UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): **March 21, 2018**

JAGUAR HEALTH, INC.

(Exact name of registrant as specified in its charter)

Delaware	**001-36714**	**46-2956775**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

201 Mission Street, Suite 2375 **San Francisco, California**	**94105**
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code: **(415) 371-8300**

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

o Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

o Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Emerging growth company x

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

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Item 1.01 Entry into a Material Definitive Agreement.

Preferred Stock Offering

Preferred Stock Purchase Agreement

On March 23, 2018, Jaguar Health, Inc. (the "Company") entered into a Stock Purchase Agreement (the "Preferred Stock Purchase Agreement") with Sagard Capital Partners, L.P. ("Sagard") pursuant to which the Company, in a private placement, agreed to issue and sell to Sagard 5,524,926 shares (the "Preferred Shares") of the Company's Series A Convertible Participating Preferred Stock, $0.0001 par value per share (the "Preferred Stock"), for an aggregate purchase price of $9,199,001 (the "Preferred Stock Offering"). The Company intends to use the proceeds from the Preferred Stock Offering for ongoing commercialization activities for Mytesi® in connection with the product's currently FDA-approved indication and for general corporate purposes.

The Preferred Stock Purchase Agreement also provides for customary representations, warranties and covenants among the parties. Among other things, the Preferred Stock Purchase Agreement requires that the Company (i) file prior to the initial closing a certificate of designation providing for the rights,

preferences and privileges of the Preferred Shares with the Secretary of State of the State of Delaware (the "Certificate of Designation") and (ii) enter into a Registration Rights Agreement (as defined below) with Sagard providing for the registration of shares of the Company's common stock, par value $0.0001 per share (the "Common Stock"), issuable upon conversion of the Preferred Shares (the "Conversion Shares"). In addition, so long as Sagard or its affiliates own, in the aggregate, no less than 50% or more of the cumulative amount of the Preferred Shares and Conversion Shares issued in the Preferred Stock Offering, Sagard and its affiliates have the right to purchase (x) 100% of the first $10 million of any new securities issued by the Company and thereafter (y) a pro rata portion of any new securities that the Company may issue from time to time, subject to certain exceptions specified in the Preferred Stock Purchase Agreement, including but not limited to the Company's right to issue an additional $2.0 million of Common Stock on terms consistent with the Common Stock Offering (described below) within 20 business days of the closing of the Preferred Stock Offering. The Preferred Shares are subject to a 12-month lock-up period, which period may be shortened in limited circumstances specified in the Preferred Stock Purchase Agreement.

The Preferred Stock Purchase Agreement also provides that Sagard has the right to designate at least one non-voting observer (subject to increase to two if at any time two designees of the Preferred Shares and the Conversion Shares are not represented on the Board) to attend meetings of the Board, the board of directors of any subsidiary of the Company and each committee of any of the foregoing (a "Board Observer"). In addition, at such time as no shares of Preferred Stock are outstanding, and so long as Sagard holds (i) at least 35% of the total number of the Conversion Shares that have been issued upon conversion of all shares of Preferred Stock issued in the Preferred Stock Offering, Sagard shall be entitled thereunder to nominate two directors of the Company (each, a "Series A Director") and (ii) less than 35% but at least 20% of the total number of the Conversion Shares that have been issued upon conversion of all shares of Preferred Stock issued in the Preferred Stock Offering, Sagard shall be entitled thereunder to nominate one director of the Company.

Notwithstanding the foregoing, the number of Series A Directors shall be reduced to the extent necessary to comply with the Company's obligations, if any, under the rules or regulations of the Nasdaq Stock Market (including Nasdaq Listing Rule 5640). The Preferred Stock Purchase Agreement provides that, if one Series A Director may not be appointed due to compliance with Nasdaq Listing Rule 5640, then Sagard shall be entitled to designate one Board Observer to attend meetings of the Board, the board of directors of any subsidiary of the Company and each committee of any of the foregoing as an observer.

The offer and sale of the Preferred Shares will not be registered under the Securities Act of 1933, as amended (the "Securities Act"), in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act and/or Regulation D promulgated thereunder.

Series A Preferred Stock

The Certificate of Designation authorizes 5,524,926 shares of Preferred Stock and provides for the rights, preferences and privileges of such Preferred Stock. Any reference to share prices in the below description of the Preferred Stock, including but not limited to the conversion price for the Preferred Shares and the amount of the liquidation preference per share, is subject to adjustment in the event of any stock dividend, stock split, reverse stock split, combination or other similar recapitalization, as further described in the Certificate of Designation.

Dividends

Holders of shares of Preferred Stock are entitled to participate equally and ratably with the holders of shares of Common Stock in all dividends paid and distributions made to the holders of Common Stock on the shares of Common Stock on an as converted basis.

Election of Directors and Voting Rights

The holders of a majority of the outstanding shares of Preferred Stock are entitled to elect two (2) members of the Company's Board of Directors. Notwithstanding the foregoing, the number of Series A Directors shall be reduced to the extent necessary to comply with the Company's obligations, if any, under the rules or regulations of the Nasdaq Stock Market (including Nasdaq Listing Rule 5640).

The holders of shares of Preferred Stock have the right to vote with holders of shares of the Common Stock, voting together as one class on all other matters, with each share of Preferred Stock entitling the holder thereof to cast that number of votes per share as is equal to the aggregate number of shares of Common Stock into which it is then convertible, using the market value of the Common Stock on the date of the Preferred Stock Agreement as the conversion price; provided that, at any time prior to the time the Company obtains stockholder approval, as required pursuant to Nasdaq Rule 5635(b), no holder (together with such holder's attribution parties) is permitted to have a number of votes in excess of such aggregate number of votes granted to the holders of 19.99% of the shares of Common Stock then outstanding (including any votes with respect to any shares of Common Stock and Preferred Stock beneficially owned by the holder or such holder's attribution parties).

Voluntary Conversion

Each share of Preferred Stock is initially convertible into nine shares of Common Stock at an effective conversion price of $0.185 per share (based on an original price per Preferred Share of $1.665), provided that, at any time prior to the time the Company obtains stockholder approval, as required pursuant to Nasdaq Rule 5635(b) any conversion of Preferred Stock by a holder into shares of the Common Stock would be prohibited if, as a result of such conversion, the holder, together with such holder's attribution parties, would beneficially own more than 19.99% of the total number of shares of the Common Stock issued and outstanding after giving effect to such conversion. Subject to certain limited exceptions, the shares of Preferred Stock cannot be offered, pledged or sold by Sagard for one year from the date of issuance. The conversion price is subject to certain adjustments in the event of any stock dividend, stock split, reverse stock split, combination or other similar recapitalization.

Mandatory Conversion

The shares of Preferred Stock will be mandatorily converted upon the date and time, or the occurrence of an event, specified by vote or written consent of the holders of a majority of the then outstanding shares of Preferred Stock at a conversion price of $0.185 per share. In each case, shares of Common Stock will be held in abeyance to the extent necessary to satisfy limitations on beneficial ownership as described under "Voluntary Conversion" above.

Optional Redemption

At any time after the first anniversary of the issuance of the Preferred Shares, so long as certain call conditions specified in the Certificate of Designation have been satisfied, the Company shall have the right to offer to redeem shares of Preferred Stock at a share price equal to two times the original share issue price of the Preferred Shares. The Company is only permitted to exercise this right to redeem two times, the first of which must be for an aggregate redemption price of $9,199,001 and the second of which must be for all remaining shares of Preferred Stock remaining. If a holder of Preferred Shares fails to accept the Company's redemption offer, such holder's shares of Preferred Stock shall be automatically converted into shares of Common Stock pursuant to the terms of "Mandatory Conversion" as described above.

Mandatory Redemption

If (i) the Company's consolidated net revenues attributable to the Mytesi products ("Mytesi Revenues") for the six-month period ended March 31, 2021 are less than $22 million, (ii) the average volume-weighted average price of the Common Stock for the thirty days immediately prior to the Measurement Date (as defined below) is less than $1.00 or (iii) the Company fails to file with the U.S. Securities and Exchange Commission (the "SEC") on or before June 30, 2021 its quarterly report on Form 10-Q for the three months ended March 31, 2021, then the holders of at least a majority of shares of Preferred Stock then outstanding may require the Company to redeem all shares of Preferred Stock then outstanding at a per share purchase price equal to $2.3057. For purposes of the foregoing sentence, "Measurement Date" means the later of (x) April 30, 2021 and (y) the date on which the Company files its quarterly report on Form 10-Q for the three months ended March 31, 2021 (but in no event later than June 30, 2021).

The mandatory redemption right described above shall terminate if, prior to the Measurement Date, both (i) the Mytesi Revenues for any six-month period ending at the end of a calendar quarter are equal to or exceed $22 million and (ii) the average volume-weighted average price of the Common Stock for the thirty days immediately preceding the end of such calendar quarter is equal to or greater than $1.00.

Fundamental Change

The Certificate of Designation provides the holders of Preferred Stock with a right to require the Company to repurchase shares of Preferred Stock at a price to be calculated pursuant to the terms of the Certificate of Designation upon the occurrence of any of the following events (each a "Fundamental Change"):

(X) (a) any person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act), other than certain "Permitted Holders" (and/or any direct transferee of shares of Preferred Stock from any Permitted Holder) (as defined in the Certificate of Designation), (i) shall have acquired beneficial ownership of more than fifty percent (50%) or more on a fully diluted basis of the voting and/or economic interest in the capital stock of the Company (or surviving entity in a merger or consolidation, if applicable)) or (ii) shall have obtained the power (whether or not exercised) to elect a majority of the members of the Company's Board of Directors (or similar governing body); or (b) the occurrence of any "change of control" or similar event under any agreements relating to any indebtedness of the Company or its subsidiaries; or

(Y) except in the case of a Deemed Liquidation Event (as defined in the Certificateof Designation and described below) in which holders of Preferred Stock receive, concurrently with the consummation of such Deemed Liquidation Event, a cash payment pursuant to Sections 2.1 and 2.4 of the Certificate of Designation in full, in an amount equal to the "Fundamental Change Price" as defined in the Certificate of Designation that would otherwise be payable, the Company or any of its subsidiaries enters into any transaction of merger or consolidation (except that a person may be merged with or into the Company or another wholly-owned subsidiary thereof so long as the Company or another wholly-owned subsidiary is the continuing or surviving person), or conveys, sells, leases, subleases (as lessor or sublessor), exchanges, transfers or otherwise disposes of, in one transaction or a series of transactions, all or substantially all of the consolidated business, assets or property of the Company and its subsidiaries.

The "Fundamental Change Price" for each share of Preferred Stock, as of any date, shall be calculated as the sum of (i) the amount payable in respect of such share under Section 2.1 of the Certificate of Designation in the event of a "Liquidation Event" as of such date, plus (ii) any and all accrued and unpaid dividends upon the Preferred Stock, whether or not declared, as of the date of the Fundamental Change, plus (iii) the "Participation Amount" as defined in the Certificate of Designation.

Merger or Liquidation

Subject to the Fundamental Change provision described above, under the terms of the Certificate of Designation, upon merger or consolidation resulting in a change of control, sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Company or any subsidiary of the Company, of substantially all of the assets of the Company and its subsidiaries taken as a whole, or the sale or disposition (whether by merger, consolidation or otherwise) of Napo (as defined below) (or any successor in interest) or one or more other subsidiaries of the Company if substantially all of the assets of the Company and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries (collectively, a "Deemed Liquidation"), liquidation, dissolution or winding up of the Company as determined under the Certificate (collectively, a "Liquidation Event"), each share of Preferred Stock will be entitled to a preference of $1.665 per share (or the equivalent of $0.185 per share on an as-converted to Common Stock basis) plus a participation right described below. Thereafter, the holders of Common Stock then outstanding shall be entitled to receive an amount per share of Common Stock (in stock or cash as determined under the Certificate of Designation) equal to $0.185 (as adjusted for stock splits, reverse splits, stock dividends, reclassifications, recapitalizations and/or other similar events). Thereafter, all of the remaining assets of the Company and/or proceeds from a Deemed Liquidation or Liquidation Event, as applicable, will in general be divided pro rata among the holders of the shares of Preferred Stock and the shares of Common Stock, on an as converted basis (all as more fully specified and calculated under the Certificate of Designation).

Covenants

Pursuant to the terms of the Preferred Stock as provided in the Certificate of Designation, so long as any shares of Preferred Stock are outstanding, the Company may not agree, among other things, without the prior written consent or vote of the holders of at least a majority of the then outstanding shares of Preferred Stock, to: (a) amend, alter, repeal or waive any provision of the Certificate of Designation, (b) amend, alter or repeal any provision of the Company's charter documents in a manner that would adversely affect the powers, privileges, preferences or rights of the Preferred Stock, (c) create additional classes or series of capital stock having rights, preferences or privileges senior to or pari passu with the Preferred Stock or (d) increase or decrease the authorized number of shares of Preferred Stock.

So long as Sagard or its affiliates own at least 35% of the shares of Preferred Stock that were originally issued, the Certificate of Designation provides that the Company may not, among other things, without the prior written consent or vote of the holders of at least a majority of the then outstanding shares of

Preferred Stock, (a) authorize or issue any capital stock of any subsidiary which is not wholly-owned by the Company, (b) declare or pay dividends on the Company's equity securities or redeem any of the Company's equity securities, (c) incur, guarantee or assume any indebtedness, subject to certain limited exceptions, (d) grant or incur any lien, subject to certain limited exceptions, (e) enter into any transaction for the acquisition of all or substantially of the equity interests or assets of another person, subject to certain limited exceptions (f) make any investments, subject to certain limited exceptions or (g) enter into any transactions with the Company's affiliates, subject to certain limited exceptions.

Registration Rights Agreement

In connection with the Preferred Stock Offering, the Company entered into a Registration Rights Agreement with Sagard (the "Registration Rights Agreement"). Pursuant to the Registration Rights Agreement, Sagard and any transferee or assignee whom Sagard or such transferee or assignee assigns its rights under the Registration Rights Agreement (collectively, the "Investors") is entitled to certain shelf and "piggyback" registration rights with respect to the Conversion Shares, subject to the limitations set forth in the Registration Rights Agreement. Pursuant to the Registration Rights Agreement, the Company will file a registration statement on Form S-3 with the SEC no later than the earlier of (i) ninety (90) days prior to the first anniversary of the closing of the Preferred Stock Offering and (ii) thirty (30) days after the occurrence of an event described in Section 4.2(c) of the Preferred Stock Purchase Agreement (such event, an "Early Filing Trigger"), to register for resale the Conversion Shares that are issuable upon the conversion of the Preferred Shares issued at closing, and any additional shares of Common Stock as may become issuable with respect to such securities as a result of stock splits, stock dividends or similar transactions (the "Registrable Securities"). The Company shall use its reasonable best efforts to have such registration statement declared effective by the SEC no later than the earlier of (1) the first anniversary of the of the closing of the Preferred Stock Offering and (2) sixty (60) days after an Early Filing Trigger. If, despite the Company's use of reasonable best efforts, the Company is not permitted to include all such Registrable Securities in such registration statement, the Company is obligated to file a registration statement covering the portion of Registrable Securities permitted to be registered, and, as soon as practicable thereafter, but in any event not later than fifteen (15) days after the necessity therefor arises, amend such registration statement or file a new additional registration statement, or both, so as to cover at least 100% of the aggregate number of the Registrable Securities required to be registered thereunder as of the trading day immediately preceding the date of the filing of such amendment or new registration statement.

If, at any time prior to the date that Investors have sold all of the Registrable Securities, there is not an effective Registration Statement covering all of the Registrable Securities and the Company has filed, or is preparing to file, with the SEC a registration statement relating to an offering for its own account or the account of others under the Securities Act of any of its equity securities, other than on Form S-4 or Form S-8, then the Company will send to each Investor reasonable prior written notice of such determination and if, within ten (10) days after receipt of such notice, any such Investor shall so request in writing, the Company shall include in such registration statement all or any part of such Registrable Securities such Investor requests to be registered, subject to customary underwriter cutbacks applicable to all holders of registration rights, which customary underwriter cutbacks shall be applied pursuant to the terms of the Registration Rights Agreement..

If the Company fails to comply with specified provisions in the Registration Rights Agreement, including if a registration statement is not filed with the SEC as required by the Registration Rights Agreement (each, a "Registration Default"), then the Company has agreed to pay each Investor liquidated damages, for each 30-day period (or portion thereof) after the date of such failure until it is cured, an amount in cash equal to one-half percent (0.5%) of the product of (i) the aggregate number of Registrable Securities held by such Investor that are not eligible for resale as a result of such Registration Default and (ii) the per share purchase price paid by Sagard for such Registrable Securities, with late payments accruing interest at a rate of eighteen percent (18%) per annum (or such lesser maximum amount that is permitted to be paid by applicable law), compounding on each payment date.

The foregoing summary descriptions of the Certificate of Designation, the Preferred Stock Purchase Agreement and the Registration Rights Agreement do not purport to be complete and are qualified in their entirety by reference to the Certificate of Designation, the Preferred Stock Purchase Agreement and the Registration Rights Agreement, which are attached as Exhibits 3.1, 10.1 and 10.2 hereto, respectively, and incorporated herein by reference.

Common Stock Offering

Concurrently with the consummation of the Preferred Stock Offering, the Company entered into share purchase agreements with certain institutional investors (collectively, the "Common Stock Purchase Agreements"), pursuant to which the Company issued approximately $5.0 million of Common Stock (the "Common Shares") to such investors at a price of $0.17 per share (the "Common Stock Offering"). The Company intends to use the proceeds from the Common Stock Offering for to repay certain aged payables relating to the Company's acquisition of Napo Pharmaceuticals, Inc. ("Napo") in July 2017. The Common Stock Purchase Agreements provide for customary representations, warranties and covenants among the parties. The Company also agreed to file a registration statement on Form S-3 with the SEC no later than 30 days following the date of the Common Stock Purchase Agreements to register for resale the Common Shares.

The offer and sale of the Common Shares in the Common Stock Offering will not be registered under the Securities Act in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act and/or Regulation D promulgated thereunder.

The foregoing summary description of the Common Stock Purchase Agreements does not purport to be complete and is qualified in its entirety by reference to the form of Common Stock Purchase Agreement, which is attached as Exhibit 10.3 hereto and incorporated herein by reference.

Services Agreement

On March 23, 2018, the Company entered into a management services agreement with Sagard Capital Partners Management Corp. ("SCPM"), an affiliate of Sagard, pursuant to which SCPM will provide certain consulting and management advisory services to the Company over a three-year period (the "Initial Term") for an annual fee of $450,000, which fees will be paid in equal installments over the Initial Term beginning in the second year of the Initial Term (the "Services Agreement"). The Services Agreement may be terminated earlier than the initial three-year term (i) upon mutual consent of the parties, (ii) by either party following a breach of the Services Agreement by the other party that remains uncured following 30 days' written notice thereof, (iii) in SCPM's sole discretion with 10 day's prior written notice, or (iv) upon the consummation of a Deemed Liquidation (so long as all accrued and unpaid fees payable thereunder as of such termination have been paid in full) or a Fundamental Change in which all of the Company's shares of Preferred Stock are repurchased by the Company.

The foregoing summary description of the Service Agreement does not purport to be complete and is qualified in its entirety by reference to the Service Agreement, which is attached as Exhibit 10.4 hereto and incorporated herein by reference.

CVP Note Offering

Securities Purchase Agreement

On March 21, 2018, the Company entered into a securities purchase agreement (the "Securities Purchase Agreement") with Chicago Venture Partners, L.P. ("CVP"), pursuant to which the Company issued to CVP a promissory note (the "Note") in the aggregate principal amount of $1,090,340.91 for an aggregate purchase price of $750,000 (the "CVP Note Offering"). The Note carries an original issue discount of $315,340.91, and the initial principal balance also includes $25,000 to cover CVP's transaction expenses. The Company will use the proceeds to fully repay certain prior secured and unsecured indebtedness. The Note bears interest at the rate of 8% per annum and matures on September 21, 2019.

Under the Securities Purchase Agreement, the Company is subject to certain covenants, including the obligations of the Company to: (i) timely file all reports required to be filed under Sections 13 or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and not terminate its status as an issuer required to file reports under the Exchange Act; (ii) maintain listing of the Company's common stock on a securities exchange; (iii) avoid trading in the Company's common stock from being suspended, halted, chilled, frozen or otherwise ceased; (iv) not issue any variable securities (i.e., Company securities that (a) have conversion rights of any kind in which the number of shares that may be issued pursuant to the conversion right varies with the market price of the Company's common stock or (b) are or may become convertible into shares of the Company's common stock with a conversion price that varies with the market price of such stock) that generate gross cash proceeds to the Company of less than the lesser of $1 million and the then-current outstanding balance of the Note without CVP's prior consent; (v) not grant a security interest in its assets without CVP's prior consent; (vi) not issue any shares of common stock to certain institutional investors; (vii) repay the Hercules Loan (as defined below) on or before March 26, 2018; (viii) repay all outstanding amounts owed to certain noteholders within five trading days of the date of issuance of the Note; (ix) not incur any debt other than in the ordinary course of business, and in no event greater than $10,0000, without CVP's prior consent; and (x) other customary covenants and obligations, for which the Company's failure to comply may be subject to certain liquidated damages. The Hercules Loan was repaid in full on March 23, 2018, simultaneously with the closing of the Preferred Stock Offering.

In addition, beginning seven months from the effective date of the Note (the "Effective Date") or at any time after the Effective Date if the Company breaches any of the covenants set forth in the Securities Purchase Agreement, CVP has the right to redeem all or any portion of the outstanding balance of the Note in cash or as otherwise mutually agreed upon between the parties.

Since the Redemption Start Condition (i.e., the Company raised at least $12 million in equity after the issuance date of the Note) was satisfied by April 1, 2018 as a result of the consummation of the Preferred Stock Offering and Common Stock Offering, the Company and CVP agreed to amend the Note and that certain Secured Convertible Promissory Note in the original amount of $2,155,000 issued by Company in favor of CVP on June 29, 2017 (the "June 2017 Note"), that certain Secured Promissory Note in the original amount of $1,587,500 issued by Company in favor of CVP on December 8, 2017 (the "December 2017 Note") and that certain Secured Promissory Note in the original amount of $2,240,909 issued by the Company in favor of CVP on February 26, 2018 (the "February 2018 Note, and together with the June 2017 Note and the December 2017 Note, the "Prior Notes") to limit the aggregate amount that CVP is permitted to redeem on a monthly basis to $500,000, which amount is the maximum aggregate redemption amount for the Prior Notes and the Note collectively. Upon the occurrence of a breach of any of the covenants set forth in Section 4 of the Securities Purchase Agreement, the foregoing amendments shall immediately and automatically terminate and shall be deemed void ab initio and of no further force or effect.

The Note was offered and sold pursuant to an exemption from the registration requirements of the Securities Act pursuant to Section 4(a)(2) of the Securities Act and/or Regulation D promulgated thereunder.

The Securities Purchase Agreement and the other transaction documents and obligations of the Company thereunder are subject in all respects to the terms of that certain subordination agreement and right to purchase debt (the "Subordination Agreement") that the Company entered into with CVP with Hercules Capital, Inc. ("Hercules") on June 29, 2017. The Subordination Agreement was terminated on March 23, 2018 in connection with the Company's repayment in full of the Hercules Loan upon the consummation of the CVP Note Offering.

Security Agreement

The Company also entered into a security agreement (the "Security Agreement") with CVP, pursuant to which CVP will receive a security interest in substantially all of the Company's assets. Pursuant to the terms of the Security Agreement, CVP's security interest becomes effective upon CVP's purchase of the Company's outstanding obligations under that certain loan and security agreement, dated August 18, 2015, between the Company and Hercules Capital, Inc. (as amended, the "Hercules Loan") or upon such time that the Hercules Loan is otherwise repaid in full. Upon the consummation of the CVP Note Offering, the Company repaid the Hercules Loan in full, and CVP's security interest in substantially all of the Company's assets became effective.

The Note, the Securities Purchase Agreement and the Security Agreement are filed as Exhibits 4.1, 10.5 and 10.6, respectively, to this Current Report on Form 8-K, and such documents are incorporated herein by reference. The foregoing is only a brief description of the material terms of the Note, the Securities Purchase Agreement and the Security Agreement, does not purport to be a complete description of the rights and obligations of the parties thereunder and is qualified in its entirety by reference to such exhibits.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information contained above in Item 1.01 is hereby incorporated by reference into this Item 2.03 in its entirety.

Item 3.03 Material Modification of Rights of Security Holders.

In connection with the Preferred Stock Offering, on March 22, 2018, the Company filed the Certificate of Designation with the Secretary of State of the State of Delaware, establishing and designating the rights, powers and preferences of the Preferred Stock. The Certificate of Designation became effective with the Secretary of the State of Delaware upon filing. Additional information required to be disclosed under this Item 3.03 is set forth in Item 1.01 above and is incorporated by reference into this Item 3.03.

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

(d) Election of New Director.

On March 19, 2018, the Board of Directors (the "Board") of the Company, by resolution as contemplated in the Company's bylaws, increased the size of the Board from seven to nine directors. In connection therewith, and to fill one of the two newly created vacancies, the Board appointed Jeffrey C. Johnson, age 46, to serve as a Class III director of the Company until the 2018 annual

meeting of stockholders or until his successor is elected and qualified, which appointment became effective as of the consummation of the Preferred Stock Offering. Mr. Johnson was also appointed by the Board to serve as a member of its Compensation Committee.

Accordingly, the current composition of the Board's committees is as follows:

Audit Committee: Messrs. Bochnowski, Micek and Qiu, Dr. Yang and Dr. Azhir

Compensation Committee: Messrs. Bochnowski, Kamphuis, Micek and Johnson and Dr. Azhir

Nominating Committee: Messrs. Bochnowski, Kamphuis and Micek

Mr. Johnson is a partner at Sagard Holdings, ULC and an investment manager at SCPM. He previously served as portfolio manager and senior analyst at Evercore Asset Management. He also serves on the board of directors of Peak Achievement Athletics and previously served on the board of directors of Vein Clinics of America. Mr. Johnson received his M.B.A. in Finance and Accounting from the Kellogg School of Management in 1999.

Item 5.03 Amendments to the Articles of Incorporation or Bylaws; Change in Fiscal Year.

The information required to be disclosed under this Item 5.03 is set forth in Items 1.01 and 3.03 above and is incorporated by reference into this Item 5.03.

Item 8.01 Other Events.

On March 26, 2017, the Company issued a press release announcing the closing of the Preferred Stock Offering and the Common Stock Offering. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
3.1	Certificate of Designation of Series A Convertible Participating Preferred Stock
4.1	Secured Promissory Note, dated March 21, 2018, by and between Jaguar Health, Inc. and Chicago Venture Partners, L.P.
10.1	Series A Preferred Stock Purchase Agreement, dated March 23, 2018, by and between Jaguar Health, Inc. and Sagard Capital Partners, L.P.
10.2	Registration Rights Agreement, dated March 23, 2018, by and between Jaguar Health, Inc. and Sagard Capital Partners, L.P.
10.3	Form of Common Stock Purchase Agreement, dated March 23, 2018, by and between Jaguar Health, Inc. and the purchasers named therein.
10.4	Management Services Agreement, dated March 23, 2018, by and between Jaguar Health, Inc. and Sagard Capital Partners Management Corp.
10.5	Securities Purchase Agreement, dated March 21, 2018, by and between Jaguar Health, Inc. and Chicago Venture Partners, L.P.
10.6	Security Agreement, dated March 21, 2018, by and between Jaguar Health, Inc. and Chicago Venture Partners, L.P.
99.1	Press Release, dated March 26, 2018.

SIGNATURES

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

JAGUAR HEALTH, INC.

By: /s/ Karen S. Wright

Name: Karen S. Wright
Title: Chief Financial Officer

Date: March 27, 2018

Exhibit 3.1

CERTIFICATE OF DESIGNATION OF

SERIES A CONVERTIBLE PARTICIPATING PREFERRED STOCK OF

JAGUAR HEALTH, INC.

Pursuant to Section 151 of the
General Corporation Law of the State of Delaware

Jaguar Health, Inc., a Delaware corporation (the "**Corporation**"), certifies that pursuant to the authority contained in its Certificate of Incorporation (as amended, the "**Certificate of Incorporation**"), and in accordance with the provisions of Section 151 of the General Corporation Law of the State of Delaware (the "**General Corporation Law**"), the Board of Directors of the Corporation (the "**Board of Directors**"), on March 19, 2018, duly approved and adopted the following resolution, which resolution remains in full force and effect on the date hereof:

RESOLVED, that pursuant to the authority vested in the Board of Directors by the Certificate of Incorporation, the Board of Directors does hereby designate, create, authorize and provide for the issue of a series of the Corporation's preferred stock, par value $0.0001 per share, which shall be designated as Series A Convertible Participating Preferred Stock (the "**Series A Preferred Stock**"), consisting of Five Million Five Hundred Twenty Four Thousand Nine Hundred and Twenty-Six (5,524,926) shares, no shares of which have heretofore been issued by the Corporation, having the following powers, designations, preferences and relative, participating, optional and other special rights, and qualifications, limitations and restrictions thereof:

1. Dividends. Holders of shares of Series A Preferred Stock shall be entitled to participate equally and ratably with the holders of shares of Common Stock in all dividends paid and distributions made to the holders of Common Stock on the shares of Common Stock as if, immediately prior to each record date of the Common Stock, the shares of Series A Preferred Stock then outstanding were converted into shares of Common Stock in accordance with the terms hereof (without regard to any limitations on conversion, including, without limitation, the applicable Maximum Percentage (as defined below)). Dividends payable pursuant to this Section 1 shall be payable on the same date that such dividends are payable to holders of shares of Common Stock unless dividends contemplated by this Section 1 are also paid at the same time in respect of the Series A Preferred Stock on a pro rata basis. Each dividend shall be payable to the holders of record of shares of Series A Preferred Stock as they appear on the stock records of the Corporation at the close of business on the same day as the record date for the payment of dividends to the holders of shares of Common Stock. The Corporation shall not declare or pay any dividends on any Junior Preferred Stock or stock that is pari passu with the Series A Preferred Stock unless the Holders of shares of Series A Preferred Stock then outstanding shall simultaneously receive a dividend on a pro rata basis as if the shares of Series A Preferred Stock had been converted into shares of Common Stock pursuant to Section 4 at the then applicable rate of conversion immediately prior to the record date for determining the stockholders eligible to receive such dividends (without regard to any limitations on conversion, including, without limitation, the applicable Maximum Percentage). Notwithstanding the foregoing, to the extent that a Holder's right to participate in any such dividend or distribution pursuant to this Section 1

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would result in such Holder and its other Attribution Parties exceeding the applicable Maximum Percentage, then such Holder shall not be entitled to participate in such dividend or distribution to such extent (and shall not be entitled to beneficial ownership of such shares of Common Stock as a result of such dividend or distribution (and beneficial ownership) to such extent) and the portion of such dividend or distribution shall be held in abeyance for such Holder until such time or times as its right thereto would not result in such Holder and its other Attribution Parties exceeding the applicable Maximum Percentage, at which time or times such Holder shall be granted such rights (and any rights under this Section 1 on such initial rights or on any subsequent such rights to be held similarly in abeyance) to the same extent as if there had been no such limitation.

2. Liquidation, Dissolution or Winding Up; Certain Mergers, Consolidations and Asset Sales.

2.1 Preferential Payments to Holders of Series A Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event (each, a "**Liquidation Event**"), the holders of shares of Series A Preferred Stock then outstanding shall be entitled to be paid in cash out of the assets of the Corporation, whether from capital or from earnings available for distribution to its stockholders, before any payment shall be made to the holders of Common Stock or shares of any series or class of preferred or other capital stock then outstanding that by its terms is junior to the Series A Preferred Stock in respect of the preferences as to distributions and payments upon such Liquidation Event (the "**Junior Preferred Stock**") by reason of their ownership thereof, an amount per share of Series A Preferred Stock equal to one (1) times the Series A Original Issue Price (as defined below). If upon any such Liquidation Event, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series A Preferred Stock the full amount to which they shall be entitled under this Section 2.1, the holders of shares of Series A Preferred Stock shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares of Series A Preferred Stock were paid in full. "**Series A Original Issue Price**" shall mean $1.665 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, reverse stock split, combination or other similar recapitalization with respect to the Series A Preferred Stock.

2.2 Preferential Payments to Holders of Junior Preferred Stock. In the event of any Liquidation Event, after the payment in full of all preferential amount required to be paid to the holders of shares of Series A Preferred Stock, the holders of Junior Preferred Stock shall be entitled to be paid in cash out of the assets of the Corporation, whether from capital or from earnings available for distribution to its stockholders, before any payment shall be made to the holders of Common Stock by reason of their ownership thereof, such preferential amount as provided in the Certificate of Incorporation. If upon any such Liquidation Event, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Junior Preferred Stock the full amount to which they shall be entitled under this Section 2.2, the holders of shares of Junior Preferred Stock shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which

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would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

2.3 Preferential Payments to Holders of Common Stock. In the event of any Liquidation Event, after the payment in full of all preferential amounts required to be paid to the holders of shares of Series A Preferred Stock and Junior Preferred Stock, the holders of shares of Common Stock then outstanding shall be entitled to be paid in cash out of the assets of the Corporation, whether from capital or from earnings available for distribution to its stockholders, an amount equal to $0.185 per share of Common Stock, subject to appropriate adjustment in the event of any stock dividend, stock split, reverse stock split, combination or other similar recapitalization with respect to the Common Stock (such amount per share of Common Stock being referred to herein as the "**Common Stock Preference Amount**"). If upon any such Liquidation Event, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Common Stock the full amount to which they shall be entitled under this Section 2.3, the holders of shares of Common Stock shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

2.4 Distribution of Remaining Assets. In the event of any Liquidation Event, after the payment in full of all preferential amounts required to be paid to the holders of shares of Series A Preferred Stock, Junior Preferred Stock and Common Stock pursuant to Sections 2.1, 2.2 and 2.3, the remaining assets of the Corporation available for distribution to its stockholders shall be distributed among the holders of the shares of Series A Preferred Stock, other shares of preferred stock that are convertible into Common Stock and shares of Common Stock, pro rata based on the number of shares held by each such holder, treating for this purpose all such securities as if they had been converted to Common Stock pursuant to the terms of the Certificate of Incorporation (including any certificates of designation) (without regard to any limitations on conversion, including, without limitation, the applicable Maximum Percentage) immediately prior to such Liquidation Event. The aggregate amount which a holder of a share of Series A Preferred Stock is entitled to receive under Sections 2.1 and 2.4 is hereinafter referred to as the "**Series A Liquidation Amount**."

2.5 Deemed Liquidation Events.

2.5.1 Definition. Each of the following events shall be considered a "**Deemed Liquidation Event**" unless the holders of at least a majority of the outstanding shares of Series A Preferred Stock elect otherwise by written notice sent to the Corporation at least three (3) Business Days prior to the effective date of any such event:

(a) a merger or consolidation in which

(i) the Corporation is a constituent party or

(ii) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation,

except any such merger or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, at least a majority, by voting power, of the capital stock of (1) the surviving or resulting corporation, or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation; or

(b) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole, or the sale or disposition (whether by merger, consolidation or otherwise) of Napo Pharmaceuticals, Inc. (or any successor in interest) or one or more other subsidiaries of the Corporation if substantially all of the assets of the Corporation and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Corporation.

2.5.2 Effecting a Deemed Liquidation Event.

(a) The Corporation shall not have the power to effect a Deemed Liquidation Event referred to in Section 2.5.1(a)(i) unless the agreement or plan of merger or consolidation for such transaction (the "**Merger Agreement**") provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 2.1, 2.2, 2.3 and 2.4.

(b) In the event of a Deemed Liquidation Event referred to in Section 2.5.1(a)(ii) or 2.5.1(b), if the Corporation does not effect a dissolution of the Corporation under the General Corporation Law within ninety (90) days after such Deemed Liquidation Event, then (i) the Corporation shall send a written notice to each holder of Series A Preferred Stock no later than the ninetieth (90th) day after the Deemed Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) to require the redemption of such shares of Series A Preferred Stock, and (ii) if the holders of at least a majority of the then outstanding shares of Series A Preferred Stock so request in a written instrument delivered to the Corporation not later than one hundred twenty (120) days after such Deemed Liquidation Event, the Corporation shall use the consideration received by the Corporation for such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board of Directors of the Corporation), together with any other assets of the Corporation available for distribution to its stockholders, all to the extent permitted by Delaware law governing distributions to stockholders (the "**Available Proceeds**"), on the one hundred fiftieth (150th) day after such Deemed Liquidation Event, to redeem all outstanding shares of Series A Preferred Stock at a price per share equal to the Series A Liquidation Amount in priority and in preference to any shares of Common Stock or Junior Preferred Stock. Notwithstanding the foregoing, in the event of a redemption pursuant to the preceding sentence, if the Available Proceeds are not sufficient to redeem all outstanding shares of Series A Preferred Stock, the Corporation shall ratably

redeem each holder's shares of Series A Preferred Stock to the fullest extent of such Available Proceeds, and shall redeem the remaining shares as soon as it may lawfully do so under Delaware law governing distributions to stockholders, and no shares of Common Stock or Junior Preferred Stock shall be redeemed until all of the outstanding shares of Series A Preferred Stock are redeemed in full. The provisions of Section 7 shall apply, with such necessary changes in the details thereof as are necessitated by the context, to the redemption of the Series A Preferred Stock pursuant to this Section 2.5.2(b). Prior to the

distribution or redemption provided for in this Section 2.5.2(b), the Corporation shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except to discharge expenses incurred in connection with such Deemed Liquidation Event or in the ordinary course of business.

2.5.3 Amount Deemed Paid or Distributed. The amount deemed paid or distributed to the holders of capital stock of the Corporation upon any Liquidation Event, other disposition or redemption shall be the cash or the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring person, firm or other entity. The value of such property, rights or securities shall be determined in good faith by the Board of Directors of the Corporation.

2.5.4 Allocation of Escrow and Contingent Consideration. In the event of a Deemed Liquidation Event pursuant to Section 2.5.1(a)(i), if any portion of the consideration payable to the stockholders of the Corporation is payable only upon satisfaction of contingencies (the "**Additional Consideration**"), the Merger Agreement shall provide that (a) the portion of such consideration that is not Additional Consideration (such portion, the "**Initial Consideration**") shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 2.1, 2.2, 2.3 and 2.4 as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event; and (b) any Additional Consideration which becomes payable to the stockholders of the Corporation upon satisfaction of such contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 2.1, 2.2, 2.3 and 2.4 after taking into account the previous payment of the Initial Consideration as part of the same transaction. For the purposes of this Section 2.5.4, consideration placed into escrow or retained as holdback to be available for satisfaction of indemnification or similar obligations in connection with such Deemed Liquidation Event shall be deemed to be Additional Consideration.

3. Voting.

3.1 General. On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting) except as otherwise provided herein, each holder of outstanding shares of Series A Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Voting Common Stock into which the shares of Series A Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter (calculated assuming the Series A Conversion Price for this purpose only was $0.1935 (subject to appropriate adjustment in the event of any stock dividend, stock split, reverse stock split, combination or other similar recapitalization)). Notwithstanding the foregoing, at no time prior to the time that the Corporation obtains Stockholder Approval may the number of votes to which all holders of outstanding shares of

Series A Preferred Stock are entitled to cast together with the Voting Common Stock equal or exceed 19.99% of the total number of votes to which all stockholders of the Corporation are entitled (including the holders of shares of Series A Preferred Stock). Except as provided by law or by the other provisions of the Certificate of Incorporation, holders of Series A Preferred Stock shall vote together with the holders of Voting Common Stock as a single class and irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

3.2 Election of Directors.

3.2.1 Except as set forth in Section 3.2.9 below, the holders of record of the shares of Series A Preferred Stock, exclusively and as a separate class, shall be entitled to elect two (2) directors of the Corporation (collectively, the "**Series A Directors**"). So long as the Board of Directors is divided into classes, the Series A Directors shall be Class III Directors. The holders of record of the shares of Common Stock and of any other class or series of voting stock of the Corporation (excluding the Series A Preferred Stock, except as set forth in the last sentence of Section 3.2.9), exclusively and as a separate class, shall be entitled to elect the balance of the Directors of the Corporation authorized from time to time. As a condition to each designation of a Series A Director, each Person which exercises the right, either individually or as part of a group, to designate or participate in the designation of a Series A Director to the Board of Directors as specified above shall be required to represent and warrant to the Corporation that, to such Person's knowledge, none of the "bad actor" disqualifying events described in Rule 506(d)(1)(i)-(viii) promulgated under the Securities Act (each, a "**Disqualification Event**"), is applicable to such Person's or such group's initial designee named above except, if applicable, for a Disqualification Event as to which Rule 506(d)(2)(ii) or (iii) or (d)(3) is applicable. Any director designee to whom any Disqualification Event is applicable, except for a Disqualification Event as to which Rule 506(d)(2)(ii) or (iii) or (d)(3) is applicable, is hereinafter referred to as a "**Disqualified Designee**". As a condition to each designation of a Series A Director, each Person which exercises the right to designate or participate in the designation of a director as specified above shall be required to covenant and agree (A) not to designate or participate in the designation of any director designee who, to such Person's knowledge, is a Disqualified Designee and (B) that in the event such Person becomes aware that any individual previously designated by any such Person is or has become a Disqualified Designee, such Person shall as promptly as practicable take such actions as are necessary to remove such Disqualified Designee from the Board of Directors and designate a replacement designee who is not a Disqualified Designee.

3.2.2 Any Series A Director elected as provided in Section 3.2.1 may be removed without cause by, and only by, the affirmative vote of the holders of record of the shares of Series A Preferred Stock, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of such stockholders.

3.2.3 If the holders of shares of Series A Preferred Stock, fail to elect a sufficient number of directors to fill all directorships for which they are entitled to elect directors, voting exclusively and as a separate class, pursuant to Section 3.2.1, then any directorship not so filled shall remain vacant until such time as the holders of the Series A Preferred Stock elect a person to fill such directorship by vote or written consent in lieu of a meeting; and no such directorship may be filled by stockholders of the Corporation other than by the affirmative vote

of the holders of record of the shares of Series A Preferred Stock, voting exclusively and as a separate class.

3.2.4 At any meeting held for the purpose of electing a Series A Director, the presence in person or by proxy of the holders of at least a majority of the outstanding shares of Series A Preferred Stock shall constitute a quorum for the purpose of electing such director. Except as otherwise provided in this Section 3.2, a vacancy in any directorship filled by the holders of record of the shares of Series A Preferred Stock shall be filled only by vote or written consent in lieu of a meeting of such holders or by any remaining director or directors elected by the holders of Series A Preferred Stock pursuant to this Section 3.2.

3.2.5 For so long as the holders of Series A Preferred Stock have the right to designate one or more Series A Directors pursuant to this Section 3.2, if any person (excluding any resident or other local director required to be appointed to the board of directors of any Subsidiary pursuant to applicable Law) not employed by the Corporation and/or its Subsidiaries is or becomes a member of the board of directors of any of the Corporation's Subsidiaries (whether a current Subsidiary or hereafter acquired), the Series A Director(s) shall also have the right to become a member of any such Subsidiary's board of directors and the Corporation shall cause, and shall cause each such Subsidiary to cause, the Series A Directors to be elected as a director of each such Subsidiary.

3.2.6 One Series A Director (which need not be the same) shall be entitled to serve on each committee of the Board of Directors (except as prohibited by applicable Law or any rule or regulation promulgated by the Nasdaq Stock Market), including the committee which will be formed to approve any amendment to any share purchase, security holders, voting, stock holders, or investors rights agreement with any holder of more than 5% of the shares of Common Stock (calculated on fully diluted, as converted basis).

3.2.7 Each Series A Director shall be entitled to at least the same compensation, if any, the same indemnification and the same director and officer insurance in connection with his or her role as a director as the other members of the Board of Directors, and each Series A Director shall be entitled to reimbursement for documented, reasonable out-of-pocket expenses incurred in attending meetings of the Board of Directors or any committees thereof, to the same extent as the other members of the Board of Directors. The Corporation agrees that such indemnification arrangements will be the primary source of indemnification and advancement of expenses in connection with the matters covered thereby and payment thereon will be made before, offset and reduce any other insurance, indemnity or expense advancement to which such Series A Director may be entitled or which is actually paid in connection with such matters, including as an employee of any holder of Series A Preferred Stock or any of its Affiliates. The covenants in this Section 3.2.7 shall survive any termination of obligations under this Section 3.2.

3.2.8 The Corporation shall notify each Series A Director of all regular and special meetings of the Board of Directors and shall notify such Series A Director of all regular and special meetings of any committee of the Board of Directors of which the Series A Director is a member. The Corporation shall provide each Series A Director with copies of all

notices, minutes, consents and other materials provided to all other members of the Board of Directors concurrently with the provision of such materials to the other members of the Board of Directors. The Series A Directors will be permitted to share information received from the Corporation with officers, directors, members, employees and representatives of Sagard and its Affiliates (which, for the avoidance of doubt, shall exclude Sagard's portfolio companies) who have entered into customary non-disclosure agreements and Sagard and such Affiliates may use such information for internal purposes; provided, that Sagard maintains reasonable procedures designed to prevent such information from being used in connection with the purchase or sale of securities of the Corporation in violation of applicable securities laws and that such information is not used to compete with the Corporation; provided, further, that each Series A Director, Sagard, its Affiliates and each of their respective officers, directors, members, employees and representatives shall keep all such information confidential and not disclose any such information in any manner whatsoever except as permitted under the confidentiality provisions to which they have agreed in writing.

3.2.9 Notwithstanding the foregoing, the number of Series A Directors shall be reduced to the extent necessary to comply with the Corporation's obligations, if any, under the rules or regulations of the Nasdaq Stock Market (including NASDAQ Stock Market Rule 5640). The determination of the applicability of such limitation contained shall be made by the Corporation in accordance with the rules and regulations of the Nasdaq Stock Market. In addition, the holders of shares of Series A Preferred Stock shall cease to have the right to elect any Series A Directors and Section 3.2.1 shall cease to have any effect if at any time the holders of all shares of Series A Preferred Stock then outstanding are entitled to vote in the aggregate less than five percent (5%) of all of the votes entitled to be cast by holders of all voting securities of the Corporation at any meeting of the stockholders of the Corporation calculated in accordance with Section 3.1. If the holders of Series A Preferred Stock are not entitled to elect any Series A Directors pursuant to the provisions of this Section 3.2.9, then at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting) to elect or remove a Director(s) each holder of outstanding shares of Series A Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Voting Common Stock into which the shares of Series A Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter (calculated assuming the Series A Conversion Price, for this purpose only and for no other purpose whatsoever, was $0.1935 (subject to appropriate adjustment in the event of any stock dividend, stock split, reverse stock split, combination or other similar recapitalization)).

3.2.10 The Corporation renounces, to the fullest extent permitted by law, any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An "**Excluded Opportunity**" is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of, (i) any Series A Director, or (ii) Sagard or its Affiliates, or any partner, member, director, stockholder, employee or agent of Sagard or its Affiliates, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, "**Covered Persons**"), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person's capacity as a director of the Corporation.

3.3 Series A Preferred Stock Protective Provisions.

3.3.1 So long as any shares of Series A Preferred Stock are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or the Certificate of Incorporation) the prior written consent or affirmative written vote of the holders of at least a majority of the then outstanding shares of Series A Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void *ab initio*, and of no force or effect:

(a) amend, alter, repeal or waive any provision of this Certificate of Designation;

(b) amend, alter or repeal any provision of the Certificate of Incorporation or Bylaws of the Corporation or add any provision to the Certificate of Incorporation or Bylaws of the Corporation, or file any articles of amendment, certificate of designations, preferences, limitations and relative rights of any series of preferred stock, if such action in a manner would adversely affect the powers, privileges, preferences or rights of the Series A Preferred Stock;

(c) create, or authorize the creation of, or issue (including by reclassification, alteration or amendment of any existing security of the Corporation) or obligate itself to issue shares of, or issue any other security convertible into or exercisable for, any additional class or series of capital stock having rights, preferences or privileges senior to or pari passu with the Series A Preferred Stock (whether in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends, rights of redemption or otherwise); or

(d) increase or decrease (other than by conversion) the authorized number of shares of Series A Preferred Stock.

3.3.2 Other Approval. Furthermore, so long as Sagard and its Affiliates own thirty-five percent (35%) or more of the shares of Series A Preferred Stock that were originally issued pursuant to the Purchase Agreement, the Corporation shall not, and shall not permit any Subsidiary to, directly or indirectly, effect any of the following without the prior written consent or affirmative written vote the holders of at least a majority of the then outstanding shares of Series A Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void *ab initio*, and of no force or effect:

(a) any offer, sale, authorization, designation or issuance of any capital stock of any Subsidiary (other than an issuance to the Corporation or a wholly-owned Subsidiary of the Corporation);

(b) (1) the declaration or payment of any dividends or payments on equity securities of the Corporation or (2) any purchase or redemption of any equity securities of the Corporation or any warrants, options or other rights in respect thereof or any set aside of funds for any of the foregoing, other than with respect to shares of Series A Preferred Stock in accordance with the terms of this Certificate of Designation;

(c) the incurrence, guarantee or assumption of any Indebtedness (including the refinancing of existing Indebtedness), other than Permitted Indebtedness;

(d) the grant or incurrence of any Lien upon or in any property or assets (including accounts and contract rights) owned by the Corporation or any of its Subsidiaries, other than Permitted Liens;

(e) the grant or incurrence of any Lien on, any of its copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, any patents, patent applications and like protections, including improvements, divisions, continuations, renewals, reissues, extensions, and continuations-in-part of the same, trademarks, service marks and, to the extent permitted under applicable law, any applications therefor, whether registered or not, and the goodwill of the business of the Corporation and its Subsidiaries connected with and symbolized thereby, know-how, operating manuals, trade secret rights, rights to unpatented inventions, and any claims for damage by way of any past, present, or future infringement of any of the foregoing, other than Permitted Liens;

(f) (i) any transaction or series of related transactions for the acquisition of all or substantially all of the outstanding equity interests or all or substantially all of the assets of another Person, whether effected as a purchase, merger, consolidation or otherwise (other than Permitted Acquisitions), or (ii) any merger or consolidation with another Person in which the stockholders of the Corporation (or any applicable Subsidiary) immediately prior to the merger or consolidation own a majority of the voting capital stock of the Corporation or such Subsidiary immediately following such merger or consolidation (assuming conversion into voting capital stock of all securities which are then convertible into voting capital stock), other than, in each case, in connection with a Permitted Acquisition;

(g) any Investments other than Permitted Investments; and

(h) any transactions with Affiliates other than (1) between the Corporation and its Subsidiaries and (2) Permitted Affiliate Transactions.

4. Optional Conversion. The holders of the Series A Preferred Stock, subject to Section 12, shall have conversion rights as follows (the "**Conversion Rights**"):

4.1 Right to Convert.

4.1.1 Conversion Ratio. Each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and

non-assessable shares of Voting Common Stock as is determined by dividing the Series A Original Issue Price by the Series A Conversion Price (as defined below) in effect at the time of conversion. The "**Series A Conversion Price**" shall initially be equal to $0.185. Such initial Series A Conversion Price, and the rate at which shares of Series A Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below.

4.1.2 Termination of Conversion Rights. In the event of a notice of redemption of any shares of Series A Preferred Stock pursuant to Sections 6, 7 and/or 9, the Conversion Rights of the shares of Series A Preferred Stock designated for redemption shall terminate at the close of business on the last full day preceding the date fixed for redemption, unless the redemption price is not fully paid on such redemption date, in which case the Conversion Rights for such shares shall continue until such price is paid in full. In the event of a Liquidation Event, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of Series A Preferred Stock.

4.2 Fractional Shares. No fractional shares of Voting Common Stock shall be issued upon conversion of the Series A Preferred Stock, but rather the number of shares of Voting Common Stock to be issued shall be rounded up to the nearest whole.

4.3 Mechanics of Conversion. The conversion of shares of Series A Preferred Stock shall be conducted in the following manner:

4.3.1 Holder's Delivery Requirements. To convert shares of Series A Preferred Stock into shares of Voting Common Stock on any date (a "**Conversion Date**"), a Holder shall (A) transmit by electronic mail (or otherwise personally deliver), for receipt on or prior to 4:59 p.m., New York City Time, on such date, a copy of a properly completed notice of conversion executed by the registered Holder of the shares of Series A Preferred Stock subject to such conversion in the form attached hereto as Exhibit I (the "**Conversion Notice**") to the Corporation and (B) if required by Section 4.3.5(d), but without delaying the Corporation's requirement to deliver shares of Voting Common Stock on the applicable Share Delivery Date (as defined below), surrender to a common carrier for delivery to the Corporation as soon as practicable following such date the original certificates representing the shares of Series A Preferred Stock being converted (or compliance with the procedures set forth in Section 14.11) (the "**Series A Preferred Stock Certificates**").

4.3.2 Corporation's Response. Upon receipt by the Corporation of copy of a Conversion Notice, the Corporation shall (I) as soon as practicable, but in any event within one (1) Trading Day, send, via electronic mail, a confirmation of receipt of such Conversion Notice to such Holder and the Transfer Agent, which confirmation shall constitute an instruction to the Transfer Agent to process such Conversion Notice in accordance with the terms herein and (II) on or before the earlier of (A) the number of Trading Days comprising the Standard Settlement Period and (B) the third (3rd) Trading Day, in each case, following the date of receipt by the Corporation of such Conversion Notice (a "**Share Delivery Date**"), (1) provided the Transfer Agent is participating in the Depository Trust Corporation ("**DTC**") Fast Automated Securities Transfer Program, credit such aggregate number of shares of Voting Common Stock to which such Holder shall be entitled to such Holder's or its designee's balance account with

DTC through its Deposit/Withdrawal at Custodian ("**DWAC**") system, or (2) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, issue and deliver to the address as specified in the Conversion Notice, a certificate, registered in the name of such Holder or its designee, for the number of shares of Voting Common Stock to which such Holder shall be entitled. If the number of shares of Series A Preferred Stock represented by the Series A Preferred Stock Certificate(s) submitted for conversion, as may be required pursuant to Section 4.3.5(d), is greater than the number of shares of Series A Preferred Stock being converted, then the Corporation shall, as soon as practicable and in no event later than ten (10) Business Days after receipt of the Series A Preferred Stock Certificate(s) (the "**Preferred Stock Delivery Date**") and at its own expense, issue and deliver to such Holder a new Series A Preferred Stock Certificate representing the number of shares of Series A Preferred Stock not converted.

4.3.3 Dispute Resolution. In the case of a dispute as to the determination of the VWAP or the arithmetic calculation of the rate of conversion of the Series A Preferred Stock, the Series A Conversion Price, the Corporation Redemption Price or the Holder Redemption Price, the Corporation shall instruct the Transfer Agent to issue to such Holder the number of shares of Voting Common Stock that is not disputed and the Corporation shall submit the disputed determinations or arithmetic calculations via electronic mail within three (3) Business Days of receipt, or deemed receipt, of the Conversion Notice, Corporation Redemption Notice, Holder Redemption Notice or the Fundamental Change Redemption Notice or other event giving rise to such dispute, as the case may be, to the applicable Holder. If such Holder and the Corporation are unable to agree upon such determination or calculation within two (2) Business Days of such disputed determination or arithmetic calculation being submitted to such Holder, then the Corporation shall, within two (2) Business Days, submit via electronic mail (a) the disputed determination of the VWAP to an independent, reputable investment bank selected by the Corporation and approved by such Holder (such approval not to be unreasonably conditioned, withheld or delayed), or (b) the disputed arithmetic calculation of the rate of conversion of the Series A Preferred Stock, the Series A Conversion Price, the Corporation Redemption Price or the Holder Redemption Price to an independent, outside accountant, selected by the Corporation and approved by such Holder (such approval not to be unreasonably conditioned, withheld or delayed). The Corporation shall cause the investment bank or the accountant, as the case may be, to perform the determinations or calculations and notify the Corporation and the applicable Holder of the results no later than five (5) Business Days from the time it receives the disputed determinations or calculations. Such investment bank's or accountant's determination or calculation, as the case may be, shall be binding upon all parties absent demonstrable error. The expenses of such investment bank or accountant shall be paid by the party whose position was furthest from the amount finally determined.

