UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
	:	
ORION HEALTHCORP, INC.	:	Case No. 18-71748 (AST)
CONSTELLATION HEALTHCARE TECHNOLOGIES, INC.	:	Case No. 18-71749 (AST)
NEMS ACQUISITION, LLC	:	Case No. 18-71750 (AST)
NORTHEAST MEDICAL SOLUTIONS, LLC	:	Case No. 18-71751 (AST)
NEMS WEST VIRGINIA, LLC	:	Case No. 18-71752 (AST)
PHYSICIANS PRACTICE PLUS, LLC	:	Case No. 18-71753 (AST)
PHYSICIANS PRACTICE PLUS HOLDINGS, LLC	:	Case No. 18-71754 (AST)
MEDICAL BILLING SERVICES, INC.	:	Case No. 18-71755 (AST)
RAND MEDICAL BILLING, INC.	:	Case No. 18-71756 (AST)
RMI PHYSICIAN SERVICES CORPORATION	:	Case No. 18-71757 (AST)
WESTERN SKIES PRACTICE MANAGEMENT, INC.	:	Case No. 18-71758 (AST)
INTEGRATED PHYSICIAN SOLUTIONS, INC.	:	Case No. 18-71759 (AST)
NYNM ACQUISITION, LLC	:	Case No. 18-71760 (AST)
NORTHSTAR FHA, LLC	:	Case No. 18-71761 (AST)
NORTHSTAR FIRST HEALTH, LLC	:	Case No. 18-71762 (AST)
VACHETTE BUSINESS SERVICES, LTD.	:	Case No. 18-71763 (AST)
MDRX MEDICAL BILLING, LLC	:	Case No. 18-71764 (AST)
VEGA MEDICAL PROFESSIONALS, LLC	:	Case No. 18-71765 (AST)
ALLEGIANCE CONSULTING ASSOCIATES, LLC	:	Case No. 18-71766 (AST)
ALLEGIANCE BILLING & CONSULTING, LLC	:	Case No. 18-71767 (AST)
PHOENIX HEALTH, LLC	:	Case No. 18-71789 (AST)
	:	
Debtors.	:	(Jointly Administered)

ORION HEALTHCORP, INC., *et al.*,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Adv. Pro. No. 18-08048 (AST)
	:	
CAPITA IRG TRUSTEES (NOMINEES) LIMITED, CHT HOLDCO LLC, BLUE MOUNTAIN HEALTHCARE LLC, PBPP PARTNERS LLC, AXIS MEDICAL SERVICES LLC, VEGA ADVANCED CARE LLC, FOREST NOMINEES LIMITED GC1 ACCT, AAKB INVESTMENTS LIMITED, PULSAR ADVANCE CARE LLC, PLATFORM SECURITIES NOMINEES LIMITED KKCLT ACCT, LEXINGTON LANDMARK SERVICES LLC, MYMSMD LLC, PPSR PARTNERS LLC, MAX EDWARD ROYDE, PBPP LLB, UBS PRIVATE BANKING NOMINEES LTD MAINPOOL ACCT, ABN AMRO GLOBAL NOMINEES LIMITED 573 MAIN ACCT, ALLIANCE TRUST SAVINGS NOMINEES LTD CDIGRO ACCT, THE BANK OF NEW YORK (NOMINEES) LIMITED, THE BANK OF NEW YORK (NOMINEES) LIMITED SFTIF ACCT, BARCLAYSHARE NOMINEES LIMITED, DAVID BEARDSALL, BEAUFORT NOMINEES LIMITED, BEAUFORT NOMINEES LIMITED SSLNOMSACCT, BNY (OCS) NOMINEES LIMITED HIT ACCT, BREWIN NOMINEES LIMITED GROSS ACCT, CFS PORTFOLIO MANAGEMENT LIMITED, CGWL NOMINEES LIMITED GC1 ACCT, CHASE NOMINEES LIMITED, CHASE NOMINEES LIMITED EXDEPAIF ACCT, DAVID FALCON BUTLER COLE, CREDIT SUISSE CLIENT NOMINEES (UK) LIMITED D6M5PB ACCT, FERLIM NOMINEES LIMITED ISA ACCT, FERLIM NOMINEES LIMITED POOLED ACCT, FITEL NOMINEES LIMITED SDPR ACCT, GOLDMAN SACHS INTERNATIONAL CREPTEMP ACT, HAREWOOD NOMINEES LIMITED 4121550 ACCT, HSBC CLIENT HOLDINGS NOMINEE (UK), HSBC GLOBAL CUSTODY NOMINEE (UK) LIMITED 630372 ACCT, HSBC GLOBAL CUSTODY NOMINEE (UK) LIMITED 667656 ACCT, HSBC GLOBAL CUSTODY NOMINEE (UK) LIMITED 944287 ACT, HSCB GLOBAL CUSTODY NOMINEE (UK) LIMITED 982409 ACCT, HUNTRESS (CI) NOMINEES LIMITED KGCLT ACCT, INVESTOR NOMINEES LIMITED, INVESTOR NOMINEES LIMITED WRAP ACCT, INVESTOR NOMINEES LIMITED NOMINEE ACCT, JAMES CAPEL (NOMINEES) LIMITED	:	

PC ACCT, JIM NOMINEES LIMITED ISA ACCT, JIM :
NOMINEES LIMITED JARVIS ACCT, JIM NOMINEES :
LIMITED JARVISNT ACCT, JOHNSTON ASSET :
MANAGEMENT LTD, MR JOHN JOSEPH JOHNSTON, :
MRS KARIN JOHNSTON, J.P. MORGAN SECURITIES PLC :
JPCREPON ACCT, KBC SECURITIES NV CLIENT ACCT, :
LAWSHARE NOMINEES LIMITED ISA ACCT, LAWSHARE :
NOMINEES LIMITED SIPP ACCT, LAWSHARE :
NOMINEES LIMITED UNDOC, LAWSHARE NOMINEES :
LIMITED DEALING, MR PAUL LINES, LYNCHWOOD :
NOMINEES LIMITED 2006420 ACCT, MERRILL LYNCH :
INTERNATIONAL MAIN ACCT, MORGAN STANLEY :
CLIENT SECURITIES NOMINEES LIMITED, MORGAN :
STANLEY CLIENT SECURITIES NOMINEES LIMITED SEG :
ACCT, NOMURA PB NOMINEES LIMITED PBNOMS :
ACCT, NORTRUST NOMINEES LIMITED, NORTRUST :
NOMINEES LIMITED TDS ACCT, NORTRUST NOMINEES :
LIMITED LUA01 ACCT, NORTRUST NOMINEES LTD :
THD05 ACCT, N.Y. NOMINEES LIMITED, N.Y. :
NOMINEES LIMITED BCCAG ACCT, PEEL HUNT :
HOLDINGS LIMITED PMPRINC ACCT, PERSHING :
NOMINEES LIMITED CCCLT ACCT, PERSHING :
NOMINEES LIMITED ELISA ACCT, PERSHING :
NOMINEES LIMITED IMCLT ACCT, PERSHING :
NOMINEES LIMITED JICLT ACCT, PERSHING :
NOMINEES LIMITED PERNY ACCT, PERSHING :
NOMINEES LIMITED RKCLT ACCT, PERSHING :
NOMINEES LIMITED RKISA :
ACCT, PERSHING NOMINEES LIMITED TMCLT ACCT, :
PERSHING NOMINEES LIMITED WRCLT ACCT, :
PERSHING NOMINEES LIMITED PQIDEAL ACCT, :
PLATFORM SECURITIES NOMINEES LIMITED KKISA :
ACCT, PLATFORM SECURITIES NOMINEES LIMITED :
ASHISA ACCT, PLATFORM SECURITIES NOMINEES :
LIMITED ASHNOM ACCT, PLATFORM SECURITIES :
NOMINEES LIMITED ASHPEN ACCT, PLATFORM :
SECURITIES NOMINEES LIMITED ASHTRU ACCT, :
RATHBONE NOMINEES LIMITED, REDMAYNE :
(NOMINEES) LIMITED P89813X ACCT, REDMAYNE :
(NOMINEES) LIMITED RG2461R ACCT, ROCK :
(NOMINEES) LIMITED ISA ACCT, ROCK (NOMINEES) :
LIMITED CSHNET ACCT, ROCK (NOMINEES) LIMITED :
TAXFULL ACCT, ROCK (NOMINEES) LIMITED :
FASTRADE ACCT, SECURITIES SERVICES NOMINEES :
LIMITED 2140036 ACCT, SHARE NOMINEES LTD, :
SKANDINAVISKA ENSKILDA BANKEN AB (PUBL) :

2035260 ACCT, SMITH & WILLIAMSON NOMINEES :
LIMITED ISA ACCT, STATE STREET NOMINEES :
LIMITED G007 ACCT, STATE STREET NOMINEES :
LIMITED OM01 ACCT, STATE STREET NOMINEES :
LIMITED OM02 ACCT, STATE STREET NOMINEES :
LIMITED OQ51 ACCT, STIFEL NICOLAUS EUROPE :
LIMITED NNIDEAL ACCT, SVS SECURITIES (NOMINEES) :
LTD ONL ACCT, TD DIRECT INVESTING NOMINEES :
(EUROPE) LIMITED USISA15 ACCT, TD DIRECT :
INVESTING NOMINEES (EUROPE) LIMITED USNOM15 :
ACCT, TD DIRECT INVESTING NOMINEES (EUROPE) :
LIMITED USNOM30 ACCT, TD DIRECT INVESTING :
NOMINEES (EUROPE) LIMITED USSIP00 ACCT, :
TRANSACT NOMINEES LIMITED INTEGRA1 ACCT, :
VICTOIRE NOMINEES LIMITED 2193900 ACCT, :
VIDACOS NOMINEES LIMITED 2154 ACCT, VIDACOS :
NOMINEES LIMITED IGUKCLT ACCT, W B NOMINEES :
LIMITED ISAMAX ACCT, W B NOMINEES LIMITED :
TREATY ACCT, WEALTH NOMINEES LIMITED WRAP :
ACCT, W H IRELAND NOMINEES LIMITED ISA ACCT, :
AND THE UNITED STATES OF AMERICA, :
DEPARTMENT OF TREASURY, INTERNAL REVENUE :
SERVICE :
:
Defendants. :
---------- x

Memorandum of Law in Support of the United States of America's Motion to Dismiss Counts V and VI for Failure to State a Claim

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Introduction

Plaintiffs in this adversary proceeding are twenty-one healthcare billing businesses, which CC Capital and Bank of America acquired from an indicted fraudster, Paul Parmar. Knowing that a federal court had issued a warrant against Parmar based on a massive alleged fraud, Plaintiffs nonetheless closed the deal. Now, under § 105(a),[1] Plaintiffs ask the Court to impose a constructive trust on Plaintiffs' tax payments resulting from that deal. The reason: Parmar allegedly engaged in similar frauds in this case. There is no allegation, however, that the United States at all aided Parmar's alleged scams, that the transfer to the United States meets the elements of any avoidance provision, or that the United States was unjustly enriched by Parmar's misconduct. Instead, Plaintiffs ask the Court to invoke its equitable powers under § 105(a) to bail them out of their loss on a risky investment. But it is hornbook law that § 105 creates no independent right of action and cannot contravene other statutory provisions. Their § 105 claims do both. And even if they could invoke § 105, equity would not require the United States indemnify Plaintiffs for their gamble on Parmar. The claims against the United States should be dismissed. Plaintiffs should be required to recover from those who benefited from the fraud, rather than the public fisc.

Background

Plaintiffs are a consolidated group of companies combined through acquisitions.[2] Plaintiff Constellation Healthcare Technologies Inc. is a holding company, which controls the remaining plaintiffs, many of which have astrological or astronomical names, like Orion,

[1] All unmodified "§" references are to title 11.

[2] For purposes of this motion to dismiss, the facts alleged in the Complaint are taken as true. Some of the following background facts are culled from the merger agreement attached as Exhibit 1. Consideration of the merger agreement is proper. *See Int'l Audiotext Network, Inc. v. Am. Tel. & Tel. Co.*, 62 F.3d 69, 72 (2d Cir. 1995) (affirming consideration of merger agreement attached to a motion to dismiss).

Northstar, Vega, Phoenix, and Western Skies (collectively "Constellation" or "Plaintiffs"). These businesses offer back-office billing and procurement services to physicians through the United States. Dkt. No. 1 at ¶ 21-34. This case stems from Parmar's cover up of his fraudulent issuance of securities on a London stock market, which caused a private equity firm, CC Capital and its principal financer, Bank of America N.A. ("BANA"), to get a disappointing return on their acquisition of Constellation.

A. Assembling Constellation through Fraudulent Security Offerings

On September 3, 2014, Parmar formed Constellation. *Id*. at ¶ 43. Soon Constellation came to be publicly traded on AIM, a lightly-regulated submarket of the London Stock Exchange. *Id*. at ¶ 7. Ostensibly, Constellation issued this initial and other secondary offerings to fund acquisitions. *See id*. at ¶¶ 44-50. The acquisitions, however, were shams: the targets, in fact, had no operations at the time of each acquisition. *See id.* at ¶ 49. Many of these acquired 'companies' even lacked tax identification numbers. *Id.* at ¶¶ 49, 50.

B. Plaintiffs and Parmar Structure the Constellation Deal

On November 25, 2016, CC Capital Management, LLC ("CC Capital"), led by Chinh Chu, offered to acquire Constellation for purchase price of $309.4 million. *Id*. at ¶ 56. Chu and Parmar structured the deal as a "go-private" transaction. *Id*. at ¶ 2. "Going private" is a term used to describe a transaction, generally with the cooperation of a controlling stockholder, that reduces the number of stockholders of a public company, allowing the company to terminate its public company status and related reporting obligations to securities markets. *See, e.g.*, Joshua M. Koenig, A BRIEF ROADMAP TO GOING PRIVATE, 2004 Colum. Bus. L. Rev. 505, 508 (2004). According to the Complaint, under the terms of the deal, CC Capital owns CC Holdco., which owns a majority of CHT Holdco., which owns Constellation, which owns the remaining plaintiffs.

C. Plaintiffs Learn of Parmar's Massive Frauds

On December 12, 2017, CC Capital appeared at a hearing in the Court of Chancery of the State of Delaware in the case styled as *In the Matter of the Rehabilitation of Freestone Insurance Company*, C.A. No. 9574-VCL ("Freestone Case").[3] In the Freestone Case, Parmar was alleged to have engaged in a massive fraud, and at that hearing, CC Capital acknowledged that a federal judge had issued a warrant seizing tens of millions of dollars held in escrow for Parmar. Exhibit 2 at 4:16-17.

D. Nonetheless, Plaintiffs Close the Deal

Despite that, on January 18, 2017, Chu increased his offer to an alleged 30.2% premium on Constellation stock's all-time-high closing price, and the shareholders approved the merger. *Id*. at ¶¶ 61, 58 n.2. On February 2, 2017, Chu through CC Holdco wired the shareholder payments to Capita Registrars, Ltd. (n/k/a Link Market Services Ltd.) ("Capita"). *Id*. at ¶ 81. The next day, Capita distributed those payments to the shareholders. *Id*. at ¶ 82.

A subset of those shareholders—those who are not alleged to have conspired in Parmar's fraud—are also named as defendants here. *Id*. at ¶¶ 18, 19 n.1. This group largely consists of financial institutions, like "Goldman Sachs International," "Merrill Lynch International Main," and "Morgan Stanley Client Securities." Dkt. No. 1-1. They are alleged to be nonresident shareholders, who held a publicly-traded security of a U.S. company. *See* Dkt. No. 1 at ¶ 86.

Because the nonresident shareholders disposed of a U.S. asset, Capita withheld $10,435,097.13 of the merger consideration "under the Foreign Investment in Real Property Tax

[3] *See* Exhibit 2, 4:7-12. Consideration of these court filings to show notice is appropriate on a motion to dismiss. *See Kramer v. Time Warner Inc*., 937 F.2d 767, 774 (2d Cir. 1991) (noting that, in ruling on a motion to dismiss, "courts routinely take judicial notice of documents filed in other courts, . . . not for the truth of the matters asserted in the other litigation, but rather to establish the fact of such litigation and related filings.").

Act of 1980, 26 U.S.C. § 1445[4], which requires a percentage of consideration paid for certain transactions to be withheld and deposited with the IRS[.]" *Id*. at ¶ 88 (the "IRS Payment"). Capita was unable to deposit the IRS Payment, however, as it lacked the "requisite shareholder information." *Id*. at ¶ 89.

E. After Eight Months of Working with Parmar, Plaintiffs Let Parmar Resign and Make the IRS Payment

The deal closed "on or about January 30, 2017." *Id*. at ¶ 80. But, even though they knew of the seizure warrant, Plaintiffs, CC Capital, and BANA did not immediately sever ties with Parmar. *Id*. at ¶ 85. Rather, over the next eight months, Parmar served Plaintiffs as their CEO and board member. *Id*. at ¶¶ 84, 85. On September 29, 2017, Parmar resigned both positions. *Id*. at ¶ 85.

On December 29, 2017, three months after Parmar's resignation, Capita transferred the IRS Payment to Constellation "so that [Constellation] could remit the funds to the IRS with the requisite shareholder information." *Id*. at ¶ 89. Almost a year after the deal closed, on January 16, 2018, "to avoid potential liability (including potential criminal liability)," Constellation caused the IRS Payment to be wired to the IRS. *Id*. at ¶ 91. Plaintiffs still have not filed the appropriate tax return with the IRS, reporting the "requisite shareholder information." *Id*. at ¶ 89.

Standard

Rule 12(b)(6) of the Federal Rules of Civil Procedure is applicable to this proceeding pursuant to Rule 7012(b) of the Federal Rules of Bankruptcy Procedure. Under Rule 12(b)(6), a

[4] Contrary to their present allegations regarding § 1445, Plaintiffs own filings show they have represented to the IRS that they withheld the IRS Payment "pursuant to Internal Revenue Code §§ 1441, 1442." Doc. 2-2 at 1; *see also id.* at 2 (explaining that "the Company consulted with legal counsel . . . and concluded that it was appropriate to remit the [IRS Payment] . . . to the IRS, in accordance with . . . §§ 1441 and 1442").

court must accept as true all allegations in the complaint and draw all reasonable inferences in the plaintiff's favor. *Loginovskaya v. Batratchenko*, 764 F.3d 266, 269-70 (2d Cir. 2014). "To survive a motion to dismiss under Rule 12(b)(6), a complaint must allege sufficient facts which, taken as true, state a plausible claim for relief." *Keiler v. Harlequin Enters. Ltd*., 751 F.3d 64, 68 (2d Cir. 2014); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("[A] complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." (citation omitted)). A claim has facial plausibility when "the factual content" of the complaint "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Tongue v. Sanofi*, 816 F.3d 199, 209 (2d Cir. 2016) (citation omitted).

Argument

Relying solely on § 105(a), Plaintiffs ask the Court for sweeping relief: they attempt to claw back over $10 million in tax payments applicable to over 100 foreign taxpayer accounts. In contrast to this extraordinary relief, the allegations against the IRS consist of nine paragraphs divided between two counts. Dkt. No. 1 at ¶¶ 131-140.

The first threadbare count, Count V, consists of four allegations and asks the Court to impose a constructive trust for Plaintiffs' benefit on the IRS Payment, which the Complaint admits was paid "to avoid potential liability (including potential criminal liability)[.]" *Id*. at ¶ 91. The second skeletal count, Count VI, seeks a permanent injunction against the IRS, disrupting its orderly administration of the internal revenue code, so that Plaintiffs may recover the nonresident shareholders' presumed tax refunds, even though there is no information from which to deduce the shareholders are, in fact, entitled to tax refunds.

I. Section 105 Creates No Independent Right of Action and Cannot Conflict with Other Provisions of the Code; Plaintiffs' § 105 Claims Do Both.

Section 105 provides no authority for the relief Plaintiffs seek; it merely supports the clear and undisputed proposition that this Court is empowered to take certain actions necessary to carry out other provisions of the Bankruptcy Code.

But the Court's equitable powers are limited "and can only be exercised within the confines of the Bankruptcy Code." *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206, (1988). Section 105 "does not . . . constitute a roving commission to do equity.'" *See In re Dairy Mart Convenience Stores, Inc.*, 351 F.3d 86, 91-92 (2d Cir. 2003) (quoting *United States v. Sutton*, 786 F.2d 1305, 1308 (5th Cir. 1986)). Nor does it "authorize the bankruptcy courts to create substantive rights that are otherwise unavailable under applicable law." *In re Smart World Techs., LLC*, 423 F.3d 166, 184 (2d Cir. 2005). Indeed, the Supreme Court has recognized that it is "hornbook law" that, "in exercising those statutory and inherent powers, a bankruptcy court may not contravene specific statutory provisions." *Law v. Siegel*, 134 S. Ct. 1188, 1194, 188 L. Ed. 2d 146 (2014).

Plaintiffs attempt to do just that. "Because no provision of the Bankruptcy Code may be successfully invoked in this case, section 105(a) affords [Plaintiffs] no independent relief." *See Dairy Mart Convenience Stores, Inc.*, 351 F.3d at 92.

A. Section 105 Creates No Independent Right of Action, Much Less the Sweeping Substantive Rights Plaintiffs Invoke.

The law is clear: § 105(a) is not an end round to the substantive provisions of the Code. *See id.* Tellingly, Plaintiffs do not allege that they are entitled to a refund of any tax, they do not allege that the payments unjustly enriched the United States, and they do not contend that the payments fit under any substantive avoidance provision. Instead, absent a mention of § 105, they altogether avoid alleging why they are entitled to recover the IRS Payment. Putting the "cart

before the horse," Plaintiffs seek the remedy of a constructive trust, without showing that they are entitled to the funds in the first place. *See Merit Mgmt. Grp., LP v. FTI Consulting, Inc.*, 138 S.Ct. 883, 895 (2018); *see also* Dkt. No. 1 at ¶¶ (5), (6).

Plaintiffs cannot make this showing under the facts set forth in the complaint. Until they assert an appropriate refund claim, when Plaintiffs paid the IRS, they received "reasonably equivalent value" for the payments—namely, a dollar-for-dollar reduction in their tax liabilities. As for any claim of actual fraud in the making of the tax payments, Plaintiffs admit that its post-Parmar management made the tax payments for a non-fraudulent purpose. This attempt to skirt the requirements of the Code should be rejected, and the Court should dismiss Count V and Count VI of the Complaint.

1. *Any Constructive Fraud Claims Fails Because Constellation is Liable for the Tax and Therefore Received Equivalent Value for its Payment.*

   a. Under the United States' International Tax Collecting Regime, Constellation Is Liable For the Tax.

Before the Foreign Investment in Real Property Tax Act of 1980 ("FIRPTA"), foreign investors were often able to structure investments in the United States so as to avoid federal income tax altogether. Marc J. Gerson, AN OVERVIEW OF THE FIRPTA PROVISIONS AND RECENT REGULATORY DEVELOPMENTS, 24 J. Real Est. Tax'n 92, 92 (1997), 1996 WL 700777, 1; *see also* S. Rep. No. 504, 96th Cong., 1st Sess. 6 (1979). FIRPTA, now codified at 26 U.S.C. § 897 *et seq.*, was enacted to address this inequity. *See id*. (explaining that "[t]he [Senate Finance Committee] believes that it is essential to establish equity of tax treatment . . . between foreign and domestic investors"). Broadly speaking, FIRPTA requires foreign taxpayers to pay U.S. income tax on net gains derived from the disposition of certain U.S. investments at similar rates to U.S. investors. 26 U.S.C. § 897(a)(1); *see also* 26 C.F.R. § 1.897-1 *et seq*.

That simple objective required construction of an elaborate framework to foil creative maneuvers escape U.S. tax. Initially, FIRPTA operated by collecting U.S. tax from foreign investors solely through a system of information reporting designed to identify foreign owners. *See, e.g.*, 26 U.S.C. § 6039C (West 1980). A major problem with the original version of FIRPTA is that it could be easily evaded. *See Staff of Joint Comm. on Tax'n*, 98th Cong., 2d Sess., GENERAL EXPLANATION OF THE REVENUE PROVISIONS OF THE DEFICIT REDUCTION ACT OF 1984, at 406-407 (1984).[5] Under the original FIRPTA, a foreign person could sell U.S. assets, take the proceeds outside of the United States, and since he was beyond the jurisdiction of the United States, not pay any tax on the sale. *See id.* at 406.

To respond this problem, Congress amended FIRPTA and generally required the entity acquiring U.S. assets to withhold part of the amount paid to foreign persons, *see* 26 U.S.C. § 1445(a), and then turnover that amount to the IRS in order to satisfy the U.S. tax. *See* 26 C.F.R. § 1.1445-1(c)(1). If a taxpayer, like Constellation, fails to turn over the tax, then it is expressly made liable by statute: "Every person required to deduct and withhold any tax under this chapter is hereby made liable for such tax." *See* 26 U.S.C. § 1461; *see also Del Commercial Properties, Inc. v. C.I.R.*, 251 F.3d 210, 213 (D.C. Cir. 2001).

This obligation "is separate from the foreign entity's tax liability." *Derrick Petroleum Servs. v. PLS, Inc.*, 2017 WL 3456920, at *14 (S.D. Tex. Aug. 11, 2017). As the Treasury Regulations make clear, the tax is assessed directly against the transferee[6] (here, Plaintiffs): "if a transferee is required to deduct and withhold tax under section 1445 but fails to do so, then the tax shall be assessed against and collected from that transferee." *See, e.g.*, 26 C.F.R. § 1.1445-

[5] Available at https://www.jct.gov/publications.html?func=showdown&id=3343.

[6] The term "transferee" means the individual acquiring foreign-held property. 26 C.F.R. § 1.1445(g)(5).

1(e)(2)(i). Thus, as Plaintiffs allege, but for the IRS Payment, they would have been exposed to civil and potentially criminal liability. *Id*. at ¶ 91; *see also* 26 C.F.R. § 1.1445-1(e)(2)(i) (if an entity fails to withhold, it may be "subject to any of the civil and criminal penalties that apply.").

b. The Dollar-For-Dollar Reduction in Constellation's Tax Liabilities Provided "Reasonably Equivalent Value" For the Payments.

A transfer of property of the debtor made for less than reasonably equivalent value may be avoided in bankruptcy under Bankruptcy Code § 548(a)(1), or under 6 Del.C. § 1305(a). *See BFP v. Resolution Tr. Corp*., 511 U.S. 531, 535 (1994). The plain language of both statutes makes clear that receipt of less than reasonably equivalent value is a necessary element of avoidance. 11 U.S.C. § 548(a)(1)(B)(i); 6 Del.C. § 1305(a).

Here, Constellation received a reasonably equivalent value in exchange for its payment of taxes—"that is, a corresponding dollar-for-dollar reduction in [its] tax obligation." *See, e.g*., *In re Simmons*, 124 B.R. 606, 608 (Bankr. M.D. Fla. 1991). Indeed, the reduction in debt here was more than reasonably equivalent; it was actually equivalent. The Complaint admits as much. *See* Dkt. No. 1. at ¶ 91. Additionally, the payment afforded Plaintiffs other advantages of tax compliance, like preventing a statutory lien for unpaid taxes under 26 U.S.C. § 6321. As in *Simmons*, the dollar-for-dollar reduction in Plaintiffs' tax liabilities provided "reasonably equivalent value" for the payment, which is therefore not a fraudulent transfer. *In re Simmons*, 124 B.R. at 608. The plain meaning of both statutes is fatal to any constructive fraud claim as to the IRS. *See, e.g.*, *In re Se. Waffles, LLC*, 702 F.3d at 858 (appellate panel stating that it could not find a single case in which the debtor's payment towards its own tax liability had been avoided under fraudulent transfer statutes).

2. *Any Actual Fraud Claim Fails Because the Complaint Admits the Payments Were Made for a Non-Fraudulent Purpose.*

Because a § 548(a)(1)(A) claim sounds in fraud, it must also satisfy the heightened pleading standards of Rule 9(b) made applicable to bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 7009. *See, e.g, In re Sharp Int'l Corp*., 403 F.3d 43, 56 (2d Cir. 2005) (applying Rule 9(b) to intentional fraudulent conveyance statute). Under Rule 9(b), "though mental states may be pleaded generally, Plaintiffs must nonetheless allege facts that give rise to a strong inference of fraudulent intent." *Loreley Fin. v. Wells Fargo Sec., LLC*, 797 F.3d 160, 171 (2d Cir. 2015) (citation omitted). A complaint will survive "if a reasonable person would deem the inference of scienter cogent and at least as compelling as any opposing inference one could draw from the facts alleged." *Blanford*, 794 F.3d at 306 (citing *Tellabs v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 324 (2007)).

Here, as to the IRS Payment, the Complaint alleges the opposite of fraudulent intent. It states that Capita segregated the funds "under . . . 26 U.S.C. § 1445 . . . to be withheld and deposited with the IRS," *see* Dkt. No. 1 at ¶ 88, and that Constellation—after Parmar had resigned on September 29, 2017—caused the IRS Payment to be turned over to the IRS on December 29, 2017. *Id*. at ¶ 91. The alleged reason: "to avoid potential liability (including potential criminal liability)." *Id*. The basis for turning over the IRS Payment, therefore, was entirely appropriate.

B. Relief under § 105 Would Conflict with FIRPTA and the Bankruptcy Code's Robust Procedures for Recovering Tax Payments under § 505(a).

Plaintiffs may not use § 105 to "contravene specific statutory provisions." *Siegel*, 571 U.S. at 415. Yet, the Complaint uses § 105 to contravene both the internal revenue code and the specific provision of bankruptcy code that controls tax disputes.

1. *Constellation's Equitable Argument Conflicts with FIRPTA.*

Plaintiffs' claims conflict with the very purpose of FIRPTA withholding. Invoking equity, Plaintiffs complain that the payments to the nonresident shareholders are likely unrecoverable. Dkt. No. 1 at ¶¶ 101, 104. That is precisely why Congress required FIRPTA withholding for the benefit of the IRS. *See Staff of Joint Comm. on Tax'n*, 98th Cong., 2d Sess., at 406-407 (1984). This difficulty of collecting is no basis to permit Constellation to recover FIRPTA payments made to the IRS for that very reason.

2. *Use of § 105(a) Here Conflicts with § 505(a)'s Requirements.*

Acceptance of Constellation's constructive trust argument would also upset § 505(a)'s delicate balance for recovery of tax payments. To the extent that Constellation contends that it overpaid a tax, its remedy, if any, to obtain a refund is in § 505(a)(2), not § 105. In that case, however, Plaintiffs must take the necessary steps before asserting that claim in court, including filing an administrative claim for refund with the IRS and waiting 120 days for the IRS to determine the claim before bringing as suit for refund. *See United States v. Bond*, 762 F.3d 255, 260 (2d Cir. 2014). These requirements must be "strictly construed" and enforced with "precision and with fidelity to the terms by which Congress has expressed its wishes." *Id*.

Here, Plaintiffs do not allege that they have even done the bare minimum to obtain a refund of the IRS Payment, much less that they have exhausted their administration avenues for relief. Plaintiffs should not be permitted to sidestep this Court's faithful enforcement of § 505(a)(2)'s requirements by camouflaging a tax dispute as a § 105(a) claim.[7]

[7] The IRS understands that Plaintiffs may indeed contend that 26 U.S.C. § 1445 did not apply and that the funds were erroneously withheld from the shareholder payments. But they have not made that allegation, filed an administrative claim to that effect, nor dispelled the possible applicability of the many provisions that require withholding on a variety of transactions involving foreign persons.

As Plaintiffs' reliance on § 105 is misplaced, there is also no sovereign immunity waiver under § 106. *See also* § 106(a)(5) (clarifying that § 106 does not create any substantive cause of action not already in existence under non-bankruptcy law). The Complaint should be dismissed on this additional basis.

II. Putting Aside § 105, Plaintiffs Claim for Equitable Relief Fails.

Even if § 105 did afford Plaintiffs access to equitable relief generally available outside the confines of the bankruptcy code, they are not entitled that relief they seek here—at the expense of the Federal Treasury, for this tax payment.

A. A Century of Supreme Court Precedent Bars Plaintiffs' Attempt to Evoke Equity to Extract Funds from the Federal Treasury.

Federal courts do not have power or authority to create entitlements to federal funds according to their own principles of equity. To the contrary, even where immunity has been waived to permit judicial review, "payments of money from the Federal Treasury are limited to those authorized by statute." *OPM v. Richmond*, 496 U.S. 414, 416 (1990); *cf. FDIC v. Meyer*, 510 U.S. 471, 484 (1994); *see also United States v. Mitchell*, 463 U.S. 206, 217 (1983) ("the claimant must demonstrate that the source of substantive law he relies upon 'can fairly be interpreted as mandating compensation by the Federal Government'").

The Supreme Court has applied this principal for more than a 150 years before this dispute. In *Buchanan v. Alexander*, 45 U.S. (4 How.) 20 (1846), for example, the Court relied on that principle to hold that wages due to federal employees (in that case, seamen of the frigate Constitution) from the Federal Treasury could not be garnished or attached by creditors. The "money in the hands of the purser . . . due to seamen for wages," the Court reasoned, constituted "public money," *id*. at 20; "[s]o long as the money remains in the hands of the disbursing officer, it is as much the money of the United States, as if it had not been drawn from the treasury," *id*. at

20-21. Because those wages constituted public funds, the Court held, they could not be paid out on the basis of rights or obligations other than those created or recognized by Congress itself: "The funds of the government are specifically appropriated to certain national objects, and if such appropriations may be diverted and defeated by state process or otherwise, the functions of the government may be suspended." *Id*. at 20.

Thirty-one years after deciding *Buchanan*, the Court again applied that principle. In *Knote v. United States*, 95 U.S. 149, 154 (1877), the President asserted that, through his pardon power, he could require the return of forfeited funds to their former owners. The Supreme Court held otherwise. "[I]f the proceeds [of the seizure] have been paid into the treasury," the Court held, then "the right to them has so far become vested in the United States that they can only be secured to the former owner of the property through an act of Congress." *Id*.

Notably, the Supreme Court has more recently reaffirmed this precedent. *See Department of the Army v. Blue Fox, Inc*., 525 U.S. 255, 264 (1999) (citing *Buchanan*). In holding that a subcontractor's lien against government funds owed to an insolvent prime contractor was barred by sovereign immunity, the Supreme Court stated that such a result "is in accord with our precedent establishing that sovereign immunity bars creditors from attaching or garnishing funds in the Treasury." *Id*.; *see also U.S. Dep't of Hous. & Urban Dev. v. K. Capolino Const. Corp*., 2001 WL 487436, at *4 (S.D.N.Y. May 7, 2001) (explaining that, the "[*Buchanan*] decision, despite its age, remains the law today.").

