified parties and any indemnifying parties or between any indemnified party and any third party, or otherwise, or any claim asserted), as and when incurred, to which Cowen, or any such person, may become subject under the Securities Act, the Exchange Act or other federal or state statutory law or regulation, at common law or otherwise, insofar as such losses, claims, liabilities, expenses or damages arise out of or are based, directly or indirectly, on (x) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or the Prospectus or any amendment or supplement to the Registration Statement or the Prospectus or in any free writing prospectus or (y) the omission or alleged omission to state in any such document a material fact required to be stated in it or necessary to make the statements in it not misleading; *provided* , *however* , that this indemnity agreement shall not apply to the extent that such loss, claim, liability, expense or damage arises from the sale of the Placement Shares pursuant to this Agreement and is caused directly or indirectly by an untrue statement or omission made in reliance upon and in conformity with the Agent's Information. This indemnity agreement will be in addition to any liability that the Company might otherwise have.

(b) Cowen Indemnification . Cowen agrees to indemnify and hold harmless the Company and its directors and each officer of the Company that signed the Registration Statement, and each person, if any, who (i) controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act or (ii) is controlled by or is under common control with the Company (a " **Company Affiliate** ") against any and all loss, liability, claim, damage and expense described in the indemnity contained in Section 9(a) , as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement (or any amendments thereto), the Prospectus (or any amendment or supplement thereto) or in any free writing prospectus in reliance upon and in conformity with Agent's Information.

(c) Procedure . Any party that proposes to assert the right to be indemnified under this Section 9 will, promptly after receipt of notice of commencement of any action against such party in respect of which a claim is to be made against an indemnifying party or parties under this Section 9 , notify each such indemnifying party of the commencement of such action, enclosing a copy of all papers served, but the omission so to notify such indemnifying party will not relieve the indemnifying party from (i) any liability that it might have to any indemnified party otherwise than under this Section 9 and (ii) any liability that it may have to any indemnified party under the foregoing provision of this Section 9 unless, and only to the extent that, such omission results in the forfeiture of substantive rights or defenses by the indemnifying party. If any such action is brought against any indemnified party and it notifies the indemnifying party of its commencement, the indemnifying party will be entitled to participate in and, to the extent that it elects by delivering written notice to the indemnified party promptly after receiving notice of the commencement of the action from the indemnified party, jointly with any other indemnifying party similarly notified, to assume the defense of the action, with counsel reasonably satisfactory to the indemnified party, and after notice from the indemnifying party to the indemnified party of its election to assume the defense, the indemnifying party will not be liable to the indemnified party for any legal or other expenses except as provided below and except for the reasonable costs of investigation subsequently incurred by the indemnified party in connection with the defense. The indemnified party will have the right to employ its own counsel in any such action, but the fees, expenses and other charges of such counsel will be at the expense of such indemnified party unless (1) the employment of counsel by the indemnified party has been authorized in writing by the indemnifying party, (2) the indemnified party has reasonably concluded (based on advice of counsel) that there may be legal defenses available to it or other indemnified parties that are different from or in addition to those available to the indemnifying party, (3) a conflict or potential conflict exists (based on advice of counsel to the indemnified party) between the indemnified party and the indemnifying party (in which case the indemnifying party will not have the right to direct the defense of such action on behalf of the indemnified party) or (4) the indemnifying party has not in fact employed counsel to assume the defense of such action within a reasonable time after receiving notice of the commencement of the action, in each of which cases the reasonable fees, disbursements and other charges of counsel will be at the expense of the indemnifying party or parties. It is understood that the indemnifying party or parties shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees, disbursements and other charges of more than one separate firm admitted to practice in such jurisdiction at any one time for all such indemnified party or parties. All such fees, disbursements and other charges will be reimbursed by the indemnifying party promptly as they are incurred after the indemnifying party receives a written invoice relating to fees, disbursements and other charges in reasonable detail. An indemnifying party will not, in any event, be liable for any settlement of any action or claim effected without its written consent. No indemnifying party shall, without the prior written consent of each indemnified party, settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action or proceeding relating to the matters contemplated by this Section 9 (whether or not any indemnified party is a party thereto), unless such settlement, compromise or consent includes an unconditional release of each indemnified party from all liability arising or that may arise out of such claim, action or proceeding.