4.3.4 Record Holder. The Person or Persons entitled to receive the shares of Voting Common Stock issuable upon a conversion of shares of Series A Preferred Stock shall be treated for all purposes as the record holder or holders of such shares of Voting Common Stock on the applicable Conversion Date, irrespective of the date such shares of Voting Common Stock are credited to such Holder's account with DTC or the date of delivery of the certificates evidencing such shares of Voting Common Stock, as the case may be.

4.3.5 Corporation's Failure to Timely Convert.

(a) Cash Damages. If on or prior to the applicable Share Delivery Date the Corporation shall fail (other than a failure caused by incorrect or incomplete information provided by the Holder) to credit a Holder's balance account with DTC (or issue and deliver a certificate to such Holder if applicable) for the number of shares of Voting Common Stock to which such Holder is entitled upon such Holder's conversion of shares of Series A Preferred Stock (a "**Conversion Failure**"), then in addition to all other available remedies which such holder may pursue hereunder and under the other Transaction Documents, including any indemnification provisions therein, the Corporation shall pay in cash to such Holder on the day after the Share Delivery Date, and on each thirtieth (30th) day thereafter (prorated for periods totaling less than thirty (30) days) during which such Conversion Failure remains uncured, an amount equal to one half percent (0.5%) of the product of (I) the number of shares of Voting Common Stock not issued to such Holder on or prior to the applicable Share Delivery Date and to which such Holder is entitled as set forth in the applicable Conversion Notice and (II) the arithmetic average of the VWAP of the Voting Common Stock on each Trading Day during the period beginning on the applicable Conversion Date and ending on the applicable Share Delivery Date. In addition to the foregoing, if a Conversion Failure occurs or the Corporation fails to comply with its obligation to deliver shares of Voting Common Stock as contemplated pursuant to clause (ii) below, and if on or after such Trading Day (but prior to the Corporation remedying any such failure) such Holder purchases (in an open market transaction or otherwise) shares of Voting Common Stock relating to the applicable Conversion Failure (a "**Buy-In**"), then the Corporation shall, within three (3) Trading Days after such Holder's request and in such Holder's discretion, pay cash to such Holder in an amount equal to such Holder's total purchase price (including brokerage commissions and out-of-pocket expenses, if any) for the shares of Voting Common Stock so purchased (such number of shares not to exceed the number of shares of Voting Common Stock failed to be

delivered or credited, as applicable) (the "**Buy-In Price**"), at which point the Corporation's obligation to deliver such certificate (and to issue such Voting Common Stock) shall terminate. For the avoidance of doubt, to the extent that the Corporation makes a payment contemplated by the foregoing sentence, the applicable portion of the shares of Series A Preferred Stock to which the Conversion Failure applied shall no longer be outstanding. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Corporation's failure to timely deliver certificates representing shares of Voting Common Stock upon conversion of the shares of Series A Preferred Stock as required pursuant to the terms hereof.

(b) Void Conversion Notice. If for any reason a Holder has not received all of the shares of Voting Common Stock to which such Holder is entitled on the applicable Share Delivery Date with respect to a conversion of shares of Series A Preferred Stock, then such Holder, upon written notice to the Corporation, with a copy to the Transfer Agent, may void its Conversion Notice with respect to, and retain or have returned, as the case may be, any shares of Series A Preferred Stock that have not been converted pursuant to such Holder's Conversion Notice; provided that the voiding of a Holder's Conversion Notice shall not affect the Corporation's obligations to make any payments which have accrued prior to the date of such notice pursuant to Section 4.3.5(a) or otherwise.

(c) Pro Rata Conversion; Disputes. Conversion Notices with an earlier Conversion Date shall have priority over Conversion Notices with a later Conversion

Date. In the event the Corporation receives a Conversion Notice from more than one Holder for the same Conversion Date and the Corporation can convert some, but not all, of such shares of Series A Preferred Stock, the Corporation shall convert from each Holder electing to have shares of Series A Preferred Stock converted at such time a pro rata amount of such Holder's shares of Series A Preferred Stock submitted for conversion based on the number of shares of Series A Preferred Stock submitted for conversion on such date by such Holder relative to the number of shares of Series A Preferred Stock submitted for conversion on such date. In the event of a dispute as to the number of shares of Voting Common Stock issuable to a Holder in connection with a conversion of shares of Series A Preferred Stock, the Corporation shall issue to such Holder the number of shares of Voting Common Stock not in dispute and resolve such dispute in accordance with Section 4.3.3.

(d) Book-Entry. Notwithstanding anything to the contrary set forth herein, upon conversion of shares of Series A Preferred Stock in accordance with the terms hereof, a Holder thereof shall not be required to physically surrender the certificate representing the shares of Series A Preferred Stock to the Corporation unless (A) the full or remaining number of shares of Series A Preferred Stock represented by the certificate are being converted, in which case such Holder shall deliver such stock certificate to the Corporation as soon as practicable following such conversion or (B) a Holder has provided the Corporation with prior written notice (which notice may be included in a Conversion Notice) requesting reissuance of shares of Series A Preferred Stock upon physical surrender of any shares of Series A Preferred Stock. Each Holder and the Corporation shall maintain records showing the number of shares of Series A Preferred Stock so converted and the dates of such conversions or shall use such other method, reasonably satisfactory to the Holders and the Corporation, so as not to require physical surrender of the certificate representing the shares of Series A Preferred Stock upon each such conversion. In the event of any dispute or discrepancy, such records of the Corporation establishing the number of shares of Series A Preferred Stock to which the record holder is entitled shall be controlling and determinative in the absence of manifest error. Notwithstanding the foregoing, if shares of Series A Preferred Stock represented by a certificate are converted as aforesaid, a Holder may not transfer the certificate representing the shares of Series A Preferred Stock unless such Holder first physically surrenders the certificate representing the shares of Series A Preferred Stock to the Corporation, whereupon the Corporation will forthwith issue and deliver upon the order of such Holder a new certificate of like tenor, registered as such Holder may request, representing in the aggregate the remaining number of shares of Series A Preferred Stock represented by such certificate. A Holder and any assignee, by acceptance of a certificate, acknowledge and agree that, by reason of the provisions of this paragraph, following conversion of any shares of Series A Preferred Stock, the number of shares of Series A Preferred Stock represented by such certificate may be less than the number of shares of Series A Preferred Stock stated on the face thereof. Each certificate for shares of Series A Preferred Stock shall bear the following legend:

> ANY TRANSFEREE OF THIS CERTIFICATE SHOULD CAREFULLY REVIEW THE TERMS OF THE CORPORATION'S CERTIFICATE OF DESIGNATION RELATING TO THE SHARES OF SERIES A PREFERRED STOCK REPRESENTED BY THIS CERTIFICATE, INCLUDING SECTION 4.3.5(d) THEREOF. THE NUMBER OF SHARES OF SERIES A PREFERRED STOCK REPRESENTED BY THIS CERTIFICATE MAY BE LESS (INCLUDING ZERO) THAN THE NUMBER

> OF SHARES OF SERIES A PREFERRED STOCK STATED ON THE FACE HEREOF PURSUANT TO SECTION 4.3.5(d) OF THE CERTIFICATE OF DESIGNATION RELATING TO THE SHARES OF SERIES A PREFERRED STOCK REPRESENTED BY THIS CERTIFICATE.

A Holder of Series A Preferred Stock shall indemnify and hold the Corporation harmless from all costs, expenses, losses and damages incurred or suffered by the Corporation as a result of the failure of such Holder to deliver certificates representing shares of Series A Preferred Stock that have been redeemed or converted into Voting Common Stock.

4.3.6 Reservation of Shares. The Corporation shall at all times when the Series A Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued capital stock, for the purpose of effecting the conversion of the Series A Preferred Stock, such number of its duly authorized shares of Voting Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Series A Preferred Stock; and if at any time the number of authorized but unissued shares of Voting Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Voting Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to the Certificate of Incorporation. Before taking any action which would cause an adjustment reducing the Series A Conversion Price below the then par value of the shares of Voting Common Stock issuable upon conversion of the Series A Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and non-assessable shares of Voting Common Stock at such adjusted Series A Conversion Price.

4.3.7 Effect of Conversion. All shares of Series A Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares shall immediately cease and terminate at the Conversion Time, except only the right of the holders thereof to receive shares of Voting Common Stock in exchange therefor and to receive payment of any declared but unpaid dividends thereon. Any shares of Series A Preferred Stock so converted shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Series A Preferred Stock accordingly.

4.4 Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the date on which the first shares of Series A Preferred Stock was issued (the "**Series A Original Issue Date**") effect a subdivision of the outstanding Common Stock, the Series A Conversion Price in effect immediately before that subdivision shall be proportionately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase in the aggregate number of shares of Voting Common Stock outstanding. If the Corporation shall at any time or from time to time after the Series A Original Issue Date combine the outstanding shares of Voting Common Stock, the Series A Conversion Price in effect immediately before the

combination shall be proportionately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in the aggregate number of shares of Common Stock outstanding. Any adjustment under this section shall become effective at the close of business on the date the subdivision or combination becomes effective.

4.5 Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time or from time to time after the Series A Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable on the Common Stock in additional shares of Common Stock, then and in each such event the Series A Conversion Price in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Series A Conversion Price then in effect by a fraction:

(1) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(2) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution.

Notwithstanding the foregoing (a) if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series A Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Series A Conversion Price shall be adjusted pursuant to this subsection as of the time of actual payment of such dividends or distributions; and (b) that no such adjustment shall be made if the holders of Series A Preferred Stock simultaneously receive a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have received if all outstanding shares of Series A Preferred Stock had been converted into Common Stock on the date of such event.

4.6 Adjustment for Merger or Reorganization, etc. Subject to the provisions of Section 2.5, if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock (but not the Series A Preferred Stock) is converted into or exchanged for securities, cash or other property (other than a transaction covered by Section 4.4), then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of Series A Preferred Stock shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of Series A Preferred Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors of the Corporation) shall be made in the application of the provisions in this Section

4 with respect to the rights and interests thereafter of the holders of the Series A Preferred Stock, to the end that the provisions set forth in this Section 4 (including provisions with respect to changes in and other adjustments of the Series A Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Series A Preferred Stock. For the avoidance of doubt, nothing in this Section 4.6 shall be construed as preventing the holders of Series A Preferred Stock from seeking any appraisal rights to which they are otherwise entitled under the General Corporation Law in connection with a merger triggering an adjustment hereunder, nor shall this Section 4.6 be deemed conclusive evidence of the fair value of the shares of Series A Preferred Stock in any such appraisal proceeding.

4.7 [Reserved.]

4.8 Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Series A Conversion Price pursuant to this Section 4, the Corporation at its expense shall, as promptly as reasonably practicable but in any event not later than five (5) Business Days thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series A Preferred Stock a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which the Series A Preferred Stock is convertible) and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, as promptly as reasonably practicable after the written request at any time of any holder of Series A Preferred Stock (but in any event not later than five (5) Business Days thereafter), furnish or cause to be furnished to such holder a certificate setting forth (i) the Series A Conversion Price then in effect, and (ii) the number of shares of Voting Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of Series A Preferred Stock.

4.9 Notice of Record Date. In the event:

(a) the Corporation shall take a record of the holders of its Voting Common Stock (or other capital stock or securities at the time issuable upon conversion of the Series A Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of capital stock of any class or any other securities, or to receive any other security; or

(b) of any capital reorganization of the Corporation, any reclassification of the Common Stock of the Corporation, any Deemed Liquidation Event or obtaining knowledge of a Fundamental Change; or

(c) of the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation,

then, and in each such case, the Corporation will send or cause to be sent to the holders of the Series A Preferred Stock a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation,

merger, transfer, dissolution, liquidation or winding-up is proposed to take place, and the time, if any is to be fixed, as of which the holders of record of Voting Common Stock (or such other capital stock or securities at the time issuable upon the conversion of the Series A Preferred Stock) shall be entitled to exchange their shares of Voting Common Stock (or such other capital stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up, and the amount per share and character of such exchange applicable to the Series A Preferred Stock and the Voting Common Stock. Such notice shall be sent at least ten (10) days prior to the record date or effective date for the event specified in such notice.

4.10 Limitation on Conversions. Notwithstanding anything to the contrary contained in Section 4 or 5 of this Certificate of Designation, at any time prior to the time the Corporation obtains Stockholder Approval, the Corporation shall not effect the conversion of any portion of shares of Series A Preferred Stock, and no Holder shall have the right to convert any portion of shares of Series A Preferred Stock pursuant to the terms and conditions of this Certificate of Designation and any such conversion shall be null and void and treated as if never made, to the extent that after giving effect to such conversion, such Holder together with the other Attribution Parties collectively would beneficially own in excess of 19.99% (the "**Maximum Percentage**") of the number of shares of Common Stock outstanding immediately after giving effect to such conversion. For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by a Holder and its other Attribution Parties shall include the number of shares of Common Stock held by such Holder and all of its other Attribution Parties plus the number of shares of Voting Common Stock issuable upon conversion of the shares of Series A Preferred Stock with respect to which the determination of such sentence is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (A) conversion of the remaining, nonconverted shares of Series A Preferred Stock beneficially owned by such Holder or any of its other Attribution Parties and (B) exercise or conversion of the unexercised or unconverted portion of any other securities of the Corporation (including, without limitation, any convertible notes or convertible preferred stock or warrants) beneficially owned by such Holder or any of its other Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 4.10. For purposes of this Section 4.10, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act. For purposes of determining the number of outstanding shares of Voting Common Stock a Holder may acquire upon the conversion of shares of Series A Preferred Stock without exceeding the applicable Maximum Percentage, such Holder may rely on the number of outstanding shares of Voting Common Stock as reflected in (x) the Corporation's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the SEC, as the case may be, (y) a more recent public announcement by the Corporation or (z) any other written notice by the Corporation or the Transfer Agent setting forth the number of shares of Common Stock outstanding (the "**Reported Outstanding Share Number**"). If the Corporation receives a Conversion Notice from a Holder at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding Share Number, the Corporation shall (i) notify such Holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such Conversion Notice would otherwise cause such Holder's beneficial ownership, as determined pursuant to this Section 4.10, to exceed the applicable Maximum Percentage, such Holder must notify the Corporation of a reduced number of shares of Voting

Common Stock to be purchased pursuant to such Conversion Notice. For any reason at any time, upon the written or oral request of any Holder, the Corporation shall within three (3) Trading Days confirm orally and in writing or by electronic mail to such Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Voting Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Corporation, including the shares of Series A Preferred Stock, by such Holder and any of its other Attribution Party since the date as of which the Reported Outstanding Share Number was reported. In the event that the issuance of shares of Voting Common Stock to a Holder upon exercise of such Holder's shares of Series A Preferred Stock results in such Holder and its other Attribution Parties being deemed to beneficially own, in the aggregate, more than the applicable Maximum Percentage of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the Exchange Act), the number of shares so issued by which such Holder's and its other Attribution Parties' aggregate beneficial ownership exceeds the applicable Maximum Percentage (the "**Excess Shares**") shall be deemed null and void and shall be cancelled *ab initio*, and such Holder shall not have the power to vote or to transfer the Excess Shares. For purposes of clarity, the shares of Common Stock underlying the shares of Series A Preferred Stock in excess of the Maximum Percentage shall not be deemed to be beneficially owned by a Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the Exchange Act. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 4.10 to the extent necessary to correct this paragraph or any portion of this paragraph which may be defective or inconsistent with the intended beneficial ownership limitation contained in this Section 4.10 or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be waived and shall apply to a successor holder of shares of Series A Preferred Stock.

5. Mandatory Conversion.

5.1 Election by Majority of Series A Preferred.

5.1.1 Upon the date and time, or the occurrence of an event, specified by vote or written consent of the holders of at least a majority of the then outstanding shares of Series A Preferred Stock (the time of such closing or the date and time specified or the time of the event specified in such vote or written consent is referred to herein as the "**Mandatory Conversion Time**"), then all outstanding shares of Series A Preferred Stock shall

automatically be converted into shares of Voting Common Stock, at the applicable ratio described in Section 4.1.1 based on the then effective conversion rate as calculated pursuant to Section 4. All holders of record of shares of Series A Preferred Stock shall be sent written notice of the Mandatory Conversion Time and the place designated for mandatory conversion of all such shares of Series A Preferred Stock pursuant to this Section 5. Such notice need not be sent in advance of the occurrence of the Mandatory Conversion Time.

5.1.2 The Corporation shall deliver within not more than two (2) Trading Days following the Mandatory Conversion Time a written notice thereof by electronic mail to all Holders and the Transfer Agent (a "**Mandatory Conversion Notice**"). The Mandatory Conversion Notice shall be irrevocable and shall (i) state (a) the Trading Day of the Mandatory

Conversion Time and (b) the number of shares of Voting Common Stock to be issued to such Holder.

5.2 Mandatory Conversion upon Failure to Accept Redemption pursuant to Section 6. If any holder of shares of Series A Preferred Stock fails to deliver to the Corporation a Redemption Acceptance Notice (as defined below) by the Corporation Redemption Date (as defined below), then all outstanding shares of Series A Preferred Stock held by such holder automatically shall be converted into shares of Voting Common Stock, at the applicable ratio described in Section 4.1.1 based on the then effective conversion rate as calculated pursuant to Section 4. Such mandatory conversion shall occur effective as of the Corporation Redemption Date.

5.3 Mechanics of Mandatory Conversion. The provisions of Sections 4.2, 4.3 (other than clause (A) of Section 4.3.1) and 4.8 shall apply to any mandatory conversion pursuant to this Section 5.

6. Optional Redemption.

6.1 General. At any time following the first anniversary of Series A Original Issue Date, if the Call Conditions (as defined below) are satisfied as of the date of the Corporation Redemption Notice (as defined below), the Corporation may elect to redeem shares of Series A Preferred Stock at a per share price equal to two (2) times the Series A Original Issue Price (the "**Corporation Redemption Price**") by providing a Corporation Redemption Notice to each holder of record of Series A Preferred Stock as provided in Section 6.2. "**Call Conditions**" shall mean the satisfaction of all of the following conditions: (i) the average VWAP (as defined below) of the Common Stock for the immediately preceding thirty-day period shall be at least $1.00 (as adjusted to reflect any stock dividend, stock split, reverse stock split, combination or other similar recapitalization with respect to the Voting Common Stock from and after the date hereof); (ii) the Effective Date (as defined in the Purchase Agreement) shall have occurred and the prospectus applicable to the resale of Registerable Securities (as defined in the Purchase Agreement) shall be available for immediate use and no stop order shall have been issued with respect to such prospectus and no proceeding seeking such a stop order is pending; (iii) the average weekly trading volume of the Common Stock for the immediately preceding four (4) full calendar weeks shall be no less than ten percent (10%) of the number of shares of Voting Common Stock issuable upon conversion of the number of shares of Series A Preferred Stock that are being redeemed by the Corporation pursuant to the Corporation Redemption Notice; and (iv) the shares of Voting Common Stock issuable on conversion of the Series A Preferred Stock are listed on Nasdaq or another national securities exchange.

6.2 Certain Limitations. The Corporation may elect to exercise its right to redeem Series A Preferred Stock pursuant to this Section 6 only two times and in the amounts set forth below.

6.2.1 The first time that the Corporation exercises its right to redeem Series A Preferred Stock pursuant to this Section 6, the aggregate Redemption Price of all outstanding shares of Series A Preferred Stock subject to redemption pursuant to the Corporation Redemption Notice must be at least $9,199,001.

6.2.2 The second time that the Corporation exercises its right to redeem Series A Preferred Stock pursuant to this Section 6, the Corporation must elect to redeem all remaining shares of Series A Preferred Stock which are then outstanding.

6.3 Corporation Redemption Notice. The Corporation shall send written notice of its election to redeem shares of Series A Preferred Stock (the "**Corporation Redemption Notice**") to each holder of record of Series A Preferred Stock not less than fifteen (15) days, and no more than thirty (30) days, prior to the Corporation Redemption Date (as defined below). The Corporation Redemption Notice shall state:

(a) the number of shares of Series A Preferred Stock held by the holder that the Corporation intends to redeem on the Corporation Redemption Date;

(b) the date on which the Corporation shall redeem such shares (the "**Corporation Redemption Date**") and the Redemption Price;

(c) the date upon which the holder's right to convert such shares terminates (as determined in accordance with Section 4.1); and

(d) subject to Section 14.11 below, for holders of shares in certificated form, that the holder is to surrender to the Corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the shares of Series A Preferred Stock to be redeemed.

6.4 Surrender of Certificates; Payment. Unless a holder desires to convert such shares as provided in Section 5.2, on or before the Corporation Redemption Date, each holder of shares of Series A Preferred Stock to be redeemed on the Corporation Redemption Date, shall provide to the Corporation a written notice accepting the offer of the Corporation in the Redemption Notice (a "**Redemption Acceptance Notice**") and if a holder of shares in certificated form, surrender the certificate or certificates representing such shares, subject to Section 14.11 below, to the Corporation, in the manner and at the place designated in the Corporation Redemption Notice, and thereupon the Corporation Redemption Price for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof. In the event that less than all of the shares of Series A Preferred Stock

represented by a certificate (subject to Section 14.11 below) are redeemed, a new certificate, instrument, or book entry representing the unredeemed shares of Series A Preferred Stock shall promptly be issued to such holder.

6.5 Rights Subsequent to Redemption. If the Corporation Redemption Notice shall have been duly given, and if on the Corporation Redemption Date the Corporation Redemption Price payable upon redemption of the shares of Series A Preferred Stock to be redeemed on the Corporation Redemption Date is paid or tendered for payment, set aside in a separate company bank account or otherwise made available or deposited with an independent payment agent so as to be available therefor in a timely manner, then, subject to Section 14.11 below, notwithstanding that any certificates evidencing any of the shares of Series A Preferred Stock so called for redemption shall not have been surrendered, all rights with respect to such shares shall forthwith after the Corporation Redemption Date terminate, except only the right of

the holders to receive the Corporation Redemption Price without interest upon surrender of any such certificate or certificates therefor.

7. Mandatory Redemption.

7.1 General. If a Redemption Event has occurred as of the Measurement Date, the holders of at least a majority of the shares of Series A Preferred Stock then outstanding may require the Corporation to redeem, subject to compliance with Delaware law, all shares of Series A Preferred Stock then outstanding at a per share purchase price equal to $2.3057, subject to appropriate adjustment in the event of any stock dividend, stock split, reverse stock split, combination or other similar recapitalization with respect to the Series A Preferred Stock (the "**Holder Redemption Price**") by providing written notice requesting such redemption (the "**Redemption Request**") to the Corporation within sixty (60) days following the Measurement Date. The Redemption Request shall specify the date (the "**Holder Redemption Date**") on which such shares are to be redeemed, which shall not be less than sixty (60) days after the date of the Redemption Request. "**Redemption Event**" shall mean the occurrence as of the Measurement Date of any one of the following events: (i) the Corporation's consolidated net revenues (including royalties and profit sharing), calculated in accordance with GAAP, attributable to the Mytesi products approved by the Food and Drug Administration (excluding extraordinary items) ("**Mytesi Revenues**") for the six-month period ending March 31, 2021 are less than $22,000,000; (ii) the average VWAP of the Common Stock for the thirty (30) days immediately preceding the Measurement Date is less than $1.00 (as adjusted to reflect any stock dividend, stock split, reverse stock split, combination or other similar recapitalization with respect to the Voting Common Stock from and after the date hereof); or (iii) the Corporation fails to file with the Securities and Exchange Commission on or before June 30, 2021, its Form 10-Q for the three months ending March 31, 2021. "**Measurement Date**" shall mean the later of (i) April 30, 2021 and (ii) the date on which the Corporation files its Form 10-Q for the three months ending March 31, 2021, but if the Corporation fails to so file such Form 10-Q, in no event shall the Measurement Date be later than June 30, 2021. If, on the Holder Redemption Date, Delaware law governing distributions to stockholders prevents the Corporation from redeeming all of the shares of Series A Preferred Stock then outstanding, the Corporation shall ratably redeem the maximum number of shares of Series A Preferred Stock that it may redeem consistent with such law, and the Corporation agrees to use its best efforts to redeem the remaining shares of Series A Preferred Stock as soon as it may lawfully do so, including, without limitation, revaluating its assets in accordance with applicable law to make funds legally available under applicable law for such redemption. All Holders' rights to deliver a Redemption Request shall terminate if, prior to the Measurement Date, both (i) the Mytesi Revenues for any six-month period ending at the end of a calendar quarter are equal to or exceed $22,000,000 and (ii) the average VWAP of the Common Stock for the thirty (30) days immediately preceding the end of such calendar quarter is equal to or greater than $1.00 (as adjusted to reflect any stock dividend, stock split, reverse stock split, combination or other similar recapitalization with respect to the Voting Common Stock from and after the date hereof). Furthermore, in the event that the Corporation validly exercises its right to issue a Corporation Redemption Notice and the Holders validly exercise their right to issue a Redemption Request, the Corporation Redemption Notice shall control and the Redemption Request shall be of no effect so long as the Corporation Redemption Notice applies to all of the shares of Series A Preferred Stock then outstanding, and

so long as the Corporation makes full payment of the aggregate Corporation Redemption Price for all such shares.

7.2 Holder Redemption Notice. Within five (5) Business Days of the Corporation's receipt of a Redemption Request, the Corporation shall send written notice of the mandatory redemption (the "**Holder Redemption Notice**") to each holder of record of Series A Preferred Stock. The Holder Redemption Notice shall state:

(a) the number of shares of Series A Preferred Stock held by the holder that the Corporation shall redeem on the Holder Redemption Date;

(b) the Holder Redemption Date and the Holder Redemption Price;

(c) the date upon which the holder's right to convert such shares terminates (as determined in accordance with Subsection 4.1); and

(d) subject to Section 14.11 below, for holders of shares in certificated form, that the holder is to surrender to the Corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the shares of Series A Preferred Stock to be redeemed.

7.3 Surrender of Certificates; Payment. On or before the Holder Redemption Date, each holder of shares of Series A Preferred Stock to be redeemed on the Holder Redemption Date, unless such holder has exercised his, her or its right to convert such shares as provided in Section 4, shall, if a holder of shares in certificated form, surrender, subject to Section 14.11 below, the certificate or certificates representing such shares to the Corporation, in the manner and at the place designated in the Holder Redemption Notice, and thereupon the Holder Redemption Price for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof. Subject to Section 14.11 below, in the event less than all of the shares of Series A Preferred Stock represented by a certificate are redeemed, a new certificate, instrument, or book entry representing the unredeemed shares of Series A Preferred Stock shall promptly be issued to such holder.

7.4 Rights Subsequent to Redemption. If the Holder Redemption Notice shall have been duly given, and if on the Holder Redemption Date the Holder Redemption Price payable upon redemption of the shares of Series A Preferred Stock to be redeemed on the Holder Redemption Date is paid

or tendered for payment, set aside in a separate company bank account or otherwise made available or deposited with an independent payment agent so as to be available therefor in a timely manner, then, subject to Section 14.11 below, notwithstanding that any certificates evidencing any of the shares of Series A Preferred Stock so called for redemption shall not have been surrendered, all rights with respect to such shares shall forthwith after the Holder Redemption Date terminate, except only the right of the holders to receive the Holder Redemption Price without interest upon surrender of any such certificate or certificates therefor.

7.5 Interest. If any shares of Series A Preferred Stock are not redeemed for any reason on the Holder Redemption Date, all such unredeemed shares shall remain outstanding and entitled to all the rights and preferences of the Series A Preferred Stock provided herein, and

the Corporation shall pay interest on the Holder Redemption Price applicable to such unredeemed shares at an aggregate per annum rate equal to eleven percent (11%) (increased by one and a half percent (1.5%) each three-month period following the Holder Redemption Date until the Redemption Price, and any interest thereon, is paid in full), with such interest to accrue and be compounded quarterly; provided, however, that in no event shall such interest rate exceed the lesser of (i) twenty-four percent (24%) per annum and (ii) the maximum permitted rate of interest under applicable law.

7.6 Notices. In order to facilitate the exercise of the rights of the holders of Series A Preferred Stock under this Section 7, the Corporation shall, at its expense, as promptly as reasonably practicable but in any event not later than five (5) Business Days after the Corporation acquires knowledge of either event specified in Section 7.6(i) and (ii), provide to each holder of Series A Preferred Stock a written notice containing:

(i) Notice of the occurrence of any Redemption Event which has occurred; and/or

(ii) Notice of the occurrence of any event contemplated by the penultimate sentence of Section 7.1 which has resulted in the termination of the rights of the holders of Series A Preferred Stock under this Section 7, together with detailed supporting information therefor.

Furthermore, the Corporation shall, as promptly as reasonably practicable after the written request at any time of holders holding at least a majority of the shares of Series A Preferred Stock then outstanding (but in any event not later than five (5) Business Days thereafter), furnish or cause to be furnished to such holders a certificate setting forth the calculation of Mytesi Revenues for the most recent six month period ended as of the end of the most recent calendar quarter for which audited or unaudited consolidated financial statements of the Corporation have been published. In the event of a dispute by the holders as to the occurrence of an event described in clause (ii), such dispute shall be submitted to an independent reputable investment bank or an independent, outside accountant pursuant to the terms of Section 4.3.3, and Section 4.3.3 shall apply mutandis mutandis to the resolution of such dispute (except, in the case of a dispute involving the calculation of Mytesi Revenues, the reference to two (2) Business Days shall be ten (10) Business Days and the reference to five (5) Business Days shall be twenty (20) Business Days).

8. Steps to Ensure Compliance with Redemption Provisions. If any shares of Series A Preferred Stock remain outstanding as of December 1, 2020, the following provisions in this Section 8 shall apply:

8.1 By December 1, 2020, the Corporation shall take reasonable steps to interview and select an investment banking firm of national standing (and other appropriate professionals, including a quality of earnings accounting firm, an independent investment banking firm to provide a fairness opinion, and transaction counsel (who may be the Corporation's existing corporate and securities counsel)) who shall be engaged to conduct preparatory work to commence a sale process of the Corporation and its Subsidiaries as promptly as possible after the receipt of a Redemption Request.

8.2 Sagard (or if Sagard ceases to hold a majority of the outstanding shares of Series A Preferred Stock, the holders of such majority at the time) shall have the right to participate in, and provide comments with respect to, the selection of such investment bank and other professional services firms, and any such preparatory work and sale process, and the process below, including the right to receive updates, timelines, bidder lists, summaries of bids and proposals, and other information.

8.3 If and to the extent that the Corporation fails to pay the Holder Redemption Price on the Holder Redemption Date (for whatever reason, including the application of the redemption provisions of Delaware law, the terms of loan documents or otherwise), the Corporation shall promptly commence in good faith a sale process to solicit proposals for the sale of the Corporation and its Subsidiaries (or, alternatively, the sale of material assets designed to yield sufficient proceeds to pay the full Holder Redemption Price).

8.4 The Corporation shall provide regular updates regarding the status thereof to the Board of Directors, including the Series A Directors.

8.5 The Corporation shall submit all proposals to the Board of Directors for review and approval. In evaluating any such proposals in the exercise of their fiduciary duties to all stockholders, the Board of Directors shall be obligated to take into account the negative effect upon other stockholders of any delay in payment of the Holder Redemption Price and the increasing premium upon the Holder Redemption Price if the Holder Redemption Price is not timely paid.

8.6 If the Board of Directors approves any such sale, the Corporation shall, and shall cause its Subsidiaries to, take all reasonable steps to promptly negotiate and execute applicable transaction documents and submit such sale to the stockholders for approval.

8.7 The Corporation shall not amend (including by merger, consolidation, recapitalization or otherwise) this Certificate of Designation, its Bylaws or its Certificate of Incorporation or enter into any agreement in contravention of the covenants set forth in this Section 8 which actions are intended to interfere with or otherwise impair the Redemption Request rights under Section 7 or redemption rights under Section 9.

8.8 Sagard (or if Sagard ceases to hold a majority of the outstanding shares of Series A Preferred Stock, the holders of such majority at the time) shall have the right of specific performance to enforce its rights in this Section 8, without the necessity of posting a bond or other security. In the

event of litigation relating to enforce the Holders' rights under this Section 8, the non-prevailing party (as determined by a court of competent jurisdiction in a final, non-appealable order) will reimburse the other party for its reasonable legal fees incurred in connection with such litigation, including any appeal therefrom.

8.9 From and after the delivery date of the Redemption Request and until the completion of such redemption, after payment of trade payables and wages, the proceeds of the issuance of any equity securities, or securities convertible into or exercisable or exchangeable for equity securities, shall solely and exclusively be applied to (A) any mandatory prepayment of Indebtedness of the Corporation and/or (B) towards payment of the Holder Redemption Price.

8.10 The rights and obligations under this Section 8 shall automatically terminate and be of no further force and effect (i) immediately before the consummation of a Deemed Liquidation Event or (ii) if a Redemption Event has not occurred as of the Measurement Date.

9. Fundamental Change — Mandatory Offer to Purchase or Redemption.

9.1 Upon the occurrence of a Fundamental Change, the Corporation (or its successor) shall take the following actions, as the case may be:

9.1.1 if such Fundamental Change is a No-Proceeds Fundamental Change, the Corporation shall make an offer to repurchase, at the option and election of each Holder thereof, any and all of the outstanding shares of Series A Preferred Stock at a price per share equal to the Fundamental Change Price;

9.1.2 if such Fundamental Change is a Stock Fundamental Change, the Corporation shall make an offer to repurchase, at the option and election of each Holder thereof, any and all of the outstanding shares of Series A Preferred Stock at a price per share equal to the Fundamental Change Price; and

9.1.3 if such Fundamental Change is a Cash Fundamental Change, the Corporation shall redeem all, but not less than all, of the outstanding shares of Series A Preferred Stock at a price per share equal to the Fundamental Change Price (for the avoidance of doubt, the mechanics of a redemption pursuant to this Section 9.1.3, other than with regards to the Fundamental Change Price, shall be as set forth in Section 6).

The term "**Repurchase Offer**" means any offers to repurchase shares of Series A Preferred Stock made by the Corporation pursuant to Section 9.1.1 or 9.1.2.

9.2 The "**Fundamental Change Price**" for each share of Series A Preferred Stock, as of any date, shall be calculated as the sum of (i) the amount payable in respect of such share under Section 2.1 as of such date, plus (ii) any and all accrued and unpaid dividends upon the Series A Preferred Stock, whether or not declared, as of the date of the Fundamental Change, plus (iii) the Participation Amount. For the avoidance of doubt, upon the occurrence of a Fundamental Change, after a Holder of shares of Series A Preferred Stock has received the Fundamental Change Price with respect to each share of Series A Preferred Stock held by such Holder, no other amounts shall be payable to such Holder which have been redeemed or repurchased solely on account of its ownership of the shares of Series A Preferred Stock.

9.3 The Corporation shall pay the Fundamental Change Price to the Holders in cash; *provided*, that, so long as (i) the Voting Common Stock will, immediately following such Fundamental Change, continue to be traded on NASDAQ or other national securities exchange on which the Voting Common Stock is traded immediately prior to such Fundamental Change and (ii) the Trading Price of the Voting Common Stock upon the occurrence of the Fundamental Change is higher than the last Closing Price of the Voting Common Stock on NASDAQ (or other national securities exchange) immediately prior to the Closing Date, the Corporation may, at its election (to be made in whole and not in part with respect to each such Holder) pay the portion of the Fundamental Change Price arising under clause (iii) of the definition thereof by issuing to

such Holder, in lieu of a cash payment and in respect of any shares of Series A Preferred Stock, the number of Freely Tradable shares of Common Stock obtained by dividing the portion of the Fundamental Change Price attributable to the Participation Amount by the Trading Price (it being understood that such Trading Price is the same Trading Price as that used to determine the Participation Amount).

9.4 Mechanics of Repurchase.

9.4.1 As soon as practicable (but in any event, within two (2) Business Days) after the announcement of a transaction or execution of an agreement that could result in, a No-Proceeds Fundamental Change or Stock Fundamental Change, as the case may be, the Corporation shall commence the Repurchase Offer by delivering a notice (the "**Repurchase Notice**"), addressed to the Holders of record of the shares of Series A Preferred Stock as they appear in the books and records of the Corporation as of the date that such Repurchase Notice is first sent to the Holders. The "**Repurchase Date**" shall be (x) in the case of a Stock Fundamental Change, the date on which such Stock Fundamental Change occurs, but in any event, prior to or simultaneously with any corresponding payments, if any, made with respect to Common Stock and (y) in the case of a No-Proceeds Fundamental Change, a date no later than ten (10) days following the date of such No-Proceeds Fundamental Change having occurred (including, for these purposes, the filing of a Schedule 13D pursuant to the Exchange Act), *provided* that, in any event, the Repurchase Date shall occur following the expiration of the applicable Offer Period.

9.4.2 Each Repurchase Notice shall be in writing and must state: (A) that the Fundamental Change Offer may be accepted (subject to the occurrence of the Fundamental Change) by delivery of a written notice specifying the number of shares of Series A Preferred Stock to be repurchased prior to the expiration of the applicable offer period (including a description of such offer period); (B) the expected Fundamental Change Price as of the expected Repurchase Date (it being understood that the actual Fundamental Change Price will be calculated as of the actual Repurchase Date); (C) the name of the paying agent to whom, and the address of the place to where, the shares of Series A Preferred Stock are to be surrendered for payment of the Fundamental Change Price; (D) that any shares of Series A Preferred Stock not tendered for payment shall continue to be outstanding and holders thereof

shall remain entitled to, among other things, all rights, privileges and preferences in respect thereof; and (E) the circumstances and material facts regarding such Fundamental Change, including the actual or expected date of the Fundamental Change and, to the extent known, the Repurchase Date.

9.4.3 The Corporation shall be obligated to repurchase, on the Repurchase Date, the aggregate number of shares of Series A Preferred Stock so requested in writing by Holders thereof prior to the expiration of the Offer Period at a price per share equal to the Fundamental Change Price. If fewer than all the shares of Series A Preferred Stock represented by any certificate are to be repurchased, the Corporation shall promptly issue to the applicable Holder a new certificate representing the unrepurchased shares of Series A Preferred Stock without cost to the Holder.

9.5 Notwithstanding this Section 9, the Fundamental Change Offer shall be subject to, and be made in compliance with, all applicable federal and state securities laws,

including any applicable time periods. The Corporation shall notify the Holders of the results of the Repurchase Offers on or as soon as practicable after the Repurchase Date.

9.6 The following provisions apply with respect to certain redemptions and repurchases of shares of Series A Preferred Stock pursuant to this Section 9 as set forth below:

9.6.1 without limiting any other rights and remedies in this Certificate of Designation, if the funds of the Corporation legally available under applicable law for redemption or repurchase of shares of Series A Preferred Stock on any Redemption Date or Repurchase Date, as the case may be, are insufficient to redeem or repurchase the total number of shares of Series A Preferred Stock to be redeemed or repurchased on such date pursuant to this Section 9, then (i) those funds which are legally available under applicable law shall be used to redeem or repurchase the maximum possible number of shares of Series A Preferred Stock (including fractional shares) ratably among the Holders to be redeemed or repurchased based on the respective amounts which would otherwise be payable in respect of the shares of Series A Preferred Stock to be redeemed or repurchased if the legally available funds under applicable law were sufficient to redeem all shares of Series A Preferred Stock to be redeemed, (ii) the Corporation shall take all actions required or permitted under applicable law to permit the redemption or repurchase of the Series A Preferred Stock, including, without limitation, through the revaluation of its assets in accordance with applicable law, to make funds legally available under applicable law for such redemption, and (iii) shall redeem the remaining shares of Series A Preferred Stock, or portions thereof, to have been redeemed as soon as practicable after the Corporation has funds legally available under applicable law; and

9.6.2 if the Corporation has determined to pay the Participation Amount in connection with a redemption or repurchase of shares of Series A Preferred Stock in accordance this Section 9 in shares of Freely Tradable Common Stock (in lieu of cash), the Corporation shall issue to each Holder one or more stock certificates representing such number of shares of Freely Tradable Common Stock to which such Holder is entitled, free of all liens and charges, and not subject to any preemptive rights.

10. Consolidations and Mergers. Notwithstanding anything else contained herein (including Section 9), if the Corporation enters into any transaction of merger or consolidation, and (i) the Corporation is not the surviving entity following such event and (ii) one or more shares of Series A Preferred Stock have not been redeemed or repurchased as of, or immediately following, such event, then (x) each remaining share of Series A Preferred Stock shall be canceled and extinguished and automatically converted into the right to receive one fully paid and nonassessable share of a newly-designated series of Preferred Stock (the "**New Preferred Stock**") of the surviving entity having in respect of such successor the same powers, designations, preferences, rights and the qualifications, limitations or restrictions (to the fullest extent practicable) thereon, that the share of Series A Preferred Stock had immediately prior to such transaction and (y) the Corporation shall deliver to the Holders a certificate executed by a senior officer of the Corporation stating that such transaction complies herewith.

11. Redeemed, Converted or Otherwise Acquired Shares. Any shares of Series A Preferred Stock that are redeemed, converted or otherwise acquired by the Corporation or any of its Subsidiaries in accordance with the terms of this Certificate of Designation shall be

automatically and immediately cancelled and retired and shall not be reissued, sold or transferred. From and after the earlier of such time when (1) all shares of Series A Preferred Stock have been redeemed in accordance with the terms hereof and (2) all then outstanding shares of Series A Preferred Stock have been converted into shares of Voting Common Stock in accordance with the terms hereof, all rights of equity holders under Section 2 above automatically shall terminate (subject to the reinstatement rights of Holders pursuant to Section 5.16 of the Purchase Agreement). Neither the Corporation nor any of its Subsidiaries may exercise any voting or other rights granted to the holders of Series A Preferred Stock following redemption or conversion.

12. Nasdaq Compliance. Without limiting Section 4.10 above, the Corporation shall not issue any shares of Voting Common Stock upon conversion of the Series A Preferred Stock if and only to the extent that the issuance of such shares of Voting Common Stock would exceed the aggregate number of shares of Common Stock which the Corporation may issue upon conversion of the Series A Preferred Stock and the other securities issued pursuant to the terms of the Purchase Agreement or otherwise without breaching the rules or regulations of the Nasdaq Stock Market (including rules related to the aggregate of offerings under NASDAQ Stock Market Rule 5635(d) and rules related to a change of control under NASDAQ Stock Market Rule 5635(b)), except that such limitation shall not apply in the event that the Corporation obtains the approval of its stockholders as required by the applicable rules of the Nasdaq Stock Market for issuances of such shares of Common Stock. The determination of the applicability of the limitation contained in this Section 12 shall be made by the Corporation in accordance with the rules and regulations of the Nasdaq Stock Market.

13. Definitions. Capitalized terms used but not otherwise defined in this Certificate of Designation shall have the meanings ascribed to them in the Corporation's Certificate of Incorporation, as in effect from time to time.

13.1 "Affiliate" means with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with such Person as such terms are used in and construed under Rule 405 under the Securities Act.

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

13.3 "Business Day" means any weekday that is not a legal holiday in New York, New York and is not a day on which banking institutions in New York, New York are authorized or required by law or regulation to be closed.

13.4 "Cash Fundamental Change" means a Fundamental Change in which, as a result of or in connection therewith, all holders of the Common Stock are entitled to exchange their Common Stock only for all-cash proceeds.

13.5 "Certificate of Designation" means this Certificate of Designation of Series A Convertible Participating Preferred Stock of the Corporation.

13.6 "Closing Price" of the Common Stock (or other relevant capital stock or equity interest) on any date of determination means the closing sale price or, if no closing sale price is reported, the last reported sale price of the shares of the Common Stock (or other relevant capital stock or equity interest) on NASDAQ on such date. If the Common Stock (or other relevant capital stock or equity interest) is not traded on NASDAQ on any date of determination, the Closing Price of the Common Stock (or other relevant capital stock or equity interest) on such date of determination means the closing sale price as reported in the composite transactions for the principal U.S. national securities exchange on which the Common Stock (or other relevant capital stock or equity interest) is so listed or quoted, or, if no closing sale price is reported, the last reported sale price on the principal U.S. national securities exchange on which the Common Stock (or other relevant capital stock or equity interest) is so listed or quoted, or if the Common Stock (or other relevant capital stock or equity interest) is not so listed or quoted on a U.S. national securities exchange, the last quoted bid price for the Common Stock (or other relevant capital stock or equity interest) in the over-the-counter market as reported by Pink Sheets LLC or similar organization, or, if that bid price is not available, the market price of the Common Stock (or other relevant capital stock or equity interest) on that date as determined by an Independent Financial Expert retained by the Corporation for this purpose. All references herein to the "Closing Price" and "last reported sale price" of the Common Stock (or other relevant capital stock or equity interest) on NASDAQ shall be such closing sale price and last reported sale price as reflected on the website of NASDAQ (http://www.nasdaq.com).

13.7 "Common Stock" means the Voting Common Stock and/or the Non-Voting Common Stock.

13.8 "Common Stock Preference Amount" has the meaning set forth in Section 2.3 above.

13.9 "Contingent Obligation" means any agreement, undertaking or arrangement by which any Person guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to or otherwise to invest in a debtor, or otherwise to assure a creditor against loss) any indebtedness, obligation or other liability of any other Person (other than by endorsements of instruments in the course of collection), or guarantees the payment of dividends or other distributions upon the shares of any other Person; provided, however, for the avoidance of doubt, any warranty or customary contractual indemnities in respect of assets sold in the ordinary course of business shall not be considered "Contingent Obligations". The amount of any Person's obligation in respect of any Contingent Obligation shall (subject to any limitation set forth therein) be deemed to be the principal amount of the debt, obligation or other liability supported thereby.

13.10 "CVP" means Chicago Venture Partners, L.P., a Utah limited partnership.

13.11 "Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

13.12 "Fair Market Value" means

13.12.1 in the case of cash, the amount thereof;

13.12.2 in the case of shares of stock where, at least thirty (30) days prior to the issuance thereof, other shares of the same class had been listed on NASDAQ (or another U.S. national securities exchange that is the primary market for the trading of the Common Stock), the VWAP of such stock for the five (5) consecutive Trading Days immediately preceding the day as of which Fair Market Value is being determined;

13.12.3 in the case of shares of stock where, at least thirty (30) days prior to the issuance thereof, other shares of the same class had not been listed on NASDAQ (or another U.S. national securities exchange that is the primary market for the trading of the Common Stock), but had been listed in the over-the-counter market as reported by Pink Sheets LLC or similar organization, the VWAP of such stock for the five (5) consecutive Trading Days on which shares of such stock have traded on such over-the-counter market immediately preceding the day as of which Fair Market Value is being determined; or

13.12.4 in the case of securities not covered by clause 13.10.2 or 13.10.3 above and in the case of other property not covered by clause 13.10.1, 13.10.2 or 13.10.3 above, the Fair Market Value of such securities or other property, as the case may be, shall be determined by an Independent Financial Expert appointed for such purpose, using one or more valuation methods that the Independent Financial Expert in its best professional judgment determines to be most appropriate, assuming, in the case of securities, such securities are fully distributed and in each case, such securities or other property are to be sold in an arm's-length transaction and there was no compulsion on the part of any party to such sale to buy or sell and taking into account all relevant factors.

13.13 "Freely Tradable" means, with respect to Common Stock as of any date, such Voting Common Stock which is (i) listed on NASDAQ or other national securities exchange that is the primary market for the trading of the Common Stock and (ii) immediately resalable by the Holders or their respective Affiliates pursuant to an effective registration statement, subject only to applicable securities laws and the Corporation's then applicable insider trading policy.

13.14 "Fundamental Change" means the occurrence, at any time after the closing of the Exchange, of any of the following:

13.14.1 (a) any Person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act), other than the Permitted Holders (and/or any direct transferee of shares of Series A Preferred Stock from any Permitted Holder), (A) shall have acquired beneficial ownership of more than fifty percent (50%) or more on a fully diluted basis of the voting and/or economic interest in the capital stock of the Corporation (or surviving entity

in a merger or consolidation, if applicable)) or (B) shall have obtained the power (whether or not exercised) to elect a majority of the members of the Board of Directors (or similar governing body); or (b) the occurrence of any "change of control" or similar event under any agreements relating to any Indebtedness of the Corporation or its Subsidiaries; or

13.14.2 Except in the case of a Deemed Liquidation Event in which holders of Series A Preferred Stock receive, concurrently with the consummation of such Deemed Liquidation Event, a cash payment pursuant to Sections 2.1 and 2.4 in full, in an amount equal to the Fundamental Change Price that would otherwise be payable, the Corporation or any of its Subsidiaries enters into any transaction of merger or consolidation (except that a Person may be merged with or into the Corporation or another wholly-owned Subsidiary thereof so long as the Corporation or another wholly-owned Subsidiary is the continuing or surviving Person), or conveys, sells, leases, subleases (as lessor or sublessor), exchanges, transfers or otherwise disposes of, in one transaction or a series of transactions, all or substantially all of the consolidated business, assets or property of the Corporation and its subsidiaries.

13.15 "Fundamental Change Price" shall have the meaning set forth in Section 9.2.

13.16 "GAAP" means United States generally accepted accounting principles applied on a consistent basis during the periods involved.

13.17 "Hedging Obligation" means, with respect to any Person, any liability of such Person under any interest rate, currency or commodity swap agreement, cap agreement or collar agreement, and any other agreement or arrangement designed to protect a Person against fluctuations in interest rates, currency exchange rates or commodity prices. The amount of any Person's obligation in respect of any Hedging Obligation shall be deemed to be the incremental obligation that would be reflected in the financial statements of such Person in accordance with GAAP.

13.18 "Hercules Debt" means the Corporation's outstanding obligations under that certain Loan and Security Agreement, dated August 18, 2015, between Corporation and Hercules Capital, Inc. (f/k/a Hercules Technology Growth Capital, Inc.), as amended.

13.19 "Holder" means each Person in whose name a share of Series A Preferred Stock is registered, which may be treated by the Corporation as the absolute owner of such share of Series A Preferred Stock for the purpose of making payment and for all other purposes.

13.20 "Indebtedness," as to a Person, means (a) all indebtedness of such Person for borrowed money, (b) all indebtedness evidenced by bonds, debentures, notes or similar instruments (including, without limitation, any notes issued to sellers in connection with a Permitted Acquisition, but excluding surety, performance, and other like bonds, which are addressed in subclause (f) below), (c) all obligations of such Person as lessee under capital leases which are required to be recorded as liabilities on a balance sheet of such Person in accordance with GAAP, (d) all obligations of such Person to pay the deferred purchase price of property or services (excluding (i) any customary post-closing working capital adjustment in connection with any Permitted Acquisition and (ii) trade accounts payable in the ordinary course of

business), (e) all indebtedness secured by a Lien on the property of such Person, whether or not such indebtedness shall have been assumed by such Person (with the amount thereof being measured as the lesser of the fair market value of such property and the amount of indebtedness), (f) all obligations with respect to letters of credit (whether or not drawn), banker's acceptances and surety, performance and other like bonds issued for the account of such Person, (g) all Hedging Obligations of such Person, (h) all Contingent Obligations of such Person, (i) all non-compete payment obligations, earn-outs, holdbacks and similar obligations, (j) all indebtedness of any partnership of which such Person is a general partner, and (k) all obligations of such Person under any synthetic lease transaction, where such obligations are considered borrowed money indebtedness for tax purposes but the transaction is classified as an operating lease in accordance with GAAP.

13.21 "Independent Financial Expert" means a nationally recognized investment banking firm mutually agreed by the Corporation and holders of a majority of the outstanding shares of Series A Preferred Stock at the time, which firm does not have a material financial interest or other material economic relationship with either the Corporation or such holders or their Affiliates. If the Corporation and such holders of a majority of the outstanding shares of Series A Preferred Stock at the time are unable to agree on an Independent Financial Expert, the Corporation and such Holders shall each promptly choose a separate nationally recognized investment banking firm and such two nationally recognized investment banking firms shall promptly choose a third nationally recognized investment banking firm that shall not have a material financial interest or other material economic relationship with either the Corporation or such Holders or their Affiliates, which firm shall serve as the "Independent Financial Expert".

13.22 "Investments" means any beneficial ownership (including stock, partnership or limited liability company interests) of or in any Person, or any loan, advance or capital contribution to any Person.

13.23 "Liens" means a lien, charge, pledge, security interest, encumbrance, right of first refusal, preemptive right or other restriction.

13.24 "Nantucket Investor Rights Agreement" means the Investor Rights Agreement, dated March 31, 2017, between the Corporation and Nantucket Investments Limited.

13.25 "Non-Voting Common Stock" means the Non-Voting Common Stock of the Corporation, par value $0.0001 per share.

13.26 "No-Proceeds Fundamental Change" means a Fundamental Change other than a Cash Fundamental Change or Stock Fundamental Change.

13.27 "Outstanding Lender Debt" means the Hercules Debt and the Riverside/Magna Debt.

13.28 "Participation Amount" means, as of any date, an amount equal to the number obtained by multiplying (x) the number of shares of Voting Common Stock issuable upon conversion of one share of Series A Preferred Stock as of such date by (y) (1) the Trading Price as of such date *minus* (2) the Common Stock Preference Amount; *provided*, that if the Corporation calculates the Trading Price based on the amounts payable pursuant to clause (A)(y)

or (A)(z) of the definition of "Trading Price", and as a result of subsequent events, a higher Trading Price would have been calculated by the Corporation pursuant to clause (A)(x) of the definition of "Trading Price" with respect to such Fundamental Change had such events existed at the time that the Trading Price had originally been determined, contemporaneously with the occurrence of such subsequent events, the Corporation shall pay to the Holders the difference between the Participation Amount previously paid (which amount was based on a calculation using clause (A)(y) or (A)(z) of the definition of "Trading Price") and the Participation Amount that it would have paid had it calculated the "Trading Price" pursuant to clause (A)(x) of the definition of Trading Price (assuming that such subsequent events had occurred at such earlier time).

13.29 "Permitted Acquisition" means an acquisition by the Corporation, of or from any Person, whether pursuant to an acquisition of equity securities in such Person or otherwise, of all or substantially all of the assets of such Person, or of a distinct division, line of business, or other business unit of such Person or otherwise, in each case, so long as the aggregate amount of the cash consideration paid by the Corporation in connection with any such acquisition(s) does not exceed $2,000,000 in the aggregate.

13.30 "Permitted Affiliate Transactions" means (i) transactions among the Corporation and its Subsidiaries; (ii) compensation and reimbursement of expenses of employees, officers and consultants of the Corporation, (iii) the issuance of options to (and exercise thereof by) officers, directors and employees of the Corporation and (iv) other transactions which are entered into in the ordinary course of the Corporation's business on terms and conditions substantially as favorable to the Corporation as would be obtainable by it in a comparable arm's length transaction with a Person other than an Affiliate.