This rule flows directly from the Constitution. Under our system of separated powers, federal courts do not make fiscal policy. Nor do they have authority to allocate resources of the United States based on judicial notions of equity or fairness. The Appropriations Clause, Art. I, § 9, Cl. 7, provides that "[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law . . . ." As the Court has explained, the Appropriations Clause

"assure[s] that public funds will be spent according to the letter of the difficult judgments reached by Congress as to the common good and not according to the individual favor of Government agents or the individual pleas of litigants." *Richmond*, 496 U.S. at 428; *see* 2 J. Story, *Commentaries on the Constitution of the United States* § 1348 (3d ed. 1858) (object of this clause "is to secure regularity, punctuality, and fidelity, in the disbursements of public money").

This case fits easily within that precedent. Acting against this background, Congress has enacted no law granting these plaintiffs a substantive right to extract funds from the Federal Treasury using this state law claim. To the contrary, in passing a comprehensive regime regulating this field, Congress granted other creditors—but not Plaintiffs—the very relief that the Complaint seeks.

In exacting detail, Congress established the Treasury Offset Program ("TOP"), which permits a limited class of creditors to directly obtain a tax refunds to satisfy a limited class of debts. *See, e.g.*, 26 U.S.C. § 6402; 31 U.S.C. § 3720A. *See also United States v. Hunter*, 2007 WL 2122052, at *2 n.10 (E.D.N.Y. July 23, 2007); *Easterling v. U.S. Dep't of Educ.*, 2016 WL 8674610, at *4 (D.N.J. Dec. 23, 2016). Plaintiffs clearly cannot avail themselves of TOP—their claim is not for an appropriate debt, and they are not an appropriate creditor. Even if they qualified, Congress has expressly deprived courts of jurisdiction to hear Plaintiffs' type of claim. *See* 26 U.S.C. § 6402(g); *see also Setlech v. United States*, 816 F. Supp. 161, 166 (E.D.N.Y.), *aff'd*, 17 F.3d 390 (2d Cir. 1993) (collecting cases). Accordingly, Plaintiffs' claims fail like that of many other attempts to reach into the Federal Treasury to obtain judgment debtors' tax refunds. *See Lisa L. Knight v. Monica Renee Eppard* (*In re Monica Renee Eppard*), 502 B.R. 458, 463 n.4 (Bankr. W.D. Va. 2012) (declining to enter an order "that has the effect of exercising control over a tax refund not yet in the hands of a taxpayer"); *Williamson v. Murray* (*In re Courtney Jane Beach, f/k/a Courtney Jane Keith*), 506 B.R. 129, 140 (B.A.P. 10th Cir.),

aff'd, 586 F. App'x 477 (10th Cir. 2014) (noting that an "executing creditor outside of bankruptcy cannot effectively attach . . . [a] refund held by the IRS") (collecting cases).

B. Even if Plaintiffs' Claim Could Proceed Against the Government, It Fails Because There Was No Unjust Enrichment.

Even on its own terms, Plaintiffs constructive trust claim fails. The heart of a constructive trust claim is unjust enrichment. It is the most important element of the claim.[8] *In re Koreag, Controle et Revision S.A.*, 961 F.2d 341, 354 (2d Cir. 1992) ("the key factor is unjust enrichment"). And it is the entire purpose of the remedy. *In re First Cent. Fin. Corp.*, 377 F.3d 209, 212 (2d Cir. 2004); *see also Counihan v. Allstate Ins. Co.*, 194 F.3d 357, 361 (2d Cir.1999) ("[A constructive trust's] purpose is to prevent unjust enrichment."). In contrast, enrichment alone will not suffice to invoke the remedial powers of equity. *In re First Cent. Fin. Corp.*, 377 F.3d 209, 218 (2d Cir. 2004). Rather, "[c]ritical is that under the circumstances and as between the two parties to the transaction the enrichment be unjust." *Transeo S.A.R.L. v. Bessemer Venture Partners VI L.P.*, 936 F. Supp. 2d 376, 410 (S.D.N.Y. 2013).

The Complaint fails entirely to allege that the United States was unjustly enriched. Even if it had, Plaintiffs cannot show unjust enrichment, unless they show they do not owe the tax. And they cannot show they do not owe the tax until they satisfy § 505. *See Bond*, 762 F.3d at 260 (explaining that Second Circuit precedent "compel[s] a strict construction of § 505(a)(2)"). Even putting aside § 505, Plaintiffs do not allege that their payment was erroneous. Plaintiffs should not be permitted to litigate what is really a substantive tax claim, under the guise of unjust enrichment, until Plaintiffs satisfy § 505(a)(2) and allege why they are entitled to recover the tax in the first place. Rather than making this showing, the Complaint suggests the opposite—

[8] This is true of every potential source of substantive law. *See Int'l Bus. Machs. Corp. v. Liberty Mut. Ins. Co.*, 363 F.3d 137, 143 (2d Cir. 2004) (bypassing the choice of law analysis and applying New York law in the absence of a material conflict) (collecting cases).

namely, that the IRS gave Plaintiffs the benefit of the funds by reducing their liability. Dkt. No. 1 at ¶ 91.

This case is therefore distinguishable from the IRS constructive trust scenario presented in cases like *Carter v. United States*, 1981 WL 1953, at *5 (N.D. Cal. Mar. 27, 1981). *See also United States v. Fontana*, 528 F. Supp. 137, 141 (S.D.N.Y. 1981); *Dennis v. United States*, 372 F. Supp. 563, 567 (E.D. Va. 1974). In those cases, the IRS seized fraudsters' fraudulently-obtained funds and attempted to use them to pay down the fraudsters' tax liabilities. *Id.* at 564-566; *Carter*, 1981 WL 1953, at *1-4. The fraudsters' victims brought claims under 26 U.S.C. § 7426, which allows any person who claims an interest in wrongfully seized property to "bring a civil action against the United States[.]" *See* 26 U.S.C. § 7426(a). The victims argued that, by virtue of a constructive trust (or similar doctrine), the seizure was wrongful because the seized funds did not belong to the fraudsters. *See, e.g.*, *Dennis*, 372 F. Supp. at 567 (citing Libin and Haydon, EMBEZZLED FUNDS AS TAXABLE INCOME: A STUDY IN JUDICIAL FOOTWORK, 61 Mich.L.Rev. 425, 439-440 (1963) ("Under state law, . . . an embezzler has no . . . interest in the funds which he misappropriates—the funds continue to be the property of the victim [and] [t]hus . . . a federal tax lien would not attach to embezzled funds traceable into the hands of the embezzler"). Those courts agreed, holding that the seized funds were imposed with a constructive trust, belonged to the victims of the fraud, and therefore were wrongfully seized to pay down the fraudsters' tax liabilities. *Id*., at *10; *Dennis*, 372 F. Supp. at 568.

Here, unlike those cases, Plaintiffs obtained the IRS Payment a year after the fraud. Dkt. No. 1 at ¶ 89. Then, Plaintiffs—not Parmar—voluntarily wired the IRS Payment, after cutting ties with Parmar. *Id*. at ¶¶ 84, 85, 91. They admit that they made the payment "to avoid potential liability (including potential criminal liability)[.]" *Id*. at ¶ 91. And the payment, under the complaint's allegations, reduced Plaintiffs' exposure to tax liability, giving them—not

Parmar—the benefit of the IRS Payment. Accordingly, this is not a case where the IRS seized funds subject to a constructive trust and applied them to taxes owed by the wrongdoer. It is a case where, a year after the fraud, the alleged victims voluntarily paid the IRS, reducing their liability.

Even if they were not required to withhold, Plaintiffs still cannot recover: the IRS Payment is not Plaintiffs' money, and it not property of the estate. *See Begier v. I.R.S.*, 496 U.S. 53, 62-64 (1990). Capita withheld the funds from Plaintiffs' payment to the foreign shareholders and then held the IRS Payment in trust for the government. Dkt. No. 1 at ¶¶ 88, 89. So did Plaintiffs. This is because "[w]henever any person is required to collect or withhold any internal revenue tax from any other person and to pay over such tax to the United States, the amount of tax so collected or withheld shall be held to be a special fund in trust for the United States." *Begier* 496 U.S. at 60 (quoting 26 U.S.C. § 7501)). And because "the debtor does not own an equitable interest in property he holds in trust for another, that interest is not 'property of the estate,' [nor] is such an equitable interest 'property of the debtor[.]" *See id*. Accordingly, Plaintiffs held the IRS Payment—the foreign shareholders' money—in "special fund in trust for the United States." *See id*.

Since it is not Plaintiffs' money, they are not entitled to assert any putative refund for over withholding—the foreign shareholders are. *See* 26 U.S.C. § 1445(c)(1)(C); 26 C.F.R. 1.1445-1(f)(2). Assuming Plaintiffs could assert that claim on the foreign shareholders' behalf, Plaintiffs cannot establish unjust enrichment until they establish that the foreign shareholders do not owe tax. Whether or not Plaintiffs were required to withhold, the foreign shareholders still realized taxable income on the merger transaction due to Chu's payment of an alleged 30.2% premium on Constellation stock's all-time-high closing price. *Id*. at ¶ 58 n.2.

C. Plaintiffs' Sophistication and Knowledge of Parmar's Alleged Wrongdoing Bars Their Request for Equitable Relief.

Even if Plaintiffs had pleaded a valid constructive trust claim, their conduct bars their appeal to equity. Before the deal closed, Plaintiffs learned that a federal court had issued warrant seizing millions held in escrow for Parmar. *See* Ex. 2, 4:7-17. Despite that, Plaintiffs closed the deal, likely complicating, if not thwarting, any recovery of the existing pool of victims already defrauded by Palmer. Dkt. No. 1 at ¶ 80. Attempting to profit from that conduct, Plaintiffs then worked closely with Parmar for months, only to find that Parmar allegedly committed similar frauds against them. *Id.* at ¶ 85.

In determining "whether to impose an equitable remedy such as a constructive trust, the 'innocence' of the victim is a relevant consideration." *DLJ Mortg. Capital, Inc. v. Kontogiannis*, 2009 WL 1652253, at *5 (E.D.N.Y. June 4, 2009). That term is used here to refer to the sophistication of plaintiffs as the alleged victims, and the reasonableness of their reliance. *See id*. (citing *In re N.Y. Agency of Bank of Commerce & Credit Int'l S.A.*, 683 N.E.2d 756, 763 (N.Y. 1997) ("BCCI")). Thus, where a sophisticated investor fails to carry out a "basic responsibility" of a diligent investor, it is not entitled to assert a claim for constructive trust. *DLJ Mortg. Capital, Inc*., 2009 WL 1652253, at *5.

For instance, in *BCCI*, the Court of Appeals of New York rejected a constructive trust claim because the party appealing to equity, CITIC, could not be "portrayed as an innocent victim[.]" *BBCI*, 683 N.E.2d at 763. "At the time it agreed to transfer funds to [the fraudster]" the state's highest court reasoned, CITIC "knew or should have known that [the fraudster] was a rogue bank whose operations had come under close scrutiny by both U.S. and British authorities." *Id.* CITIC therefore "chose to do business with [the fraudster] . . . at their own

risk" and was not entitled to the remedy of a constructive trust. *Id*. (explaining "that CITIC took a known risk, hoping to reap a larger return than it could have elsewhere.").

Here, like the bank that was not "an innocent victim" in *BCCI* when it "knew or should have known" of the risks involved in dealing with the fraudster, Plaintiffs are not entitled to equitable relief because they closed the deal with Parmar, knowing he had "come under close scrutiny" from federal authorities for fraud. *BCCI*, 683 N.E.2d at 763. As in *BCCI*, Plaintiffs clearly took a known risk—they knew of the seizure warrant—and perhaps hoped "to reap a larger return than [they] could have elsewhere." *Id*. Further, like in *DLJ Mortgage Capital*, Plaintiffs are sophisticated entities, who clearly failed to carry out their basic responsibility as investors. *DLJ Mortg. Capital, Inc*., 2009 WL 1652253, at *5. Accordingly, Plaintiffs did business with Parmar "at their own risk" and equity should not insure their gamble on Parmar. *BBCI*, 683 N.E.2d at 763.

CONCLUSION

Plaintiffs cannot show that they are entitled to a tax refund, that the IRS Payment meets any avoidance provision, or that IRS Payment unjustly enriched the United States. They should not be permitted to plead their way around this inability by relying on an equitable claim. The Court should require Plaintiffs to proceed directly against the nonresident shareholders and reject Plaintiffs' attempt to recover from an innocent government agency, so that they can avoid the effort of collecting directly those that benefited from the alleged fraud.

Date: August 15, 2018

Respectfully submitted,

UNITED STATES OF AMERICA

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EXHIBIT 1

EXECUTION VERSION

AGREEMENT AND PLAN OF MERGER

by and among

CC CAPITAL MANAGEMENT, LLC

(solely for purposes of Article VIII and Section 9.19 herein),

ORION HEALTHCORP, INC.

(solely for purposes of Section 9.20 herein)

CHT HOLDCO, LLC,

CHT MERGERSUB, INC.

and

CONSTELLATION HEALTHCARE TECHNOLOGIES, INC.

November 24, 2016

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AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER, dated as of November 24, 2016 (this "Agreement"), by and among Constellation Healthcare Technologies, Inc., a Delaware corporation (the "Company"), CHT Holdco, LLC, a Delaware limited liability company ("Parent"), CC Capital Management, LLC, a Delaware limited liability company (solely for purposes of Article VIII and Section 9.19 herein), Orion HealthCorp, Inc., a Delaware corporation (solely for purposes of Section 9.20 herein), and CHT MergerSub, Inc., a Delaware corporation ("Sub"). Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in Section 1.1 hereof.

WHEREAS, the parties intend that Sub be merged with and into the Company, with the Company being the surviving corporation on the terms and subject to the conditions set forth herein (the "Merger");

WHEREAS, in the Merger, upon the terms and subject to the conditions of this Agreement, each share of common stock, par value $0.0001 per share, of the Company (the "Common Stock") not held by members of the Purchaser Group will be converted into the right to receive the Merger Consideration;

WHEREAS, the board of directors of the Company (the "Board") acting upon the recommendation of a special committee of independent and disinterested directors previously appointed (the "Special Committee"), has unanimously (i) determined that this Agreement and the Contemplated Transactions, including the Merger, are advisable and in the best interests of the Company's stockholders (other than members of the Purchaser Group); (ii) approved this Agreement and the Contemplated Transactions, including the Merger; and (iii) resolved to recommend that the stockholders of the Company approve the adoption of this Agreement and the Merger (the "Company Recommendation");

WHEREAS, the respective boards of directors of Parent and Sub have each unanimously (i) determined that this Agreement and the Contemplated Transactions, including the Merger, are advisable and in the best interests of Parent and Sub, respectively, and their respective stockholders; and (ii) approved this Agreement and the other Contemplated Transactions, including the Merger;

WHEREAS, prior to the Effective Time, (i) the Persons set forth on Schedule 1.1(a) to the Company Disclosure Schedule (each, a "Contributing Entity") will directly or indirectly contribute that number of shares of Common Stock listed on Schedule 1.1(a) directly or indirectly beneficially owned by such Contributing Entity to Parent (the "Contributed Shares"), (ii) First United Health LLC contributed to Parent a promissory note in the original principal amount of $12,000,000 issued by the Company to First United Health LLC and (iii) CC Capital will purchase limited liability company interests in Parent on the terms and subject to the conditions set forth in a subscription agreement to be entered into between Parent, CC Capital, CC Capital CHT Holdco LLC, each Contributing Entity and Paul Parmar (the "Subscription Agreement");

WHEREAS, as a condition to, and in connection with the execution of this Agreement, Paul Parmar, Sam Zaharis and each entity set forth on Schedule 1.1(b) to the Company Disclosure Schedule (each, a "Parmar Controlled Entity") has executed and delivered a Voting Agreement pursuant to which such Persons agree to vote the shares of

Common Stock set forth on Schedule 1.1(b) to the Company Disclosure Schedule beneficially owned by such Persons in favor of the Merger; and

WHEREAS, Parent, Sub and the Company desire to make certain representations, warranties, covenants and agreements specified herein in connection with this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

ARTICLE I

DEFINITIONS AND TERMS

Section 1.1 Definitions. As used in this Agreement, the following terms shall have the meanings set forth below:

"Acceptable Confidentiality Agreement" means an executed confidentiality agreement on terms determined in good faith by any Independent Committee to be customary for transactions of the nature contemplated by an Acquisition Proposal; provided, for the avoidance of doubt, that an Acceptable Confidentiality Agreement (a) need not contain a provision that would prohibit any Person from communicating confidentially an Acquisition Proposal to the Board or any Independent Committee, and (b) shall contain a "standstill" provision.

"Acquired Corporations" means: (a) the Company; (b) each of the Company's Subsidiaries; and (c) any other Entity that has been merged with or into, or that is a predecessor to, any of the Entities identified in clauses "(a)" or "(b)" above.

"Acquisition Proposal" means any inquiry, indication of interest, proposal or offer made by any Person (other than Parent or any of its Affiliates) contemplating or otherwise relating to any Acquisition Transaction.

"Acquisition Transaction" means any transaction or series of related transactions involving: (a) any merger, exchange, consolidation, business combination, plan of arrangement, issuance of securities, acquisition of securities, reorganization, recapitalization, takeover offer, tender offer, exchange offer or other similar transaction: (i) in which a Person or "group" (as defined in the Exchange Act) of Persons directly or indirectly acquires beneficial or record ownership of securities representing more than 50.1% of the outstanding securities of any class of voting securities of any of the Acquired Corporations whose assets, individually or in the aggregate, constitute 50.1% or more of the consolidated assets of the Company (as determined on a book value basis); or (ii) in which any of the Acquired Corporations whose assets, individually or in the aggregate, constitute 50.1% or more of the consolidated assets of the Company (as determined on a book value basis) issues securities representing more than 50.1% of the outstanding securities of any class of any Acquired Corporation's voting securities; (b) any sale, lease, exchange, transfer, license or disposition of any business or businesses or assets that constitute or account for 50.1% or more of the consolidated net revenues, consolidated net income or consolidated assets of the Acquired Corporations taken as a whole; or (c) any liquidation or dissolution of any of the Acquired

Corporations whose assets, individually or in the aggregate, constitute 50.1% or more of the consolidated assets of the Company (as determined on a book value basis).

"Affiliate" has the meaning given to such term in Rule 12b-2 under the Exchange Act; provided that (a) neither Parent, Sub nor any other member of the Purchaser Group shall be deemed to be Affiliates of any Acquired Corporation and (b) no Acquired Corporation shall be deemed to be an Affiliate of Parent, Sub or any other member of the Purchaser Group for any purpose hereunder.

"Affiliated Group" means a group of Persons that elects, is required to, or otherwise files a Tax Return or pays a Tax as an affiliated group, consolidated group, combined group, unitary group, or other group recognized by applicable Tax Law.

"AIM" means the market of that name operated by the London Stock Exchange.

"AIM Rules" means the "AIM Rules for Companies" published by the London Stock Exchange, as in force at the date of this Agreement or, where the context requires, as amended or modified after the date of this Agreement.

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

"Anti-Kickback Statute" has the meaning set forth in the definition of "Healthcare Laws."

"Benefit Plans" means all benefit and compensation plans, Contracts, policies or arrangements, whether written or unwritten, covering any individuals on, or formerly on, the payroll of any Acquired Corporation (the "Company Employees") (it being agreed that the term "Company Employees" does not include any individuals engaged or retained by any Acquired Corporation as independent contractors or consultants), any independent contractors or consultants of any Acquired Corporation and any current or former directors of the Company that are sponsored, maintained or contributed to by any Acquired Corporation or pursuant to which any Acquired Corporation has any liability, including "employee benefit plans" within the meaning of Section 3(3) of ERISA, and compensation, deferred compensation, pension, retirement, severance, tax gross-up, stock option, stock purchase, stock appreciation rights, stock-based, incentive, bonus, health, medical, dental, disability, accident or life insurance, and vacation plans, whether or not subject to ERISA, but excluding (i) any Multiemployer Plans and (ii) any plans or programs that are mandated and administered by a Governmental Entity.

"Board" has the meaning set forth in the Recitals.

"Book-Entry Shares" has the meaning set forth in Section 3.1(d).

"Business Day" means a day, other than a Saturday, Sunday or another day on which commercial banking institutions in New York, New York are authorized or required by Law to be closed.

"By-Laws" means the By-Laws of the Company, dated December 5, 2014, as amended on October 7, 2016 and as further amended from time to time.

"Cash Merger Consideration" has the meaning set forth in Section 3.1(a).

"CC Capital" means CC Capital Management, LLC.

"Certificate of Incorporation" means the Amended and Restated Certificate of Incorporation of the Company, dated December 5, 2015, as amended on June 3, 2015, and as further amended from time to time.

"Certificate of Merger" has the meaning set forth in Section 2.3.

"Certificates" has the meaning set forth in Section 3.1(d).

"Change in Recommendation" has the meaning set forth in Section 6.3(f).

"Change in Recommendation Notice" has the meaning set forth in Section 6.3(f).

"Civil Monetary Penalty" has the meaning set forth in the definition of "Healthcare Laws."

"Closing" has the meaning set forth in Section 2.2.

"Closing Date" has the meaning set forth in Section 2.2.

"Closing Date Capitalization" has the meaning set forth in Section 4.2(a).

"CMS" means the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services.

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

"Commercial Healthcare Plan" means any plan or program established by a non-governmental third-party payor that pays for health care provided to individuals, including, without limitation, indemnity plans, health maintenance organizations, preferred provider organizations, and plans established under ERISA.

"Common Stock" has the meaning set forth in the Recitals.

"Company" has the meaning set forth in the Preamble.

"Company Affiliated Group" means any Affiliated Group that has the Company or any Subsidiary of the Company as its common parent.

"Company Contract" means any Contract: (a) to which any of the Acquired Corporations is a party; (b) by which any of the Acquired Corporations or any Company Intellectual Property or any other asset of any Acquired Corporation is bound or under which any Acquired Corporation has any obligation; or (c) under which any Acquired Corporation has any right or interest.

"Company Disclosure Schedule" means the disclosure schedules delivered by the Company to Parent simultaneously with the execution of this Agreement.

"Company Employees" has the meaning set forth in the definition of "Benefit Plans."

"Company Expense Reimbursement" has the meaning set forth in Section 8.2(b).

"Company Intellectual Property Agreements" means all licenses, sublicenses, consent to use agreements, covenants not to sue and permissions and other Contracts, including the right to receive royalties or any other consideration, whether written or oral, relating to Intellectual Property and to which any Acquired Corporation is a party or under which any Acquired Corporation is a licensor or licensee.

"Company Intellectual Property" has the meaning set forth in Section 4.13(a).

"Company Leased Real Property" means each leasehold interest held by any Acquired Corporation in any real property used or occupied in connection with the businesses of any Acquired Corporation.

"Company Leases" has the meaning set forth in Section 4.14(a).

"Company Material Adverse Effect" means any Effect that, considered together with all other Effects, has had or would reasonably be expected to have or result in a material adverse effect on: (a) the business, condition (financial or otherwise), prospects, operations, assets or financial performance of the Acquired Corporations taken as a whole, other than any such Effect resulting from (i) any decrease in the market price of the Common Stock (but not any Effect underlying such decrease to the extent that such Effect would otherwise constitute a Company Material Adverse Effect), (ii) conditions generally affecting the economy or financial markets generally or the industry in which the Acquired Corporations operate, (iii) any Effect resulting from the announcement or pendency of this Agreement or the Contemplated Transactions, (iv) changes in Law or GAAP or principles, interpretations or enforcement thereof, (v) the occurrence, escalation, outbreak or worsening of any acts of war, armed hostilities, sabotage or terrorism (including cyber-terrorism or cyber-attacks) threatened or underway as of the date of this Agreement, (vi) the existence, occurrence or continuation of any force majeure event, including any earthquakes, floods, hurricanes, tropical storms, fires or other national disasters, (vii) any action taken or not taken by the Company or any of its Subsidiaries, in each case that is specifically required by this Agreement, or (viii) any action taken by or at the explicit written request of the Purchaser Group; provided that any Effect resulting from any of the matters described in clause "(ii)", "(iv)", "(v)" or "(vi)" may be taken into account in determining whether or not there has been, or is reasonably expected to be, a Company Material Adverse Effect if, but only if, such Effect has a disproportionate adverse effect (and solely to the extent of such disproportionate adverse effect) on the Company and its Subsidiaries, taken as a whole, as compared to other companies in the industry in which the Company and its Subsidiaries operate, other than any such Effect resulting from any of the matters described in the immediately preceding clauses "(vii)" and "(viii)," or (b) the ability of the Company to consummate the Contemplated Transactions or to perform any of its covenants or obligations under this Agreement.

"Company Meeting" has the meaning set forth in Section 6.6(b).

"Company Recommendation" has the meaning set forth in the Recitals.

"Company Related Party" has the meaning set forth in Section 8.2(k)(i).

"Company Stockholder Approval" has the meaning set forth in Section 4.18.

"Computer Codes" has the meaning set forth in Section 4.13(f)(ii).

"Consideration Fund" has the meaning set forth in Section 3.2(a).

"Contemplated Transactions" means the Merger and the other transactions contemplated by this Agreement, and the Voting Agreements and the transactions contemplated therein.

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

"Controlled Group Liability" means any and all liabilities (A) under Title IV of ERISA, (B) under Section 302 of ERISA, (C) under Sections 412 and 4971 of the Code, or (D) as a result of a failure to comply with the continuation coverage requirements of Section 601 et seq. of ERISA and Section 4980B of the Code and (E) under corresponding or similar provisions of foreign Laws or regulations.

"Contributed Shares" has the meaning set forth in the Recitals.

"Contributing Entity" has the meaning set forth in the Recitals.

"D&O Insurance" has the meaning set forth in Section 6.5(c).

"Debt Commitment" has the meaning set forth in Section 5.9.

"DGCL" has the meaning set forth in Section 2.1.

"Disclosure Schedule Update" has the meaning set forth in Section 7.2(a)(iv).

"Dissenting Shares" has the meaning set forth in Section 3.4(a).

"DOJ" means the United States Department of Justice.

"Effect" means any effect, event, fact, development, circumstance, condition or change.

"Effective Time" has the meaning set forth in Section 2.3.

"Enforceability Exceptions" means any exceptions to the enforceability of any agreement under applicable bankruptcy, insolvency, reorganization or other similar Laws affecting the enforcement of creditors' rights generally or under principles of equity regarding the availability of remedies.

"Entity" means any corporation (including any non-profit corporation), general partnership, limited partnership, limited liability partnership, joint venture, joint venture syndicate, estate, trust, company (including any company limited by shares, limited liability company or joint stock company), firm, society or other enterprise, association, organization or entity.

"Environmental Laws" means any Laws primarily regarding the protection of the environment, public health and safety, occupational health and safety or worker health and safety, natural resources or any other environmental matter, including the following laws as

amended and as in effect as of the Closing Date: (A) Clean Air Act (42 U.S.C. Section 7401, et seq.); (B) Clean Water Act (33 U.S.C. Section 1251, et seq.); (C) Resource Conservation and Recovery Act (42 U.S.C. Section 6901, et seq.); (D) Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601, et seq.); (E) Safe Drinking Water Act (42 U.S.C. 300f, et seq.); (F) the Hazardous Materials Transportation Act (49 U.S.C. Section 5101 et seq.); (G) Federal Insecticide, Fungicide and Rodenticide Act (14 U.S.C. Section 136 et seq.); (H) Toxic Substances Control Act (15 U.S.C. Section 2601, et seq.); and (I) Endangered Species Act (15 U.S.C. Section 1531, et seq.) and all laws primarily regarding the treatment, storage, and disposal of Medical Waste.

"Environmental Licenses" has the meaning set forth in Section 4.27(a).

"ERISA" mean the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" means the single-employer plan of any entity which is considered one employer with the Company under Section 4001 of ERISA or Section 414 of the Code.

"ERISA Plan" means a Benefit Plan which is subject to ERISA.

"Euroclear" means Euroclear UK & Ireland Limited.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Exclusion Statute" has the meaning set forth in the definition of "Healthcare Laws."

"False Claims Act" has the meaning set forth in the definition of "Healthcare Laws."

"FCA" means the UK Financial Conduct Authority.

"Financial Statements" has the meaning set forth in Section 4.5(b).

"Financing" has the meaning set forth in Section 5.9.

"Financing Source" has the meaning set forth in Section 8.2(k)(ii).

"FSMA" means the UK Financial Services and Markets Act 2000, as amended.

"FSA" means the Financial Services Act 2012, as amended.

"GAAP" has the meaning set forth in Section 4.5(b).

"Go-Shop Period" has the meaning set forth in Section 6.3(a).

"Government Healthcare Program" means Medicare, Medicaid, TRICARE and any other program for the provision of health care established by the U.S. federal government or a state government.

"Government Healthcare Program Contractor" means a non-governmental entity that acts on behalf of a Governmental Healthcare Program to administer a Government Healthcare Program, process and audit claims, make eligibility determinations, enroll and dis-enroll providers and suppliers, or audit providers and suppliers, including, for example, any

Medicare Administrative Contractor ("MAC"), Recovery Audit Contractor ("RAC"), Zone Program Integrity Contractor ("ZPIC").

"Governmental Entity" means any: (a) nation, state, commonwealth, province, territory, county, municipality, tribal territory, district or other jurisdiction of any nature; (b) U.S. federal, state, local or municipal, non-U.S. or other government; (c) governmental or quasi-governmental authority of any nature (including any governmental division, department, agency, commission, instrumentality, official, ministry, fund, foundation, center, organization, unit, body or Entity and any court or other tribunal); (d) self-regulatory organization (including the London Stock Exchange and the FCA); or (e) any Government Healthcare Program Contractor.

"GPO" has the meaning set forth in Section 4.19(m).

"Hazardous Substances" means any material, substance, waste or compound regulated, characterized or otherwise classified under Environmental Laws as hazardous, toxic, a pollutant, a contaminant or words of similar meaning or effect, including petroleum, or any refined product, byproduct, fraction or derivative thereof, asbestos, or polychlorinated biphenyls.

"Healthcare Laws" means all federal and state laws pertaining to regulation, licensing, claims submission, payment, or provision of health care including, without limitation: (i) all federal and state fraud and abuse laws including, without limitation, 42 U.S.C. § 1320a-7b(b) ("Anti-Kickback Statute"), the other provisions of 42 U.S.C. §1320a-7b, 42 U.S.C. § 1395nn ("Stark Law"), 31 U.S.C. § 3729 *et seq*. ("False Claims Act"), 42 U.S.C. § 1320a-7 ("Exclusion Statute"), 42 U.S.C. § 1320a-7a ("Civil Monetary Penalty Law"), 18 U.S.C. § 1347 and the regulations promulgated pursuant to such statutes; (ii) Laws pertaining to mail fraud and wire fraud; (iii) Laws and regulations pertaining to medical records; (iv) Laws and regulations pertaining to billing and claims filing and collection; (v) all federal and state statutes, regulations and manuals pertaining to Medicare or Medicaid; (vi) all statutes and regulations applicable to Government Healthcare Programs established under Titles V, XX, and XXI of the Social Security Act of 1935, as amended; (vii) all statutes and regulations pertaining to TRICARE; (viii) HIPAA and other federal and state privacy laws and regulations, (ix) all state laws relating to fee splitting, kickbacks and self-referral; (x) all statutes, regulations and cases pertaining to corporate practice of medicine; (xi) all federal and state laws regulating disposal of Medical Waste and radioactive waste; (xii) all statutes and regulations pertaining to the federal Drug Enforcement Administration; (xiii) all statutes and regulations pertaining to the federal Food and Drug Administration; (xiv) all applicable statutes and regulations regarding the regulation of imaging equipment; and (xv) any other federal or state laws and regulations pertaining to the delivery or payment for health care services applicable to the Acquired Corporations.

"Healthcare Programs" means a collective reference to Government Healthcare Programs and any Commercial Healthcare Plan.

"HIPAA" means the Administrative Simplification provisions of the Health Information Portability and Accountability Act of 1996, as amended, and implementing regulations at 45 C.F.R. Parts 160, 162 and 164.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"Indemnified Party" has the meaning set forth in Section 6.5(a).

"Independent Committee" means the Special Committee and, solely if the Special Committee no longer exists, any other committee of the Board composed solely of independent directors.

"Information Systems" means Software, hardware, computer systems, telecommunications equipment and systems, and Internet and intranet sites.

"Intellectual Property" means all worldwide rights arising under: (a) issued patents and patent applications, including all continuations, divisionals, continuations-in-part, provisionals, reissues, renewals, reexaminations, substitutions, additions, and extensions thereof, utility models and industrial design rights and applications and registrations therefor, inventions and invention disclosures (whether or not patentable and whether or not reduced to practice) and improvements thereto as well as the rights to file for and to claim priority to any such rights; (b) trademarks, service marks, certification marks, trade names, slogans, trade dress, logos, corporate names and other source or business identifiers, together with the goodwill symbolized by any of the foregoing, and all applications, registrations, renewals and extensions thereof (collectively, "Trademarks"); (c) all Internet domain names and registrations and social media accounts; (d) copyrights (including copyrights in computer software programs and moral rights), works of authorship, translations, design rights, databases, and all registrations, applications, renewals, extensions and reversions thereof; (e) Software (including source code), programs and databases in any form, including all versions, updates, releases, corrections, enhancements, replacements, modifications and derivative works thereof and all documentation related thereto; (f) all confidential and proprietary information, including know-how and trade secret rights, technologies, techniques, processes, discoveries, concepts, ideas, research and development, formulae, patterns, inventions, algorithms, compilations, compositions, manufacturing and production processes, programs, devices, methods, technical data, procedures, designs, recordings, graphs, drawings, reports, analyses, specifications, customer lists, supplier lists, pricing and cost information, and business and marketing plans and proposals; and (g) any rights recognized under applicable Law that are equivalent to any of the foregoing.

"IRS" means the Internal Revenue Service.

"knowledge" means, when used with respect to the Company, the actual knowledge, after due inquiry, of those Persons listed on Section 1.1(c) of the Company Disclosure Schedule.

"Law" means any federal, state, provincial, local, municipal or foreign law, statute, ordinance, regulation, judgment, Order, arbitration award, franchise, license, requirement or permit issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Entity.

"Lease Documents" has the meaning set forth in Section 4.14(a).

"Legal Proceeding" means any action, suit, litigation, arbitration, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), hearing, audit, examination or investigation commenced, brought, conducted or heard by or before, or otherwise involving, any court or other Governmental Entity or any arbitrator or arbitration panel.