(d) Contribution . In order to provide for just and equitable contribution in circumstances in which the indemnification provided for in the foregoing paragraphs of this Section 9 is applicable in accordance with its terms but for any reason is held to be unavailable from the Company or Cowen, the Company and Cowen will contribute to the total losses, claims, liabilities, expenses and damages (including any investigative, legal and other expenses reasonably incurred in connection with, and any amount paid in settlement of, any action, suit or proceeding or any claim asserted, but after deducting any contribution received by the Company from persons other than Cowen, such as persons who control the Company within the meaning of the Securities Act, officers of the Company who signed the Registration Statement and directors of the Company, who also may be liable for contribution) to which the Company and Cowen may be subject in such proportion as shall be appropriate to reflect the relative benefits received by the Company on the one hand and Cowen on the other. The relative benefits received by the Company on the one hand and Cowen on the other hand shall be deemed to be in the same proportion as the total Net Proceeds from the sale of the Placement Shares (before deducting expenses) received by the Company bear to the total compensation received by Cowen from the sale of Placement Shares on behalf of the Company. If, but only if, the allocation provided by the foregoing sentence is not permitted by applicable law, the allocation of contribution shall be made in such proportion as is appropriate to reflect not only the relative benefits referred to in the foregoing sentence but also the relative fault of the Company, on the one hand, and Cowen, on the other, with respect to the statements or omission that resulted in such loss, claim, liability, expense or damage, or action in respect thereof, as well as any other relevant equitable considerations with respect to such offering. Such relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company or Cowen, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and Cowen agree that it would not be just and equitable if contributions pursuant to this Section 9(d) were to be determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to herein. The amount paid or payable by an indemnified party as a result of the loss, claim, liability, expense, or damage, or action in respect thereof, referred to above in this Section 9(d) shall be deemed to include, for the purpose of this Section 9(d) , any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim to the extent consistent with Section 9(c) hereof. Notwithstanding the foregoing provisions of this Section 9(d) , Cowen shall not be required to contribute any amount in excess of the commissions received by it under this Agreement and no person found guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 9(d) , any person who controls a party to this Agreement within the meaning of the Securities Act, and any officers, directors, partners, employees or agents of Cowen, will have the same rights to contribution as that party, and each officer of the Company who signed the Registration Statement will have the same rights to contribution as the Company, subject in each case to the provisions hereof. Any party entitled to contribution, promptly after receipt of notice of commencement of any action against such party in respect of which a claim for contribution may be made under this Section 9(d) , will notify any such party or parties from whom contribution may be sought, but the omission to so notify will not relieve that party or parties from whom contribution may be sought from any other obligation it or they may have under this Section 9(d) except to the extent that the failure to so notify such other party materially prejudiced the substantive rights or defenses of the party from whom contribution is sought. Except for a settlement entered into pursuant to the last sentence of Section 9(c) hereof, no party will be liable for contribution with respect to any action or claim settled without its written consent if such consent is required pursuant to Section 9(c) hereof.

10. Representations and Agreements to Survive Delivery . The indemnity and contribution agreements contained in Section 9 of this Agreement and all representations and warranties of the Company herein or in certificates delivered pursuant hereto shall survive, as of their respective dates, regardless of (i) any investigation made by or on behalf of Cowen, any controlling persons, or the Company (or any of their respective officers, directors or controlling persons), (ii) delivery and acceptance of the Placement Shares and payment therefor or (iii) any termination of this Agreement.

11. Termination.

(a) Cowen shall have the right by giving notice as hereinafter specified at any time to terminate this Agreement if (i) any Material Adverse Change, or any development that could reasonably be expected to result in a Material Adverse Change has occurred that, in the reasonable judgment of Cowen, may materially impair the ability of Cowen to sell the Placement Shares hereunder, (ii) the Company shall have failed, refused or been unable to perform any agreement on its part to be performed hereunder; *provided, however,* in the case of any failure of the Company to deliver (or cause another person to deliver) any certification, opinion, or letter required under Sections 7(m) , 7(n) , or 7(o) , Cowen's right to terminate shall not arise unless such failure to deliver (or cause to be delivered) continues for more than thirty (30) days from the date such delivery was required; or (iii) any suspension or limitation of trading in the Placement Shares or in securities generally on Nasdaq shall have occurred. Any such termination shall be without liability of any party to any other party except that the provisions of Section 7(g) (Expenses), Section 9 (Indemnification and Contribution), Section 10 (Representations and Agreements to Survive Delivery), Section 16 (Applicable Law; Consent to Jurisdiction) and Section 17 (Waiver of Jury Trial) hereof shall remain in full force and effect notwithstanding such termination. If Cowen elects to terminate this Agreement as provided in this Section 11(a) , Cowen shall provide the required notice as specified in Section 12 (Notices).

