

SECURITIES AND EXCHANGE COMMISSION

FORM 8-K

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FILER

TENAX THERAPEUTICS, INC.

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): January 15, 2021

Tenax Therapeutics, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation)

001-34600
(Commission File Number)

26-2593535
(IRS Employer Identification No.)

ONE Copley Parkway, Suite 490
Morrisville, NC 27560
(Address of principal executive offices) (Zip Code)

919-855-2100
(Registrant's telephone number, including area code)

N/A
(Former name or former address, if changed since last report)

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:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.0001 par value per share	TENX	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR 230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR 240.12b-2).

Emerging growth company

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.

Item 1.01. Entry into a Material Definitive Agreement.

The applicable information set forth in Item 2.01 of this Current Report on Form 8-K is incorporated by reference in this Item 1.01.

Item 2.01. Completion of Acquisition or Disposition of Assets.

On January 15, 2021, Tenax Therapeutics, Inc. (the “Company”), Life Newco II, Inc., a Delaware corporation and a wholly-owned, direct subsidiary of the Company (“Life Newco”), PHPrecisionMed Inc., a Delaware corporation (“PHPM,”) and Dr. Stuart Rich, solely in his capacity as holders’ representative (in such capacity, the “Representative”), entered into an Agreement and Plan of Merger, dated January 15, 2021 (the “Merger Agreement”), pursuant to which, subject to the satisfaction or waiver of the conditions set forth in the Merger Agreement, the Company would acquire 100% of the equity of PHPM. Under the terms of the Merger Agreement, Life Newco would merge with and into PHPM, with PHPM surviving as a wholly-owned subsidiary of the Company (the “Merger”). On January 15, 2021, the Company completed the acquisition contemplated by the Merger Agreement (the “Acquisition”).

As consideration for the Merger, the stockholders of PHPM received (i) 1,892,905 shares of the Company’s common stock (“Common Stock”), and (ii) 10,232 shares of the Company’s Series B convertible preferred stock, which are convertible into up to an aggregate of 10,232,000 shares of Common Stock (“Preferred Stock”) (collectively, the “Merger Consideration”). The issuance of 1,212,492 shares of Common Stock issuable upon conversion of the Preferred Stock, representing approximately 10% of the Merger Consideration, will be delayed as security for closing adjustments and post-closing indemnification obligations of PHPM and the stockholders of PHPM. Each share of Preferred Stock will automatically convert into (i) 881.5 shares of Common Stock following receipt of the approval of the stockholders of the Company for the Conversion (as defined herein), and (ii) 118.5 shares of Common Stock 24 months after the date of issuance of the Preferred Stock, subject to reduction for indemnification claims. The number of shares of Common Stock into which the Preferred Stock converts is subject to adjustment in the case of stock splits, stock dividends, combinations of shares and similar recapitalization transactions. The Preferred Stock does not carry dividends or a liquidation preference. The Preferred Stock carries voting rights aggregating 4.99% of the Company’s Common Stock voting power immediately prior to the closing of the Merger. The rights, preferences and privileges of the Preferred Stock are set forth in the Certificate of Designation of Series B Convertible Preferred Stock that the Company filed with the Secretary of State of the State of Delaware on January 15, 2021 (the “Certificate of Designation”).

Pursuant to the Merger Agreement, the Company must, no later than July 31, 2021, take all action necessary to call, convene and hold a meeting of the Company’s stockholders to vote upon the conversion of the Preferred Stock pursuant to the Certificate of Designation (the “Conversion”). If stockholder approval is not obtained at such meeting, the Company must call a meeting every 90 days thereafter to seek stockholder approval for the Conversion until the earlier of the date stockholder approval for the Conversion is obtained or the Preferred Stock is no longer outstanding.

The terms of the Merger Agreement also require the board of directors of the Company (the “Board”) to, subject to the Board’s fiduciary duties under applicable law, (i) recommend to the Company’s stockholders that they approve the Conversion at any meeting of the Company’s stockholders called for the approval of the Conversion, and (ii) use reasonable best efforts to solicit from the Company’s stockholders, the affirmative vote of the holders of shares representing a majority of the shares of the Company’s capital stock voting in person or by proxy at any such meeting. A vote on the Conversion is expected to take place at the Company’s next annual meeting of stockholders. In addition, (i) at the Company’s first regularly scheduled Board meeting following the closing of the Merger, the Board must appoint one director designated by the Representative to serve on the Board, and (ii) as promptly as practicable after the Company has obtained stockholder approval for the Conversion, the Board must appoint two additional directors designated by the Representative to serve on the Board. Dr. Stuart Rich, the co-founder and Chief Executive Officer, and a stockholder, of PHPM, is expected to be appointed to the Board at the next regularly scheduled Board meeting, while two other designees of the Representative will be appointed to the Board following receipt of stockholder approval for the transaction.