"Licenses" has the meaning set forth in Section 4.10(c).

"Lien" means any lien, mortgage, charge, pledge, security interest, encumbrance, hypothecation, easement, encroachment imperfection of title, title exception, title defect, right of possession, lease, tenancy, license, security interest, claim, infringement, interference, option, right of first refusal, preemptive right, community property interest or restriction of any nature (including any restriction on the voting of any security, any restriction on the transfer of any security or other asset, any restriction on the receipt of any income derived from any asset, any restriction on the use of any asset and any restriction on the possession, exercise or transfer of any other attribute of ownership of any asset).

"London Stock Exchange" means London Stock Exchange plc.

"Losses" means, with respect to any Loss Party, any losses, damages, liabilities, claims, costs, fees and expenses (including the fees of attorneys and advisors), interest, penalties, judgments and settlements or any other cost and liability of any nature whatsoever, including any incidental, indirect, consequential or special damages, in each case, as may be incurred, suffered or otherwise payable by any Loss Party.

"Loss Party" means the Company, Parent, Sub, the Surviving Corporation, CC Capital and any of their respective Affiliates, and also includes any of their respective former, current and future direct or indirect equity holders, controlling persons, stockholders, directors, officers, employees, agents, members, managers, general or limited partners or assignees; provided that Loss Party shall not include any former or current stockholder of the Company who is a plaintiff in any action, claim, suits or Legal Proceedings relating to the Contemplated Transactions (other than Parent, Sub or their respective Affiliates, who, for the avoidance of doubt, shall be deemed Loss Parties).

"Majority of the Minority Approval" has the meaning set forth in Section 4.18.

"Material Contracts" has the meaning set forth in Section 4.12(s).

"Medicaid" means the need-based health care program established under Title XIX of the Social Security Act.

"Medicare" means the health care program for individuals age 65 and over, certain disabled individuals, and certain individuals with end-stage renal disease established under Title XVIII of the Social Security Act.

"Medicare Advantage" means the health insurance program for certain individuals 65 and over established under Part C of Title XVIII of the Social Security Act usually in the form of a coordinated care program and generally administered by non-governmental entities.

"Medical Waste" means any solid or liquid waste that is generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals, including, without limitation, blood soaked bandages; culture dishes and other glassware; discarded surgical gloves; discarded surgical instruments; discarded syringes and needles used to give shots or draw blood; blood and blood products; cultures, stocks, swabs used to inoculate cultures; removed body organs or other body tissue; human body waste; and discarded lancets.

"Merger" has the meaning set forth in the Recitals.

"Merger Consideration" has the meaning set forth in Section 3.1(a).

"Multiemployer Plans" means "multiemployer plans" within the meaning of Section 3(37) of ERISA.

"New Plan" has the meaning set forth in Section 6.15(b).

"Non-U.S. Benefit Plan" means each Benefit Plan maintained outside of the United States primarily for the benefit of Company Employees or current or former independent contractors, consultants or directors of the Company working outside of the United States.

"Non-Waiving Stockholder" means each stockholder that does not sign a Voting and Support Agreement and Release of Claims (even if, for the avoidance of doubt, such stockholder signs a Voting Commitment).

"Note Merger Consideration" has the meaning set forth in Section 3.1(a).

"Notice Period" has the meaning set forth in Section 6.3(f).

"OCR" means the Office for Civil Rights of the United States Department of Health and Human Services.

"OIG" means the Office of the Inspector General of the United States Department of Health and Human Services.

"Order" means any order, writ, injunction, judgment or decree.

"Organizational Documents" means, collectively, the Certificate of Incorporation and the By-Laws.

"Outside Date" has the meaning set forth in Section 8.1(b)(iv).

"Owned Intellectual Property" has the meaning set forth in Section 4.13(b).

"Owned Real Property" means all interests in real property, including all fixtures and improvements thereon, owned by any Acquired Corporation in fee simple, including easements, rights-of-way and similar authorizations.

"Parent" has the meaning set forth in the Preamble.

"Parent Disclosure Schedule" means the disclosure schedules delivered by Parent to the Company simultaneously with the execution of this Agreement.

"Parent Expense Reimbursement" has the meaning set forth in Section 8.2(e).

"Parent Material Adverse Effect" means any Effect that, considered together with all other Effects, has had or would reasonably be expected to have or result in a material adverse effect on the ability of Parent or Sub to consummate the Contemplated Transactions or to perform any of their respective covenants or obligations under this Agreement.

"Parent Proposal" has the meaning set forth in Section 6.3(f).

"Parmar Controlled Entity" has the meaning set forth in the Recitals.

"Paying Agent" has the meaning set forth in Section 3.2(a).

"Permitted Liens" shall mean, collectively: (a) liens, charges, encumbrances and exceptions for Taxes or other governmental charges, fees, levies or assessments that are not yet delinquent, or the validity of which are being contested in good faith and for which adequate accruals or reserves have been established in accordance with GAAP; (b) mechanics', materialmen's, carriers', workers', repairers' and other similar liens or encumbrances arising or incurred in the ordinary course of business consistent with past practices; (c) zoning, entitlement, conservation restrictions and other land use and environmental regulations imposed by Governmental Entities that do not, individually or in the aggregate, materially interfere with the value or current use of any real property; (d) easements, encumbrances, restrictions, covenants and other matters of record, and the covenants and restrictions set forth in this Agreement; (e) liens specifically set forth on Section 1.1(d) of the Company Disclosure Schedule; and (f) leases and occupancy agreements not in violation of the representation and warranty in the second sentence of Section 4.14(a).

"Pension Plan" means an "employee pension benefit plan" within the meaning of Section 3(2) of ERISA.

"person" or "Person" means any individual, person (including a "person" as defined in Section 13(d)(3) of the Exchange Act), Entity or Governmental Entity.

"Pre-Closing Period" has the meaning set forth in Section 6.1.

"Pre-Closing Tax Period" means any taxable period that ends on or before the Closing Date.

"Promissory Note" means one or more promissory notes issued by the Company or Parent or an intermediary holding company between the Surviving Corporation and Parent (as determined in the discretion of Parent), such notes (i) to be denominated in U.S. dollars, (ii) to accrue payment-in-kind (PIK) interest at an annual rate of 5%, (iii) to be payable by the Company on or prior to the date that is the seventh anniversary of the issuance date, (iv) not to be registered for listing or trading, subject to the transfer restrictions set forth therein and subject to restrictions on transfer under applicable securities Laws, and (v) subject to offset with respect to Non-Waiving Stockholders as provided in Section 3.1(f), such notes to be in the forms to be reasonably agreed upon in good faith by the Company and the Parent.

"Prospectus Rules" means the 'Prospectus Rules' published by the FCA as in force at the date of this Agreement or, where the context requires, as amended or modified after the date of this Agreement.

"Protected Health Information" has the meaning set forth in 45 C.F.R. § 160.103.

"Proxy Date" has the meaning set forth in Section 6.6(a).

"Proxy Statement" has the meaning set forth in Section 4.6.

"Publicly Available Software" means (i) any Software that contains, or is derived in any manner (in whole or in part) from, any software that is distributed as free software or open source software (for example, software distributed under the GNU General Public License, the GNU Lesser General Public License, the Affero General Public License, or the Apache Software License), or pursuant to open source, copyleft or similar licensing and distribution models and (ii) any Software that requires as a condition of use, modification and/or distribution of such software that such software or other software incorporated into, derived from or distributed with such software (A) be disclosed or distributed in source code form, (B) be licensed for the purpose of making derivative works or (C) be redistributable at no or minimal charge.

"Purchaser Group" means Parent, Sub, Paul Parmar, each Contributing Entity and CC Capital.

"Purchaser Related Party" has the meaning set forth in Section 8.2(k)(ii).

"Registered Intellectual Property" has the meaning set forth in Section 4.13(c).

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, seeping, migrating, dumping or disposing of any Hazardous Substance (including the abandonment or discarding of barrels, containers and other closed receptacles containing any Hazardous Substance) or Medical Waste into the environment.

"Representatives" means a Person's directors, officers, managers, other employees, agents, attorneys, accountants, advisors and representatives.

"Reverse Termination Fee" means each of the Tier 1 Reverse Termination Fee and the Tier 2 Reverse Termination Fee.

"SEC" means the United States Securities and Exchange Commission.

"Securities Act" means the Securities Act of 1933, as amended.

"Self-Help Code" means any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a Person other than the user of the program.

"Software" means all software, firmware, middleware and computer programs, including any and all software implementations of algorithms, models and methodologies, whether in source code, object code, executable or binary code form, and all related documentation.

"Special Committee" has the meaning set forth in the Recitals.

"Stark Law" has the meaning set forth in the definition of "Healthcare Law."

"Stockholder Claim" has the meaning set forth in Section 3.1(f).

"Sub" has the meaning set forth in the Preamble.

"Subscription Agreement" has the meaning set forth in the Recitals.

"Sub Stockholder Consent" has the meaning set forth in Section 5.2.

"Subsidiary" means, as to any Person, any Person (a) of which such first Person directly or indirectly owns securities or other equity interests representing more than fifty percent (50%) of the aggregate voting power, (b) of which such first Person possesses directly or indirectly more than fifty percent (50%) of the right to elect directors or Persons holding similar positions, (c) of which such first Person or any other subsidiary of such first Person is a general partner, or (d) who is or would be consolidated in such first Person's financial statements pursuant to GAAP.

"Superior Proposal" means an unsolicited *bona fide* written Acquisition Proposal that: (a) did not result from a breach of Section 6.3; (b) is not subject to a financing contingency and in respect of which any required financing is then committed; (c) includes merger consideration in excess of the aggregate Merger Consideration pursuant to the terms of this Agreement; and (d) is determined by the Board or any Independent Committee, in its good faith judgment, and after taking into account, among other things, all legal, financial, regulatory and other aspects of the offer, including any conditions, and the identity of the offeror and the likelihood and anticipated timing of consummation, to be more favorable from a financial point of view to the holders of the shares of Common Stock not held by members of the Purchaser Group than the Contemplated Transactions.

"Superior Proposal Determination" has the meaning set forth in Section 6.3(f).

"Surviving Corporation" has the meaning set forth in Section 2.1.

"Takeover Statutes" has the meaning set forth in Section 4.17.

"Tax" means any net or gross income, net or gross receipts, net or gross proceeds, capital gains, capital stock, sales, use, user, leasing, lease, transfer, natural resources, premium, ad valorem, value added, franchise, profits, gaming, license, capital, withholding, payroll or other employment, estimated, goods and services, severance, excise, stamp, fuel, interest equalization, registration, recording, occupation, premium, turnover, personal property (tangible and intangible), real property, unclaimed or abandoned property, alternative or add-on, windfall or excess profits, environmental (including Code Section 59A), social security, disability, unemployment or other tax or customs duties or amount imposed by (or otherwise payable to) any Governmental Entity, or any interest, any penalties, additions to tax or additional amounts assessed, imposed, or otherwise due or payable under applicable Laws with respect to taxes, in each case, whether disputed or not.

"Tax Return" means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and any amendments thereto, submitted to (or required under applicable Laws to be submitted to) a Governmental Entity

"Termination Fee" means each of the Tier 1 Termination Fee, the Tier 2 Termination Fee and the Tier 3 Termination Fee.

"Tier 1 Reverse Termination Fee" has the meaning set forth in Section 8.2(h).

"Tier 2 Reverse Termination Fee" has the meaning set forth in Section 8.2(f).

"Tier 1 Termination Fee" has the meaning set forth in Section 8.2(g).

"Tier 2 Termination Fee" has the meaning set forth in Section 8.2(d).

"Tier 3 Termination Fee" has the meaning set forth in Section 8.2(c).

"Top Customers" has the meaning set forth in Section 4.22(a).

"Top Suppliers" has the meaning set forth in Section 4.22(b).

"Trademarks" has the meaning set forth in the definition of Intellectual Property.

"TRICARE" means the health care program established by the Department of Defense under Title 10, Subtitle A, Part II, Chapter 55 (10 U.S.C. §1071 *et seq*.) for members of the military, military retirees, and their dependents.

"Unauthorized Code" means any virus, Trojan horse, worm, or other software routines or hardware components designed to permit unauthorized access, to disable, erase, or otherwise harm software, hardware, or data.

"Voting Agreements" shall mean each of the Voting and Support Agreement and Release of Claims and Voting Commitments.

"Voting and Support Agreement and Release of Claims" shall mean each Voting and Support Agreement and Release of Claims executed by the Company, Parent and the Company stockholder party thereto in substantially the form set forth as Exhibit A-1 hereto.

"Voting Commitments" shall mean each Voting Commitment executed by the Company, Parent and the Company stockholder party thereto in substantially the form set forth as Exhibit A-2 hereto or such other agreement of similar nature in form and substance satisfactory to Parent and CC Capital.

Section 1.2 Other Definitional Provisions; Interpretation.

(a) The words "hereof," "herein" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement, and references to articles, sections, paragraphs, exhibits and schedules are to the articles, sections and paragraphs of, and exhibits and schedules to, this Agreement, unless otherwise specified.

(b) Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the phrase "without limitation."

(c) Words describing the singular number shall be deemed to include the plural and vice versa, words denoting any gender shall be deemed to include all genders and words denoting natural persons shall be deemed to include business entities and vice versa.

(d) When used in reference to information or documents, the phrase "made available" means that the information or documents referred to have been made available if requested by the party to which such information or documents are to be made available.

(e) References to any statute are to that statute, as amended from time to time, and to the rules and regulations promulgated thereunder, in effect as of the date of this Agreement.

ARTICLE II

THE MERGER

Section 2.1 The Merger. Subject to the terms and conditions of this Agreement and in accordance with the General Corporation Law of the State of Delaware (the "DGCL"), at the Effective Time, the Company and Sub shall consummate the Merger pursuant to which (a) Sub shall merge with and into the Company and the separate corporate existence of Sub shall thereupon cease, (b) the Company shall be the surviving corporation (the "Surviving Corporation") in the Merger and shall continue to be governed by the laws of the State of Delaware, (c) the separate corporate existence of the Company with all its rights, privileges, immunities, powers and franchises shall continue unaffected by the Merger and (d) the Surviving Corporation will assume all obligations of Sub prior to the Merger. The Merger shall have the effects set forth in this Agreement and the DGCL.

Section 2.2 Closing. Subject to the terms and conditions contained in this Agreement, the closing of the Merger (the "Closing") will take place remotely via the exchange of documents and signatures at 9:00 a.m., Eastern Time (or such other time specified by the parties hereto), on a date to be specified by the parties hereto (the date on which the Closing actually takes place being the "Closing Date", which shall be no later than two (2) Business Days after the satisfaction or waiver (subject to restrictions on waiver of Section 7.1(a)) of all of the conditions set forth in Article VII hereof (other than conditions that by their terms are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions).

Section 2.3 Effective Time. Subject to the provisions of this Agreement, at the Closing, the Company, Parent and Sub shall cause a certificate of merger (the "Certificate of Merger") to be executed, acknowledged and filed with the Secretary of State of the State of Delaware in accordance with the relevant provisions of the DGCL and shall make all other filings or recordings required under the DGCL. The Merger will become effective at such time as the Certificate of Merger has been duly filed with the Secretary of State of the State of Delaware or at such later date or time as may be agreed by the Company and Parent in writing and specified in the Certificate of Merger in accordance with the DGCL (the effective time of the Merger being hereinafter referred to as the "Effective Time").

Section 2.4 Certificate of Incorporation and By-laws of the Surviving Corporation. At the Effective Time, the Certificate of Incorporation shall be amended and restated in its entirety to read as set forth on Exhibit B hereto and, as so amended, shall be the certificate of incorporation of the Surviving Corporation, until thereafter amended in accordance with the DGCL and as provided in such certificate of incorporation, subject to Section 6.5. The parties hereto shall take all necessary action such that the By-Laws, as in effect immediately prior to the Effective Time, shall be amended and restated in their entirety at the Effective Time to read as set forth on Exhibit C, and, as so amended, shall be the by-laws of the Surviving Corporation until thereafter amended as provided by Law, the certificate of incorporation of the Surviving Corporation and such by-laws, subject to Section 6.5.

Section 2.5 **Directors and Officers of the Surviving Corporation**. The parties hereto shall take all necessary action such that the directors of Sub at the Effective Time shall, from and after the Effective Time, be the directors of the Surviving Corporation until their successors shall have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the Surviving Corporation's certificate of incorporation and by-laws. The officers of the Company at the Effective Time shall, from and after the Effective Time, be the officers of the Surviving Corporation until their successors shall have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the Surviving Corporation's certificate of incorporation and by-laws.

ARTICLE III

CONVERSION OF SHARES

Section 3.1 **Conversion of Capital Stock**.

(a) At the Effective Time, each share of the Common Stock issued and outstanding immediately prior to the Effective Time (other than shares of Common Stock to be cancelled pursuant to Section 3.1(c) hereof and Dissenting Shares) shall, by virtue of the Merger and without any action on the part of the holder thereof or the Company, Parent or Sub, be converted into the right to receive $2.93 U.S. dollars per share in cash, without any interest thereon (the "Cash Merger Consideration") and $0.43 U.S. dollars per share in a Promissory Note, subject to offset with respect to each Non-Waiving Stockholder as provided in Section 3.1(f) (the "Note Merger Consideration" and together with the Cash Merger Consideration, the "Merger Consideration").

(b) Each share of common stock, par value one cent ($0.01) per share, of Sub issued and outstanding immediately prior to the Effective Time shall, at the Effective Time, by virtue of the Merger and without any action on the part of Parent or Sub, be converted into one fully paid and nonassessable share of the common stock, par value one cent ($0.01) per share, of the Surviving Corporation, so that after the Effective Time, Parent shall be the holder of all of the issued and outstanding common stock of the Surviving Corporation.

(c) All shares of Common Stock that are owned by the Company as treasury stock and the Contributed Shares immediately prior to the Effective Time (including, for the avoidance of doubt, the Contributed Shares) shall, at the Effective Time, be cancelled and shall cease to exist, and no consideration shall be delivered in exchange therefor.

(d) At the Effective Time, each share of Common Stock converted into the right to receive the Merger Consideration without any interest thereon pursuant to Section 3.1(a) shall automatically cease to exist and the holders immediately prior to the Effective Time of shares of outstanding Common Stock not represented by certificates ("Book-Entry Shares") and the holders of certificates that, immediately prior to the Effective Time, represent shares of outstanding Common Stock (the "Certificates") shall cease to have any rights with respect to such shares of Common Stock other than the right to receive, upon surrender of such Book-Entry Shares or Certificates in accordance with Section 3.2, the Merger Consideration, without any interest thereon (other than as stated in the Promissory Note), for each such share of Common Stock held by them. The Merger Consideration paid upon the surrender for exchange of the Certificates or the Book-Entry Shares in accordance with Section 3.2 shall be deemed to have been paid in full satisfaction of all rights and privileges pertaining to the

Common Stock exchanged theretofore and represented by such Certificates or Book-Entry Shares.

(e) If at any time between the date of this Agreement and the Effective Time any change in the number of outstanding shares of Common Stock shall occur as a result of a reclassification, recapitalization, stock split (including a reverse stock split), or combination, exchange or readjustment of shares, or any stock dividend or stock distribution with a record date during such period, the amount of the Merger Consideration as provided in Section 3.1(a) shall be equitably adjusted to reflect such change.

(f) To the extent there are any actions, suits, claims or Legal Proceedings brought by any current or former stockholder of the Company (a "Stockholder Claim") directly or indirectly with respect to any Loss Party relating to or arising from the Contemplated Transactions and which results in any Losses, the face value of each Promissory Note to be issued to a Non-Waiving Stockholder shall be reduced dollar-for-dollar on a pro rata basis for such Losses. Any offset to any Promissory Note issued to a Non-Waiving Stockholder pursuant to this Section 3.1(f) will be treated as an adjustment to the Merger Consideration.

Section 3.2 Exchange of Certificates Representing Common Stock; Payments.

(a) As soon as reasonably practicable after the execution of this Agreement, the Company shall enter into an agreement with a bank or trust company that may be jointly designated by the Company and Parent (the "Paying Agent") to act as paying agent hereunder for the purpose of exchanging Certificates and Book-Entry Shares for the Merger Consideration. Immediately after the Effective Time, the Surviving Corporation shall deliver or cause to be delivered, in trust, to the Paying Agent, for the benefit of the holders of shares of Common Stock at the Effective Time, sufficient funds for timely payment of the aggregate Merger Consideration to be paid pursuant to this Section 3.2 in exchange for all outstanding shares of Common Stock immediately prior to the Effective Time (other than shares of Common Stock to be cancelled pursuant to Section 3.1(c) hereof) (such cash amounts being hereinafter referred to as the "Consideration Fund").

(b) Promptly after the Effective Time (and in any event not later than the second (2nd) Business Day following the Effective Time), the Surviving Corporation shall cause the Paying Agent to mail to each holder of record of Certificates or Book-Entry Shares whose shares were converted into the right to receive Merger Consideration pursuant to Section 3.1 (i) a letter of transmittal that shall specify that delivery of such Certificates or Book-Entry Shares shall be deemed to have occurred, and risk of loss and title to the Certificates or Book-Entry Shares, as applicable, shall pass, only upon proper delivery of the Certificates (or affidavits of loss in lieu thereof) or Book-Entry Shares to the Paying Agent and (ii) instructions for use in effecting the surrender of the Certificates or Book-Entry Shares in exchange for payment of the Merger Consideration to which the holder thereof is entitled, the form and substance of which letter of transmittal and instructions shall be substantially as reasonably agreed to by the Company and Parent and prepared prior to the Closing. Upon surrender of a Book-Entry Share or a Certificate (or affidavit of loss in lieu thereof) for cancellation to the Paying Agent together with such letter of transmittal, duly executed and completed in accordance with the instructions thereto, the holder of such Book-Entry Share or Certificate shall be entitled to receive in exchange therefor, subject to any required withholding of Taxes, the Merger Consideration pursuant to the provisions of this Article III, and the Book-Entry Share or Certificate so surrendered shall forthwith be cancelled. No interest shall be paid or accrued on the Cash Merger Consideration payable to holders of

Book-Entry Shares or Certificates. If any Merger Consideration is to be paid to a Person other than a Person in whose name the Book-Entry Share or Certificate surrendered in exchange therefor is registered, it shall be a condition of such exchange that the Person requesting such exchange shall pay to the Paying Agent any transfer or other Taxes required by reason of payment of the Merger Consideration to a Person other than the registered holder of the Book Entry Share or Certificate surrendered, or shall establish to the reasonable satisfaction of the Paying Agent that such Tax has been paid or is not applicable.

(c) The Consideration Fund shall be invested by the Paying Agent as directed by the Surviving Corporation; provided that any such investments shall be in securities issued or directly and fully guaranteed or insured as to principal and interest by the United States government or any agency or instrumentality thereof and having maturities of not more than one month from the date of investment. Earnings on the Consideration Fund shall be the sole and exclusive property of the Surviving Corporation and shall be paid to the Surviving Corporation. No investment of the Consideration Fund shall relieve the Surviving Corporation or the Paying Agent from making the payments required by this Article III, and following any losses from any such investment, the Surviving Corporation shall promptly provide additional funds to the Paying Agent for the benefit of the holders of shares of Common Stock at the Effective Time in the amount of such losses, which additional funds shall be deemed to be part of the Consideration Fund.

(d) At the Effective Time, the share transfer books of the Company shall be closed and thereafter there shall be no further registration of transfers of the Common Stock that were outstanding immediately prior to the Effective Time. If, after the Effective Time, Certificates or Book-Entry Shares are presented to the Surviving Corporation or the Paying Agent for any reason, they shall be cancelled and exchanged for the Merger Consideration with respect to the Common Stock formerly represented thereby pursuant to this Article III, except as otherwise provided by Law.

(e) Any portion of the Consideration Fund (including the proceeds of any investments thereof) that remains unclaimed by the former stockholders of the Company for two (2) years after the Effective Time shall be delivered to the Surviving Corporation. Any holders of Certificates or Book-Entry Shares who have not theretofore complied with this Article III with respect to such Certificates or Book-Entry Shares shall thereafter look only to the Surviving Corporation for payment of their claim for Merger Consideration in respect thereof.

(f) Notwithstanding the foregoing, neither the Paying Agent, Parent, Sub, the Surviving Corporation or the Company, or any stockholder, partner, member, Representative or Affiliate thereof, shall be liable to any Person in respect of cash from the Consideration Fund delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law. If any Certificate or Book-Entry Share shall not have been surrendered prior to the date on which any Merger Consideration in respect thereof would otherwise escheat to or become the property of any Governmental Entity, any such Merger Consideration in respect of such Certificate or Book-Entry Share shall, to the extent permitted by applicable Law, become the property of the Surviving Corporation, and any holder of such Certificate or Book-Entry Share who has not theretofore complied with this Article III with respect thereto shall thereafter look only to the Surviving Corporation for payment of its claim for Merger Consideration in respect thereof.

(g) If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact (such affidavit shall be in a form reasonably satisfactory to the Parent and the Paying Agent) by the Person claiming such Certificate to be lost, stolen or destroyed, and, if required by the Paying Agent, the posting by such Person of a bond in customary amount as indemnity against any claim that may be made against it with respect to such Certificate, the Paying Agent shall issue in exchange for such lost, stolen or destroyed Certificate the Merger Consideration to which such Person is entitled in respect of such Certificate pursuant to this Article III.

Section 3.3 Withholding Rights. Each of Sub, the Surviving Corporation and the Paying Agent shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to any holder of Common Stock such amounts as are required to be deducted or withheld therefrom under the Code or any provision of any other applicable Tax Law. To the extent that amounts are so deducted or withheld, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person to whom such amounts would otherwise have been paid.

Section 3.4 Shares of Dissenting Stockholders.

(a) Notwithstanding any provision of this Agreement to the contrary, if required by the DGCL (but only to the extent required thereby), shares of Common Stock that are issued and outstanding immediately prior to the Effective Time and that are held by a holder who has demanded and perfected such holder's right to appraisal of such shares of Common Stock in accordance with Section 262 of the DGCL (the "Dissenting Shares") will not be converted into the right to receive the Merger Consideration, but such holder will be entitled to such rights as afforded under the DGCL with respect to such Dissenting Shares unless and until any such holder fails to perfect or effectively withdraws or loses its rights to appraisal and payment under the DGCL with respect to such Dissenting Shares or a court of competent jurisdiction determines that such holder is not entitled to the relief provided by Section 262 with respect to such Dissenting Shares. The Surviving Corporation shall be entitled to retain any of the Merger Consideration not paid on account of the Dissenting Shares pending resolution of the claims of such holders, and the remaining holders of Common Stock shall not be entitled to any portion thereof. If, after the Effective Time, any such holder fails to perfect or effectively withdraws or loses such appraisal right with respect to such Dissenting Shares, such Dissenting Shares will thereupon be treated as if they had been converted into and have become exchangeable for, at the Effective Time, the right to receive the Merger Consideration, without any interest thereon (other than as stated in the Promissory Note), the Surviving Corporation shall remain liable for payment of the Merger Consideration for such shares of Common Stock, and the Surviving Corporation shall promptly provide cash to the Paying Agent for the benefit of the holders of shares of Common Stock at the Effective Time in an amount equal to the Cash Merger Consideration multiplied by the number of such Dissenting Shares, and such Dissenting Shares shall no longer be deemed Dissenting Shares under this Agreement.

(b) The Company will give Parent (i) prompt notice of any demands received by the Company for appraisal of shares of Common Stock, attempted withdrawals of such demands and any other instruments served pursuant to applicable Law that are received by the Company related to the stockholders' rights of appraisal; and (ii) the opportunity to participate in and direct all negotiations and proceedings with respect to such notices and demands. Prior to the Effective Time, the Company shall not, except with the prior written

consent of Parent, make any payment with respect to any demands for appraisal, offer to settle or settle any such demands, or approve any withdrawal of any such demands.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as disclosed in the corresponding schedule of the Company Disclosure Schedule, the Company represents and warrants to Parent and Sub as follows:

Section 4.1 **Organization**. Each of the Acquired Corporations is a corporation or other entity duly organized, validly existing and (to the extent applicable) in good standing under the laws of the jurisdiction of its incorporation or organization and has the requisite entity power and authority to own, lease and operate its properties and to carry on its business as it is now being conducted, except where the failure to be so organized, existing, qualified or in good standing, or to have such power and authority has not and would not reasonably be expected to have a Company Material Adverse Effect. Each of the Acquired Corporations is duly qualified or licensed to do business and is in good standing (with respect to jurisdictions which recognize such concept) as a foreign corporation in the jurisdictions set forth on Schedule 4.1 to the Company Disclosure Schedule and such jurisdictions constitute all jurisdictions in which the nature of the business conducted by it makes such qualification or licensing necessary, except where the failure to be so qualified, licensed or in good standing has not and would not reasonably be expected to have a Company Material Adverse Effect.

Section 4.2 **Capitalization**.

(a) As of the date of this Agreement, the authorized capital stock of the Company consists of 150,000,000 shares of Common Stock, of which 88,390,749 shares have been issued and are outstanding. The Company does not hold any shares of its capital stock in its treasury; immediately prior to the Effective Time and as of the Closing Date, 92,081,632 shares of Common Stock of the Company will be issued and outstanding (the "Closing Date Capitalization"). All of the outstanding shares of Common Stock have been duly authorized and validly issued, and are fully paid and nonassessable. None of the Acquired Corporations holds any shares of Common Stock or any rights to acquire shares of Common Stock. None of the outstanding shares of Common Stock is entitled or subject to any preemptive right, right of participation, right of maintenance or any similar right. None of the outstanding shares of Common Stock is subject to any right of first refusal in favor of any of the Acquired Corporations. Except for restrictions contained in the Certificate of Incorporation and the Lock-In Agreement, dated November 28, 2014, by and among the Covenantors (as defined therein), Paul Parmar, Finncap Ltd., and the Company, there is no Company Contract relating to the voting or registration of, or restricting any Person from purchasing, selling, pledging or otherwise disposing of (or from granting any option or similar right with respect to), any shares of Common Stock. None of the Acquired Corporations is under any obligation, or is bound by any Contract pursuant to which it may become obligated, to repurchase, redeem or otherwise acquire any outstanding capital stock of the Company or other securities.

(b) There is no: (i) outstanding subscription, option, call, warrant or right (whether or not currently exercisable) to acquire any shares of the capital stock or other securities of any of the Acquired Corporations; (ii) outstanding security, instrument or obligation that is or may become convertible into or exchangeable for any shares of the capital stock or other securities of any of the Acquired Corporations; or (iii) stockholder rights plan (or similar plan

commonly referred to as a "poison pill") or similar Contract under which any of the Acquired Corporations is or may become obligated to sell or otherwise issue any shares of its capital stock or any other securities.

(c) Except as set forth on Section 4.2(c) of the Company Disclosure Schedule, the Company does not own, directly or indirectly, any capital stock of or any other equity or ownership interest in, directly or indirectly, any other Person, and none of the Acquired Corporations is, directly or indirectly, a party to, member of or participant in any partnership, joint venture or similar business arrangement.

(d) All of the outstanding capital stock of, or other equity or ownership interest in, each Subsidiary of the Company is owned by the Company, directly or indirectly, free and clear of any Liens (other than Permitted Liens) and free and clear of any other limitation or restrictions (including the any restriction on the right to vote, sell or otherwise dispose of such capital stock or other equity or ownership interest). Each share of capital stock of, or other equity or ownership interest in, each Subsidiary of the Company is duly authorized and validly issued, and is fully paid and nonassessable. The authorized capitalization of each Subsidiary of the Company is set forth on Section 4.2(d) of the Company Disclosure Schedule.

Section 4.3 Authorization; Validity of Agreement; Company Action. The Company has the requisite corporate power and authority to execute and deliver this Agreement and the Voting Agreements, and, subject to obtaining the Company Stockholder Approval, to consummate the Contemplated Transactions. The (i) execution, delivery and performance by the Company of this Agreement and the Voting Agreements, (ii) consummation by the Company of the Contemplated Transactions, (iii) Company Recommendation and (iv) direction that this Agreement and the Contemplated Transactions be submitted to the Company's stockholders for the Company Stockholder Approval, have been duly authorized by the Independent Committee and the Board. Except as set forth on Section 4.3 of the Company Disclosure Schedule, and except for obtaining the Company Stockholder Approval and the filing and recordation of appropriate merger documents as required by the DGCL, no other corporate action on the part of the Company is necessary to authorize the execution and delivery by the Company of this Agreement and the consummation by it of the Contemplated Transactions. This Agreement has been duly executed and delivered by the Company and, subject to the Company Stockholder Approval (assuming due and valid authorization, execution and delivery hereof by Parent and Sub), is a valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as enforceability may be limited by the Enforceability Exceptions. Each of the Voting Agreements, when duly and executed by the Company, will be a valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as enforceability may be limited by the Enforceability Exceptions.

Section 4.4 Consents and Approvals; No Violation.

(a) Except as set forth on Section 4.4 of the Company Disclosure Schedule and except for (i) obtaining the Company Stockholder Approval, (ii) filing of the Certificate of Merger, (iii) compliance with the rules and regulations of the London Stock Exchange, including the AIM Rules, (iv) compliance with any applicable foreign or state securities or "blue sky" laws and (v) compliance with filings under the HSR Act or antitrust, trade regulation, competition or similar merger control Laws of other applicable jurisdictions, neither the execution, delivery or performance of this Agreement by the Company nor the

consummation by the Company of the Contemplated Transactions will require on the part of the Company any filing or registration with, notification to, or authorization, consent or approval of any Governmental Entity or other Person, except for such filings, registrations, notifications, authorizations, consents or approvals the failure of which to make or obtain would not have a Company Material Adverse Effect.

(b) Assuming the consents, approvals, qualifications, orders, authorizations and filings referred to in Section 4.4(a) have been made or obtained and the Company Stockholder Approval is obtained, neither the execution, delivery or performance of this Agreement by the Company nor the consummation by the Company of the Contemplated Transactions will (i) violate any provision of the Organizational Documents (or equivalent organizational documents) of any of the Acquired Corporations; (ii) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, license, contract, agreement or other instrument or obligation to which any of the Acquired Corporations is a party or by which any of them or any of their properties or assets may be bound; or (iii) violate any Law applicable to the any of the Acquired Corporations or any of their properties or assets, in each case, except where such violation, breach, default, termination, cancellation or acceleration would not have a Company Material Adverse Effect.

Section 4.5 Reporting; Financial Statements.

(a) The Company has not registered the sale of any securities under the Securities Act and is not required to file or furnish reports and other documents with the SEC pursuant to the Exchange Act.