13.31 "Permitted Holders" means, collectively, Sagard and its Control Investment Affiliates.

13.32 "Permitted Indebtedness" means (i) the refinancing of the Outstanding Lender Debt as of Closing, as a result of which CVP will hold no more than $5,743,348 aggregate principal amount of Indebtedness of the Corporation and its Subsidiaries as of the Closing, including the principal amount of all Indebtedness held prior to the Closing; (ii) Indebtedness existing as of the Closing; (iii) indebtedness of up to $500,000 outstanding at any time secured by a Lien described in clause (vii) of the defined term "Permitted Liens"; (iv) Indebtedness to trade creditors incurred in the ordinary course of business, including indebtedness incurred in the ordinary course of business with corporate credit cards; (v) Indebtedness that also constitutes a Permitted Investment; (vi) reimbursement obligations in connection with letters of credit that are secured by cash and issued on behalf of the Corporation or any of its Subsidiaries in an amount not to exceed $500,000 at any time outstanding; (vii) Indebtedness consisting of financing of insurance premiums incurred in the ordinary course of business; (viii) other Indebtedness in an amount not to exceed $1,000,000 at any time outstanding; and (ix) extensions, refinancings and renewals of any items of Permitted Indebtedness, *provided* that the principal amount thereof is not increased or the terms modified to impose materially more burdensome terms upon the Corporation or any of its Subsidiaries, as the case may be.

13.33 "Permitted Investments" means (i) Investments existing as of the Closing; (ii) (a) marketable direct obligations issued or unconditionally guaranteed by the United States of America or any agency or any State thereof maturing within one year from the date of acquisition thereof, (b) commercial paper maturing no more than one year from the date of creation thereof and currently having a rating of at least A-2 or P-2 from either Standard & Poor's Corporation or Moody's Investors Service, (c) certificates of deposit issued by any bank with assets of at least $250,000,000 maturing no more than one year from the date of investment therein, and (d) money market accounts which invest in assets of at least 95% of which satisfy the requirements of the foregoing clauses (a)-(c); (iii) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers; (iv) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business in an amount not to exceed $500,000 at any one time outstanding; (v) Investments consisting of loans not involving the net transfer on a substantially contemporaneous basis of cash proceeds to employees, officers or directors relating to the purchase of capital stock of the Corporation by such employees, officers or directors pursuant to employee stock purchase plans or other similar agreements approved by the Board of Directors; (vi) Investments consisting of travel advances in the ordinary course of business; (vii) loans and advances to employees, officers and directors for relocation and housing expenses not to exceed $200,000 at any time outstanding; (viii) Investments in Subsidiaries of the Corporation, including any newly formed Subsidiary; (ix) joint ventures or strategic alliances in the ordinary course of the Corporation's business consisting of the nonexclusive licensing of technology (*provided* that such licenses may be exclusive in respects other than territory and may be exclusive as to territory only as to discreet geographical areas outside the United States), the development of technology or the providing of technical support, provided that any cash Investments by the Corporation do not exceed $300,000 in the aggregate in any fiscal year; (x) Permitted Acquisitions; (xi) Investments of a target acquired in a Permitted Acquisition not to exceed $200,000; and (xii) additional Investments that do not exceed $250,000 in the aggregate.

13.34 "Permitted Liens" means any and all of the following: (i) Liens in favor of CVP as of Closing; (ii) Liens existing on the Closing Date; (iii) Liens for taxes, fees, assessments or other governmental charges or levies, either not delinquent or being contested in good faith by appropriate proceedings; *provided*, that the Corporation maintains adequate reserves therefor in accordance with GAAP; (iv) Liens securing claims or demands of materialmen, artisans, mechanics, carriers, warehousemen, landlords and other like Persons arising in the ordinary course of the Corporation's business and imposed by operation of law without action of such parties; *provided*, that the payment thereof is not yet required; (v) Liens arising from judgments, decrees

or attachments in circumstances which do not constitute an Event of Default under any Indebtedness of the Corporation; (vi) the following deposits, to the extent made in the ordinary course of business: deposits under worker's compensation, unemployment insurance, social security and other similar laws, or to secure the performance of bids, tenders or contracts (other than for the repayment of borrowed money) or to secure indemnity, performance or other similar bonds for the performance of bids, tenders or contracts (other than for the repayment of borrowed money) or to secure statutory obligations (other than Liens arising under ERISA or environmental Liens) or surety or appeal bonds; (vii) Liens on equipment or software or other intellectual property in each case constituting purchase money Liens and Liens in connection

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with capital leases securing indebtedness permitted in clause (iii) of "Permitted Indebtedness"; (viii) leasehold interests in leases or subleases and licenses granted in the ordinary course of business and not interfering in any material respect with the business of the licensor; (ix) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of custom duties that are promptly paid on or before the date they become due; (x) Liens on insurance proceeds securing the payment of financed insurance premiums that are promptly paid on or before the date they become due (provided that such Liens extend only to such insurance proceeds and not to any other property or assets); (xi) statutory and common law rights of set-off and other similar rights as to deposits of cash and securities in favor of banks, other depository institutions and brokerage firms; (xii) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business so long as they do not materially impair the value or marketability of the related property; (xiii) Liens on cash securing obligations permitted under clause (vi) of the definition of Permitted Indebtedness; and (xiv) Liens incurred in connection with the extension, renewal or refinancing of the Indebtedness secured by Liens of the type described in clauses (i)-(ii) above; *provided*, that any extension, renewal or replacement Lien shall be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness being extended, renewed or refinanced (as may have been reduced by any payment thereon) does not increase.

13.35 "Person" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

13.36 "Purchase Agreement" shall the Series A Preferred Stock Purchase Agreement dated on or about the date hereof among the Corporation and the Purchaser identified therein, as in effect from time to time.

13.37 "Riverside/Magna Debt" means the Corporation's outstanding obligations under the Original Issue Discount Exchangeable Promissory Notes issued by the Corporation to MEF I, LP and Riverside Merchant Partners pursuant to that certain Note Purchase Agreement, dated as of March 1, 2017, by and among the Corporation, MEF I, LP and Riverside Merchant Partners, as amended (to be repaid and terminated in full as of the Closing).

13.38 "Sagard" means Sagard Capital Partners, L.P., a Delaware limited partnership.

13.39 "Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

13.40 "Stock Fundamental Change" means a Fundamental Change in which, as a result of or in connection therewith, all holders of the Voting Common Stock are entitled to exchange their Voting Common Stock for all-stock proceeds or a combination of stock and cash proceeds.

13.41 "Stockholder Approval" shall mean the "Approval" as defined in the Purchase Agreement.

13.42 "Subsidiary" means any subsidiary of the Corporation that is a "significant subsidiary" as defined in Rule 1-02 of Regulation S-X under the Securities Act and shall, where applicable, also include any direct or indirect significant subsidiary of the Corporation formed or acquired after the date hereof.

13.43 "Trading Price" means, with respect to any determinations to be made hereunder in connection with the redemption or repurchase of shares of Series A Preferred Stock upon the occurrence of a Fundamental Change pursuant to Section 9, in the case of (A) a Cash Fundamental Change or a Stock Fundamental Change, the highest of (x) the Fair Market Value of the aggregate consideration paid to the holders of Common Stock on account of a share of Common Stock in connection with such Cash Fundamental Change or Stock Fundamental Change, as the case may be, (y) the VWAP for the 20 consecutive Trading Days which are immediately prior to the announcement of a transaction or execution of an agreement that could result in such Cash Fundamental Change or Stock Fundamental Change, as the case may be, and (z) the VWAP for the 20 consecutive Trading Days which are immediately prior to the date of payment and which, if applicable, follow the date of announcement of a transaction or execution of an agreement that could result in such Cash Fundamental Change or Stock Fundamental Change, as the case may be (provided, that in the case of this clause (z), if the number of consecutive Trading Days from and after the announcement of a transaction or execution of an agreement that could result in a Cash Fundamental Change or Stock Fundamental Change, as the case may be, up to but not including the date of such Cash Fundamental Change or Stock Fundamental Change, as the case may be, is less than 20, then the VWAP for such lesser number of consecutive Trading Days shall be used instead) and (B) a No-Proceeds Fundamental Change, the VWAP for 20 consecutive Trading Days immediately prior to the No-Proceeds Fundamental Change and which, if applicable, follow the date of announcement of a transaction or execution of an agreement that could result in such No-Proceeds Fundamental Change (provided, that if the number of consecutive Trading Days from and after the announcement of a transaction or execution of an agreement that could result in such No-Proceeds Fundamental Change by the Corporation up to but not including the date of such No-Proceeds Fundamental Change is less than 20, then the VWAP for such lesser number of consecutive Trading Days shall be used instead).

13.44 "Transaction Documents" means this Certificate of Designation and the Purchase Agreement.

13.45 "Transfer Agent" means Computershare Trust Company, N.A., with offices located at 8742 Lucent Blvd., Suite 225, Highlands Ranch, CO 80129, and any successor transfer agent of the Corporation.

13.46 "Voting Common Stock" means the Voting Common Stock of the Corporation, par value $0.0001 per share.

13.47 "VWAP" shall mean the daily volume weighted average price of the Common Stock on Nasdaq (or if not listed on Nasdaq, another national securities exchange on which the Voting Common Stock is then listed) as calculated by the Nasdaq Market Intelligence Desk (or successor organization or organization providing comparable information) (for and based on a trading day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City

Time)) (or, if such volume weighted price is unavailable, the market price of one share of Voting Common Stock for such period determined, using a volume weighted average method, by an Independent Financial Expert).

14. General.

14.1 Amendment and Waiver. Subject to Section 3, any of the rights, powers, preferences and other terms of the Series A Preferred Stock set forth herein may be amended or waived on behalf of all holders of Series A Preferred Stock by the affirmative written consent or vote of the holders of at least a majority of the shares of Series A Preferred Stock then outstanding.

14.2 Notices. Any notice required or permitted by the provisions of this Certificate of Designation to be given to a holder of shares of Series A Preferred Stock shall be mailed, postage prepaid, to the post office address last shown on the records of the Corporation, or if to the Corporation addressed to the Chief Executive Officer at the principal executive offices of the Corporation or given by electronic communication in compliance with the provisions of the General Corporation Law, and shall be deemed sent upon such mailing or electronic transmission.

14.3 Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Certificate of Designation shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware, without regard to the principles of conflicts of law thereof. Each party agrees that all legal proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Certificate of Designation (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the State of Delaware. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the State of Delaware for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of this Certificate of Designation), and hereby irrevocably waives, and agrees not to assert in any action, suit or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is improper or is an inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Certificate of Designation and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law. If any party shall commence an action or proceeding to enforce any provisions of this Certificate of Designation, then, the prevailing party in such action, suit or proceeding shall be reimbursed by the other party for its reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding.

14.4 Severability. If any term, provision, covenant or restriction of this Certificate of Designation is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

14.5 Remedies. The remedies provided in this Certificate of Designation shall be cumulative and in addition to all other remedies available under this Certificate of Designation, at law or in equity (including a decree of specific performance and/or other injunctive relief). No remedy contained herein shall be deemed a waiver of compliance with the provisions giving rise to such remedy. Nothing herein shall limit a Holder's right to pursue actual damages for any failure by the Corporation to comply with the terms of this Certificate of Designation. The Corporation covenants to each Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by such Holder thereof and shall not, except as expressly provided herein, be subject to any other obligation of the Corporation (or the performance thereof). The Corporation acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holders and that the remedy at law for any such breach may be inadequate. The Corporation therefore agrees that, in the event of any such breach or threatened breach, the Holders shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required.

14.6 Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then such action may be taken or such right may be exercised on the next succeeding Business Day.

14.7 Construction. The Corporation and the Holders agree that each of them and/or their respective counsel have reviewed and had an opportunity to revise this Certificate of Designation and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Certificate of Designation or any amendments thereto.

14.8 **WAIVER OF JURY TRIAL. IN ANY ACTION, SUIT, OR PROCEEDING IN ANY JURISDICTION BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY ARISING OUT OF OR RELATING TO THIS CERTIFICATE OF DESIGNATION, THE CORPORATION AND THE HOLDERS EACH KNOWINGLY AND INTENTIONALLY, TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY ABSOLUTELY, UNCONDITIONALLY,**

IRREVOCABLY AND EXPRESSLY WAIVES FOREVER ANY RIGHT TO TRIAL BY JURY.

14.9 Certificate of Incorporation. In addition to the provisions of this Certificate of Designation with respect to shares of Series A Preferred Stock, such shares of Series A Preferred Stock shall be subject to and be entitled to the benefit of the provisions set forth in the Certificate of Incorporation of the Corporation with respect to preferred stock of the Corporation generally; *provided, however*, that in the event of any conflict between such provisions, the provisions set forth in this Certificate of Designation shall control.

14.10 Payments. Whenever any payment of cash is to be made by the Corporation to any Person pursuant to this Certificate of Designation, such payment shall be made in lawful money of the United States of America by a check drawn on the account of the Corporation and sent via overnight courier service to such Person at such address as previously provided to the Corporation in writing (which address, in the case of the Purchaser (as defined in the Purchase Agreement), initially shall be as set forth on the Schedule of Purchaser attached to the Purchase Agreement); *provided*, that a Holder may elect to receive a payment of cash via wire transfer of immediately available funds by providing the Corporation with no less than two (2) Business Days prior written notice setting out such request and such Holder's wire transfer instructions. Whenever any amount expressed to be due by the terms of this Certificate of Designation is due on any day which is not a Business Day, the same shall instead be due on the next succeeding day which is a Business Day.

14.11 Lost or Stolen Certificates. Upon receipt by the Corporation of evidence reasonably satisfactory to the Corporation of the loss, theft, destruction or mutilation of any Series A Preferred Stock Certificates representing shares of Series A Preferred Stock, and, in the case of loss, theft or destruction, of an indemnification undertaking by such Holder to the Corporation in customary form and, in the case of mutilation, upon surrender and cancellation of the Series A Preferred Stock Certificate(s), the Corporation shall execute and deliver new preferred stock certificate(s) of like tenor and date; provided, however, the Corporation shall not be obligated to re-issue preferred stock certificates if such Holder contemporaneously requests the Corporation to convert such shares of Series A Preferred Stock into Common Stock.

14.12 Failure or Indulgence Not Waiver. No failure or delay on the part of a Holder in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

14.13 Transfer of Shares of Series A Preferred Stock. A Holder may assign some or all of the shares of Series A Preferred Stock and the accompanying rights hereunder held by such Holder without the consent of the Corporation; *provided* that such assignment is in compliance with applicable securities laws. Notwithstanding the foregoing, in no event shall any Holder that is an officer or director of the Corporation, or a Person that is controlled by an officer or director of the Corporation be permitted to transfer any of its shares of Series A Preferred Stock prior to the time the Corporation obtains the Stockholder Approval. Holders shall have the right to transfer and to exercise rights with respect to fractional shares of Series A Preferred Stock and any redemptions of shares of Series A Preferred Stock by the Corporation shall be

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made calculating the number of applicable shares of Series A Preferred Stock to one-one thousandth of a shares of Series A Preferred Stock.

14.14 Series A Preferred Share Register. The Corporation shall maintain at its principal executive offices (or such other office or agency of the Corporation as it may designate by notice to the Holders), a register for the shares of Series A Preferred Stock, in which the Corporation shall record the name and address of the persons in whose name the shares of Series A Preferred Stock have been issued, as well as the name and address of each transferee. The Corporation may treat the person in whose name any share of Series A Preferred Stock is registered on the register as the owner and holder thereof for all purposes, notwithstanding any notice to the contrary, but in all events recognizing any properly made transfers.

14.15 Disclosure. Upon receipt or delivery by the Corporation of any notice in accordance with the terms of this Certificate of Designation, unless the Corporation has in good faith determined that the matters relating to such notice do not constitute material, nonpublic information relating to the Corporation or its Subsidiaries, the Corporation shall, unless any provision of any Transaction Document provides otherwise with respect to the receipt or delivery of a particular notice in accordance with the terms and conditions of the Transaction Documents, within two (2) Business Days after any such receipt or delivery publicly disclose such material, nonpublic information on a Current Report on Form 8-K or otherwise. In the event that the Corporation believes that a notice contains material, nonpublic information relating to the Corporation or its Subsidiaries, the Corporation so shall indicate to the Holders contemporaneously with delivery of such notice, and in the absence of any such indication, the Holders shall be allowed to presume that all matters relating to such notice do not constitute material, nonpublic information relating to the Corporation or its Subsidiaries. For purposes of this Section 14.15, public disclosure of any information by a stockholder of the Corporation (including any filing pursuant to Section 13 or Section 16 of the Exchange Act) shall satisfy the requirement that such information be publicly disclosed by the Corporation.

IN WITNESS WHEREOF, this Certificate of Designation has been executed by a duly authorized officer of this Corporation on this 22nd day of March, 2018.

By: /s/Lisa A. Conte
President

EXHIBIT I

JAGUAR HEALTH, INC.

CONVERSION NOTICE

Reference is made to the Certificate of Designation of Series A Convertible Preferred Stock of Jaguar Health, Inc. (the “**Certificate of Designation**”). In accordance with and pursuant to the Certificate of Designation, the undersigned hereby elects to convert the number of shares of Series A Convertible Preferred Stock, par value $0.0001 per share (the “**Series A Preferred Shares**”), of Jaguar Health, Inc., a Delaware corporation (the “**Company**”), indicated below into shares of Voting Common Stock, par value $0.0001 per share (the “**Common Stock**”), of the Company, as of the date specified below.

Date of Conversion:

Number of shares of Series A Preferred Stock to be converted:

Stock certificate no(s). of shares of Series A Preferred Stock to be converted:

Tax ID Number (If applicable):

Please confirm the following information:

Conversion Price:

Number of shares of Common Stock to be issued:

Please issue the shares of Common Stock into which the shares of Series A Preferred Stock are being converted to the Holder, or for its benefit, as follows:

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

Issue to:

Address:

Telephone Number:

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

DTC Participant:

DTC Number:

Account Number:

o Check here if requesting delivery by book-entry only registration through the DTC’s Direct Registration System (DRS):

Issue to:

Address:

Telephone Number:

Authorization:

By: ______________________________
Title: ______________________________

Dated:

Account Number (if electronic book entry transfer):

Transaction Code Number (if electronic book entry transfer):

[NOTE TO HOLDER — THIS FORM MUST BE SENT CONCURRENTLY TO TRANSFER AGENT]

Exhibit 4.1

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "*ACT*"), OR UNDER THE SECURITIES LAWS OF ANY STATES IN THE UNITED STATES. THIS NOTE IS SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE ACT AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM.

THIS NOTE IS SUBJECT TO THAT CERTAIN SUBORDINATION AGREEMENT ENTERED INTO BY AND AMONG BORROWER (AS DEFINED BELOW), LENDER (AS DEFINED BELOW), AND HERCULES GROWTH CAPITAL, INC., A MARYLAND CORPORATION, DATED JUNE 29, 2017 (THE "SUBORDINATION AGREEMENT").

THIS NOTE IS ISSUED WITH ORIGINAL ISSUE DISCOUNT FOR PURPOSES OF SECTION 1271 ET SEQ. OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED. PURSUANT TO TREASURY REGULATION SECTION 1.1275-3, A HOLDER MAY OBTAIN THE ISSUE PRICE, AMOUNT OF ORIGINAL ISSUE DISCOUNT, ISSUE DATE, AND YIELD TO MATURITY FOR THIS NOTE BY SUBMITTING A WRITTEN REQUEST FOR SUCH INFORMATION TO THE BORROWER AT THE FOLLOWING ADDRESS: 201 MISSION STREET, SUITE 2375, SAN FRANCISCO, CALIFORNIA 94105.

SECURED PROMISSORY NOTE

Effective Date: March 21, 2018 U.S. $1,090,340.91

FOR VALUE RECEIVED, JAGUAR HEALTH, INC., a Delaware corporation ("**Borrower**"), promises to pay to CHICAGO VENTURE PARTNERS, L.P., a Utah limited partnership, or its successors or assigns ("**Lender**"), $1,090,340.91 and any interest, fees, charges, and late fees on the Maturity Date in accordance with the terms set forth herein and to pay interest on the Outstanding Balance at the rate of eight percent (8%) per annum from the Purchase Price Date until the same is paid in full. This Secured Promissory Note (this "**Note**") is issued and made effective as of March 21, 2018 (the "**Effective Date**"). This Note is issued pursuant to that certain Securities Purchase Agreement dated March 21, 2018, as the same may be amended from time to time, by and between Borrower and Lender (the "**Purchase Agreement**"). All interest calculations hereunder shall be computed on the basis of a 360-day year comprised of twelve (12) thirty (30) day months, shall compound daily and shall be payable in accordance with the terms of this Note. Certain capitalized terms used herein are defined in Attachment 1 attached hereto and incorporated herein by this reference.

This Note carries an OID of $315,340.91. In addition, Borrower agrees to pay $25,000.00 to Lender to cover Lender's legal fees, accounting costs, due diligence, monitoring and other transaction costs incurred in connection with the purchase and sale of this Note (the "**Transaction Expense Amount**"), all of which amount is included in the initial principal balance of this Note. The purchase price for this Note shall be $750,000.00 (the "**Purchase Price**"), computed as follows: $1,090,340.91 original principal balance, less the OID, less the Transaction Expense Amount. The Purchase Price shall be payable by Lender by wire transfer of immediately available funds.

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1. Payment; Prepayment.

1.1. Payment. All payments owing hereunder shall be in lawful money of the United States of America as provided for herein, and delivered to Lender at the address or bank account furnished to Borrower for that purpose. All payments shall be applied first to (a) costs of collection, if any, then to (b) fees and charges, if any, then to (c) accrued and unpaid interest, and thereafter, to (d) principal.

1.2. Prepayment. Notwithstanding the foregoing, Borrower shall have the right, exercisable on not less than five (5) Business Days prior written notice to Lender to prepay the Outstanding Balance of this Note, in full, in accordance with this Section 1.2. Any notice of prepayment hereunder (an "**Optional Prepayment Notice**") shall be delivered to Lender at its registered address and shall state: (i) that Borrower is exercising its right to prepay this Note, and (ii) the date of prepayment, which shall be not less than five (5) Business Days from the date of the Optional Prepayment Notice. On the date fixed for prepayment (the "**Optional Prepayment Date**"), Borrower shall make payment of the Optional Prepayment Amount (as defined below) to or upon the order of Lender as may be specified by Lender in writing to Borrower. If Borrower exercises its right to prepay this Note, Borrower shall make payment to Lender of an amount in cash equal to 117.5% (the "**Prepayment Premium**") multiplied by the then Outstanding Balance of this Note (the "**Optional Prepayment Amount**"). In the event Borrower delivers the Optional Prepayment Amount to Lender prior to the Optional Prepayment Date or without delivering an Optional Prepayment Notice to Lender as set forth herein without Lender's prior written consent, the Optional Prepayment Amount shall not be deemed to have been paid to Lender until the Optional Prepayment Date. In the event Borrower delivers the Optional Prepayment Amount without an Optional Prepayment Notice, then the Optional Prepayment Date will be deemed to be the date that is five (5) Business Days from the date that the Optional Prepayment Amount was delivered to Lender.

2. Security. This Note is secured by that certain Security Agreement of even date herewith, as the same may be amended from time to time (the "**Security Agreement**"), executed by Borrower in favor of Lender encumbering all assets of Borrower, as more specifically set forth in the Security Agreement, all the terms and conditions of which are hereby incorporated into and made a part of this Note.

3. [Reserved].

4. Defaults and Remedies.

4.1. Defaults. The following are events of default under this Note (each, an "**Event of Default**"): (a) Borrower fails to pay any principal or any interest, fees, charges, or any other amount when due and payable hereunder, which default remains uncured for a period of one (1) Business Day; (b) a receiver, trustee or other similar official shall be appointed over Borrower or a material part of its assets and such appointment shall remain uncontested for thirty (30) calendar days or shall not be dismissed or discharged within sixty (60) calendar days; (c) Borrower generally fails to pay, or admits in writing its inability to pay, its debts as they become due, subject to applicable grace periods, if any; (d) Borrower makes a general assignment for the benefit of creditors; (e) Borrower files a petition for relief under any bankruptcy, insolvency or similar law (domestic or foreign); (f) an involuntary bankruptcy proceeding is commenced or filed against Borrower which is not dismissed or discharged within sixty (60) calendar days; (g) Borrower defaults or otherwise fails to observe or perform any covenant, obligation, condition or agreement of Borrower contained herein or in any other Transaction Document (as defined in the Purchase Agreement), other than those specifically set forth in this Section 4.1 and Section 4 of the Purchase Agreement, which default

continues for a period of thirty (30) calendar days following notice by Lender to Borrower thereof; (h) any representation, warranty or other statement made or furnished by or

on behalf of Borrower to Lender herein or in any Transaction Document, is false, incorrect, incomplete or misleading in any material respect when made or furnished; (i) the occurrence of a Fundamental Transaction without Lender's prior written consent; (j) Borrower effectuates a reverse split of its common stock, $0.0001 par value per share ("**Common Stock**") without twenty (20) Business Days prior written notice to Lender (other than such splits effectuated to remain listed with NASDAQ); (k) any money judgment, writ or similar process is entered or filed against Borrower or any subsidiary of Borrower or any of its property or other assets for more than $1,000,000.00, and shall remain unpaid, unvacated, unbonded or unstayed for a period of thirty (30) calendar days unless otherwise consented to by Lender; (l) Borrower fails to observe or perform any covenant set forth in Section 4 of the Purchase Agreement, which default continues for a period of thirty (30) calendar days following the occurrence of the applicable breach; or (m) Borrower breaches any covenant or other term or condition contained in any Other Agreements, which default continues for a period of thirty (30) calendar days following notice by Lender to Borrower thereof. Notwithstanding the foregoing, the cure period set forth in 4.1(b) above shall only apply to the first three (3) occurrences and shall not apply to any occurrences thereafter.

4.2. Remedies. At any time and from time to time after Lender becomes aware of the occurrence of any Event of Default, Lender may apply the Default Effect and accelerate this Note by written notice to Borrower, with the Outstanding Balance becoming immediately due and payable in cash. Notwithstanding the foregoing, at any time following the occurrence of any Event of Default, Lender may, at its option, elect to increase the Outstanding Balance by applying the Default Effect (subject to the limitation set forth below) via written notice to Borrower without accelerating the Outstanding Balance, in which event the Outstanding Balance shall be increased as of the date of the occurrence of the applicable Event of Default pursuant to the Default Effect, but the Outstanding Balance shall not be immediately due and payable unless so declared by Lender (for the avoidance of doubt, if Lender elects to apply the Default Effect pursuant to this sentence, it shall reserve the right to declare the Outstanding Balance immediately due and payable at any time and no such election by Lender shall be deemed to be a waiver of its right to declare the Outstanding Balance immediately due and payable as set forth herein unless otherwise agreed to by Lender in writing). Notwithstanding the foregoing, upon the occurrence of any Event of Default described in clauses (d), (e), (f), (g) or (h) of Section 4.1, the Outstanding Balance as of the date of acceleration shall become immediately and automatically due and payable in cash at the Outstanding Balance as automatically increased by the Default Effect, without any written notice required by Lender. At any time following the occurrence of any Event of Default, upon written notice given by Lender to Borrower, interest shall accrue on the Outstanding Balance beginning on the date the applicable Event of Default occurred at an interest rate equal to the lesser of 17% per annum or the maximum rate permitted under applicable law ("**Default Interest**"). In connection with acceleration described herein, Lender need not provide, and Borrower hereby waives, any presentment, demand, protest or other notice of any kind, and Lender may immediately and without expiration of any grace period enforce any and all of its rights and remedies hereunder and all other remedies available to it under applicable law. Such acceleration may be rescinded and annulled by Lender at any time prior to payment hereunder and Lender shall have all rights as a holder of the Note until such time, if any, as Lender receives full payment pursuant to this Section 4.2. No such rescission or annulment shall affect any subsequent Event of Default or impair any right consequent thereon. Nothing herein shall limit Lender's right to pursue any other remedies available to it at law or in equity.

5. Unconditional Obligation; No Offset. Borrower acknowledges that this Note is an unconditional, valid, binding and enforceable obligation (except as may be limited by applicable bankruptcy, insolvency and similar laws affecting creditors' rights and by general principles of equity) of Borrower not subject to offset, deduction or counterclaim of any kind. Borrower hereby waives any rights of offset it now has or may have hereafter against Lender, its successors and assigns, and agrees to make the payments called for herein in accordance with the terms of this Note.

6. Waiver. No waiver of any provision of this Note shall be effective unless it is in the form of a writing signed by the party granting the waiver. No waiver of any provision or consent to any prohibited action shall constitute a waiver of any other provision or consent to any other prohibited action, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit a party to provide a waiver or consent in the future except to the extent specifically set forth in writing.

7. [Reserved].

8. Borrower Redemptions. Beginning on the Redemption Start Date, Lender shall have the right, exercisable at any time in its sole and absolute discretion, to redeem a portion of the Note in any amount (such amount, the "**Redemption Amount**") by providing Borrower with a notice substantially in the form attached hereto as Exhibit A (each, a "**Redemption Notice**", and each date on which Lender delivers a Redemption Notice, a "**Redemption Date**"). For the avoidance of doubt, Lender may submit to Borrower one (1) or more Redemption Notices in any given calendar month. Payments of each Redemption Amount will be made in cash or as otherwise mutually agreed upon and will be delivered to Lender on or before the third Business Day immediately following the applicable Redemption Date. Notwithstanding that failure to repay this Note in full by the Maturity Date is an Event of Default, the Redemption Dates shall continue after the Maturity Date pursuant to this Section 8 until the Outstanding Balance is repaid in full.

9. [Reserved].

10. [Reserved].

11. [Reserved].

12. [Reserved].

13. Payment of Collection Costs. If this Note is placed in the hands of an attorney for collection or enforcement prior to commencing arbitration or legal proceedings, or is collected or enforced through any arbitration or legal proceeding, or Lender otherwise takes action to collect amounts due under this Note or to enforce the provisions of this Note, then Borrower shall pay the reasonable and documented out-of-pocket costs incurred by Lender for such collection, enforcement or action including, without limitation, reasonable and documented attorneys' fees and disbursements.

14. Opinion of Counsel. In the event that an opinion of counsel is needed for any matter related to this Note, Lender has the right to have any such opinion provided by its counsel.

15. Governing Law; Venue. This Note shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Note shall be governed by, the internal laws of the State of Utah, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Utah or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Utah. The provisions set forth in the Purchase Agreement to determine the proper venue for any disputes are incorporated herein by this reference.

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16. Resolution of Disputes.

16.1. Arbitration of Disputes. By its acceptance of this Note, each party agrees to be bound by the Arbitration Provisions (as defined in the Purchase Agreement) set forth in the Purchase Agreement.

16.2. Calculation Disputes. Notwithstanding the Arbitration Provisions, in the case of a dispute as to any Calculation (as defined in the Purchase Agreement), such dispute will be resolved in the manner set forth in the Purchase Agreement.

17. Cancellation. After repayment of the entire Outstanding Balance, this Note shall be deemed paid in full, shall automatically be deemed canceled, and shall not be reissued.

18. Amendments. The prior written consent of both parties hereto shall be required for any change or amendment to this Note.

19. Assignments. Borrower may not assign this Note without the prior written consent of Lender. This Note may be offered, sold, assigned or transferred by Lender without the consent of Borrower.

20. Time is of the Essence. Time is expressly made of the essence with respect to each and every provision of this Note and the documents and instruments entered into in connection herewith.

21. Notices. Whenever notice is required to be given under this Note, unless otherwise provided herein, such notice shall be given in accordance with the subsection of the Purchase Agreement titled "Notices."

22. Liquidated Damages. Lender and Borrower agree that in the event Borrower fails to comply with any of the terms or provisions of this Note, Lender's damages would be uncertain and difficult (if not impossible) to accurately estimate because of the parties' inability to predict future interest rates, future share prices, future trading volumes and other relevant factors. Accordingly, Lender and Borrower agree that any fees, balance adjustments, Default Interest or other charges assessed under this Note are not penalties but instead are intended by the parties to be, and shall be deemed, liquidated damages (under Lender's and Borrower's expectations that any such liquidated damages will tack back to the Purchase Price Date for purposes of determining the holding period under Rule 144).

23. Waiver of Jury Trial. EACH OF LENDER AND BORROWER IRREVOCABLY WAIVES ANY AND ALL RIGHTS SUCH PARTY MAY HAVE TO DEMAND THAT ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN ANY WAY RELATED TO THIS NOTE OR THE RELATIONSHIPS OF THE PARTIES HERETO BE TRIED BY JURY. THIS WAIVER EXTENDS TO ANY AND ALL RIGHTS TO DEMAND A TRIAL BY JURY ARISING UNDER COMMON LAW OR ANY APPLICABLE STATUTE, LAW, RULE OR REGULATION. FURTHER, EACH PARTY HERETO ACKNOWLEDGES THAT SUCH PARTY IS KNOWINGLY AND VOLUNTARILY WAIVING SUCH PARTY'S RIGHT TO DEMAND TRIAL BY JURY.

24. Voluntary Agreement. Borrower has carefully read this Note and has asked any questions needed for Borrower to understand the terms, consequences and binding effect of this Note and fully understand them. Borrower has had the opportunity to seek the advice of an attorney of Borrower's choosing, or has waived the right to do so, and is executing this Note voluntarily and without any duress or undue influence by Lender or anyone else.

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25. Severability. If any part of this Note is construed to be in violation of any law, such part shall be modified to achieve the objective of Borrower and Lender to the fullest extent permitted by law and the balance of this Note shall remain in full force and effect.

[*Remainder of page intentionally left blank; signature page follows*]

IN WITNESS WHEREOF, Borrower has caused this Note to be duly executed as of the Effective Date.

BORROWER:

JAGUAR HEALTH, INC.

By: /s/ Lisa Conte
Name: Lisa Conte
Title: President and CEO

ACKNOWLEDGED, ACCEPTED AND AGREED:

LENDER:

CHICAGO VENTURE PARTNERS, L.P.

By: Chicago Venture Management, L.L.C.,
its General Partner

By: CVM, Inc., its Manager

By: /s/ John M. Fife
John M. Fife, President

[*Signature Page to Secured Promissory Note*]

ATTACHMENT 1
DEFINITIONS

For purposes of this Note, the following terms shall have the following meanings:

A1. "**Bloomberg**" means Bloomberg L.P. (or if that service is not then reporting the relevant information regarding the Common Stock, a comparable reporting service of national reputation selected by Lender and reasonably satisfactory to Borrower).

A2. "**Business Day**" means any day other than a Saturday, Sunday or any day on which banks located in the State of California or Utah are authorized or obligated to close.

A3. "**Default Effect**" means multiplying the Outstanding Balance as of the date the applicable Event of Default occurred by 17.5%.

A4. "**Fundamental Transaction**" means that, except in connection with the transactions contemplated by the Merger Agreement and the S-4 Transactions, (a) (i) Borrower shall, directly or indirectly, in one or more related transactions, consolidate or merge with or into (whether or not Borrower or any of its subsidiaries is the surviving corporation) any other person or entity, or (ii) Borrower shall, directly or indirectly, in one or more related transactions, sell, lease, license, assign, transfer, convey or otherwise dispose of all or substantially all of its respective properties or assets to any other person or entity, or (iii) Borrower or any of its subsidiaries shall, directly or indirectly, in one or more related transactions, allow any other person or entity to make a purchase, tender or exchange offer that is accepted by the holders of more than 50% of the outstanding shares of voting stock of Borrower (not including any shares of voting stock of Borrower held by the person or persons making or party to, or associated or affiliated with the persons or entities making or party to, such purchase, tender or exchange offer), or (iv) Borrower shall, directly or indirectly, in one or more related transactions, consummate a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with any other person or entity whereby such other person or entity acquires more than 50% of the outstanding shares of voting stock of Borrower (not including any shares of voting stock of Borrower held by the other persons or entities making or party to, or associated or affiliated with the other persons or entities making or party to, such stock or share purchase agreement or other business combination), or (v) Borrower shall, directly or indirectly, in one or more related transactions, reorganize, recapitalize or reclassify the Common Stock, other than an increase in the number of authorized shares of Borrower's Common Stock, or (b) any "person" or "group" (as these terms are used for purposes of Sections 13(d) and 14(d) of the 1934 Act and the rules and regulations promulgated thereunder) is or shall become the "beneficial owner" (as defined in Rule 13d-3 under the 1934 Act), directly or indirectly, of 50% of the aggregate ordinary voting power represented by issued and outstanding voting stock of Borrower.

A5. "**Maturity Date**" means (a) the date that is eighteen (18) months from the Effective Date if the Redemption Start Condition is satisfied on or before April 1, 2018 or (b) the date that is nine (9) months from the Effective Date if the Redemption Start Condition is not satisfied on or before April 1, 2018.

A6. "**Merger Agreement**" means the Agreement and Plan of Merger, dated March 31, 2017, by and among Napo Pharmaceuticals, Inc., a Delaware corporation, the Company and Napo Acquisition Corporation, a Delaware corporation, as amended.

A7. "**Merger Closing Date**" means the date upon which the merger contemplated by the Merger Agreement is consummated and has become effective.

A8. "**Other Agreements**" means, collectively, (a) all existing and future agreements and instruments between, among or by Borrower (or an affiliate), on the one hand, and Lender (or an affiliate), on the other hand, and (b) any financing agreement or a material agreement that affects Borrower's ongoing business operations.

A9. "**Outstanding Balance**" means as of any date of determination, the Purchase Price, as reduced or increased, as the case may be, pursuant to the terms hereof for payment, redemption, offset, or otherwise, plus the OID, the Transaction Expense Amount, accrued but unpaid interest, collection and enforcements costs (including attorneys' fees) incurred by Lender, and any other fees or charges incurred under this Note

A10. "**Purchase Price Date**" means the date the Purchase Price is delivered by Lender to Borrower.

A11. “**Redemption Start Condition**” means that between March 13, 2018 and April 1, 2018, the Company has raised at least $12,000,000.00 in equity.

A12. “**Redemption Start Date**” means (a) the date that is seven (7) months from the Effective Date if the Redemption Start Condition is satisfied on or before April 1, 2018 or (b) the date that is six (6) months from the Effective Date if (i) the Redemption Start Condition is not satisfied on or before April 1, 2018 or (ii) at any time after the Effective Date Borrower breaches any of the covenants set forth in Section 4 of the Purchase Agreement.

A13. “**S-4 Transactions**” means any and all transactions individually or in the aggregate and documents and agreements referenced and/or filed as exhibits as disclosed or contemplated in that certain Form S-4 Registration Statement relating to the Borrower and filed with the United States Securities and Exchange Commission on April 18, 2017, as amended, modified or supplemented from time to time.

EXHIBIT A

Chicago Venture Partners, L.P.
303 East Wacker Drive, Suite 1040
Chicago, Illinois 60601

Jaguar Health, Inc. Date:
Attn: Lisa A. Conte, CEO
201 Mission Street, Suite 2375
San Francisco, CA 94105

REDEMPTION NOTICE

The above-captioned Lender hereby gives notice to Jaguar Health, Inc., a Delaware corporation (the “**Borrower**”), pursuant to that certain Secured Promissory Note made by Borrower in favor of Lender on March 13, 2018 (the “**Note**”), that Lender elects to redeem a portion of the Note as set forth below. In the event of a conflict between this Redemption Notice and the Note, the Note shall govern, or, in the alternative, at the election of Lender in its sole discretion, Lender may provide a new form of Redemption Notice to conform to the Note. Capitalized terms used in this notice without definition shall have the meanings given to them in the Note.

REDEMPTION INFORMATION

A. Redemption Date: , 201
B. Redemption Amount:
C. Remaining Outstanding Balance of Note: *

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* Subject to adjustments for corrections, defaults, interest and other adjustments permitted by the Transaction Documents (as defined in the Purchase Agreement), the terms of which shall control in the event of any dispute between the terms of this Redemption Notice and such Transaction Documents.

[CVP to provide bank information for cash redemption]

Sincerely,

Lender:

CHICAGO VENTURE PARTNERS, L.P.

By: Chicago Venture Management, L.L.C.,
its General Partner

By: CVM, Inc., its Manager

By: ______________________________
John M. Fife, President

Exhibit 10.1

EXECUTION COPY

SERIES A PREFERRED STOCK
PURCHASE AGREEMENT

BETWEEN

JAGUAR HEALTH, INC.
(COMPANY)

AND

SAGARD CAPITAL PARTNERS, L.P.
(PURCHASER)

DATED: MARCH 23, 2018

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SERIES A PREFERRED STOCK PURCHASE AGREEMENT

THIS SERIES A PREFERRED STOCK PURCHASE AGREEMENT (this "Agreement"), is made as of the 23rd day of March, 2018 by and between Jaguar Health, Inc. a company incorporated under the laws of Delaware (the "Company") and Sagard Capital Partners L.P., a Delaware limited partnership (the "Purchaser").

RECITALS

The Company desires to issue and sell to the Purchaser, and the Purchaser desires to purchase from the Company, the Preferred Shares (as defined below) in accordance with the provisions of this Agreement.

The Company has authorized a new series of convertible preferred stock of the Company designated as Series A Convertible Participating Preferred Stock, the terms of which are set forth in the Certificate of Designation (as defined below), which Preferred Shares shall be convertible or redeemable into the Company's Voting Common Stock (as defined below), in accordance with the terms of the Certificate of Designation (all shares of Voting Common Stock issued or issuable pursuant to the terms of the Certificate of Designation pursuant to the terms thereof are referred to herein collectively, as the "Conversion Shares").

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Company and the Purchaser hereby agree as follows:

ARTICLE I.
DEFINITIONS

1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, for all purposes of this Agreement, the following terms have the meanings set forth in this Section 1.1:

"8-K Filing" shall have the meaning ascribed to such term in Section 4.5.

"Action" shall have the meaning ascribed to such term in Section 3.1(l).

"Affiliate" means with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with such Person as such terms are used in and construed under Rule 405 under the Securities Act.

"Board Designees" shall have the meaning ascribed to such term in Section 4.11(a).

"Board of Directors" means the board of directors of the Company.

"Business Day" means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

"Certificate of Designation" means the Certificate of Designation of Series A Convertible Participating Preferred Stock of Jaguar Health, Inc. in the form of Exhibit A attached to this Agreement.

"Closing" means the closing of the purchase and sale of the Preferred Shares pursuant to Section 2.1.

"Closing Date" means the hour and the date on the Trading Day on which all conditions precedent to (i) the Purchaser's obligations to pay the Closing Payment as set forth in Section 2.3 below and (ii) the Company's obligations to deliver the Preferred Shares, in each case, have been satisfied or waived (other than those conditions which by their nature are to be satisfied at the Closing, but subject to such satisfaction), but in no event later than 10:00 a.m. (New York City time) on the first Trading Day following the date hereof or at such earlier time as shall be agreed upon by the Purchaser and the Company. The Closing may be undertaken remotely by electronic transfer of Closing documentation.

"Closing Payment" shall have the meaning ascribed to such term in Section 2.1(a).

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

"Common Share Price" means $0.185

"Common Stock" means collectively, the Voting Common Stock and the Non-Voting Common Stock.

"Common Stock Equivalents" means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

"Company Auditor" means BDO USA, LLP, with offices located at One Bush Street, Suite 1800, San Francisco, CA 94104.

"Company Counsel" means Reed Smith LLP, with offices located at 1510 Page Mill Road, Suite 110, Palo Alto, California 94304.

"Concurrent Investment" means the investment by Invesco Asset Management Limited or its affiliates and one or more investors who are reasonably satisfactory to the Purchaser, concurrently with the issuance of Preferred Shares at the Closing, of an aggregate of no less than $3.5 million and up to no more than $7.0 million of Voting Common Stock for cash at $0.17 per share (of which up to $2.0 million may be issued to such investors within 20 Business Days after the Closing Date), pursuant to agreements

which are reasonably satisfactory to the Purchaser and its counsel (to be provided to the Purchaser at least three (3) Business Days prior to Closing), with the entire proceeds of such Concurrent Investment to be applied in full towards aged payables relating to the Merger in a manner consistent with the Officer's Certificate to be delivered to the Purchaser at Closing pursuant to Section 2.2(c).

"Conversion Shares" shall have the meaning ascribed to such term in the Recitals.

"CVP" shall have the meaning ascribed to such term in the definition of "CVP Transaction" below.

"CVP Transactions" means, collectively, the Company's issuance of (i) a secured promissory note in the principal amount of $2,240,909 (with a discount equal to $655,909) to Chicago Venture Partners, L.P., a Utah limited partnership ("CVP") pursuant to a securities purchase agreement by and between the Company and CVP, dated as of February 26, 2018 ("Feb 2018 CVP Purchase Agreement") and (ii) a secured promissory note in the principal amount of $1,090,340.91 (with a discount equal to $315,340.91) to CVP pursuant to a securities purchase agreement by and between the Company and CVP, dated as of March 21, 2018 ("March 2018 CVP Purchase Agreement," and together with the Feb 2018 CVP Purchase Agreement, the "CVP Purchase Agreements").

"DTC" shall have the meaning ascribed to such term in Section 3.1(bb).

"Deemed Liquidation Event" shall have the meaning ascribed to such term in the Certificate of Designation.

"Disclosure Letter" means the Disclosure Letter of the Company delivered concurrently herewith.

"Evaluation Date" shall have the meaning ascribed to such term in Section 3.1(x).

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Execution Date" shall mean the date on which the parties execute and enter into this Agreement.

"Exempt Issuance" means any of the following:

(a) shares of Common Stock issued or issuable upon conversion of outstanding shares of Preferred Stock;

(b) shares of Common Stock (and/or options, warrants or rights therefor) granted or issued hereafter to employees, officers, directors, contractors, consultants, or advisers to, the Company or any Subsidiary pursuant to incentive agreements, stock purchase or stock option plans, stock bonuses or awards, warrants, contracts or other arrangements that are approved by the Board of Directors;

(c) shares of Common Stock or Preferred Stock issued or issuable (or options, warrants or rights therefor) in connection with strategic transactions involving the Company and other entities approved by the Board of Directors, including without limitation joint ventures, equipment, manufacturing, marketing, distribution, technology transfer or development arrangements;

(d) shares of Common Stock or Preferred Stock (or options, warrants or rights therefor) issued pursuant to the acquisition of another corporation or entity by the Company by consolidation, merger, purchase of all or substantially all of the assets, or other reorganization in which the Company acquires, in a single transaction or series of related transactions, all or substantially all of the assets of such other corporation or entity or fifty percent (50%) or more of the voting power of such other corporation or entity or fifty percent (50%) or more of the equity ownership of such other entity; provided that such transaction or series of transactions has been approved by the Board of Directors, or pursuant to the purchase of less than a fifty percent (50%) equity ownership in connection with a joint venture or other strategic arrangement or other commercial relationship, provided such an arrangement is approved by the Board of Directors;

(e) shares of Common Stock or Preferred Stock issuable upon exercise of any options, warrants or rights to purchase any securities of the Company outstanding as of the Execution Date and any securities issuable upon the conversion or exercise thereof;

(f) shares of Common Stock or Preferred Stock (or options, warrants or rights therefor) issued or issuable in a Deemed Liquidation Event; and

(g) the portion of the Concurrent Investment that is scheduled to close within twenty (20) Business Days after the Closing Date, as contemplated by the definition thereof.

"FCPA" means the Foreign Corrupt Practices Act of 1977, as amended.

"FINRA" means the Financial Industry Regulatory Authority.

"Fundamental Change" shall have the meaning ascribed to such term in the Certificate of Designation.

"GAAP" shall have the meaning ascribed to such term in Section 3.1(i).

"Hercules Debt" means the Company's outstanding obligations under that certain Loan and Security Agreement, dated August 18, 2015, between Company and Hercules Capital, Inc. (f/k/a Hercules Technology Growth Capital, Inc.), as amended, and all related documents.

"Indebtedness" has the meaning set forth in the Certificate of Designation.

"Indemnification Agreements" shall have the meaning ascribed to such term in Section 2.3(i).

"Indemnified Liabilities" shall have the meaning ascribed to such term in Section 5.11(a).

"Indemnitees" shall have the meaning ascribed to such term in Section 5.11(a).

"Insolvent" shall have the meaning ascribed to such term in Section 3.1(k).

"Intellectual Property Rights" shall have the meaning ascribed to such term in Section 3.1(q).

"Investments" means any beneficial ownership (including stock, partnership or limited liability company interests) of or in any Person, or any loan, advance or capital contribution to any Person or the acquisition of all, or substantially all, of the assets of another Person.

"Irrevocable Transfer Agent Instructions" shall have the meaning ascribed to such term in Section 2.2(e).

"L2 Capital" means L2 Capital, LLC, a Kansas limited liability company.

"L2 Capital Stock Purchase Agreement" means that certain common stock purchase agreement by and between the Company and L2 Capital, dated as of November 24, 2017.

"Liens" means a lien, charge, pledge, security interest, encumbrance, right of first refusal, preemptive right or other restriction.

"Material Adverse Effect" means any event or occurrence that has a material adverse effect on (i) the legality, validity or enforceability of any Transaction Document, (ii) the results of operations, operations, assets, liabilities, properties, business, prospects or condition (financial or otherwise) of the Company and the Subsidiaries, taken as a whole, or (iii) the Company's authority or ability to perform on a timely basis its obligations under any Transaction Document.

"Material Permit" shall have the meaning ascribed to such term in Section 3.1(o).

"Measurement Date" shall have the meaning ascribed to such term in the Certificate of Designation.

"Merger" means the merger, effective as of July 31, 2017, of Napo into a wholly-owned subsidiary of the Company formed for purposes of effectuating the Merger pursuant to the terms of the Merger Agreement.

"Merger Agreement" means the Agreement and Plan of Merger dated March 31, 2017 by and among the Company, Napo Pharmaceuticals, Inc., Napo Acquisition Corporation, and the representative of Napo named therein.

"MNPI" shall have the meaning ascribed to such term in Section 4.8(c).

"Napo" means Napo Pharmaceuticals, Inc., a company incorporated under the laws of Delaware.

"New Securities" shall mean any Common Stock or Preferred Stock of the Company, whether now authorized or not, and rights, options or warrants to purchase such Common Stock or Preferred Stock, and securities of any type whatsoever that are, or may become, convertible or exchangeable into such Common Stock or Preferred Stock; *provided*, *however*, that the term "New Securities" does not include Exempt Issuances.

"Non-Voting Common Stock" means the non-voting common stock of the Company, par value $0.0001 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

"Offering" shall have the meaning ascribed to such term in Section 2.1(a).

"Officer's Certificate" shall have the meaning ascribed to such term in Section 2.2(c).

"Outstanding Lender Debt" means the Hercules Debt and the Riverside/Magna Debt.

"Person" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

"Preferred Shares" shall have the meaning ascribed to such term in Section 2.1(a).

"Principal Trading Market" shall mean Nasdaq Capital Market.

"Proceeding" means an action, claim, suit, investigation or proceeding (including, without limitation, an informal investigation or partial proceeding, such as a deposition), whether commenced or threatened.

"Proposal" shall have the meaning ascribed to such term in Section 4.9(a).

"Proxy Statement" shall have the meaning ascribed to such term in Section 4.9(b).

"Purchase Price" shall have the meaning ascribed to such term in Section 2.1(a).

"Redemption Event" shall have the meaning ascribed to such term in the Certificate of Designation.

"Registrable Securities" means the Conversion Shares; *provided*, *however*, that Registrable Securities shall not include any Conversion Shares that have previously been registered and remain subject to a currently effective registration statement or which have been sold to the public either pursuant to a registration statement or Rule 144, or which have been sold in a private transaction in which the transferor's rights under the Registration Rights Agreement are not assigned, or which may be sold immediately

without registration under the Securities Act and without restriction or limitation pursuant to Rule 144 and without the requirement to be in compliance with Rule 144(c)(1).

"Registrable Securities Amount" means the Common Share Price times the number of applicable Registrable Securities.

"Registration Rights Agreement" shall have the meaning ascribed to such term in Section 2.3(j).

"Required Approvals" shall have the meaning ascribed to such term in Section 3.1(e).

"Returns" means all returns, declarations, reports, statements, and other documents required to be filed in respect to Taxes.

"Riverside/Magna Debt" means the Company's outstanding obligations under the Original Issue Discount Exchangeable Promissory Notes issued by the Company to MEF I, LP and Riverside Merchant Partners pursuant to that certain Note Purchase Agreement, dated as of March 1, 2017, by and among the Company, MEF I, LP and Riverside Merchant Partners, as amended, and all related documents.

"Rule 424" means Rule 424 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

"SEC Reports" shall have the meaning ascribed to such term in Section 3.1(i).

"Secretary's Certificate" shall have the meaning ascribed to such term in Section 2.2(g).

"Securities" means the Preferred Shares and the Conversion Shares.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Series A Conversion Price" shall have the meaning ascribed to such term in the Certificate of Designation.

"Series A Preferred Stock" means the Series A Convertible Participating Preferred Stock of the Company, par value $0.0001 per share.

"Subsidiary" means any subsidiary of the Company that is a "significant subsidiary" as defined in Rule 1-02 of Regulation S-X under the Securities Act and shall, where applicable, also include any direct or indirect significant subsidiary of the Company formed or acquired after the date hereof.

"Taxes" mean all federal, state, local, foreign, and other net income, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, license, lease, service, service use, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, windfall profits, customs, duties or other taxes, fees, assessments, or charges of any kind whatsoever, together with any interest and any penalties, additions to tax, or additional amounts with respect thereto.

"Trading Day" means a day on which the principal Trading Market is open for trading.

"Trading Market" means any of the following markets or exchanges on which the Voting Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange (or any successors to any of the foregoing).

"Transaction Documents" means this Agreement, the Certificate of Designation, the Irrevocable Transfer Agent Instructions, the Registration Rights Agreement, the Indemnification Agreements, the Secretary's Certificate, Officer's Certificate and any other documents or agreements executed in connection with the transactions contemplated hereunder.

"Transfer Agent" means Computershare Trust Company, N.A., with offices located at 8742 Lucent Blvd., Suite 225 Highlands Ranch, CO 80129, and any successor transfer agent of the Company.

"Voting Cap" means the rules related to a change of control under NASDAQ Listing Rule 5635(b).

"Voting Common Stock" means the voting common stock of the Company, par value $0.0001 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

ARTICLE II.
PURCHASE AND SALE

2.1 Closing.

(a) Upon the terms and subject to the conditions set forth herein, the Company agrees to sell and issue to the Purchaser at the Closing Five Million Five Hundred Twenty Four Thousand Nine Hundred and Twenty-Six (5,524,926) shares of Series A Preferred Stock (the "Preferred Shares") at a purchase price of $1.665 per share (the "Offering") for an aggregate of Nine Million One Hundred Ninety Nine and One Dollars ($9,199,001) (the "Purchase Price"), of which, for the avoidance of doubt, (i) Nine Million and One Dollars ($9,000,001) will be paid to the Company at Closing (the "Closing Payment") and (ii) the remainder of the Purchase Price will be paid directly by the Purchaser to the Purchaser's legal counsel for reasonable legal fees and expenses as set forth in Section 5.2.

(b) On the Closing Date, the Company shall deliver to the Purchaser a certificate representing the Preferred Shares and the other items required pursuant to Section 2.2 deliverable at the Closing against the Purchaser's payment of the Closing Payment by wire transfer of immediately available funds to a bank account designated by the Company.