(b) The Company shall have the right, by giving ten (10) days notice as hereinafter specified to terminate this Agreement in its sole discretion at any time after the date of this Agreement . Any such termination shall be without liability of any party to any other party except that the provisions of Section 7(g) , Section 9 , Section 10 , Section 16 and Section 17 hereof shall remain in full force and effect notwithstanding such termination.

(c) Cowen shall have the right, by giving ten (10) days notice as hereinafter specified to terminate this Agreement in its sole discretion at any time after the date of this Agreement . Any such termination shall be without liability of any party to any other party except that the provisions of Section 7(g) , Section 9 , Section 10 , Section 16 and Section 17 hereof shall remain in full force and effect notwithstanding such termination.

(d) Unless earlier terminated pursuant to this Section 11 , this Agreement shall automatically terminate upon the issuance and sale of all of the Placement Shares through Cowen on the terms and subject to the conditions set forth herein; *provided* that the provisions of Section 7(g) , Section 9 , Section 10 , Section 16 and Section 17 hereof shall remain in full force and effect notwithstanding such termination.

(e) This Agreement shall remain in full force and effect unless terminated pursuant to Sections 11(a) , (b) , (c), or (d) above or otherwise by mutual agreement of the parties; *provided, however,* that any such termination by mutual agreement shall in all cases be deemed to provide that Section 7(g) , Section 9 , Section 10 , Section 16 and Section 17 shall remain in full force and effect. Upon termination of this Agreement, the Company shall not have any liability to Cowen for any discount, commission or other compensation with respect to any Placement Shares not otherwise sold by Cowen under this Agreement, except with respect to reimbursement of expenses pursuant to Section 7(g).

(f) Any termination of this Agreement shall be effective on the date specified in such notice of termination; *provided, however,* that such termination shall not be effective until the close of business on the date of receipt of such notice by Cowen or the Company, as the case may be. If such termination shall occur prior to the Settlement Date for any sale of Placement Shares, such Placement Shares shall settle in accordance with the provisions of this Agreement.

12. Notices . All notices or other communications required or permitted to be given by any party to any other party pursuant to the terms of this Agreement shall be in writing, unless otherwise specified in this Agreement, and if sent to Cowen, shall be delivered to Cowen at Cowen and Company, LLC, 599 Lexington Avenue, New York, NY 10022, fax no. 646-562-1124, Attention: General Counsel with a copy to Duane Morris LLP, attention: James T. Seery, e-mail jtseery@duanemorris.com; or if sent to the Company, shall be delivered to TerraVia Holdings, Inc., 225 Gateway Boulevard, South San Francisco, CA 94080 attention: Paul Quinlan, e-mail: pquinlan@terravia.com, with a copy to Davis Polk & Wardwell LLP, attention: Alan Denenberg, e-mail: alan.denenberg@davispolk.com. Each party to this Agreement may change such address for notices by sending to the parties to this Agreement written notice of a new address for such purpose. Each such notice or other communication shall be deemed given (i) when delivered personally or by verifiable facsimile transmission (with an original to follow) on or before 4:30 p.m., New York City time, on a Business Day (as defined below), or, if such day is not a Business Day on the next succeeding Business Day, (ii) on the next Business Day after timely delivery to a nationally-recognized overnight courier and (iii) on the Business Day actually received if deposited in the U.S. mail (certified or registered mail, return receipt requested, postage prepaid). For purposes of this Agreement, " **Business Day** " shall mean any day on which the Nasdaq and commercial banks in the City of New York are open for business.

13. Successors and Assigns . This Agreement shall inure to the benefit of and be binding upon the Company and Cowen and their respective successors and the affiliates, controlling persons, officers and directors referred to in Section 9 hereof. References to any of the parties contained in this Agreement shall be deemed to include the successors and permitted assigns of such party. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and permitted assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement. Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party; *provided* , *however* , that Cowen may assign its rights and obligations hereunder to an affiliate of Cowen without obtaining the Company's consent.

14. Adjustments for Share Splits . The parties acknowledge and agree that all share-related numbers contained in this Agreement shall be adjusted to take into account any share split, share dividend or similar event effected with respect to the Common Stock.

15. Entire Agreement; Amendment; Severability . This Agreement (including all schedules and exhibits attached hereto and Placement Notices issued pursuant hereto) constitutes the entire agreement and supersedes all other prior and contemporaneous agreements and undertakings, both written and oral, among the parties hereto with regard to the subject matter hereof. Neither this Agreement nor any term hereof may be amended except pursuant to a written instrument executed by the Company and Cowen. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable as written by a court of competent jurisdiction, then such provision shall be given full force and effect to the fullest possible extent that it is valid, legal and enforceable, and the remainder of the terms and provisions herein shall be construed as if such invalid, illegal or unenforceable term or provision was not contained herein, but only to the extent that giving effect to such provision and the remainder of the terms and provisions hereof shall be in accordance with the intent of the parties as reflected in this Agreement.