(b) The Company has made available to Parent copies of the audited consolidated balance sheets of the Company and its Subsidiaries, and the related consolidated statements of operations and cash flows, as of and for the fiscal years ended December 31, 2015, 2014 and 2013 and the unaudited consolidated balance sheets of the Company and its Subsidiaries, and the related consolidated statements of income and comprehensive loss and cash flows and stockholders' equity, as of and for the six months ended June 30, 2016 (collectively, the "Financial Statements"). The Financial Statements (including the notes thereto) present fairly in all material respects the consolidated financial position of the Company and its consolidated Subsidiaries as of the respective dates thereof and the consolidated results of their operations and cash flows for the respective periods then ended, except as otherwise noted therein (subject, in the case of unaudited statements, to normal year-end adjustments and to any other adjustments described therein, including the notes thereto) in accordance with generally accepted accounting principles in the United States ("GAAP") applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto). Furthermore, the Financial Statements are based in all material respects on true and accurate transactions which have a valid business purpose, and do not contain any untrue statement of a material fact or omit to state any material fact necessary to make the Financial Statements or information therein not misleading.

(c) The Acquired Corporations have implemented and maintain a system of "internal controls over financial reporting" (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) that are sufficient to provide reasonable assurances regarding the reliability of financial reporting and the preparation of financial statements for external purposes, including to provide reasonable assurances that (i) transactions are executed in

accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of the Financial Statements in conformity with GAAP and to maintain asset accountability, (iii) access to assets that could have a material effect on the Financial Statements is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Except as disclosed in Section 4.5(c) of the Company Disclosure Schedule, since January 1, 2013, the Acquired Corporations have not received from their independent auditors any oral or written notification of a "control deficiency," "significant deficiency" or "material weakness" in the Acquired Corporations' internal controls. For purposes of this Agreement, the terms "control deficiency," "significant deficiency" and "material weakness" shall have the meanings assigned to them in the Statements of Auditing Standards No. 115, as in effect on the date hereof. Since January 1, 2013, the Company's principal chief executive officer and its principal chief financial officer have disclosed to the Company's auditors and the audit committee of the Board (1) all known significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting that are reasonably likely to adversely affect in any material respect the Acquired Corporations' ability to record, process, summarize and report financial information, and (2) any fraud, whether or not material, that involves management or other employees who have a significant role in the Acquired Corporations' internal controls and the Company has provided to Parent and Sub copies of any non-privileged written materials in its possession relating to each of the foregoing. The Company has made available to Parent and Sub all such disclosures made by management to the Company's auditors and audit committee since January 1, 2013.

(d) The Acquired Corporations have in place disclosure controls and procedures that are reasonably designed to ensure that material information that is required to be disclosed by the Acquired Corporations by the AIM is recorded, processed, summarized and reported within the time periods specified in the AIM Rules and is accumulated and made known to the Company's principal chief executive officer and principal chief financial officer as appropriate to allow timely decisions regarding required disclosure.

(e) The Company is, and has at all times since its admission to trading on AIM been, in compliance in all material respects with: FSMA, FSA, the AIM Rules, the Prospectus Rules, the rules and regulations of the London Stock Exchange, the rules, practices and procedures laid down by Euroclear and all other applicable Laws, rules and regulations.

Section 4.6 Proxy Statement; Other Information. Except as set forth on Section 4.6 of the Company Disclosure Schedule and subject to the last sentence of this Section 4.6, the proxy statement (including the letter to stockholders, notice of meeting and form of proxy, the "Proxy Statement") to be provided to stockholders of the Company in connection with seeking the adoption of this Agreement by the stockholders of the Company will not, at the time when such are first mailed to the stockholders of the Company or at the time of the Company Meeting contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. No representation is made by the Company with respect to statements made in the Proxy Statement based on information supplied, or required to be supplied, by or on behalf of Parent, Sub or any of their Affiliates for inclusion or incorporation by reference therein.

Section 4.7 **No Undisclosed Liabilities**. Except as set forth on Section 4.7 of the Company Disclosure Schedule, and except for (a) liabilities incurred in the ordinary course of business consistent with past practices since December 31, 2015, (b) liabilities disclosed in or reflected or reserved against in the Financial Statements, (c) liabilities arising in connection with the Contemplated Transactions or for performance of obligations under the express terms of existing contracts or applicable Law or (d) liabilities which have been discharged or paid in full in the ordinary course of business consistent with past practices, as of the date hereof, none of the Acquired Corporations has, or is responsible for performing or discharging, any liabilities of the type required to be disclosed in the liabilities column of a balance sheet prepared in accordance with GAAP.

Section 4.8 **Absence of Certain Changes**. Except as set forth on Section 4.8 of the Company Disclosure Schedule, since December 31, 2015, (a) the business of each Acquired Corporation has been carried on and conducted in the ordinary course of business consistent with past practices and (b) there has not been any Company Material Adverse Effect.

Section 4.9 **Litigation; Orders**.

(a) Other than as set forth on Section 4.9(a) of the Company Disclosure Schedule, none of the Acquired Corporations is subject to any pending Legal Proceeding or, to the knowledge of the Company, threatened Legal Proceeding that would reasonably be expected to have a Company Material Adverse Effect.

(b) There is no Order to which any of the Acquired Corporations, or any of the assets owned or used by any of the Acquired Corporations, is subject that would have a Company Material Adverse Effect. To the knowledge of the Company, no officer of any of the Acquired Corporations is subject to any Order that prohibits such officer from engaging in or continuing any conduct, activity or practice relating to the business of any of the Acquired Corporations.

Section 4.10 **Compliance with Law**.

(a) Except as set forth on Section 4.10 of the Company Disclosure Schedule, each of the Acquired Corporations is in compliance in all material respects with all applicable Laws which are necessary for the operation of the business of the Acquired Corporations as conducted. None of the Acquired Corporations has received any written notice of, or been charged with, the violation of any Laws. None of the Acquired Corporations are now (nor has any been during the past three (3) years) subject to any penalty or assessment, or, to the knowledge of the Company, any inspection, investigation or audit by any Governmental Entity, or to any other allegation that any Acquired Corporation (including any agent, representative or broker acting on behalf of any Acquired Corporation) violated in any material respects any applicable Law or made a material false statement or omission to any such Governmental Entity.

(b) None of the Acquired Corporations nor, to the knowledge of the Company, any of their respective directors, officers, employees or agents has, with respect to the businesses of any Acquired Corporation (i) used any funds for any unlawful contribution, endorsement, gift, entertainment or other unlawful expense relating to political activity, (ii) made any direct or indirect unlawful payment to any foreign or domestic official or employee of a Governmental Entity, (iii) violated or is in violation of any provision of the Foreign Corrupt Practices Act of 1977, as amended, or (iv) made any bribe, rebate, payoff, influence

payment, kickback or other unlawful payment to any Person.

(c) Each of the Acquired Corporations possesses all material licenses which are required for the operation of the business of such Acquired Corporation as currently conducted (the "Licenses"). None of the Acquired Corporations are in default or violation, and no event has occurred which, with notice or the lapse of time or both, would constitute a default or violation, of any term, condition or provision of any License to which it is a party, to which its business is subject or by which its assets or properties are bound that has had or would be reasonably likely to have a Company Material Adverse Effect. The Licenses are in full force and effect and are not subject to any condition except conditions applicable to such Licenses generally, or as otherwise disclosed on the face of the Licenses. To the knowledge of the Company, there is not any reason why any Licenses would not be renewed in the ordinary course of business consistent with past practices.

Section 4.11 Taxes.

Except as set forth on Section 4.11 of the Company Disclosure Schedule, and to the knowledge of the Company, and except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect:

(a) Each of the Acquired Corporations has (i) timely filed all Tax Returns required to be filed by any of them (taking into account applicable extensions) and all such returns were true, correct and complete in all respects when filed and (ii) timely paid all Taxes due and payable with respect to any Tax Returns, other otherwise payable by an Acquired Company;

(b) All Taxes of each of the Acquired Corporations not yet due and payable have been fully accrued on the books of such Acquired Corporation in accordance with GAAP;

(c) There are no federal, state, local or foreign audits or other Legal Proceedings in progress, pending, or to the knowledge of the Company, threatened with regard to Taxes or Tax Returns of any Acquired Corporation;

(d) There are no outstanding written requests, agreements, consents or waivers to extend the statutory period of limitations applicable to the assessment or collection of any Taxes or deficiencies against any Acquired Corporation;

(e) None of the Acquired Corporations is a party to any agreement providing for the allocation or sharing of Taxes other than any agreements between the Acquired Corporations;

(f) There are no Liens for Taxes upon the assets of any Acquired Corporation, except for Permitted Liens;

(g) Each Acquired Corporation has timely and properly withheld (i) all required amounts from payments to its employees, agents, contractors, nonresidents, shareholders, lenders, and other Persons and (ii) all sales, use, ad valorem, and value added Taxes, and has timely remitted all withheld Taxes to the proper Governmental Entity in accordance with all applicable Laws;

(h) No Acquired Corporation (i) has ever been a member of any Affiliated Group (other than a Company Affiliated Group) or (ii) is liable for Taxes of any other Person (other than other members of a Company Affiliated Group) as a result of successor liability, transferee liability, joint or several liability (including pursuant to Treasury Regulation Section 1.1502-6 or any similar provision of state, local, or non-U.S. Laws), or otherwise;

(i) None of the Acquired Corporations is (or has ever been) a "United States real property holding corporation" within the meaning of Code Section 897(c);

(j) No Acquired Corporation has received in the past three (3) years a written notice from any Governmental Entity that the Acquired Corporation is required to pay Taxes or file Tax Returns in a jurisdiction in which such Acquired Corporation does not file Tax Returns or pay Taxes;

(k) No Acquired Corporation has engaged in any transaction that could affect the Tax liability for any taxable year not closed by the applicable statute of limitations (i) which is a "reportable transaction," (ii) which is a "listed transaction," or (iii) a "significant purpose of which is the avoidance or evasion of United States federal income tax" within the meanings of Code Sections 6662, 6662A, 6011, 6012, 6111, or 6707A or Treasury Regulations promulgated thereunder or pursuant to notices or other guidance published by the Internal Revenue Service (irrespective of the effective dates);

(l) No Acquired Corporation is party to any contract, agreement, plan or other arrangement covering any employee or former employee or contractor or former contractor that, individually or collectively, could give rise to a (or already has resulted in a) payment or provision of any other benefit (including accelerated vesting) that could not be deductible by reason of Code Section 280G or could be subject to an excise Tax under Code Section 4999;

(m) No Acquired Corporation is required to include a material item of income, or exclude a material item of deduction, for any period after the Closing Date as a result of (i) an installment sale transaction occurring on or before the Closing governed by Code Section 453 (or any similar provision of state, local or non-U.S. Laws); (ii) a transaction occurring on or before the Closing reported as an open transaction for U.S. federal income Tax purposes (or any similar doctrine under state, local, or non-U.S. Laws); (iii) any material prepaid amounts; (iv) an adjustment under Code Section 481 as a result of a change in method of accounting with respect to a Pre-Closing Tax Period (or an impermissible method used in a Pre-Closing Tax Period); (v) an agreement entered into with any Government Entity (including a "closing agreement" under Code Section 7121) on or prior to the Closing Date; or (vi) an election (including a protective election) pursuant to Code Section 108(i);

(n) None of the Acquired Corporations has an "excess loss account" with respect to stock owned in any Subsidiary of the Company;

(o) No Acquired Corporation has any item of income, gain, loss, expense, or deduction that remains deferred under the intercompany transaction rules of Treasury Regulation Section 1.1502-13 (or similar provision of state, local, or non-U.S. Laws);

(p) No Acquired Corporation has a request for a private letter ruling, a request for administrative relief, a request for technical advice, a request for a change of any method of accounting, or any other request pending with any Governmental Entity that relates to the Taxes or Tax Returns of an Acquired Corporation;

(q) No power of attorney granted by any Acquired Company with respect to any Taxes will be in force as of the Closing Date;

(r) No Acquired Company (i) has been, in the past three (3) years, a party to a transaction reported or intended to qualify as a reorganization under Code Section 368 or (ii) has constituted a "distributing corporation" or a "controlled corporation" (within the meaning of Code Section 355(a)(1)(A)) in a distribution of shares that was reported or otherwise constitute a distribution of shares under Code Section 355(i) in the two (2) years prior to the date of this Agreement or that could otherwise constitute part of a "plan" or "series of related transactions" (within the meaning of Code Section 355(e)) that includes the transactions contemplated by this Agreement.

(s) No debt of any of the Acquired Corporations is "corporate acquisition indebtedness" within the meaning of Code Section 279 or an "applicable high yield debt obligation" within the meaning of Code Section 163(e)(5), and no interest accrued or paid by any of the Acquired Corporations (whether as stated interest, imputed interest, or original issue discount) on any debt obligation of any of the Acquired Corporations is not deductible for income Tax purposes;

(t) Other than as a result of the transactions contemplated by this Agreement, no Acquired Corporation is subject to any limitations on the use of net operating losses or unrealized losses under Code Section 269, Code Section 382, Code Section 384, or any other provision of the Code or Treasury Regulations;

(u) Each Acquired Corporation is, and has at all times been, in compliance with the provisions of Code Sections 6011, 6111, and 6112 relating to tax shelter disclosure, registration, list maintenance and record keeping requirements; and

(v) Each Acquired Corporation is in compliance with the provisions of the Patient Protection and Affordable Care Act of 2010, as amended, such that no Acquired Corporation is subject to any Tax or other payment imposed pursuant to the Code, including any obligation to make any payment pursuant to Code Section 4980H.

Section 4.12 Material Contracts. Section 4.12 of the Company Disclosure Schedule lists the following Company Contracts:

(a) Contracts with any current or former (to the extent such Contract contains ongoing obligations by a party thereto) officer, director, member or Affiliate of any Acquired Corporation;

(b) Contracts with any labor union or association representing any employee of any Acquired Corporation;

(c) Contracts entered into during the past three (3) years for the sale of any assets of any Acquired Corporation other than in the ordinary course of business consistent with past practices;

(d) Contracts for joint ventures, strategic alliances or partnerships;

(e) Contracts containing operative covenants of any Acquired Corporation not to compete in any line of business or with any Person in any geographical area or covenants of

any other Person not to compete with any Acquired Corporation in any line of business or in any geographical area;

(f) Contracts containing nondisclosure or confidentiality agreement (other than those entered into in the ordinary course of business consistent with past practices with customers and employees);

(g) Contracts relating to the acquisition by any Acquired Corporation of any operating business or the capital stock of any other Person during the last three (3) years or that otherwise contains any ongoing benefits or obligations of any Acquired Corporation;

(h) Contracts relating to the incurrence, assumption or guarantee of any indebtedness or imposing a Lien on any of its assets;

(i) Contracts under which any Acquired Corporation has made advances or loans to any other Person, except advancement of reimbursable ordinary and necessary business expenses made to directors, officers and employees of any Acquired Corporation in the ordinary course of business consistent with past practices;

(j) Outstanding agreements of guaranty, surety or indemnification by any Acquired Corporation (other than provisions for indemnification contained in agreements entered into in the ordinary course of business consistent with past practices (other than for indebtedness for borrowed money));

(k) any other Contract to which any Acquired Corporation is a party, the performance of which will require payments to or by the Company of more than $100,000 in any twelve (12) month period;

(l) all Contracts, licenses, covenants not to sue and permissions relating to the development, ownership, licensing, use or enforcement of any Intellectual Property (excluding non-exclusive licenses granted to any Acquired Corporation's customers in the ordinary course of business consistent with past practices and licenses of commercially available off-the-shelf Software having a replacement cost of less than $10,000). any settlement, conciliation or similar agreement, the performance of which will involve payment after the execution date of this Agreement for consideration in excess of $100,000 or governmental monitoring, consent decree or reporting responsibilities outside the ordinary course of business consistent with past practices;

(m) any Contract, agreement or arrangement for capital expenditures or the acquisition or construction of fixed assets in excess of $100,000;

(n) (i) any consulting agreement or arrangement or contract for the employment of any person who, for the fiscal year ended December 31, 2015, received base compensation of $100,000 or more or providing for the payment of any cash or other compensation or benefits upon the consummation of the transactions contemplated hereby or (ii) any operative contracts entered into during the past three (3) years that provide severance or other benefits for any person;

(o) any Contract between any Acquired Corporation and a Top Customer or Top Supplier;

(p) any Contract, agreement or arrangement under which any Acquired Corporation is (i) a lessee or sublessee of any machinery, equipment, vehicle or other tangible personal property with a required annual payment in excess of $50,000, (ii) a lessor of any tangible personal property owned by the Acquired Corporations or (iii) a lessee or sublessee of any real property, including the Leases;

(q) any Contract, agreement or arrangement under which any Acquired Corporation is the lessor of or permits any third party to hold or operate any property, real or personal, owned or controlled by any Acquired Corporation;

(r) any Contract that involves any exchange traded, over-the-counter or other swap, cap, floor, collar, futures contract, forward contract, option or other derivative financial instrument;

(s) Contracts that are otherwise material to any Acquired Corporation, including the Option Agreement, dated March 31, 2015, by and among Porteck India Infoservices Private Limited, Sh. Dewan Singh Dardi, Jessbir Kour and Physicians Practice Plus LLC (collectively, together with any Contracts entered into by any Acquired Corporation after the date hereof and prior to the Closing which would have otherwise been listed in Section 4.12 of the Company Disclosure Schedule if such Contracts had been entered into on the date of this Agreement, and all written and oral amendments, modifications or supplements to any such Contracts, the "Material Contracts").

The Company has made available to Parent or its representatives a true, correct and complete copy of each Material Contract, together with all amendments, modifications or supplements thereto, other than any Material Contract which is an oral Contract. Except as specifically identified in Section 4.12 of the Company Disclosure Schedule, each Material Contract is in full force and effect and is valid and enforceable against the Acquired Corporation that is party thereto, except as such enforceability may be limited by the Enforceability Exceptions and, to the knowledge of the Company, each other party thereto. No Acquired Corporation is in default in any material respect under any Material Contract nor, to the knowledge of the Company, is any other party to any Material Contract in default in any material respect thereunder, and to the knowledge of the Company, no event has occurred that with the lapse of time or the giving of notice, or both, would constitute a default in any material respect thereunder. As of the date hereof, no Acquired Corporation has received notice in writing that any party to a Material Contract which is currently doing business with any Acquired Corporation intends to terminate or materially limit or restrict its relationship with such Acquired Corporation.

Section 4.13 Intellectual Property.

(a) Each of the Acquired Corporation owns or has a valid and enforceable written license or other rights to use all Intellectual Property used in connection with the business of such Acquired Corporation (the "Company Intellectual Property"). No loss or expiration of any of the Company Intellectual Property is threatened, pending or reasonably foreseeable, except for patents expiring at the end of their statutory terms (and not as a result of any act or omission by any Acquired Corporation).

(b) An Acquired Corporation is the sole and exclusive owner of all right, title and interest in and to Company Intellectual Property owned by the Acquired Corporations and used or held for use in or necessary for the conduct of the business of the Acquired

Corporations as currently conducted and contemplated (the "Owned Intellectual Property"), free and clear of all Liens other than Permitted Liens. All of the Owned Intellectual Property is in full force and effect, valid and enforceable. To the knowledge of the Company as of the date hereof, no third party is infringing or otherwise violating any Owned Intellectual Property. The Acquired Corporations have taken commercially reasonable measures to protect the confidentiality of all material trade secrets and other confidential information of the Acquired Corporations (and any confidential information owned by any Person to whom the Acquired Corporations has a confidentiality obligation), including requiring Persons who have access to such material trade secrets and confidential information to be bound by a written confidentiality obligation. No present or former employee, consultant, officer, director, shareholder or founder has any right, title or interest, directly or indirectly, in whole or in part, in any Company Intellectual Property. All parties (including all present and former employees and contractors) who have created any material Software for an Acquired Corporation has (i) with respect to employees, created such Software within the scope of his or her employment as a "work for hire" as such term is defined under U.S. copyright law or has assigned or is obligated to assign all rights in such Software to an Acquired Corporation and (ii) with respect to contractors, assigned or is obligated to assign all rights in such Software to an Acquired Corporation.

(c) None of the Acquired Corporations has made any claims alleging such infringement or other violation against any Person during the past three (3) years. Section 4.13(c) of the Company Disclosure Schedule contains an accurate and complete list of all of the patents, patent applications, Internet domain name registrations, social media accounts, trademark and service mark registrations and applications and copyright registrations, and applications of the Acquired Corporations and any other Owned Intellectual Property that is the subject of an application, certificate, filing, registration or other document issued by, filed with or recorded by any Governmental Entity (the "Registered Intellectual Property"), including (i) the jurisdictions in which each such item of Registered Intellectual Property has been issued or registered or in which any such application for issuance or registration has been filed and (ii) the registration or application date, as applicable, for each such item of Registered Intellectual Property. All Registered Intellectual Property has been maintained effective by the filing of all necessary filings, maintenance and renewals and timely payment of requisite fees. Section 4.13(c) of the Company Disclosure Schedule also set forth all material unregistered Trademarks that are Owned Intellectual Property.

(d) The current and former products, services and operation of the business of each of the Acquired Corporations and use of the Owned Intellectual Property in connection with the business of each of the Acquired Corporations do not infringe or otherwise violate, and have not infringed or otherwise violated, any Intellectual Property of any Person. None of the Acquired Corporations is the subject of any pending Legal Proceeding that (i) alleges a claim of infringement or other violation of any Intellectual Property of any Person, and no such claim has been asserted or, to the knowledge of the Company, threatened against any of the Acquired Corporations at any time during the past three (3) years or (ii) challenges the ownership, use, validity or enforceability of any Company Intellectual Property. No Person has notified in writing any of the Acquired Corporations that any of such Person's Intellectual Property rights are infringed or otherwise violated by any of the Acquired Corporations or that any of the Acquired Corporations require a license to any of such Person's Intellectual Property in order for any of the Acquired Corporations to continue activities that are material to the business of the Acquired Corporations.

(e) All websites operated by any of the Acquired Corporations and all data collection, including registration information, and marketing practices on the websites are operated in material compliance with all applicable Laws in effect as of the date hereof.

(f) Software.

(i) Section 4.13(f)(i) of the Company Disclosure Schedule sets forth a complete and correct list of all Software that is Owned Intellectual Property and is material to the business of each of the Acquired Corporations. All such Software (A) conforms in all material respects with all specifications, representations, warranties and other descriptions established by the Acquired Corporations or conveyed thereby to its customers or other transferees, (B) is operative for its intended purpose free of any material defects or deficiencies and does not contain any Self-Help Code, Unauthorized Code, or similar programs and (C) has been maintained by the Acquired Corporations on their own behalf or on behalf of their customers and other transferees to their reasonable satisfaction and in accordance with industry standards.

(ii) All copies of source and object codes relating to all of the Software identified on Section 4.13(f)(ii) of the Company Disclosure Schedule, and all derivative works or improvements thereof (collectively, the "Computer Codes") are complete and correct, except for minor deviations that would not have a material adverse effect on the function or use of any of the Computer Codes or cause such Computer Codes to malfunction. No Person other than the Acquired Corporations possess a copy, in any form (print, electronic or otherwise), of any of the Computer Codes, and all source code for all Owned Intellectual Property is in the sole possession of the Acquired Corporations and has been maintained strictly confidential. None of the Acquired Corporations has any obligation to afford any Person access to any source code for any Computer Codes. The Acquired Corporations are in possession of all other material relating to the Computer Codes and all other Software material to the business of the Acquired Corporations, including installation and user documentation, engineering specifications, flow charts and know-how reasonably necessary for the use, maintenance, enhancement, development and other exploitation of such Computer Codes as used in, or currently under development for, the business of the Acquired Corporations, except for those materials where the failure of any Acquired Corporation to possess such materials would not reasonably be expected to have a Company Material Adverse Effect.

(iii) No product or service of any of the Acquired Corporations (including any product or service of any of the Acquired Corporations currently under development) contains or otherwise uses any code that is, in whole or in part, subject to the provisions of any license to Publicly Available Software. All Publicly Available Software used by any of the Acquired Corporations has been used in its entirety and without modification.

(iv) None of the Acquired Corporations nor any of their consultants has used Publicly Available Software in whole or in part in the former or current development of any part of the Owned Intellectual Property, nor licensed or distributed to any third party any combination of Publicly Available Software and Owned Intellectual Property in a manner that may (i) require, or condition the use or distribution of any Owned Intellectual Property on, the disclosure, licensing or distribution of any source code for any portion of such Company Intellectual Property

or (ii) otherwise impose any limitation, restriction or condition on the right or ability of any of the Acquired Corporations to use, distribute or enforce any Owned Intellectual Property in any manner.

(g) The Information Systems that are used or relied on by any of the Acquired Corporations in the conduct of its business are operational, fulfill the purposes for which they were acquired or developed and have commercially reasonable security, back-ups and disaster recovery arrangements in place and maintenance and trained personnel which are sufficient in all material respects for the current needs of such business. Each of the Acquired Corporations has taken commercially reasonable steps to safeguard the availability, security and integrity of the Information Systems and all data and information stored thereon. Each of the Acquired Corporations has maintained in the ordinary course of business consistent with past practices all required licenses and service contracts, including the purchase of a sufficient number of license seats for all Software, with respect to the Information Systems. To the Company's knowledge, none of the Information Systems of the Acquired Corporations have suffered any security breach or material failure within the past three (3) years.

(h) The consummation of the Contemplated Transactions would not be reasonably expected to result in the loss or impairment of any rights of any of the Acquired Corporations under any Company Intellectual Property or any Contract relating to any Company Intellectual Property. Immediately subsequent to the Closing, the material Company Intellectual Property will be owned or available for use by the Acquired Corporations on terms and conditions identical to those under which the Acquired Corporations owned or used the Company Intellectual Property immediately prior to the Closing, without payment of additional fees.

Section 4.14 Real Property.

(a) To the knowledge of the Company, and except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect: each of the leases (the "Company Leases") under which any of the Acquired Corporations holds any Company Leased Real Property is in full force and effect and constitutes a valid and binding obligation of such Acquired Corporation in accordance with its terms, subject to the Enforceability Exceptions. Each of the Acquired Corporations has valid title to the leasehold estate in all Company Leased Real Property as lessee or sublessee, in each case free and clear of all Liens, other than Permitted Liens. None of the Acquired Corporations is in default under any Company Lease, nor has any notice of default been received by any of the Acquired Corporations. The execution, delivery and performance of this Agreement by the Company does not, and the consummation of the Merger and the other Contemplated Transactions will not, constitute or result in any breach or violation of, or constitute a default (or an event which with notice or lapse of time or both would become a default), or give rise to any right of termination, cancellation, amendment or acceleration of, any Company Lease. The Company has delivered or made available to Parent complete and accurate copies of each of the lease documents (the "Lease Documents"), and none of such Lease Documents have been modified as of the date hereof in any material respect.

(b) None of the Acquired Corporations has received written notice of any pending or threatened actions, suits, arbitration, claims or Legal Proceedings at law or in equity against it and affecting any Company Leased Real Property.

(c) None of the Company Leased Real Property is subject to any subleases, licenses, or other occupancy agreements, other than the Lease Documents, or is being occupied by any third parties or any Affiliates of any of the Acquired Corporations.

(d) The Company Leased Real Property is being used to operate the business as it is currently conducted, and no other real property, is being used or is otherwise reasonably required to operate the business as it is currently conducted. To the knowledge of the Company, the physical conditions of the Company Leased Real Property are suitable for the operation of the business as it is currently conducted.

(e) None of the Acquired Corporations has received any written complaint, order, summons, citation, notice of violation, directive letter or other written communication from any Governmental Entity or other Person regarding the presence of any Hazardous Substance affecting any Company Leased Real Property which remains open or otherwise uncured.

(f) None of the Acquired Corporation has received any written notice of any violation of any zoning, subdivision, platting, building, fire, insurance, safety, health, environmental, set back requirements or other applicable Laws related to the Company Leased Real Property or the occupancy thereof that would reasonably be expected, individually or in the aggregate, to have a Company Material Adverse Effect.

(g) None of the Acquired Corporations has received any notice that the owner of any Company Leased Real Property has made any assignment, pledge, or hypothecation of the Company Lease with respect thereto or the rents or use fees due thereunder.

(h) None of the Acquired Corporations has any Owned Real Property nor is a party to any contract for the purchase of any real property.

(i) The Company has good and marketable title to, or a valid leasehold interest in, all tangible personal property, except as set forth on Section 4.14(i) of the Company Disclosure Schedule, that it uses in the conduct of its business, free and clear of all Liens except for (i) the Liens described in Section 4.14(i)) of the Company Disclosure Schedule, all of which Liens will be released or discharged at or prior to Closing and (ii) Permitted Liens. All material items of the Company's tangible personal property are suitable for the purposes for which they are being used and for which they will be used as of the Closing Date, and are (x) in good operating condition and repair, ordinary wear and tear excepted, (y) free from latent and patent defects, and (z) in confirming with all applicable Laws relating to their use and operation. Each item of tangible personal property owned or used by the Company immediately prior to the Closing Date will be owned or available for the Company on identical terms and conditions immediately subsequent to the Closing Date. The Company has title to, or a leasehold interest in, all material assets used in or necessary to operate the business of the Company as currently conducted.

(j) All of the assets, properties, Contracts and rights of the Company include (and immediately after the Closing will include) all of the assets, properties, Contracts and rights necessary for the conduct of the Company's business as it has been conducted since January 1, 2016 and as it is currently conducted. Except as set forth in Section 4.14(j) of the Company Disclosure Schedule, no Parmar Controlled Entity or an Affiliate owns, or has any rights in, any of the assets, properties, Contracts or rights of the Company.

Section 4.15 Brokers or Finders. Except as set forth on Section 4.15 of the Company Disclosure Schedule, no investment banker, broker, finder, consultant or intermediary is entitled to any investment banking, brokerage, finder's or similar fee or commission in connection with this Agreement or the Contemplated Transactions based upon arrangements made by or on behalf of any of the Acquired Corporations.

Section 4.16 Books and Records. Except as set forth on Section 4.16 of the Company Disclosure Schedule, the minute books and stock record books of the Company, all of which have been made available to Parent, are materially complete and correct and have been maintained in accordance with sound business practices. The minute books of the Company contain materially accurate and complete records of all meetings, and actions taken by written consent of, the stockholders, the board of directors and any committees of the board of directors of the Company, and no meeting, or action taken by written consent, of any such stockholders, board of directors or committee has been held for which minutes have not been prepared and are not contained in such minute books. At the Closing, all of those books and records will be in the possession of the Company

Section 4.17 Takeover Statutes. Except as set forth on Section 4.17 of the Company Disclosure Schedule and pursuant to Section 6.16 of the Certificate of Incorporation, the Board has waived the provisions of Section 6.2 of the Certificate of Incorporation and no further actions or votes are necessary to render the restrictions of any "fair price," "moratorium," "control share acquisition" or any other takeover or anti-takeover statute or similar federal or state Law, including the restrictions on "business combinations" set forth in Section 203 of the DGCL (collectively, "Takeover Statutes"), inapplicable to this Agreement or the Contemplated Transactions.

Section 4.18 Stockholder Approval. Except as set forth on Section 4.18 of the Company Disclosure Schedule, the only vote of stockholders of the Company required under the DGCL, the Organizational Documents of the Company and the AIM Rules in order for the Company to validly perform its obligations under this Agreement is the adoption of this Agreement by the affirmative vote of a majority of the aggregate voting power of the issued and outstanding shares of Common Stock based on the Closing Date Capitalization (the "Company Stockholder Approval"). This Agreement also requires, as a condition to the Closing, that the holders of the majority of outstanding shares of Common Stock based on the Closing Date Capitalization, other than those shares of Common Stock held by an "officer" of the Company (as defined in Rule 16a-1(f) promulgated under the Exchange Act) and the Parmar Controlled Entities as set forth on Schedule 1.1(b) to the Company Disclosure Schedule, shall have voted in favor of the adoption of this Agreement (the "Majority of the Minority Approval").

Section 4.19 Healthcare Compliance. Without limiting the generality of any other representation or warranty made herein:

(a) Except as disclosed in Section 4.19(a) of the Company Disclosure Schedule, each of the Acquired Corporations is in compliance in all material respects with all Healthcare Laws, including, but not limited to, (i) the Anti-Kickback Statute, the Stark Law, the Civil Monetary Penalty Law, and the Exclusion Statute; (ii) all Laws pertaining to Medicare, Medicare and TRICARE, (iii) HIPAA and other federal and state privacy Laws; (iv) all state Laws relating to fee splitting or kickbacks; (v) all federal and state Laws regulating the disposal of Medical Waste and radioactive waste; and (vi) all laws regulating the corporate practice of medicine.

(b) Except as disclosed in Section 4.19(b) of the Company Disclosure Schedule, none of the Acquired Corporations is (i) a supplier or provider under an agreement with CMS, (ii) holds an agreement with a state Medicaid agency; or (iii) a party to an agreement with a Medicare Advantage plan.

(c) Each of the Acquired Corporations has in all material respects billed and filed claims on behalf of customers in accordance with the terms of the applicable agreements with Healthcare Programs, including, where applicable, billing and collection of all deductibles and co-payments. All claims that have been filed by each of the Acquired Corporations, to the extent coded by any of the Acquired Corporations, were properly coded, were filed in compliance with all Healthcare Program requirements and, to the knowledge of the Company, are for services actually rendered. The representations and warranties in the first two sentences of this subsection (c) do not apply with respect to the substance of claims to the extent an act or omission is solely attributable to a customer of the Acquired Corporations. Each of the Acquired Corporations that provides coding for health care providers engages coders who are properly trained, conducts on-going supervision of coders to ensure that coding is accurate, and requires retraining or dismissal of coders who do not meet accuracy requirements.

(d) Except for routine audits in the ordinary course of business consistent with past practices, no audit or investigation relating to claims submission and collection provided by any of the Acquired Corporations has been conducted by any Governmental Entity connection with any Government Healthcare Program, including, but not limited to, the DOJ, OIG, any MAC, RAC, ZPIC, or by any Commercial Healthcare Plan and to the knowledge of the Company no such review is scheduled, pending or threatened against or affecting any of the Acquired Corporations.

(e) In each case where any of the Acquired Corporations pays a commission for sales, successful marketing or similar activities, the individual who receives the commission is a bona fide W-2 employee of the Acquired Corporation that pays the commission.

(f) None of the Acquired Corporations and, to the knowledge of the Company, none of their Representatives, is a party to an individual integrity agreement, corporate integrity agreement, deferred prosecution agreement, settlement agreement, or other formal or informal agreement with any Governmental Entity concerning compliance with Healthcare Laws.