2.2 Deliveries. The Company shall deliver or cause to be delivered to the Purchaser the following on the Closing Date:

(a) A certificate representing the Preferred Shares, which certificate shall be duly executed by the Company and delivered to the address set forth on the Purchaser's signature page to this Agreement;

(b) A legal opinion of Company Counsel addressed to the Purchaser in form and substance satisfactory to the Purchaser;

(c) A duly executed and delivered Officer's Certificate ("Officer's Certificate"), dated as of the Closing Date, in substantially the form of Exhibit B attached hereto;

(d) A certificate of the Transfer Agent as to the number of shares of Common Stock outstanding immediately prior to the Closing;

(e) A copy of the Irrevocable instructions to the Transfer Agent pertaining to the conversion of the Preferred Shares substantially in the form of Exhibit C attached hereto ("Irrevocable Transfer Agent Instructions"), which instructions shall be countersigned by the Transfer Agent;

(f) Certificates evidencing the formation and good standing of the Company and its Subsidiaries in each such entity's jurisdiction of formation issued by the Secretary of State (or comparable office) of such jurisdiction, as of a date within ten (10) days of the Closing Date; and

(g) A certificate (the "Secretary's Certificate"), executed by the secretary of the Company and dated as of the Closing Date, certifying as to (i) the resolutions consistent with Section 3.1(c) as adopted by the Company's Board of Directors in a form reasonably acceptable to the Purchaser, (ii) the Company's Certificate of Incorporation (including a certified copy of the Certificate of Incorporation, including the Certificate of Designation, as certified by the Secretary of State of the State of Delaware (or a fax or pdf copy of such certificate)), (iii) the Company's bylaws, each as in effect at the Closing and (iv) the approval by the Company's stockholders of: (A) a reverse stock split of not less than 1:1.2 and not more than 1:10 and (B) for purposes of Nasdaq Listing Rule 5635(d), the issuance of Voting Common Stock in one or more non-public capital raising transactions at a price that may be less than the greater of book or market value of the Company's Voting Common Stock.

2.3 Closing Conditions. The obligation of the Purchaser to purchase the Preferred Shares at the Closing are subject to the fulfillment on or before the Closing Date of each of the following conditions:

(a) approval by the Company's stockholders of a sufficient number of shares of Common Stock for the issuance of Conversion Shares and approval by the Board of Directors to reserve such shares as Conversion Shares;

(b) the Company shall have performed and complied with all agreements, obligations and conditions contained in this Agreement that are required to be performed or complied with by it on or before the Closing Date;

(c) the accuracy in all material respects when made and on the date in question (other than representations and warranties of the Company already qualified by materiality which shall be true and correct in all respects) of the representations and warranties of the Company contained herein (unless as of a specific date therein);

(d) the delivery by the Company of the items set forth in Section 2.2 of this Agreement;

(e) consummation of the Concurrent Investment prior to or concurrently with the Closing in accordance with a funding memorandum agreed to by the parties;

(f) consummation of the CVP Transactions prior to or concurrently with the Closing in accordance with a funding memorandum agreed to by the parties;

(g) payment of the Outstanding Lender Debt concurrently with the Closing and delivery to the Purchaser of copies of payoff letters and evidence of releases of all Liens in connection therewith (including, for the avoidance of doubt, evidence of the release of all Liens in favor of Hercules Capital, Inc.), as applicable;

(h) Jeffrey C. Johnson shall concurrently commence his service as a Class III director of the Board of Directors pursuant to the provisions of Section 3.2 of the Certificate of Designation;

(i) the execution and delivery by the Company and Jeffrey C. Johnson of an indemnification agreement (which shall contain Purchaser's customary primacy language) substantially in the form of Exhibit D attached to this Agreement (collectively, the "Indemnification Agreements");

(j) the execution and delivery by the Company of the Registration Rights Agreement (the "Registration Rights Agreement") substantially in the form of Exhibit E; and

(k) delivery by the Company to the Purchaser, pursuant to the Officer's Certificate, of copies of the final amendments to the Company's 2014 Stock Incentive Plan (the "2014 Plan"), each as duly approved by the Board and the Company's stockholders:

2.4 Closing Documents. On the Closing Date, the Company agrees to deliver, or cause to be delivered, to the Purchaser executed copies of transaction documents evidencing each of:

(i) consummation of the Concurrent Investment;

(ii) consummation of the CVP Transactions; and

(iii) payment of the Outstanding Lender Debt, including delivery to the Purchaser of copies of payoff letters and evidence of release of Liens in connection therewith (including, for the avoidance of doubt, evidence of the release of the Lien in favor of Hercules Capital, Inc.).

Furthermore, within ten calendar days after Closing, the Company shall deliver a full closing set of all closing documents associated with the Transaction Documents.

Purchaser acknowledges that delivery of all such copies in PDF form via email shall satisfy this requirement.

2.5 Further Assurances. From time to time after the date hereof, without further consideration, the Company and the Purchaser shall use their commercially reasonable efforts to take, or cause to be taken, all actions necessary or appropriate to consummate the transactions contemplated by this Agreement.

2.6 Termination. In the event that the Closing shall not have occurred on or before five (5) Business Days from the date hereof due to the Company's or the Purchaser's failure to satisfy the conditions set forth in Section 2.3 above (and the nonbreaching party's failure to waive such unsatisfied condition(s)), the nonbreaching party shall have the option to terminate this Agreement with respect to such breaching party at the close of business on such date by delivering a written notice to that effect to the breaching party and without liability to the breaching party; provided, however, that if this Agreement is terminated pursuant to this Section 2.6, the Company shall remain obligated to reimburse the Purchaser or its designee(s), as applicable, for the expenses described in Section 5.2.

ARTICLE III.
REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Company. Except as set forth in the Disclosure Letter, which Disclosure Letter shall be deemed a part hereof and shall qualify any representation or otherwise made herein to the extent of the disclosure contained in the corresponding section of the Disclosure Letter, the Company represents and warrants to the Purchaser as of the Execution Date and as of the Closing Date as follows:

(a) Subsidiaries. All of the direct and indirect Subsidiaries of the Company are set forth in the SEC Reports to the extent required under the Securities Act and the Exchange Act. The Company owns, directly or indirectly, all of the issued and outstanding capital stock or other equity interests of each Subsidiary free and clear of any Liens. All of the issued and outstanding shares of capital stock of each Subsidiary are

validly issued and are fully paid, non-assessable and free of preemptive and similar rights to subscribe for or purchase securities, and no convertible or exchangeable securities, options, warrants or other rights to purchase, agreements or other obligations to issue or other rights to convert any obligations into shares of capital stock or ownership interests in the Subsidiaries are outstanding.

(b) Organization and Qualification. The Company and each of the Subsidiaries is an entity duly incorporated or otherwise organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted. Neither the Company nor any Subsidiary is in violation nor default of any of the provisions of its respective certificate or articles of incorporation, bylaws or other organizational or charter documents. Each of the Company and the Subsidiaries is duly qualified to conduct business and is in good standing as a foreign corporation or other entity in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, could not have or reasonably be expected to result in a Material Adverse Effect and no Proceeding has been instituted in any such jurisdiction revoking, limiting or curtailing or seeking to revoke, limit or curtail such power and authority or qualification.

(c) Authorization; Enforcement. The Company has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by this Agreement and each of the other Transaction Documents to which it is a party and otherwise to carry out its obligations hereunder and thereunder and to issue the Securities in accordance with the terms hereof and thereof. The execution and delivery of this Agreement and each of the other Transaction Documents by the Company and the consummation by it of the transactions contemplated hereby and thereby, including, without limitation, the issuance of the Preferred Shares and the reservation for issuance and the issuance of the Conversion Shares issuable pursuant to the terms of the Certificate of Designation, have been duly authorized by all necessary action on the part of the Company and no further action is required by the Company, the Board of Directors or the Company's stockholders in connection herewith or therewith other than in connection with the Required Approvals. This Agreement and each other Transaction Document to which the Company is a party has been (or upon delivery will have been) duly executed by the Company and, when delivered in accordance with the terms hereof and thereof, will constitute the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally and (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law. As of immediately prior to the Closing, the Certificate of Designation in the form attached hereto as Exhibit A has been filed with the Secretary of State of the State of Delaware and is in full force and effect, enforceable against the Company in accordance with its terms and has not been amended.

(d) No Conflicts. The execution, delivery and performance by the Company of this Agreement and the other Transaction Documents to which it is a party, the issuance and sale of the Securities and the consummation by it of the transactions contemplated hereby and thereby, including, without limitation, the issuance of the Preferred Shares and the reservation for issuance and the issuance of the Conversion Shares issuable pursuant to the terms of the Certificate of Designation, do not and will not (i) conflict with or violate any provision of the Company's or any Subsidiary's certificate of incorporation, bylaws or other organizational or charter documents, or (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any Lien upon any of the properties or assets of the Company or any Subsidiary, or give to others any rights of termination, amendment, acceleration, conversion, redemption, or cancellation (with or without notice, lapse of time or both) of, any agreement, credit facility, debt or other instrument (evidencing a Company or Subsidiary debt or otherwise) or other understanding to which the Company or any Subsidiary is a party or by which any property or asset of the Company or any Subsidiary is bound or affected, or (iii) subject to the Required Approvals, conflict with or result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Company or a Subsidiary is subject (including federal and state securities laws and regulations), or by which any property or asset of the Company or a Subsidiary is bound or affected; except in the case of each of clauses (ii) and (iii), such as could not have or reasonably be expected to result in a Material Adverse Effect.

(e) Filings, Consents and Approvals. The Company is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority or other Person in connection with the execution, delivery and performance by the Company of the Transaction Documents, other than such filings as are required to be made under applicable state securities laws (collectively, the "Required Approvals"). Neither the Company nor any of its Subsidiaries is required to obtain any consent or authorization of, or provide prior notice to any other Person in order for it to execute, deliver or perform any of its obligations under or contemplated by the Transaction Documents, in each case in accordance with the terms hereof or thereof.

(f) Issuance of Securities. The Preferred Shares are duly authorized and, when issued and paid for in accordance with the applicable Transaction Documents, will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens with respect to the issuance thereof. The Conversion Shares has been duly reserved for issuance, and upon issuance in accordance with the terms of the Certificate of Designation, will be validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company. The Company has reserved from its duly authorized capital stock at least 150% of the maximum number of shares of Voting Common Stock issuable upon conversion of the Preferred Shares pursuant to the Certificate of Designation (without taking into account any limitations on the conversion or redemption of the Preferred Shares set forth in the Certificate of Designation). The Securities are not and will not be subject to the preemptive rights of any holders of any security of the

Company or similar contractual rights granted by the Company. All corporate action required to be taken for the authorization, issuance and sale of the Securities has been duly and validly taken.

(g) Capitalization. The capitalization of the Company is as set forth in Schedule 3.1(g)(1). Without limiting the foregoing, as of the date hereof, immediately prior to the transactions contemplated by this Agreement, the authorized capital stock of the Company consists of (1) 500,000,000 shares of Voting Common Stock, of which 96,286,425 shares are issued and outstanding, 43,261,502 shares are available for grant pursuant to the Company's stock option and purchase plans and 30,986,554 shares are reserved for issuance pursuant to securities (other than the aforementioned options and warrants and below-mentioned Non-Voting Common Stock) exercisable or exchangeable for, or convertible into, Common Stock, (2) 50,000,000 shares of Non-Voting Common Stock, of which 42,617,893 shares are issued and outstanding and 7,382,107 shares are reserved for issuance, and (3) 10,000,000 shares of preferred stock, par value $0.0001 per share, of which 5,524,926 shares are designated as Preferred Shares (for issuance hereunder) and no other shares are designated or issued and outstanding. No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by the Transaction Documents. Except as set forth in Schedule 3.1(g)(1), (i) there are no outstanding options, warrants, scrip rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire, any shares of Common Stock, or contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to issue additional shares of Common Stock or Common Stock Equivalents; and (ii) neither the Company nor any of its Subsidiaries has any stock appreciation rights or "phantom stock" plans or agreements or any similar plan or agreement. The issuance and sale of the Securities will not obligate the Company to issue shares of Common Stock or other securities to any Person (other than the Purchaser) and will not result in a right of any holder of Company securities or other instruments to adjust the exercise, conversion, exchange or reset price under any of such securities or other instruments. All of the outstanding shares of capital stock of the Company are duly authorized, validly issued, fully paid and nonassessable, have been issued in compliance with all federal and state securities laws, and none of such outstanding shares was issued in violation of any preemptive rights or similar rights to subscribe for or purchase securities. The offers and sales of the Company's securities were at all relevant times either registered under the Securities Act and the applicable state securities or Blue Sky laws or, based in part on the representations and warranties of the purchasers, exempt from such registration requirements. Except for the approval by the Trading Market of the Company's additional shares listing application filed in connection with this Agreement, no further approval or authorization of any stockholder, the Board of Directors or others is required for the issuance and sale of the Securities. Except as set forth in Schedule 3.1(g)(2), there are no stockholders agreements, voting agreements or other similar agreements with respect to the Company's capital stock to which the Company is a party or, to the knowledge of the Company, between or among any of the Company's stockholders.

(h) The Company confirms that each press release issued by the Company or any of its Subsidiaries during the twelve (12) months preceding the date hereof did not at the time of release, when taken into consideration with the SEC Reports and other public disclosure made by the Company, contain any untrue statement of material fact or omit to state a material fact required to be stated therein or necessary in order to make such statements therein, in the light of the circumstances in which they were made, not misleading. The Company does not have any agreement with the Purchaser with respect to the transactions contemplated by the Transaction Documents other than as specified in the Transaction Documents.

(i) SEC Reports; Financial Statements. The Company has filed all reports, schedules, forms, statements and other documents required to be filed by the Company under the Securities Act and the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, for the two years preceding the date hereof (or such shorter period as the Company was required by law or regulation to file such material) (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the "SEC Reports") on a timely basis (other than as set forth in Schedule 3.1(h)) or has received a valid extension of such time of filing and has filed any such SEC Reports prior to the expiration of any such extension. As of their respective dates, the SEC Reports complied in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable, and none of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The financial statements of the Company and other financial information included in the SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the Commission with respect thereto as in effect at the time of filing. Such financial statements have been prepared in accordance with United States generally accepted accounting principles applied on a consistent basis during the periods involved ("GAAP"), except as may be otherwise specified in such financial statements or the notes thereto or, in the case of unaudited statements, as permitted by Form 10-Q of the Commission, and fairly present in all material respects the financial position of the Company and its consolidated Subsidiaries as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, recurring, immaterial, year-end audit adjustments. All disclosures contained in the in the SEC Reports regarding "non-GAAP financial measures" (as such term is defined by the Rules and Regulations) comply in all material respects with Regulation G of the 1934 Act and Item 10 of Regulation S-K under the 1933 Act, to the extent applicable. The Company and the Subsidiaries do not have any material liabilities or obligations, direct or contingent (including any off-balance sheet obligations or any "variable interest entities" within the meaning of Financial Accounting Standards Board Interpretation No. 46), not disclosed in the SEC Reports. The Company has not consummated any financing transaction that has not been disclosed in the SEC Reports in a time and manner as required under the Securities Act and the Exchange Act. There are no financial statements (historical or pro forma) that are required to be included in the SEC Reports that are not included as required.

(j) Contracts. There is no document, contract or other agreement required to be described in the SEC Reports which is not described or filed as required. Each description of a contract, document or other agreement in the SEC Reports accurately reflects in all material respects the terms of the underlying contract, document or other agreement. Each contract, document or other agreement described in the SEC Reports is in full force and effect and is valid and enforceable by and against the Company in accordance with its terms (except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and by general equitable principle). Except as set forth on Schedule 3.1(k) or otherwise disclosed in the SEC Reports, neither the Company nor any of its Subsidiaries, (i) is a party to any contract, agreement or instrument relating to Indebtedness, the violation of which, or default under which, by the other party(ies) to such contract, agreement or instrument would reasonably be expected to result in a Material Adverse Effect, (ii) is in violation of any term of, or in default under, any contract, agreement or instrument, except where such violations and defaults would not result, individually or in the aggregate, in a Material Adverse Effect, or (iii) is a party to any contract, agreement or instrument, the performance of which, in the judgment of the Company's officers, has or is expected to have a Material Adverse Effect.

(k) Material Changes; Undisclosed Events, Liabilities or Developments. Since the date of the latest audited financial statements included within the SEC Reports, except as specifically disclosed in a subsequent SEC Report filed prior to the date hereof or as set forth in Schedule 3.1(k), (A) there has been no event, occurrence or development that has had or that could reasonably be expected to result in a Material Adverse Effect, (B) the Company has not incurred any liabilities (contingent or otherwise) other than (1) trade payables and accrued expenses incurred in the ordinary course of business consistent with normal industry practice and (2) liabilities not required to be reflected in the Company's financial statements pursuant to GAAP or disclosed in filings made with the Commission, (C) the Company has not altered its method of accounting, (D) the Company has not declared or made any dividend or distribution of cash or other property to its stockholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock, (E) the Company has not issued any equity securities to any officer, director or Affiliate, except pursuant to existing Company stock option plans, (F) no officer or director of the Company has resigned from any position with the Company, (G) there has not been any sale of any assets, acquisition or investments individually or in the aggregate, in excess of $250,000 or (H) there has not been any capital expenditure, individually or in the aggregate, in excess of $250,000, other than transactions in the ordinary course of business and transactions described in the SEC Reports. The Company does not have pending before the Commission any request for confidential treatment of information. Neither the Company nor any of its Subsidiaries has taken any steps to seek protection pursuant to any bankruptcy law nor does the Company have any knowledge or reason to believe that its creditors intend to initiate involuntary bankruptcy proceedings or any actual knowledge of any fact that would reasonably lead a creditor to do so. The Company and its Subsidiaries, individually and on a consolidated basis, are not; as of the date hereof, and after giving effect to the transactions contemplated hereby to occur at the Closing, will not be

Insolvent (as defined below). For purposes of this Agreement, "Insolvent" means, with respect to any Person, (i) the present fair saleable value of such Person's assets is less than the amount required to pay such Person's total Indebtedness (as defined below), (ii) such Person is unable to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured, or (iii) such Person intends to incur or believes that it will incur debts that would be beyond its ability to pay as such debts mature. Except for the issuance of the Preferred Shares contemplated by this Agreement, no event, liability, fact, circumstance, occurrence or development has occurred or exists or is reasonably expected to occur or exist with respect to the Company or its Subsidiaries or their respective businesses, prospects, properties, operations, assets or financial condition that would be required to be disclosed by the Company under applicable securities laws at the time this representation is made or deemed made that has not been publicly disclosed at least 1 Trading Day prior to the date that this representation is made.

(l) Litigation. Except as specifically disclosed in an SEC Report filed prior to the date hereof, there is no action, suit, inquiry, notice of violation, proceeding or investigation pending or, to the knowledge of the Company, threatened against or affecting the Company, any Subsidiary or any of their respective properties before or by any court, arbitrator, governmental or administrative agency or regulatory authority (federal, state, county, local or foreign) which could, if there were an unfavorable decision, have or reasonably be expected to result in a Material Adverse Effect. To the knowledge of the Company, there has not been and there is not pending or contemplated, any investigation by the Commission involving the Company or any current or former director or officer of the Company.

(m) Labor Relations. No labor dispute exists or, to the knowledge of the Company, is imminent with respect to any of the employees of the Company, which could reasonably be expected to result in a Material Adverse Effect. None of the Company's or its Subsidiaries' employees is a member of a union that relates to such employee's relationship with the Company or such Subsidiary, and neither the Company nor any of its Subsidiaries is a party to a collective bargaining agreement, and the Company and its Subsidiaries believe that their relationships with their employees are good. No executive officer of the Company or any of its Subsidiaries (as defined in Rule 501(f) of the 1933 Act) or other key employee of the Company of any of its Subsidiaries has notified the Company or any such Subsidiary that such officer intends to leave the Company or any such Subsidiary or otherwise terminate such officer's employment with the Company or any such Subsidiary. To the knowledge of the Company, no executive officer of the Company or any Subsidiary, is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement or non-competition agreement, or any other contract or agreement or any restrictive covenant in favor of any third party, and the continued employment of each such executive officer does not subject the Company or any of its Subsidiaries to any liability with respect to any of the foregoing matters. The Company and its Subsidiaries are in compliance with all U.S. federal, state, local and foreign laws and regulations relating to employment and employment practices, terms and conditions of employment and wages and hours, except where the failure to be in compliance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(n) Compliance. Neither the Company nor any Subsidiary: (i) is in default under or in violation of (and no event has occurred that has not been waived that, with notice or lapse of time or both, would result in a default by the Company or any Subsidiary under), nor has the Company or any Subsidiary received notice of a claim that it is in default under or that it is in violation of, any indenture, loan or credit agreement or any other agreement or instrument to which it is a party or by which it or any of its properties is bound that has not been waived, (ii) is in violation of any judgment, decree or order of any court, arbitrator or other governmental authority or (iii) is or has been in violation of any statute, rule, ordinance or regulation of any governmental authority, including without limitation all foreign, federal, state and local laws relating to Taxes, environmental protection, occupational health and safety, product quality and safety and employment and labor matters, except in each case as could not have or reasonably be expected to result in a Material Adverse Effect.

(o) Regulatory Permits. The Company and the Subsidiaries possess all certificates, authorizations and permits issued by the appropriate federal, state, local or foreign regulatory authorities necessary to conduct their respective businesses as described in the SEC Reports, except where the failure to possess such permits could not reasonably be expected to result in a Material Adverse Effect (each, a "Material Permit"), and neither the Company nor any Subsidiary has received any notice of proceedings relating to the revocation or modification of any Material Permit.

(p) Title to Assets. The Company and the Subsidiaries have good and marketable title in fee simple to, or have valid and marketable rights to lease or otherwise use, all real property and all material personal property that is reflected in the consolidated financial statements of the Company and the Subsidiaries, in each case free and clear of all Liens, except for (i) Liens as do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company and the Subsidiaries, (ii) Liens for the payment of federal, state or other Taxes, for which appropriate reserves have been made in accordance with GAAP, and the payment of which is

neither delinquent nor subject to penalties and (iii) Liens disclosed in the SEC Reports. Any real property and facilities held under lease by the Company and the Subsidiaries are held by them under valid, subsisting and enforceable leases with which the Company and the Subsidiaries are in compliance, except where failure to be in compliance could not reasonably be expected to have a Material Adverse Effect.

(q) Intellectual Property. Except as described in the SEC Reports or as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, the Company and the Subsidiaries have, or have rights to use, all patents, patent applications, trademarks (registered or unregistered), trademark applications, service marks, trade names, trade secrets, inventions, copyrights and registrations, licenses and other intellectual property rights and similar rights necessary or required for use in connection with their respective businesses (collectively, the "Intellectual Property

Rights"). All Company owned Intellectual Property Rights have been assigned to the Company and recorded as required, or are subject to an obligation to assign rights to the Company; all required fees and maintenance fees for Intellectual Property Rights have been paid. There are no outstanding options, licenses or agreements of any kind relating to the Intellectual Property Rights of the Company that are required to be described in the SEC Reports and are not described therein in all material respects. The Company is not a party to or bound by any options, licenses or agreements with respect to the Intellectual Property Rights of any other person or entity that are required to be set forth in the SEC Reports and are not described therein in all material respects. None of, and neither the Company nor any Subsidiary has received a notice (written or otherwise) that any of, the Intellectual Property Rights has expired, terminated or been abandoned, or is expected to expire or terminate or be abandoned, within two (2) years from the date of this Agreement, except for Intellectual Property Rights that are within a year of the end of their term or the abandonment of which would not have a Material Adverse Effect. Neither the Company nor any Subsidiary has received, since the date of the latest audited financial statements included within the SEC Reports, a written notice of a claim or otherwise has any knowledge that the Company's products or planned future products violate or infringe upon the intellectual property rights of any Person, except for any such violation or infringement that, if the subject of any unfavorable decision, ruling or finding, would not have or would not reasonably be expected to have a Material Adverse Effect. The Company knows of no infringement by others of Intellectual Property Rights owned or licensed by the Company and which is necessary for and material to its business as currently conducted. The Company and each of its Subsidiaries have taken commercially reasonable measures to protect the secrecy and confidentiality of their Intellectual Property. To the knowledge of the Company, all such Intellectual Property Rights are enforceable and there is no existing infringement by another Person of any of the Intellectual Property Rights. The Company and its Subsidiaries have taken reasonable security measures to protect the secrecy, confidentiality and value of all of their intellectual properties, except where failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(r) Manipulation of Prices. The Company has not, and to its knowledge no one acting on its behalf has taken or may take, directly or indirectly, any action designed to cause or to result, or that would reasonably be expected to cause or result, in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of any of the Securities.

(s) Industry and Market Data. The statistical, industry-related and market-related data included in the SEC Reports are based on or derived from sources which the Company reasonably and in good faith believes are reliable and accurate, and such data agree in all material respects with the sources from which they are derived.

(t) Investment Company Act. Neither the Company nor any of its Subsidiaries is, and upon consummation of the sale of the Securities will not be, an "investment company" as such terms are defined in the Investment Company Act of 1940, as amended.

(u) Insurance. The Company and the Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which the Company and the Subsidiaries are engaged, including, but not limited to, clinical trial insurance coverage and directors and officers insurance coverage. Neither the Company nor any such Subsidiary has been refused any insurance coverage sought or applied for and neither the Company nor any such Subsidiary has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business without a significant increase in cost.

(v) Employee Benefits. The Company and each Subsidiary is in compliance with all presently applicable provisions of the Employee Retirement Income Security Act of 1974, as amended, including the regulations and published interpretations thereunder ("ERISA"), except where failure to be in compliance would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; no "reportable event" (as defined in ERISA) has occurred with respect to any "pension plan" (as defined in ERISA) that would reasonably be expected to have a Material Adverse Effect; the Company and each Subsidiary has not incurred and does not expect to incur liability under (i) Title IV of ERISA with respect to termination of, or withdrawal from, any "pension plan" or (ii) Sections 412 or 4971 of the Internal Revenue Code of 1986, as amended, including the regulations and published interpretations thereunder (the "Code") that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect; and each "pension plan" for which the Company or any Subsidiary would have any liability that is intended to be qualified under Section 401(a) of the Code is so qualified except where failure to be so qualified would reasonably be expected to have a Material Adverse Effect, and, to the Company's knowledge, nothing has occurred, whether by action or by failure to act, which would cause the loss of such qualification.

(w) Transactions With Affiliates and Employees. Except as set forth in the SEC Reports, none of the officers, directors or 5% or greater securityholders of the Company or any Subsidiary and, to the knowledge of the Company, none of the employees of the Company or any Subsidiary is presently a party to any transaction with the Company or any Subsidiary (other than for services as employees, consultants officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, providing for the borrowing of money from or lending of money to or otherwise requiring payments to or from, any officer, director or such employee or, to the knowledge of the Company, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee, stockholder, member or partner, in each case in excess of $120,000 other than for (i) payment of salary or consulting fees for services rendered, (ii) reimbursement for expenses incurred on behalf of the Company and (iii) other employee benefits, including stock option agreements under any stock option plan of the Company.

(x) Sarbanes-Oxley; Internal Accounting Controls. The Company and the Subsidiaries are in compliance with any and all applicable requirements of the Sarbanes-Oxley Act of 2002 that are effective as of the date hereof, and any and all applicable rules and regulations promulgated by the Commission thereunder that are effective as of the date hereof and as of the Closing Date where such failure would have a Material Adverse Effect. The Company and the Subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that: (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability, (iii) access to assets 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. During the twelve months prior to the date hereof neither the Company nor any of its Subsidiaries has received any notice or correspondence from any accountant relating to any material weakness in any part of the system of internal accounting controls of the Company or any of its Subsidiaries. The Company and the Subsidiaries have established disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the Company and the Subsidiaries and designed such disclosure controls and procedures to ensure that information required to be disclosed by the Company in the reports it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms, where such failure to establish would have a Material Adverse Effect. The Company's certifying officers have evaluated the effectiveness of the disclosure controls and procedures of the Company and the Subsidiaries as of the end of the period covered by the most recently filed periodic report under the Exchange Act (such date, the "Evaluation Date"). The Company presented in its most recently filed periodic report under the Exchange Act the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of the Evaluation Date. Since the Evaluation Date, there have been no changes in the internal control over financial reporting (as such term is defined in the Exchange Act) of the Company and its Subsidiaries that have materially affected, or is reasonably likely to materially affect, the internal control over financial reporting of the Company and its Subsidiaries.

(y) Certain Fees. No brokerage or finder's fees or commissions are or will be payable by the Company, any Subsidiary or Affiliate of the Company to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by the Transaction Documents. The Company shall be responsible for the payment of any placement agent's fees, financial advisory fees, or broker's commissions (other than for persons engaged by the Purchaser or its investment advisor) relating to or arising out of the transactions contemplated hereby. The Company shall pay, and hold the Purchaser harmless against, any liability, loss or expense (including, without limitation, attorney's fees and out-of-pocket expenses) arising in connection with such claim (other than for claims made by Persons engaged by the Purchaser).

(z) No Registration Required. Assuming the accuracy of the representations and warranties of the Purchaser contained herein, the issuance and sale of the Securities pursuant to the Transaction Documents is exempt from registration requirements of the

Securities Act, and neither the Company nor, to the knowledge of the Company, any authorized representative acting on its behalf has taken or will take any action hereafter that would cause the loss of such exemption.

(aa) Registration Rights. Except as set forth in the SEC Reports or in Schedule 3.1(aa), no Person has any right to cause the Company or any Subsidiary to effect the registration under the Securities Act of any securities of the Company or any Subsidiary. Except as set forth in the SEC Reports or in Schedule 3.1(aa), the Company has not granted registration rights that (a) are equal or superior in priority to, or otherwise equal to or greater than, in any respect, those contained herein, (b) reduce the aggregate amount of securities that may be registered pursuant terms herein or (c) conflict in any material respect with the rights granted to the Purchaser pursuant to the terms herein.

(bb) Listing and Maintenance Requirements. The Common Stock is quoted for trading on the Principal Market. The issuance and sale of the Preferred Shares and issuance of Voting Common Stock upon conversion of the Preferred Shares do not contravene Principal Market rules and regulations. Except as set forth on Schedule 3.1(cc), the Company has not, in the twelve (12) months preceding the date hereof, received notice from any Trading Market on which the Voting Common Stock is or has been listed or quoted to the effect that the Company is not in compliance with the listing or maintenance requirements of such Trading Market. Except as set forth under Schedule 3.1(cc), the Company is, and has no reason to believe that, after consummation of a reverse stock split (in a ratio of no more than 1:10), if necessary, it will not in the foreseeable future continue to be, in compliance with all such listing and maintenance requirements. The Voting Common Stock is currently eligible for electronic transfer through the Depository Trust Company or another established clearing corporation and the Company is current in payment of the fees of the Depository Trust Company ("DTC") or such other established clearing corporation in connection with such electronic transfer.

(cc) Acknowledgment Regarding Purchaser's Purchase of Securities. The Company acknowledges and agrees that the Purchaser is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated hereby and thereby and that, prior to the Closing, the Purchaser is not (i) an officer or director of the Company or any of its Subsidiaries, (ii) an "affiliate" of the Company or any of its Subsidiaries (as defined in Rule 405 of the 1933 Act) or (iii) to the knowledge of the Company, a "beneficial owner" of more than 10% of the shares of Common Stock (as defined for purposes of Rule 13d-3 of the 1934 Act). The Company further acknowledges that the Purchaser is not acting as a financial advisor or fiduciary of the Company or any of its Subsidiaries (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated hereby and thereby, and any advice given by the Purchaser or any of its representatives or agents in connection with the Transaction Documents and the transactions contemplated hereby and thereby is merely incidental to the Purchaser's purchase of the Securities. The Company further represents to the Purchaser that the Company's decision to enter into the Transaction Documents has been based solely on the independent evaluation by the Company and its representatives.

(dd) Adjustment to Conversion Shares. The Company understands and acknowledges that the number of Conversion Shares issuable pursuant to the terms of the Certificate of Designation will increase in certain circumstances. The Company further acknowledges that its obligations to issue Conversion Shares in accordance with this Agreement and the Certificate of Designation is subject to the terms and conditions set forth therein, absolute and unconditional.

(ee) Application of Takeover Protections. The Company and the Board of Directors have taken all necessary action, if any, in order to render inapplicable the Company's issuance of the Securities and the Purchaser's ownership of the Securities from the provisions of any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Company's certificate of incorporation (or similar charter documents) or the laws of its state of incorporation that is or could become applicable as a result of the Company fulfilling its obligations under the Transaction Documents. The Company does not have any stockholder rights plan or similar arrangement relating to accumulations of beneficial ownership of Common Stock or a change in control of the Company.

(ff) Tax Status. Except for matters that would not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect, the Company and its Subsidiaries each (i) has made or filed all United States federal, state and local income and all foreign income and franchise Tax Returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has paid all Taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such Returns, reports and declarations and (iii) has set aside on its books provision reasonably adequate for the payment of all material Taxes for periods subsequent to the periods to which such Returns, reports or declarations apply. There are no unpaid Taxes in any material amount claimed to be due by the taxing authority of any jurisdiction.

(gg) Foreign Corrupt Practices. Neither the Company nor any Subsidiary, nor to the knowledge of the Company or any Subsidiary, any agent or other person acting on behalf of the Company or any Subsidiary, has (i) directly or indirectly, used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses related to foreign or domestic political activity, (ii) directly or indirectly made any unlawful payment to foreign or domestic government officials or employees or to any foreign or domestic political parties or campaigns from corporate funds, (iii) failed to disclose fully any contribution made by the Company or any Subsidiary (or made by any person acting on its behalf of which the Company is aware) which is in violation of law, (iv) violated in any material respect any provision of FCPA or any other similar law of any other jurisdiction in which the Company operates its business, including, in each case, the rules and regulations thereunder, (v) taken or is currently taking any action in furtherance of an offer, payment, gift or anything else of value, directly or indirectly, to any person while knowing that all or some portion of the money or value will be offered, given or promised to anyone to improperly influence official action, to obtain or retain business or otherwise to secure any improper advantage or (vi) otherwise made any bribe, rebate,

payoff, influence payment, unlawful kickback or other unlawful payment. The Company has taken reasonable steps to ensure that its accounting controls and procedures are sufficient to cause the Company to comply in all material respects with the FCPA and the other laws described above. No action of the Company or any of its Subsidiaries in connection with the direct or indirect use of proceeds from the Securities or the consummation of any other transaction contemplated hereby or by the other Transaction Documents or the fulfillment of the terms hereof or thereof, will result in the proceeds of the transactions contemplated hereby and by the other Transaction Documents being used to for the purpose of financing or facilitating any activity that would violate the laws and regulations referred to above.

(hh) Accountants. The Company Auditor (i) is an independent registered public accounting firm as required by the Exchange Act and (ii) to the Company's knowledge and belief, the Company Auditor shall express its opinion with respect to the financial statements to be included in the Company's Annual Report for the fiscal year ending December 31, 2018.

(ii) FDA and Other Governmental Authorities. As to each product subject to the jurisdiction of the U.S. Food and Drug Administration ("FDA") under the Federal Food, Drug and Cosmetic Act, as amended, and the regulations thereunder ("FDCA") that is manufactured, packaged, labeled, tested, distributed, sold, and/or marketed by the Company or any of its Subsidiaries (each such product, a "Pharmaceutical Product"), such Pharmaceutical Product is being manufactured, packaged, labeled, tested, distributed, sold and/or marketed by the Company in compliance with all applicable requirements under FDCA and similar laws, rules and regulations relating to registration, investigational use, premarket clearance, licensure, or application approval, good manufacturing practices, good laboratory practices, good clinical practices, product listing, quotas, labeling, advertising, record keeping and filing of reports, except where the failure to be in compliance would not have a Material Adverse Effect. The properties, business and operations of the Company have been and are being conducted in all material respects in accordance with all applicable laws, rules and regulations of the FDA and other applicable governmental authorities. The Company has not been informed by the FDA or other governmental authorities that such government entity will prohibit the marketing, sale, license or use of any product proposed to be developed, produced or marketed by the Company.

(jj) Office of Foreign Assets Control. Neither the Company nor any of the Subsidiaries has made any contribution or other payment to any official of, or candidate for, any federal, state or foreign office in violation of any law which violation is required to be disclosed in the SEC Reports. Neither the Company nor any Subsidiary nor, to the Company's knowledge, any director, officer, agent, employee or affiliate of the Company or any Subsidiary is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department, the U.S. Departments of State or Commerce and including, without limitation, the designation as a "specially designated national" or "blocked person"), the United Nations Security Council, the European Union, Her Majesty's Treasury or any other relevant sanctions authority. Neither the Company nor any of its Subsidiaries are located, organized or resident in a country or territory that is the

subject or target of a comprehensive embargo or sanctions prohibiting trade with the country or territory, including, without limitation, Crimea, Cuba, Iran, North Korea, Sudan and Syria (each, a "Sanctioned Country"). No action of the Company or any of its Subsidiaries in connection with (i) the execution, delivery and performance of this Agreement and the other Transaction Documents, (ii) the issuance and sale of the Securities or (iii) the direct or indirect use of proceeds from the Securities or the consummation of any other transaction contemplated hereby or by the other Transaction Documents or the fulfillment of the terms hereof or thereof, will result in the proceeds of the transactions contemplated hereby and by the other Transaction Documents being used, or loaned, contributed or otherwise made available, directly or indirectly, to any Subsidiary, joint

venture partner or other person or entity, for the purpose of (1) unlawfully funding or facilitating any activities of or business with any person that, at the time of such funding or facilitation, is the subject or target of Sanctions, (2) unlawfully funding or facilitating any activities of or business in any Sanctioned Country or (3) in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as underwriter, advisor, investor or otherwise) of sanctions. For the past five years, the Company and its Subsidiaries have not knowingly engaged in and are not now knowingly engaged in any dealings or transactions with any person that at the time of the dealing or transaction is or was the subject or the target of Sanctions or with any Sanctioned Country.

(kk) U.S. Real Property Holding Corporation. The Company is not and has never been a U.S. real property holding corporation within the meaning of Section 897 of the Internal Revenue Code of 1986, as amended, and the Company shall so certify upon the Purchaser's request.

(ll) Money Laundering. The operations of the Company and its Subsidiaries are and have been conducted at all times in compliance with applicable financial record-keeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, applicable money laundering statutes and applicable rules and regulations thereunder (collectively, the "Money Laundering Laws"), and to the knowledge of the Company or any Subsidiary, no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any Subsidiary with respect to the Money Laundering Laws is pending or threatened.

(mm) Board of Directors. The Board of Directors is comprised of the persons set forth under the heading of the Company's definitive proxy statement on Schedule 14A, filed on April 17, 2017 captioned "PROPOSAL 1—ELECTION OF DIRECTORS—Information Regarding the Board of Directors and Director Nominees." The qualifications of the persons serving as board members and the overall composition of the Board of Directors comply with the Sarbanes-Oxley Act of 2002 and the rules promulgated thereunder applicable to the Company and the rules of the Trading Market. At least one member of the Board of Directors qualifies as a "financial expert" as such term is defined under the Sarbanes-Oxley Act of 2002 and the rules promulgated thereunder and the rules of the Trading Market. In addition, at least a majority of the persons serving on the Board of Directors qualify as "independent" as defined under the rules of the Trading Market.

(nn) Subsidiary Rights. Except as set forth in Schedule 3.1(nn), the Company or one of its Subsidiaries has the unrestricted right to vote, and (subject to limitations imposed by applicable law) to receive dividends and distributions on, all equity securities of its Subsidiaries as owned by the Company or such Subsidiary.

(oo) Off Balance Sheet Arrangements. There is no transaction, arrangement, or other relationship between the Company and an unconsolidated or other off balance sheet entity that is required to be disclosed by the Company in its 1934 Act filings and is not so disclosed or that otherwise would be reasonably likely to have a Material Adverse Effect.

(pp) Transfer Taxes. On the Closing Date, all stock transfer or other similar taxes (other than income or similar taxes) which are required to be paid in connection with the sale and transfer of the Securities to be sold to the Purchaser hereunder will be, or will have been, fully paid or provided for by the Company, and all laws imposing such taxes will be or will have been complied with.

(qq) U.S. Real Property Holding Corporation. Neither the Company, nor any of its Subsidiaries, is or has ever been a U.S. real property holding corporation within the meaning of Section 897 of the Code and the Company and each Subsidiary shall so certify upon the Purchaser's request.

(rr) Shell Company Status. The Company is not, and has not in the past five (5) years been, an issuer identified in Rule 144(i)(1).

(ss) No Disagreements with Accountants and Lawyers. There are no material disagreements of any kind presently existing, or reasonably anticipated by the Company to arise, between the Company and the accountants and lawyers formerly or presently employed by the Company and the Company is current with respect to any fees owed to its accountants and lawyers which would reasonably be expected to affect the Company's ability to perform any of its obligations under any of the Transaction Documents.

(tt) Purchaser Designee(s). Jeffrey C. Johnson has qualified for election as a director of the Company as of Closing under applicable law and listing requirements, and will be elected as a Class III Director as of the Closing to serve his initial term until the next annual stockholders' meeting of the Company (which is expected to occur no later than June 30, 2018), at which time the provisions of Section 3.2 of the Certificate of Designation (and Section 4.11 hereof, to the extent applicable) shall apply to his re-election for a new term as a Class III Director.

(uu) Purchaser's Representations Limited. The Company acknowledges and agrees that the Purchaser has not made any representations and warranties about or relating to the Purchaser or with respect to the transactions contemplated by this Agreement other than those representations and warranties of the Purchaser specifically set forth in Section 3.2, and the Company has not relied on, and expressly disclaims any reliance on, any representation, warranty or other information about or relating to the Purchaser or with respect to the transactions contemplated by this Agreement except for the representations and warranties of the Purchaser set forth in Section 3.2.

3.2 Representations and Warranties of the Purchaser. The Purchaser represents and warrants to the Company as of the Execution Date and as of the Closing Date as follows:

(a) Authorization. The Purchaser has full power and authority to enter into the Transaction Documents to which the Purchaser is a party. The Transaction Documents to which the Purchaser is a party, when executed and delivered by the Purchaser in accordance with the terms and conditions hereof, will constitute valid and legally binding obligations of the Purchaser, enforceable in accordance with their terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and any other laws of general application affecting enforcement of creditors' rights generally, and as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies.

(b) Purchase Entirely for Own Account. This Agreement is made with the Purchaser in reliance upon the Purchaser's representation to the Company, which by the Purchaser's execution of this Agreement, the Purchaser hereby confirms, that the Preferred Shares will be acquired for investment for the Purchaser's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and that the Purchaser has no present intention of selling, granting any participation in, or otherwise distributing the same. By executing this Agreement, the Purchaser further represents that the Purchaser does not presently have any contract, undertaking, agreement or arrangement with any Person to sell, transfer or grant participations to such Person or to any third Person, with respect to any of the Preferred Shares. The Purchaser has not been formed for the specific purpose of acquiring the Preferred Shares.

(c) Access to Information. The Purchaser acknowledges that it has had the opportunity to review the Transaction Documents (including all exhibits and schedules thereto) and the SEC Reports and has been afforded (i) the opportunity to ask such questions as it has deemed necessary of, and to receive answers from, representatives of the Company concerning the terms and conditions of the offering of the Preferred Shares and the merits and risks of investing in the Preferred Shares; (ii) access to information about the Company and its financial condition, results of operations, business, properties, management and prospects sufficient to enable it to evaluate its investment; and (iii) the opportunity to obtain such additional information that the Company possesses or can acquire without unreasonable effort or expense that is necessary to make an informed investment decision with respect to the investment.

(d) Restricted Securities. The Purchaser understands that the Preferred Shares have not been registered under the Securities Act. The Purchaser understands that, until such time as the Preferred Shares have been registered pursuant to the provisions of the Securities Act, or the Preferred Shares are eligible for resale pursuant to Rule 144 promulgated under the Securities Act without any restriction as to the number of securities as of a particular date that can then be immediately sold, the Preferred Shares are "restricted securities" under applicable U.S. federal and state securities laws and that, pursuant to these laws, the Purchaser must hold the Preferred Shares indefinitely unless they are registered with the Securities and Exchange Commission and qualified by state

authorities, or an exemption from such registration and qualification requirements is available. The Purchaser acknowledges that the Company has no obligation to register or qualify any of the Securities except as set forth in this Agreement. The Purchaser further acknowledges that if an exemption from registration or qualification is available, it may be conditioned on various requirements including, but not limited to, the time and manner of sale, the holding period for the Preferred Shares, and on requirements relating to the Company which are outside of the Purchaser's control, and which the Company is under no obligation and may not be able to satisfy.

(e) No Public Market. The Purchaser understands that no public market now exists for the Preferred Shares, and that the Company has made no assurances that a public market will ever exist for the Preferred Shares.

(f) Legends. The Purchaser understands that, until such time as the Preferred Shares and any securities issued in respect of or exchange for the Preferred Shares have been registered pursuant to the provisions of the Securities Act, or such securities are eligible for resale pursuant to Rule 144 promulgated under the Securities Act without any restriction as to the number of securities as of a particular date that can then be immediately sold, the Preferred Shares and any securities issued in respect of or exchange for the Preferred Shares shall be notated with one or all of the following restrictive legends:

"THIS SECURITY HAS NOT BEEN REGISTERED WITH THE U.S. SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE LAWS."

(i) Any legend set forth in, or required by, the Certificate of Designation.

(ii) Any legend required by the securities laws of any state to the extent such laws are applicable to the Preferred Shares represented by the certificate, instrument, or book entry so legended.

(g) Accredited Investor. The Purchaser is an accredited investor as defined in Rule 501(a) of Regulation D promulgated under the Securities Act.

(h) Foreign Investors. If the Purchaser is not a United States person (as defined by Section 7701(a)(30) of the Code), the Purchaser hereby represents that it has satisfied itself as to the full observance of the laws of its jurisdiction in connection with any invitation to subscribe for the Preferred Shares or any use of this Agreement, including (i) the legal requirements within its jurisdiction for the purchase of the Preferred Shares, (ii) any foreign exchange restrictions applicable to such purchase,

(iii) any governmental or other consents that may need to be obtained, and (iv) the income tax and other tax consequences, if any, that may be relevant to the purchase, holding, redemption, sale, or transfer of the Preferred Shares. The Purchaser's subscription and payment for and continued beneficial ownership of the Preferred Shares will not violate any applicable securities or other laws of the Purchaser's jurisdiction.

(i) Residence. The office or offices of the Purchaser in which its principal place of business is identified in the address or addresses of the Purchaser set forth on signature page hereto.

(j) Bad Actor. Neither the Purchaser nor any person or entity with whom the Purchaser will share beneficial ownership of the Securities, is subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act.

ARTICLE IV.
OTHER AGREEMENTS OF THE PARTIES

4.1 Preemptive Rights.

(a) General. So long as the Purchaser and its Affiliates own, in the aggregate, no less than fifty percent (50%) of the cumulative amount of the total number of Preferred Shares and Conversion Shares (taken together, calculated on an as-converted, fully diluted basis) (as adjusted for splits, reverse splits, stock dividends, share combinations and the like) which are initially issued, then the Purchaser and its Affiliates (the "**Rights Holder**") shall have the right to purchase (x) One Hundred Percent (100%) of the first Ten Million Dollars ($10,000,000) of New Securities and thereafter (y) the Rights Holder's Pro Rata Shares, of all (or any part) of any New Securities that the Company may from time to time issue after the Closing Date; *provided, however*, the Rights Holder shall have no right to purchase any such New Securities if the Rights Holder cannot demonstrate to the Company's reasonable satisfaction that the Rights Holder is at the time of the proposed issuance of such New Securities an "accredited investor" as such term is defined in Regulation D under the Securities Act. The Rights Holder's "**Pro Rata Share**" for purposes of this right of first refusal shall be a fraction, the numerator of which is the total number of shares of Common Stock held by the Rights Holder (including any shares of Common Stock issuable upon conversion/exercise of any Preferred Stock, options or warrants held by the Rights Holder) and the denominator of which is the total number of shares of the Company's fully diluted Common Stock outstanding (including any shares of Common Stock issuable upon conversion of or exercise of, as the case may be, Preferred Stock, outstanding options and options reserved under any of the Company option plans, warrants or any other convertible securities) immediately prior to the issuance of the New Securities.

(b) Procedures. In the event that the Company proposes to undertake an issuance of New Securities, it shall give to the Rights Holder a written notice of its intention to issue New Securities (the "**Notice**"), describing the type of New Securities and the price target and the general terms upon which the Company proposes to issue such New Securities given in accordance with this Section 4.1. The Rights Holder shall

have five (5) Business Days from the date such Notice is effective to agree in writing to purchase the Rights Holder's then applicable Pro Rata Share of such New Securities for the price and upon the general terms specified in the Notice by giving written notice to the Company and stating therein the quantity of New Securities to be purchased (not to exceed the Rights Holder's Pro Rata Share). If the Rights Holder fails to so agree in writing within such five (5) Business Day period to purchase the Rights Holder's full Pro Rata Share of an offering of New Securities, then the Rights Holder shall forfeit the right hereunder to purchase the Rights Holder's Pro Rata Share of such New Securities that the Rights Holder did not so agree to purchase.

(c) Issuance of Equity Securities to Other Persons/Failure to Exercise. The Company shall have one hundred twenty (120) days following the delivery of the Notice provided pursuant to Section 4.1(b) to sell the New Securities in respect of which the Rights Holder's rights were not exercised, at a price not lower than, and otherwise upon general terms and conditions not materially more favorable to the purchasers thereof than, specified in the Company's notice to the Rights Holder pursuant to Section 4.1(b) hereof. If the Company has not sold such New Securities within one hundred twenty (120) days of the notice provided pursuant to Section 4.1(b), the Company shall not thereafter issue or sell any New Securities, without first offering such securities to the Rights Holder in the manner provided above.

(d) Termination. This pre-emptive right shall automatically terminate and be of no further force and effect with respect to a Rights Holder (i) immediately before consummation of a Deemed Liquidation Event and/or (ii) on the date that the Rights Holder is no longer a Rights Holder.

4.2 Purchaser Lock-Up.

(a) The Purchaser, on behalf of itself and any successor entity of the Purchaser, agrees that, without the prior written consent of the Company, it will not, during the period commencing on the Execution Date and ending twelve (12) months following the Closing (or such shorter period upon the occurrence of the events set forth in Section 4.1(c), the "Lock-Up Period"), (a) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any Securities (the "Lock-Up Securities") or any securities convertible into or exercisable or exchangeable for the Lock-Up Securities or (b) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Lock-Up Securities, whether any such transaction described in clause (a) or (b) above is to be settled by delivery of the Lock-Up Securities, in cash or otherwise.

(b) Notwithstanding the foregoing, and subject to the condition below, the Purchaser may transfer the Lock-Up Securities (i) to any Affiliate, partner, member, former partner or member, or shareholder of the Purchaser or any of its Affiliates) and/or (ii) as distributions to the Purchaser's partners, members or stockholders or holders of similar equity interest in the Purchaser; *provided*, that in the case of any such transfer,

each transferee shall sign and deliver to the Company a lock-up agreement substantially in the form of this Section 4.1. None of the restrictions set forth in this Lock-Up Agreement shall apply to Common Stock acquired in open market transactions after the date hereof.

(c) Notwithstanding the foregoing, the Lock-Up Period shall expire earlier than the first anniversary of the Closing in the following circumstances: (x) immediately before a Deemed Liquidation Event or Fundamental Change (as defined in the Certificate of Designation), and (y) immediately (i) upon breach by the Company of any material obligation to the Purchaser under this Agreement or any other Transaction Document (including, but not limited to, a breach of Company's obligations under the Registration Rights Agreement), unless such breach is capable of being and is cured within twenty (20) Business Days of written notice of such breach from the Purchaser, (ii) the failure of two (2) designees of Purchaser to be elected directors, as set forth in the Certificate of Designation and herein (excluding, for the avoidance of doubt any election that was not permitted under the applicable rules of the Trading Market or Purchaser's decision not to exercise its rights to appoint one or more designees), (iii) any representation or warranty made by the Company to the Purchaser in this Agreement was materially untrue when made, and such breach has had or is reasonably likely to have a material adverse effect on the value of the Preferred Securities, (iv) upon the Company's material breach of any

of the provisions of Section 3 of the Certificate of Designation, unless such breach is capable of being cured and is cured within twenty (20) Business Days of written notice of such breach from the Purchaser, or (v) the maximum monthly redemption amount restrictions set forth in Section 7 of the CVP Purchase Agreements (or any substantially similar provisions in any subsequent purchase agreement by and between CVP and the Company) cease to be effective.

4.3 [Intentionally Omitted].

4.4 Legends. The Company covenants that the legend set forth in Section 3.2(f) shall be removed and the Company shall (and/or shall instruct its transfer agent to) issue a certificate without such legend to the holder of the Preferred Shares and any securities issued in respect thereof or exchange thereof (including Conversion Shares) upon which it is stamped, unless otherwise required by state securities Laws, if (i) such Preferred Shares or any securities issued in respect thereof or exchange (including Conversion Shares) are registered for resale under the 1933 Act, (ii) in connection with a sale, assignment or other transfer, such holder provides the Company with an opinion of counsel, in a generally acceptable form, to the effect that such sale, assignment or transfer of the Preferred Shares or any securities issued in respect thereof or exchange (including Conversion Shares) may be made without registration under the applicable requirements of the 1933 Act and the purchaser, assignee or transferee, as the case may be, may receive a certificate without such legend, or (iii) such holder provides the Company with reasonable assurance that the Preferred Shares or any securities issued in respect thereof or exchange (including Conversion Shares) can be sold, assigned or transferred pursuant to Rule 144(b)(1)(i). If reasonably required by the Transfer Agent, the Company shall promptly deliver any authorizations, certificates and directions required by the Transfer Agent which authorize and direct the transfer agent to transfer such Preferred Shares or any securities issued in respect thereof or exchange (including Conversion Shares) without legend upon sale by the Purchaser of

such Preferred Shares or any securities issued in respect thereof (including Conversion Shares) under the Registration Statement (as such term is defined in the Registration Rights Agreement).

4.5 Securities Laws Disclosure; Publicity. The Company shall, (x) by 9:00 a.m. (New York City time) on the Trading Day immediately following the Closing Date, issue a press release disclosing the material terms of the Offering and (y) file a Current Report on Form 8-K, including the Transaction Documents as exhibits thereto, with the Commission within the time required by the Exchange Act (the "8-K Filing"). The Company and the Purchaser shall consult with each other in issuing any other press releases with respect to the Offering, and neither the Company nor the Purchaser shall issue any such press release nor otherwise make any such public statement without the prior consent of the Company, with respect to any press release of the Purchaser, or without the prior consent of the Purchaser, with respect to any press release of the Company, which consent shall not unreasonably be withheld or delayed, except if such disclosure is required by law or the rules of the Trading Market, in which case the disclosing party shall promptly provide the other party with prior notice of such public statement or communication.

4.6 Application of Net Proceeds.

(a) The Company will apply the net proceeds from the Offering received by it for commercialization activities relating to the launch, in North America, and for general corporate purposes of Mytesi, Napo's FDA-approved human prescription drug.

(b) The Company will apply the net proceeds from the Concurrent Investments towards aged payables relating to the Merger in a manner consistent with the Officer's Certificate.