In connection with the closing of the Merger, Dr. Stuart Rich was also appointed Chief Medical Officer of the Company. In addition, pursuant to the Merger Agreement, certain of PHPM's stockholders, including Dr. Rich, entered into restrictive covenant agreements that contain provisions restricting such stockholders from competing with the Company or soliciting employees or customers for five years from the closing of the Merger.

The foregoing summaries of the Merger Agreement and the Preferred Stock do not purport to be complete and are subject to, and qualified in their entirety by, the full text of the Merger Agreement and the Certificate of Designation, respectively, copies of which are attached to this Current Report on Form 8-K as Exhibit 2.1 and Exhibit 4.1, respectively, and are incorporated herein by reference.

The Merger Agreement is incorporated by reference to provide investors and security holders with information regarding its terms. It is not intended to provide any other factual information about the Company, PHPM or their respective subsidiaries and affiliates. The Merger Agreement contains representations and warranties by each of the parties to the Merger Agreement, which were made only for purposes of that agreement and as of specified dates. The representations, warranties and covenants in the Merger Agreement were made solely for the benefit of the parties to the Merger Agreement, are subject to limitations agreed upon by the contracting parties, including being qualified by confidential disclosures made for the purposes of allocating contractual risk between the parties to the Merger Agreement instead of establishing these matters as facts, and may be subject to standards of materiality applicable to the contracting parties that may differ from those applicable to investors. Investors should not rely on the representations, warranties and covenants or any descriptions thereof as characterizations of the actual state of facts or condition of the Company, PHPM or any of their respective subsidiaries or affiliates.

Item 3.02. Unregistered Sales of Equity Securities.

The applicable information set forth in Item 2.01 of this Current Report on Form 8-K is incorporated by reference in this Item 3.02.

The Common Stock and Preferred Stock issued as Merger Consideration were issued and sold without registration under the Securities Act of 1933, as amended (the "Securities Act") in reliance on the exemptions provided by Section 4(a)(2) of the Securities Act and/or Rule 506 of Regulation D promulgated thereunder in that (i) the securities were issued to accredited investors or not more than 35 unaccredited investors, (ii) the disclosure requirements of Rule 502(b) of Regulation D were met, and (iii) the offer and sale of the shares were not accomplished by means of any general solicitation or general advertising.

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

On January 15, 2021, the Board appointed Dr. Stuart Rich as the Company's Chief Medical Officer.

Dr. Rich, age 71, joined the Company from PHPM, where he was a co-founder and held the positions of Chief Executive Officer and Director from October 2018 until January 2021. Prior to PHPM, Dr. Rich served as the Chief Medical Officer (part-time) of United Therapeutics from October 2003 until December 2004. Dr. Rich currently serves as Professor of Medicine at Northwestern University Feinberg School of Medicine and as Director of the Pulmonary Vascular Disease Program at the Bluhm Cardiovascular Institute, a U.K. based charity, and of the Cardiovascular Medical and Research Foundation, a U.S. based charity. Prior to Northwestern University, Dr. Rich was the Professor of Medicine and Chief of the Section of Cardiology at the University of Illinois College of Medicine in Chicago from July 1980 until July 1996, was Professor of Medicine at the Rush Heart Institute of the Rush University School of Medicine from July 1996 until September 2004, and was Professor of Medicine at the Section of Cardiology of the University of Chicago Pritzker School of Medicine from September 2004 until July 2015. Dr. Rich received his B.S. in Biology at the University of Illinois and his M.D. at Loyola University Stritch School of Medicine, and he completed his residency in medicine at the Washington University of St. Louis and his fellowship in cardiology at the University of Chicago.