(g) None of the Acquired Corporations and, to the knowledge of the Company, none of their Representatives: (i) has been charged with or convicted of any criminal offense relating to the delivery of an item or service in connection with any Healthcare Program; or (ii) has had a civil monetary penalty assessed against it, him or her under the Civil Monetary Penalty Law or its regulations.

(h) None of the Acquired Corporations and none of their directors, officers, managers or employees or independent contractors: (i) during the time any of them provided services to any of the Acquired Corporations is or was excluded from participation in any Government Healthcare Program and, to the knowledge of the Company, none of them is threatened with exclusion; or (ii) is currently listed on the General Services Administration System for Award Management as ineligible, restricted, excluded or debarred from federal procurement programs and non-procurement programs.

(i) None of the Acquired Corporations, any of their officers, directors, managers, nor, to the knowledge of the Company, employees, or agents has engaged in any activity that is in violation of, or is cause for civil penalties or mandatory or permissive exclusion under, any Healthcare Laws, including without limitation: (i) knowingly and willfully making or causing to be made a false statement or representation of a material fact in any application for any benefit or payment; (ii) knowingly and willfully making or causing to be made a false statement or representation of a material fact for use in determining rights to any benefit or payment; (iii) knowingly and willfully soliciting or receiving any remuneration (including any kickback, bribe or rebate), directly or indirectly, overtly or covertly, in cash or kind (A) in return for referring an individual to a Person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under any Healthcare Program, or (B) in return for purchasing, leasing, or ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service or item for which payment may be made in whole or in part under any Healthcare Program; (iv) knowingly and willfully offering or paying any remuneration (including any kickback, bribe or rebate), directly or indirectly, overtly or covertly, in cash or in kind, to any Person to induce such Person (A) to refer an individual to a Person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Healthcare Program, or (B) to purchase, lease, order or arrange for or recommend purchasing, leasing or ordering any good, facility, service or item for which payment may be made in whole or in part under a Healthcare Program; or (v) any other activity that violates any Healthcare Law relating to prohibiting fraudulent, abusive or unlawful practices connected in any way with the provision of health care items or services or the billing for such items or services provided to a beneficiary of any Healthcare Program.

(j) None of the Acquired Corporations has since January 1, 2013 received any subpoena, civil investigative demand or similar process from the DOJ, the OIG, any state attorney general, Medicaid fraud unit or other Governmental Entity To the knowledge of the Company, none of them a defendant in a suit under the False Claims Act.

(k) Each of the Acquired Corporations maintains in full force and effect a corporate compliance program to ensure compliance with Healthcare Laws.

(l) Except as disclosed in Section 4.19(l) of the Company Disclosure Schedule, each of the Acquired Corporations that under HIPAA is a "covered entity" or "business associate" as each is defined in 45 C.F.R. § 160.103, is in compliance in all material respects with HIPAA, including, without limitation (i) has completed thorough and detailed risk assessments of all areas of its business and operations subject to HIPAA that are appropriate or required for such Company to be in compliance with HIPAA; (ii) has developed, implemented, and maintains in full force and effect both in the United States and in all foreign offices a HIPAA compliance plan, including, without limitation, policies and procedures as required by HIPAA to protect the privacy and security of Protected Health Information, to provide proper notification in the event of a "breach" (as defined in 45 C.F.R. § 164.402) of Protected Health Information, and to engage in electronic transactions in compliance with HIPAA; (iii) has in effect a "business associate contract" (as defined under HIPAA) with each Person for which a business associate contract is required, that complies with HIPAA as currently in effect (including, but not limited to, revisions that were required by the regulations promulgated by OCR on January 25, 2013) and each of the Acquired Corporations is in compliance in all material respects with each such business associate contract. Except as disclosed in Section 4.19(l) of the Company Disclosure Schedule, none

of the Acquired Corporations has experienced a breach of Protected Health Information pertaining to five hundred (500) or more individuals. None of the Company or any Subsidiary has been the subject of an audit by the OCR.

(m) Each Acquired Corporation that is a Group Purchasing Organization ("GPO") complies with the GPO safe harbor to the Anti-Kickback Statute set forth in 42 C.F.R. §1001.952(j). Each Acquired Corporation that is a GPO has required each entity selling within the GPO to comply with the requirements in the discount safe harbor to the Anti-Kickback Statute set forth in 42 C.F.R. §1001.952(h).

Section 4.20 Certain Relationships with Affiliates. Except as set forth in Section 4.20 of the Company Disclosure Schedule, no Affiliate (including the Parmar Controlled Entities) of any Acquired Corporation or any of their respective directors, officers, partners, stockholders or Affiliates (including the Parmar Controlled Entities) of any such Person is currently or has been party to any material business arrangement or relationship with any Acquired Corporation within the three (3) years prior to the date of this Agreement, is a participant in any material transaction to which any Acquired Corporation is a party, and no Affiliate (including the Parmar Controlled Entities) of any Acquired Corporation owns any material asset, tangible or intangible, which is used in the business of any Acquired Corporation. Each Contract or arrangement between any Acquired Corporation, on the one hand, and any Affiliate (including the Parmar Controlled Entities) of such Acquired Corporation or any of their respective directors, officers, partners, stockholders or Affiliates (including the Parmar Controlled Entities) of any such Person, on the other hand, is on commercially reasonable terms no more favorable to such Affiliate, director, officer or employee than what any third party negotiating on an arms-length basis has realized or would expect.

Section 4.21 Accounts Receivable; Accounts Payable; Inventory.

(a) Except as set forth on Section 4.21 of the Company Disclosure Schedule, all accounts receivable and accounts payable of the Acquired Corporations reflected in the Financial Statements and all accounts receivable and accounts payable of the Acquired Corporations arising after December 31, 2015 (a) are valid and genuine, (b) are properly reflected on the Company's books and records in accordance with GAAP, (c) have arisen from bona fide transactions in the ordinary course of business consistent with past practices and (d) are not subject to any counterclaims, deduction, credit or offset, except to the extent of the allowance for doubtful accounts. Subject to a reserve for bad debts shown on the Financial Statements or, with respect to accounts receivable arising after December 31, 2015, on the accounting records of the Company, all accounts receivable of the Acquired Corporations are collectible in full within 90 days after billing. The reserve for bad debts shown on the Financial Statements or, with respect to accounts receivable arising after December 31, 2015, on the accounting records of the Company have been determined in accordance with GAAP, consistently applied, subject to normal year-end adjustments and the absence of disclosures normally made in footnotes. No Person has, and as of the Closing Date, no Person will have, any Lien on any accounts receivable of the Acquired Corporations or any part thereof, and no agreement for deduction, free services or goods, discount or other deferred price or quantity adjustment will have been made with respect to any such accounts receivable of the Acquired Corporations.

(b) All items of inventory of the Acquired Corporations (i) consist of items of a qu ality and quantity useable and saleable in the ordinary course of business consistent with past

practices and (ii) are not obsolete, excessive, damaged or defective. The value of the inventory of the Acquired Corporations reflected in the most recent Financial Statements reflects the Acquired Corporations' normal inventory valuation policies and were determined in accordance with GAAP.

Section 4.22 Customer Relationships.

(a) Section 4.22(a) of the Company Disclosure Schedule contains a true, correct and complete list of the top twenty (20) largest customer (the "Top Customers") of the Acquired Corporations determined by dollar volume of sales for the six-month period through June 30, 2016 and for the fiscal year ended December 31, 2015. Since the date of the most recent Financial Statements, there has not been, and none of the Acquired Corporations has received written notice of, any termination or cancellation of, or a material adverse modification or change in, the business relationship with any of the Top Customers. No Acquired Corporation has received any written notice that any Top Customers will cease to be a customer.

(b) Section 4.22(b) of the Company Disclosure Schedule contains a true, correct and complete list of the top twenty (20) largest suppliers (the "Top Suppliers") of the Acquired Corporations determined by dollar volume of sales for the six-month period through June 30, 2016 and for the fiscal year ended December 31, 2015. Since the date of the most recent Financial Statements, there has not been, and none of the Acquired Corporations has not received written notice of, any termination or cancellation of, or a material adverse modification or change in, the business relationship with any of the Top Suppliers. No Acquired Corporation has not received any written notice that any Top Suppliers will cease to be a supplier.

Section 4.23 Insurance. Each of the Acquired Corporations has policies of insurance and bonds of the type and in amounts customarily carried by Persons conducting business or owning assets similar to those conducted or owned by such Acquired Corporation. Section 4.23 of the Company Disclosure Schedule contains a list of all policies of liability, environmental, crime, fidelity, life, fire, workers' compensation, health, director and officer liability and all other forms of insurance currently owned or held by any Acquired Corporation or to which one of the Acquired Corporations is a named insured or otherwise the beneficiary, and identified for each such policy: the underwriter; the name of the policy holder; policy number; retroactive premium adjustments or other loss-sharing arrangements); expiration date; and deductible amount. Section 4.23 of the Company Disclosure Schedule also sets forth a claims history for the past three (3) years in respect of such policies. All of the insurance policies listed on Section 4.23 of the Company Disclosure Schedule are outstanding and in full force and effect and will remain in full force and effect after the consummation of the transactions contemplated hereby with respect to occurrences prior to the Closing. All premiums with respect to such policies are currently paid. None of the Acquired Corporations has within the past three (3) years (a) been in breach or default (including with respect to the payment of premiums or the giving of notices) with respect to its obligations under any such insurance policies, (b) repudiated any provision of any such insurance policies or (c) been denied insurance coverage. Except as set forth in Section 4.23 of the Company Disclosure Schedule, none of the Acquired Corporations has any self-insurance, deductible retention or co-insurance programs, and, to the knowledge of the Company, the reserves set forth on the Company's latest unaudited balance sheet included in the Financial Statements are adequate to cover all anticipated liabilities with respect to any such self-insurance, deductible retention or co-insurance programs.

Section 4.24 Names and Locations. Except as listed in Section 4.24 of the Company Disclosure Schedule, during the three (3) year period prior to the execution and delivery of this Agreement, none of the Acquired Corporations has used any name or names under which it has invoiced account debtors, maintained records concerning its assets or otherwise conducted business. As of the date hereof and as of the Closing, all of the tangible assets and properties of each of the Acquired Corporations is located at the locations set forth on Section 4.24 of the Company Disclosure Schedule.

Section 4.25 Employee Benefits.

(a) All material Benefit Plans are listed on Section 4.25(a) of the Company Disclosure Schedule and each such Benefit Plan that has received a favorable opinion letter from the IRS and each Non-U.S. Benefit Plan has been separately identified. With respect to each Benefit Plan, true and complete copies of, to the extent applicable, have been provided to Parent: (i) all Benefit Plan documents and amendments thereto, (ii) the most recent annual report on Form 5500, (iii) the most recent actuarial report or financial statement, (iv) the most recent summary plan description, (vi) all material correspondence during the past three (3) years with any Governmental Entity, and (vii) each current trust agreement, insurance contract or policy, funding arrangement or other third-party administration agreement.

(b) All Benefit Plans have been established, maintained, funded and administered in compliance in all material respects with their terms and with ERISA and the Code (to the extent applicable) and other applicable Laws. Each ERISA Plan that is a Pension Plan intended to be qualified under Section 401(a) of the Code, has received or may rely on a favorable determination or opinion letter from the IRS (and a true and correct copy of such letter or such application has been provided to Parent), and each trust forming a part thereof is exempt from federal income tax pursuant to Section 501(a) of the Code, and the Company is not aware of any circumstances reasonably likely to result in the loss of the qualification of such Pension Plan under Section 401(a) of the Code. None of the Acquired Corporations or any fiduciary has engaged in a transaction with respect to any ERISA Plan that, assuming the taxable period of such transaction expired as of the date hereof, could subject any ERISA Plan or any related trust, the Company or any of its Subsidiaries, or any person that the Company or any of its Subsidiaries has an obligation to indemnify, to a tax or penalty imposed by either Section 4975 of the Code or Section 502(i) of ERISA. There are no pending or, to the knowledge of the Company, threatened audits, investigations or non-routine requests for information by any Governmental Entity with respect to any Benefit Plan.

(c) No Benefit Plan is (A) a "defined benefit plan" (as defined in ERISA Section 3(35), (B) a Multiemployer Plan, (C) a plan that has two or more contributing sponsors, at least two of whom are not under common control, within the meaning of Section 4063 of ERISA or (D) subject to Sections 412 or 4971 of the Code, Section 302 of ERISA or Title IV of ERISA. None of the Acquired Corporations has during the last six (6) years incurred, or is expected to incur, any obligation or liability under Subtitle C or D of Title IV of ERISA with respect to any ongoing, frozen or terminated "single-employer plan", within the meaning of Section 4001(a)(15) of ERISA, currently or formerly maintained by any of them, or an ERISA Affiliate. Neither the Company nor any of its ERISA Affiliates has engaged in any transaction described in Section 4069, 4204(a) or 4212(c) of ERISA. There does not now exist, nor do any circumstances exist that would reasonably be expected to result in, any Controlled Group Liability that would be a liability of the Surviving Corporation or any of its affiliates following the Closing.

(d) As of the date hereof, there is no material pending or, to the knowledge of the Company, threatened action or litigation relating to the Benefit Plans, other than routine claims for benefits. Each Benefit Plan that is in any part a "nonqualified deferred compensation plan" subject to Section 409A of the Code materially complies and, at all times has materially complied, both in form and operation, with the requirements of, and has not resulted in the application of any penalty tax under, Section 409A of the Code and the final regulations and other applicable guidance thereunder.

(e) Neither the execution and delivery of this Agreement nor the consummation of the Transactions will, either alone or in combination with another event, (i) entitle any Company Employee, independent contractor, consultant, or any current or former officer or director of any of the Acquired Corporations to any retirement, severance, unemployment compensation or any other payment or enhanced or accelerated benefit (including any lapse of repurchase rights or obligations with respect to any Company stock plans or other benefit under any compensation plan or arrangement of the Company), or (ii) accelerate the time of payment or vesting, or increase the amount of compensation due any such Company Employee, independent contractor, consultant, officer or director, or result in any limitation on the right of the Acquired Corporations to amend, merge, terminate or receive a reversion of assets from any Benefit Plan, Non-U.S. Benefit Plan or related trust. The execution of this Agreement (either alone or in conjunction with any other event) shall not result in the funding of any "rabbi" or similar trust pursuant to any Benefit Plan.

(f) No Benefit Plan provides for the gross-up or reimbursement of Taxes under Sections 4999 or 409A of the Code.

(g) No Benefit Plan provides welfare benefits, including without limitation, death or medical benefits (whether or not insured), beyond retirement or termination of service, other than coverage mandated solely by applicable Law.

(h) Each Non-U.S. Benefit Plan (A) that is required to be registered with a Governmental Entity has been registered (and where applicable accepted for registration) and has been maintained in all material respects in good standing with the applicable Governmental Entity, (ii) that is intended to qualify for special Tax treatment meets all material requirements for such treatment, and no condition exists and no event has occurred that would reasonably be expected to result in the loss or revocation of such qualification, and (iii) that is required to be funded and/or book-reserved is funded and/or book-reserved, as appropriate, in accordance with GAAP and, if required, applicable Law. In addition, no Non-US Benefit Plan is a defined benefit pension plan or scheme and there are no unfunded Liabilities for deferred compensation, pension benefits, pension schemes and termination indemnities related to any period of time prior to the Closing under any Non-US Benefit Plan or with respect to any employees or former employees outside of the United States, except for any Liabilities reflected on the Company's financial statements.

Section 4.26 Labor Matters.

(a) (i) Except as set forth on Section 4.26 of the Company Disclosure Schedule, none of the Acquired Corporations is a party to or otherwise bound by any collective bargaining agreement or other Contract with a labor union, labor organization or works council, no demand for recognition of any Company Employees has been made by or on behalf of any labor union, labor organization or works council in the past three (3) years, (ii) no petition has been filed or Legal Proceeding been instituted by any Company Employee or

group of Company Employees with any labor relations board or commission seeking recognition of a collective bargaining representative in the past three (3) years, (iii) to the knowledge of the Company, no union organizing activities are ongoing with respect to any Company Employee, (iv) none of the Acquired Corporations is the subject of any material Legal Proceeding asserting that any of the Acquired Corporations has committed an unfair labor practice or seeking to compel it to bargain with any labor union or labor organization, and (v) there are no pending or, to the knowledge of the Company, threatened, labor strikes, disputes, walk-outs, work stoppages, slow-downs or lockouts involving any of the Acquired Corporations.

(b) Each of the Acquired Corporations is in compliance in all material respects with all applicable Laws in respect of employment, employment practices, labor, terms and conditions of employment and wages and hours.

(c) With respect to Company Employees, independent contractors, (i) there are no charges or complaints pending or, to the knowledge of the Company, threatened before the National Labor Relations Board, Equal Employment Opportunity Commission or any other Governmental Entity against any of the Acquired Corporations, (ii) there are no employee or labor complaints, grievances or arbitrations in each case, against or with respect to any of the Acquired Corporations, (iii) none of the Acquired Corporations is the subject of any audits or investigations by any Governmental Entity responsible for the enforcement of labor, employment, wages and hours of work, child labor, immigration, or occupational safety and health Laws, nor has any notice of an intention to conduct an investigation against or with respect to them been received, and (iv) there are no complaints, lawsuits or other Legal Proceedings pending or, to the knowledge of the Company, threatened in any forum by or on behalf of such individuals (including, for purposes of this Section 4.26(c)(iv), any applicant for employment or classes of Company Employees or independent contractors) alleging breach of any express or implied contract of employment, any applicable Law governing employment or the termination thereof or other discriminatory, wrongful or tortious conduct in connection with the employment relationship.

(d) Each of the Acquired Corporations has satisfied any legal or contractual requirement to provide notice to, enter into any consultation procedure with or obtain an opinion from any labor or trade union, works council, employee forum or other employee representative body recognized by the Acquired Corporations for collective consultation purposes in relation to any Company Employee, in connection with the execution of this Agreement or the consummation of the Transactions.

Section 4.27 Environmental Matters

(a) The Company has obtained and currently maintains in full force and effect all Licenses required under any Environmental Laws in connection with the operation of the Company (the "Environmental Licenses") and is and has been in compliance with all Environmental Licenses and Environmental Laws except in each case as has not resulted or would not result in the Company incurring material liabilities under any Environmental Licenses or Environmental Laws. Section 4.27(a) of the Company Disclosure Schedule sets forth a list of Environmental Licenses.

(b) The Company has not received any written notice of, and the Company is not subject to, any pending or, to the knowledge of the Company, any threatened claims, demands, actions, Legal Proceedings, investigations, allegations, assertions or notices

alleging noncompliance with or potential liability under any Environmental Licenses or Environmental Laws, except in each case as have not resulted or would not result in the Company incurring material liabilities under Environmental Laws or Environmental Licenses.

(c) Except as disclosed in Section 4.27(c) of the Company Disclosure Schedule, there are no facts, circumstances or conditions relating to the Company, the Company Leased Real Property or Owned Real Property, any real property formerly owned, operated or leased by the Company or any property to which the Company arranged for the transport, treatment, storage or disposal of Hazardous Substances, including the Release of Hazardous Substances, that has resulted in or could result in the Company incurring material liabilities under Environmental Laws.

(d) The Company has provided Parent with true, correct and complete copies of all environmental, health and safety assessments, investigations, audits, reports, pleadings and notices related to the Company, the Company Leased Real Property or Owned Real Property, or any property currently or formerly owned, operated or leased by the Company, including any Phase I Environmental Site Assessments and Phase II reports in the possession, custody or control of the Company.

(e) To the knowledge of the Company, the Company has not assumed by Contract, or otherwise assumed, undertaken, or provided an indemnity with respect to any material or potentially material liability of any other Person under Environmental Law.

(f) To the knowledge of the Company, none of the following exists on, at or under the Company Leased Real Property or Owned Real Property except as in compliance with applicable Environmental Laws: (i) underground storage tanks or (ii) landfills, surface impoundments or other waste disposal areas.

(g) To the knowledge of the Company, there have been no Releases of Hazardous Substances at the Company Leased Real Property or Owned Real Property during the Company's ownership or leasehold, and the Company has not Released Hazardous Substances (i) at any real property formerly owned, leased, used, operated by any of the Acquired Corporations or (ii) at any location at which Hazardous Substances generated by any of the Acquired Corporations were transported, disposed of or came to be located.

Section 4.28 Full Disclosure. Except as set forth on Section 4.28 of the Company Disclosure Schedule, no representation or warranty by the Company in this Agreement and no statement contained in the Company Disclosure Schedule or any certificate or other document furnished or to be furnished to the Company pursuant to this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF PARENT AND SUB

Except as disclosed in the Parent Disclosure Schedule, Parent and Sub jointly and severally represent and warrant to the Company as follows:

Section 5.1 **Organization**. Each of Parent and Sub is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has the requisite entity power and authority to own, lease and operate its properties and to carry on its business as it is now being conducted, except where the failure to be so organized, existing and in good standing or to have such power and authority would not, individually or in the aggregate, have a Parent Material Adverse Effect. Each of Parent and Sub is duly qualified or licensed to do business and in good standing (with respect to jurisdictions which recognize such concept) as a foreign corporation in each jurisdiction in which the nature of the business conducted by it makes such qualification or licensing necessary, except where the failure to be so duly qualified or licensed and in good standing would not, individually or in the aggregate, have a Parent Material Adverse Effect.

Section 5.2 **Authorization; Validity of Agreement; Necessary Action**. Prior to the date hereof Parent, as the sole stockholder of Sub, duly executed and delivered a stockholder consent, effective as of immediately following execution of this Agreement, which, when effective, will duly adopt this Agreement (the "Sub Stockholder Consent"). The Sub Stockholder Consent has not been revoked and is in full force and effect. Each of Parent and Sub has the requisite power and authority to execute and deliver this Agreement and, upon effectiveness of the Sub Stockholder Consent, to issue and perform under the Promissory Notes and consummate the Contemplated Transactions. The execution, delivery and performance by Parent and Sub of this Agreement, the issuance of and performance under the Promissory Notes and the consummation of the Contemplated Transactions, have been duly authorized by all necessary action on the part of Parent and Sub, subject to the effectiveness of the Sub Stockholder Consent, and no other action on the part of Parent or Sub is necessary to adopt this Agreement or to authorize the execution and delivery by Parent and Sub of this Agreement, the issuance of and performance under the Promissory Notes and the consummation by them of the Contemplated Transactions. This Agreement has been duly executed and delivered by Parent and Sub, and assuming due and valid authorization, execution and delivery hereof by the Company, is a valid and binding obligation of each of Parent and Sub, enforceable against them in accordance with its terms, except as enforceability may be limited by the Enforceability Exceptions.

Section 5.3 **Consents and Approvals; No Violations**.

(a) Except for (i) obtaining the Company Stockholder Approval, (ii) the filing of the Certificate of Merger, (iii) compliance with the rules and regulations of the London Stock Exchange, including the AIM Rules, (iv) compliance with any applicable foreign or state securities or "blue sky" laws and (v) compliance with filings under the HSR Act or antitrust, trade regulation, competition or similar merger control Laws of other applicable jurisdictions, neither the execution, delivery or performance of this Agreement by Parent or Sub nor the consummation by Parent or Sub of the Contemplated Transactions will require on the part of Parent or Sub any filing or registration with, notification to, or authorization, consent or approval of, any Governmental Entity; except for such filings, registrations, notifications, authorizations, consents or approvals the failure of which to make or obtain would not have a Parent Material Adverse Effect.

(b) Neither the execution, delivery or performance of this Agreement by the Parent or Sub nor the issuance and performance under the Promissory Note and the consummation by the Parent or Sub of the Contemplated Transactions will (i) violate any provision of the certificate of incorporation or bylaws of Parent or Sub, (ii) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a

default (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, license, contract, agreement or other instrument or obligation to which Parent or any of its Subsidiaries is a party or by which any of them or any of their properties or assets may be bound or (iii) assuming the effectiveness of the Sub Stockholder Consent, violate any Law applicable to Parent, any of its Subsidiaries or any of their properties or assets; except in the case of clauses (ii) and (iii) for such violations, breaches, defaults, terminations, cancellations or accelerations that would not have a Parent Material Adverse Effect.

Section 5.4 **Proxy Statement; Other Information**. None of the information provided by Parent or Sub to be included in the Proxy Statement will, at the time such are first mailed to the stockholders of the Company or at the time of the Company Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

Section 5.5 **Sub's Operations**. Sub has not conducted any business prior to the date hereof and has, and prior to the Effective Time will have, no assets, liabilities or obligations of any nature other than those incident to its formation and pursuant to this Agreement and the Merger and the other Contemplated Transactions.

Section 5.6 **Brokers or Finders**. No investment banker, broker, finder, consultant or intermediary is entitled to any investment banking, brokerage, finder's or similar fee or commission in connection with this Agreement or the Contemplated Transactions based upon arrangements made by or on behalf of Parent or any of its Subsidiaries.

Section 5.7 **Certain Contracts**. As of the date hereof, other than the Subscription Agreement, there are no agreements, contracts, arrangements or understandings between Parent, Sub or any of their Affiliates on the one hand, and any of the Company's or its Subsidiaries' directors, officers, employees or stockholders, on the other hand, (a) that relate to the Contemplated Transactions, (b) pursuant to which any stockholder of the Company would be entitled to receive consideration with respect to the Contemplated Transactions of a different amount or nature than the Merger Consideration or (c) pursuant to which any stockholder of the Company has agreed to vote such stockholder's shares to approve this Agreement or the Merger or has agreed to vote against any Superior Proposal.

Section 5.8 **No Other Representations**. Each of Parent and Sub acknowledges and agrees, for themselves and each member of the Purchaser Group, that except for the representations and warranties contained in Article IV, neither the Company or any Subsidiary of the Company nor any other Person acting on behalf of the Company or any such Subsidiary, makes any representation or warranty, express or implied, with respect to the Company or any Subsidiary or Affiliate thereof or with respect to any other information provided to Parent, Sub or any of their respective Affiliates or Representatives in connection with the Contemplated Transactions, including the accuracy or completeness thereof, nor is Parent, Sub or any member of the Purchaser Group relying thereon.

Section 5.9 **Financing**. Parent has delivered to the Company a copy of the executed commitment letter (together with all exhibits, annexes and schedules, if any), dated as of the date hereof (the "Debt Commitment"), to provide, subject only to the terms and conditions expressly set forth therein, debt financing in the aggregate amounts set forth therein (the "Financing"). As of the date hereof, the Debt Commitment has not been

amended or modified, no such amendment or modification is presently contemplated, and the respective obligations and commitments contained in such letter has not been withdrawn or rescinded in any respect. As of the date hereof, the Debt Commitment is in full force and effect and is the valid, binding and enforceable obligations of Parent, subject to the Enforceability Exceptions.

Section 5.10 **Accredited Investor**. Each of Parent and Sub represents and warrants that it is an "accredited investor," as such term is defined in Rule 501(a) promulgated by the SEC under the Securities Act, and that it has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the acquisition of the Common Stock contemplated hereby. Each of Parent and Sub shall execute and deliver to the Company such documents as the Company may request in order to confirm the accuracy of the foregoing.

ARTICLE VI

COVENANTS

Section 6.1 **Interim Operations of the Company**. During the period from the date of this Agreement through the Closing or the date, if any, on which this Agreement is earlier terminated pursuant to Section 8.1 (the "Pre-Closing Period"), except (w) as may be required by Law or requested by a Governmental Entity, (x) with the prior written consent of Parent, (y) as required or specifically contemplated by this Agreement or (z) as set forth in Section 6.1 of the Company Disclosure Schedule: (i) the Company shall ensure that the business and operations of each of the Acquired Corporations shall be conducted in the ordinary course of business consistent with past practices, and in compliance with all applicable Law (including, without limitation, Healthcare Laws) and the requirements of all Material Contracts; and (ii) the Company shall use reasonable best efforts to ensure that each of the Acquired Corporations (A) preserves intact its current business organization, (B) preserves its existing relationships and goodwill with all customers, suppliers and others having significant business dealings with it and with all Governmental Entities, (C) keeps available the services of its current officers and other employees. Without limiting the generality of the foregoing, except (w) as may be required by Law or requested by a Governmental Entity, (x) with the prior written consent of Parent, (y) as required or specifically requested by or pursuant to this Agreement or (z) as set forth in Section 6.1 of the Company Disclosure Schedule, during the Pre-Closing Period, none of the Acquired Corporations will:

(a) issue, deliver, sell, grant, dispose of, pledge or otherwise encumber, or authorize or propose the issuance, sale, grant, disposition, pledge or other encumbrance of (i) any shares of capital stock of any class or any other ownership interest of any of the Acquired Corporations, or any securities or rights convertible into, exchangeable for, or evidencing the right to subscribe for any shares of capital stock or any other ownership interest of any of the Acquired Corporations, or any rights, warrants, options, calls, commitments or any other agreements of any character to purchase or acquire any shares of capital stock or any other ownership interest of any of the Acquired Corporations or any securities or rights convertible into, exchangeable for, or evidencing the right to subscribe for, any shares of capital stock or any other ownership interest of any of the Acquired Corporations, or (ii) any other securities of any of the Acquired Corporations in respect of, in lieu of, or in substitution for, Common Stock outstanding on the date hereof;

(b) redeem, purchase or otherwise acquire, or propose to redeem, purchase or otherwise acquire, any outstanding shares of capital stock or other securities of any Acquired Corporations;

(c) split, combine, subdivide or reclassify any Common Stock or declare, accrue, set aside for payment or pay any dividend in respect of any Common Stock or otherwise make any payments to stockholders in their capacity as such, except for dividends by a wholly owned Subsidiary of the Company in the ordinary course of business consistent with past practices;

(d) acquire, sell, lease, license or dispose of any assets or right other than in the ordinary course of business and consistent with past practices;

(e) (i) incur, issue or assume any indebtedness or guarantee or otherwise become liable for any indebtedness (including increasing the indebtedness under Contracts in existence as of the date hereof); (ii) make any loans, advances (other than expense advances made to directors or officers or other employees in the ordinary course of business consistent with past practices) or capital contributions to, or investments in, any other Person, other than to the Company or any wholly owned Subsidiary of the Company; or (iii) sell or transfer, or create, assume or suffer to exist any Lien on, any accounts receivable (other than in the ordinary course of business consistent with past practices);

(f) establish, adopt, enter into or amend any Benefit Plan, pay any bonus or make any profit-sharing or similar payment to, or increase the amount of the wages, salary, commissions, fringe benefits or other compensation (including equity-based compensation, whether payable in stock, cash or other property) or remuneration payable to, any of its directors or any of its officers, other than as required by Law or by written agreements in effect on or prior to the date of this Agreement with such person;

(g) enter into or become bound by, terminate or amend any Material Contract, other than in the ordinary course of business consistent with past practices;

(h) change any of its accounting methods unless required by Law or GAAP;

(i) amend or permit the adoption of any amendment to the Organizational Documents or to the charter or other organizational documents of any of the other Acquired Corporations, or form any Subsidiary;

(j) (i) acquire any equity interest or other interest in any other Entity; or (ii) effector become a party to any merger, consolidation, plan of arrangement, share exchange, business combination, amalgamation, recapitalization, reclassification of shares, stock split, reverse stock split, issuance of bonus shares, division or subdivision of shares, consolidation of shares or similar transaction;

(k) make any capital expenditure (except that the Acquired Corporations may make any capital expenditure that when added to all other capital expenditures made on behalf of the Acquired Corporations during the Pre-Closing Period does not exceed $100,000 in the aggregate);

(l) make any pledge of any of its assets or permit any of its assets to become subject to any Liens, except for Permitted Liens or Liens that do not materially detract from

the value of such assets or materially impair the operations of any of the Acquired Corporations;

(m) (i) promote any employee or change any employee's title in the ordinary course of business consistent with past practices; or (ii) hire any employee or retain any individual independent contractor with annual target cash compensation in excess of $100,000;

(n) (i) make any material election with respect to Taxes inconsistent with past practices; (ii) change or revoke any material Tax election, (iii) adopt or change any method of Tax accounting or accounting period, (iv) file any material amended Tax Return, (v) surrender the right to claim a Tax refund, (vi) settle or compromise any claim, notice, audit report, assessment, or other Legal Proceeding in respect of any Tax, or (vii) consent to any extension or waiver of the statute of limitations period applicable to any Tax claim or assessment;

(o) commence any Legal Proceeding, except (i) with respect to routine collection matters in the ordinary course of business consistent with past practices, (ii) Legal Proceedings to enforce this Agreement or (iii) Legal Proceedings in connection with this Agreement undertaken in accordance with Section 6.12;

(p) subject to Section 6.12, settle any Legal Proceeding or other material claim; or

(q) enter into any Contract to do any of the foregoing.

Section 6.2 Access to Information. During the Pre-Closing Period, upon reasonable notice, the Acquired Corporations shall (and shall cause the respective Representatives of the Acquired Corporations to): (a) provide Representatives of Parent reasonable access, during normal business hours, in a manner not disruptive to the operations of the business of the Acquired Corporations, to the properties, books, records, Tax Returns, work papers and other documents and information relating to the Acquired Corporations, (b) furnish promptly to such Representatives all information concerning the business, properties and personnel of the Acquired Corporations as may reasonably be requested and (c) provide reasonable access to the Acquired Corporations' Representatives and personnel, to the extent such individuals are not members of the Purchaser Group; provided that nothing herein shall require any of the Acquired Corporations to disclose any information to Parent or Sub if such disclosure would, in the reasonable judgment of the Company, (i) cause significant competitive harm to any of the Acquired Corporations if the transactions contemplated by this Agreement are not consummated, (ii) violate applicable Law or the provisions of any agreement to which any of the Acquired Corporations is a party or (iii) jeopardize any attorney-client or other legal privilege. Parent agrees that it will not, and will cause its Representatives not to, use any information obtained pursuant to this Section 6.2 for any competitive or other purpose unrelated to the consummation of the Contemplated Transactions.

Section 6.3 Acquisition Proposals.