4.7 Furnishing of Information; Public Information. Until the earlier of the time that (i) the Purchaser no longer owns Securities, or (ii) the consummation of a Deemed Liquidation Event, the Company covenants to maintain the registration of the Common Stock under Section 12(b) or 12(g) of the Exchange Act and to timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to the Exchange Act and the Company shall not terminate its status as an issuer required to file reports under the Exchange Act even if the Exchange Act or the rules and regulations thereunder would no longer require or otherwise permit such termination. The Company shall take all actions necessary to maintain its eligibility to register the Conversion Shares for resale by the Purchaser on Form S-3. As long as the Purchaser owns Securities, if the Company is not required to file reports pursuant to the Exchange Act, it will prepare and furnish to the Purchaser and make publicly available in accordance with Rule 144(c) such information as is required for the Purchaser to sell the Securities, including without limitation, under Rule 144. The Company further covenants that it will take such further action as any holder of Securities may reasonably request, to the extent required from time to time to enable such Person to sell such Securities without registration under the Securities Act, including without limitation, within the requirements of the exemption provided by Rule 144.

4.8 Management Rights; Non-Voting Observers. Subject to Section (e), so long as the Purchaser owns no less than twenty-five percent (25%) of the Preferred Shares and/or Conversion Shares (taken together, calculated on an as-converted, fully diluted basis) (as adjusted for splits, reverse splits, stock dividends, share combinations and the like) which are initially issued, the following provisions shall apply:

(a) The Purchaser shall be entitled to consult with and advise management of the Company on significant business issues, including management's proposed annual operating plans, and management will meet with the Purchaser regularly during each year at the Company's facilities at mutually agreeable times for such consultation and advice and to review progress in achieving said plans.

(b) The Purchaser may examine the books and records of the Company and inspect its facilities and may request information at reasonable times and intervals concerning the general status of the Company's financial condition and operations.

(c) The Purchaser shall have the right to designate at least one non-voting observer (subject to increase to two if at any time two designees of the Preferred Shares and/or Conversion Shares are not represented on the Board of Directors). The Purchaser shall be entitled to designate such non-voting observer(s) to receive notices of, and to attend (whether telephonically or otherwise), all regular and special meetings of the Board of Directors, the board of directors of any Subsidiary and each committee of any of the foregoing, and receive all materials and information provided to the Board of Directors, the board of directors of any Subsidiary and each committee of any of the foregoing at the same

time and in the same manner as members thereof (including board books, drafts of resolutions and written consents, and any minutes furnished to the members thereof following such meeting), subject to the Purchaser's compliance with Section (d); *provided*, that the Company shall be entitled to exclude such observer(s) from all or a portion of an applicable Board of Directors meeting and/or from receiving any such information to the extent any such observer's presence during all or such portion of an applicable meeting and/or receipt of information (i) would result in the waiver of attorney-client privilege as advised in writing by outside counsel or (ii) would result in an actual conflict of interest as reasonably determined by the Board of Directors; *provided*, *further*, that the Company shall pay the reasonable and documented out-of-pocket travel expenses incurred by such observer(s) in connection with his or her attendance at in-person meetings of the Board of Directors; *provided*, *further*, that to the extent any material non-public information ("MNPI") of the Company is reasonably likely to be discussed at any Board of Directors meeting or disclosed in any materials or information to be provided to such observer(s) pursuant to this Section 4.8(c), the Company shall, prior to disclosing or making available such materials or information containing MNPI, request from the Purchaser whether it wishes to receive such materials or information without identifying or disclosing such MNPI and the Company shall only proceed to deliver such materials or information containing MNPI to the Purchaser if the Purchaser consents for such observer(s) to receive such materials or information.

(d) The foregoing observer(s) will be permitted to share information received from the Company and/or its Subsidiaries with officers, directors, members, employees

and representatives of the Purchaser and its Affiliates (which, for the avoidance of doubt, shall exclude the Purchaser's portfolio companies) and the Purchaser and such Affiliates may use such information for internal purposes, so long as the Purchaser maintains reasonable procedures designed to prevent such information from being used in connection with the purchase or sale of securities of the Company in violation of applicable securities laws. The Purchaser agrees that any confidential information provided to or learned by it in connection with its rights under this Section 4.8 shall be subject to the confidentiality provisions set forth in that certain Non-Disclosure Agreement between the Company and the Purchaser.

(e) Notwithstanding the foregoing, the Purchaser's rights under this Section 4.8 shall automatically terminate and be of no further force and effect immediately before consummation of a Deemed Liquidation Event.

4.9 Stockholder Approval.

(a) The Company shall submit a proposal (the "Proposal") relating to the removal of the Voting Cap for approval by the Company's stockholders (the "Stockholder Approval") at a stockholders meeting to be held as soon as is commercially reasonable after Closing but in any event not later than June 30, 2018, which proposal the Company will recommend that the stockholders approve.

(b) Not less than five (5) Trading Days prior to the filing of a proxy statement relating to the Proposal, the Company shall furnish to the Purchaser and its legal counsel copies of such proxy statement and all such documents proposed to be filed (collectively, the "Proxy Statement"), which documents will be subject to the review of the Purchaser. The Company shall not file the Proxy Statement to which the Purchaser shall reasonably object in good faith, *provided* that, the Company is notified of such objection in writing no later than three (3) Trading Days after the Purchaser has been so furnished a copy of the Proxy Statement. The Company will promptly notify the Purchaser and its counsel of all comments, if any, from the Commission and other material developments related to the Proxy Statement, and the Company shall promptly respond to such comments.

(c) The Company shall provide each stockholder with the Proxy Statement, and shall use its reasonable best efforts to solicit its stockholders' approval of such resolutions. The Company shall be obligated to use its reasonable best efforts to obtain the Stockholder Approval by June 30, 2018. If, despite the Company's reasonable best efforts the Stockholder Approval is not obtained on or prior to June 30, 2018, the Company shall cause an additional stockholder meeting to be held every six (6) months thereafter until such Stockholder Approval is obtained; provided that, in no event, shall the Company be obligated to call more than three (3) stockholder meetings in its efforts to obtain the Stockholder Approval.

(d) The Company will pay (i) all expenses of the Company associated with the solicitation and (ii) the reasonable fees and expenses of the Purchaser's counsel related to review of the Proxy Statement (not to exceed $10,000).

4.10 Listing of Voting Common Stock. The Company hereby agrees to use best efforts to maintain the listing or quotation of the Voting Common Stock on the Trading Market on which it is currently listed, and concurrently with the Closing, the Company shall apply to list or quote all of the Conversion Shares on such Trading Market and promptly secure the listing of all of the Conversion Shares on such Trading Market. Without limiting the foregoing, the Company hereby agrees that its Board of Directors shall approve a reverse split no later than May 14, 2018 (or such other later date as may be approved by the Principal Trading Market, including but not limited to a stay granted by the Principal Trading Market in connection with any appeal made by the Company to a hearing panel of the Principal Trading Market, but in no event later than June 30, 2018) (subject to prior confirmation with the Principal Trading Market that such reverse split is sufficient for purposes of the Company's compliance with the Principal Trading Market's listing requirements and all other obligations under the bylaws or rules of the Trading Market, as applicable). The Company further agrees, if the Company applies to have the Voting Common Stock traded on any other Trading Market, it will then include in such application all of the Conversion Shares, and will take such other action as is necessary to cause all of the Conversion Shares to be listed or quoted on such other Trading Market as promptly as possible. The Company will then take all action reasonably necessary to continue the listing and trading of its Voting Common Stock on the Trading Market and will comply in all respects with the Company's reporting, filing and other obligations under the bylaws or rules of the Trading Market. The Company agrees to maintain the eligibility of the Voting Common Stock for electronic transfer through the Depository Trust Company or another established clearing corporation, including, without limitation, by timely payment of fees to the Depository Trust Company or such other established clearing corporation in connection with such electronic transfer.

4.11 Appointment of Directors.

(a) In addition to the election of Jeffrey C. Johnson as a Board Designee as of Closing, the Company confirms and agrees that (i) the holders of Series A Preferred Stock may elect at any time after Closing, pursuant to the provisions of the Certificate of Designation, a second Person

designated by the Purchaser to serve as an additional Class III director of the Board of Directors (together with Jeffrey C. Johnson and/or his successor under Section 3.2 of the Certificate of Designation, the "Board Designees") until the next annual stockholders' meeting of the Company which is expected to occur no later than June 30, 2018, at which such time the holders of the Series A Preferred Stock shall have the right to re-appoint the Board Designees (or such other two Persons so designated by the holders of Series A Preferred Stock pursuant to the provisions of the Certificate of Designation) to serve as Class III directors of the Board of Directors (i.e., with new term(s) of three (3) years) and (ii) if one such Board Designee may not be appointed due to compliance with Nasdaq Listing Rule 5640, the Purchaser shall be entitled to designate one Person to attend meetings of the Board of Directors, the board of directors of any Subsidiary and each committee of any of the foregoing as an observer.

(b) At such time as no Preferred Shares are outstanding because holders of the Preferred Shares have exercised their conversion rights in accordance with the terms of the Certificate of Designation, then, if and so long as, the Purchaser holds (i) at least 35% of the total number of the Conversion Shares that have been issued (as adjusted for splits,

reverse splits, stock dividends, share combinations and the like) upon conversion of all Preferred Shares issued hereunder, the Purchaser shall be entitled hereunder to nominate two (2) Board Designees or (ii) less than 35% but at least 20% of the total number of the Conversion Shares as have been issued (as adjusted for splits, reverse splits, stock dividends, share combinations and the like) that have been issued upon conversion of all Preferred Shares issued hereunder, the Purchaser shall be entitled hereunder to nominate one (1) Board Designee. In the case of both (i) and (ii), the Company shall use reasonable best efforts to cause such designees to be elected and the provisions of Sections 3.2.5, 3.2.6, 3.2.7 and 3.2.8 of the Certificate of Designation are hereby incorporated herein by reference, mutatis mutandis, for the benefit of the Purchaser.

(c) In furtherance of the foregoing:

(i) So long as the Purchaser possesses the rights contemplated by Section 4.11(b), the Company shall take such action as is required under applicable Law, the rules and regulations in effect at such time of the Trading Market or such other market on which the Common Stock is then listed or quoted, the Company's certificate of incorporation and its bylaws, to include on the Board of Directors or in the slate of nominees recommended by the Board of Directors, the Board Designee(s).

(ii) So long as the Purchaser possesses the rights contemplated by Section 4.11(b), the Company shall use its commercially reasonable efforts to have the Board Designee(s) elected as a director(s) of the Company and the Company shall solicit proxies for each such person to the same extent as it does for any of its other nominees to the Board of Directors.

(iii) If a vacancy is created at any time by the death, disability, retirement, resignation or removal of a Board Designee, so long as the Purchaser possesses the rights under Section 4.11(b), the Purchaser may designate or nominate, as applicable, another individual to be elected to fill the vacancy created thereby, and the Company hereby agrees to take, at any time and from time to time, all actions necessary to accomplish the same.

(iv) Following the termination of the rights of the Purchaser under Section 4.11(b), upon request by the Board of Directors, the Purchaser shall cause the Board Designee(s) to resign promptly from the Board of Directors. Any vacancy created by such resignation may be filled by the Board of Directors or the stockholders of the Company in accordance with the Company's articles of incorporation, the bylaws and applicable Law. The Company may implement this provision by requiring the execution and delivery of a resignation letter by the Board Designee(s) subject to termination of designation or nomination rights.

(v) The Company confirms and agrees that the primacy language provided by the Purchaser shall be incorporated in the indemnification agreements for each Board Designee.

(d) Notwithstanding the foregoing, the number of Board Designees shall be reduced to the extent necessary to comply with the Company's obligations, if any, under the rules or regulations of the Nasdaq Stock Market (including NASDAQ Stock Market

Rule 5640). The determination of the applicability of such limitation contained shall be made by the Company in good faith, in consultation with counsel, in accordance with the rules and regulations of the Nasdaq Stock Market. In addition, the Purchaser shall cease to have the right to elect any Series A Directors and Section 4.11 shall cease to have any effect if at any time the Purchaser is entitled to vote in the aggregate less than five percent (5%) of all of the votes entitled to be cast by holder of all voting securities of the Company at any meeting of the stockholders of the Company calculated in accordance with Section 3.1 of the Certificate of Designation. If the Purchaser is not entitled to elect any Series A Directors pursuant to the provisions of this Section 4.11, then at any meeting of stockholders of the Company (or by written consent of stockholders in lieu of meeting) to elect or remove a director(s), the Purchaser shall be entitled to cast the number of votes equal to the number of whole shares of Voting Common Stock into which the shares of Series A Preferred Stock held by the Purchaser are convertible as of the record date for determining stockholders entitled to vote on such matter (calculated assuming the Series A Conversion Price for this purpose only was $0.1935 (subject to appropriate adjustment in the event of any stock dividend, stock split, reverse stock split, combination or other similar recapitalization)).

(e) Notwithstanding the foregoing, the Purchaser's rights under the foregoing provisions of this Section 4.11 shall automatically terminate and be of no further force and effect immediately before consummation of a Deemed Liquidation Event.

(f) The Company renounces, to the fullest extent permitted by law, any interest or expectancy of the Company in, or in being offered an opportunity to participate in, any Excluded Opportunity. An "Excluded Opportunity" is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of, (i) any Board Designee, or (ii) the Purchaser or any holder of Series A Preferred Stock (or Conversion Shares) or its Affiliates, or any partner, member, director, stockholder, employee or agent of any such holder or its Affiliates, other than someone who is an employee of the Company or any of its subsidiaries (collectively, "Covered Persons"), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person's capacity as a director of the Company.

(g) As a condition to each designation of a Board Designee hereunder, each Person with the right, either individually or as part of a group, to designate or participate in the designation of a director to the Board of Directors as the Purchaser shall be required to represent and warrant to the Company that, to the Purchaser's knowledge, none of the "bad actor" disqualifying events described in Rule 506(d)(1)(i)-(viii) promulgated under the Securities Act (each, a "Disqualification Event"), is applicable to the Purchaser's initial Board Designee named above except, if applicable, for a Disqualification Event as to which Rule 506(d)(2)(ii) or (iii) or (d)(3) is applicable. Any Board Designee to whom any Disqualification Event is applicable, except for a Disqualification Event as to which Rule 506(d)(2)(ii) or (iii) or (d)(3) is applicable, is hereinafter referred to as a "Disqualified Designee". The Purchaser hereby covenants and agrees (A) not to designate or participate in the designation of any Board Designee

who, to the Purchaser's knowledge, is a Disqualified Designee and (B) that in the event the Purchaser becomes aware that any individual previously designated by the Purchaser is or has become a Disqualified Designee, the Purchaser shall as promptly as practicable take such actions as are necessary to remove such Disqualified Designee from the Board of Directors and designate a replacement designee who is not a Disqualified Designee.

4.12 Register; Transfer Agent Instructions.

(a) Register. The Company shall maintain at its principal executive offices (or such other office or agency of the Company as it may designate by notice to each holder of Securities), a register for the Preferred Shares in which the Company shall record the name and address of the Person in whose name the Preferred Shares have been issued (including the name and address of each transferee), the number of Preferred Shares held by such Person, the number of Conversion Shares issued and issuable pursuant to the terms of the Certificate of Designation held by such Person. The Company shall keep the register open and available at all times during business hours for inspection of Purchaser or its legal representatives.

(b) Transfer Agent Instructions. The Company shall issue irrevocable instructions to the Company's transfer agent to issue certificates or credit shares to the applicable balance accounts at DTC, registered in the name of each Purchaser or its respective nominee(s), for the Conversion Shares in such amounts as specified from time to time by Purchaser to the Company pursuant to the terms of the Irrevocable Transfer Instructions. The Company represents and warrants that no instruction other than the Irrevocable Transfer Agent Instructions referred to in this Section 4.12 will be given by the Company to the Transfer Agent, and/or any subsequent transfer agent, with respect to the Securities, and that the Securities shall otherwise be freely transferable on the books and records of the Company as and to the extent provided in this Agreement and the other Transaction Documents. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Purchaser. Accordingly, the Company acknowledges that the remedy at law for a breach by the Company of its obligations under this Section 4.12 will be inadequate and agrees, in the event of a breach or threatened breach by the Company of the provisions of this Section 4.12, that the Purchaser shall be entitled, in addition to all other available remedies, to an order and/or injunction restraining any breach and requiring immediate issuance and transfer, without the necessity of showing economic loss and without any bond or other security being required.

(c) Fast Compliance. While any Preferred Shares are outstanding, the Company shall maintain a transfer agent that participates in the DTC Fast Automated Securities Transfer Program.

4.13 Intentionally omitted.

4.14 Actions Regarding Anti-Takeover and Other Protections; Rights Amendment. The Company and the Board of Directors shall take all necessary action, if any, in order to render inapplicable any control share acquisition, business combination, poison

pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Company's certificate of incorporation (or similar charter documents) or other agreements or the laws of its state of incorporation (including, without limitation, Section 203 of the Delaware General Corporation Law) that is or could become applicable to the Purchaser as a result of, or with respect to the Securities and/or any additional securities acquired pursuant to the Certificate of Designation.

4.15 Actions Regarding the Pricing Committee. The Company hereby agrees (i) to disband the pricing committee of the Board of Directors as soon as reasonably practicable after the Closing and (ii) that any issuance of Voting Common stock to L2 Capital after the date hereof shall instead be subject to approval by the full Board of Directors.

4.16 Transfer Taxes. Any stock transfer, stamp, registration or other similar taxes or fees payable as a direct result of the issuance of the Securities to the Purchaser shall be paid by the Company. The party required by applicable law to file tax returns required in connection with such taxes and fees shall file such tax returns. Each party hereto shall use its commercially reasonable efforts to minimize such taxes and fees and to cooperate in the preparation, execution and filing of all tax returns and other documents required in connection with such taxes and fees.

ARTICLE V.
MISCELLANEOUS

5.1 Force Majeure. No party will be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party hereunder), when and to the extent such failure or delay is caused by or results from the following force majeure events (each, a "Force Majeure Event"): (a) acts of God; (b) flood, fire, earthquake or explosion; (c) government order or law; (d) actions, embargoes or blockades in effect on or after the date of this Agreement; (e) action by any governmental authority; and (f) national or regional emergency. The party impacted by the Force Majeure Event (the "Impacted Party") shall give notice within five Business Days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted

Party's failure or delay remains uncured for a period of thirty (30) days following written notice given by it under this Section 5.1, any party may thereafter terminate this Agreement upon five (5) days' written notice.

5.2 Expense Reimbursement. The Company shall pay, or reimburse the Purchaser for, the reasonable fees and expenses of the Purchaser (including reasonable legal fees and expenses) actually incurred by the Purchaser by deduction from the net proceeds of the Offering payable to the Company on the Closing Date. From and after the Closing, the Company shall be responsible for the payment of any fees incurred by or on behalf of the Investor and its designees in connection with any waivers, amendments or modifications to the Transaction Documents.

5.3 Confidentiality. The Purchaser covenants that until such time as the transactions contemplated by this Agreement are publicly disclosed by the Company pursuant to the initial press release as described in Section 4.5, the Purchaser will maintain the confidentiality of the existence and terms of this transaction and the information included in the Transaction Documents and the Disclosure Letter.

5.4 Entire Agreement. The Transaction Documents, together with the exhibits and schedules thereto, contain the entire understanding of the parties with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, oral or written, with respect to such matters, which the parties acknowledge have been merged into such documents, exhibits and schedules.

5.5 Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of: (a) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number or e-mail attachment at the email address set forth on the signature pages attached hereto at or prior to 5:30 p.m. (New York City time) on a Trading Day, (b) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number or e-mail attachment at the e-mail address as set forth on the signature pages attached hereto on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (c) the second (2nd) Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service or (d) upon actual receipt by the party to whom such notice is required to be given. The address for such notices and communications shall be as set forth on the signature pages attached hereto.

5.6 Amendments; Waivers. No provision of this Agreement may be waived, modified, supplemented or amended except in a written instrument signed, in the case of an amendment, by the Company and the Purchaser. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right.

5.7 Headings. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

5.8 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. The Company shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Purchaser, including by way of merger, consolidation or otherwise. For the avoidance of doubt, the Purchaser may assign some or all of its rights hereunder to any of its Affiliates in connection with transfer (including by merger, consolidation or otherwise) of any of the Preferred Shares or Conversion Shares to such Affiliate without the consent of the Company, in which event such Affiliate-assignee shall be deemed to be the Purchaser hereunder with respect to such assigned rights; provided, that the Purchaser shall nonetheless remain responsible for all of its obligations hereunder.

5.9 Governing Law. All questions concerning the construction, validity, enforcement and interpretation of the Transaction Documents shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware, without regard to the principles of conflicts of law thereof. Each party agrees that all legal proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and any other Transaction Documents (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the State of Delaware. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the State of Delaware for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any action, suit or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is improper or is an inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law. If either party shall commence an action or proceeding to enforce any provisions of the Transaction Documents, then, in addition to the obligations of the Company under the Indemnification Agreements, the prevailing party in such action, suit or proceeding shall be reimbursed by the other party for its reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding.

5.10 Survival. The representations and warranties contained herein shall survive the Closing, if any, and the delivery of the Preferred Shares.

5.11 Indemnification.

(a) In consideration of the Purchaser's execution and delivery of the Transaction Documents and acquiring the Securities and in addition to all of the Company's other obligations under the Transaction Documents, subject to the conditions set forth below, the Company shall defend, protect, indemnify and hold harmless the Purchaser and all of its stockholders, partners, members, officers, directors, employees and direct or indirect investors and any of the foregoing Persons' agents or other representatives (including, without limitation, those retained in connection with the transactions contemplated by this Agreement) (collectively, the "Indemnitees") from and against any and all third-party actions, causes of

action, suits, claims, losses, costs, penalties, fees, liabilities and damages, and expenses in connection therewith (irrespective of whether any such Indemnitee is a party to the action for which indemnification hereunder is sought), and including reasonable attorneys' fees and disbursements (the "Indemnified Liabilities"), incurred by any Indemnitee as a result of, or arising out of, or relating to (i) any breach of any representation or warranty made by the Company in the Transaction Documents or any other certificate, instrument or

document contemplated hereby or thereby (including, for the avoidance of doubt, the Officer's Certificate), (ii) any breach of any covenant, agreement or obligation of the Company contained in the Transaction Documents or any other certificate, instrument or document contemplated hereby or thereby or (iii) any cause of action, suit or claim brought or made against such Indemnitee by a third party (including for these purposes a derivative action brought on behalf of the Company) and arising out of or resulting from (A) the execution, delivery, performance or enforcement of the Transaction Documents or any other certificate, instrument or document contemplated hereby or thereby, (B) any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of the issuance of the Securities, (C) any disclosure made by Purchaser pursuant to Section 4.4, or (D) the status (or alleged status) of the Purchaser (unless such action is based upon a breach of an Indemnitee's representations, warranties or covenants under the Transaction Documents or any agreements or understandings an Indemnitee may have with any such third party or any violations by such Indemnitee of state or federal securities laws or any conduct by such Indemnitee which constitutes fraud, gross negligence, willful misconduct, or malfeasance or a breach of a fiduciary duty). To the extent that the foregoing undertaking by the Company may be unenforceable for any reason, the Company shall make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law.

(b) Promptly after receipt by an Indemnitee under this Section 5.11 of notice of the commencement of any action or proceeding (including any governmental action or proceeding) involving an Indemnified Liability, such Indemnitee shall, if a claim for indemnification in respect thereof is to be made against any indemnifying party under this Section 5.11, deliver to the indemnifying party a written notice of the commencement thereof, and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume control of the defense thereof with counsel mutually satisfactory to the indemnifying party and the Indemnitee; provided, however, that an Indemnitee shall have the right to retain its own counsel with the reasonable and documented fees and expenses of not more than one counsel for such Indemnitee to be paid by the indemnifying party, if, in the written opinion of outside counsel to the Indemnitee, the representation by such counsel of the Indemnitee and the indemnifying party would be inappropriate due to actual or potential differing interests between such Indemnitee and any other party represented by such counsel in such proceeding. Legal counsel referred to in the immediately preceding sentence shall be selected by the Purchaser. The Indemnitee shall cooperate fully with the indemnifying party in connection with any negotiation or defense of any such action or Indemnified Liabilities by the indemnifying party and shall furnish to the indemnifying party all information reasonably available to the Indemnitee that relates to such action or Indemnified Liabilities. The indemnifying party shall keep the Indemnitee fully apprised at all times as to the status of the defense or any settlement negotiations with respect thereto. No indemnifying party shall be liable for any settlement of any action, claim or proceeding effected without its prior written consent, provided, however, that the indemnifying party shall not unreasonably withhold, delay or condition its consent. No indemnifying party shall, without the prior written consent of the Indemnitee, consent to entry of any

judgment or enter into any settlement or other compromise which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnitee of a release from all liability in respect to such Indemnified Liabilities or litigation, all at no cost or liability to such Indemnitee. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action shall not relieve such indemnifying party of any liability to the Indemnitee under this Section 5.11, except to the extent that the indemnifying party is prejudiced in its ability to defend such action.

(c) The indemnification required by this Section 5.11 shall be advanced by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or Indemnified Liabilities are incurred.

(d) The indemnity agreements contained herein shall be, in addition to (x) any cause of action or similar right of the Indemnitee against the indemnifying party or others, and (y) any liabilities to which the indemnifying party may be subject pursuant to law.

(e) Any Indemnified Liability for which any Indemnitee is entitled to indemnification under this Section 5.11 shall be determined without duplication of recovery by reason of the state of facts giving rise to such Indemnified Liability constituting a breach of one or more representation, warranty or covenant.

5.12 Execution. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to each other party, it being understood that the parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

5.13 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

5.14 Remedies. In addition to being entitled to exercise all rights provided herein or granted by law, including recovery of damages, the Purchaser and the Company will be entitled to specific performance under the Transaction Documents. The parties agree that monetary damages may not be adequate compensation for any loss incurred by reason of any

breach of obligations contained in the Transaction Documents and hereby agree to waive and not to assert in any action for specific performance of any such obligation the defense that a remedy at law would be adequate.

5.15 Rescission and Withdrawal Right. Notwithstanding anything to the contrary contained in (and without limiting any similar provisions of) the Transaction Documents, whenever the Purchaser exercises a right, election, demand or option under a Transaction Document and the Company does not timely perform its related obligations within the periods therein provided, then the Purchaser may rescind or withdraw, in its sole discretion from time to time prior to the time the Company shall perform such related obligations, upon written notice to the Company, any relevant notice, demand or election in whole or in part without prejudice to its future actions and rights.

5.16 Payment Set Aside. To the extent that the Company makes a payment or payments to the Purchaser hereunder or pursuant to any of the other Transaction Documents or the Purchaser enforces or exercises rights hereunder or thereunder, and such payment or payments or the proceeds of such enforcement or exercise or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, recovered from, disgorged by or are required to be refunded, repaid or otherwise restored to the Company, a trustee, receiver or any other Person under any law (including, without limitation, any bankruptcy law, foreign, state or federal law, common law or equitable cause of action), then to the extent of any such restoration the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.

5.17 Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then such action may be taken or such right may be exercised on the next succeeding Business Day.

5.18 Construction. The parties agree that each of them and/or their respective counsel have reviewed and had an opportunity to revise the Transaction Documents and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Transaction Documents or any amendments thereto. In addition, each and every reference to share prices and shares of Common Stock and Series A Preferred Stock in any Transaction Document shall be subject to adjustment for reverse and forward stock splits, stock dividends, stock combinations and other similar transactions of the Common Stock and Series A Preferred Stock that occur after the date of this Agreement.

5.19 **WAIVER OF JURY TRIAL. IN ANY ACTION, SUIT, OR PROCEEDING IN ANY JURISDICTION BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, THE PARTIES EACH KNOWINGLY AND INTENTIONALLY, TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY AND EXPRESSLY WAIVE FOREVER ANY RIGHT TO TRIAL BY JURY.**

5.20 Section 16 Matters. If the Company becomes a party to a consolidation, merger or other similar transaction, or if there is any event or circumstance that may result in the Purchaser, its Affiliates and/or any director designee being deemed to have made a disposition or acquisition of equity securities of the Company or derivatives thereof for purposes of Section 16 of the Exchange Act, and if any director designated by the holders of Preferred Shares or the Conversion Shares is serving on the Board of Directors at such time or has served on the Board of Directors during the preceding six months (i) the Board of Directors or a committee thereof comprised solely of two or more “non-employee directors” as defined in Rule 16b-3 of the Exchange Act will pre-approve such acquisition or disposition of equity securities of the Company or derivatives thereof for the express purpose of exempting the Purchaser’s, its Affiliates’ and any such Director’s interests (for the Purchaser and/or its Affiliates, to the extent such persons may be deemed to be “directors by deputization”) in such transaction from Section 16(b) of the Exchange Act pursuant to Rule 16b-3 thereunder and (ii) if the transaction involves (A) a merger or consolidation to which the Company is a party and the Voting Common Stock is, in whole or in part, converted into or exchanged for equity securities of a different issuer, (B) a potential acquisition or deemed acquisition, or disposition or deemed disposition, by the Purchaser, the Purchaser’s Affiliates, and/or any such director of equity securities of such other issuer or derivatives thereof and (C) an Affiliate or other designee of the Purchaser or its Affiliates will serve on the board of directors (or its equivalent) of such other issuer pursuant to the terms of an agreement to which the Company is a party (or if the Purchaser notifies the Company of such service a reasonable time in advance of the closing of such transactions), then if the Company requires that the other issuer pre-approve any acquisition of equity securities or derivatives thereof for the express purpose of exempting the interests of any director or officer of the Company or any of its subsidiaries in such transactions from Section 16(b) of the Exchange Act pursuant to Rule 16b-3 thereunder, the Company shall require that such other issuer pre-approve any such acquisitions of equity securities or derivatives thereof for the express purpose of exempting the interests of the Purchaser’s, its Affiliates’ and any such director’s (for the Purchaser and/or its Affiliates, to the extent such persons may be deemed to be “directors by deputization” of such other issuer) in such transactions from Section 16(b) of the Exchange Act pursuant to Rule 16b-3 thereunder. If any Director designated by the holders of Preferred Shares or the Conversion Shares is granted any equity or equity-based awards by the Company in connection with his or her service on the Board of Directors (or any committee thereof), (a) the Board of Directors acknowledges that, immediately upon grant of such award, such director may assign all rights, title and interest in the shares of Company Common Stock underlying such award to any Affiliate of the Purchaser and (b) the Board of Directors or a committee thereof comprised solely of two or more “non-employee directors” (as defined in Rule 16b-3 of the Exchange Act) will pre-approve the grant of such awards (and any such subsequent assignment thereof to any such Affiliate) to be exempt to the maximum extent possible for purposes of Section 16(b) of the Exchange Act pursuant to Rule 16b-3 thereunder or any other rule or regulation thereunder.

(Signature Pages Follow)

IN WITNESS WHEREOF, the undersigned have caused this Series A Preferred Stock Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

Very truly yours,

JAGUAR HEALTH, INC.

By: /s/ Lisa Conte
Name: Lisa Conte
Title: Chief Executive Officer

Address for Notice:

201 Mission Street, Suite 2375
San Francisco, California 94105
Email: Separately provided to the Purchaser.

Copy to: Reed Smith LLP

Accepted on the date first above written.

SAGARD CAPITAL PARTNERS, L.P.
By: Sagard Capital Partners GP, Inc.
its general partner

By: /s/ Samuel Robinson
Name: Samuel Robinson
Title: President

Address for Notice:

Sagard Capital Partners
280 Park Avenue, 3rd Floor
New York, New York 10017
Attention: Chief Financial Officer and General Counsel
Email: Separately provided to the Company

Address for delivery of the Preferred Shares:

Deborah Mullin
Morgan Stanley - Firmwide Ops
1300 Thames Street, Thames Street Wharf, 5th Floor
Baltimore, MD 21231

Copy to: Finn Dixon & Herling LLP

REGISTRATION RIGHTS AGREEMENT

by and between

JAGUAR HEALTH, INC.

and

SAGARD CAPITAL PARTNERS, L.P.

Dated as of March 23, 2018

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Exhibit A - Plan of Distribution
Exhibit B - Notice of Registration and Selling Securityholder Questionnaire
Exhibit C - Notice of Transfer

REGISTRATION RIGHTS AGREEMENT

REGISTRATION RIGHTS AGREEMENT (this "Agreement"), dated as of March 23, 2018, is by and between Jaguar Health, Inc., a Delaware corporation (the "Company"), and the undersigned Purchaser (the "Purchaser").

RECITALS

In connection with, and pursuant to, that certain Securities Purchase Agreement by and among the parties hereto of even date herewith (the "Securities Purchase Agreement"), the Company has agreed, upon the terms and subject to the conditions of the Securities Purchase Agreement, to issue and sell to the Purchaser at the Closing 5,524,926 shares (the "Purchased Shares") of Series A Preferred Stock, which are convertible into shares (the "Conversion Shares") of Voting Common Stock, par value $0.0001 per share (the "Common Stock"), of the Company. Capitalized terms used and not otherwise defined herein shall have the respective meanings set forth in the Securities Purchase Agreement.

To induce the Purchaser to execute, deliver and make the investment contemplated by the Securities Purchase Agreement, the Company has agreed to provide certain registration rights under the Securities Act of 1933, as amended, and the rules and regulations thereunder, or any similar successor statute (collectively, the "Securities Act"), and applicable state securities laws.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Investors (as defined below) hereby agree as follows:

1. DEFINITIONS. In addition to the capitalized terms elsewhere defined herein, the following terms, when used herein, shall have the following meanings, unless the context otherwise requires:

"Agreement" has the meaning set forth in the preface above.

"Assignment Period" has the meaning set forth in Section 5(c).

"Black Out Period" has the meaning set forth in Section 5(a)(i)(B).

"Business Day" means any day except Saturday, Sunday and any day which shall be a legal holiday or a day on which banking institutions in New York, New York generally are authorized or required by law or other governmental actions to close.

"Claims" has the meaning set forth in Section 7(a).

"Common Stock" has the meaning set forth in the recitals above.

"Company" has the meaning set forth in the preface above.

"Conversion Shares" has the meaning set forth in the recitals above.

"Early Filing Trigger" means the occurrence of an event described in Section 4.2(c) of the Securities Purchase Agreement.

"Effective Date" means the date a Registration Statement is declared or becomes effective under the Securities Act.

"Effectiveness Deadline" has the meaning set forth in Section 2(a).

"Exchange Act" has the meaning set forth in Section 3(b).

"Filing Deadline" has the meaning set forth in Section 2(a).

"Investor Representative" means Sagard Capital Partners, L.P.

"Investors" means (i) the Purchaser, (ii) any transferee or assignee thereof to whom the Purchaser or an Investor assigns its rights under this Agreement and who agrees to become bound by the provisions of this Agreement in accordance with Section 9(c), and (iii) any transferee or assignee thereof

to whom a transferee or assignee assigns its rights under this Agreement and who agrees to become bound by the provisions of this Agreement in accordance with Section 9(c).

"Legal Counsel" has the meaning set forth in Section 2(f).

"Liquidated Damages" has the meaning set forth in Section 5(c).

"Notice and Questionnaire" means the selling securityholder questionnaire attached to the Notice of Registration and Selling Securityholder Questionnaire attached as Exhibit B hereto.

"Person" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, other entity, an unincorporated organization and a governmental or any department or agency thereof.

"Purchased Shares" has the meaning set forth in the recitals above.

"Purchaser" has the meaning set forth in the preface above.

"Records" has the meaning set forth in Section 3(q)(ii).

"Register," "registered," and "registration" refer to a registration effected by preparing and filing one or more Registration Statements in compliance with the Securities Act and pursuant to Rule 415 under the Securities Act or any successor rule providing for offering securities on a continuous or delayed basis ("Rule 415"), and the declaration or ordering of effectiveness of such Registration Statement(s) by the SEC.

"Registrable Securities" means (i) all Conversion Shares, (ii) all shares of Common Stock issued pursuant to Section 4.1 of the Securities Purchase Agreement (including shares of Common Stock issuable upon exercise, conversion or exchange of securities issued pursuant to such Section 4.1) and (iii) any shares of capital stock issued or issuable with respect to the

Conversion Shares or any of the shares described in clause (ii), in either case as a result of any stock split, stock dividend, recapitalization, exchange or similar event or otherwise; provided, however, that Registrable Securities shall not include any such shares (A) which have been disposed of pursuant to an effective registration statement under the Securities Act, (B) which have been sold or otherwise transferred in a transaction in which the rights under the provisions of this Agreement have not been assigned, (C) which have been sold under Rule 144 or (D) which are owned by an Investor with respect to which this Agreement has terminated pursuant to Section 9(p) hereof.

"Registrable Securities Purchase Price" means, with respect to any Registrable Security, the purchase price actually paid by Sagard Capital Partners, L.P. for such Registrable Security (or, in the case of Conversion Shares (or other Registrable Securities, if such Registrable Security was acquired upon exercise or conversion of other equity securities), the exercise price or conversion price thereof), in all cases subject to adjustment for any stock split, reverse stock split, dividend, spin-off or combination, or any reclassification, recapitalization, merger, consolidation, exchange or other similar reorganization or business combination.

"Registration Default" has the meaning set forth in Section 5(c).

"Registration Period" has the meaning set forth in Section 3(a).

"Registration Statement" means a registration statement or registration statements of the Company filed under the Securities Act covering the Registrable Securities.

"Rule 144" means Rule 144 promulgated by the SEC under the Securities Act.

"Scheduled Earnings Blackouts" has the meaning set forth in Section 5(a)(i).

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

"Securities Act" has the meaning set forth in the recitals above.

"Securities Purchase Agreement" has the meaning set forth in the recitals above.

"Series A Preferred Stock" means the Series A Convertible Preferred Participating Preferred Stock of the Company, par value $0.0001 per share.

"Subsequent Registration Rights" has the meaning set forth in Section 9(a)(ii).

"Suspension Notice" has the meaning set forth in Section 5(a)(i).

2. REGISTRATION.

(a) Mandatory Registration. The Company shall prepare and file with the SEC a Registration Statement on Form S-3 covering the resale of all of the Registrable Securities. The Company shall file the Registration Statement no later than the earlier of (i) ninety (90) days prior to the first anniversary of the Closing and (ii) thirty (30) days after an Early Filing Trigger. Such deadline is referred to herein as the "Filing Deadline." If Form S-3 is unavailable for such

a registration, the Company shall use such other form as is available for such a registration, subject to the provisions of Section 2(b). The Registration Statement prepared pursuant hereto shall register for resale at least that number of shares of Common Stock equal to the aggregate number of Registrable Securities issued and outstanding as of the trading day immediately preceding the date the Registration Statement is initially filed with the SEC, subject to adjustment as provided in Section 2(c). The Company shall use its reasonable best efforts to have the Registration Statement declared effective by the SEC no later than the earlier of (1) the first anniversary of the Closing and (2) sixty (60) days after an Early Filing Trigger (the "Effectiveness Deadline").

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

(c) Sufficient Number of Shares Registered. If the number of shares available under the Registration Statement filed pursuant to Section 2(a) is, or becomes, insufficient to cover all of the Registrable Securities required to be covered by the Registration Statement, the Company shall amend the Registration Statement, or file a new Registration Statement (on the short form available therefor, if applicable), or both, so as to cover at least 100% of the aggregate number of the Registrable Securities required to be registered hereunder as of the trading day immediately preceding the date of the filing of such amendment or new Registration Statement, in each case, as soon as practicable, but in any event not later than fifteen (15) days after the necessity therefor arises. The Company shall use its reasonable best efforts to cause such amendment and/or new Registration Statement to become effective as soon as practicable following the filing thereof. For all purposes of this Agreement, such additional Registration Statement shall be deemed to be the Registration Statement required to be filed by the Company pursuant to Section 2(a) of this Agreement, and the Company and the Investors shall have the same rights and obligations with respect to such additional Registration Statement as they shall have with respect to the initial Registration Statement required to be filed by the Company pursuant to Section 2(a).

(d) Intentionally omitted.

(e) Plan of Distribution. The intended method or methods of disposition and/or sale (Plan of Distribution) of the Registrable Securities contained in the Registration Statement to be filed hereunder shall be in the form attached hereto as Exhibit A, with only such modifications and changes as expressly agreed by the Company and the Investor Representative.

(f) Legal Counsel. Subject to Section 6 hereof, the Investor Representative shall have the right to select one legal counsel in connection with any offering pursuant to this Section 2 ("Legal Counsel"), which shall be Finn Dixon & Herling LLP or such other counsel as hereafter designated by the Investor Representative. The Company shall reasonably cooperate with Legal Counsel in performing the Company's obligations under this Agreement.

3. RELATED OBLIGATIONS. At such time as the Company is obligated to file a Registration Statement with the SEC pursuant to Section 2 or Section 3(p), the Company will use its reasonable best efforts to effect the registration of the Registrable Securities covered by such Registration Statement in accordance with the intended method of disposition thereof and the Company shall have the following additional obligations:

(a) The Company shall use its reasonable best efforts to keep the Registration Statement effective pursuant to Rule 415 at all times from the Effective Date until the date on which the Investors shall have sold all the Registrable Securities covered by such

Registration Statement (the "Registration Period"), which Registration Statement (including any amendments or supplements thereto and prospectuses contained therein), at the time it is first filed with the SEC, at the time it is ordered effective by the SEC and at all times during which it is required to be effective hereunder (and each such amendment and supplement at the time it is filed with the SEC and at all times during which it is available for use in connection with the offer and sale of the Registrable Securities) shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading. If the Registration Statement is no longer effective during the Registration Period, the Company shall use its reasonable best efforts to cause a new Registration Statement to become effective pursuant to Section 2 or Section 3(p) as promptly as practicable.

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

(c) The Company shall permit Legal Counsel to review and comment upon (i) any Registration Statement prior to its filing with the SEC and (ii) all other Registration Statements and all amendments and supplements to all Registration Statements (except for Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K and any similar or successor reports) prior to their filing with the SEC. The Company shall not submit a request for acceleration of the effectiveness of a Registration Statement or any amendment or supplement thereto without the prior approval of Legal Counsel, which consent shall not be withheld unless Legal Counsel has reasonable objections to disclosures in the Registration Statement relating to the Investors. The Company shall furnish to Legal Counsel, without charge, (i) any correspondence from the SEC or the staff of the SEC to the Company or its representatives relating to any Registration Statement, (ii) promptly after the same is prepared and filed with the SEC, one copy of any Registration Statement and any amendment(s) thereto, including financial statements and schedules, all documents incorporated therein by reference and all exhibits and (iii) upon the effectiveness of any Registration Statement, one copy of the prospectus included in such Registration Statement and all amendments and supplements thereto.

(d) The Company shall furnish, without charge, to each Investor selling Registrable Securities and each underwriter, if any, such number of copies of such Registration Statement, each amendment and supplement thereto (in each case including all exhibits), the prospectus included in such Registration Statement (including each preliminary prospectus and any summary prospectus) and any other prospectus filed under Rule 424 under the Securities Act, and each free writing prospectus utilized in connection therewith, in each case, in conformity with the requirements of the Securities Act, and other documents, as such Investor or underwriter may reasonably request in order to facilitate the public sale or other disposition of the Registrable Securities owned by such Investor.

(e) The Company shall use its reasonable best efforts to cause such Registrable Securities to be registered with or approved by such other governmental agencies or authorities as may be necessary to consummate the disposition of such Registrable Securities pursuant to a Registration Statement; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to (i) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 3(e), (ii) subject itself to general taxation in any such jurisdiction, or (iii) file a general consent to service of process in any such jurisdiction.

(f) The Company shall notify Legal Counsel and each Investor in writing of the happening of any event, as promptly as practicable after becoming aware of such event, as a result of which the prospectus included in a Registration Statement, as then in effect, includes an untrue statement of a material fact or omission to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading (provided that in no event shall such notice contain any material, nonpublic information), and promptly prepare a supplement or amendment to such Registration Statement to correct such untrue statement or omission, and deliver such number of copies of such supplement or amendment to Legal Counsel and each Investor as Legal Counsel or such Investor may reasonably request. The Company shall also promptly notify Legal Counsel and each Investor in writing (i) when a prospectus or any prospectus supplement or post-effective amendment has been filed, and when a Registration Statement or any post-effective amendment has become effective (notification of such effectiveness shall be delivered to Legal Counsel and each Investor by email on the same day of such effectiveness and by overnight delivery), (ii) of any request by the SEC for amendments or supplements to a Registration Statement or related prospectus or related information, and (iii) of the Company's reasonable determination that a post-effective amendment to a Registration Statement would be appropriate.

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

(h) The Company shall cooperate with the Investors who hold Registrable Securities being offered and facilitate the timely preparation and delivery of certificates (not bearing any

restrictive legend) representing the Registrable Securities to be offered pursuant to a Registration Statement and enable such certificates to be in such denominations or amounts, as the case may be, as the Investors may reasonably request and registered in such names as the Investors may request.

(i) The Company shall appoint (if one has not already been appointed) and maintain a transfer agent and registrar for its Common Stock not later than the Effective Date. The Company shall use reasonable best efforts to procure the cooperation of the Company's transfer agent in settling any offering or sale of Registrable Securities, including with respect to the transfer of physical stock certificates into book-entry form in accordance with any procedures reasonably requested by any Investor.

(j) The Company shall otherwise use its reasonable best efforts to comply (and continue to comply) with all applicable rules and regulations of the SEC (including, without limitation, maintaining disclosure controls and procedures (as defined in Exchange Act Rule 13a-15(e)) and internal control over financial reporting (as defined in Exchange Act Rule 13a-15(f)) in accordance with the Exchange Act);

(k) Within one (1) Business Day after a Registration Statement which covers Registrable Securities is ordered effective by the SEC, the Company shall deliver or shall cause legal counsel for the Company to deliver to the Company's transfer agent confirmation that such Registration Statement has been declared effective by the SEC.

(l) The Company shall use commercially reasonable efforts to take all other actions reasonably necessary to expedite and facilitate disposition by Investors of Registrable Securities pursuant to a Registration Statement.

(m) Intentionally omitted.

(n) The Company shall use its reasonable best efforts to secure the listing of all of the Registrable Securities covered by such Registration Statement upon each national securities exchange and automated quotation system, if any, upon which shares of Common Stock shall be so listed and shall maintain, so long as any other shares of Common Stock shall be so listed, such listing of such Registrable Securities.

(o) During the period that the Company is required to maintain effectiveness of the Registration Statement pursuant to Section 3(a), the Company shall not bid for or purchase any Common Stock or any right to purchase Common Stock or attempt to induce any person to purchase any such security or right if such bid, purchase or attempt would in any way limit the right of the Investors to sell Registrable Securities by reason of the limitations set forth in Regulation M under the Exchange Act.

(p) If a Registration Statement covering the Registrable Securities will terminate by its terms, the Company shall, as far in advance as is practicable, refile (or file and have declared effective) a new Registration Statement and use its reasonable best efforts to minimize and gap between the two Registration Statements.

(q) To the extent that any of the Investors is deemed to be an underwriter of Registrable Securities (pursuant to any SEC comments or discussions with the SEC staff with respect to a Registration Statement), the Company agrees that:

(i) The indemnification and contribution provisions contained in Section 7 shall be applicable to the benefit of the Investors in their role as deemed underwriter in addition to their capacity as holders of Registrable Securities;

(ii) The Investors shall be entitled to conduct the due diligence which they would normally conduct in connection with an offering of securities registered under the Securities Act, including without limitation receipt of customary opinions and comfort letters; *provided*, *however*, that each Investor shall agree to hold in strict confidence and shall not make any disclosure or use of any record or other information ("Records") which the Company determines in good faith to be confidential, and of which determination the Investors are so notified, unless (A) the disclosure of such Records is required by law or (B) the information in such Records has been made generally available to the public other than by disclosure in violation of this Agreement;

(iii) The Company shall obtain opinions of counsel to the Company (which counsel and opinions (in form, scope and substance) shall be reasonably satisfactory to the Investor Representative) in customary form addressed to the Investors, covering such matters as are customarily covered in opinions requested in underwritten offerings and dated as of the date such opinion is customarily dated;

(iv) The Company shall obtain "comfort letters" and updates thereof from the independent public accountants of the Company (and, if necessary, any other independent public accountants of any subsidiary of the Company or of any business acquired by the Company for which financial statements and financial data are, or are required to be, included in the Registration Statement), addressed to the Investors, in customary form and covering matters of the type customarily covered in comfort letters in connection with primary underwritten offerings and dated as of the date such comfort letter is customarily dated; and

(v) The Company shall deliver such other customary documents and certificates as may be reasonably requested by the Investors to evidence compliance with any customary conditions contained in underwriting agreements, if any.

4. OBLIGATIONS OF THE INVESTORS.

(a) At least ten (10) Business Days prior to the first anticipated filing date of a Registration Statement, the Company shall, by delivering a Notice and Questionnaire, notify each Investor in writing of the information the Company reasonably requires from each such Investor if such Investor elects to have any of such Investor's Registrable Securities included in such Registration Statement. It shall be a condition precedent to the obligations of the Company to complete the registration pursuant to this Agreement with respect to the Registrable Securities of a particular Investor that such Investor shall furnish to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it as shall be reasonably required to effect the registration of

such Registrable Securities and shall execute such documents in connection with such registration as the Company may reasonably request, including, without limitation, a properly completed Notice and Questionnaire.

(b) Each Investor, by such Investor's acceptance of the Registrable Securities, agrees to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of any Registration Statement hereunder, unless such Investor no longer holds any Registrable Securities or has notified the Company in writing of such Investor's election to exclude all of such Investor's Registrable Securities from such Registration Statement.

(c) Each Investor agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in the first sentence of Section 3(f) or in Section 3(g) or, such Investor will immediately discontinue disposition of Registrable Securities pursuant to any Registration Statement(s) covering such Registrable Securities until such Investor's receipt of the copies of the supplemented or amended prospectus contemplated by the first sentence of Section 3(f) or by Section 3(g) or receipt of notice that no supplement or amendment is required and, if so directed by the Company, such Investor shall deliver to the Company, or destroy all copies in such Investor's possession, any prospectus covering such Registrable Securities current at the time of receipt of such notice. Notwithstanding anything to the contrary contained herein, if the Investor has sold any Registrable Securities prior to the Investor's receipt of a notice from the Company of the happening of any event of the kind described in the first sentence of Section 3(f) or in Section 3(g) but has not yet settled such sale prior to the receipt of any such notice, the Company shall cause its transfer agent to deliver an unlegended certificate(s) representing the shares of Common Stock to be transferred to the applicable transferee(s) in accordance with the terms of the Securities Purchase Agreement.

5. SUSPENSION OF REGISTRATION RIGHTS.

(a) Suspension Notices.

(i) Notwithstanding anything to the contrary herein, during any earnings blackout period in effect pursuant to a policy established by the Company's Board of Directors or a designated committee thereof (including, without limitation, the Company's current earnings blackout policy) (a "Scheduled Earnings Blackout"), unless the Company provides the Investors notice that a Black Out Period (as defined below) with respect to a Scheduled Earnings Blackout will not be in effect, or if the Company shall at any time furnish to the Investors a certificate signed by any of its authorized officers (a "Suspension Notice") stating that:

(A) the Company has pending or in process a material transaction, the disclosure of which would, in the good faith judgment of the Company's Board of Directors, after consultation with its outside counsel, materially and adversely affect the Company or the prospects for consummation of such material transaction; or

(B) the Company's Board of Directors has made the good faith determination after consultation with counsel that (x) use or continued use of any proposed or effective Registration Statement for purposes of effecting offers or sales of

Registrable Securities pursuant thereto would require, under the Securities Act, premature disclosure in such Registration Statement (or the prospectus relating thereto) of material, non-public information, (y) such premature disclosure would not be in the best interest of the Company and (z) it is therefore necessary to defer the filing or to suspend the use of such Registration Statement (and the prospectus relating thereto) for purposes of effecting offers or sales of Registrable Securities pursuant thereto,

the right of the Investors to use any Registration Statement (and the prospectus relating thereto) for purposes of effecting offers or sales of Registrable Securities pursuant thereto shall be suspended for a period (a "Black Out Period") of not more than 240 days in the aggregate in any 360 consecutive-day, with the first calculation of any such period first commencing on the earlier of (1) March 31, 2019 or (2) the date on which the "Lock-Up Period" as defined in the Securities Purchase Agreement) has terminated earlier than the first anniversary of the closing under the Securities Purchase Agreement; provided, however, that, such 240 day aggregate limit may be increased for up to two additional periods in any 12-month period, not to exceed 60 days in the aggregate in any 12 consecutive-month period, but only in the case of a Suspension Notice(s) approved by all of the members of the Board of Directors (other than any representative of the Investor to the extent a member thereof) delivered in respect of a material transaction described in Section 5(a)(i)(A); and provided, further, however, that following the second anniversary of the date hereof, such 240 day aggregate limit may be increased (such increase in the 240 day aggregate limit pursuant to this proviso, the "Limit Increase") for up to two additional periods in any 12-month period, not to exceed 30 days in the aggregate in any 12 consecutive-month period, but (1) only in the case of a Suspension Notice(s) approved by all of the members of the Board of Directors (other than any representative of the Investor to the extent a member thereof) delivered in respect of a material transaction described in Section 5(a)(i)(A) and (2) the Limit Increase contemplated by this proviso may not be utilized by the Company more than one time (and after being used, may not thereafter be used again without the consent of the Purchaser in its sole discretion). If the Company modifies its earnings blackout policy, or its implementation thereof, to reduce the number of days comprising Scheduled Earnings Blackouts, the 240 day aggregate limit in the preceding sentence (as may be increased pursuant to the proviso in the preceding sentence) shall be reduced by a like number of days. Furthermore, in addition to the 240 day (or such greater or lesser period, as applicable, pursuant to the Limit Increase and any decrease pursuant to the previous sentence, respectively) aggregate limit on Blackout Periods per each 360 day period, no Black Out Period shall last for more than 45 consecutive days in any 360 consecutive day period except (i) in the case of a Suspension Notice delivered, or a Scheduled Earnings Blackout designated, in respect of the Company's year-end earnings reports, no more than 65 consecutive days after delivery of such Suspension Notice or start of such Scheduled Earnings Black Out and (ii) in the case of a Suspension Notice delivered in respect of a material transaction described in Section 5(a)(i)(A), no more than 100 consecutive days after delivery of such Suspension Notice. For the avoidance of doubt, with respect to any Registrable Security, no Registration Default shall be applicable to such Registrable Security during any Black Out Period permitted to be imposed on the holder of such Registrable Security pursuant to this Section 5.

A Suspension Notice shall not disclose the specific material, non-public information with respect to any Black Out Period, unless the Investor specifically requests in writing to receive such material, non-public information and agrees in writing to keep such material, non-public information confidential.

(ii) Notwithstanding anything to the contrary in this Section 5(a), the Company shall not impose any Black Out Period, including any Scheduled Earnings Black Out, in a manner that is more restrictive (including, without limitation, as to duration) than the comparable restrictions that the Company may impose on transfers of the Company's equity securities by its directors and senior executive officers.

(iii) During any Black Out Period, no Investor shall offer or sell any Registrable Securities pursuant to or in reliance upon any Registration Statement (or the prospectus relating thereto) filed by the Company. Notwithstanding the foregoing, if the public announcement of such material, nonpublic information is made during a Black Out Period, then the Black Out Period shall terminate without any further action of the parties and the Company shall immediately notify the Investors of such termination.

(b) Intentionally omitted.