In connection with his appointment, the Company entered into an employment agreement with Dr. Rich, effective January 15, 2021 (the "Employment Agreement"). Under the Employment Agreement, Dr. Rich will receive an annual base salary of \$300,000, and will also receive participation in medical insurance, dental insurance, and other benefit plans on the same basis as the Company's other officers. Under the Employment Agreement, Dr. Rich is eligible for an annual target cash bonus of 40% of his base salary, based on 100% achievement of annual goals (with no cap on the bonus for greater than 100% achievement of goals). Pursuant to Employment Agreement, Dr. Rich received as an inducement award a one-time non-statutory stock option grant of 250,000 shares of Common Stock. The option award will vest as follows: 25% upon initiation of a Phase 3 trial (the "Trial"); 25% upon database lock of the Trial; 25% upon acceptance for review of an Investigational New Drug Application; and 25% upon approval. The options have a 10-year term and an exercise price of \$1.78 per share, the January 15, 2021 closing price of the Company's common stock.

The Employment Agreement is effective for a one-year term, and automatically renews for additional one-year terms, unless the Employment Agreement is terminated in advance of renewal or either party gives notice at least 90 days prior to the end of the then current term of an intention not to renew. If Dr. Rich is terminated without cause, if he terminates his employment for good reason, or if the Company elects not to renew the Employment Agreement, Dr. Rich would be entitled to receive (i) one-year of his then current base salary, (ii) a pro-rated amount of the annual bonus that he would have received had 100% of goals been achieved, (iii) acceleration of vesting of all outstanding equity-based compensation awards held by Dr. Rich, and (iii) one-year of COBRA reimbursements or benefits payments, as applicable. Dr. Rich's entitlement to these payments is conditioned upon execution of a release of claims.

For purposes of the Employment Agreement: (i) "cause" includes (a) a willful material breach of the Employment Agreement by Dr. Rich, (b) material misappropriation of Company property, (c) material failure to comply with Company policies, (d) abuse of illegal drugs or abuse of alcohol in a manner that materially interferes with the performance of the officer's duties, (e) dishonest or illegal action that is materially detrimental to the Company, and (f) failure to disclose material conflicts of interest, and (ii) "good reason" includes (a) a material reduction in base salary, (b) a material reduction of the officer's authority, duties or responsibility, or (c) a material breach of the Employment Agreement by the Company.

The Employment Agreement with Dr. Rich is filed as Exhibit 10.1 to this Current Report on Form 8-K. The foregoing summary of the terms of the Employment Agreement is subject to, and qualified in its entirety by, such documents, which are incorporated herein by reference. Other than pursuant to the Merger Agreement and the Employment Agreement, the Company is not aware of any transactions involving Dr. Rich that would be required to be disclosed pursuant to Item 404(a) of Regulation S-K.

Item 7.01. Regulation FD Disclosure.

On January 19, 2021, the Company issued a press release regarding the consummation of the Acquisition and Dr. Rich's appointment as the Company's Chief Medical Officer. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated by reference herein.

The information set forth under this Item 7.01, including Exhibit 99.1, shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or incorporated by reference in any filing under the Securities Act or the Exchange Act, except as shall be expressly set forth by specific reference in such a filing.

Item 9.01. Financial Statements and Exhibits.

- (a) Financial statements of business acquired.

The financial statements required to be filed as part of this Current Report on Form 8-K will be filed by amendment to this Current Report as soon as practicable but not later than March 31, 2021.

- (b) Pro forma financial information.

The pro forma financial information required to be filed as part of this Current Report on Form 8-K will be filed by amendment to this Current Report as soon as practicable but not later than March 31, 2021.

- (d) Exhibits.

Exhibit No.	Description
2.1	Agreement and Plan of Merger among PHPPrecisionMed Inc., Tenax Therapeutics, Inc., Life Newco II, Inc., and Dr. Stuart Rich dated January 15, 2021.
4.1	Certificate of Designation of Series B Convertible Preferred Stock.
10.1	Employment Agreement with Dr. Stuart Rich dated January 15, 2021.
99.1	Press Release dated January 19, 2021.

SIGNATURES

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

Date: January 19, 2021

Tenax Therapeutics, Inc.

By: /s/ Michael B. Jebsen

Michael B. Jebsen
President and Chief Financial Officer

AGREEMENT AND PLAN OF MERGER

This Agreement and Plan of Merger (this “**Agreement**”), dated as of January 15, 2021 is entered into among PHPPrecisionMed Inc., a Delaware corporation (the “**Company**”), Tenax Therapeutics, Inc., a Delaware corporation (“**Buyer**”), Life Newco II, Inc., a Delaware corporation and a wholly-owned subsidiary of the Buyer (“**Merger Sub**”), and Dr. Stuart Rich as the Stockholder Representative (as defined below).