(a) Anything in this Agreement to the contrary notwithstanding, during the period beginning on the date of this Agreement and continuing until 11:59 p.m., Eastern Time, on December 24, 2016 (the "Go-Shop Period"), the Acquired Corporations and their respective Representatives shall have the right to, directly or indirectly: (i) solicit or initiate, or induce,

facilitate or encourage, the making, submission or announcement of any Acquisition Proposal or take any action that would reasonably be expected to lead to an Acquisition Proposal; (ii) furnish any nonpublic information regarding any of the Acquired Corporations to any Person in connection with or in response to an Acquisition Proposal (other than any notes, analysis or other documents or materials prepared by CC Capital (the "CC Capital Information")); and (iii) engage in discussions or negotiations with any Person with respect to any Acquisition Proposal; provided that (w) prior to furnishing nonpublic information regarding the Acquired Corporations the Company receives from such Person or group of Persons an executed Acceptable Confidentiality Agreement; (x) within forty-eight (48) hours of entering into discussions with such Person or group of Persons, the Company gives Parent written notice setting forth the Company's intention to furnish nonpublic information to, or enter into discussions with, such Person or group of Persons; (y) concurrently with furnishing any such nonpublic information to such Person or group of Persons, the Company furnishes such nonpublic information to Parent (to the extent such nonpublic information has not been previously furnished by the Company to Parent); and (z) the Company shall not provide any such Person non-public information of or related to or prepared by Parent, Sub, CC Capital or any of their respective Affiliates or Representatives (which, for the avoidance of doubt, shall include any notes, analysis or other documents or materials prepared by CC Capital), except as required by Law. Following the expiration of the Go-Shop Period, the Company shall, and shall direct its Representatives to, (i) immediately cease any discussions or negotiations with any Persons that may be ongoing with respect to any Acquisition Proposal and (ii) promptly request each Person or group of Persons that has executed a confidentiality or similar agreement in connection with its consideration of a possible Acquisition Transaction or a possible equity investment in any Acquired Corporation from January 1, 2014 through the Go-Shop Period to return to the Acquired Corporations all confidential information heretofore furnished to such Person or group of Persons by or on behalf of any of the Acquired Corporations, unless, in each case, any such Person has submitted an Acquisition Proposal prior to the expiration of the Go-Shop Period with respect to which the Board (in accordance with Section 9.17) or any committee thereof has made a Superior Proposal Determination in accordance with the provisions of Section 6.3(f).

(b) During the period beginning immediately following the expiration of the Go-Shop Period and continuing until the Effective Time or, if earlier, the termination of this Agreement in accordance with Section 8.1, the Company and the other Acquired Corporations shall not, and the Company and the other Acquired Corporations shall instruct their respective Representatives not to, directly or indirectly: (i) solicit or initiate, or induce, facilitate or encourage, the making, submission or announcement of any Acquisition Proposal or take any action that would reasonably be expected to lead to an Acquisition Proposal; (ii) furnish any nonpublic information regarding any of the Acquired Corporations to any Person in connection with or in response to an Acquisition Proposal; (iii) engage in discussions or negotiations with any Person with respect to any Acquisition Proposal; (iv) approve, endorse or recommend any Acquisition Proposal; (v) enter into any letter of intent or Contract contemplating or otherwise relating to any Acquisition Transaction (other than an Acceptable Confidentiality Agreement entered into in accordance with Section 6.3(c)); (vi) take any action that would render any of the restrictions of any of the Takeover Statutes inapplicable to any Person (other than Parent, Sub or any member of the Purchaser Group); or (vii) resolve or propose or agree to do any of the foregoing.

(c) Anything in this Agreement to the contrary notwithstanding, at any time prior to the receipt of the later of the Company Stockholder Approval and the Majority of the

Minority Approval, (i) the Company may furnish nonpublic information regarding the Acquired Corporations to, and engage in discussions or negotiations with, any Person or group of Persons in response to an Acquisition Proposal submitted to the Company, the Board or any Independent Committee by such Person or group (and not withdrawn) that the Board or any Independent Committee concludes in good faith is or could reasonably be expected to result in a Superior Proposal if (A) such Acquisition Proposal did not result from a breach of this Section 6.3; (B) the Board or any Independent Committee determines in good faith, after consultation with its outside legal counsel, that the failure to take such action would be inconsistent with its fiduciary duties under applicable Law, (C) (x) prior to furnishing nonpublic information regarding the Acquired Corporations, the Company receives from such Person or group of Persons an executed Acceptable Confidentiality Agreement; (y) within twenty-four (24) hours of entering into discussions with such Person or group of Persons, the Company gives Parent written notice setting forth the Company's intention to furnish nonpublic information to, or enter into discussions with, such Person or group of Persons; and (z) the Company shall not provide any such Person non-public information of or related to or prepared by Parent, Sub, CC Capital or any of their respective Affiliates or Representatives (which, for the avoidance of doubt, shall include any notes, analysis or other documents or materials prepared by CC Capital), except as required by Law, and (D) concurrently with furnishing any such nonpublic information to such Person or group of Persons, the Company furnishes such nonpublic information to Parent (to the extent such nonpublic information has not been previously furnished by the Company to Parent); (ii) the Company (in accordance with Section 9.17) may waive any standstill provision of any confidentiality, standstill or similar agreement that would prohibit a Person or group of Persons from communicating an Acquisition Proposal to the Company, the Board or any Independent Committee if (A) any request for such waiver did not result from a breach of this Section 6.3; (B) the Board or any Independent Committee determines in good faith, after consultation with its outside legal counsel, that the failure to take such action would be inconsistent with its fiduciary duties under applicable Law, (C) prior to such waiver, the Company gives Parent written notice of the existence of such standstill provision and the identity of such Person or group of Persons subject to such standstill, and (D) concurrent with such waiver, the Company gives Parent written notice of such waiver; and (iii) following the receipt of an Acquisition Proposal, the Board or any Independent Committee may contact the Person or group of Persons who has made such Acquisition Proposal to clarify and understand the terms and conditions thereof. Without limiting the generality of the foregoing, the Company (i) shall not permit any officer of the Company or authorize any Affiliate or Representative of any of the Acquired Corporations (other than any member of the Purchaser Group) to take any action inconsistent with any of the provisions set forth in the preceding sentence and (ii) acknowledges and agrees that any action inconsistent with any of the provisions set forth in the preceding sentence by a Representative of the Board or any Independent Committee shall be a breach of this Section 6.3 by the Company.

(d) At any time prior to the receipt of the later of the Company Stockholder Approval and the Majority of the Minority Approval, if any Acquisition Proposal is made or submitted by any Person or group of Persons, then the Company shall promptly (and in no event later than twenty-four (24) hours after receipt of such Acquisition Proposal) advise Parent orally and in writing of such Acquisition Proposal (including the terms thereof). The Company shall keep Parent promptly and reasonably informed with respect to the status of any such Acquisition Proposal and shall provide notice to Parent within twenty-four (24) hours of any changes in the terms or any modification or proposed modification thereto.

(e) Subject to Section 6.3(c), the Company agrees not to release or permit the release of any Person or group of Persons from, or to waive or permit the waiver of any confidentiality, non-solicitation, or no hire provision in any Contract with respect to an Acquisition Proposal to which any of the Acquired Corporations is a party or under which any of the Acquired Corporations has any rights (including any Acceptable Confidentiality Agreement entered into during the Pre-Closing Period), and will cause each such agreement to be enforced to the extent requested by Parent.

(f) Neither the Company nor the Board (in accordance with Section 9.17) nor any committee thereof shall (i) withhold, withdraw, amend, qualify or modify, in a manner adverse to Parent or Sub, or propose publicly to withhold, withdraw, amend, qualify or modify, in a manner adverse to Parent or Sub, the Company Recommendation, (ii) adopt, approve or recommend, or publicly propose to adopt, approve or recommend, or publicly take a neutral position or no position with respect to, any Acquisition Proposal, (iii) fail to include the Company Recommendation in the Proxy Statement or (iv) following receipt of an Acquisition Proposal, fail to reaffirm its approval or recommendation of this Agreement and the Merger within five (5) Business Days after receipt of any reasonable request to do so from Parent (any of the actions or events described in clauses "(i)" through "(iv)", a "Change in Recommendation"). Notwithstanding anything in this Agreement to the contrary, at any time prior to the receipt of the later of the Company Stockholder Approval and the Majority of the Minority Approval, if in response to the receipt by the Company of an Acquisition Proposal not in violation of this Section 6.3, the Board or any Independent Committee determines in good faith, after consultation with its outside legal counsel, that such Acquisition Proposal constitutes a Superior Proposal (a "Superior Proposal Determination") and that the failure to take such action would be inconsistent with its fiduciary duties under applicable Law, the Board or any Independent Committee may make a Change in Recommendation in respect of such Superior Proposal, as the case may be. The Board or any Independent Committee may make a Change in Recommendation only if (i) the Board or any Independent Committee has notified Parent in writing of its intent to take such action (any such notice, a "Change in Recommendation Notice"), which notice shall specify the material terms of the Superior Proposal and contain a copy of the material documents and/or agreements providing for the Superior Proposal; provided that it is agreed that the provision of such Change in Recommendation Notice to Parent shall not constitute a Change in Recommendation; (ii) the Company shall, and shall cause its Representatives to, for a period of at least ten (10) Business Days following receipt by Parent of the Change in Recommendation Notice (such time period, the "Notice Period"), negotiate with Parent and any Representative of Parent in good faith (to the extent Parent desires to negotiate) to permit Parent to propose amendments to the terms and conditions of this Agreement and the Contemplated Transactions (a "Parent Proposal"); (iii) on the date that is no later than two (2) Business Days immediately following the end of the Notice Period, and taking into account any Parent Proposal received during the Notice Period, the Board or any Independent Committee shall have considered in good faith such Parent Proposal, if any, and shall have determined, in respect of such Superior Proposal, that the Superior Proposal would continue to constitute a Superior Proposal if the revisions proposed in such Parent Proposal, if any, were to be given effect; and (iv) such Superior Proposal did not result from a breach of this Section 6.3. The Company acknowledges and agrees that, in connection with a Change in Recommendation Notice delivered in connection with an Acquisition Proposal that is determined to be a Superior Proposal, each successive material modification to the financial terms of such Acquisition Proposal shall be deemed to constitute a new Acquisition Proposal for purposes of this Section 6.3(f) and shall trigger a new Notice Period.

(g) Nothing contained in this Agreement shall prohibit the Company or the Board or any committee thereof from making any disclosure to the Company's stockholders with regard to the Contemplated Transactions or an Acquisition Proposal that the Board or any committee thereof has determined in good faith, after consultation with outside legal counsel, that the failure to do so would be reasonably likely to violate U.S. federal or state securities laws or other applicable Law or would be inconsistent with the Board's fiduciary duties under applicable Law; provided that compliance by the Company or the Board with such obligations shall not relieve the Company of any of its obligations under the provisions of this Section 6.3. For the avoidance of doubt, none of the Company, the Board or any committee thereof shall effect a Change in Recommendation except in accordance with and in compliance with the terms of Section 6.3(f).

Section 6.4 Publicity. The initial press release by each of Parent and the Company with respect to the execution of this Agreement shall be reasonably acceptable to Parent and the Company, provided that a regulatory announcement in accordance with the AIM Rules in a form agreed between Parent and the Company shall be made immediately following the execution of this Agreement. Neither the Company nor Parent (nor any of their respective Affiliates) shall issue any other press release or make any other public announcement with respect to this Agreement or the Contemplated Transactions without the prior agreement of the other party, except (a) as may be required by Law (including the AIM Rules) or by any listing agreement with a national securities exchange, in which case the party proposing to issue such press release or make such public announcement shall use its reasonable best efforts to consult in good faith with the other party before making any such public announcements, (b) that the Company shall not be required to obtain the prior agreement of Parent or Sub in connection with the receipt and existence of an Acquisition Proposal and matters related thereto or a Change in Recommendation, and (c) the Company may otherwise communicate in the ordinary course of business consistent with past practices with its employees, customers, suppliers and vendors as it deems appropriate.

Section 6.5 Directors' and Officers' Insurance and Indemnification. Parent shall, and shall cause the Surviving Corporation, and the Surviving Corporation hereby agrees, to do the following:

(a) From and after the Effective Time, Parent shall, and shall cause the Surviving Corporation to, and the Surviving Corporation shall, indemnify and hold harmless, and provide advancement of expenses to, the present and former officers and directors of Acquired Corporations (each, an "Indemnified Party") in respect of acts or omissions in their capacity as an officer or director of the any of the Acquired Corporations or any of their respective predecessors or as an officer, director, employee, fiduciary or agent of another enterprise if the Indemnified Party was serving in such capacity at the request of any of the Acquired Corporations or any of their respective predecessors, in any case occurring at or prior to the Effective Time to the fullest extent permitted by the DGCL or any other applicable Law or provided under the certificate of incorporation, bylaws, any indemnification agreements and any other governing documents of Acquired Corporations in effect on the date hereof, which for the avoidance of doubt, includes a finding that such Indemnified Party breached his fiduciary duty of care to the Company. In the event of any threatened or pending claim, action, suit or Legal Proceedings to which an Indemnified Party is, has been or becomes a party or with respect to which an Indemnified Party is, has been or becomes otherwise involved (including as a witness), arising in whole or in part out of, or pertaining in whole or in part to, the fact that the Indemnified Party is or was an officer or

director of any of the Acquired Corporations or any of their respective predecessors or is or was serving at the request of any of the Acquired Corporations or any of their respective predecessors as an officer, director, employee, fiduciary or agent of another enterprise (including any Legal Proceeding arising out of or pertaining to matters occurring or existing or alleged to have occurred or existed, or acts or omissions occurring or alleged to have occurred, at or prior to the Effective Time, or arising out of or pertaining to this Agreement and the transactions and actions contemplated hereby), (i) Parent shall, and shall cause the Surviving Corporation to, and the Surviving Corporation shall, advance fees, costs and expenses (including reasonable attorney's fees and disbursements) incurred by each Indemnified Party in connection with and prior to the final disposition of such Legal Proceedings, such fees, costs and expenses (including reasonable attorney's fees and disbursements) to be advanced within twenty (20) Business Days of receipt by Parent from the Indemnified Party of a request therefor, provided that such Indemnified Party delivers an undertaking to the Surviving Corporation, agreeing to repay such advanced fees, costs and expenses if it is determined by a court of competent jurisdiction in a final nonappealable order that such Indemnified Party was not entitled to indemnification with respect to such fees, costs and expenses because such Indemnified Party breached his fiduciary duty of loyalty, and (ii) neither Parent nor the Surviving Corporation shall settle, compromise or consent to the entry of any judgment in any Legal Proceeding in which indemnification could be sought by such Indemnified Party hereunder, unless such settlement, compromise or consent includes an unconditional release of such Indemnified Party from all liability arising out of such Legal Proceeding or such Indemnified Party otherwise consents in writing. If any claim for indemnification is asserted or made by any Indemnified Party pursuant to this Section 6.5, any determination required to be made with respect to whether such Indemnified Party's conduct complies with the standards under the DGCL, the certificate of incorporation of the Surviving Corporation or any Subsidiary, other applicable Law or any applicable indemnification agreement shall be made by independent legal counsel selected by such Indemnified Party. If any Legal Proceeding is brought against any Indemnified Party in which indemnification could be sought by such Indemnified Party under this Section 6.5, (A) the Surviving Corporation shall have the right to control the defense thereof after the Effective Time, unless the Legal Proceeding concerns whether indemnification is available to such Indemnified Party, (B) each Indemnified Party shall be entitled to retain his or her own counsel in connection with such Legal Proceeding at the expense of the Surviving Corporation and the Parent, and (C) no Indemnified Party shall be liable for any settlement effected without his or her prior express written consent. Neither Parent nor the Surviving Corporation shall be liable for any settlement, compromise or consent to the entry of judgment or termination unless such settlement, compromise or consent is approved in writing in advance by the Surviving Corporation, such approval not to be unreasonably withheld, conditioned or delayed, unless Parent or the Surviving Corporation shall not have responded to any such request for settlement, compromise or consent within thirty days of receipt thereof.

(b) From and after the Effective Time, Parent shall cause to be maintained in effect all provisions in the Surviving Corporation's certificate of incorporation and bylaws (or in such documents of any successor to the business of the Surviving Corporation) and in the certificate of incorporation, bylaws and other governing documents of the other Acquired Corporations regarding (i) elimination of liability of directors, (ii) indemnification of officers, directors and employees and (iii) advancement of expenses, in each case, that are no less advantageous to the intended beneficiaries than the corresponding provisions in existence on the date of this Agreement.

(c) Prior to the Effective Time, the Company will obtain and fully pay the premium for the non-cancellable extension of the directors' and officers' liability coverage of the Company's existing directors' and officers' insurance policies and the Company's existing fiduciary liability insurance policies (collectively, "D&O Insurance"), in each case for a claims reporting or discovery period ending six (6) years from and after the Effective Time with respect to any claim related to any period of time at or prior to the Effective Time, from an insurance carrier with the same or better credit rating as the Company's current insurance carrier with respect to D&O Insurance, with terms, conditions, retentions and limits of liability that are no less favorable to the Indemnified Parties than the coverage provided under the Company's existing policies with respect to any actual or alleged error, misstatement, misleading statement, act, omission, neglect, breach of duty or any matter claimed against a director or officer of any of the Acquired Corporations by reason of him or her serving in such capacity that existed or occurred at or prior to the Effective Time (including in connection with this Agreement or the Contemplated Transactions); provided that the maximum aggregate premium for such policies shall not be in excess of 300% of the amount the Company paid for its D&O Insurance in its last full fiscal year; provided, further, that if the premiums of such "tail" policy exceed such amount, the Company will obtain such a "tail" policy with the greatest coverage available, with respect to matters occurring prior to the Effective Time, for a cost not exceeding 300% of such amount. If the Company does not obtain such "tail" insurance policies as of the Effective Time, the Surviving Corporation shall, and Parent shall cause the Surviving Corporation to, continue to maintain in effect, for a period of at least six (6) years from and after the Effective Time, the D&O Insurance in place as of the date hereof with the Company's current insurance carrier or with an insurance carrier with the same or better credit rating as the Company's current insurance carrier with respect to D&O Insurance with terms, conditions, retentions and limits of liability that are no less favorable than the coverage provided under the Company's existing policies as of the date hereof, or the Surviving Corporation shall purchase from the Company's current insurance carrier or from an insurance carrier with the same or better credit rating as the Company's current insurance carrier with respect to D&O Insurance comparable D&O Insurance for such six (6) year period with terms, conditions, retentions and limits of liability that are no less favorable to the Indemnified Parties than as provided in the Company's existing policies as of the date hereof; provided that in no event shall Parent or the Surviving Corporation be required to expend for such policies pursuant to this sentence an annual premium amount in excess of 300% of the amount per annum the Company paid for its D&O Insurance in its last full fiscal year; and provided, further, that if the premiums of such insurance coverage exceed such amount, the Surviving Corporation shall be obligated to obtain a policy with the greatest coverage available, with respect to matters occurring prior to the Effective Time, for a cost not exceeding 300% of such amount.

(d) If Parent, the Surviving Corporation or any of their respective successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger, or (ii) transfers or conveys all or substantially all of its properties and assets to any Person, then, and in each such case, to the extent necessary, proper provision shall be made so that the successors and assigns of Parent or the Surviving Corporation, as the case may be, shall assume the obligations set forth in this Section 6.5.

(e) The provisions of this Section 6.5 shall survive consummation of the Merger and are intended to be for the benefit of, and shall be enforceable by, each Indemnified Party referred to in this Section 6.5 and his or her heirs and representatives, and are in addition to,

and not in substitution for, any other rights that any such person may have under the certificate of incorporation, bylaws or other governing documents of any of the Acquired Corporations, under the DGCL or any other applicable Law or under any agreement of any Indemnified Party with any of the Acquired Corporations or otherwise.

Section 6.6 Proxy Statement; Other Actions.

(a) The Company will prepare and mail the Proxy Statement as soon as practicable following the date of this Agreement but in no event later than thirty (30) days following the date of this Agreement (the "Proxy Date"). Parent and the Company will cooperate with each other in connection with the preparation of the foregoing. Notwithstanding the foregoing, the Company assumes no responsibility with respect to information supplied in writing by or on behalf of Parent or Sub for inclusion or incorporation by reference in the Proxy Statement. If at any time prior to the Company Meeting, any information should be discovered by any party which should be set forth in an amendment or supplement to the Proxy Statement so that the Proxy Statement would not include any misstatement 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, the party which discovers such information will promptly notify the other parties and, to the extent required by applicable Law, an appropriate amendment or supplement describing such information shall be promptly disseminated by the Company to the stockholders of the Company.

(b) Subject to the other provisions of this Agreement, the Company shall (i) take all action required under the DGCL and its Organizational Documents to duly call, give notice of, convene and hold a meeting of its stockholders promptly following the mailing of the Proxy Statement for the purpose of obtaining the Company Stockholder Approval and the Majority of the Minority Approval (the "Company Meeting"), with such notice of the Company Meeting to be included in the Proxy Statement and with the record date and meeting date of the Company Meeting to be mutually agreed by the Company and Parent, and (ii) subject to a Change in Recommendation in accordance with Section 6.3, use all reasonable efforts to solicit from its stockholders proxies in favor of the adoption of this Agreement and approval of the Contemplated Transactions. Notwithstanding anything to the contrary contained in this Agreement, the Company may, and at the direction of Parent the Company will, adjourn or postpone the Company Meeting if and to the extent any Independent Committee or Parent, as the case may be, determines in good faith (i) such adjournment or postponement is necessary to ensure that any supplement or amendment to the Proxy Statement that is required by applicable Law is timely provided to the Company's stockholders, or (ii) additional time is required to solicit proxies in favor of the adoption of this Agreement.

Section 6.7 Reasonable Best Efforts.

(a) Upon the terms and subject to the conditions set forth in this Agreement, the Company and Parent shall each use their reasonable best efforts to promptly (i) take, or to cause to be taken, all actions, and to do, or to cause to be done, and to assist and cooperate with the other parties in doing all things necessary, proper or advisable under applicable Law or otherwise to consummate and make effective the Contemplated Transactions; (ii) obtain from any Governmental Entities any actions, non-actions, clearances, waivers, consents, approvals, permits or orders required to be obtained by the Company, Parent or any of their respective Subsidiaries in connection with the authorization, execution, delivery and

performance of this Agreement and the consummation of the Contemplated Transactions, including making or causing to be made as promptly as reasonably practicable (and in no event later than ten (10) Business Days after the date of this Agreement), in consultation and cooperation with the other party hereto, all filings required under the HSR Act; (iii) make all registrations, filings, notifications or submissions which are necessary or advisable, and thereafter make any other required submissions, with respect to this Agreement and the Merger required under (A) any applicable federal or state securities laws and (B) any other applicable Law; provided, that the Company and Parent will cooperate with each other in connection with the making of all such filings, including providing copies of all such filings and attachments to outside counsel for the non-filing party and including the timing of the initial filings; (iv) furnish all information required for any application or other filing to be made pursuant to any applicable Law in connection with the Contemplated Transactions; (v) keep the other party promptly (and in any event within two (2) Business Days) informed in all material respects of any material communication received by such party from, or given by such party to, any Governmental Entity and of any material communication received or given in connection with any Legal Proceeding by a private party, in each case relating to the Contemplated Transactions; (vi) permit the other parties to review any material communication (and considering the other party's reasonable comments thereto) delivered to, and consulting with the other party in advance of any meeting or conference with, any Governmental Entity relating to the Contemplated Transactions or in connection with any Legal Proceeding by a private party relating thereto, and giving the other party the opportunity to attend and participate in such meetings and conferences (to the extent permitted by such Governmental Entity or private party); (vii) avoid the entry of, or have vacated or terminated, any decree, order, or judgment that would restrain, prevent or delay the consummation of the Contemplated Transactions, including defending any lawsuits or other Legal Proceedings, whether judicial or administrative, challenging this Agreement or the consummation of the Contemplated Transactions; and (viii) execute and deliver any additional instruments necessary to consummate the Contemplated Transactions; provided, (Y) that in no event shall the any of the Acquired Corporations, prior to the Effective Time, pay or agree to pay any fee, penalty or other consideration to any third party for any consent or approval required for the consummation of the Contemplated Transactions under any Contract (except to the extent of the amount of any fee or other consideration set forth in such Contract, except for ordinary course fees or other consideration which are not material in amount); and (Z) that in obtaining consent or approval from any Person (other than a Governmental Entity) with respect to the Contemplated Transactions, (I) without the prior written consent of Parent, none of the Acquired Corporations shall pay or commit to pay any material amount to any Person or incur any material liability or other obligation and (II) neither Parent nor Sub shall be required to pay or commit to pay any material amount or incur any liability or obligation.

(b) No party to this Agreement shall consent to any voluntary delay of the consummation of the Contemplated Transactions at the behest of any Governmental Entity without the consent of the other parties to this Agreement, which consent shall not be unreasonably delayed, conditioned or withheld. Notwithstanding anything in this Agreement to the contrary, unless required by Law or any Governmental Entity, materials provided pursuant to this Section 6.7 may be redacted (i) to remove references concerning the valuation of the businesses of the Acquired Corporations, (ii) as necessary to comply with contractual arrangements and (iii) as necessary to address reasonable privilege or confidentiality concerns.

(c) The Company shall use its reasonable best efforts to obtain, on or prior to the Proxy Date, the execution and delivery of Voting Agreements by stockholders representing, in the aggregate, at least 89% of the issued and outstanding shares of Common Stock based on the Closing Date Capitalization and the Company shall promptly execute and deliver to Parent and Sub each of the Voting Agreements.

Section 6.8 **Sub and Surviving Corporation**. Parent will take all actions necessary to (a) cause Sub and the Surviving Corporation, to perform promptly their respective obligations under this Agreement, (b) cause Sub to commence and consummate the Merger on the terms and conditions set forth in this Agreement and (c) ensure that, prior to the Effective Time, Sub shall not conduct any business, make any investments or incur or guarantee any indebtedness, other than pursuant to the Subscription Agreement.

Section 6.9 **Financing Cooperation**. Prior to the Effective Time, the Company shall and shall cause each of the Acquired Corporations and their respective Representatives to, at the sole expense of Parent with respect to reasonable out-of-pocket expenses actually incurred, provide such reasonable cooperation reasonably necessary to consummate the Financing in connection with the Transactions as may be reasonably requested by Parent or its Representatives. Without limiting the generality of the foregoing, the Company shall, and shall cause each of the Acquired Corporations to: (i) furnish the report of the Company's auditor on the audited consolidated financial statements of the Company for the 2013, 2014 and 2015 fiscal years and use its reasonable best efforts to obtain the consent of such auditor to the use of its report thereon in accordance with normal custom and practice in connection with any Financing and use reasonable best efforts to cause such auditor to provide customary comfort letters to the underwriters, initial purchasers or placement agents, as applicable, in connection with any such Financing; (ii) furnish any financial statements, schedules or other financial data or information relating to any of the Acquired Corporations reasonably requested by Parent or its Representatives as may be reasonably necessary to consummate any such Financing, including, without limitation, to satisfy any conditions relating to any Financing and any financial information about the Acquired Corporations required in order to prepare a pro forma financial statements of the Parent and its Subsidiaries after giving effect to the transactions described herein; (iii) provide direct contact in a reasonable number of meetings, presentations and drafting sessions between (x) senior management and advisors, including auditors, of the Company and (y) the proposed lenders, underwriters, initial purchasers or placement agents, as applicable, and/or Parent's or any of its Affiliate's auditors in connection with, the Financing; (iv) assist reasonably with the preparation of offering materials, marketing materials and presentations (including, without limitation, a confidential offering memorandum); (v) obtain the cooperation and assistance of counsel and accountants to the Acquired Corporations in providing customary legal opinions, comfort letters and other services; (vi) provide customary certificates and other documents and instruments relating to such Financing and facilitate (including, without limitation, by taking all corporate, limited liability company, partnership or other similar actions necessary to authorize) the execution and delivery of definitive pledge, security and guarantee documents and other definitive documents (which documents shall only be required to become effective as of the Closing Date) and the provision of guarantees and security and the performance of the other obligations contemplated in connection with the Financing (which documents shall only be required to become effective as of the Closing Date); (vii) permit the reasonable use by Parent and its Affiliates of the Acquired Corporations' logos for syndication and underwriting, as applicable, of Financing (subject to advance review of and consultation with respect to such use) so long as such logos are used solely (x) in a manner

that is not intended to or likely to harm or disparage any Acquired Corporation or its reputation or goodwill and (y) in connection with a description of the business of the Acquired Corporations or the transactions contemplated by this Agreement; (viii) participate in meetings (including, without limitation, meetings with lenders), road shows, due diligence sessions, drafting sessions and sessions with ratings agencies (including the participation in such meetings of the Company's senior management); (ix) use reasonable best efforts to assist in procuring any necessary rating agency ratings or approvals; (x) at the Parent's request, use reasonable best efforts to ensure that any syndication efforts with respect to such Financing benefit materially from the Acquired Corporations' existing lending relationships; and (xi) deliver to Parent, at least five (5) business days prior to the Closing Date, all documentation and other information relating to the Acquired Corporations required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the PATRIOT Act of 2001, as amended, in each case to the extent requested by the Parent from the Company in writing at least ten (10) business days prior to the Closing Date; provided that no obligations of any of the Acquired Corporations under any certificate, document or instrument delivered by any of the Corporations pursuant to this Section 6.9 (other than authorization or representation letters) shall be effective until the Effective Time; and provided further, that nothing herein will require any Acquired Corporation to take any action that would be effective prior to the Effective Time to the extent it would, in the Company's reasonable judgment, interfere unreasonably with the business or operations of the Acquired Corporations. All non-public or otherwise confidential information regarding each of the Acquired Corporations shall be kept confidential. All non-public or otherwise confidential information regarding each of the Acquired Corporations shall be kept confidential; provided, however, that the Parent and its Subsidiaries and their representatives shall be permitted to disclose information as necessary and consistent with customary practices in connection with any debt or equity financing in connection with the transactions described herein subject to customary confidentiality arrangements.

Section 6.10 Takeover Statutes. If the restrictions of any Takeover Statutes become or are deemed to be applicable to the Company, Parent, Sub, or the Contemplated Transactions, then each of the Company, Parent, Sub, and their respective board of directors shall use their reasonable best efforts to grant such approvals and take such actions as are necessary so that the Contemplated Transactions may be consummated as promptly as practicable on the terms contemplated hereby and otherwise act to render the restrictions of such Takeover Statute inapplicable to the foregoing.

Section 6.11 AIM De-listing. Each of the Company and Parent shall take such actions reasonably required for the cancellation of admission of the shares of Common Stock to trading on AIM immediately following the Effective Time.

Section 6.12 Stockholder Litigation. Each party to this Agreement shall give the other parties to this Agreement the opportunity to participate in (but not control) the defense or settlement of any stockholder litigation against any party and/or its respective directors relating to the Contemplated Transactions, whether commenced prior to or after the execution and delivery of this Agreement. The Company agrees that it shall not settle or offer to settle any litigation commenced prior to or after the date hereof against the Company or any of its directors or officers by any stockholder of the Company relating to this Agreement, the Merger, any other Contemplated Transaction or otherwise, where such settlement would impose obligations (monetary or otherwise) on the Company or the Surviving Corporation

without the prior written consent of Parent, such consent not to be unreasonably withheld, conditioned or delayed.

Section 6.13 Certain Contracts. Without the prior written consent of any Independent Committee, Parent and Sub shall not, and shall use reasonable best efforts to cause the members of the Purchaser Group not to (a) enter into any side letters or other oral or written agreements or understandings with any of the Acquired Corporations' directors, officers, employees or stockholders (i) that relate to the Contemplated Transactions, (ii) pursuant to which any stockholder of the Company would be entitled to receive consideration of a different amount or nature than the Merger Consideration or (iii) pursuant to which any stockholder of the Company will agree to vote to approve this Agreement or the Merger or against any Superior Proposal, or (b) enter into or modify any Contract (i) which would, individually or in the aggregate, prevent or materially delay the ability of Parent or Sub to consummate the Merger and the other Contemplated Transactions or (ii) which would prevent or materially impair the ability of any management member, director or stockholder of the Company or any of their respective Affiliates, with respect to any Acquisition Proposal the Company may receive, from taking any of the actions described in Section 6.3 to the extent such actions are permitted to be taken by the Company thereunder.

Section 6.14 Special Committee. Prior to the Effective Time, without the consent of the Special Committee, (a) the Board shall not eliminate the Special Committee, or revoke or diminish the authority of the Special Committee, and (b) Parent and Sub shall not, and shall cause each member of the Purchaser Group not to, remove or cause the removal of any director of the Board that is a member of the Special Committee either as a member of the Board or such Special Committee.

Section 6.15 Employee Benefit Matters

(a) For one (1) year after the Effective Time, Parent and Sub shall provide or shall cause the Surviving Corporation to provide the Company Employees (other than Paul Parmar and Sam Zaharis): (i) compensation (including only base salary and target cash bonus opportunity, and excluding any equity-based compensation) that is, in the aggregate, no less favorable than the aggregate compensation being provided to such Company Employees immediately prior to the Effective Time (excluding any equity-based compensation), and (ii) benefits programs that are, in the aggregate, not materially less favorable than the aggregate benefits programs being provided to such Company Employees immediately prior to the Effective Time under the Benefit Plans. Notwithstanding any provision of this Agreement to the contrary, nothing contained in this Agreement limits the right of Parent or Sub, the Surviving Corporation, the Company, the Company's Subsidiaries or any of their respective Affiliates, as applicable, to terminate the employment of any Company Employee at any time following the Closing Date.

(b) For purposes of eligibility and vesting under the employee benefit plans of Parent or Sub, the Company, the Company Subsidiaries or their respective Affiliates providing benefits to any Company Employees (other than Paul Parmar and Sam Zaharis) after the Closing (the "New Plans"), and for purposes of accrual of vacation and other paid time off and severance benefits under New Plans, each Company Employee (other than Paul Parmar and Sam Zaharis) shall be credited with his or her years of service with the Company, the Company's Subsidiaries and their respective Affiliates (and any additional service with any predecessor employer) before the Closing, to the same extent as such Company Employee was entitled, before the Closing, to credit for such service under any similar

Benefit Plan; provided, however, that no such service credit shall result in a duplication of benefits with respect to any service period. In addition, and without limiting the generality of the foregoing: (i) each Company Employee (other than Paul Parmar and Sam Zaharis) shall be immediately eligible to participate, without any waiting time, in any and all New Plans to the extent coverage under such New Plan replaces coverage under a comparable Benefit Plan in which such Company Employee participated immediately before the replacement; and (ii) for purposes of each New Plan providing medical, dental, pharmaceutical or vision benefits to any Company Employee (other than Paul Parmar and Sam Zaharis), to the extent permitted under the applicable New Plan, either Parent or Sub shall cause: (A) all preexisting condition exclusions and actively-at-work requirements of such New Plan to be waived for such Company Employee and his or her covered dependents and (B) any eligible expenses incurred by such Company Employee and his or her covered dependents under a Benefit Plan during the plan year of the New Plan that includes the Effective Time for purposes of satisfying all deductible, coinsurance and maximum out-of-pocket requirements applicable to such Company Employee and his or her covered dependents for the applicable plan year as if such amounts had been paid in accordance with such New Plan.