(c) Delay Payments. The Company and each Investor each agree that any such Investor will suffer damages, and it would not be feasible to ascertain the extent of such damages with precision, if the Company fails to fulfill its obligations hereunder. Subject in all cases to Section 5 (including any applicable Blackout Period), if (i) a Registration Statement is not filed on or prior to any required date hereunder, (ii) a Registration Statement is not declared effective by the SEC or any order of a governmental authority preventing or suspending the use of any prospectus is not lifted prior to any Effective Date or Effectiveness Date applicable thereto, (iii) the Company fails to file with the SEC a request for acceleration of effectiveness in accordance with Rule 461 promulgated under the Securities Act, within five (5) Business Days after the date that (A) the Company is notified in writing by the SEC that a Registration Statement will not be "reviewed," or is not subject to further review and (B) Legal Counsel has given its prior approval to request acceleration of effectiveness pursuant to Section 3(c), or (iv) after the Effective Date, a Registration Statement required to be effective hereunder ceases for any reason to remain effective (without being succeeded immediately by a replacement Registration Statement filed and declared effective) or usable (excluding as a result of a post-effective amendment thereto that is required by applicable law in order to cause a permitted assignee hereunder to be named as a selling securityholder therein, provided that such post-effective amendment is filed by the Company within ten (10) Business Days after the Company receiving notice from any Investor that such post-effective amendment is required (any such ten (10) Business Day period, an "Assignment Period") for the resale of Registrable Securities, or the Investors are otherwise unable to effect the resale of any Registrable Securities hereunder as a result of a breach by the Company of its obligations hereunder, in each case for such period of time (excluding the duration of any Black Out Period applicable to such Registrable Securities or any Assignment Period) as to any Registrable Securities for which any Registration Statement is then required to be effective hereunder (each of the events referred to in clauses (i) through (iv), a "Registration Default") the Company shall pay to any Investor holding any Registrable Securities not eligible for resale as a result of such Registration Default, for the duration of such Registration Default as it applies to such Registrable Securities held by such Investor an amount equal to one-half percent (0.5%) of the Registrable Securities Purchase Price of such Registrable Securities per thirty (30) days (or portion thereof), payable in cash on the second business day of each calendar month in respect of payments accruing through the last

day of the preceding calendar month, with late payments accruing interest at a rate of eighteen percent (18%) per annum (or such lesser maximum amount that is permitted to be paid by applicable law), compounding on each payment date (the payments described in this Section 5(c), the "Liquidated Damages"); *provided*, *however*, that the aggregate amount of Liquidated Damages payable by the Company to the Investors, for all Registration Defaults, shall not exceed $900,000. Each of the Company and each Investor agree that the Liquidated Damages provided for in this Section 5 constitute a reasonable estimate of the monetary damages that may be incurred by the Investor by reason of a Registration Default and that such Liquidated Damages are the only monetary damages available to the Investors in the event of a Registration Default. Notwithstanding anything to the contrary set forth in this Section 5, no event shall be considered a Registration Default hereunder if such event or the primary cause thereof (i) was consented to in writing by the Investor Representative or (ii) results (and shall not be considered a Registration Default for as long as it continues to result) solely from any breach or delay in performance by any Investor of any of its obligations set forth in this Agreement.

6. EXPENSES OF REGISTRATION. The Company shall bear all expenses, other than underwriting discounts and commissions, incurred in connection with registrations, filings or qualifications pursuant to Sections 2 and 3, including, without limitation, all registration, listing and qualification fees, printers and accounting fees, fees and disbursements of counsel for the Company in connection with registration, filing or qualification pursuant to Sections 2 and 3 of this Agreement, fees and disbursements of Legal Counsel (up to an aggregate of $25,000 for Legal Counsel) and reasonable fees and disbursements of underwriters and their counsel customarily paid by the issuers or sellers of securities (such as fees and expenses related to dealings with and filings with the Financial Industry Regulatory Authority, Inc. and any "blue-sky" related filings). In addition, the Company shall be responsible for all of its internal expenses incurred in connection with the consummation of the transactions contemplated by this Agreement (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit and the fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange as required hereunder.For the avoidance of doubt, each Investor shall pay all underwriting and placement discounts and commissions, agency and placement fees, brokers' commissions and transfer taxes, if any, relating to the sale or disposition of such Investor's Registrable Securities.

7. INDEMNIFICATION. If any Registrable Securities are included in a Registration Statement under this Agreement:

(a) Obligations of the Company to Indemnify. In the event of any registration of any Registrable Securities pursuant to this Agreement, the Company shall indemnify and hold harmless each Investor and its directors, officers, partners, agents, stockholders, managers, members, employees, each underwriter, if any, in the offering or sale of such securities, and each other Person, if any, who controls such Investor or any such underwriter within the meaning of the Securities Act, and the directors, officers, partners, agents, stockholders, managers, members and employees of each such controlling Person, from and against any and all third-party losses, claims, damages or liabilities, joint or several, actions or proceedings and expenses (including reasonable fees of counsel) to which each such indemnified party may become subject under the Securities Act, the Exchange Act or otherwise (collectively, "Claims"), insofar as such Claims arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement under which such securities were registered under the Securities Act or the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the

statements therein not misleading, or any untrue statement or alleged untrue statement of a material fact contained in any preliminary, final or summary prospectus or any amendment or supplement thereto, together with the documents incorporated by reference therein, or any free writing prospectus utilized in connection therewith, or the omission or alleged omission to state therein a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, and the Company will reimburse any such indemnified party for any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such Claim as such expenses are incurred; provided, however, that the Company shall not be liable to any such indemnified party in any such case to the extent such Claim arises out of or is based upon any untrue statement or alleged untrue statement of a material fact or omission or alleged omission of a material fact made in such registration statement or amendment thereof or supplement thereto or in any such prospectus or any preliminary, final or summary prospectus or free writing prospectus in reliance upon and in conformity with written information furnished to the Company by or on behalf of such indemnified party specifically for use therein (it being understood that the Investor has approved Exhibit A and Exhibit B hereto for this purpose); provided, further, however, that the Company shall not be liable to any such indemnified party with respect to any amounts paid in settlement of any such loss, claim, damage, liability, or action if such settlement is effected without the consent of the Company (which consent shall not be unreasonably withheld). Such indemnity and reimbursement of expenses shall remain in full force and effect regardless of any investigation made by or on behalf of such indemnified party and shall survive the transfer of Registrable Securities by an Investor. Notwithstanding any of the foregoing to the contrary, the foregoing indemnity agreement shall not inure to the benefit of any Investor or underwriter, or any person controlling or claiming through such Investor or underwriter, from whom the person asserting any such Claim purchased shares in the offering (i) with respect to any preliminary prospectus, if a copy of the prospectus (as then amended or supplemented and previously provided by the Company to the Investor or underwriter, as applicable, in accordance with Section 3(d)) was not sent or given by or on behalf of such Investor or underwriter to such person, if required by law so to have been delivered, at or prior to the written confirmation of the sale of the shares to such Person, and if the prospectus (as so amended or supplemented) would have cured the defect giving rise to such Claim and (ii) with respect to any Registration Statement, preliminary, final or summary prospectus or any amendment or supplement thereto, or any free writing prospectus utilized in connection therewith, if any such document was used during a Black Out Period.

(b) Obligations of the Investors to Indemnify. Each Investor selling Registrable Securities shall, severally and not jointly, indemnify and hold harmless (in the same manner and to the same extent as set forth in Section 7(a)) the Company, its officers, directors, employees, legal counsel and accountants, each Person controlling the Company within the meaning of the Securities Act and each of the other Investors and their respective directors, officers, stockholders, fiduciaries, managing directors, agents, affiliates, consultants, representatives, successors, assigns or general and limited partners and respective controlling Persons for Claims insofar as such Claims arise out of are based upon any untrue statement or alleged untrue statement of any material fact in, or omission or alleged omission of any material fact from, such registration statement, any preliminary, final or summary prospectus contained therein, or any amendment or supplement thereto, or any free writing prospectus utilized in connection therewith, if such statement or alleged statement or omission or alleged omission was made in reliance upon and in conformity with written

information furnished to the Company or its representatives by or on behalf of such Investor specifically for use therein (it being understood that such Investor has approved the information provided in Exhibit A and Exhibit B hereto for this purpose), and each such Investor shall reimburse such indemnified

party for any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such Claim as such expenses are incurred; provided, however, that the aggregate amount which any such Investor shall be required to pay pursuant to this Section 7(b) and/or any other provisions of this Section 7 shall in no case be greater than the amount of the net proceeds received by such Investor upon the sale of the Registrable Securities pursuant to the registration statement giving rise to such Claim.

(c) Procedure. Any Person entitled to indemnification under this Agreement shall notify promptly the indemnifying party in writing of the commencement of any action or proceeding with respect to which a claim for indemnification may be made pursuant to this Section 7, but the failure of any indemnified party to provide such notice shall not relieve the indemnifying party of its obligations under the preceding paragraphs of this Section 7, except to the extent the indemnifying party is materially and actually prejudiced thereby, and shall not relieve the indemnifying party from any liability which it may have to any indemnified party otherwise than under this Agreement. In case any action or proceeding is brought against an indemnified party and it shall notify the indemnifying party of the commencement thereof (as required above), the indemnifying party shall be entitled to participate therein and to assume the defense thereof jointly with any other indemnifying party similarly notified, to the extent that it chooses, with counsel reasonably satisfactory to such indemnified party, and after notice from the indemnifying party to such indemnified party, the indemnifying party shall not be liable to such indemnified party for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation; provided, however, that (i) if the indemnifying party fails to take reasonable steps necessary to defend diligently the action or proceeding within twenty (20) days after receiving notice from such indemnified party that the indemnified party believes it has failed to do so; or (ii) if such indemnified party who is a defendant in any action or proceeding which is also brought against the indemnifying party reasonably shall have concluded that there may be one or more legal or equitable defenses available to such indemnified party which are not available to the indemnifying party or which may conflict with those available to another indemnified party with respect to such Claim; or (iii) if representation of both parties by the same counsel is otherwise, in the reasonable opinion of outside counsel to the indemnified party, a conflict of interest between such indemnified and indemnifying party may exist in respect of such claim, then, in any such case, the indemnified party shall have the right to assume or continue its own defense as set forth above (but with no more than one firm of counsel for all indemnified parties in each jurisdiction) and the indemnifying party shall be liable for any reasonable expenses therefor. No indemnifying party shall, without the written consent of the indemnified party, effect the settlement or compromise of, or consent to the entry of any judgment with respect to, any pending or threatened action or claim in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified party is an actual or potential party to such action or claim) unless such settlement, compromise or judgment (A) includes an unconditional release of the indemnified party from all liability arising out of such action or claim and (B) does not include a statement as to or an admission of fault, culpability or a failure to act, by or on behalf of any indemnified party.

(d) Contribution. If for any reason the foregoing indemnity is unavailable, unenforceable or is insufficient to hold harmless an indemnified party under

Sections 7(a) or (b), then each applicable indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of any Claim in such proportion as is appropriate to reflect the relative fault of the indemnifying party, on the one hand, and the indemnified party, on the other hand, with respect to such Claim, as well as other relevant equitable considerations. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the indemnifying party or the indemnified party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. If, however, the allocation provided in the second preceding sentence is not permitted by applicable law, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative faults but also the relative benefits of the indemnifying party and the indemnified party as well as any other relevant equitable considerations. The parties hereto agree that it would not be just and equitable if any contribution pursuant to this Section 7(d) were to be determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in the preceding sentences of this Section 7(d). The amount paid or payable in respect of any Claim shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such Claim. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. Notwithstanding anything in this Section 7(d) to the contrary, no indemnifying party (other than the Company) shall be required pursuant to this Section 7(d) to contribute any amount in excess of the net proceeds received by such indemnifying party from the sale of Registrable Securities in the offering to which the losses, claims, damages or liabilities of the indemnified parties relate, less the amount of any indemnification payment made by such indemnifying party pursuant to Section 7(b).

(e) Other Agreements. Notwithstanding this Section 7, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement, if any, entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control.

(f) Payments. The indemnification and contribution required by this Section 7 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or expense, loss, damage or liability is incurred.

(g) Survival. The indemnification and contribution provided for under this Agreement will remain in full force and effect regardless of any investigation made by or on behalf of the indemnified party or any officer, director or controlling Person of such indemnified party and will survive the transfer of any Registrable Securities.

8. REPORTS UNDER THE EXCHANGE ACT. With a view to making available to the Investors all of the benefits of Rule 144 (or any similar successor rule), the Company agrees to: (i) make and keep public information available, as those terms are understood and defined in Rule 144 (or any similar successor rule), (ii) file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act and (iii) furnish to each Investor so long as such Investor owns Registrable Securities, promptly upon request, (A) a written statement by the Company that it has complied with the reporting requirements of Rule 144 (or any similar successor rule) and the Exchange Act, (B) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company and (C) such other information as may be reasonably requested to permit the Investors to sell such securities pursuant to Rule 144 (or any similar successor rule) without registration.

9. MISCELLANEOUS.

(a) Other Registration Rights.

(i) The Company has not previously entered into any agreement granting any registration rights with respect to any of its securities to any Person which have not been fully satisfied.

(ii) The Company may hereafter grant to any Person or Persons the right to request the Company to register any equity securities of the Company (the "Subsequent Registration Rights"), or any securities convertible or exchangeable into or exercisable for such securities, without the prior written consent of the holders of the Registrable Securities; provided, however, that, except for any equity securities issued to the Investors in the future, the Subsequent Registration Rights may not have priority over, or parity with, the registration rights of the Registrable Securities hereunder in any respect and such Subsequent Registration Rights shall have no piggyback rights on any registration and sale of Registrable Securities hereunder.

(iii) Except as set forth in Schedule 9(a), until the Effective Date, the Company shall not file a registration statement under the Securities Act relating to securities held by any selling security holder other than the Purchaser without the prior written consent of the Purchaser.

(b) General Piggyback Rights of the Investors. If at any time during the Registration Period, there is not an effective Registration Statement covering all of the Registrable Securities for any reason whatsoever and the Company has filed, or is preparing to file, with the SEC a registration statement relating to an offering for its own account or the account of others under the Securities Act of any of its equity securities, other than on Form S-4 or Form S-8 (each as promulgated under the Securities Act) or their then equivalents relating to equity securities to be issued solely in connection with any acquisition of any entity or business or equity securities issuable in connection with stock option or other employee benefit plans, then the Company shall send to each Investor written notice of such determination and (i) the Company shall not effect such filing without reasonable prior written notice to the Investor Representative and (ii) if, within ten (10) days after receipt of such notice, any such Investor shall so request in writing, the Company shall include in such registration statement all or any part of such Registrable Securities such Investor requests to be registered, subject to customary underwriter cutbacks applicable to all holders of registration rights, which customary underwriter cutbacks shall be applied such that shares of Common Stock are included in such registration as follows: *first*, all shares of Common Stock to be offered by the Company and all Registrable Securities to be offered by Investors, pro rata among the Company and such participating Investors, and *second*, shares of Common Stock to be offered by any other holders of registration rights. For the avoidance of doubt, all of the covenants and obligations of the Company hereunder shall apply to such piggy back registration, to the extent consistent with this Section 9(b).

(c) Assignment of Registration Rights.

(i) The registration rights of any Investor under this Agreement with respect to any Registrable Securities may be assigned to any of the following Persons, if they acquire Registrable Securities: (A) any Affiliate of the Investor, (B) if the Investor is a partnership, its partners or former partners in accordance with partnership interests or the estate of any such

partner or former partner or a liquidating trust for the benefit of its partners, (C) if the Investor is a limited liability company, its members or former members in accordance with their interest in the limited liability company, (D) if the Investor is a corporation, its majority owned subsidiaries or Affiliates thereof or (E) if the Investor is an individual, the Investor's family members or trust for the benefit of such Investor or his or her family members or an entity whose equity owners consist solely of the Investor and his or her family members.

(ii) Upon any such permitted assignment, (A) the Investor shall give the Company written notice at or prior to the time of such assignment stating the name and address of the assignee and identifying the shares with respect to which the rights under this Agreement are being assigned; (B) such assignee shall agree in writing, in form and substance reasonably satisfactory to the Company, to be bound to the same extent and in the same capacity as the Investor by the provisions of this Agreement; and (C) such assignee shall acknowledge, immediately following such assignment, that the further disposition of such securities by such assignee may be restricted under the Securities Act. In connection with any such transfer the Company shall, at its sole cost and expense, promptly after such assignment take such reasonable actions as shall be reasonably acceptable to the Investors and such permitted transferee to assure that the Registration Statement and related prospectus are available for use by such permitted transferee for sales of the Registrable Securities in respect of which the rights to registration have been so assigned. Notwithstanding any other provision of this Agreement, no Person who acquires securities transferred in violation of this Agreement, or who acquires securities that are not, or upon acquisition cease to be, Registrable Securities, shall have any rights under this Agreement with respect to such securities, and such securities shall not have the benefits afforded hereunder to Registrable Securities.

(d) Successors and Assigns; Third Party Beneficiaries. Except as otherwise expressly provided herein, all covenants and agreements contained in this Agreement by or on behalf of any of the parties hereto will bind and inure to the benefit of the respective permitted successors and assigns of the parties hereto, whether so expressed or not.

(e) Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement.

(f) Descriptive Headings. The descriptive headings of this Agreement are inserted for convenience of reference only and do not constitute a part of, and shall not be utilized in interpreting, this Agreement.

(g) Notices. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by facsimile or email (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); (iii) one (1) Business Day after deposit with a nationally recognized overnight delivery service or (iv) five (5) days after deposit in the U.S. mail, return receipt requested, in each case properly addressed to the party to receive the same. The addresses and facsimile numbers for such communications shall be:If to the Company:

Jaguar Health, Inc.
201 Mission Street, Suite 2375
San Francisco, California 94105
Facsimile: (415) 371-8311
Email: lconte@jaguar.health
Attention: Lisa A. Conte

With a copy to:

Reed Smith LLP
101 Second Street, Suite 1800
San Francisco, CA 94105
Email: DReinke@ReedSmith.com
Attention: Donald C. Reinke, Esq.

If to the Purchaser:

Sagard Capital Partners, L.P.
New York, New York 10017
Facsimile: On file with the Company
Email: On file with the Company
Attention: Chief Financial Officer and General Counsel

If to Legal Counsel:

Finn Dixon & Herling LLP
Six Landmark Square
Stamford, Connecticut 06901
Telephone: (203) 325-5000
Facsimile: (203) 325-5001
Email: cdowney@fdh.com
Attention: Charles J. Downey III, Esq.

If to an Investor, to its address and facsimile number set forth on the Schedule of Investors attached hereto, with copies to such Investor's representatives as set forth on the Schedule of Investors, or to such other address and/or facsimile number and/or to the attention of such other person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change. Written confirmation of receipt or deposit in the U.S. mail, as the case may be, (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's (1) facsimile machine containing the time, date, recipient facsimile number and an image of the first page of such transmission, or (2) email system, (C) provided by a courier or overnight courier service shall be rebuttable evidence of personal service, receipt by facsimile or receipt from a nationally recognized overnight delivery service or (D) by a signed return receipt in accordance with clause (i), (ii), (iii), or (iv) above, respectively.

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

(i) Amendments and Waivers. The provisions of this Agreement may be amended, waived or otherwise modified upon the written agreement of the Company and the Investor Representative. Any waiver, permit, consent or approval of any kind or character on the part of any holders of any provision or condition of this Agreement must be made in writing and shall be effective only to the extent specifically set forth in writing.

(j) Specific Performance. The Company and the Investor acknowledge and agree that irreparable damage to the other party would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that each party shall be entitled to an injunction, injunctions or other equitable relief, without the necessity of posting a bond, to prevent or cure breaches of the provisions of this Agreement and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which the parties may be entitled by law or equity.

(k) Delays or Omissions. It is agreed that no delay or omission to exercise any right, power or remedy accruing to any party, upon any breach, default or noncompliance by another party under this Agreement, shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such breach, default or noncompliance, or any acquiescence therein, or of or in any similar breach, default or noncompliance thereafter occurring. All remedies, either under this Agreement, by law, or otherwise afforded to any party, shall be cumulative and not alternative.

(l) Final Agreement. This Agreement constitutes the complete and final agreement of the parties concerning the matters referred to herein and supersedes all prior agreements and understandings.

(m) Execution. This Agreement may be executed in identical counterparts, each of which shall be deemed an original but all of which shall constitute one and the same agreement. This Agreement, once executed by a party, may be delivered to the other party hereto by facsimile transmission of a copy of this

Agreement bearing the signature of the party so delivering this Agreement.

(n) Consents. All consents and other determinations to be made by the Investors pursuant to this Agreement shall be made, unless otherwise specified in this Agreement, by the Investor Representative.

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

(p) Termination of Agreement. This Agreement and all registration rights granted to an Investor shall terminate and be of no further force or effect with respect to that Investor if both of the following conditions are satisfied: (i) all Registrable Securities then held by and issuable to such Investor (and its affiliates, partners and former partners, members and former members) may be sold under Rule 144 during any ninety (90) day period and the certificates evidencing such Registrable Securities bear no legends restricting the transfer thereof (and, to the extent such securities are issued in global form, bear an unrestricted CUSIP number) and (ii) the Company's Common Stock is traded on a national securities exchange or quoted on an automated inter-dealer quotation system; provided that Section 7, Section 9 and any accrued but unpaid obligation of the Company in respect of Liquidated Damages shall survive any termination under this Section 9(p).

* * * * * *

[Signature Page to Registration Rights Agreement — Jaguar Health/Sagard]

IN WITNESS WHEREOF, the Purchaser and the Company have caused this Registration Rights Agreement to be duly executed as of the date first written above.

COMPANY:

JAGUAR HEALTH, INC.

By: /s/ Lisa Conte
Name: Lisa Conte
Title: Chief Executive Officer

[Signature Page to Registration Rights Agreement— Jaguar Health/Sagard]

IN WITNESS WHEREOF, the Purchaser and the Company have caused this Registration Rights Agreement to be duly executed as of the date first written above.

PURCHASER:

SAGARD CAPITAL PARTNERS, L.P.
By: Sagard Capital Partners GP, Inc., its general partner

By: /s/ Samuel Robinson
Name: Samuel Robinson
Title: President

SCHEDULE OF INVESTORS

Investor's Name	Investor's Address, Facsimile Number and Email Address

Sagard Capital Partners, L.P.	New York, New York 10017 Attention: Chief Financial Officer and General Counsel Email: On file with the Company

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SCHEDULE 9(a)

1. Registration Rights Agreement, dated June 8, 2016, by and between Jaguar Health, Inc. and Aspire Capital Fund, LLC.

2. Note Purchase Agreement, dated March 1, 2017, by and among Napo Pharmaceuticals, Inc., MEF I, LP and Riverside Merchant Partners (requiring Napo to include in the Merger Agreement provisions, consistent with the terms set forth in Annex II of the Note Purchase Agreement, that the Company will register the maximum number of shares of the Company's common stock issuable in connection with interest payments under the Exchangeable Promissory Notes issuable thereunder), as amended by (a) the Letter Agreement, dated September 1, 2017, by and among Napo Pharmaceuticals, Inc., MEF I, LP and Riverside Merchant Partners, (b) the First Amendment to the Note Purchase Agreement and Notes, dated December 29, 2017, by and among Napo Pharmaceuticals, Inc., MEF I, LP and Riverside Merchant Partners and (c) the Second Amendment to the Note Purchase Agreement and Notes and Payoff Agreement, dated February 16, 2018, by and among Napo Pharmaceuticals, Inc., MEF I, LP and Riverside Merchant Partners.

3. Investor Rights Agreement, dated March 31, 2017, by and between Jaguar Health, Inc. and Nantucket Investments Limited.

4. Securities Purchase Agreement, dated June 29, 2017, by and between Jaguar Health, Inc. and Chicago Venture Partners, L.P. ("CVP"), as amended by the Letter Agreement, dated August 30, 2017, by and between Jaguar Health, Inc. and CVP.

5. Share Purchase Agreement, dated December 27, 2017, by and between Jaguar Health, Inc. and the purchasers named therein.

6. Share Purchase Agreement, dated January 18, 2018, by and between Jaguar Health, Inc. and the purchasers named therein.

7. Share Purchase Agreement to be entered into on or about the Closing Date, by and between Jaguar Health, Inc. and Invesco Asset Management Limited.

8. Share Purchase Agreement to be entered into on or about the Closing Date, by and between Jaguar Health, Inc. and the purchasers named therein.

9. One or more registration statements that the Company may file from time to time to register the resale of any shares issued to CVP following the Closing Date in connection with the repayment or redemption of the secured promissory notes issued by the Company to CVP as of the Closing Date.

10. A registration statement on Form S-8 with respect to resale of shares of Common Stock issuable upon exercise of the stock options, restricted stock and restricted stock unit awards granted under the Company's 2014 Stock Incentive Plan.

EXHIBIT A

Plan of Distribution

Each Selling Stockholder (the "Selling Stockholders") of the common stock and any of their pledgees, assignees and successors-in-interest may, from time to time, sell any or all of their shares of common stock covered hereby on any stock exchange, market or trading facility on which the shares are traded or in private transactions. These sales may be at fixed or negotiated prices. A Selling Stockholder may use any one or more of the following methods when selling shares:

- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the shares as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- settlement of short sales entered into after the effective date of the registration statement of which this prospectus is a part;
- in transactions through broker-dealers that agree with the Selling Stockholders to sell a specified number of such shares at a stipulated price per share;
- through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise;
- a combination of any such methods of sale; or
- any other method permitted pursuant to applicable law.

The Selling Stockholders may also sell shares under Rule 144 under the Securities Act of 1933, as amended (the "Securities Act"), if available, rather than under this prospectus.

Broker-dealers engaged by the Selling Stockholders may arrange for other brokers-dealers to participate in sales. Broker-dealers may receive commissions or discounts from the Selling Stockholders (or, if any broker-dealer acts as agent for the purchaser of shares, from the purchaser) in amounts to be negotiated, but, except as set forth in a supplement to this Prospectus, in the case of an agency transaction not in excess of a customary brokerage commission in compliance with FINRA Rule 2440; and in the case of a principal transaction a markup or markdown in compliance with FINRA IM-2440.

In connection with the sale of the common stock or interests therein, the Selling Stockholders may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of the common stock in the course of hedging the positions they assume. The Selling Stockholders may also sell shares of the common stock short and deliver these securities to close out their short positions, or loan or pledge the common stock to broker-dealers that in turn may sell these securities. The Selling Stockholders may also enter into option or other transactions with broker-dealers or other financial institutions or create one or more derivative securities which require the delivery to such broker-dealer or other financial institution of shares offered by this prospectus, which shares such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction).

The Selling Stockholders and any broker-dealers or agents that are involved in selling the shares may be deemed to be "underwriters" within the meaning of the Securities Act in connection with such sales. In such event, any commissions received by such broker-dealers or agents and any profit on the resale of the shares purchased by them may be deemed to be underwriting commissions or discounts under the Securities Act. Each Selling Stockholder has informed the Company that it does not have any written or oral agreement or understanding, directly or indirectly, with any person to distribute the Common Stock.

The Company is required to pay certain fees and expenses incurred by the Company incident to the registration of the shares. The Company has agreed to indemnify the Selling Stockholders against certain losses, claims, damages and liabilities, including liabilities under the Securities Act.

Because Selling Stockholders may be deemed to be "underwriters" within the meaning of the Securities Act, they will be subject to the prospectus delivery requirements of the Securities Act including Rule 172 thereunder. The Selling Stockholders have advised us that there is no underwriter or coordinating broker acting in connection with the proposed sale of the resale shares by the Selling Stockholders.

We agreed to keep this prospectus effective until all of the shares continuing to have registration rights have been sold pursuant to this prospectus or Rule 144 under the Securities Act or any other rule of similar effect. The resale shares will be sold only through registered or licensed brokers or dealers if required under applicable state securities laws. In addition, in certain states, the resale shares of Common Stock covered hereby may not be sold unless they have been registered or qualified for sale in the applicable state or an exemption from the registration or qualification requirement is available and is complied with.

Under applicable rules and regulations under the Exchange Act, any person engaged in the distribution of the resale shares may not simultaneously engage in market making activities with respect to the common stock for the applicable restricted period, as defined in Regulation M, prior to the commencement of the distribution. In addition, the Selling Stockholders will be subject to applicable provisions of the Exchange Act and the rules and regulations thereunder,

including Regulation M, which may limit the timing of purchases and sales of shares of the common stock by the Selling Stockholders or any other person. We will make copies of this prospectus available to the Selling Stockholders and have informed them of the need to deliver a copy of this prospectus to each purchaser at or prior to the time of the sale (including by compliance with Rule 172 under the Securities Act).

<u>EXHIBIT B</u>

Jaguar Health, Inc.

Notice of Registration Statement
and
<u>Selling Securityholder Questionnaire</u>

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Reference is hereby made to the Registration Rights Agreement (the *"Registration Rights Agreement"*) between Jaguar Health, Inc. (the *"Company"*) and the Investors named therein. Pursuant to the Registration Rights Agreement, the Company has filed or will file with the United States Securities and Exchange Commission (the *"Commission"*) a registration statement on Form S-3 (the *"Shelf Registration Statement"*) for the registration and resale under Rule 415 of the Securities Act of 1933, as amended (the *"Securities Act"*), of the Company's common stock issued in connection with the Company's recently completed private exchange offers (the *"Securities"*). A copy of the Registration Rights Agreement has been filed with the Commission on Form 8-K and can be obtained from the Commission's website at www.sec.gov. All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Registration Rights Agreement.

Each holder of Registrable Securities (as defined in the Registration Rights Agreement) is entitled to have the Registrable Securities held by it included in the Shelf Registration Statement (or a supplement or amendment thereto). In order to have Registrable Securities included in the Shelf Registration Statement, this Notice of Registration Statement and Selling Securityholder Questionnaire (*"Notice and Questionnaire"*) must be completed, executed and delivered to the Company's counsel at the address set forth herein for receipt ON OR BEFORE **[ ]**. Holders of Registrable Securities who do not properly

complete, execute and return this Notice and Questionnaire by such date (i) will not be named as selling securityholders in the Shelf Registration Statement and (ii) may not use the Prospectus forming a part thereof for resales of Registrable Securities.

Certain legal consequences arise from being named as a selling securityholder in the Shelf Registration Statement and related Prospectus. Accordingly, holders and beneficial owners of Registrable Securities are advised to consult their own securities law counsel regarding the consequences of being named or not being named as a selling securityholder in the Shelf Registration Statement and related Prospectus.

ELECTION

The undersigned holder (the *"Selling Securityholder"*) of Registrable Securities hereby elects to include in the Shelf Registration Statement the Registrable Securities beneficially owned by it and listed below in Item (3). The undersigned, by signing and returning this Notice and Questionnaire, agrees to be bound with respect to such Registrable Securities by the terms and conditions of this Notice and Questionnaire and the Registration Rights Agreement, including, without limitation, Section 5 of the Registration Rights Agreement, as if the undersigned Selling Securityholder were an original party thereto.

Pursuant to the Registration Rights Agreement, the undersigned has agreed to indemnify and hold harmless the Company, its officers who sign any Shelf Registration Statement, and each person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act of 1934, as amended (the *"Exchange Act"*), against certain losses arising out of an untrue statement, or the alleged untrue statement, of a material fact in the Shelf Registration Statement or the related prospectus or the omission, or alleged omission, to state a material fact required to be stated in such Shelf Registration Statement or the related prospectus, but only to the extent such untrue statement or omission, or alleged untrue statement or omission, was made in reliance on and in conformity with the information provided in this Notice and Questionnaire.

Upon any sale of Registrable Securities pursuant to the Shelf Registration Statement, the Selling Securityholder will be required to deliver to the Company and Transfer Agent the Notice of Transfer set forth in Exhibit C to the Registration Rights Agreement.

The Selling Securityholder hereby provides the following information to the Company and represents and warrants that such information is true, accurate and complete:

QUESTIONNAIRE

(1) (a) Full legal name of Selling Securityholder:

(b) Full legal name of registered Holder (if not the same as in (a) above) of Registrable Securities listed in Item (3) below:

(2) Address for notices to Selling Securityholder:

Telephone:
Fax:
Contact Person:
E-mail for Contact Person:

(3) Beneficial Ownership of Securities:

Except as set forth below in this Item (3), the undersigned does not beneficially own any Securities.

(a) Number of shares of Registrable Securities beneficially owned:

(b) Number of shares of Common Stock other than Registrable Securities beneficially owned:

(c) Number of shares of Registrable Securities that the undersigned wishes to be included in the Shelf Registration Statement:

(4) Beneficial Ownership of Other Securities of the Company:

Except as set forth below in this Item (4), the undersigned Selling Securityholder is not the beneficial or registered owner of any other securities of the Company, other than the Securities listed above in Item (3).

State any exceptions here:

(5) Individuals who exercise dispositive powers with respect to the Securities:

If the Selling Securityholder is not an entity that is required to file reports with the Commission pursuant to Section 13 or 15(d) of the Exchange Act (a "Reporting Company"*), then the Selling Securityholder must disclose the name of the natural person(s) who exercise sole or shared dispositive powers with respect to the Securities. Selling Securityholders should disclose the beneficial holders, not nominee holders or other such others of record. In addition, the Commission has provided guidance that Rule 13d-3 of the Exchange Act should be used by analogy when determining the person or persons sharing voting and/or dispositive powers with respect to the Securities.*

(a) Is the holder a Reporting Company?

Yes o No o

If "No", please answer Item (5)(b).

(b) List below the individual or individuals who exercise dispositive powers with respect to the Securities:

Please note that the names of the persons listed in (b) above will be included in the Shelf Registration Statement and related Prospectus.

(6) Relationships with the Company:

Except as set forth below, neither the Selling Securityholder nor any of its affiliates, officers, directors or principal equity holders (5% or more) has held any position or office or has had any other material relationship with the Company (or its predecessors or affiliates) during the past three years.

State any exceptions here:

(7) Plan of Distribution:

Except as set forth below, the undersigned Selling Securityholder intends to distribute the Registrable Securities listed above in Item (3) only in accordance with the "Plan of Distribution" section attached as Exhibit A to the Registration Rights Agreement.

State any exceptions here:

Note: In no event may such method(s) of distribution take the form of an underwritten offering of Registrable Securities without the prior written agreement of the Company.

(8) Broker-Dealers:

The Commission requires that all Selling Securityholders that are registered broker-dealers or affiliates of registered broker-dealers be so identified in the Shelf Registration Statement. In addition, the Commission requires that all Selling Securityholders that are registered broker-dealers be named as underwriters in the Shelf Registration Statement and related Prospectus, even if they did not receive the Registrable Securities as compensation for underwriting activities.

(a) State whether the undersigned Selling Securityholder is a registered broker-dealer:

Yes o No o

(b) If the answer to (a) is "Yes", you must answer (i) and (ii) below, and (iii) below if applicable. ***Your answers to (i) and (ii) below, and (iii) below if applicable, will be included in the Shelf Registration Statement and related Prospectus.***

(i) Were the Securities acquired as compensation for underwriting activities?

Yes o No o

If you answered "Yes", please provide a brief description of the transaction(s) in which the Securities were acquired as compensation:

(ii) Were the Securities acquired for investment purposes?

Yes o No o

(iii) If you answered "No" to both (i) and (ii), please explain the Selling Securityholder's reason for acquiring the Securities:

(c) State whether the undersigned Selling Securityholder is an affiliate of a registered broker-dealer and, if so, list the name(s) of the broker-dealer affiliate(s):

Yes o No o

(d) If you answered "Yes" to question (c) above:

(i) Did the undersigned Selling Securityholder purchase Registrable Securities in the ordinary course of business?

Yes o No o

If the answer is "No" to question (d)(i), provide a brief explanation of the circumstances in which the Selling Securityholder acquired the Registrable Securities:

(ii) At the time of the purchase of the Registrable Securities, did the undersigned Selling Securityholder have any agreements, understandings or arrangements, directly or indirectly, with any person to dispose of or distribute the Registrable Securities?

Yes o No o

If the answer is "Yes" to question (d)(ii), provide a brief explanation of such agreements, understandings or arrangements:

If the answer is "No" to Item (8)(d)(i) or "Yes" to Item (8)(d)(ii), you will be named as an underwriter in the Shelf Registration Statement and the related Prospectus.

(9) Hedging and short sales:

(a) State whether the undersigned Selling Securityholder has or will enter into "hedging transactions" with respect to the Registrable Securities:

Yes o No o

If "Yes", provide below a complete description of the hedging transactions into which the undersigned Selling Securityholder has entered or will enter and the purpose of such hedging transactions, including the extent to which such hedging transactions remain in place:

(b) Set forth below is Interpretation A.65 of the Commission's July 1997 Manual of Publicly Available Interpretations regarding short selling:

"An issuer filed a Form S-3 registration statement for a secondary offering of common stock which is not yet effective. One of the selling shareholders wanted to do a short sale of common stock "against the box" and cover the short sale with registered shares after the effective date. The issuer was advised that the short sale could not be made before the registration statement becomes effective, because the shares underlying the short sale are deemed to be sold at the time such sale is made. There would, therefore, be a violation of Section 5 if the shares were effectively sold prior to the effective date."

By returning this Notice and Questionnaire, the undersigned Selling Securityholder will be deemed to be aware of the foregoing interpretation.

* * * * *

By signing below, the Selling Securityholder acknowledges that it understands its obligation to comply, and agrees that it will comply, with the prospectus delivery and other provisions of the Securities Act and the Exchange Act, particularly Regulation M (or any successor rule or regulation).

The Selling Securityholder hereby acknowledges its obligations under the Registration Rights Agreement to indemnify and hold harmless the Company and certain other persons as set forth in the Registration Rights Agreement.

In the event that the Selling Securityholder transfers all or any portion of the Registrable Securities listed in Item (3) above after the date on which such information is provided to the Company, the Selling Securityholder agrees to notify the transferee(s) at the time of the transfer of its rights and obligations, if any, under this Notice and Questionnaire and the Registration Rights Agreement (including Section 8(e) of the Registration Rights Agreement).

By signing below, the Selling Securityholder consents to the disclosure of the information contained herein in its answers to Items (1) through (9) above and the inclusion of such information in the Shelf Registration Statement and related Prospectus. The Selling Securityholder understands that such information will be relied upon by the Company in connection with the preparation of the Shelf Registration Statement and related Prospectus.

In accordance with the Selling Securityholder's obligation under Section 3(a) of the Registration Rights Agreement to provide such information as may be required by law for inclusion in the Shelf Registration Statement, the Selling Securityholder agrees to promptly notify the Company of any inaccuracies or changes in the information provided herein which may occur subsequent to the date hereof at any time while the Shelf Registration Statement remains in effect and to provide such additional information that the Company may reasonably request regarding such Selling Securityholder and the intended method of distribution of Registrable Securities in order to comply with the Securities Act. Except as otherwise provided in the Registration Rights Agreement, all notices hereunder and pursuant to the Registration Rights Agreement shall be made in writing, by hand-delivery, first-class mail, or air courier guaranteeing overnight delivery as follows:

(i) To the Company:

Jaguar Health, Inc.
201 Mission Street, Suite 2375
San Francisco, California 94105
Attention:

(ii) With a copy to:

Once this Notice and Questionnaire is executed by the Selling Securityholder and received by the Company, the terms of this Notice and Questionnaire, and the representations and warranties contained herein, shall be binding on, shall inure to the benefit of and shall be enforceable by the respective successors, heirs, personal representatives, and assigns of the Company and the Selling Securityholder (with respect to the Registrable Securities beneficially owned by such Selling Securityholder and listed in Item (3) above). This Notice and Questionnaire shall be governed in all respects by the laws of the State of New York.

IN WITNESS WHEREOF, the undersigned, by authority duly given, has caused this Notice and Questionnaire to be executed and delivered either in person or by its duly authorized agent.

Dated: ______________________________

____
Selling Securityholder
(Print/type full legal name of holder of Registrable Securities)

By: ______________________________
Name:
Title:

PLEASE RETURN THE COMPLETED AND EXECUTED NOTICE AND QUESTIONNAIRE FOR RECEIPT ON OR BEFORE **[ ]** TO THE COMPANY AT:

Jaguar Health, Inc.
201 Mission Street, Suite 2375
San Francisco, California 94105
Attention:

EXHIBIT C

NOTICE OF TRANSFER PURSUANT TO REGISTRATION STATEMENT

Jaguar Health, Inc.
c/o Computershare
[ADDRESS]
Attention: Transfer Agent and Registrar

Re: Jaguar Health, Inc. (the "*Company*")
Common Stock

Dear Sirs:

Please be advised that   has transferred   shares of the above-referenced Common Stock pursuant to an effective Registration Statement on Form S-3 (File No. 333-   ) filed by the Company.

We hereby certify that the prospectus delivery requirements, if any, of the Securities Act of 1933, as amended, have been satisfied and that the above-named beneficial owner of the Common Stock is named as a "Selling Holder" in the Prospectus dated **[date]** or in amendments or supplements thereto, and that the number of shares of Common Stock transferred equals the number of shares of Common Stock listed in such Prospectus as amended or supplemented opposite such owner's name.

Dated:

Very truly yours,

____
(Name)

By: ______________________________
(Authorized Signature)

THE SECURITIES TO WHICH THIS AGREEMENT RELATES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED ("SECURITIES ACT"), OR UNDER ANY STATE SECURITIES LAWS ("BLUE SKY LAWS"), AND MAY NOT BE OFFERED OR SOLD WITHOUT REGISTRATION UNDER THE SECURITIES ACT, AND AS REQUIRED BY BLUE SKY LAWS IN EFFECT AS TO SUCH TRANSFER, UNLESS AN EXEMPTION FROM SUCH REGISTRATION UNDER STATE AND FEDERAL LAW IS AVAILABLE

FORM OF SHARE PURCHASE AGREEMENT

THIS SHARE PURCHASE AGREEMENT (the "Agreement") is deemed to be effective as of March 23, 2018 (the "Effective Date"), by and among Jaguar Health, Inc., a Delaware corporation (the "Company"), and each purchaser identified on the signature pages hereto (each, a "Purchaser" and collectively, the "Purchasers").

RECITALS

A. Subject to the terms and conditions set forth in this Agreement and pursuant to Section 4(a)(2) of the Securities Act of 1933, as amended (the "Securities Act"), and Rule 506 promulgated thereunder, the Company desires to issue and sell to each Purchaser, and each Purchaser, severally and not jointly, desires to purchase from the Company, securities of the Company as more fully described in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual agreements, covenants, representations and warranties contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Company and each Purchaser hereby agree as follows:

1. Purchase and Sale of Stock.

a. Sale and Issuance of Stock. Subject to the terms and conditions of this Agreement, the Company agrees to sell, and the Purchasers, severally and not jointly, agree to purchase, shares (the "Shares") of the Company's voting common stock, par value $0.0001 per share (the "Common Stock"), in an aggregate amount equal to the amounts specified on each of the signature pages hereto executed by a Purchaser and at a price of US$0.17 per share.

b. Closing, Payment and Delivery. Subject to fulfillment of the conditions set forth in Section 5 below, the consummation of the transactions contemplated herein (the "Closing") shall take place at the offices of Reed Smith LLP, 1510 Page Mill Road, Suite 110, Palo Alto, California, 94304 (or remotely via the exchange of documents and signatures) on the Effective Date. At the Closing, each Purchaser shall deliver to the Company, via wire transfer or a certified check, immediately available funds equal to the aggregate amount to be paid for Shares purchased hereunder by such Purchaser (the "Subscription Amount") as specified below such Purchaser's name on the signature page hereto executed by such Purchaser.

For the purposes of this Agreement, "Business Day" means a day other than Saturday, Sunday or any day on which banks located in the State of New York or the City of London are authorized or obligated to close.

c. Delivery of Share Certificate. At the Closing, the Company shall deliver to the Purchasers a copy of the irrevocable instructions to Computershare Trust Company, N.A., the current transfer agent of the Company, with a mailing address of 8742 Lucent Blvd., Suite 225 Highlands Ranch, CO 80129 Attn: Brooke Webb (the "Transfer Agent"), instructing the Transfer Agent to deliver, on an expedited basis, a certificate or certificates evidencing the Shares, registered in the names set forth on the signature page hereto, in exchange for the Subscription Amount.

2. Company's Representations and Warranties. The Company hereby represents and warrants to each Purchaser as of the Effective Date and as of the Closing as follows, subject to the exceptions as are disclosed prior to the Effective Date in the Company's reports, schedules, forms, statements and other documents required to be filed by the Company under the Securities Act of 1933, as amended (the "Securities Act") and the Exchange Act of 1934, as amended (the "Exchange Act") including pursuant to Section 13(a) or 15(d) thereof (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the "SEC Reports"), which SEC Reports as filed prior to the Effective Date shall be deemed a part hereof and shall qualify any representation or warranty otherwise made herein to the extent of the disclosure contained in the SEC Reports as filed prior to the Effective Date:

a. Organization, Good Standing and Qualification. The Company is a corporation duly organized and validly existing under the laws of the State of Delaware. The Company has all requisite corporate power and authority to own and operate its properties and assets, to execute and deliver this Agreement and sell the Shares, and to carry out the provisions of this Agreement and to carry on its business as presently conducted. The Company is duly qualified and is authorized to do business and is in good standing as a foreign corporation in all jurisdictions in which the nature of its activities and of its properties (both owned and leased) makes such qualification necessary, except for those jurisdictions in which failure to do so would not have a material adverse effect on the Company or its business.

b. Authorization; Binding Obligations. All corporate action on the part of the Company, its officers, directors and shareholders necessary for the authorization of this Agreement and the Shares, the performance of all obligations of the Company hereunder at the Closing, and the sale, issuance and delivery of the Shares pursuant hereto has been taken or will be taken prior to the Closing.

c. No Conflict. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will (i) violate or result in a breach of or constitute a default under any contract or agreement to which the Company is a party or by which it is bound, (ii) conflict with or result in a breach of or constitute a default under any provision of the certificate of incorporation or bylaws (or other charter documents) of the Company, or (iii) violate or result in a breach of or constitute a default under any judgment, order, decree, rule or regulation of any court or governmental agency to which the Company is subject.

d. SEC Reports; Financial Statements. The Company has filed all SEC Reports required to be filed by the Company under the Securities Act and the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, for the two years preceding the date hereof (or such shorter period as the Company was required by law or regulation to file such material). The financial statements of the Company included in the SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the U.S. Securities and Exchange Commission (the "Commission") with respect thereto as in effect at the time of filing. Such financial statements have been prepared in accordance with United States generally accepted accounting principles applied on a consistent basis during the periods involved ("GAAP"), except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements may not contain all footnotes required by GAAP, and fairly present in all material respects the financial position of the Company as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, immaterial, year-end audit adjustments.

e. Capitalization. Except as set forth on Schedule 2.e., the authorized capital stock of the Company and the issued and outstanding securities of the Company are as disclosed as of the Effective Date in the SEC Reports.

f. Absence of Litigation. Neither the Company nor any of its directors is engaged in any litigation, administrative, mediation or arbitration proceedings or other proceedings or hearings before any statutory or governmental body, department, board or agency and is not the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body. Except as set forth on Schedule 2.f., no such proceedings, investigation or inquiry are pending or, to the Company's knowledge, threatened against the Company, and, to the Company's knowledge, there are no circumstances likely to give rise to any such proceedings.

g. Intellectual Property. The Company has, or has rights to use, all patents, patent applications, trademarks, trademark applications, service marks, trade names, trade secrets, inventions, copyrights, licenses and other intellectual property rights and similar rights as described in the SEC Reports as necessary or required for use in connection with its business and which the failure to so have could have a material adverse effect (collectively, the "Intellectual Property Rights"). The Company has not received a notice (written or otherwise) that any of, the Intellectual Property Rights has expired, terminated or been abandoned, or is expected to expire or terminate or be abandoned, within two (2) years from the date of this Agreement. To the knowledge of the Company, all such Intellectual Property Rights are enforceable and there is no existing infringement by another Person of any of the Intellectual Property Rights.

h. Valid Issuance. The Shares issued hereunder will be duly and validly issued, fully paid and non-assessable and will be free of restrictions on transfer other than restrictions on transfer under this Agreement and under applicable state and federal securities laws.

3. Purchaser Representations and Warranties. Each Purchaser, for itself and for no other Purchaser, represents and warrants as of the Closing as follows:

a. Requisite Power and Authority. Such Purchaser has all necessary power and authority under all applicable provisions of law to execute and deliver this Agreement and to carry out its provisions. All action on such Purchaser's part required for the lawful execution and delivery of this Agreement has been or will be taken prior to the Closing.

b. Own Account. Such Purchaser is acquiring the Shares as principal for its own account and not with a view to, or for resale in connection with, any distribution thereof in the United States, and such Purchaser has no present intention of selling or distributing any Shares in the United States. Such Purchaser understands that the Shares have not been registered under the Securities Act by reason of a specific exemption from the registration provisions of the Securities Act which depends upon, among other things, the bona fide nature of the investment as expressed herein. For the avoidance of doubt, this Section 3(b) is not intended to restrict such Purchaser's ability to transfer the securities outside the United States pursuant to Regulation S promulgated under the Securities Act. It is the parties' understanding that the provisions of the Securities Act will not ordinarily restrict such Purchaser's ability to transfer the Shares outside the United States pursuant to Regulation S promulgated under the Securities Act.

c. Access to Data. Such Purchaser has had an opportunity to discuss the Company's business, management and financial affairs with the Company's management and to obtain any additional information which such Purchaser has deemed necessary or appropriate for deciding whether or not to purchase the Shares, including an opportunity to receive, review and understand the information regarding the Company's financial statements, capitalization and other business information contained in the SEC Reports as such Purchaser deems prudent. Such Purchaser acknowledges that no representations or warranties, oral or written, have been made by the Company or any agent thereof except as set forth in this Agreement.

d. No Fairness Determination. Such Purchaser is aware that no federal, state or other agency has made any finding or determination as to the fairness of the investment, nor made any recommendation or endorsement of the Shares.

e. Knowledge And Experience. Such Purchaser has such knowledge and experience in financial and business matters, including investments in other start-up companies, that such entity or individual is capable of evaluating the merits and risks of the investment in the Shares and it is able to bear the economic risk of such investment. Such Purchaser is an "accredited" investor as that term is defined under Regulation D promulgated under the Securities Act, and as set forth on Schedule I attached hereto. Further, Such Purchaser has such knowledge and experience in financial and business matters that such individual is capable of utilizing the information made available in connection with the offering of the Shares, of evaluating the merits and risks of an investment in the Shares and of making an informed investment decision with respect to the Shares. Neither such Purchaser, nor any person or entity with whom such Purchaser will share beneficial ownership of the Shares, is subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act.

f. General Solicitation. Such Purchaser is not, to such Purchaser's knowledge, purchasing the Shares as a result of any advertisement, article, notice or other communication regarding the Shares published in any newspaper, magazine or similar media or broadcast over

television or radio or presented at any seminar or any other general solicitation or general advertisement.

g. **Residence**. Such Purchaser's principal place of business or residence is and its investment decisions are made in the jurisdiction identified in the address or other jurisdiction set forth on the signature page.

4. **Restrictions on Transfer**.

a. Each instrument evidencing the Shares which such Purchaser may purchase hereunder and any other securities issued upon any stock split, stock dividend, recapitalization, merger, consolidation or similar event (unless no longer required in the opinion of the counsel for the Company) shall be imprinted with a legend substantially in the following form:

THIS SECURITY HAS NOT BEEN REGISTERED WITH THE U.S. SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS. THIS SECURITY MAY BE SUBJECT TO ADDITIONAL RESTRICTIONS PURSUANT TO EXEMPTIONS IN THE VARIOUS JURISDICTIONS WHERE THEY ARE BEING SOLD.

b. Certificates evidencing the Shares shall not contain any legend (including the legend set forth in Section 4(a) above), (i) while a registration statement (including the Registration Statement (as defined below)) covering the resale of such security is effective under the Securities Act, (ii) following any sale of such Shares pursuant to Rule 144 (if the transferor is not an affiliate of the Company), (iii) if such Shares are eligible for sale under Rule 144, without the requirement for the Company to be in compliance with the current public information required under Rule 144 as to such Shares and without volume or manner-of-sale restrictions, or (iv) if such legend is not required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the Commission). The Company shall cause its counsel to issue a legal opinion to the Transfer Agent promptly after the Registration Statement Effective Date (as defined below) if required by the Transfer Agent to effect the removal of the legend hereunder.

5. **Conditions to Closing**.

a. The obligation of the Purchasers to consummate the transactions contemplated herein at the Closing is subject to the satisfaction on or before the date of the Closing of the following conditions, all or any of which may be waived in writing by the Purchasers as to their obligation to consummate the transaction so contemplated:

i. Concurrent Investment. The Company shall issue $9.0 million in equity securities to an institutional investor concurrently with the consummation of the transaction contemplated by this Agreement (the "Concurrent Investment").

ii. Performance. The Company shall have performed all obligations, covenants and agreements herein required to be performed by the Company on or prior to the Closing.

iii. Proceedings. All corporate and other proceedings taken or to be taken in connection with the transactions contemplated hereby to be consummated at or prior to the Closing and all documents incidental thereto or required to be delivered prior to or at the Closing will be reasonably satisfactory in form and substance to the Purchasers.

iv. Suits/Proceedings. No action, suit, proceeding or investigation by or before any court, administrative agency or other governmental authority shall have been instituted or threatened to restrain, prohibit or invalidate the transactions contemplated by this Agreement.

v. Authorization of Issuance. The Company's board of directors will have authorized the issuance and sale by it to the Purchasers pursuant to this Agreement of the Shares.

vi. Consents and Approvals. The Company shall have obtained any and all consents (including all governmental or regulatory consents, approvals or authorizations required in connection with the valid execution and delivery of this Agreement), permits and waivers necessary or appropriate for consummation of the transactions contemplated by this Agreement.

vii. Representations and Warranties. The representations and warranties of the Company contained in this Agreement that are not qualified by materiality or similar qualification shall be true and correct in all material respects on and as of the Closing, except to the extent expressly made as of an earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date, and the representations and warranties of the Company contained in this Agreement that are qualified by materiality or similar qualification shall be true and correct in all respects on and as of the Closing, except to the extent expressly made as of an earlier date, in which case such representations and warranties shall be true and correct in all respects as of such earlier date.

b. The obligation of the Company to consummate the transactions contemplated herein at the Closing is subject to the satisfaction on or before the date of the

Closing of the following conditions, all or any of which may be waived in writing by the Company as to its obligation to consummate the transaction so contemplated:

i. Performance. The Purchasers shall have performed all obligations, covenants and agreements herein required to be performed by the Purchasers on or prior to the Closing.

ii. Instruments and Documents. All instruments and documents required to carry out this Agreement or incidental thereto shall be reasonably satisfactory to the Company and its counsel.

iii. Suits/Proceedings. No action, suit, proceeding or investigation by or before any court, administrative agency or other governmental authority shall have been instituted or threatened to restrain, prohibit or invalidate the transactions contemplated by this Agreement.

iv. Representations and Warranties. The representations and warranties of the Purchasers contained in this Agreement that are not qualified by materiality or similar qualification shall be true and correct in all material respects on and as of the Closing, except to the extent expressly made as of an earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date, and the representations and warranties of the Purchasers contained in this Agreement that are qualified by materiality or similar qualification shall be true and correct in all respects on and as of the Closing, except to the extent expressly made as of an earlier date, in which case such representations and warranties shall be true and correct in all respects as of such earlier date.