16. Applicable Law; Consent to Jurisdiction . This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York without regard to the principles of conflicts of laws. Each party hereby irrevocably submits to the non-exclusive jurisdiction of the state and federal courts sitting in the City of New York, borough of Manhattan, for the adjudication of any dispute hereunder or in connection with any transaction contemplated hereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof (certified or registered mail, return receipt requested) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law.

17. Waiver of Jury Trial . The Company and Cowen each hereby irrevocably waives any right it may have to a trial by jury in respect of any claim based upon or arising out of this Agreement or any transaction contemplated hereby.

18. Absence of Fiduciary Relationship . The Company acknowledges and agrees that:

(a) Cowen has been retained solely to act as sales agent in connection with the sale of the Common Stock and that no fiduciary, advisory or agency relationship between the Company and Cowen has been created in respect of any of the transactions contemplated by this Agreement, irrespective of whether Cowen has advised or is advising the Company on other matters;

(b) the Company is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated by this Agreement;

(c) the Company has been advised that Cowen and its affiliates are engaged in a broad range of transactions which may involve interests that differ from those of the Company and that Cowen has no obligation to disclose such interests and transactions to the Company by virtue of any fiduciary, advisory or agency relationship; and

(d) the Company waives, to the fullest extent permitted by law, any claims it may have against Cowen, for breach of fiduciary duty or alleged breach of fiduciary duty and agrees that Cowen shall have no liability (whether direct or indirect) to the Company in respect of such a fiduciary claim or to any person asserting a fiduciary duty claim on behalf of or in right of the Company, including stockholders, partners, employees or creditors of the Company.

19. Counterparts . This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed Agreement by one party to the other may be made by facsimile transmission.

20. Definitions . As used in this Agreement, the following term has the meaning set forth below:

(a) " *Applicable Time* " means the date of this Agreement, each Representation Date, the date on which a Placement Notice is given, and any date on which Placement Shares are sold hereunder.

(b) *"Agent's Information"* means, solely the following information in the Prospectus:
the third sentence of the eighth paragraph under the caption "Plan of Distribution" in the Prospectus.

[Remainder of Page Intentionally Blank]

If the foregoing correctly sets forth the understanding between the Company and Cowen, please so indicate in the space provided below for that purpose, whereupon this letter shall constitute a binding agreement between the Company and Cowen.

Very truly yours,

COWEN AND COMPANY, LLC

By: _ /s/ Robert Sine_____
Name: Robert Sine
Title: Managing Director

ACCEPTED as of the date
first-above written:

TERRAVIA HOLDINGS, INC.

By: _ /s/ Tyler Painter_____
Name: Tyler Painter
Title: COO/CFO

Exhibit 31.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
(Pursuant to Rule 13a -14(a) or Rule 15d-14(a) of the
Securities Exchange Act of 1934, as amended,
as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002)

I, Apurva S. Mody, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of TerraVia Holdings, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 4, 2016

/s/ Apurva S. Mody

Apurva S. Mody
Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER
(Pursuant to Rule 13a -14(a) or Rule 15d-14(a) of the
Securities Exchange Act of 1934, as amended,
as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002)

I, Tyler W. Painter, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of TerraVia Holdings, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a015(f) and 15d-15(f) for the registrant and have:
   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 4, 2016

/ S / T YLER W. P AINTER

Tyler W. Painter
Chief Operating Officer and
Chief Financial Officer
(Principal Financial Officer)

Exhibit 32.1

CERTIFICATIONS PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of TerraVia Holdings, Inc. (the "Company") on Form 10-Q for the quarter ended September 30, 2016 , as filed with the Securities and Exchange Commission (the "Report"), each of Apurva S. Mody, Chief Executive Officer and Tyler W. Painter, Chief Operating Officer and Chief Financial Officer of the Company, respectively, do each hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge:

- The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ APURVA S. MODY

Apurva S. Mody
Chief Executive Officer

Date: November 4, 2016

/ S / T YLER W. P AINTER

Tyler W. Painter
Chief Operating Officer and
Chief Financial Officer

Date: November 4, 2016

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

This certification accompanies the Report to which it relates, is not deemed filed with the SEC and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, whether made before or after the date of the Report and irrespective of any general incorporation language contained in such filing.