Section 6.16 Standstill. Except as otherwise provided by this Agreement, any Voting Agreement or the Subscription Agreement, prior to the Effective Time, Parent, Sub, or their respective Affiliates shall not directly or indirectly (i) (whether acting alone, as a part of a group or otherwise in concert with others) acquire (or propose to acquire) or enter into any agreement with any third party with respect to the acquisition of, (A) additional shares of Common Stock by Parent, Sub, or their respective Affiliates, or (B) any of the Company's loans, debt securities, equity securities or assets, or rights or options to acquire interests in any of the foregoing, (ii) effect, or seek to effect, any business combination, merger, tender offer, exchange offer or similar transaction involving the Company or any of its subsidiaries, (iii) effect, or seek to effect, any restructuring, recapitalization, liquidation or similar transaction involving the Company or any of its subsidiaries, or (iv) sell (including short sales), transfer, tender, assign or otherwise dispose of (including by gift) any or all of the shares of Common Stock.

ARTICLE VII

CONDITIONS TO THE MERGER

Section 7.1 Conditions to Each Party's Obligation to Effect the Merger. The obligations of the Company, on the one hand, and Parent and Sub, on the other hand, to consummate the Merger are subject to the satisfaction (or mutual waiver by the Company, Parent and Sub, if permissible under applicable Law; provided that the condition in Section 7.1(a) cannot be waived by any Person, including the Company, Parent or Sub, in any circumstance) of the following conditions:

(a) the Majority of the Minority Approval shall have been obtained;

(b) the Company Stockholder Approval shall have been obtained;

(c) no Governmental Entity having jurisdiction over the Company, Parent or Sub shall have issued an order, decree or ruling or taken any other action enjoining or otherwise prohibiting consummation of the Merger substantially on the terms contemplated by this Agreement that continues to be in effect and no Person has initiated a Legal Proceeding for any such enjoinment; and

(d) Any waiting period applicable to the Merger under the HSR Act shall have been terminated or shall have expired and the clearances or approvals set forth in Section 4.4(a) shall have been obtained.

Section 7.2 Conditions to Parent's and Sub's Obligations to Effect the Merger. The obligations of Parent and Sub to effect the merger are subject to the satisfaction (or waiver by the Parent and Sub) of the following conditions:

(a) (i) the representations and warranties of the Company contained in Section 4.1 (Organization) Section 4.2 (Capitalization), Section 4.3 (Authorization; Validity of Agreement; Company Action) and Section 4.17 (Takeover Statutes) of this Agreement shall be true and accurate in all respects as of the date hereof and as of the Closing Date as though made on the Closing Date (other than to the extent any such representation and warranty addresses matters only as of a particular date or only with respect to a specific period of time which representation and warranty needs only be true and accurate as of such date or with respect to such period); (ii) the representation and warranty of the Company contained in clause "(b)" of Section 4.8 (Absence of Certain Changes) of this Agreement shall be true and accurate as of the date hereof and as of the Closing Date as though made on the Closing Date; (iii) all other representations and warranties of the Company set forth in this Agreement shall be true and accurate in all material respects as of the date hereof and as of the Closing Date and shall be true and accurate (without giving effect to any limitation as to "materiality" or Company Material Adverse Effect) as of the date hereof and as of the Closing Date as though made on the Closing Date (other than those representations and warranties that address matters only as of a particular date or only with respect to a specific period of time which representations and warranties need only be true and accurate as of such date or with respect to such period); and (iv) Parent shall have received at the Closing a certificate signed on behalf of the Company by a senior executive officer of the Company to the effect that such officer has read this Section 7.2(a) and the conditions set forth in this Section 7.2(a) have been satisfied. The Company shall promptly, but in no event later than ten (10) Business Days prior to the Closing, supplement or amend the Company Disclosure Schedule (each such supplement or amendment, a "Disclosure Schedule Update") to reference or identify any fact, event or circumstance the occurrence of which arose or occurs solely after the date hereof and prior to the Closing, which fact, event or circumstance is required to be disclosed so as to permit the Company to make its representations and warranties at Closing on the Closing without a breach. Each such Disclosure Schedule Update shall be deemed to be incorporated into and to supplement and amend the Company Disclosure Schedule as of the Closing Date. Notwithstanding anything else to the contrary herein, if any fact, event or circumstance included in a Disclosure Schedule Update would, absent such Disclosure Schedule Update, reasonably be expected to result in a failure of the satisfaction of one or more of the conditions set forth in this Section 7.2 (as determined at the time of such Disclosure Schedule Update), then each of the Parent and Sub shall have the right to immediately terminate this Agreement in accordance with Section 8.1(d)(i); provided, however, that if the Parent or Sub does not exercise such termination rights within ten (10) Business Days of receipt of the Disclosure Schedule Update, then the termination right with respect to such Disclosure Schedule Update (and only such Disclosure Schedule Update) will be deemed waived;

(b) the Company shall have performed all obligations and complied with all covenants, in each case in all material respects, required by this Agreement to be performed

or complied with by it at or prior to the Closing, and Parent shall have received a certificate signed on behalf of the Company by a senior executive officer of the Company to such effect;

(c) (i) all conditions to the closing of the transactions contemplated by the Subscription Agreement (other than the conditions to be satisfied at such closing) have been satisfied or waived or will be satisfied at such closing and (ii) the closing of the transactions contemplated by the Subscription Agreement have occurred or will occur contemporaneously with the Closing;

(d) The execution and delivery of employment agreements in form and substance to be agreed upon by Parent and the Persons set forth on Schedule 7.2(d) of the Company Disclosure Schedule;

(e) there shall not be a Company Material Adverse Effect;

(f) (i) Voting Agreements shall have been duly executed and delivered to the Company on or prior to the Proxy Date by stockholders representing, in the aggregate, at least 89% of the issued and outstanding shares of Common Stock based on the Closing Date Capitalization and no stockholders having executed a Voting Agreement shall have revoked such agreement, attempted to revoke such agreement or otherwise challenged the validity or enforceability of such agreement or any terms and conditions thereof immediately prior to the Effective Time and (ii) the adoption of this Agreement at the Company Meeting by the affirmative vote of stockholders representing, in the aggregate, at least 89% of the issued and outstanding shares of Common Stock based on the Closing Date Capitalization; and

(g) (i) all conditions to the closing of the Financing (other than the conditions to be satisfied at such closing) have been satisfied or waived and (ii) the Financing has been consummated or will be consummated contemporaneously with the Closing.

Section 7.3 Conditions to Company's Obligations to Effect the Merger. The obligations of Company to effect the merger are subject to the satisfaction (or waiver by Company) of the following conditions:

(a) (i) the representations and warranties of Parent and Sub contained in the Agreement shall be true and accurate as of the date hereof and as of the Closing Date as though made on the Closing Date (other than those representations and warranties that address matters only as of a particular date or only with respect to a specific period of time which representations and warranties need only be true and accurate as of such date or with respect to such period), except where the failure of such representations and warranties of Parent or Sub to be so true and accurate (without giving effect to any limitation as to "materiality" or Parent Material Adverse Effect set forth therein), would not individually or in the aggregate, have a Parent Material Adverse Effect; and (ii) the Company shall have received at the Closing a certificate signed on behalf of Parent and Sub by a senior executive officer of Parent to the effect that such officer has read this Section 7.3(a) and the condition set forth in this Section 7.3(a) has been satisfied; and

(b) Parent and Sub shall have performed all obligations and complied with all covenants, in each case in all material respects, required by this Agreement to be performed or complied with by Parent and Sub at or prior to the Closing, and the Company shall have received a certificate signed on behalf of Parent and Sub by a senior executive officer of Parent to such effect.

Section 7.4 **Frustration of Conditions**. None of the Company, Parent or Sub may rely on the failure of any condition set forth in Section 7.1, Section 7.2 or Section 7.3, as the case may be, to be satisfied if such failure was caused by such party's failure to act in good faith or use its reasonable best efforts to consummate the Merger and the other Contemplated Transactions, as required by and subject to Section 6.7.

ARTICLE VIII

TERMINATION

Section 8.1 **Termination**. Anything herein or elsewhere to the contrary notwithstanding, this Agreement may be terminated and the Merger contemplated herein may be abandoned at any time prior to the Effective Time notwithstanding the adoption of this Agreement by the stockholders of the Company or Sub (provided that no termination right under this Section 8.1 shall be available to any party as a result of such party's breach of this Agreement, which breach gives rise to such termination right):

(a) by the mutual written agreement of the Company (in accordance with Section 9.17) and Parent.

(b) by either the Company (in accordance with Section 9.17) or Parent:

(i) if any Governmental Entity having jurisdiction over the Company, Parent or Sub shall have issued an Order or taken any other action, in each case permanently restraining, enjoining or otherwise prohibiting the consummation of the Merger substantially as contemplated by this Agreement and such Order or other action shall have become final and nonappealable; provided that the right to terminate this Agreement under this Section 8.1(b)(i) shall not be available to a party who has failed to comply with its obligations pursuant to Section 6.7 with respect to such restraint, injunction or other prohibition;

(ii) prior to the Effective Time, if the Board or an Independent Committee (in accordance with Section 9.17) (A) shall have effected a Change in Recommendation as a result of a Superior Proposal Determination or (B) notwithstanding the foregoing, shall have publicly announced its intention to effect a Change in Recommendation as a result of a Superior Proposal Determination; provided that the Company shall not have the right to terminate this Agreement under this Section 8.1(b)(ii) unless the Company shall have paid, or concurrently with such termination pays, to CC Capital a Termination Fee and the Company Expense Reimbursement;

(iii) if the Company Stockholder Approval or the Majority of the Minority Approval shall not have been obtained at the Company Meeting (after taking into account any adjournment, postponement or recess thereof); or

(iv) if the Merger shall not have occurred by February 15, 2017 (the "Outside Date"), unless the failure to consummate the Merger is the result of a failure to fulfill in any material respect any obligation contained in this Agreement by the party purporting to terminate this Agreement; provided that the Company (in accordance with Section 9.17) and Parent may mutually agree in writing to extend the Outside Date to March 15, 2017 in its sole discretion if the conditions set forth in

Section 7.1(c) or Section 7.1(d) have not been satisfied or waived on the Outside Date.

(c) by the Company (in accordance with Section 9.17) upon a breach of any representation, warranty, covenant or agreement on the part of Parent or Sub set forth in this Agreement such that (if such breach occurred or was continuing as of the Closing Date) the conditions set forth in Section 7.3(a) or Section 7.3(b) would be incapable of fulfillment and which breach is incapable of being cured, or is not cured, within thirty (30) days following receipt of written notice of such breach.

(d) by Parent:

(i) (x) upon a breach of any representation, warranty, covenant or agreement on the part of the Company set forth in this Agreement such that (if such breach occurred or was continuing as of the Closing Date) the conditions set forth in Section 7.2(a) or Section 7.2(b) would be incapable of fulfillment and which breach is incapable of being cured, or is not cured, within thirty (30) days following receipt of written notice of such breach or (y) from time to time, in each case, within ten (10) Business Days of receipt of a Disclosure Schedule Update that otherwise gives rise to a termination right in accordance with Section 7.2(a).

(ii) if the condition set forth in Section 7.2(f)(i) shall not have been satisfied by the Proxy Date or the condition set forth in Section 7.2(f)(ii) shall not have been satisfied by the Company Meeting; or

(iii) if the condition set forth in Section 7.2(g) shall not have been satisfied or waived on the date that all other conditions to the Closing are satisfied or waived (other than conditions that by their terms are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions); provided that Parent shall not have the right to terminate this Agreement under this Section 8.1(d)(iii) unless CC Capital shall have paid, or concurrently with such termination pays, to the Company the Tier 1 Reverse Termination Fee and the Parent Expense Reimbursement.

Section 8.2 Effect of Termination.

(a) If one party desires to terminate this Agreement in accordance with Section 8.1, written notice thereof shall forthwith be given to the other party or parties specifying the provision hereof pursuant to which such termination is made, and this Agreement shall forthwith become null and void, and there shall be no liability on the part of Parent, Sub, CC Capital or the Company or their respective directors, officers, employees, stockholders, Representatives, agents or advisors other than, with respect to Parent, Sub, CC Capital and the Company, the obligations pursuant to this Section 8.2 and Article IX. If one party has a right to terminate this Agreement pursuant to two (2) or more provisions of Section 8.1, such party shall determine, in its sole discretion, which provision under which to terminate the Agreement.

(b) If the Company or Parent terminates this Agreement pursuant to Section 8.1(b)(iii) or Section 8.1(b)(iv) or Parent terminates this Agreement pursuant to Section 8.1(d)(i) (provided that such breach is not intentional), then the Company shall, within two (2) Business Days following such termination, pay to CC Capital the reasonable expenses of CC Capital incurred in connection with the examination, negotiation or otherwise relating to

the Contemplated Transactions which expenses shall be capped at $4,000,000 (the "Company Expense Reimbursement"); provided that in the event the Company or Parent terminates this Agreement pursuant to Section 8.1(b)(iv) and the conditions set forth in Section 7.1(c) or Section 7.1(d) have not been satisfied or waived at the time of such termination and the failure to satisfy such conditions results in the failure to consummate the Merger by the Outside Date (as such Outside Date may be extended by the mutual written agreement of the Company and Parent pursuant to Section 8.1(b)(iv)), the Company Expense Reimbursement under this Section 8.2(b) shall be capped at $2,000,000.

(c) If Parent terminates this Agreement pursuant to Section 8.1(d)(i) and such breach by the Company is intentional, the Company shall, within two (2) Business Days following such termination, pay to CC Capital a termination fee of $16,100,000 (the "Tier 3 Termination Fee") and the Company Expense Reimbursement.

(d) If Parent terminates this Agreement pursuant to Section 8.1(d)(ii), the Company shall, within two (2) Business Days following such termination, pay to CC Capital a termination fee of $10,000,000 (the "Tier 2 Termination Fee") and the Company Expense Reimbursement.

(e) If the Company terminates this Agreement pursuant to Section 8.1(c) (provided that such breach is not intentional), then Parent shall, within two (2) Business Days of termination of this Agreement by the Company, pay to the Company the reasonable expenses of the Company incurred in connection with the examination, negotiation or otherwise relating to the Contemplated Transactions which expenses shall be capped at $2,000,000 (the "Parent Expense Reimbursement").

(f) If the Company terminates this Agreement pursuant to Section 8.1(c) and such breach by Parent is intentional, then Parent shall, within two (2) Business Days of termination of this Agreement by the Company, pay to the Company a reverse termination fee of $16,100,000 (the "Tier 2 Reverse Termination Fee") and the Parent Expense Reimbursement.

(g) If the Company or Parent terminates this Agreement pursuant to (i) Section 8.1(b)(ii) as a result of a Superior Proposal Determination made during the Go-Shop Period that resulted in such Change in Recommendation that served as the basis for the termination of this Agreement, then the Company shall concurrently with such termination, pay CC Capital a termination fee of $8,000,000 (the "Tier 1 Termination Fee") and the Company Expense Reimbursement or (ii) Section 8.1(b)(ii) as a result of a Superior Proposal Determination made after the Go-Shop Period that resulted in such Change in Recommendation that served as the basis for such termination of this Agreement, then the Company shall concurrently with such termination, pay CC Capital the Tier 3 Termination Fee and the Company Expense Reimbursement.

(h) If Parent terminates this Agreement pursuant to Section 8.1(d)(iii), then CC Capital shall concurrently with such termination, pay the Company a reverse termination fee of $10,000,000 (the "Tier 1 Reverse Termination Fee") and the Parent Expense Reimbursement.

(i) Upon payment of the Company Expense Reimbursement and/or a Termination Fee, as applicable, the Company shall have no further liability to Parent, Sub or CC Capital with respect to the Merger, this Agreement or the Contemplated Transactions. Upon payment of the Parent Expense Reimbursement and/or a Reverse Termination Fee, as applicable,

Parent, Sub and CC Capital shall have no further liability to the Company with respect to the Merger, this Agreement or the Contemplated Transactions. The Company Expense Reimbursement, a Termination Fee, the Parent Expense Reimbursement and a Reverse Termination Fee shall be made by wire transfer of immediately available funds to an account designated by CC Capital or the Company, as the case may be, and shall be reduced by any amounts required to be deducted or withheld therefrom under applicable Law in respect of Taxes.

(j) For purposes of this Agreement, an "intentional" breach shall mean an action or omission (including a failure to cure) taken or omitted to be taken that the breaching person intentionally takes (or fails to take) and knows (or should reasonably have known) would, or would reasonably be expected to, cause a material breach.

(k) Notwithstanding anything to the contrary in this Agreement, if:

(i) the Company is required to pay the Company Expense Reimbursement and/or a Termination Fee, as applicable, to CC Capital pursuant to this Agreement, Parent's, Sub's and CC Capital's sole and exclusive remedy (whether at law, in equity, in contract, in tort or otherwise), subject to Section 9.12, against the Company and any of its former, current and future direct or indirect equity holders, controlling persons, stockholders, directors, officers, employees, agents, Affiliates, members, managers, general or limited partners or assignees (each a "Company Related Party" and collectively, the "Company Related Parties") or any Company Related Party of any Company Related Party for any breach, loss or damage shall be to terminate this Agreement and receive payment of the Company Expense Reimbursement and/or a Termination Fee, as applicable, in each case, only to the extent provided by Section 8.2; and upon payment of such amount, none of Parent, Sub or CC Capital shall have any rights or claims against any of the Company Related Parties or any Company Related Party of any Company Related Party under this Agreement or otherwise, whether at law or equity, in contract, in tort or otherwise, and none of the Company Related Parties or any Company Related Party of any Company Related Party shall have any further liability or obligation relating to or arising out of this Agreement or the Contemplated Transactions.

(ii) Parent or CC Capital is required to pay the Parent Expense Reimbursement and/or a Reverse Termination Fee, as applicable, to the Company pursuant to this Agreement, the Company's sole and exclusive remedy (whether at law, in equity, in contract, in tort or otherwise), subject to Section 9.12, against Parent, Sub, CC Capital or sources of the Financing (each such commercial bank, investment bank or other financial institutions acting as a lender, arranger, agent or in a similar role in providing the Financing, a "Financing Source") and any of Parent's, Sub's, CC Capital's or any Financing Source's respective former, current and future direct or indirect equity holders, controlling persons, stockholders, directors, officers, employees, agents, Affiliates, members, managers, general or limited partners or assignees (each a "Purchaser Related Party" and collectively, the "Purchaser Related Parties") or any Purchaser Related Party of any Purchaser Related Party for any breach, loss or damage shall be to terminate this Agreement and receive payment of the Parent Expense Reimbursement and/or a Reverse Termination Fee, as applicable, in each case, only to the extent provided by Section 8.2; and upon payment of such amount, the Company shall not have any rights or claims against any of the Purchaser Related Parties or any Purchaser Related Party of any Purchaser Related Party under

this Agreement or otherwise, whether at law or equity, in contract, in tort or otherwise, and none of the Purchaser Related Parties or any Purchaser Related Party of any Purchaser Related Party shall have any further liability or obligation relating to or arising out of this Agreement or the Contemplated Transactions.

(l) Notwithstanding the foregoing and for the avoidance of doubt, nothing herein shall limit, effect, modify or cause the termination of the Subscription Agreement or the Pledge Agreements or Indemnity and Support Agreement (each as defined in the Subscription Agreement), except in accordance with their respective terms.

(m) Each of the Company, Parent, Sub and CC Capital acknowledges that the agreements contained in this Section 8.2 are an integral part of the Contemplated Transactions and that, without these agreements, the parties would not enter into this Agreement. In the event that the Company, Parent or CC Capital shall fail to pay the Company Expense Reimbursement, a Termination Fee, the Parent Expense Reimbursement and/or a Reverse Termination Fee, as applicable, when due, and, in order to obtain such payment, Parent, CC Capital or the Company, as applicable, commences a suit which results in a judgment against the Company, Parent or CC Capital, as applicable, for any fee set forth in this Section 8.2, the Company shall pay to Parent or CC Capital, as applicable, or Parent or CC Capital shall pay to the Company, as applicable, its reasonable costs and expenses (including reasonable attorneys' fees and expenses) in connection with such suit, together with interest on the amount of the fee at the prime rate prevailing during such period as published in The Wall Street Journal, calculated on a daily basis from the date such amounts were required to be paid until the date of actual payment.

ARTICLE IX

MISCELLANEOUS

Section 9.1 Amendment and Modification. Subject to applicable Law, this Agreement may be amended, modified and supplemented in any and all respects, whether before or after any vote of the stockholders of the Company contemplated hereby and whether before or after the effectiveness of the Sub Stockholder Consent at any time prior to the Effective Time, with respect to any of the terms contained herein by written agreement of the parties hereto, by action taken by their respective boards of directors (or individuals holding similar positions) with the Company acting solely through any Independent Committee; provided, however, that following receipt of the Company Stockholder Approval and the Majority of the Minority Approval, no amendment may be made to this Agreement that by law requires further approval or authorization by the stockholders of the Company without such further approval or authorization; provided, further, no amendment or modification shall be made to this Section 9.1 or to Sections 8.2(k)(ii), 9.6, 9.8, 9.9, 9.18 or 9.21 in a manner that adversely affects any Financing Source without the prior written consent of such Financing Source that will be adversely affected by such amendment or modification, which consent may be granted or withheld in the sole discretion of the Financing Source.

Section 9.2 Nonsurvival of Representations and Warranties. None of the representations and warranties in this Agreement or in any schedule, instrument or other document delivered pursuant to this Agreement shall survive the Effective Time or the termination of this Agreement. This Section 9.2 shall not limit any covenant or agreement

contained in this Agreement that by its terms is to be performed in whole or in part after the Effective Time.

Section 9.3 **Notices**. All notices, consents and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by hand delivery, by prepaid overnight courier (providing written proof of delivery), by confirmed facsimile transmission or by certified or registered mail (return receipt requested and first class postage prepaid), addressed as follows:

(a) if to Parent or Sub, to:

CHT Holdco, LLC
c/o CC Capital Management, LLC
555 Madison Avenue, 26th Floor
New York, NY 10022
Facsimile: (212) 588-8713
Attention: Chinh Chu

with copies (which shall not constitute notice) to:

Winston & Strawn LLP
1700 K Street, N.W.
Washington, DC 20006-3817
Facsimile: (202) 282-5100
Attention: Chris Zochowski, Esq.

(b) if to the Company, to:

Constellation Healthcare Technologies, Inc.
3200 Wilcrest Drive, Suite 600
Houston, TX 77042
Facsimile: (212) 956-2164
Attention: Chief Executive Officer

with copies to:

Robinson Brog Leinwand Greene Genovese & Gluck P.C.
875 Third Avenue
New York, NY 10022
Facsimile: (212) 956-2164
Attention: Adam Greene, Esq.

(c) if to the Special Committee to

Constellation Healthcare Technologies, Inc.
3200 Wilcrest Drive, Suite 600
Houston, TX 77042
Facsimile: (212) 446-4900
Attention: Special Committee

with copies to:

McGuireWoods LLP
1345 Avenue of the Americas
7th Floor
New York, NY 10105-0106
Facsimile: (212) 715-6291
Attention: Stephen Older, Esq. and Jeffrey Rothschild, Esq.

or to such other address or facsimile number for a party as shall be specified in a notice given in accordance with this Section 9.3; provided that any notice received by facsimile transmission or otherwise at the addressee's location on any Business Day after 5:00 p.m. Eastern Time shall be deemed to have been received at 9:00 a.m. Eastern Time on the next Business Day; provided further that notice of any change to the address or any of the other details specified in or pursuant to this Section 9.3 shall not be deemed to have been received until, and shall be deemed to have been received upon, the later of the date specified in such notice or the date that is five (5) Business Days after such notice would otherwise be deemed to have been received pursuant to this Section 9.3. A party's rejection or other refusal to accept notice hereunder or the inability of another party to deliver notice to such party because of such party's changed address or facsimile number of which no notice was given by such party shall be deemed to be receipt of the notice by such party as of the date of such rejection, refusal or inability to deliver.

Section 9.4 Interpretation. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement. Disclosure of any fact, circumstance or information in any section of the Company Disclosure Schedule or the Parent Disclosure Schedules shall be deemed to be adequate response and disclosure of such fact, circumstance or information with respect to any representation, warranty or covenant in, with respect to the Company Disclosure Schedules, any section of Article IV or Article VI, and with respect to the Parent Disclosure Schedule, any of Article V, calling for disclosure of such fact, circumstance or information, whether or not such disclosure is specifically associated with or purports to respond to one or more or all of such representations, warranties or covenants if the applicability of such disclosure to such representation, warranty or covenant is reasonably apparent on the face of such disclosure. The inclusion of any item in the Company Disclosure Schedule or the Parent Disclosure Schedule shall not be deemed to be an admission or evidence of materiality of such item, nor shall it establish any standard of materiality for any purpose whatsoever.

Section 9.5 Counterparts. This Agreement may be executed in multiple counterparts, all of which shall together be considered one and the same agreement. The exchange of a fully executed Agreement (in counterparts or otherwise) by facsimile or by electronic delivery in .pdf format shall be sufficient to bind the parties to the terms and conditions of this Agreement.

Section 9.6 Entire Agreement; Third-Party Beneficiaries. This Agreement, including the Company Disclosure Schedule and the exhibits hereto, together with the other instruments referred to herein, (a) constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties, or any of them, with respect to the subject matter hereof and thereof, and (b), except as provided in Article III

on and after the Effective Time and Section 6.5, is not intended to confer upon any Person other than the parties hereto any rights or remedies hereunder, except for the rights of Indemnified Parties to enforce the indemnification provisions and the directors and officers insurance provision provided for herein and except for the Financing Sources with respect to Section 9.21.

Section 9.7 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable or against its regulatory policy, 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.

Section 9.8 Governing Law. Except as otherwise provided in Section 9.21 hereof, this Agreement shall be governed and construed in accordance with the laws of the State of Delaware applicable to contracts to be made and performed entirely therein without giving effect to the principles of conflicts of law thereof or of any other jurisdiction.

Section 9.9 Jurisdiction. Except as otherwise provided in Section 9.21 hereof, each of the parties hereto irrevocably agrees that any legal action or Legal Proceeding with respect to this Agreement, and the rights and obligations arising hereunder, or for recognition and enforcement of any judgment in respect of this Agreement, and the rights and obligations arising hereunder brought by the other party hereto or its successors or assigns, shall be brought and determined exclusively in the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (or, if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any state or federal court within the State of Delaware). Each of the parties hereto hereby irrevocably submits with regard to any such action or Legal Proceeding for itself and in respect of its property, generally and unconditionally, to the personal jurisdiction of the aforesaid courts and agrees that it will not bring any action relating to this Agreement or any of the Contemplated Transactions in any court other than the aforesaid courts. Each of the parties hereto hereby irrevocably waives, and agrees not to assert as a defense, counterclaim or otherwise, in any action or Legal Proceeding with respect to this Agreement (a) any claim that it is not personally subject to the jurisdiction of the above named courts for any reason other than the failure to serve in accordance with Section 9.10, (b) any claim that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (c) to the fullest extent permitted by the applicable Law, any claim that (i) the suit, action or Legal Proceeding in such court is brought in an inconvenient forum, (ii) the venue of such Legal Proceeding is improper or (iii) this Agreement or the subject matter hereof, may not be enforced in or by such courts.

Section 9.10 Service of Process. Each party irrevocably consents to the service of process outside the territorial jurisdiction of the courts referred to in Section 9.9 hereof in any such action or Legal Proceeding by mailing copies thereof by registered United States mail, postage prepaid, return receipt requested, to its address as specified in or pursuant to Section 9.3 hereof. However, the foregoing shall not limit the right of a party to effect service of process on the other party by any other legally available method.

Section 9.11 Waiver of Jury Trial. EACH OF THE PARTIES KNOWINGLY, INTENTIONALLY AND VOLUNTARILY WITH AND UPON THE ADVICE OF COMPETENT COUNSEL IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL

BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE CONTEMPLATED TRANSACTIONS.

Section 9.12 Specific Performance

(a) Except for those matters with respect to which a Termination Fee or Reverse Termination Fee are to be paid, the parties recognize and agree that if for any reason any of the provisions of this Agreement are not performed in accordance with their specific terms or are otherwise breached, immediate and irreparable harm or injury would be caused for which money damages would not be an adequate remedy. Accordingly, subject to Section 9.12(b), and Section 9.12(c), each party agrees that, in addition to other remedies, prior to any termination of this Agreement pursuant to Section 8.1, each party shall be entitled to specific performance of the terms hereof (without the requirement to post a bond in connection therewith), in addition to any other remedy at law or equity (except to the extent expressly limited by Section 9.12(b) or Section 9.12(c)). In the event that any action shall be brought in equity to enforce the provisions of this Agreement, neither party shall allege, and each party hereby waives the defense, that there is an adequate remedy at law. For the avoidance of doubt, the Company shall terminate any pending claim for specific performance or other claim at law or in equity, and shall be foreclosed from bringing any such claim, upon Parent's payment of a Reverse Termination Fee and/or the Parent Expense Reimbursement, as the case may be, in accordance with the terms of this Agreement.

(b) Notwithstanding Section 9.12(a), the right of the Company to obtain an injunction, or other appropriate form of specific performance or equitable relief to cause the Closing, in each case, shall be subject to the requirement that (i) the conditions to Closing set forth in Section 7.1, Section 7.2 and Section 7.3 (other than the conditions that by their terms are to be satisfied at the Closing but which conditions would be satisfied if the Closing Date were the date of such injunction or other form of equitable relief) have been satisfied or waived and (ii) the Company has irrevocably certified by written notice to Parent that (A) all of the conditions to Closing set forth in Section 7.1 and Section 7.3 (other than the conditions that by their terms are to be satisfied at the Closing but which conditions would be satisfied if the Closing Date were the date of such injunction or other form of equitable relief) have been satisfied or waived by the Company and (B) if specific performance is granted, it will take the actions required of it by this Agreement to cause the Closing to occur.

(c) Notwithstanding Section 9.12(a), the right of Parent or Sub to obtain an injunction, or other appropriate form of specific performance or equitable relief to cause the Closing, in each case, shall be subject to the requirement that (i) the conditions to Closing set forth in Section 7.1, Section 7.2 and Section 7.3 (other than the conditions that by their terms are to be satisfied at the Closing but which conditions would be satisfied if the Closing Date were the date of such injunction or other form of equitable relief) have been satisfied or waived and (ii) Parent and Sub have irrevocably certified by written notice to the Company that (A) all of the conditions to Closing set forth in Section 7.1 and Section 7.2 (other than the conditions that by their terms are to be satisfied at the Closing but which conditions would be satisfied if the Closing Date were the date of such injunction or other form of equitable relief) have been satisfied or waived by Parent and Sub and (B) if specific performance is granted, it will take the actions required of it by this Agreement to cause the Closing to occur.

Section 9.13 Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other parties. Subject to the

preceding sentence, this Agreement will be binding upon, inure to the benefit of and be enforceable by the parties and their respective permitted successors and assigns.

Section 9.14 Expenses. Subject to Section 8.2, all costs and expenses incurred in connection with the Contemplated Transactions, this Agreement and the consummation of the Contemplated Transactions shall be paid by the party incurring such costs and expenses, whether or not the Contemplated Transactions are consummated.

Section 9.15 Headings. Headings of the articles and sections of this Agreement and the table of contents, schedules and exhibits are for convenience of the parties only and shall be given no substantive or interpretative effect whatsoever.

Section 9.16 Waivers. Except as otherwise provided in this Agreement, any failure of any of the parties to comply with any obligation, covenant, agreement or condition herein may be waived by the party or parties entitled to the benefits thereof only by a written instrument signed by the party expressly granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

Section 9.17 Independent Committee Approval. Any amendment, consent, waiver or other determination to be made, or action to be taken, by the Company or the Board under or with respect to this Agreement shall be made or taken at the direction and upon the approval of, and only at the direction and upon the approval of an Independent Committee. An Independent Committee, and only an Independent Committee, may pursue any action or litigation with respect to breaches of this Agreement on behalf of the Company.

Section 9.18 No Recourse. This Agreement may only be enforced against, and any claims or causes of action that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement may only be made against the entities that are expressly identified as parties hereto and no past, present or future, direct or indirect, equityholder, controlling person, Affiliate, director, officer, employee, incorporator, member, manager, partner, shareholder, agent, attorney or representative of any party hereto shall have any liability for any obligations or liabilities of the parties to this Agreement or for any claim based on, in respect of, or by reason of, the Contemplated Transactions.

Section 9.19 Guarantee of Parent Obligations. CC Capital hereby absolutely and unconditionally guarantees the full and prompt payment of any Reverse Termination Fee and Parent Expense Reimbursement and all other payment obligations of each of Parent and Sub as provided herein; provided, however, that, in consideration of the foregoing guarantee and notwithstanding anything else to the contrary herein:

(a) each of Parent and Sub hereby agree that neither Parent nor Sub may take, or omit to take, any action hereunder, including the exercising of rights or pursuit of remedies, without obtaining the prior written consent of CC Capital;

(b) each of Parent and Sub hereby agree that Parent and Sub shall take all action with respect to any matter hereunder as directed by CC Capital (and only CC Capital), including the exercising of rights or pursuit of remedies; provided that if Parent or Sub fail to take any action with respect to any matter hereunder as directed by CC Capital, CC Capital may act in the place of Parent or Sub and take such action, including the exercising of rights or pursuit of remedies hereunder.

(c) the absolute and unconditional guarantee set forth in this Section 9.19 shall be null and void and of no further effect under this Agreement with respect to any payment obligation arising hereunder, including the payment of a Reverse Termination Fee and/or Parent Expense Reimbursement, based on a breach of this Agreement (whether or not intentional) and such breach occurred as a result of Parent or Sub violating the requirements of or otherwise breaching the foregoing clauses (a) or (b) of this Section 9.19; and

(d) all amounts to be paid hereunder by the Company to Parent or Sub in connection with the termination of this Agreement shall be paid directly and solely to CC Capital.

For the avoidance of doubt, CC Capital shall not pay or otherwise be responsible for the payment of a Reverse Termination Fee and/or Parent Expense Reimbursement or any other payment obligations hereunder if such obligations arise from a breach of this Agreement by Parent or Sub and the basis of such breach is the result of any action taken, or omitted to be taken, without obtaining the prior written consent of CC Capital or the failure to comply with any direction provided by CC Capital.