6. Reliance. The Purchasers is aware that the Company is relying on the accuracy of the representations and warranties set forth in Section 3 hereof to establish compliance with Federal and State securities laws. If any such warranties or representations are not true and accurate in any respect as of the Closing, the Purchasers shall so notify the Company in writing immediately and shall be cause for rescission by the Company at its sole election.

7. Registration Rights.

a. The Company hereby agrees that, within thirty (30) days after the Effective Date, the Company shall file a shelf registration statement (or such other form available, the “Registration Statement”) with the Commission with respect to the Shares. The Company shall use its commercially reasonable efforts to cause the Registration Statement to be declared effective under the Securities Act as promptly as possible after the filing thereof, but in any event (x) no later than the sixtieth (60th) day following the filing of the Registration Statement in the event of “limited review” by the Commission, or (y) in the event of a “review” by the Commission, the ninetieth (90th) day following the filing of the Registration Statement, and shall use its commercially reasonable efforts to keep such Registration Statement continuously effective under the Securities Act during the entire Effectiveness Period (as such term is defined below along with any other terms used in this Section 7).

b. Notwithstanding anything in this Section to the contrary, the Company may, on no more than two occasions during any 12-month period, delay or suspend the

effectiveness of the Registration Statement for up to 30 days on each occasion (a “Delay Period”) if the board of directors of the Company determines in good faith that (i) effectiveness of the Registration Statement must be suspended in accordance with the rules and regulations under the Securities Act or that (ii) the disclosure of material non-public information (“Pending Developments”) at such time would be detrimental to the Company and its subsidiaries, taken as a whole. Notwithstanding the foregoing, the Company shall use its reasonable best efforts to ensure that the Registration Statement is declared effective and its permitted use is resumed following a Delay Period as promptly as practicable.

c. If at any time the Company proposes to file a Registration Statement (other than to file a shelf registration that is not in connection with a particular offering), or the Company proposes to sell Company Common Stock in an underwritten offering for cash (excluding the Excluded Registration Statements and excluding an offering relating solely to an employee benefit plan or an offering relating to a transaction on Form S-4) (a “Piggyback Registration Statement”), the Company shall give prompt written notice (the “Piggyback Notice”) to all Holders that hold Registrable Securities (collectively, the “Piggyback Eligible Holders”) of the Company’s intention to file a Piggyback Registration Statement reasonably in advance of (and in any event at least ten (10) Business Days before) the anticipated filing date of such Piggyback Registration Statement. The Piggyback Notice shall offer the Piggyback Eligible Holders the opportunity to include for registration in such Piggyback Registration Statement the number of Registrable Securities of the same class and series as those proposed to be registered as they may request, subject to pro ration for the maximum number of shares that can be sold in the reasonable judgment of the lead underwriter (a “Piggyback Registration”). The Company shall use its commercially reasonable efforts to include in each such Piggyback Registration such Registrable Securities for which the Company has received written requests (each, a “Piggyback Request”) from Piggyback Eligible Holders within five (5) Business Days after giving the Piggyback Notice. The Company shall use its commercially reasonable efforts to effect the registration under the Securities Act of all Registrable Securities which the Company has been so requested to register pursuant to the Piggyback Requests, to the extent required to permit the disposition of the Registrable Securities so requested to be registered.

d. All fees and expenses incident to the performance of or compliance with this Section by the Company shall be borne by the Company whether or not any Registrable Securities are sold pursuant to a Registration Statement.

e. Except for registration rights granted on or prior to the Effective Date (including for the avoidance of doubt the registration rights granted in connection with the Concurrent Investment), the Company has not entered into and, unless agreed in writing by each Holder on or after the date of this Agreement, will not enter into, any agreement or arrangement that (i) is inconsistent with the rights granted to the Holders with respect to Registrable Securities in this Agreement or otherwise conflicts with the provisions hereof in any material respect or (ii) other than as set forth in this Agreement, would allow any holder of Company Common Stock or other securities of the Company to include such securities in any Registration Statement filed by the Company on a basis that is more favorable in any material respect to the rights granted to the Holders hereunder including granting registration rights that would have priority over the Registrable Securities with respect to the inclusion of such securities in any registration.

f. As used in this Section, the following terms have the respective meanings:

“Effectiveness Period” means, the period commencing on the Registration Statement Effective Date and ending on the earlier of (i) the time as all of the Registrable Securities covered by such Registration Statement have been sold (either pursuant to a Registration Statement or otherwise) by the

Holders, or (ii) the time as all of the remaining Registrable Securities are eligible to be sold by the Holders without compliance with the volume limitations or public information requirements of Rule 144.

"Holder" or "Holders" means the holder or holders, as the case may be, from time to time, of Registrable Securities.

"Excluded Registration Statements" means (i) the post-effective amendment to the registration statement on Form S-4 (File No. 333-217364) relating to the resale of shares of the Company's common stock issuable upon vesting of the contingent rights issued to holders of common stock of Napo Pharmaceuticals, Inc., pursuant to the Merger Agreement and (ii) one or more registration statements relating to the resale of shares of the Company's common stock issued or issuable pursuant to the Common Stock Purchase Agreement, dated June 8, 2016, by and between the Company and Aspire Capital Fund, LLC.

"Merger" means the merger of Napo into Merger Sub pursuant to the terms of the Merger Agreement.

"Merger Agreement" means an agreement and plan of merger among the Company, Napo and Merger Sub, whereby Napo will merge into the Merger Sub and become a wholly-owned subsidiary of the Company, and as a result of such Merger the equity holders of Napo shall receive Common Stock (except as otherwise provided therein).

"Merger Sub" means a wholly owned subsidiary of the Company formed for purposes of effectuating the Merger.

"Napo" means Napo Pharmaceuticals, Inc., a Delaware corporation.

"Registrable Securities" means: (i) the Shares and (ii) any securities issued or issuable upon any stock split, dividend or other distribution, recapitalization or similar event, or any price adjustment as a result of such stock splits, reverse stock splits or similar events with respect to any of the securities referenced in (i).

"Registration Statement" means the registration statements required to be filed in accordance with this Section and any additional registration statements required to be filed under this Section, including in each case the prospectus, amendments and supplements to such registration statements or prospectus, including pre and post effective amendments, all exhibits thereto, and all material incorporated by reference or deemed to be incorporated by reference therein.

"Registration Statement Effective Date" means, as to a Registration Statement, the date on which such Registration Statement is first declared effective by the Commission.

"Trading Day" means a day on which the Nasdaq Stock Market is open for trading.

8. Miscellaneous.

a. Survival. The representations, warranties, covenants and agreements made herein shall survive the closing of the transactions contemplated hereby for a period of one year.

b. Successors and Assigns. Except as otherwise expressly provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto.

c. Entire Agreement. This Agreement and the Schedule attached hereto constitute the entire agreement and understanding between the parties with respect to the subject matters herein, and supersede and replace any prior agreements and understandings, whether oral or written between and among them with respect to such matters. This Agreement supersedes and replaces the Commitment which is hereby terminated. The provisions of this Agreement may be waived, altered, amended or repealed, in whole or in part, only upon the written consent of the Company and Purchasers holding at least 50.1% in interest of the Shares then outstanding or, in the case of a waiver, by the party against whom enforcement of any such waived provision is sought, provided that if any amendment, modification or waiver disproportionately and adversely impacts a Purchaser (or group of Purchasers), the consent of such disproportionately impacted Purchaser (or group of Purchasers) shall also be required.

d. Title and Subtitles. The titles of the Sections and subsections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

e. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

f. Applicable Law. This Agreement shall be governed by and construed in accordance with laws of the State of California, applicable to contracts between California residents entered into and to be performed entirely within the State of California.

g. Venue. Any action, arbitration, or proceeding arising directly or indirectly from this Agreement or any other instrument or security referenced herein shall be litigated or arbitrated, as appropriate, in the County of San Francisco, in the State of California.

h. Authority. With respect to each Purchaser, the individual executing and delivering this Agreement on behalf of such Purchaser has been duly authorized and is duly qualified to execute and deliver this Agreement in connection with the purchase of the Shares and the signature of such individual is binding upon such Purchaser.

i. Notices. All notices and other communications provided for or permitted hereunder shall be made by hand-delivery, telecopier, or overnight air courier guaranteeing next

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day delivery at the address set forth on the signature pages hereof to the Purchasers and with respect to the Company at its principal place of business. All such notices and communications shall be deemed to have been duly given at the time delivered by hand, if personally delivered; when receipt acknowledged, if telecopied; and the next business day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery. The parties may change the addresses to which notices are to be given by giving five days prior written notice of such change in accordance herewith.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the day and year first set forth above.

COMPANY:

JAGUAR HEALTH, INC.

By: ______________________________
Name: Lisa A. Conte
Title: CEO and President

Address for Notice:

201 Mission Street, Suite 2375
San Francisco, CA 94105
Fax: (415) 371-8311

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

Donald C. Reinke, Esq.
Reed Smith LLP
101 Second Street, Suite 1800
San Francisco, CA 94105

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOR PURCHASERS FOLLOW]**

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be duly executed by their respective authorized signatories as of the day and year first set forth above.

Name of Purchaser: ______________________________

Signature of Authorized Signatory of Purchaser: _

Name of Authorized Signatory: ______________________________

Title of Authorized Signatory: ______________________________

Email Address of Authorized Signatory: ______________________________

Facsimile Number of Authorized Signatory: ______________________________

Address for Notice to Purchaser:

Address for Delivery of Securities to Purchaser (if not same as address for notice):

Subscription Amount: $

Shares:

EIN/Tax ID Number:

Closing Date: ______________________________

Shares to be registered in the name of (if not same as name of purchaser above):

Exhibit 10.4

MANAGEMENT SERVICES AGREEMENT

This Management Services Agreement (this "Agreement") is entered into as of March 23, 2018 (the "Commencement Date") by and between Jaguar Health, Inc., a Delaware corporation (the "Company"), and Sagard Capital Partners Management Corp., a Delaware corporation ("Sagard Management").

RECITALS

WHEREAS, the Company seeks the services of Sagard Management (or an affiliate designated by Sagard Management), and Sagard Management (or an affiliate designated by the Sagard Management) wishes to provide, certain management services relating to the affairs of the Company; and

WHEREAS, the Company and Sagard Management wish to enter into this Agreement in order to govern the terms and conditions of the provision of such management services.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Services. The Company hereby retains Sagard Management, and Sagard Management hereby agrees that, from the date hereof until March 31, 2021 (the "Initial Term"), it will collaborate with the Company and Company's wholly-owned subsidiary, Napo Pharmaceuticals, Inc., on the following consulting and management advisory services to the Company:

(a) assistance with strategic planning and analysis regarding the Company's commercial strategy in Canada and the European Union ("EU"), including:

(i) strategy for potential Canadian and EU regulatory approvals, including specifically options for regulatory filing in Canada on the basis of the U.S. approved new drug applications for crofelemer;

(ii) participating in the preparation of, and rehearsals for, meeting(s) with representatives of Health Canada; and

(iii) coordinating projects for commercialization of the Company's product(s) in Canada, including timing of potential business development relationships, pre-launch activities, investor relations, and regulatory timelines;

(b) conducting research and due diligence for executive level human resource activities, including organizational design and recruitment and compensation/retention of potential senior managers/executives, advisors and directors;

(c) strategic advice in connection with financing, acquisition and disposition transactions involving the Company, any of its direct or indirect subsidiaries and/or any of their respective business or product lines (however structured);

(d) assistance with developing and executing on the Company's investor relations strategy;

(e) strategic advice in connection with the potential search for new business opportunities and strategic acquisitions for the Company;

(f) providing insight regarding financing for acquisitions, growth and/or refinancing of the existing debt of the Company;

(g) advice and counsel regarding capital expenditures; and

(h) such other services (which may include financial and strategic planning and analysis, consulting services, human resources and executive recruitment services and other services) as Sagard Management and the Company may from time to time agree.

Notwithstanding the foregoing, the services will not include any legal services or legal services management or any services which may be deemed to constitute broker-dealer activities.

Sagard Management shall devote such time and efforts to the performance of services contemplated hereby as Sagard Management deems reasonably necessary or appropriate; provided, however, that no minimum number of hours is required to be devoted by Sagard Management on a weekly, monthly, annual or other basis. The Company acknowledges that Sagard Management's services are not exclusive and that Sagard Management will render similar services to other persons and entities. In providing services to the Company, Sagard Management will act as an independent contractor, and it is expressly understood and agreed that this Agreement is not intended to create, and does not create, any partnership, agency, joint venture or similar relationship and that neither Sagard Management, on the one hand, nor the Company, on the other hand, has the right or ability to contract for or on behalf of the other party, or to effect any transaction for the account of the other party. Sagard Management may contract with its affiliates to provide the services.

2. Payment of Fees.

2.1 (a) (i) Subject to Sections 2.1(a)(ii) and 2.3, in consideration of the services that Sagard Management shall provide hereunder, the Company shall pay to Sagard Management an annual fee (the "Annual Fee") in the amount of $450,000, prorated for any partial calendar year (not to exceed in the aggregate $1,350,000).

(ii) The Annual Fees payable during the Initial Term shall be paid on the following terms:

(1) The Annual Fee due for services performed in the first year of the Initial Term shall be paid in equal quarterly installments during the second and third years of the Initial Term concurrently with the quarterly payments due for the Annual Fee payable with

respect to the second and third years of the Initial Term. As such, quarterly payments of $168,750 shall be made during the second and third years of the Initial Term in the amounts and on the dates set forth on Schedule 2.1. All such payments shall be paid on the applicable date (or, if such date is not a business day, on

the immediately preceding business day). For the avoidance of doubt, the parties understand that Sagard Management has agreed to defer payment of the Annual Fee due with respect to services provided during the first year of the Initial Term and that such payment shall be accrued (and not cancelled) until paid to Sagard Management pursuant to this Section 2.1(a)(ii).

2.2 The Annual Fee shall be in addition to the reimbursement of expenses under Section 4.

2.3 If Sagard Management elects in its discretion (it being agreed that Sagard Management shall have no obligation to do so) to defer a payment to which it is otherwise entitled pursuant to Section 2.1(a) of this Agreement, then such payment shall be accrued (and not cancelled) and then paid by the Company at such time as Sagard Management ends such deferral.

3. Term. This Agreement may be terminated earlier than the Initial Term upon (a) mutual consent of the parties, (b) the consummation of a Deemed Liquidation Event (as defined in the Certificate of Designation of Series A Convertible Participating Preferred Stock of the Company) (so long as all accrued and unpaid fees payable hereunder as of such termination have been paid in full), or (c) at the Company's election, upon the consummation of a Fundamental Change (as defined in the Certificate of Designation of Series A Convertible Participating Preferred Stock of the Company) in which all of the Company's shares of Series A Convertible Participating Preferred Stock are repurchased by the Company; provided, however, that (i) Sagard Management, on the one hand, and the Company, on the other hand, may terminate this Agreement following a material breach of the terms of this Agreement by the other party, and a failure to cure such breach within thirty (30) days following written notice thereof, and (ii) Sagard Management may terminate this Agreement upon not less than ten (10) days written notice to the Company; and provided, further, that each of (A) the obligations of the Company under Section 4 below and the provisions of Section 6 below (whether in respect of or relating to services rendered prior to termination of this Agreement), (B) the obligations of Sagard Management under Section 5(a) below, (C) any and all accrued and unpaid obligations of the Company owed under Section 2 above and (D) the provisions of Section 9 shall all survive any termination of this Agreement to the maximum extent permitted under applicable law.

4. Expenses; Indemnification.

(a) Expenses. Sagard Management shall request advance written authorization for all expenses incurred by or on behalf of Sagard Management and Sagard Capital Partners, L.P. ("Sagard") relating to operations of, or services provided by Sagard Management to, the Company or its affiliates from time to time under this Agreement. Sagard agrees to provide to the Company such documentation as the Company may reasonably require to verify such expenses.

(b) Indemnity and Liability.

(i) The Company hereby indemnifies, defends and holds Sagard Management, and each of its respective partners, shareholders, members, affiliates, directors,

officers, fiduciaries, employees and agents and each of the partners, shareholders, members, affiliates, directors, officers, fiduciaries, employees and agents of each of the foregoing (collectively, the "Indemnitees"), free and harmless from and against any and all actions, causes of action, suits, claims and liabilities and reasonable expenses in connection therewith, including without limitation reasonable attorneys' fees and charges (collectively, the "Indemnified Liabilities"), incurred by the Indemnitees or any of them as a result of, arising out of, or in any way relating to (A) this Agreement or (B) operations of, or services provided by Sagard Management to, the Company or its affiliates from time to time, except for any such Indemnified Liabilities arising on account of such Indemnitee's gross negligence or willful misconduct, and if and to the extent that the foregoing undertaking may be unenforceable for any reason, the Company hereby agrees to make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law.

(ii) Notwithstanding anything to the contrary contained herein or in the certificate of incorporation, bylaws or other organizational documents of the Company, the Company acknowledges and agrees that although under certain circumstances certain Indemnitees may be entitled to indemnification and expense advancement and/or reimbursement from Sagard Management, Sagard or Sagard's general partner or their respective affiliates (collectively, "Sagard Related Parties") in connection with claims made against any such Indemnitee, the obligations of the Company hereunder and/or under the certificate of incorporation, bylaws or other organizational documents of the Company with respect to any claim by an Indemnitee are primary to any obligations of any Sagard Related Party with respect thereto and the Indemnitee will not be obligated to seek indemnification from or expense advancement or reimbursement by any Sagard Related Party with respect to any claim. In addition: (A) the Company, on behalf of itself and any insurers providing liability insurance, hereby waives any rights of contribution or subrogation or any other right from or against each and every Sagard Related Party and every insurer providing liability insurance to the Sagard Related Parties and/or any Indemnitee with respect to any claim and (B) the Company acknowledges and agrees that if any Sagard Related Party provides indemnification, expense advancement, expense reimbursement or otherwise to an Indemnitee with respect to any liabilities, including Indemnified Liabilities, such Sagard Related Party or Parties shall be subrogated to the extent of such payment to all rights of recovery of Indemnitee under this Agreement or the certificate of incorporation, bylaws or other organization documents of the Company, as applicable. Each of the Indemnitees and Sagard Related Parties is an intended third party beneficiary of this Section 4(b)(ii) and the Company agrees to take such further action as may be requested by any Indemnitee or Sagard Related Party to effectuate the contractual arrangement between the Company and the Indemnitees and Sagard Related Parties as set forth herein.

5. Confidentiality; Status and Reports.

(a) Confidentiality.

(i) Sagard Management agrees to keep the Confidential Information (as defined below) strictly confidential; provided that Confidential Information may be disclosed to Sagard Management's Representatives who need to know such information in connection with Sagard Management's provision of services hereunder. Disclosure of Confidential Information

by Sagard Management or its Representatives may also be made with the Company's prior consent. Sagard Management agrees to inform its Representatives that are provided with Confidential Information by or on behalf of Sagard Management hereunder of the existence of this Agreement and to direct them to maintain the confidentiality of such Confidential Information (unless disclosure would be permitted hereunder). Sagard Management agrees to be responsible for breach of this Agreement by such Representatives other than any such Representative that has entered into its own confidentiality agreement with the Company with respect to the Confidential Information or has agreed to abide by the confidentiality restrictions set forth in this Agreement in an instrument naming the Company as a third party beneficiary thereof.

(ii) Notwithstanding anything to the contrary herein, if Sagard Management or any of its Representatives is requested or required pursuant to or in connection with any applicable law, rule, regulation or procedure of, under or before any governmental authority or self-regulatory agency (including any deposition, interrogatory, oral questioning, information or document request, subpoena, court order, regulatory filing, civil investigative demand or other similar process) to disclose Confidential Information, then such information may be disclosed without violation of this Agreement; provided that Sagard Management agrees to notify the Company, to the extent reasonably practicable and legally permitted under the circumstances, prior to such disclosure so that the Company may, if it so chooses, seek a protective order or other appropriate remedy protecting the confidentiality of the Confidential Information. If the Company so requests in writing, Sagard Management will reasonably cooperate with the Company at the Company's expense to obtain such a protective order or other appropriate remedy protecting the confidentiality of the Confidential Information. Notwithstanding anything to the contrary in this Agreement, if Sagard Management or any of its Representatives are subject to an examination, inquiry, or proceeding by a regulatory governmental agency, Sagard Management or its Representatives may disclose any Confidential Information as requested by any regulator in the course of any such examination, inquiry, or proceeding, without complying with the foregoing notice and cooperation requirements so long as, in each case, such examination, inquiry or proceeding is not targeted at the Company, this Agreement or the Confidential Information.

(iii) Promptly following the written request of the Company, all Confidential Information provided to Sagard Management or (on its behalf) to any of its Representatives hereunder will be, at Sagard Management's option, either returned to the Company or destroyed; provided, however, that Sagard Management and its Representatives

(1) may each retain one copy of the Confidential Information for recordkeeping or regulatory purposes and for the purpose of defending its rights and obligations hereunder, and

(2) will not be required to return or destroy any computer or other electronic hardware or systems, to render any electronic data irrecoverable or to disable any existing electronic data backup procedures.

(iv) The Company acknowledges that private investment vehicles managed by certain of Sagard Management's affiliates are engaged in the purchase of debt and

equity securities of numerous companies, that they may now own or may in the future purchase or sell securities of the Company or one or more of its affiliates, and that they may from time to time possess information with respect to the Company or one or more of its affiliates. The Company acknowledges that Sagard Management's and its Representatives' review of Confidential Information will inevitably enhance Sagard Management's and its Representatives' knowledge and understanding of the business of the Company in a way that cannot be separated from Sagard Management's and its Representatives' other knowledge, and the Company agrees that this Agreement shall not restrict Sagard Management or its Representatives in connection with the purchase, sale, consideration of, and decisions related to other investments and serving on the boards of such investments. The Company acknowledges that Sagard Management or its affiliates' directors, officers or employees may serve as directors of portfolio companies of investment funds managed by Sagard Management, and the Company agrees that such portfolio companies will not be deemed to have received Confidential Information solely because any such individual serves on the board of such portfolio company, provided, that (i) such individual has not provided such portfolio company or any other director, officer, employee or other representative of such portfolio company with Confidential Information, (ii) such portfolio company does not act at the direction of or with encouragement from such individual or Sagard Management and (iii) no Confidential Information has been provided to employees or agents of such portfolio company.

(v) For purposes hereof:

(1) "Confidential Information" means confidential information regarding the Company and its subsidiaries, regardless of the form of communication, furnished during the term of this Agreement to Sagard Management or (on its behalf) to its Representatives in connection with Sagard Management's provision of services hereunder; provided that the term "Confidential Information" does not include information:

(a) that is or becomes publicly available other than as a result of disclosure by Sagard Management or its Representatives in violation of this Agreement;

(b) that was available to Sagard Management or its Representatives prior to its disclosure under this Agreement;

(c) that is received from a third party not known by Sagard Management or its Representatives to have violated an obligation of confidentiality to the Company in disclosing such information; or

(d) that is developed through the efforts of Sagard Management or its Representatives without use of the Confidential Information.

(2) "Representative" means a person's affiliates and its and their respective directors, partners, members, managers, officers, agents, control persons, employees, consultants and representatives (including actual and potential attorneys, accountants, advisors, financing sources and, if applicable, their respective advisors); provided that, for the avoidance of doubt, the term "Representatives" does not include any person that

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would otherwise fall within the definition of such term but has not been provided with Confidential Information by or on behalf of Sagard Management hereunder.

(b) Status Updates. Sagard Management and the Chief Executive Officer of the Company ("CEO") shall review and agree upon the services provided hereunder no less frequently than on a monthly basis. At the request of the CEO, Sagard Management shall provide no less frequently than on a monthly basis to the CEO a telephonic review of the services provided by Sagard Management, with a discussion of progress and findings to date, and to obtain feedback on methodology and information sources. The CEO may also request an oral update by Sagard Management, given in person or by telephone, to be provided to the board of directors of the Company no more frequently than once a calendar quarter regarding the status of and services provided hereunder. Likewise, Sagard Management shall make its management available by phone as reasonably requested from time to time by the CEO regarding the services provided under this Agreement. The contents of any such calls or updates, and the contents of any research, report or analysis performed or provided hereunder by Sagard Management, shall be kept strictly confidential by the Company and shall not be shared or disclosed by the Company with any third party nor filed publicly with any governmental authority.

6. Accuracy of Information; Disclaimer and Limitation of Liability; Opportunities.

(a) Accuracy of Information. The Company shall furnish or cause to be furnished to Sagard Management such information as Sagard Management believes reasonably appropriate in connection with providing the services contemplated by this Agreement (all such information so furnished, the "Information"). The Company recognizes and confirms that the Sagard Management (a) will use and rely primarily on the Information and on information available from generally recognized public sources in performing the services contemplated by this Agreement without independent verification, (b) does not assume responsibility for the accuracy or completeness of the Information and such other information and (c) is entitled to rely upon the Information without independent verification.

(b) Disclaimer — Standard of Care. Sagard Management makes no representations or warranties, express or implied, in respect of the services to be provided by it hereunder. In no event shall Sagard Management or any other Indemnitee be liable to the Company or any of its affiliates for any act, alleged act, omission or alleged omission on the part of Sagard Management that does not constitute gross negligence or willful misconduct as determined by a final, non-appealable determination of a court of competent jurisdiction.

(c) Limitation of Liability. In no event will Sagard Management or any of its affiliates be liable to the Company or any of its affiliates for any indirect, special, incidental or consequential damages, including lost profits or savings, whether or not such damages are foreseeable, or for any third party claims (whether based in contract, tort or otherwise), relating to the services to be provided by Sagard Management hereunder, except for Sagard Management's or any of its affiliates' gross negligence or willful misconduct. The maximum liability of Sagard Management under this Agreement except for gross negligence or willful misconduct shall not exceed the aggregate amount of all fees actually paid to Sagard Management under Section 2.1(a).

(d) Freedom to Pursue Opportunities. In recognition that Sagard Management and its affiliates currently have, and will in the future have or will consider acquiring, investments in numerous companies with respect to which Sagard Management or its affiliates may serve as an advisor, a director or in some other capacity, and recognition that Sagard Management and its affiliates have myriad duties to various investors and partners, and in anticipation that the Company and Sagard Management (or one or more affiliates, associated investment funds or portfolio companies, or clients of Sagard Management) may engage in the same or similar activities or lines of business and have an interest in the same areas of corporate opportunities, and in recognition of the benefits to be derived by the Company hereunder and in recognition of the difficulties which may confront any advisor who desires and endeavors fully to satisfy such advisor's duties in determining the full scope of such duties in any particular situation, the provisions of this Section 6(d) are set forth to regulate, define and guide the conduct of certain affairs of the Company as they may involve Sagard Management. Except as Sagard Management may otherwise agree in writing after the date hereof:

(i) Sagard Management and its affiliates (including any employee or representative serving as a director of the Company) shall have the right: (A) to directly or indirectly engage in any business (including, without limitation, any business activities or lines of business that are the same as or similar to those pursued by, or competitive with, the Company), (B) to directly or indirectly do business with any client or customer of the Company and (C) to take any other action that Sagard Management believes in good faith is necessary to or appropriate to fulfill its obligations as described in the first sentence of this Section 6(d)(i), and (D) not to present potential transactions, matters or business opportunities to the Company, or any of its subsidiaries, and to pursue, directly or indirectly, any such opportunity for itself, and to direct any such opportunity to another person.

(ii) Sagard Management and its officers, employees, partners, members, other clients, affiliates and other associated entities (including any employee or representative serving as a director of the Company) shall have no duty (contractual or otherwise) to communicate or present any corporate opportunities to the Company or any of its affiliates or to refrain from any action specified in Section 6(d)(i), and the Company on its own behalf and on behalf of its affiliates, hereby renounce and waive any right to require Sagard Management or any of its affiliates to act in a manner inconsistent with the provisions of this Section 6(d).

(iii) Neither Sagard Management nor any officer, director, employee, partner, member, stockholder, affiliate or associated entity thereof (including any employee or representative serving as a director of the Company) shall be liable to the Company or any of its affiliates for breach of any duty (contractual or otherwise) by reason of any activities or omissions of the types referred to in this Section 6(d) or of any such person's participation therein unless such potential transaction, matter or business opportunity is presented to, or acquired, created or developed by, or otherwise comes into the possession of, such party expressly and solely in such party's capacity as a director of the Company.

7. Assignment, etc. Except as provided below, no party shall have the right to assign this Agreement without the prior written consent of the other parties hereto. Notwithstanding the foregoing, (a) Sagard Management may assign all or part of its rights and obligations hereunder to any affiliate of Sagard Management which provides services similar to those called for by this Agreement as long as such affiliate expressly assumes Sagard Management's obligations hereunder and has the same or greater level of skill for the services provided hereunder, in which event Sagard Management shall be released of all of its rights and obligations hereunder, (b) the Company may collaterally assign any or all of its rights and interests hereunder to one or more subsidiaries or affiliates and (c) the provisions hereof for the benefit of Sagard shall inure to the benefit of its successors and assigns.

8. Amendments and Waivers. No amendment or waiver of any term, provision or condition of this Agreement shall be effective, unless in writing and executed by each of Sagard Management and the Company. No waiver on any one occasion shall extend to or effect or be construed as a waiver of any right or remedy on any future occasion. No course of dealing of any person nor any delay or omission in exercising any right or remedy shall constitute an amendment of this Agreement or a waiver of any right or remedy of any party hereto.

9. Miscellaneous.

(a) Choice of Law. This Agreement and all matters arising under or related to this Agreement shall be governed by and construed in accordance with the domestic substantive laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule that would cause the application of the domestic substantive laws of any other jurisdiction.

(b) Consent to Jurisdiction. Each of the parties agrees that all actions, suits or proceedings arising out of, based upon or relating to this Agreement or the subject matter hereof shall be brought and maintained exclusively in the federal and state courts of the State of Delaware. Each of the parties hereto by execution hereof (i) hereby irrevocably submits to the jurisdiction of the federal and state courts in the State of Delaware for the purpose of any action, suit or proceeding arising out of or based upon this Agreement or the subject matter hereof and (ii) hereby waives to the extent not prohibited by applicable law, and agrees not to assert, by way of motion, as a defense or otherwise, in any such action, suit or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that it is immune from extraterritorial injunctive relief or other injunctive relief, that its property is exempt or immune from attachment or execution, that any such action, suit or proceeding may not be brought or maintained in one of the above-named courts, that any such action, suit or proceeding brought or maintained in one of the above-named courts should be dismissed on grounds of forum non conveniens, should be transferred to any court other than one of the above-named courts, should be stayed by virtue of the pendency of any other action, suit or proceeding in any court other than one of the above-named courts, or that this Agreement or the subject matter hereof may not be enforced in or by any of the above-named courts. Notwithstanding the foregoing, to the extent that any party hereto is or becomes a party in any litigation in connection with which it may assert indemnification rights set forth in this agreement, the court in which such litigation is being heard shall be deemed to be included in Section 9(b)(i) above. Each of the parties hereto hereby consents to service of process in any such suit, action or proceeding in any manner permitted by the laws of the State of Delaware, agrees that service of process by registered or

certified mail, return receipt requested, at the address specified in or pursuant to Section 11 is reasonably calculated to give actual notice and waives and agrees not to assert by way of motion, as a defense or otherwise, in any such action, suit or proceeding any claim that service of process made in accordance with Section 11 does not constitute good and sufficient service of process. The provisions of this Section 9 shall not restrict the ability of any party to enforce in any court any judgment obtained in a federal or state court of the State of Delaware.

(c) Waiver of Jury Trial. To the extent not prohibited by applicable law which cannot be waived, each of the parties hereto hereby waives, and covenants that it will not assert (whether as plaintiff, defendant, or otherwise), any right to trial by jury in any forum in respect of any issue, claim, demand, cause of action, action, suit or proceeding arising out of or based upon this Agreement or the subject matter hereof, in each case whether now existing or hereafter arising and whether in contract or tort or otherwise. Each of the parties hereto acknowledges that it has been informed by each other party that the provisions of this Section 9(c) constitute a material inducement upon which such party is relying and will rely in entering into this Agreement and the transactions contemplated hereby. Any of the parties hereto may file an original counterpart or a copy of this Agreement with any court as written evidence of the consent of each of the parties hereto to the waiver of its right to trial by jury.

10. Entire Agreement. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and supersedes any prior communication or agreement with respect thereto.

11. Notice. All notices, demands, and communications required or permitted under this Agreement shall be in writing and shall be effective if served upon such other party and such other party's copied persons as specified below to the address set forth for it below (or to such other address as such party shall have specified by notice to each other party) if (a) delivered personally, (b) sent and received by facsimile, or (c) sent by Federal Express or UPS or any other comparably reputable overnight courier service, postage prepaid, to the appropriate address as follows:

If to the Company:

Jaguar Health, Inc.
201 Mission Street, Suite 2375
San Francisco, CA 94105
Attention: Chief Executive Officer

with a copy (not to constitute notice) to:

Reed Smith LLP
101 Second Street, Suite 1800
San Francisco, CA 94105
Attention: Donald C. Reinke, Esq.

If to Sagard Management to:

Sagard Capital Partners Management Corp.
280 Park Ave, Third Floor,
New York, New York 10017
Facsimile: (203) 629-6721
Attention: Chief Financial Officer

with a copy (not to constitute notice) to:

Finn Dixon & Herling LLP
Six Landmark Square
Stamford, Connecticut 06901-2048
Facsimile: (203) 325-5001
Attention: Charles J. Downey III, Esq.

Unless otherwise specified herein, such notices or other communications shall be deemed effective, (i) on the date received, if personally delivered or sent by facsimile during normal business hours, (ii) on the business day after being received if sent by facsimile other than during normal business hours and (iii) one (1) business day after being sent next-day delivery by Federal Express or UPS or other comparably reputable delivery service. Each of the parties hereto shall be entitled to specify a different address by giving notice as aforesaid to each of the other parties hereto.

12. Severability. If in any judicial or arbitral proceedings a court or arbitrator shall refuse to enforce any provision of this Agreement, then such unenforceable provision shall be deemed eliminated from this Agreement for the purpose of such proceedings to the extent necessary to permit the remaining provisions to be enforced. To the full extent, however, that the provisions of any applicable law may be waived, they are hereby waived to the end that this Agreement be deemed to be valid and binding agreement enforceable in accordance with its terms, and in the event that any provision hereof shall be found to be invalid or unenforceable, such provision shall be construed by limiting it so as to be valid and enforceable to the maximum extent consistent with and possible under applicable law.

13. Counterparts. This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original and both of which shall constitute one and the same agreement.

(signature page to follow)

[Signature Page to Management Services Agreement]

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed on its behalf as an instrument under seal as of the date first above written by its officer or representative thereunto duly authorized.

JAGUAR HEALTH, INC.

By: /s/ Lisa Conte
Name: Lisa Conte
Title: Chief Executive Officer

SAGARD CAPITAL PARTNERS MANAGEMENT CORP.

By: /s/ Samuel Robinson
Name: Samuel Robinson
Title: President

Schedule 2.1
Schedule of Payments

Payment Date	Amount of Payment
June 30, 2019	$ 168,750
September 30, 2019	$ 168,750
December 31, 2019	$ 168,750
March 31, 2020	$ 168,750
June 30, 2020	$ 168,750
September 30, 2020	$ 168,750
December 31, 2020	$ 168,750
March 31, 2021	$ 168,750

SECURITIES PURCHASE AGREEMENT

THIS SECURITIES PURCHASE AGREEMENT (this "**Agreement**"), dated as of March 21, 2018, is entered into by and between JAGUAR HEALTH, INC., a Delaware corporation ("**Company**"), and CHICAGO VENTURE PARTNERS, L.P., a Utah limited partnership, its successors and/or assigns ("**Investor**").

A. Company and Investor are executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by the Securities Act of 1933, as amended (the "**1933 Act**"), and the rules and regulations promulgated thereunder by the United States Securities and Exchange Commission (the "**SEC**").

B. Investor desires to purchase and Company desires to issue and sell, upon the terms and conditions set forth in this Agreement, a Secured Promissory Note, in the form attached hereto as Exhibit A, in the original principal amount of $1,090,340.91 (the "**Note**" or "**Securities**"), upon the terms and subject to the limitations and conditions set forth in such Note.

C. This Agreement, the Note, the Security Agreement (as defined below), the Subordination Agreement (as defined below), and all other certificates, documents, agreements, resolutions and instruments executed and delivered to any party under or in connection with this Agreement, as the same may be amended from time to time, are collectively referred to herein as the "**Transaction Documents**".

NOW, THEREFORE, in consideration of the above recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Company and Investor hereby agree as follows:

1. Purchase and Sale of Securities.

1.1. Purchase of Securities. Company shall issue and sell to Investor and Investor agrees to purchase from Company the Note. In consideration thereof, Investor shall pay the Purchase Price (as defined below) to Company at the Closing (as defined below).

1.2. Form of Payment. On the Closing Date (as defined below), Investor shall pay the Purchase Price to Company via wire transfer of immediately available funds against delivery of the Note.

1.3. Closing Date. The closing of the transactions contemplated by this Agreement (the "**Closing**") shall occur on March 21, 2018 so long as all of the conditions set forth in Section 5 and Section 6 below have been satisfied, or such other mutually agreed upon date (the date upon which the Closing actually occurs, the "**Closing Date**"). The Closing shall occur on the Closing Date by means of the exchange by email of signed .pdf documents, but shall be deemed for all purposes to have occurred at the offices of Hansen Black Anderson Ashcraft PLLC in Lehi, Utah.

1.4. Collateral for the Note. The Note shall be secured by the collateral set forth in that certain Security Agreement attached hereto as Exhibit B listing substantially all of Company's assets as security for Company's obligations under the Transaction Documents (the "**Security Agreement**"); *provided, however*, that the security interest granted pursuant to the Security Agreement shall not become effective unless and until either: (a) Investor purchases the Company's outstanding obligations (the "**Hercules Debt**") under that certain Loan and Security Agreement between Company and Hercules Capital, Inc. (f/k/a Hercules Technology Growth Capital, Inc.), a Maryland corporation ("**Hercules**"), on August 18, 2015, as amended, pursuant to the purchase right set forth in Section 4 of the Subordination Agreement; or (b) Company repays the Hercules Debt in full.

1.5. Original Issue Discount; Transaction Expense Amount. The Note carries an original issue discount of $315,340.91 (the "**OID**"). In addition, Company agrees to pay $25,000.00 to Investor to cover Investor's legal fees, accounting costs, due diligence, monitoring and other transaction costs incurred in connection with the purchase and sale of the Securities (the "**Transaction Expense Amount**"), all of which amount is included in the initial principal balance of the Note. The "**Purchase Price**", therefore, shall be $750,000.00 computed as follows: $1,090,340.91 initial principal balance, less the OID, less the Transaction Expense Amount.

2. Investor's Representations and Warranties. Investor represents and warrants to Company that as of the Closing Date: (i) this Agreement has been duly and validly authorized; (ii) Investor has all necessary power and authority under all applicable provisions of law to execute and deliver each Transaction Document and to carry out their provisions; (iii) this Agreement constitutes a valid and binding agreement of Investor enforceable in accordance with its terms; (iv) Investor is an "accredited investor" as that term is defined in Rule 501(a) of Regulation D of the 1933 Act; (v) Investor is acquiring the Securities for investment for such Investor's own account, and not with a view to, or for resale in connection with, any distribution thereof, and Investor has no present intention of selling or distributing any of the Securities, (vi) Investor has had an opportunity to discuss Company's business, management and financial affairs with its management and to obtain any additional information which Investor has deemed necessary or appropriate for deciding whether or not to purchase the Securities, including an opportunity to receive, review and understand the information set forth in Company's financial statements, capitalization and other business information as Investor deems prudent, (vii) Investor acknowledges that no other representations or warranties, oral or written, have been made by Company or any agent thereof except as set forth in this Agreement, (viii) Investor is aware that no federal, state or other agency has made any finding or determination as to the fairness of the investment, nor made any recommendation or endorsement of the Securities, (ix) Investor has such knowledge and experience in financial and business matters, including investments in other emerging growth companies that such individual or entity is capable of evaluating the merits and risks of the investment in the Note and it is able to bear the economic risk of such investment, (x) Investor has such knowledge and experience in financial and business matters that such individual is capable of utilizing the information made available in connection with the offering of the Securities, of evaluating the merits and risks of an investment in the Securities and of making an informed investment decision with respect to the Securities, (xi) neither Investor, nor any person or entity with whom such Investor shares beneficial ownership of the Securities, is subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii); (xii) Investor is aware that there is currently no public market for the Note, that there is no guarantee that a public market will develop at any time in the future and Investor understands that the Note is unregistered and may not presently be sold except in accordance with applicable securities laws, (xiii) Investor understands that the Note cannot be readily sold or liquidated in case of an emergency or other financial need, (xiv) Investor acknowledges and agrees that the Note must be held indefinitely unless it is subsequently registered under the 1933 Act or an exemption from such registration is available, and Investor has been advised or is aware of the provisions of Rule 144 promulgated under the 1933 Act as in effect from time to time, which permits limited resale of securities purchased in a private placement subject to the satisfaction of certain conditions, including, among other things: the availability of certain current public information about the Company and the resale occurring following the required

holding period under Rule 144, (xv) Investor is not affiliated in any way with Unkar Systems (as defined below), has no contractual or other relationship with Unkar Systems and receives no payments, kickbacks or other compensation of any kind from Unkar Systems, and (xvi) each instrument evidencing the Note which Investor may purchase hereunder may be imprinted with legends substantially in the following form:

"THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR UNDER THE SECURITIES LAWS OF ANY STATES IN THE UNITED STATES. THIS NOTE IS SUBJECT TO

RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE ACT AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM.

THIS NOTE IS ISSUED WITH ORIGINAL ISSUE DISCOUNT FOR PURPOSES OF SECTION 1271 ET SEQ. OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED. PURSUANT TO TREASURY REGULATION SECTION 1.1275-3, A HOLDER MAY OBTAIN THE ISSUE PRICE, AMOUNT OF ORIGINAL ISSUE DISCOUNT, ISSUE DATE, AND YIELD TO MATURITY FOR THIS NOTE BY SUBMITTING A WRITTEN REQUEST FOR SUCH INFORMATION TO THE BORROWER AT THE FOLLOWING ADDRESS: 201 MISSION STREET, SUITE 2375, SAN FRANCISCO, CALIFORNIA 94105."

Notwithstanding the foregoing representations and warranties, Company acknowledges and agrees that such representations and warranties do not affect Company's obligations to repay the Note in full pursuant to the terms thereof.

3. Company's Representations and Warranties. Company represents and warrants to Investor that as of the Closing Date: (i) Company is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation and has the requisite corporate power to own its properties and to carry on its business as now being conducted; (ii) Company is duly qualified as a foreign corporation to do business and is in good standing in each jurisdiction where the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified would not reasonably be expected to have a material adverse effect on Borrower's business, assets, properties, operations or financial condition or its ability to perform its obligations hereunder (a "**Material Adverse Effect**"); (iii) Company has registered its Common Stock under Section 12(g) of the Securities Exchange Act of 1934, as amended (the "**1934 Act**"), and is obligated to file reports pursuant to Section 13 or Section 15(d) of the 1934 Act; (iv) each of the Transaction Documents and the transactions contemplated hereby and thereby, have been duly and validly authorized by Company and all necessary actions have been taken; (v) this Agreement, the Note, the Security Agreement, the Subordination Agreement and the other Transaction Documents have been duly executed and delivered by Company and constitute the valid and binding obligations of Company enforceable in accordance with their terms, except as enforceability may be limited by applicable bankruptcy, insolvency and similar laws affecting creditors' rights and by general principles of equity; (vi) the execution and delivery of the Transaction Documents by Company, the issuance of Securities in accordance with the terms hereof, and the consummation by Company of the other transactions contemplated by the Transaction Documents do not and will not conflict with or result in a breach by Company of any of the terms or provisions of, or constitute a default under (a) Company's formation documents or bylaws, each as currently in effect, (b) any indenture, mortgage, deed of trust, or other material agreement or instrument to which Company is a party or by which it or any of its properties or assets are bound, including, without limitation, any listing agreement for the Common Stock, except as would not reasonably be expected to have a Material Adverse Effect, or (c) any existing applicable law, rule, or regulation or any applicable decree, judgment, or order of any court, United States federal, state or foreign regulatory body, administrative agency, or other governmental body having jurisdiction over Company or any of Company's properties or assets, except as would not reasonably be expected to have a Material Adverse Effect; (vii) no further authorization, approval or consent of any court, governmental body, regulatory agency, self-regulatory organization, or stock exchange or market or the stockholders or any lender of Company is required to be obtained by Company for the issuance of the Securities to Investor or the entering into of the Transaction Documents; (viii) none of Company's filings with the SEC contained, at the time they were filed, any untrue statement of a material fact or omitted to state any material fact

required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not materially misleading; (ix) within the 12 months immediately preceding the date hereof, Company has filed all reports, schedules, forms, statements and other documents required to be filed by Company with the SEC under the 1934 Act on a timely basis or has received a valid extension of such time of filing and has filed any such report, schedule, form, statement or other document prior to the expiration of any such extension; (x) there is no action, suit, proceeding, inquiry or investigation before or by any court, public board or body pending or, to the knowledge of Company, threatened against or affecting Company before or by any governmental authority or non-governmental department, commission, board, bureau, agency or instrumentality or any other person which would reasonably be expected to have a Material Adverse Effect; (xi) Company has not consummated any financing transaction that has not been disclosed in a periodic filing or current report with the SEC under the 1934 Act; (xii) Company is not, nor has it been at any time in the previous twelve (12) months, a "Shell Company," as such type of "issuer" is described in Rule 144(i)(1) under the 1933 Act; (xiii) with respect to any commissions, placement agent or finder's fees or similar payments that will or would become due and owing by Company to any person or entity as a result of this Agreement or the transactions contemplated hereby ("**Broker Fees**"), any such Broker Fees will be made in full compliance with all applicable laws and regulations and only to a person or entity that is a registered investment adviser or registered broker-dealer; (xiv) Investor shall have no obligation with respect to any Broker Fees or with respect to any claims made by or on behalf of other persons for fees of a type contemplated in this subsection that may be due in connection with the transactions contemplated hereby and Company shall indemnify and hold harmless each of Investor, Investor's employees, officers, directors, stockholders, members, managers, agents, and partners, and their respective affiliates, from and against all claims, losses, damages, costs (including the costs of preparation and attorneys' fees) and expenses suffered in respect of any such claimed Broker Fees; (xv) neither Investor nor any of its officers, directors, stockholders, members, managers, employees, agents or representatives has made any representations or warranties to Company or any of its officers, directors, employees, agents or representatives except as expressly set forth in the Transaction Documents and, in making its decision to enter into the transactions contemplated by the Transaction Documents, Company is not relying on any representation, warranty, covenant or promise of Investor or its officers, directors, members, managers, employees, agents or representatives other than as set forth in the Transaction Documents; (xvi) Company acknowledges that the State of Utah has a reasonable relationship and sufficient contacts to the transactions contemplated by the Transaction Documents and any dispute that may arise related thereto such that the laws and venue of the State of Utah, as set forth more specifically in Section 8.3 below, shall be applicable to the Transaction Documents and the transactions contemplated therein; and (xvii) Company has performed due diligence and background research on Investor and its affiliates including, without limitation, John M. Fife, and, to its satisfaction, has made inquiries with respect to all matters Company may consider relevant to the undertakings and relationships contemplated by the Transaction Documents including, among other things, the following:

http://investing.businessweek.com/research/stocks/people/person.asp?personId=7505107&ticker=UAHC; SEC Civil Case No. 07-C-0347 (N.D. Ill.); SEC Civil Action No. 07-CV-347 (N.D. Ill.); and FINRA Case #2011029203701. Company, being aware of the matters described in subsection (xvii) above, acknowledges and agrees that such matters, or any similar matters, have no bearing on the transactions contemplated by the Transaction Documents and covenants and agrees it will not use any such information as a defense to performance of its obligations under the Transaction Documents or in any attempt to avoid, modify or reduce such obligations.

4. Company Covenants. Until all of Company's obligations (other than contingent and indemnification obligations) under all of the Transaction Documents are paid in full, or within the timeframes otherwise specifically set forth below, Company will at all times comply with the following covenants: (i) so long the Note is outstanding and for at least twenty (20) Business Days (as defined in the Note) thereafter, Company will timely file on the applicable deadline (including any extensions thereof)

all reports required to be filed with the SEC pursuant to Sections 13 or 15(d) of the 1934 Act that would otherwise impact the availability of Rule 144 of the 1933 Act, and will take all reasonable action under its control to ensure that adequate current public information with respect to Company, as required in accordance with Rule 144 of the 1933 Act, is publicly available, and until a Fundamental Transaction (as defined in the Note) will not terminate its status as an issuer required to file reports under the 1934 Act even if the 1934 Act or the rules and regulations thereunder would permit such termination; (ii) until a Fundamental Transaction, the Common Stock shall be listed or quoted for trading on any of (a) NYSE, (b) NASDAQ, (c) OTCQX, or (d) OTCQB; (iii) until a Fundamental Transaction, trading in Company's Common Stock will not be suspended, halted, chilled, frozen, reach zero bid or otherwise cease on Company's principal trading market; (iv) Company will not make any Variable Security Issuance (as defined below) that generates gross cash proceeds to the Company of less than the lesser of $1,000,000.00 and the then-current outstanding balance of the Note, without Investor's prior written consent, which consent may be granted or withheld in Investor's sole and absolute discretion; (v) at Closing and on the first day of each calendar quarter for so long as the Note remains outstanding or on any other date during which the Note is outstanding, as may be requested by Investor, Company shall cause its Chief Executive Officer to provide to Investor a certificate in substantially the form attached hereto as Exhibit C (the "**Officer's Certificate**") certifying in her personal capacity and in her capacity as Chief Executive Officer of Company that Company's has not made any Variable Security Issuance in which Company received gross proceeds of less than the lesser of $1,000,000.00 and the then-current outstanding balance of the Note without Investor's consent as of the date the applicable Officer's Certificate is executed; (vi) Company will not grant a security interest in any of its assets without Investor's prior written consent; (vii) in the event Investor exercises its right to purchase the Purchased Debt (as defined in the Subordination Agreement) from Hercules pursuant to Section 4 of the Subordination Agreement, Company will repay Investor an amount equal to the purchase price paid by Investor to Hercules for the Purchased Debt plus, if the Purchased Debt is in default at the time of the purchase or goes into default subsequent to the purchase, a premium in the amount of 17.5% multiplied by the purchase price will be added to the outstanding balance of the Purchased Debt; (viii) Company will not issue any shares of Common Stock to MEF I, LP or its affiliates ("**MEF**") after the Closing Date; (ix) Company will repay the Hercules Debt and deliver confirmation thereof to Investor on or before March 26, 2018; (x) Company will repay all outstanding amounts owed to MEF and all outstanding amounts owed to Riverside Merchant Partners LLC in full and deliver confirmation thereof to Investor within five (5) Trading Days of the Closing Date; and (xi) Company will not incur any debt other than in the ordinary course of business, and in no event greater than $10,000.00, without Investor's prior written consent. For purposes hereof, the term "**Variable Security Issuance**" means any issuance of any Company securities that (A) have or may have conversion rights of any kind, contingent, conditional or otherwise, in which the number of shares that may be issued pursuant to such conversion right varies with the market price of the Common Stock, or (B) are or may become convertible into Common Stock (including without limitation convertible debt, warrants or convertible preferred stock), with a conversion price that varies with the market price of the Common Stock, even if such security only becomes convertible following an event of default, the passage of time, or another trigger event or condition. For avoidance of doubt, the issuance of shares of Common Stock under, pursuant to, in exchange for or in connection with any contract or instrument, whether convertible or not, is deemed a Variable Security Issuance for purposes hereof if the number of shares of Common Stock to be issued is based upon or related in any way to the market price of the Common Stock, including, but not limited to, Common Stock issued in connection with a Section 3(a)(9) exchange, a Section 3(a)(10) settlement, or any other similar settlement or exchange.

5. Conditions to Company's Obligation to Sell. The obligation of Company hereunder to issue and sell the Securities to Investor at the Closing is subject to the satisfaction, on or before the Closing Date, of each of the following conditions:

5.1. Investor shall have executed this Agreement and delivered the same to Company.

5.2. Investor shall have delivered the Purchase Price to Company in accordance with Section 1.2 above.

6. Conditions to Investor's Obligation to Purchase. The obligation of Investor hereunder to purchase the Securities at the Closing is subject to the satisfaction, on or before the Closing Date, of each of the following conditions, provided that these conditions are for Investor's sole benefit and may be waived by Investor at any time in its sole discretion:

6.1. Company shall have executed this Agreement, the Note and the Security Agreement, and delivered the same to Investor.

6.2. Company's Chief Executive Officer shall have executed the Officer's Certificate and delivered the same to Investor.

6.3. Company shall have delivered to Investor a fully executed Secretary's Certificate substantially in the form attached hereto as Exhibit D evidencing Company's approval of the Transaction Documents.

6.4. Company shall have delivered to Investor fully executed copies of all Transaction Documents required to be executed by Company herein or therein.

7. Agreement to Amend Note. In the event that Company raises at least $12,000,000.00 in equity after March 13, 2018 and on or before April 1, 2018 (as evidenced by a written confirmation of a receipt of funds by Company to Investor):

7.1. Company and Investor shall amend the Note as follows:

a. Section 8 of the Note shall be deleted in its entirety and replaced with the following:

8. Borrower Redemptions. Beginning on the Redemption Start Date, Lender shall have the right, exercisable at any time in its sole and absolute discretion, to redeem a portion of the Note in any amount (such amount, the "**Redemption Amount**") up to the Maximum Monthly Redemption Amount by providing Borrower with a notice substantially in the form attached hereto as Exhibit A (each, a "**Redemption Notice**", and each date on which Lender delivers a Redemption Notice, a "**Redemption Date**"). For the avoidance of doubt, Lender may submit to Borrower one (1) or more Redemption Notices in any given calendar month, provided that the aggregate amount being redeemed in any calendar month does not exceed the Maximum Monthly Redemption Amount. Payments of each Redemption Amount will be made in cash or as otherwise mutually agreed upon and will be delivered to Lender on or before the third Business Day immediately following the applicable Redemption Date. Notwithstanding the foregoing Lender may not propose that any Redemption Amount be paid prior to the Redemption Start Date. Notwithstanding that failure to repay this Note in full by the Maturity Date is an Event of Default, the Redemption Dates shall continue after the Maturity Date pursuant to this Section 8 until the Outstanding Balance is repaid in full, provided that the aggregate

Redemption Amounts in any given calendar month following an Event of Default may exceed the Maximum Monthly Redemption Amount.

b. The definition for the term "Redemption Start Date" shall be deleted in its entirety and replaced with the following:

The term "**Redemption Start Date**" means October 19, 2018.

c. The following definition shall be added to the Note:

"**Maximum Monthly Redemption Amount**" means $500,000.00, which is the maximum aggregate Redemption Amount for this Note that may be redeemed in any calendar month. For purposes of calculating the Maximum Monthly Redemption Amount, all Redemption Amounts redeemed under this Note shall be aggregated with all redemption amounts redeemed under the Other Notes.

d. The following definition shall be added to the Note:

"**Other Notes**" means (a) that certain Secured Convertible Promissory Note in the original amount of $2,155,000.00 issued by Lender in favor of Borrower on June 29, 2017; (b) that certain Secured Promissory Note in the original amount of $1,587,500.00 issued by Lender in favor of Borrower on December 8, 2017; and (c) that certain Secured Promissory Note in the original amount of $2,240,909.00 issued by Lender in favor of Borrower on February 26, 2018.