Section 9.20 Guarantee of Company Obligations. Orion HealthCorp, Inc. hereby absolutely and unconditionally guarantees the full and prompt payment of any Termination Fee and Company Expense Reimbursement and all other payment obligations of the Company as provided herein.

Section 9.21 Financing Source Arrangements. Notwithstanding anything to the contrary contained in this Agreement, each of the parties hereto: (a) agrees that it will not bring or support any Person, or permit any of its Affiliates to bring or support any Person, in any Legal Proceeding, cause of action, claim, cross-claim or third-party claim of any kind or description, whether in law or in equity, whether in contract or in tort or otherwise, against any Financing Source in any way relating to this Agreement or any of the transactions contemplated by this Agreement, including, but not limited to, any dispute arising out of or relating in any way to the Debt Commitment or the performance thereof or the financings contemplated thereby, in any forum other than the federal and New York State courts located in the Borough of Manhattan within the City of New York; (b) agrees that, except as specifically set forth in the Debt Commitment, all claims or causes of action (whether at law, in equity, in contract, in tort or otherwise) against any of the Financing Sources in any way relating to the Debt Commitment or the performance thereof or the financings contemplated thereby, shall be exclusively governed by, and construed in accordance with, the internal laws of the State of New York, without giving effect to principles or rules of conflict of laws to the extent such principles or rules would require or permit the application of laws of another jurisdiction; and (c) HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION (WHETHER AT LAW OR IN EQUITY, IN CONTRACT, IN TORT OR OTHERWISE) DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING IN ANY WAY TO THE DEBT COMMITMENT OR THE PERFORMANCE THEREOF OR THE FINANCINGS CONTEMPLATED THEREBY. Notwithstanding anything to the contrary contained in this Agreement, (i) the Company and its subsidiaries, Affiliates, directors, officers, employees, agents or stockholders shall not have any rights or claims against any Financing Source in any way relating to this Agreement or any of the transactions contemplated by this Agreement, or in respect of any oral representations made or alleged to have been made in connection herewith or therewith, including any dispute arising out of or relating in any way to the Debt Commitment or the performance thereof or the financings

contemplated thereby, whether at law or in equity, in contract, in tort or otherwise and (ii) no Financing Source shall have any liability (whether in contract, in tort or otherwise) to the Company or any of its subsidiaries, Affiliates, directors, officers, employees, agents or stockholders for any obligations or liabilities of any party hereto under this Agreement or for any claim based on, in respect of, or by reason of, the transactions contemplated hereby and thereby or in respect of any oral representations made or alleged to have been made in connection herewith or therewith, including any dispute arising out of or relating in any way to the Debt Commitment or the performance thereof or the financings contemplated thereby, whether at law or in equity, in contract, in tort or otherwise. Notwithstanding anything to the contrary contained in this Agreement, the Financing Sources are intended third-party beneficiaries of, and shall be entitled to the protections of this provision and Sections 8.2(k)(ii), 9.1, 9.6, 9.8, 9.9 and 9.18 to the same extent as if the Financing Sources were parties to this Agreement.

IN WITNESS WHEREOF, the Company, Parent and Sub have caused this Agreement to be signed by their respective officers thereunto duly authorized as of the date first written above.

CHT HOLDCO, LLC

By: Paul Parmar
Name: Paul Parmjit Parmar
Title: Manager

CHT MERGERSUB, INC.

By: Paul Parmar
Name: Paul Parmjit Parmar
Title: President

ORION HEALTHCORP, INC.
(solely for purposes of Section 9.20 herein)

By: Paul Parmar
Name: Paul Parmjit Parmar
Title: President

CONSTELLATION HEALTHCARE TECHNOLOGIES, INC.

By: _____

Name: Paul Parmjit Parmar

Title: President

CC CAPITAL MANAGEMENT, LLC
(solely for purposes of Section 9.19 herein)

By: _____
Name: CHINH CHU
Title: MANAGING DIRECTOR

EXHIBIT 2

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF THE LIQUIDATION OF FREESTONE INSURANCE COMPANY	C.A. No. 9574-VCL
DESTRA TARGETED INCOME UNIT INVESTMENT TRUST, ON BEHALF OF UNITHOLDERS, a Delaware Statutory Trust; CONSTELLATION HEALTH GROUP, LLC, a Delaware Limited Liability Company; CONSTELLATION HEALTH, LLC, a Delaware Limited Liability Company, Plaintiffs,	
v	C. A. No. 13006-VCL
PARMJIT SINGH PARMAR (A.K.A. PAUL PARMAR); NAYA CONSTELLATION HEALTH LLC, a Delaware Limited Liability Company; ALPHA CEPHEUS, LLC, a Delaware Limited Liability Company; CONSTELLATION HEALTH INVESTMENT, LLC, a Delaware Limited	

Caption Cont'd ...

- - -

Chancery Courtroom No. 12B
Leonard L. Williams Justice Center
500 North King Street
Wilmington, Delaware
Friday, March 16, 2018
2:00 p.m.

- - -

BEFORE: HON. J. TRAVIS LASTER, Vice Chancellor

- - -

ORAL ARGUMENT ON CHT PARTIES' MOTION TO LIFT PRELIMINARY INJUNCTION AND RULINGS OF THE COURT

... Caption Cont'd

Liability Company; FIRST UNITED HEALTH, LLC, a Delaware Limited Liability Company; BLUE MOUNTAIN HEALTHCARE, LLC, a Delaware Limited Liability Company; JOEL PLASCO; and SOTIRIOS ZAHARIS (A.K.A. SAM ZAHARIS),

Defendants,

and

CONSTELLATION HEALTH GROUP, LLC and CONSTELLATION HEALTH, LLC,

Nominal Defendants.

- - -

APPEARANCES:

DIANE J. BARTELS,, ESQ.
Diane J. Bartels, Esquire
-and-
JAMES J. BLACK III, ESQ.
of the Pennsylvania Bar
Black & Gerngross, P.C.
for the Honorable Trinidad Navarro, Insurance Commissioner of the State of Delaware, in his capacity as Receiver of Freestone Insurance Company in Liquidation

DAVID J. TEKLITS, ESQ.
Morris, Nichols, Arsht & Tunnell LLP
-and-
MICHAEL B. FISCO, ESQ.
of the Minnesota Bar
DLA Piper LLP (US)
for Plaintiffs in 13006-VCL

LUCIAN B. MURLEY, ESQ.
Saul Ewing Arnstein & Lehr LLP
-and-
TIMOTY C. PARLARTORE, ESQ.
of the New York Bar
Fisher Broyles LLP
for Defendants in 13006-VCL

BROCK E. CZESCHIN, ESQ.
MATTHEW W. MURPHY, ESQ.
Richards, Layton & Finger, P.A.
-and-
J. DAVID DANTZLER, JR., ESQ.
of the Georgia Bar
Troutman Sanders LLP
for Intervenors CC Capital CHT Holdco, LLC, CC Capital Management, LLC, and CCT Holdco, LLC

ALSO PRESENT:

PAMELA J. HICKS, ESQ.
of the District of Columbia Bar
U.S. Department of Justice

- - -

THE COURT: Welcome, everyone.

ALL COUNSEL: Good afternoon, Your Honor.

THE COURT: So we are here today in two cases, Civil Action No. 13006 and Civil Action No. 9574. I just want you to know that I have been informed by those court personnel who care deeply about such matters that it is proper form to put the earlier number first. So just make that note for future reference. I personally don't have a strong preference, and so I want to go along with and respect the wishes of those who do, because it's not something that seems to make a big difference for my life, and so I am happy to defer to those who have a deeper stake in the matter. So do not take that as a scolding or reprimand or anything like that. It's purely informational, for those of you who may face this issue sometime in the future.

The real question today is whether I should lift an injunction that I previously entered that effectively sequestered, held in escrow, restrained, some funds, in favor of a seizure by the federal government so that those funds could be administered by the District Court.

I have a motion before me by CC Capital that actually seeks that relief. Unless anyone had strong preferences for another order of proceeding, I was going to let them present first. Then we could have any oppositions that people wanted to make, be they folks who filed the motion or anyone else who wanted to be heard. Then I'd have a reply and we'd go from there.

So at least initially, is there anyone that feels strongly that that is not the right way to proceed?

MR. BLACK: No, Your Honor.

MS. BARTELS: No, Your Honor.

THE COURT: Great. Then let's start with the CC Capital folks. And I welcome you back, so that Mr. Czeschin can stay relaxed at his table.

MR. DANTZLER: Thank you, Your Honor. David Dantzler with Troutman Sanders. It's a pleasure to be back, and I will be very brief.

The CC Capital or CHT parties, as we call them in the brief, our position is very straightforward and is set forth in our papers. We do believe that the right answer here is for the injunction to be lifted in favor of the seizure

warrant so that the escrowed funds can be administered by the DOJ. We believe that the positions in responses and opposition are mostly grasping at straws. I'm happy to address those, any questions the Court has, or deal with that in reply.

I think what's abundantly clear is that the escrowed funds are going to be seized. The only question is when. Nothing that this Court decides is going to affect how the DOJ would administer those funds. There's no reason to delay the inevitable, in our view, and further complicate the overall procedural circumstance. One thing that has occurred to me, at least in thinking about today, is that if the Court does not release the money, given the state of play, our client, as well as others who may have funded some of the money that is actually now in escrow, will have to decide procedurally what we need to do to protect our rights.

When the DOJ seizes the funds, they'll be secure, and there are processes in place for them to be administered. In the unlikely event that the funds are not dealt with and administered by the DOJ, they will come back here. And at that point, it would then be appropriate for us to wrestle with the issues

and the competing claims of these funds. But in our view, to go through all of that now is a waste of judicial resources and causes our clients and others who may be victims here to spend time and money in a process that will ultimately be trumped.

A proposed order has been submitted, updated by Young Conaway, that deals with both their fees and the administrative specifics that have to be dealt with in order for the money to be lifted in favor of the warrant, and we would ask the Court to enter that order.

THE COURT: So you are fine with the Young Conaway form of order?

MR. DANTZLER: Yes.

THE COURT: All right. Is there any possibility -- and I didn't see this in the papers, and obviously, I'll hear from Mr. Black, or whoever else wants to speak to this matter -- but is there any possibility that you can envision in which my ruling on any of these issues in this case would somehow alter the priority of the claims and the funds in the federal action?

MR. DANTZLER: Your Honor, I do not profess to be an expert, but of course we've looked at

that. And I think the answer is no. I think there's nothing you can do. My understanding --

THE COURT: I'm not necessarily asking to do something. I don't want you to feel like, oh, I want to do something.

MR. DANTZLER: No.

THE COURT: I'm curious whether -- and again, it didn't seem to me this way, but just so you understand where I'm coming from -- I'm curious whether I am depriving, somehow, Destra from essentially a priority that it could have if it went forward here, as opposed to having to assert its claim in some form in the federal proceeding or later.

MR. DANTZLER: I do not believe so. My understanding is that the processes that will be employed by DOJ, whether they be through the civil forfeiture process or the restitution and remission process that is part of the criminal procedure, the focus there is to return funds that are the proceeds of a crime to all of the victims of the crime who can make a showing of entitlement, on a pro rata basis.

And what this -- and remember, the Destra plaintiffs have no judgment. As far as I understand, there's not even an answer in that case.

So we are a long way from priorities. And whatever rights they have are not extinguished by virtue of the seizure. It's just that everybody who could have a claim has a seat at the table, so to speak, in the DOJ process, and that is inevitable. That's -- that's really where we are.

What we wanted originally was just the funds locked down so we had a day in court to make our claim to whomever. But we're pragmatists, and given where we are, we think this is the right answer.

THE COURT: Thank you.

MR. DANTZLER: Thank you.

MS. BARTELS: Your Honor, James Black is representing the receiver today.

THE COURT: Great. Welcome back, Mr. Black.

MR. BLACK: Thank you, Your Honor. Good afternoon. Your Honor, I will try to be brief and to the point, as counsel was.

Your Honor, your January 19th correspondence indicated that there were two matters today. One was whether Mr. McBride would receive his administrative fees and the other was whether or not the Court should lift the injunction as to the

remaining funds in deference to the seizure warrant.

It's a rare show of national unity. I believe everyone has advised Your Honor that Mr. McBride should receive his administrative funds. However, the Commissioner, as receiver, urges Your Honor not to lift the injunction, or rather, not to lift the injunction at this time. Your Honor, when you indicated a few minutes ago what was at issue today, used the word "should I lift the -- what is before me today." And we believe that lifting the injunction at this time is unnecessary, and it would be premature.

The premature nature of the lifting of the injunction would be prejudicial to the parties that are before this Court, whereas the failure of Your Honor to lift the injunction today in no way prejudices the rights of the United States, any potential victims, to receive relief, even from these funds.

But at least three things would have to happen first, before it would be determined that the -- that these funds are properly going to the federal court. As the government indicated to Your Honor, they said if they decide to go forward with the

forfeiture. There's nothing before us in the record that indicates that this forfeiture is and there's no assurances that it would necessarily proceed.

Secondly, the government would have to be successful in its claims, in its claims against the defendants that they claim as part of the forfeiture. And that is far from a certainty. And then, lastly, the Destra parties and the Insurance Commissioner, as receiver, would have to be unsuccessful in convincing the federal adjudicative bodies, whether it's a court or administrative proceeding, that the forfeiture warrant was properly obtained.

Now, we reaffirm what we said in our papers, Your Honor, that the receiver, as -- the Commissioner, as receiver, will take all our arguments and positions regarding the propriety of the seizure to the federal and to the administrative proceedings and will never ask this Court to issue any ruling that conflicts with the ruling of the federal courts regarding these funds and in this matter today.

And I believe that the strawman of the urgency is contained in CC Capital's papers, at paragraph 4, where they say, "The warrant was served but not executed due to the pendency of the

preliminary injunction." Your Honor, that is exactly wrong. The warrant was obtained -- first of all, the government was, of course, aware, the federal government was aware of the existence of the preliminary injunction, and they sought the forfeiture warrant only because it was going to be imminently distributed out from under the auspices of your injunction. And they feared that the distribution of those proceeds -- the imminent distribution, if the settlement had been approved by the Court, would include distribution to Mr. Parmar and his entities.

And I should point out, Your Honor, we don't have to guess about that. The government carefully and expressly did not ask this Court to lift the injunction. That was contained within paragraph -- page 2, footnote 2, of their only filing with the Court.

The United States also admits and says that if they do not pursue forfeiture of the funds -- and again, we're not aware of anything. Your Honor invited them to be present today. I don't know whether there's anyone here from the government. But certainly we're aware that nothing has changed since their filing with the Court. They admit that if they

did not pursue the forfeiture of the funds, it would seek to return them to the account from which they were seized. Presumably, that would make Mr. McBride happy, but that account only exists in the future if the injunction is maintained.

So until there are additional proceedings in this Court, where the Destra parties and the receiver have both indicated we'll proceed, and those additional federal proceedings that give clarity to what's the record, we believe, Your Honor, that the maintenance of the injunction protects all sides. The federal government has requested no more, only that they be informed of when distribution here might occur so that they could obtain a preliminary seizure warrant if they feel it's appropriate at that point.

So we urge Your Honor to maintain the injunction and only to amend it to provide for the distribution of the Young Conaway fees and expenses, and to do that forthwith, and perhaps agreeing to notify the United States if any subsequent order of distribution is imminent, so that they can obtain the preliminary forfeiture warrants that they indicated to Your Honor would be appropriate.

THE COURT: Okay. Great. Thank you. I appreciate that.

MR. BLACK: Thank you, Your Honor.

THE COURT: Other folks?

Mr. Teklits?

MR. TEKLITS: David Teklits on behalf of the plaintiffs.

THE COURT: Come on up.

MR. TEKLITS: I rise only to reintroduce to the Court Mr. Fisco from DLA Piper, who will be presenting for the plaintiffs today.

THE COURT: Thank you.

MR. FISCO: Thank you, Your Honor.

CC Capital would love everything to go away, because they're going to assert the biggest claim and they're not going to be able to be challenged in that process. The underlying litigation that the Master Trust brought and CHG brought has to come to a conclusion, because specifically in the federal process, it says one of the elements is that the victims of -- have suffered a loss of a specific amount. We have to determine that amount. So that's one reason that the litigation is going to have to proceed.

The second reason is this is not the only course -- recourse, and it's not the only assets that can compensate the victims and my client. There's other transfers. There's multiple transfers that we've demonstrated to the Court, and we've found additional evidence in the record when we objected to CC Capital's motion to impose a constructive trust. There's a number of other things that aren't even disclosed yet, that we aren't even aware of. So there may be other sources of recovery for our plaintiffs.

And specifically, Your Honor, there is multiple levels of fraud, at least three major levels of fraud, starting with Southport, Parmar's fraud, and then, ultimately, at least at the end, the CC Capital transaction. So all of that has to be resolved, and those claims have to be liquidated, at a minimum, to get to the federal process.

So the litigation is going to continue because, if nothing else, we have to monetize those claims. And there are other assets out there beyond the seized funds. And we join in the other arguments as well, Your Honor. Thank you.

THE COURT: So let me ask you something. If I go first, effectively, so as to

reduce these claims that you have to judgment, and let's assume that you prove through that that there's fraud and you recover more money, and it ends up being like $100 million all-in.

After I do all that and I enter a final order and there's an appeal and we ultimately have an answer, and assume even after the appeal you still win, what do you envision happening at that point?

MR. FISCO: I think our clients would enforce remedies. And that includes the seized funds, to the extent that the federal government still has those.

THE COURT: But imagine a world where I haven't done what the other side wants me to do. So all of this money is now here in Delaware. What I've been having the impression, and this is where I want you to correct me if my impression is erroneous, is that at that point, you would have a claim, but the money at that point, because the DOJ has decided to seize it, the money would be swept anyway over into the DOJ's control.

So the benefit to you at that point, I guess, is that you would, in theory, have a judgment

before the DOJ took the money. But at least as I'm thinking about it, you wouldn't actually get to ever hold the money, would you?

MR. FISCO: Not until the federal process is resolved or the federal government says, you know what? We're fine with what's happened, and they give the money back to the Court. Which is why we want the injunction to stay in place.

THE COURT: Right, right, right. So that's path A. And again, just for talking purposes, let's assume that it takes us two years to get to that point, and two years from today, you are the happy holder of a judgment, and you then can go to the DOJ and participate in that process after they sweep the funds. All right.

Now shift to the timeline which your friends are talking about, which is funds get swept now. We go forward here, and again, two years from now you're the happy holder of a judgment. But in this case, the DOJ had swept the 55 million two years before. You, in my hypothetical, because I wanted to end up with 100 million, you've now recovered an additional 45 million, right? So you've got 45 million sitting here. DOJ at one point swept the 55

million over there.

So two questions: Is the 55 million still sitting over there, or is the DOJ already giving it out to various claimants? Do you have any sense of that?

MR. BLACK: We don't, Your Honor. And that's exactly why we would like this Court to continue to hold it, and all of these rights have to be resolved.

THE COURT: Okay. So that's concern number one, is that the DOJ wouldn't wait around for the two years until I, in my hypothetical -- and again, people always go crazy whenever I say anything. This does not mean I've already decided the case and said that you're going to win. Nobody has a reliance interest in thinking that I've already decided the case in your favor. You can't cite these comments on appeal to say that I indicated to you that you were going to win, and hence you were prejudiced if later I decide that you lose -- but one risk is that those monies would already be gone.

Other than that, how are you better off or worse off? Is that basically what it comes down to, is that there's a risk that the DOJ could go

ahead and distribute before you become a holder of your money?

MR. FISCO: That risk, Your Honor, and there's no transparency in that process. There's no opportunity for us to say this is this party's knowledge of what happened and a fairness to allocation of the money. It seems like it goes into the black hole of the federal process and someone decides how that's going to happen, without discovery, without anything else.

So we would not be -- we'd be prejudiced by that, because we're getting up to speed while other parties are saying, "We have a specific amount that we would claim to that," and the federal process is going to go forward regardless of whether we can go -- how fast we can go forward to get our judgment.

THE COURT: All right. Now, explain to me, though, why you are worse off than CHT. I mean, it seems to me -- and again, this may just be my lack of knowledge about the other proceedings that are going on -- but is CHT right now a judgment holder? Have they won a judgment somewhere that says, hey, we were defrauded? Or are they like you, in that what

they have is essentially a contingent or an inchoate claim?

MR. FISCO: We're worse off, because they have already said what their claim is, $309 million.

THE COURT: So they've put a number on it.

MR. FISCO: Absolutely.

THE COURT: But they don't have a court judgment that says you were defrauded to the tune of $309 million?

MR. FISCO: That's correct.

THE COURT: Right. What is stopping you from putting a number on it?

MR. FISCO: It requires a factual determination over -- as the Court is aware of the complicated nature of these proceedings, a complicated analysis, working through the various values of the entities, the transfers in and out, multiple transfers to other entities, diversion of assets. It's not -- we couldn't stand before the Court and say our amount is X.

THE COURT: Yeah.

MR. FISCO: We did it with the

settlement, but that was not able to get proved.

THE COURT: No, that --

MR. FISCO: Short of that, we're going to have to try the case or get a stipulated amount and put evidence before the Court that the Court deems is appropriate to say yes, we believe that is the amount that you are damaged by.

THE COURT: For purposes of a claim in the DOJ proceeding, again, I have limited analogies to draw, but I'm envisioning something like a proof of claim process where, who knows, they've put a number on it, 309, and maybe because their fraud, from their standpoint, is more straightforward, and yours is trickier, it's easier for them to put a number on it. But at the same time, it seems to me that if you were in a bankruptcy or a receivership claim proceeding in front of me, you would have to put a number on it. And that initial number wouldn't have the same evidentiary support as you're discussing. It would be a good-faith number, but it wouldn't necessarily be like the "we've proved this in a court of law" number.

Is there some reason why you can't put that kind of number on it and say to the DOJ, they're talking about 309, we're talking about X, whatever it

is?

MR. FISCO: We could, Your Honor.

THE COURT: You could do that?

MR. FISCO: But what's the credibility in that number?

THE COURT: I don't know.

MR. FISCO: And that's the problem. The federal government is going to have to judge based on, as you pointed out, a proof of claim --

THE COURT: Yeah.

MR. FISCO: -- not a tried case with findings of fact identifying the loss and the harm suffered by our constituency.

THE COURT: So in that sense, if we've gone through two years and an appeal and you can come in and point to, God forbid, a 150-page, 400-footnote opinion, you feel like that will give you more heft with the DOJ in terms of saying, look, we really were harmed in terms of X million, so put us in the pot for that much?

MR. FISCO: Not only that, Your Honor. It's different, multiple frauds. So again, there's each level. And they might prioritize, for example, in their mind -- it's unclear what the process would

hold -- this fraud versus the second fraud versus the third fraud. So we would have that laid out for them, because we have been the victims of three levels of fraud.

THE COURT: All right. Anything else you want to tell me?

MR. FISCO: No. Thank you, Your Honor.

THE COURT: Great. Thank you.

Anyone else want to share anything? Add anything? Express views on anything, before I go back to the CHT folks?

MR. BLACK: Your Honor, is that directed at -- I don't want to jump my place, but --

THE COURT: I wasn't thinking about giving you another chance. You've already had a chance.

MR. BLACK: Okay. That's fine.

THE COURT: I was really thinking of anybody else who hadn't had a chance yet.

MR. BLACK: Thank you, Your Honor.

THE COURT: All right. So seeing no motion, I think we're back to you.

MR. DANTZLER: One, let me say that

I'm under no illusion that if DOJ is administering these funds that the process is not going to work just as the Court envisioned. We're not going to be able, nor are they, going to get to the front of the line, no matter what. It's going to be a proof-of-claim-like process.

What I believe matters is what is the criminal conduct that resulted in these proceeds, and who are the victims of those crimes, and how much. And everybody who has an articulable claim is going to get notice, and that's where this corpus will be divided.

Mr. Black said something about there being no record of forfeiture. I would say that exactly the opposite is the case. Seizure precedes forfeiture. And so the government has, in fact, gotten the seizure warrant, and but for deference -- and I know that nobody wants to get into a jurisdictional dispute here -- but for deference and kid-glove treatment of that issue and --

THE COURT: We're all trying to be friends here.

MR. DANTZLER: Exactly. Exactly.

THE COURT: We're all trying to be on

the same team.

MR. DANTZLER: Right. So my point is, there is evidence. But they have to have the money to move to the forfeiture piece, which comes next. So there is clear evidence of forfeiture. I don't think it's a black box. It's a different process.

And let me say, Judge, I don't want to be misunderstood here. Unfortunately, I believe that if we had a judgment in hand and we could march in here today and prove to you that that money in escrow is impressed with a constructive trust for the benefit of our client, and you were willing to give all $55 million to CC Capital, the result's still the same. The government will execute on that money and we'll be right -- we'll all be filing proofs of claim, or whatever they call the claim there.

So all this -- and I get -- they thought they had a big pile of money. But really what it is, that escrow is a payment from our client and some banks to Mr. Parmar and his entities that this Court interrupted for their benefit. But it's -- right now, but for the escrow, that money was a payment, you know, on the way.

They have no right to that money.

They have no title to that money. They have a hope for that money. And that's not a good enough reason, in my judgment, to go through all this, when we have a very simple and kind of straightforward and reality that that warrant is going to get executed at some point.

So that's -- that's why we're -- like I say, we're pragmatists.

THE COURT: All right. Thank you.

Mr. Black, you wanted to add something?

MR. BLACK: May I, Your Honor?

THE COURT: Please do.

MR. BLACK: Your Honor, I originally rose to answer on the receiver's behalf a question that you had put to Mr. Fisco, but I do have to say, with respect to the reply, that that's not -- that argument is not coming from the United States. It's a great argument, or might be a great argument, if the United States were asking you to dissolve the injunction. They did not. They had an opportunity to ask you to do that and specifically said, "You could, but we don't ask you to. We only ask you to tell us when you're going to distribute the money so that we

may do an anticipatory seizure warrant."

We do, on this side of the table, the Destra trustee and the receiver, we do differ from this party in this Court, in one important respect. Your Honor has found that the distribution of that money would imminently harm us, and we made the sufficient showing, with a fairly high burden, that we were likely to proceed on the merits, and that those funds would be appropriate to satisfy judgments that we would obtain.

So again, nothing's changed. Nothing will change. Unfortunately, through my poor career choice, I have had the pleasure of always touching forfeiture on behalf of that forfeiture process. And it is more complicated than I think of, well, they put all the funds together and they decide what is fair. There's the restitution order, there's the criminal jury suit forfeiture order, there's substitute forfeiture, there's determinations of whether or not things were proceeds or substitute assets of proceeds.

The proof of claim process that Your Honor asked about was -- is, I believe, called an innocent owner petition. And there's a full determination, and then no clear guidance as to

whether it's a first-in, first-out proceeding, whether it's a LIFO proceeding, whether it's a tracing analysis.

But at this time, all those issues are premature, since there has been no forfeiture, there has -- you're not being asked to dissolve the injunction, there are at least -- I can think of three hypotheticals as to which we would never get to this issue, one of which they would decide not to pursue forfeiture. Another would be that the criminal parties might plead guilty and negotiate a situation where the forfeiture does not occur. Another would be that they prevail at trial and the government has no right to the funds. Or the arguments or the positions that the Insurance Commissioner has that seizure of its assets by a federal court is improper could be sustained in a federal court. The dissolution of your injunction at this time greatly prejudices our argument and helps no one.

Thank you, Your Honor.

THE COURT: Thank you. All right. I'm going to take a recess until quarter of, and then I'll come back and let you know whether I can give you an answer today or whether I need to think about this

some more.

Thank you all. We'll be back in 15 minutes.

(A recess was taken, 2:30 to 2:45 p.m.)

THE COURT: Welcome back, everyone. Please take your seats.

So my court clerk did tell me that there is someone from the Department of Justice here. Welcome.

MS. HICKS: Thank you, Your Honor.

THE COURT: Whichever one of you is the appropriate person, could you just come up and tell me whether you actually want this money or not. Because if you guys are happy to let me hold it, I'll keep holding it. But part of the premise has been that you guys actually want it.

So what is your druthers?

MS. HICKS: Yes, Your Honor. My name is Pamela Hicks. I'm with the U.S. Department of Justice. I'm doing that for whatever court reporter is here.

We obviously would like to have it. We went and got a seizure warrant for it. I think, as our letter makes clear, we don't necessarily think

it's appropriate to make a request of a State Court for that, but yeah, obviously we would like to have it. That's why we went to the trouble of getting a warrant for it.

THE COURT: And you don't have to go into detail, but you do have procedures? This is not something that you're just going to do on a one-off thing?

MS. HICKS: No. We do this a lot.

THE COURT: Yeah.

MS. HICKS: The parties were correct, we would have to successfully forfeit the money, either in a criminal or civil process. And the remission process which follows on that to deal with victims of fraud is a process. It can be a very simple process, for simple frauds. It can be a very complicated process, like the one we're currently using for the Madoff fraud. We just released, I think, about a billion dollars a couple of months ago, where we do it in different currencies all over the world and hire an outside person to help decide who lost what, because the calculations of those can be kind of complicated.

It is ultimately within the discretion

of the Department on how to award remissions, so that is correct. But there is a process in place. We have regulations that govern what losses qualify. I think we talked a little bit about those in our letter.

So there is a process in place. We've done it for very massive frauds, very complicated frauds, some of the ponzi schemes where you have net winners and net losers in what you calculate as a loss and what you don't. It does happen fairly frequently, unfortunately, at the Department.

So, yeah, there is a well -- I think it works -- I'm biased, but I think it works pretty well at the department to do that kind of calculation.

THE COURT: Great. All right. Thank you very much. I appreciate those comments.

What that presentation effectively did for me was confirm my inclinations in this matter. I am going to enter the order in the form that Young Conaway submitted that releases this money pending the seizure by the federal government.

First of all, I appreciate everyone agreeing on the Young Conaway provisions. I'm sorry Ms. McCormick can't be down in New Orleans with probably the rest of the Young Conaway crew, but

nevertheless, I appreciate everyone working that out.

I think the real question here, as the parties have put a fine point on it, is whether the release should happen now or whether it should happen at some indeterminate point in the future, after this case has run its course and there's potentially been a judgment in favor of the plaintiffs -- I stress "potentially" -- that would then establish a monetary amount for their claim.

In my view, I don't think waiting until that endpoint makes sense, and I don't think so for two reasons. First, in terms of the grand scheme of things, I think what is really required here is a process to assess the relative claims of a wide range of individuals who assert that they were victims of fraud. That, to me, is best handled by having a single process in which the relative claims of as many parties as possible are considered.

I don't think it makes sense to have that process Balkanized or simply, in terms of my conceptual framework, divided, such that I have one pot of money and the DOJ has another pot of money and we're trying to figure things out. It seems to me that there should be a decision-maker who, consistent

with due process, can approach in an impartial manner the determinations as to who should get what, under what circumstances.

It's not clear to me that that process must or, indeed, needs to require final judgments. Indeed, I think a lot of these processes don't require that. I have no doubt that the DOJ can administer such a process, and do so appropriately, at least as well, if not far better, than this Court. And I also think, as I have said before, that there are likely priorities and interests under federal law that I am really not as well suited to consider as the DOJ. So I think that they have a comparative advantage in that regard.

My second reason for doing this now, rather than later, is this case could take a long time. I gave a simplified hypothetical in which, two years from now, we maybe get to a post-appeal judgment that can then identify the amount. There are many possibilities that can happen between now and then. And rather than that counseling in favor of my holding the money, as Mr. Black suggested, I actually think that counsels in favor of the money being held by a party that could potentially resolve this matter

efficiently as to as many claimants as possible, which I view as being the DOJ.

The third reason I would cite is that notwithstanding, I know, the receiver's view that there is in rem jurisdiction over this proceeding, I continue to think that, in terms of a situation involving directly competing claims to funds, that the supremacy clause likely counsels in favor of federal law or, at a minimum, having the federal judge figure out what is supposed to happen with the money.

So those are three quick reasons. The first two are primary. The third one is secondary.

In terms of going forward, I'm not concerned, in light of the language of the order, about there not being an appropriate procedure that could result in this money just sitting there not under anyone's control. Paragraph 2 of the order makes clear that the funds don't leave my control until the federal government is ready and has taken steps to secure them, such that there won't be some transient period where the funds are sitting out there. I also think that to the extent there are these concerns about either the forfeiture warrant or the competing jurisdictional questions, those can and

should be addressed by the federal court.

Lastly, while I think the probability that any funds return to my control is likely quite small, there is a possibility. But really what I rest on is that the DOJ and the federal system are better positioned than I in the first instance to take charge of this money and determine a priority scheme, as well as to address the jurisdictional questions and resolve them as to whether the money really should be in State hands or whether this is something where the money, because the federal government also has claims, should be handled at the federal level.

I am signing the order in the form that was presented by Young Conaway and Mr. McBride, and I will hand it to the clerk to enter on the docket.

I'm under no illusions that this action is now going to go away. I think it will be wonderful if, as a result of the federal process, some things resolved, but I assume that we will all carry on and do our best.

Thank you, everyone, for coming in. Oh, we have a question?

MR. DANTZLER: Just a procedural point

of order, Your Honor.

THE COURT: Yes, sir.

MR. DANTZLER: We intervened in both of these cases for this limited purpose. And I assume that we will be dismissed, or whatever the -- I have not ever really been in this spot before, but our intervention was for a limited purpose as to whether --

THE COURT: I have no personal desire to keep you around.

MR. DANTZLER: Right.

THE COURT: Does anybody else want to keep Mr. Dantzler and his client around?

MR. BLACK: I look forward to seeing him soon, Your Honor.

THE COURT: All right. Well, maybe you will return.

MR. DANTZLER: In another capacity.

THE COURT: But at least for now, I think you accomplished your mission, and so your purpose for intervention is over.

Thank you, everyone, for being here today, and I appreciate the time you've spent on this issue.

We stand in recess.

(Court adjourned at 2:56 p.m.)

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CERTIFICATE

I, JULIANNE LABADIA, Official Court Reporter for the Court of Chancery of the State of Delaware, Registered Diplomate Reporter, Certified Realtime Reporter, and Delaware Notary Public, do hereby certify that the foregoing pages numbered 4 through 37 contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing in the above cause before the Vice Chancellor of the State of Delaware, on the date therein indicated, except for the rulings at pages 31 through 36, which were revised by the Vice Chancellor.

IN WITNESS WHEREOF I have hereunto set my hand at Wilmington, this 16th day of March, 2018.

/s/ Julianne LaBadia

Julianne LaBadia
Official Court Reporter
Registered Diplomate Reporter
Certified Realtime Reporter
Delaware Notary Public