7.2. The definition of "Other Notes" in Attachment 1 of that certain Secured Convertible Promissory Note in the original amount of $2,155,000.00 issued by Company in favor of Investor on June 29, 2017 (the "**June 2017 Note**"), that certain Secured Promissory Note in the original amount of $1,587,500.00 issued by Company in favor of Investor on December 8, 2017 (the "**December 2017 Note**") and that certain Secured Promissory Note in the original amount of $2,240,909.00 issued by the Company in favor of Investor on February 26, 2018 (the "**February 2018 Note**"), shall be deleted in its entirety and replaced with the following:

"**Other Notes**" means:

FOR THE JUNE 2017 NOTE: "(a) that certain Secured Promissory Note in the original amount of $1,587,500.00 issued by Lender in favor of Borrower on December 8, 2017; (b) that certain Secured Promissory Note in the original amount of $2,240,909.00 issued by Lender in favor of Borrower on February 26, 2018; and (c) that certain Secured Promissory Note in the original amount of $1,090,340.91 issued by Lender in favor of Borrower on March 21, 2018".

FOR THE DECEMBER 2017 NOTE: "(a) that certain Secured Convertible Promissory Note in the original amount of $2,155,000.00 issued by Lender in favor of Borrower on June 29, 2017; (b) that certain Secured Promissory Note in the original amount of $2,240,909.00 issued by Lender in favor of Borrower on February 26, 2018; and (c) that certain Secured Promissory Note in the original amount of $1,090,340.91 issued by Lender in favor of Borrower on March 21, 2018".

FOR THE FEBRUARY 2018 NOTE: "(a) that certain Secured Convertible Promissory Note in the original amount of $2,155,000.00 issued by Lender in favor of Borrower on June 29, 2017; (b) that certain Secured Promissory Note in the original amount of $1,587,500.00 issued by Lender in favor of Borrower on December 8, 2017; and (c) that certain Secured Promissory Note in the original amount of $1,090,340.91 issued by Lender in favor of Borrower on March 21, 2018".

7.3. Notwithstanding anything herein to the contrary, all amendments set forth in Sections 7.1 and 7.2 above shall be expressly conditioned on Company's continued compliance with the covenants set forth in Section 4 above. Upon the occurrence of a breach of any of the covenants set forth in Section 4 above, the foregoing amendments shall immediately and automatically terminate and shall be deemed void ab initio and of no further force or effect.

8. Miscellaneous. The provisions set forth in this Section 8 shall apply to this Agreement, as well as all other Transaction Documents as if these terms were fully set forth therein; *provided, however*, that in the event there is a conflict between any provision set forth in this Section 8 and any provision in any other Transaction Document, the provision in such other Transaction Document shall govern.

8.1. Certain Capitalized Terms. To the extent any capitalized term used in any Transaction Document is defined in any other Transaction Document (as noted therein), such capitalized term shall remain applicable in the Transaction Document in which it is so used even if the other

Transaction Document (wherein such term is defined) has been released, satisfied, or is otherwise cancelled or terminated.

8.2. Arbitration of Claims. The parties shall submit all claims, disputes and causes of action (each, a "**Claim**") arising under this Agreement or any other Transaction Document or any other agreement between the parties and their affiliates or any Claim relating to the relationship of the parties to binding arbitration pursuant to rules of the American Arbitration Association. Within seven (7) calendar days of initiation of arbitration by either party, Investor will provide a list of five (5) arbitrators that are designated as "neutrals" or qualified arbitrators by Utah ADR Services (http://www.utahadrservices.com) (such five (5) arbitrators, the "**Proposed Arbitrators**"). Within five (5) calendar days after Investor has submitted to Company the names of the Proposed Arbitrators, Company must select by written notice to Investor, one (1) of the Proposed Arbitrators to act as the arbitrator. If Company fails to select one of the Proposed Arbitrators in writing within such 5-day period, then Investor may select the arbitrator from the Proposed Arbitrators by providing written notice of such selection to Company. The arbitrator shall be instructed to complete and shall complete the arbitration within six (6) months of commencement and shall only allow limited discovery on issues directly related to the applicable Claims. The parties hereby acknowledge and agree that the arbitration provisions set forth in this Section 8.2 (the "**Arbitration Provisions**") are unconditionally binding on the parties hereto and are severable from all other provisions of this Agreement. By executing this Agreement, Company represents, warrants and covenants that Company has reviewed the Arbitration Provisions carefully, consulted with legal counsel about such provisions (or waived its right to do so), understands that the Arbitration Provisions are intended to allow for the expeditious and efficient resolution of any dispute hereunder, agrees to the terms and limitations set forth in the Arbitration Provisions, and that Company will not take a position contrary to the foregoing representations. Company acknowledges and agrees that Investor may rely upon the foregoing representations and covenants of Company regarding the Arbitration Provisions.

8.3. Governing Law; Venue. This Agreement shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Agreement shall be governed by, the internal laws of the State of Utah, without giving effect to

any choice of law or conflict of law provision or rule (whether of the State of Utah or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Utah. Each party consents to and expressly agrees that exclusive venue for arbitration of any dispute arising out of or relating to any Transaction Document or the relationship of the parties or their affiliates shall be in Salt Lake County, Utah. Without modifying the parties obligations to resolve disputes hereunder pursuant to the Arbitration Provisions, for any litigation arising in connection with any of the Transaction Documents, each party hereto hereby (i) consents to and expressly submits to the exclusive personal jurisdiction of any state or federal court sitting in Salt Lake County, Utah, (ii) expressly submits to the exclusive venue of any such court for the purposes hereof, (iii) agrees to not bring any such action outside of any state or federal court sitting in Salt Lake County, Utah, and (iv) waives any claim of improper venue and any claim or objection that such courts are an inconvenient forum or any other claim, defense or objection to the bringing of any such proceeding in such jurisdiction or to any claim that such venue of the suit, action or proceeding is improper. Finally, Company covenants and agrees to name Investor as a party in interest in, and provide written notice to Investor in accordance with Section 8.13 below prior to bringing or filing, any action (including without limitation any filing or action against any person or entity that is not a party to this Agreement) that is related in any way to the Transaction Documents or any transaction contemplated herein or therein, and further agrees to timely name Investor as a party to any such action. Company acknowledges that the governing law and venue provisions set forth in this Section 8.3 are material terms to induce Investor to enter into the Transaction Documents and that but for Company's agreements set forth in this Section 8.3 Investor would not have entered into the Transaction Documents.

8.4. Specific Performance. Company acknowledges and agrees that irreparable damage may occur to Investor in the event that Company fails to perform any material provision of this Agreement or any of the other Transaction Documents in accordance with its specific terms. It is accordingly agreed that Investor shall be entitled to an injunction or injunctions to prevent or cure breaches of the provisions of this Agreement or such other Transaction Document and to enforce specifically the terms and provisions hereof or thereof, this being in addition to any other remedy to which the Investor may be entitled under the Transaction Documents, at law or in equity. For the avoidance of doubt, in the event Investor seeks to obtain an injunction against Company or specific performance of any provision of any Transaction Document, such action shall not be a waiver of any right of Investor under any Transaction Document, at law, or in equity, including without limitation its rights to arbitrate any Claim pursuant to the terms of the Transaction Documents.

8.5. [Reserved].

8.6. Counterparts. Each Transaction Document may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument. The parties hereto confirm that any electronic copy of another party's executed counterpart of a Transaction Document (or such party's signature page thereof) will be deemed to be an executed original thereof.

8.7. Document Imaging. Investor shall be entitled, in its sole discretion, to image or make copies of all or any selection of the agreements, instruments, documents, and items and records governing, arising from or relating to any of Company's loans, including, without limitation, this Agreement and the other Transaction Documents, and Investor may destroy or archive the paper originals. The parties hereto (i) waive any right to insist or require that Investor produce paper originals, (ii) agree that such images shall be accorded the same force and effect as the paper originals, (iii) agree that Investor is entitled to use such images in lieu of destroyed or archived originals for any purpose, including as admissible evidence in any demand, presentment or other proceedings, and (iv) further agree that any executed facsimile (faxed), scanned, emailed, or other imaged copy of this Agreement or any

other Transaction Document shall be deemed to be of the same force and effect as the original manually executed document.

8.8. Headings. The headings of this Agreement are for convenience of reference only and shall not form part of, or affect the interpretation of, this Agreement.

8.9. Severability. In the event that any provision of this Agreement is invalid or unenforceable under any applicable statute or rule of law, then such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform to such statute or rule of law. Any provision hereof which may prove invalid or unenforceable under any law shall not affect the validity or enforceability of any other provision hereof.

8.10. Entire Agreement. This Agreement, together with the other Transaction Documents, contains the entire understanding of the parties with respect to the matters covered herein and therein and, except as specifically set forth herein or therein, neither Company nor Investor makes any representation, warranty, covenant or undertaking with respect to such matters. For the avoidance of doubt, all prior term sheets or other documents between Company and Investor, or any affiliate thereof, related to the transactions contemplated by the Transaction Documents (collectively, "**Prior Agreements**"), that may have been entered into between Company and Investor, or any affiliate thereof, are hereby null and void and deemed to be replaced in their entirety by the Transaction Documents. To the extent there is a conflict between any term set forth in any Prior Agreement and the term(s) of the Transaction Documents, the Transaction Documents shall govern.

8.11. No Reliance. Company acknowledges and agrees that neither Investor nor any of its officers, directors, members, managers, representatives or agents has made any representations or warranties to Company or any of its officers, directors, representatives, agents or employees except as expressly set forth in the Transaction Documents and, in making its decision to enter into the transactions contemplated by the Transaction Documents, Company is not relying on any representation, warranty, covenant or promise of Investor or its officers, directors, members, managers, agents or representatives other than as set forth in the Transaction Documents.

8.12. Amendments. No provision of this Agreement may be waived or amended other than by an instrument in writing signed by both parties hereto.

8.13. Notices. Any notice required or permitted hereunder shall be given in writing (unless otherwise specified herein) and shall be deemed effectively given on the earliest of: (i) the date delivered, if delivered by personal delivery as against written receipt therefor or by email to an executive officer, or by facsimile (with successful transmission confirmation), (ii) the earlier of the date delivered or the third Business Day after deposit, postage prepaid, in the United States Postal Service by certified mail, or (iii) the earlier of the date delivered or the third Business Day after mailing by express courier, with delivery costs and fees prepaid, in each case, addressed to each of the other parties thereunto entitled at the following addresses (or at such other addresses as such party may designate by five (5) calendar days' advance written notice similarly given to each of the other parties hereto):

If to Company:

Jaguar Health, Inc.
Attn: Lisa A. Conte
201 Mission Street, Suite 2375
San Francisco, CA 94105

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

Reed Smith LLP
Attn: Don Reinke
1510 Page Mill Road, Suite 110
Palo Alto, CA, 94304

If to Investor:

Chicago Venture Partners, L.P.
Attn: John Fife
303 East Wacker Drive, Suite 1040
Chicago, Illinois 60601

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

Hansen Black Anderson Ashcraft PLLC
Attn: Jonathan Hansen
3051 West Maple Loop Drive, Suite 325
Lehi, Utah 84043

8.14. Successors and Assigns. This Agreement or any of the severable rights and obligations inuring to the benefit of or to be performed by Investor hereunder may be assigned by Investor to a third party, including its affiliates, in whole or in part, without the need to obtain Company's consent thereto. Company may not assign its rights or obligations under this Agreement or delegate its duties hereunder without the prior written consent of Investor.

8.15. Survival. The representations and warranties of Company and the agreements and covenants set forth in this Agreement shall survive the Closing hereunder notwithstanding any due diligence investigation conducted by or on behalf of Investor. Company agrees to indemnify and hold harmless Investor and all its officers, directors, employees, attorneys, and agents for loss or damage arising as a result of or related to any breach or alleged breach by Company of any of its representations, warranties and covenants set forth in this Agreement or any of its covenants and obligations under this Agreement, including advancement of expenses as they are incurred.

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

8.17. Investor's Rights and Remedies Cumulative; Liquidated Damages. All rights, remedies, and powers conferred in this Agreement and the Transaction Documents are cumulative and not exclusive of any other rights or remedies, and shall be in addition to every other right, power, and remedy that Investor may have, whether specifically granted in this Agreement or any other Transaction Document, or existing at law, in equity, or by statute, and any and all such rights and remedies may be exercised from time to time and as often and in such order as Investor may deem expedient. The parties acknowledge and agree that upon Company's failure to comply with the provisions of the Transaction Documents, Investor's damages would be uncertain and difficult (if not impossible) to accurately estimate because of the parties' inability to predict future interest rates and future share prices, Investor's increased

risk, and the uncertainty of the availability of a suitable substitute investment opportunity for Investor, among other reasons. Accordingly, any fees, charges, and default interest due under the Note and the other Transaction Documents are intended by the parties to be, and shall be deemed, liquidated damages (under Company's and Investor's expectations that any such liquidated damages will tack back to the Closing Date for purposes of determining the holding period under Rule 144 under the 1933 Act). The parties agree that such liquidated damages are a reasonable estimate of Investor's actual damages and not a penalty, and shall not be deemed in any way to limit any other right or remedy Investor may have hereunder, at law or in equity. The parties acknowledge and agree that under the circumstances existing at the time this Agreement is entered into, such liquidated damages are fair and reasonable and are not penalties. All fees, charges, and default interest provided for in the Transaction Documents are agreed to by the parties to be based upon the obligations and the risks assumed by the parties as of the Closing Date and are consistent with investments of this type. The liquidated damages provisions of the Transaction Documents shall not limit or preclude a party from pursuing any other remedy available at law or in equity; *provided, however*, that the liquidated damages provided for in the Transaction Documents are intended to be in lieu of actual damages.

8.18. [Reserved].

8.19. Attorneys' Fees and Cost of Collection. In the event of any arbitration or action at law or in equity to enforce or interpret the terms of this Agreement or any of the other Transaction Documents, the parties agree that the party who is awarded the most money (which, for the avoidance of doubt, shall be determined without regard to any statutory fines, penalties, fees, or other charges awarded to any party) shall be deemed the prevailing party for all purposes and shall therefore be entitled to an additional award of the full amount of the reasonable and documented out-of-pocket attorneys' fees, deposition costs, and expenses paid by such prevailing party in connection with arbitration or litigation without reduction or apportionment based upon the individual claims or defenses giving rise to the fees and expenses. Nothing herein shall restrict or impair an arbitrator's or a court's power to award fees and expenses for frivolous or bad faith pleading. If (i) the Note is placed in the hands of an attorney for collection or enforcement prior to commencing arbitration or legal proceedings, or is collected or enforced through any arbitration or legal proceeding, or Investor otherwise takes action to collect amounts due under the Note or to enforce the provisions of the Note, or (ii) there occurs any bankruptcy, reorganization, receivership of Company or other proceedings affecting Company's creditors' rights and involving a claim under the Note; then Company shall pay the costs incurred by Investor for such collection, enforcement or action or in connection with such bankruptcy, reorganization, receivership or other proceeding, including, without limitation, attorneys' fees, expenses, deposition costs, and disbursements.

8.20. Waiver. No waiver of any provision of this Agreement shall be effective unless it is in the form of a writing signed by the party granting the waiver. No waiver of any provision or consent to any prohibited action shall constitute a waiver of any other provision or consent to any other prohibited action, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit a party to provide a waiver or consent in the future except to the extent specifically set forth in writing.

8.21. Waiver of Jury Trial. EACH PARTY TO THIS AGREEMENT IRREVOCABLY WAIVES ANY AND ALL RIGHTS SUCH PARTY MAY HAVE TO DEMAND THAT ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, ANY OTHER TRANSACTION DOCUMENT, OR THE RELATIONSHIPS OF THE PARTIES HERETO BE TRIED BY JURY. THIS WAIVER EXTENDS TO ANY AND ALL RIGHTS TO DEMAND A TRIAL BY

JURY ARISING UNDER COMMON LAW OR ANY APPLICABLE STATUTE, LAW, RULE OR REGULATION. FURTHER, EACH PARTY HERETO ACKNOWLEDGES THAT SUCH PARTY IS KNOWINGLY AND VOLUNTARILY WAIVING SUCH PARTY'S RIGHT TO DEMAND TRIAL BY JURY.

8.22. Time is of the Essence. Time is expressly made of the essence with respect to each and every provision of this Agreement and the other Transaction Documents.

8.23. Voluntary Agreement. Company has carefully read this Agreement and each of the other Transaction Documents and has asked any questions needed for Company to understand the terms, consequences and binding effect of this Agreement and each of the other Transaction Documents and fully understand them. Company has had the opportunity to seek the advice of an attorney of Company's choosing, or has waived the right to do so, and is executing this Agreement and each of the other Transaction Documents voluntarily and without any duress or undue influence by Investor or anyone else.

8.24. Subordination. This Agreement, the other Transaction Documents and the obligations of the Company thereunder are subject in all respects to the terms of that certain Subordination Agreement by and among the Company, the Investor and Hercules Growth Capital, Inc., a Maryland corporation, dated June 29, 2017 (as amended, modified or supplemented, the "**Subordination Agreement**"), a copy of which is attached hereto for reference as Exhibit E.

[*Remainder of page intentionally left blank; signature page follows*]

IN WITNESS WHEREOF, the undersigned Investor and Company have caused this Agreement to be duly executed as of the date first above written.

SUBSCRIPTION AMOUNT:

Principal Amount of Note: $1,090,340.91

Purchase Price: $750,000.00

INVESTOR:

CHICAGO VENTURE PARTNERS, L.P.

By: Chicago Venture Management, L.L.C.,
its General Partner

By: CVM, Inc., its Manager

By: /s/ John M. Fife
John M. Fife, President

COMPANY:

JAGUAR HEALTH, INC.

By: /s/ Lisa Conte
Printed Name: Lisa Conte
Title: President and CEO

[*Signature Page to Securities Purchase Agreement*]

ATTACHED EXHIBITS:

Exhibit A	Note
Exhibit B	Security Agreement
Exhibit C	Officer’s Certificate
Exhibit D	Secretary’s Certificate
Exhibit E	Subordination Agreement

SECURITY AGREEMENT

THIS SECURITY AGREEMENT (this "**Agreement**"), dated as of March 21, 2018, is executed by Jaguar Health, Inc., a Delaware corporation ("**Debtor**"), in favor of Chicago Venture Partners, L.P., a Utah limited partnership ("**Secured Party**").

A. Debtor has issued to Secured Party a certain Secured Promissory Note of even date herewith, as may be amended from time to time, in the original face amount of $1,090,340.91 (the "**Note**").

B. In order to induce Secured Party to extend the credit evidenced by the Note, Debtor has agreed to enter into this Agreement and to grant Secured Party a security interest in the Collateral (as defined below).

NOW, THEREFORE, in consideration of the above recitals and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Debtor hereby agrees with Secured Party as follows:

1. Definitions and Interpretation. When used in this Agreement, the following terms have the following respective meanings:

"**Collateral**" has the meaning given to that term in Section 2 hereof.

"**Effective Date**" means the date on which Secured Party: (a) purchases the Hercules Debt from Hercules pursuant to the purchase option set forth in Section 4 of the Subordination Agreement; or (b) Debtor repays the Hercules Debt in full.

"**Hercules**" means Hercules Technology Growth Capital, Inc., a Maryland corporation.

"**Hercules Debt**" means all amounts owing to Hercules pursuant to the Hercules Loan Agreement and all other related documentation.

"**Hercules Loan Agreement**" means that certain Loan and Security Agreement dated August 18, 2015 entered into by and between Debtor and Hercules, as amended.

"**Intellectual Property**" means all patents, trademarks, service marks, trade names, copyrights, trade secrets, licenses (software or otherwise), information, know-how, inventions, discoveries, published and unpublished works of authorship, processes, any and all other proprietary rights, and all rights corresponding to all of the foregoing throughout the world, now owned and existing or hereafter arising, created or acquired.

"**Lien**" shall mean, with respect to any property, any security interest, mortgage, pledge, lien, claim, charge or other encumbrance in, of, or on such property or the income therefrom, including, without limitation, the interest of a vendor or lessor under a conditional sale agreement, capital lease or other title retention agreement, or any agreement to provide any of the foregoing, and the filing of any financing statement or similar instrument under the UCC or comparable law of any jurisdiction.

"**Obligations**" means (a) all loans, advances, future advances, debts, liabilities and obligations, howsoever arising, owed by Debtor to Secured Party or any affiliate of Secured Party of every kind and description, now existing or hereafter arising, created by the Note, this Agreement, that certain Securities Purchase Agreement of even date herewith, entered into by and between Debtor and Secured Party (the "**Purchase Agreement**"), any other Transaction Documents (as defined in the Purchase Agreement), or any modification or amendment to any of the foregoing, (b) all reasonable and

documented out-of-pocket costs and expenses, including reasonable and documented attorneys' fees, incurred by Secured Party or any affiliate of Secured Party in connection with the Note or in connection with the collection or enforcement of any portion of the indebtedness, liabilities or obligations described in the foregoing clause (a) to the extent requested to be reimbursed by the Debtor pursuant to the terms of the Transaction Documents, (c) the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Agreement, and (d) the performance of the covenants and agreements of Debtor contained in this Agreement and all other Transaction Documents.

"**Permitted Indebtedness**" means (a) indebtedness of Debtor in favor of Secured Party arising under this Agreement or any other Transaction Document; (b) indebtedness to trade creditors incurred in the ordinary course of business, including indebtedness incurred in the ordinary course of business with corporate credit cards; (c) indebtedness consisting of financing of insurance premiums incurred in the ordinary course of business; (d) other indebtedness in an amount not to exceed $250,000 at any time outstanding; (e) indebtedness consisting of capital leases and purchase money debt in an amount not to exceed $300,000 at any time outstanding; (f) reimbursement obligations in connection with letters of credit that are secured by cash and issued on behalf of Debtor or a subsidiary thereof in an amount not to exceed $300,000 at any time outstanding; and (g) extensions, refinancings and renewals of any items of Permitted Indebtedness, provided that the principal amount is not increased or the terms modified to impose materially more burdensome terms upon Debtor.

"**Permitted Liens**" means (a) Liens for taxes, fees, assessment or other governmental charges or levies, either not yet delinquent or being contested in good faith and by appropriate proceedings for which adequate reserves have been established; (b) Liens in favor of Secured Party under this Agreement or arising under the other Transaction Documents; (c) Liens securing claims or demands of materialmen, artisans, mechanics, carriers, warehousemen, landlords and other like persons arising in the ordinary course of Debtor's business and imposed without action of such parties; provided, that the payment thereof is not yet required; (d) Liens arising from judgments, decrees or attachments in circumstances which do not constitute an Event of Default hereunder; (e) the following deposits, to the extent made in the ordinary course of business: deposits under worker's compensation, unemployment insurance, social security and other similar laws, or to secure the performance of bids, tenders or contracts (other than for the repayment of borrowed money) or to secure indemnity, performance or other similar bonds for the performance of bids, tenders or contracts (other than for the repayment of borrowed money) or to secure statutory obligations (other than Liens arising under ERISA or environmental Liens) or surety or appeal bonds, or to secure indemnity, performance or other similar bonds; (f) Liens on equipment or software or other Intellectual Property constituting purchase money Liens; (g) leasehold interests in leases or subleases and licenses granted in the ordinary course of business and not interfering in any material respect with the business of the licensor; (h) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of custom duties that are promptly paid on or before the date they become due; (i) Liens on insurance proceeds securing the payment of financed insurance premiums that are promptly paid on or before

the date they become due (provided that such Liens extend only to such insurance proceeds and not to any other property or assets); (j) statutory and common law rights of set-off and other similar rights as to deposits of cash and securities in favor of banks, other depository institutions and brokerage firms; (k) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business so long as they do not materially impair the value or marketability of the related property; (l) customary liens securing capital leases on the assets financed thereby; (m) liens on cash securing letters of credit; and (n) Liens incurred in connection with the extension, renewal or refinancing of indebtedness secured by Liens of the type described in clauses (a) through (n) above; provided, that any extension, renewal or replacement Lien shall be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness being extended, renewed or refinanced (as may have been reduced by any payment thereon) does not increase.

"**Subordination Agreement**" means that certain Subordination and Option Agreement of even date herewith entered into by and among Hercules, Secured Party and Debtor.

"**UCC**" means the Uniform Commercial Code as in effect in the state whose laws would govern the security interest in, including without limitation the perfection thereof, and foreclosure of the applicable Collateral.

Unless otherwise defined herein, all terms defined in the UCC have the respective meanings given to those terms in the UCC.

2. Grant of Security Interest. As security for the Obligations, Debtor hereby pledges to Secured Party and grants to Secured Party a security interest in all right, title, interest, claims and demands of Debtor in and to the property described in Schedule A hereto, and all replacements, proceeds, products, and accessions thereof (collectively, the "**Collateral**"). Notwithstanding anything herein to the contrary, the foregoing grant of security interest shall not be effective until the Effective Date at which time such grant of security interest will immediately and automatically become effective without the need for any further action by Debtor or Secured Party.

3. Authorization to File Financing Statements. Debtor hereby irrevocably authorizes Secured Party at any time on or after the Effective Date to file with the Secretary of State of the State of Delaware (as well as any other state (if any) in which Debtor incorporates while the Obligations remain outstanding) any financing statements or documents having a similar effect and amendments thereto that provide any other information required by the Uniform Commercial Code (or similar law of any non-United States jurisdiction, if applicable) of such state or jurisdiction for the sufficiency or filing office acceptance of any financing statement or amendment, including whether Debtor is an organization, the type of organization and any organization identification number issued to Debtor. Debtor agrees to furnish any such information to Secured Party promptly upon Secured Party's request.

4. General Representations and Warranties. Debtor represents and warrants to Secured Party that (a) Debtor is the owner of the Collateral and that no other person has any right, title, claim or interest (by way of Lien or otherwise) in, against or to the Collateral, other than Permitted Liens, (b) so long as the Effective Date has occurred, upon the filing of UCC-1 financing statements with the Delaware Secretary of State, Secured Party shall have a perfected first-position security interest in the Collateral to the extent that a security interest in the Collateral can be perfected by such filing, except for Permitted Liens, (c) Debtor has received at least a reasonably equivalent value in exchange for entering into this Agreement, (d) Debtor is not insolvent, as defined in any applicable state or federal statute, nor will Debtor be rendered insolvent by the execution and delivery of this Agreement to Secured Party; and (e) as such, this Agreement is a valid and binding obligation of Debtor, except as may be limited by applicable bankruptcy, insolvency or similar laws affecting creditor rights and by general principles of equity.

5. Additional Covenants. Commencing on the date hereof, Debtor hereby agrees not to grant a security interest in any of its assets without Secured Party's prior written consent. Commencing upon and following the occurrence of the Effective Date, Debtor hereby agrees:

5.1. to perform all acts that may be necessary to maintain, preserve, protect and perfect in the Collateral, the Lien granted to Secured Party therein, and the perfection and priority of such Lien solely to the extent (i) Debtor determines to do so in the exercise of its business judgment or (ii) with respect to perfection, such perfection is required hereunder;

5.2. to procure, execute (including endorse, as applicable), and deliver from time to time any endorsements, assignments, and financing statements reasonably deemed necessary or appropriate by Secured Party to perfect, maintain and protect Secured Party's Lien hereunder and the priority thereof;

5.3. to provide at least fifteen (15) days prior written notice to Secured Party of any of the following events: (a) any changes or alterations of Debtor's name, (b) any changes with respect to Debtor's address or principal place of business, and (c) the formation of any subsidiaries of Debtor;

5.4. upon the occurrence of an Event of Default (as defined in the Note) under the Note and, solely during the existence thereof, at Secured Party's request, to endorse (up to the outstanding amount under such promissory notes at the time of Secured Party's request), assign and deliver any promissory notes and all other instruments, documents, or writings included in the Collateral to Secured Party, accompanied by such instruments of transfer or assignment duly executed in blank as Secured Party may from time to time specify;

5.5. not to sell or otherwise dispose, or offer to sell or otherwise dispose, of the Collateral or any interest therein (other than inventory in the ordinary course of business);

5.6. not to, directly or indirectly, allow, grant or suffer to exist any Lien upon any of the Collateral, other than Permitted Liens;

5.7. not to incur any indebtedness (other than Permitted Indebtedness) without Secured Party's prior written consent;

5.8. not to grant any license or sublicense under any of its Intellectual Property, or enter into any other agreement with respect to any of its Intellectual Property, except in the ordinary course of Debtor's business;

5.9. to the extent commercially reasonable and in Debtor's good faith business judgment: (a) to file and prosecute diligently any material patent, trademark or service mark applications pending as of the date hereof or hereafter until all Obligations (other than contingent and indemnification obligations) shall have been paid in full, (b) to make application on unpatented but patentable material inventions and on trademarks and service marks, (c) to preserve and maintain all rights in all of its material Intellectual Property, and (d) to ensure that all of its material Intellectual Property is and remains enforceable. Any and all costs and expenses incurred in connection with each of Debtor's obligations under this Section 5.9 shall be borne by Debtor. Debtor shall not knowingly and unreasonably abandon any right to file a material patent, trademark or service mark application, or abandon any pending patent application, or any other of its material Intellectual Property, without the prior written consent of Secured Party except for Intellectual Property that Debtor determines, in the exercise of its good faith business judgment, is not or is no longer material to its business; and

5.10. upon the reasonable request of Secured Party at any time or from time to time, and at the sole cost and expense (including, without limitation, reasonable attorneys' fees) of Debtor, Debtor shall take all actions and execute and deliver any and all instruments, agreements, assignments, certificates and/or documents reasonably required by Secured Party to collaterally assign any and all of Debtor's material patent, copyright and trademark registrations and applications now owned or hereafter acquired to and in favor of Secured Party.

6. Authorized Action by Secured Party. Commencing upon and following the occurrence of the Effective date, Debtor hereby irrevocably appoints Secured Party as its attorney-in-fact (which appointment is coupled with an interest) and agrees that Secured Party may perform solely during the existence of an Event of Default (but Secured Party shall not be obligated to and shall incur no liability to Debtor or any third party for failure so to do) any act which Debtor is obligated by this Agreement to perform, and, solely during the existence of an Event of Default, to exercise such rights and powers as Debtor might exercise with respect to the Collateral, including the right to (a) collect by legal proceedings or otherwise and endorse, receive and receipt for all dividends, interest, payments, proceeds and other sums and property now or hereafter payable on or on account of the Collateral; (b) enter into any

extension, reorganization, deposit, merger, consolidation or other agreement pertaining to, or deposit, surrender, accept, hold or apply other property in exchange for the Collateral; (c) make any compromise or settlement, and take any action Secured Party deems advisable, with respect to the Collateral, including without limitation bringing a suit in Secured Party's own name to enforce any Intellectual Property; (d) endorse Debtor's name on all applications, documents, papers and instruments necessary or desirable for Secured Party in the use of any Intellectual Property; (e) grant or issue any exclusive or non-exclusive license under any Intellectual Property to any person or entity; (f) assign, pledge, sell, convey or otherwise transfer title in or dispose of any Intellectual Property to any person or entity; (g) cause the Commissioner of Patents and Trademarks, United States Patent and Trademark Office (or as appropriate, such equivalent agency in foreign countries) to issue any and all patents and related rights and applications to Secured Party as the assignee of Debtor's entire interest therein; (h) file a copy of this Agreement with any governmental agency, body or authority, including without limitation the United States Patent and Trademark Office and, if applicable, the United States Copyright Office or Library of Congress, at the sole cost and expense of Debtor; (i) insure, process and preserve the Collateral; (j) pay any indebtedness of Debtor relating to the Collateral; (k) execute and file UCC financing statements and other documents, certificates, instruments and agreements with respect to the Collateral or as otherwise required or permitted hereunder; and (l) take any and all appropriate action and execute any and all documents and instruments that may be necessary or useful to accomplish the purposes of this Agreement. The powers conferred on Secured Party under this Section 6 are solely to protect its interests in the Collateral and shall not impose any duty upon it to exercise any such powers. Secured Party shall be accountable only for the amounts that it actually receives as a result of the exercise of such powers, and neither Secured Party nor any of its stockholders, directors, officers, managers, employees or agents shall be responsible to Debtor for any act or failure to act, except with respect to Secured Party's own gross negligence or willful misconduct. Nothing in this Section 6 shall be deemed an authorization for Debtor to take any action that it is otherwise expressly prohibited from undertaking by way of other provision of this Agreement.

7. Default and Remedies.

7.1. Default. Following the occurrence of the Effective Date, Debtor shall be deemed in default under this Agreement upon the occurrence and continuation of an Event of Default.

7.2. Remedies. Upon the occurrence and continuation of any such Event of Default following the occurrence of the Effective Date, Secured Party shall have the rights of a secured creditor under the UCC, all rights granted by this Agreement and by law, including, without limiting the foregoing, (a) the right to require Debtor to assemble the Collateral and make it available to Secured Party at a place to be designated by Secured Party, and (b) the right to take possession of the Collateral, and for that purpose Secured Party may enter upon premises on which the Collateral may be situated and remove the Collateral therefrom. Debtor hereby agrees that fifteen (15) days' notice of a public sale of any Collateral or notice of the date after which a private sale of any Collateral may take place is reasonable. In addition, Debtor waives any and all rights that it may have to a judicial hearing in advance of the enforcement of any of Secured Party's rights and remedies hereunder, including, without limitation, Secured Party's right following an Event of Default to take immediate possession of Collateral and to exercise Secured Party's rights and remedies with respect thereto. Secured Party may also have a receiver appointed to take charge of all or any portion of the Collateral and to exercise all rights of Secured Party under this Agreement. Secured Party may exercise any of its rights under this Section 7.2 without demand or notice of any kind. The remedies in this Agreement, including without limitation this Section 7.2, are in addition to, not in limitation of, any other right, power, privilege, or remedy, either in law, in equity, or otherwise, to which Secured Party may be entitled. No failure or delay on the part of Secured party in exercising any right, power, or remedy will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right hereunder. All of Secured Party's rights and remedies, whether evidenced by this Agreement or by any other agreement, instrument or document shall be cumulative and may be exercised singularly or concurrently.

7.3. Standards for Exercising Rights and Remedies. To the extent that applicable law imposes duties on Secured Party to exercise remedies in a commercially reasonable manner, Debtor acknowledges and agrees that it is not commercially unreasonable for Secured Party (a) to fail to incur expenses reasonably deemed significant by Secured Party to prepare Collateral for disposition, (b) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (c) to fail to exercise collection remedies against account debtors or other persons obligated on Collateral or to fail to remove liens or encumbrances on or any adverse claims against Collateral, (d) to exercise collection remedies against account debtors and other persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (e) to advertise dispositions of Collateral through

publications or media of general circulation, whether or not the Collateral is of a specialized nature, (f) to contact other persons, whether or not in the same business as Debtor, for expressions of interest in acquiring all or any portion of the Collateral, (g) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature, (h) to dispose of Collateral by utilizing Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets, (i) to dispose of assets in wholesale rather than retail markets, (j) to disclaim disposition warranties, (k) to purchase insurance or credit enhancements to insure Secured Party against risks of loss, collection or disposition of Collateral or to provide to Secured Party a guaranteed return from the collection or disposition of Collateral, or (l) to the extent deemed appropriate by Secured Party, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist Secured Party in the collection or disposition of any of the Collateral. Debtor acknowledges that the purpose of this Section is to provide non-exhaustive indications of what actions or omissions by Secured Party would fulfill Secured Party's duties under the UCC in Secured Party's exercise of remedies against the Collateral and that other actions or omissions by Secured Party shall not be deemed to fail to fulfill such duties solely on account of not being indicated in this Section. Without limitation upon the foregoing, nothing contained in this Section shall be construed to grant any rights to Debtor or to impose any duties on Secured Party that would not have been granted or imposed by this Agreement or by applicable law in the absence of this Section.

7.4. Marshalling. Secured Party shall not be required to marshal any present or future Collateral for, or other assurances of payment of, the Obligations or to resort to such Collateral or other assurances of payment in any particular order, and all of its rights and remedies hereunder and in respect of such Collateral and other assurances of payment shall be cumulative and in addition to all other rights and remedies, however existing or arising. To the extent that it lawfully may, Debtor hereby agrees that it will not invoke any law relating to the marshalling of Collateral which might cause delay in or impede the enforcement of Secured Party's rights and remedies under this Agreement or under any other instrument creating or evidencing any of the Obligations or under which any of the Obligations is outstanding or by which any of the Obligations is secured or payment thereof is otherwise assured, and, to the extent that it lawfully may, Debtor hereby irrevocably waives the benefits of all such laws.

7.5. Application of Collateral Proceeds. Following the occurrence of the Effective Date, the proceeds and/or avails of the Collateral, or any part thereof, and the proceeds and the avails of any remedy hereunder (as well as any other amounts of any kind held by Secured Party at the time of, or received by Secured Party after, the occurrence of an Event of Default) shall be paid to and applied as follows:

(a) First, to the payment of reasonable and documented out-of-pocket costs and expenses, including all amounts expended to preserve the value of the Collateral, of foreclosure or suit, if any, and of such sale and the exercise of any other rights or remedies, and of all proper fees, expenses, liability and advances, including reasonable legal expenses and attorneys' fees, incurred or made hereunder by Secured Party;

(b) Second, to the payment to Secured Party of the amount then owing or unpaid on the Note (to be applied first to accrued interest and fees and second to outstanding principal) and all amounts owed under any of the other Transaction Documents or other documents included within the Obligations; and

(c) Third, to the payment of the surplus, if any, to Debtor, its successors and assigns, or to whosoever may be lawfully entitled to receive the same.

In the absence of final payment and satisfaction in full of all of the Obligations (other than contingent and indemnification obligations), Debtor shall remain liable for any deficiency.

8. Miscellaneous.

8.1. Notices. Any notice required or permitted hereunder shall be given in the manner provided in the subsection titled "Notices" in the Purchase Agreement, the terms of which are incorporated herein by this reference.

8.2. Non-waiver. No failure or delay on Secured Party's part in exercising any right hereunder shall operate as a waiver thereof or of any other right nor shall any single or partial exercise of any such right preclude any other further exercise thereof or of any other right.

8.3. Amendments and Waivers. This Agreement may not be amended or modified, nor may any of its terms be waived, except by written instruments signed by Debtor and Secured Party. Each waiver or consent under any provision hereof shall be effective only in the specific instances for the purpose for which given.

8.4. Assignment. This Agreement shall be binding upon and inure to the benefit of Secured Party and Debtor and their respective successors and assigns; *provided, however*, that Debtor may not sell, assign or delegate rights and obligations hereunder without the prior written consent of Secured Party.

8.5. Cumulative Rights, etc. The rights, powers and remedies of Secured Party under this Agreement shall be in addition to all rights, powers and remedies given to Secured Party by virtue of any applicable law, rule or regulation of any governmental authority, or the Note, all of which rights, powers, and remedies shall be cumulative and may be exercised successively or concurrently without impairing Secured Party's rights hereunder. Debtor waives any right to require Secured Party to proceed against any person or entity or to exhaust any Collateral or to pursue any remedy in Secured Party's power.

8.6. Partial Invalidity. If any part of this Agreement is construed to be in violation of any law, such part shall be modified to achieve the objective of the parties to the fullest extent permitted and the balance of this Agreement shall remain in full force and effect.

8.7. Expenses. Debtor shall pay on demand all reasonable and documented out-of-pocket fees and expenses incurred following the occurrence of the Effective Date, including reasonable and documented attorneys' fees and expenses, incurred by Secured Party in connection with the custody, preservation or sale of, or other realization on, any of the Collateral or the enforcement or attempt to enforce any of the Obligations which are not performed as and when required by this Agreement.

8.8. Entire Agreement. This Agreement, the Note, and the other Transaction Documents, taken together, constitute and contain the entire agreement of Debtor and Secured Party with respect to this particular matter and supersede any and all prior agreements, negotiations, correspondence,

understandings and communications between the parties, whether written or oral, respecting the subject matter hereof.

8.9. Governing Law; Venue. Except as otherwise specifically set forth herein, the parties expressly agree that this Agreement shall be governed solely by the laws of the State of Utah, without giving effect to the principles thereof regarding the conflict of laws; *provided*, *however*, that enforcement of Secured Party's rights and remedies against the Collateral as provided herein will be subject to the UCC. The provisions set forth in the Purchase Agreement to determine the proper venue for any disputes are incorporated herein by this reference.

8.10. Waiver of Jury Trial. EACH PARTY TO THIS AGREEMENT IRREVOCABLY WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO DEMAND THAT ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE RELATIONSHIPS OF THE PARTIES HERETO BE TRIED BY JURY. THIS WAIVER EXTENDS TO ANY AND ALL RIGHTS TO DEMAND A TRIAL BY JURY ARISING UNDER COMMON LAW OR ANY APPLICABLE STATUTE, LAW, RULE OR REGULATION. FURTHER, EACH PARTY HERETO ACKNOWLEDGES THAT IT IS KNOWINGLY AND VOLUNTARILY WAIVING ITS RIGHT TO DEMAND TRIAL BY JURY.

8.11. Purchase Agreement; Arbitration of Disputes. By executing this Agreement, each party agrees to be bound by the terms, conditions and general provisions of the Purchase Agreement and the other Transaction Documents, including without limitation the Arbitration Provisions (as defined in the Purchase Agreement) set forth as an exhibit to the Purchase Agreement.

8.12. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute one instrument. Any electronic copy of a party's executed counterpart will be deemed to be an executed original.

8.13. Further Assurances. Debtor shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as Secured Party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

8.14. Time of the Essence. Time is expressly made of the essence with respect to each and every provision of this Agreement.

[*Remainder of page intentionally left blank; signature page follows*]

IN WITNESS WHEREOF, Secured Party and Debtor have caused this Agreement to be executed as of the day and year first above written.

SECURED PARTY:

CHICAGO VENTURE PARTNERS, L.P.

By: Chicago Venture Management, L.L.C., its General Partner

By: CVM, Inc., its Manager

By: /s/ John M. Fife
John M. Fife, President

DEBTOR:

JAGUAR HEALTH, INC.

By: /s/ Lisa Conte
Name: Lisa Conte
Title: President and CEO

[*Signature Page to Security Agreement*]

SCHEDULE A
TO SECURITY AGREEMENT

All right, title, interest, claims and demands of Debtor in and to all of Debtor's assets owned as of the date hereof and/or acquired by Debtor at any time while the Obligations are still outstanding, including without limitation, the following property:

1. All equity interests in all wholly- or partially-owned subsidiaries of Debtor.

2. All customer accounts, insurance contracts, and clients underlying such insurance contracts.

3. All goods and equipment now owned or hereafter acquired, including, without limitation, all laboratory equipment, computer equipment, office equipment, machinery, fixtures, vehicles, and any interest in any of the foregoing, and all attachments, accessories, accessions, replacements, substitutions, additions, and improvements to any of the foregoing, wherever located;

4. All inventory now owned or hereafter acquired, including, without limitation, all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products including such inventory as is temporarily out of Debtor’s custody or possession or in transit and including any returns upon any accounts or other proceeds, including insurance proceeds, resulting from the sale or disposition of any of the foregoing and any documents of title representing any of the above, and Debtor’s books relating to any of the foregoing;

5. All accounts receivable, contract rights, general intangibles, healthcare insurance receivables, payment intangibles and commercial tort claims, now owned or hereafter acquired, including, without limitation, all patents, patent rights and patent applications (including without limitation, the inventions and improvements described and claimed therein, and (a) all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof, (b) all income, royalties, damages, proceeds and payments now and hereafter due or payable under or with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world), trademarks and service marks (and applications and registrations therefor), inventions, discoveries, copyrights and mask works (and applications and registrations therefor), trade names, trade styles, software and computer programs including source code, trade secrets, methods, published and unpublished works of authorship, processes, know how, drawings, specifications, descriptions, and all memoranda, notes, and records with respect to any research and development, goodwill, license agreements, information, any and all other proprietary rights, franchise agreements, blueprints, drawings, purchase orders, customer lists, route lists, infringements, claims, computer programs, computer disks, computer tapes, literature, reports, catalogs, design rights, income tax refunds, payments of insurance and rights to payment of any kind and whether in tangible or intangible form or contained on magnetic media readable by machine together with all such magnetic media, and all rights corresponding to all of the foregoing throughout the world, now owned and existing or hereafter arising, created or acquired;

6. All now existing and hereafter arising accounts, contract rights, royalties, license rights and all other forms of obligations owing to Debtor arising out of the sale or lease of goods, the licensing of technology or the rendering of services by Debtor (subject, in each case, to the contractual rights of third parties to require funds received by Debtor to be expended in a particular manner), whether or not earned by performance, and any and all credit insurance, guaranties, and other security therefor, as well as all merchandise returned to or reclaimed by Debtor and Debtor’s books relating to any of the foregoing;

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7. All accounts, documents, cash, deposit accounts, letters of credit, letter of credit rights, supporting obligations, certificates of deposit, instruments, chattel paper, electronic chattel paper, tangible chattel paper and investment property, including, without limitation, all securities, whether certificated or uncertificated, security entitlements, securities accounts, commodity contracts and commodity accounts, and all financial assets held in any securities account or otherwise, wherever located, now owned or hereafter acquired and Debtor’s books relating to the foregoing;

8. All other assets, goods and personal property of Debtor, wherever located, whether tangible or intangible, and whether now owned or hereafter acquired; and

9. Any and all claims, rights and interests in any of the above and all substitutions for, additions and accessions to and proceeds and products thereof, including, without limitation, insurance, condemnation, requisition or similar payments and the proceeds thereof.

Notwithstanding the foregoing, the Collateral does not include the following:

a. More than 65% of the presently existing and hereafter arising issued and outstanding shares of capital stock owned by Debtor of any foreign subsidiary, which shares entitle the holder thereof to vote for directors or any other matter;

b. Any lease, license, contract or agreement to which the Debtor is a party, and any of its rights or interest thereunder, if and for so long as the valid grant of a Lien therein to Secured Party is prohibited as a matter of law or under the terms of such lease, license, contract or other agreement (including where the violation of any such prohibition would result in the termination of the applicable lease, license, contract or other agreement), and such prohibition has not been or is not waived or the consent of the other party to such lease, license, contract or other agreement, has not been or is not otherwise obtained; provided, that the exclusions set forth in this subsection (b) shall in no way be construed (A) to apply if any described prohibition is unenforceable under applicable laws (including, without limitation, Sections 9-406, 9-407 or 9-408 of the UCC), (B) to apply after the cessation of any such prohibition, and upon the cessation of such prohibition, such property shall automatically become part of the Collateral, (C) so as to limit, impair or otherwise affect Secured Party’s Lien upon Debtor’s rights or interests in or to monies due or to become due under any described lease, license, contract or other agreement, or (D) to limit, impair or otherwise affect Secured Party’s Lien upon any of Borrower’s rights or interest in and to any proceeds from the sale, license, lease or other disposition of any such lease, license, contract or other agreement

c. Any property, lease, license, general intangible, contract or agreement subject to Permitted Liens securing purchase money indebtedness to the extent that a grant or perfection of a Lien in favor of Secured Party on any such property is prohibited by or results in a breach or termination of, or constitutes a default under, the documentation governing such Liens or the obligations secured by such Liens, to the extent enforceable under applicable law (including, without limitation, Section 9406 of the UCC); or

d. Any deposit account exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Debtor’s employees.

Exhibit 99.1

Jaguar Health Announces Up to $16.2 Million in Equity Financings in Separate Private Placement Investments, Including Investment By Sagard Capital Partners, L.P., to Continue Commercialization of FDA-Approved Mytesi

Largest Investor Locked In for 12 Months

San Francisco, CA (March 26, 2018): Jaguar Health, Inc. (NASDAQ: JAGX) ("Jaguar" or the "Company"), a commercial stage natural-products pharmaceutical company focused on developing novel, sustainably derived gastrointestinal products on a global basis, announced today that it has closed on separate private placements involving an aggregate of approximately $16.2 million in gross proceeds, with the ability to sell up to an additional $2.0 million of the Company's voting common stock ("Common Stock") to certain investors within 20 business days of the closing (the "Closing"). In the larger private placement of Preferred Shares, Sagard Capital Partners, L.P. ("Sagard"), an entity associated with Sagard Holdings ULC ("Sagard Holdings"), was the investor. The other private placement involved the issuance of Common Stock to other investors. The Company plans to utilize the net proceeds from the transaction, and the net proceeds from a concurrent secured note issuance of $750,000 to an existing noteholder, for ongoing commercialization activities for Mytesi® in connection with the product's currently FDA-approved indication, for general corporate purposes, to repay certain aged payables relating to the Company's acquisition of Napo Pharmaceuticals, Inc. ("Napo") in July 2017, and to fully repay certain prior secured and unsecured indebtedness.

Founded in 2005 as an investment platform of Power Corporation of Canada, Sagard Holdings invests in equity and debt capital of middle market companies in the US and Canada, specializing in conducting deep, proprietary analysis and working constructively alongside management teams.

Under the terms of the Series A Preferred Stock Purchase Agreement with Sagard, Sagard invested $9,199,001 in newly authorized shares of Series A Convertible Participating Preferred Shares of Jaguar (the "Preferred Shares"). Each Preferred Share is initially convertible into nine shares of Common Stock at an effective conversion price of $0.185 per share (based on an original price per Preferred Share of $1.665), and, subject to certain limited exceptions, the Preferred Shares cannot be offered, pledged or sold by Sagard for one year from the date of issuance.

The remaining approximately $5.0 million of the investment in Common Stock was purchased by other investors at a price of $0.17 per share (the "Concurrent Investment"). Additionally, the Company may issue up to an additional $2.0 million of Common Stock on terms consistent with the Concurrent Investment within 20 business days of the Closing.

"We're very pleased to have closed on these separate investments, which was led by Sagard, involved other leading investors, and followed a collaborative and in-depth due diligence process. Our goal was to identify long-term investors focused on the recognition of value that we believe can be achieved at Jaguar from sales of Mytesi®. Sagard conducted extensive due diligence to understand the near-term commercial prospects of Mytesi®, and the Sagard investment is locked up for one year," Lisa Conte, Jaguar's president and CEO, stated. "Our goal is to use proceeds from this financing to continue to commercialize Mytesi® in the U.S. for its FDA-approved indication for the symptomatic relief of noninfectious diarrhea in adults with HIV/AIDS on antiretroviral therapy. Our business development activities will continue to evaluate the opportunity to develop and commercialize targeted Mytesi® follow-on indications for cancer therapy-related diarrhea, irritable bowel syndrome, inflammatory bowel disease, supportive care, orphan pediatric congenital diarrhea indications, and a second-generation anti-secretory agent for use in cholera patients. for patient populations globally."

Under the terms of the Certificate of Designation establishing the Preferred Shares (the "Certificate"), upon a change of control, liquidation, dissolution or winding up of the Company as determined under the Certificate (collectively, a "Change of Control"), the holders of Preferred Shares will in general be entitled to receive in preference to holders of Common Stock and all other equity securities of the Company, a one-time cash payment in an amount equal to $1.665 per share (or the equivalent of $0.185 per share on an as-converted to common stock basis), the original cost per share of the Preferred Shares (as adjusted for stock splits, reverse splits, stock dividends, reclassifications, recapitalizations and/or other similar events), plus the participation right described below. Thereafter, the holders of Common Stock will in general be entitled to receive an amount per share of Common Stock (in stock or cash as determined under the Certificate) equal to $0.185 (as adjusted for stock splits, reverse splits, stock dividends, reclassifications, recapitalizations and/or other similar events). Thereafter, all of the remaining assets of the Company and/or proceeds from a Change of Control will in general be divided pro rata among the holders of Preferred Shares and the shares of Common Stock, on an as converted basis (all as more fully specified and calculated under the Certificate). These and other terms of the Preferred Shares, including but not limited to the right to elect up to two directors of the Company and certain contingent redemption rights upon specified events are as more fully described in the current report on Form 8-K and accompanying exhibits to be filed with the U.S. Securities and Exchange Commission.

Concurrently with the consummation of the private placement investment by Sagard, the Company entered into a management services agreement with Sagard Capital Partners Management Corp. ("SCPM"), an affiliate of Sagard, pursuant to which SCPM will provide certain consulting and management advisory services to the Company over a three-year period for an annual fee of $450,000.

As previously announced, Jaguar, through Napo, now controls commercial rights for Mytesi® for all indications, territories and patient populations globally, and crofelemer (Mytesi®) manufacturing is being conducted at a new, multimillion-dollar commercial manufacturing facility that has been FDA-inspected and approved. Additionally, several of the drug product candidates in Jaguar's pipeline are backed by compelling Phase 2 clinical trial data.

About Jaguar Health, Inc.

Jaguar Health, Inc. is a commercial stage natural-products pharmaceuticals company focused on developing novel, sustainably derived gastrointestinal products on a global basis. Our wholly- owned subsidiary, Napo Pharmaceuticals, Inc., focuses on developing and commercializing proprietary human gastrointestinal pharmaceuticals for the global marketplace from plants used traditionally in rainforest areas. Our Mytesi® (crofelemer) product is approved by the U.S. FDA for the symptomatic relief of noninfectious diarrhea in adults with HIV/AIDS on antiretroviral therapy.

For more information about Jaguar, please visit jaguar.health. For more information about Napo, visit napopharma.com.

About Mytesi®

Mytesi® (crofelemer) is an antidiarrheal indicated for the symptomatic relief of noninfectious diarrhea in adult patients with HIV/AIDS on antiretroviral therapy (ART). Mytesi® is not indicated for the treatment of infectious diarrhea. Rule out infectious etiologies of diarrhea before starting Mytesi®. If infectious etiologies are not considered, there is a risk that patients with infectious etiologies will not receive the appropriate therapy and their disease may worsen. In clinical studies, the most common adverse reactions occurring at a rate greater than placebo were upper respiratory tract infection (5.7%), bronchitis (3.9%), cough (3.5%), flatulence (3.1%), and increased bilirubin (3.1%).

More information and complete Prescribing Information are available at Mytesi.com. Crofelemer, the active ingredient in Mytesi®, is a botanical (plant-based) drug extracted and purified from the red bark sap of the medicinal *Croton lechleri* tree in the Amazon rainforest. Napo has established a sustainable harvesting program for crofelemer to ensure a high degree of quality and ecological integrity.

Forward-Looking Statements

Certain statements in this press release constitute "forward-looking statements." These include statements regarding the Company's plans to utilize the net proceeds from the transaction for ongoing commercialization activities for Mytesi® for the product's currently FDA-approved indication, repayment of aged payables and debt and for general corporate purposes. In some cases, you can identify forward-looking statements by terms such as "may," "will," "should," "expect," "plan," "aim," "anticipate," "could," "intend," "target," "project," "contemplate," "believe," "estimate," "predict," "potential" or "continue" or the negative of these terms or other similar expressions. The forward-looking statements in this release are only predictions. Jaguar has based these forward-looking statements largely on its current expectations and projections about future events. These forward-looking statements speak only as of the date of this release and are subject to a number of risks, uncertainties and assumptions, some of which cannot be predicted or quantified and some of which are beyond Jaguar's control. Except as required by applicable law, Jaguar does not plan to publicly update or revise any forward-looking statements contained herein, whether as a result of any new information, future events, changed circumstances or otherwise.

Source: Jaguar Health, Inc.

Contact:
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Jaguar-JAGX