RECITALS

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

WHEREAS, the Board of Directors of the Company (the “**Company Board**”) has unanimously: (a) determined that it is in the best interests of the Company and the holders of shares of the Company's common stock (the “**Company Common Stock**”), and declared it advisable, to enter into this Agreement with Buyer and Merger Sub; (b) approved the execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated hereby, including the Merger; and (c) resolved, subject to the terms and conditions set forth in this Agreement, to recommend adoption of this Agreement by the Stockholders; in each case, in accordance with the Delaware General Corporation Law (the “**DGCL**”);

WHEREAS, the respective Boards of Directors of Buyer (the “**Buyer Board**”) and Merger Sub (the “**Merger Sub Board**”) have each unanimously: (a) determined that it is in the best interests of Buyer or Merger Sub, as applicable, and their respective stockholders, and declared it advisable, to enter into this Agreement; and (b) approved the execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated hereby, including the Merger; in each case, in accordance with the DGCL;

WHEREAS, the Buyer Board has approved the issuance of shares of capital stock of the Buyer in connection with the Merger on the terms and subject to the conditions set forth in this Agreement (the “**Buyer Stock Issuance**”);

WHEREAS, for U.S. federal income Tax purposes, the parties intend that the Merger qualify as a "reorganization" within the meaning of Section 368(a) of the Code, and that this Agreement be, and is hereby, adopted as a plan of reorganization within the meaning of Section 368(a) of the Code; and

WHEREAS, the parties desire to make certain representations, warranties, covenants, and agreements in connection with the Merger and the other transactions contemplated by this Agreement and also to prescribe certain terms and conditions to the Merger.

NOW, THEREFORE, in consideration of the foregoing and of the representations, warranties, covenants, and agreements contained in this Agreement, the parties, intending to be legally bound, agree as follows:

ARTICLE I DEFINITIONS

The capitalized terms used but not otherwise defined in this Agreement have the meanings specified or referred to in this II:

“**Accredited Investor**” means an “accredited investor” as defined and determined pursuant to Rule 501(a) of the Securities Act.

“**Action**” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

“**Affiliate**” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Ancillary Documents**” means the Employment Agreement, Restrictive Covenant Agreements, and the Certificate of Designation.

“**Business Day**” means any day except Saturday, Sunday or any other day on which commercial banks located in North Carolina are authorized or required by Law to be closed for business.

“**Buyer’s Accountants**” means Cherry Bekaert LLP.

“**CERCLA**” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.

“**Certificate of Designation**” means that certain Certificate of Designation of Preferences, Rights and Limitations of Series B Convertible Preferred Stock, dated as of the date hereof.

“**Closing Indebtedness Certificate**” means a certificate executed by the President of the Company certifying on behalf of the Company an itemized list of all outstanding Indebtedness as of the open of business on the Closing Date and the Person to whom such outstanding Indebtedness is owed and an aggregate total of such outstanding Indebtedness.

“**Closing Transaction Expenses Certificate**” means a certificate executed by the President of the Company, certifying the amount of Transaction Expenses remaining unpaid as of the open of business on the Closing Date (including an itemized list of each such unpaid Transaction Expense with a description of the nature of such expense and the Person to whom such expense is owed).

“**Closing Working Capital**” means: (a) the Current Assets of the Company, less (b) the Current Liabilities of the Company, determined as of the open of business on the Closing Date.

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

“**Company Intellectual Property**” means all Intellectual Property that is owned by the Company.

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

“**Company IP Registrations**” means all Company Intellectual Property that is subject to any issuance, registration or application by or with any Governmental Authority or authorized private registrar in any jurisdiction, including issued Patents, registered Trademarks, domain names and Copyrights, and pending applications for any of the foregoing.

“Company IT Systems” means all software, computer hardware, servers, networks, platforms, peripherals, and similar or related items of automated, computerized, or other information technology (IT) networks and systems (including telecommunications networks and systems for voice, data and video) owned, leased, licensed, or used (including through cloud-based or other third-party service providers) by the Company.

“Contracts” means all contracts, leases, deeds, mortgages, licenses, instruments, notes, commitments, undertakings, indentures, joint ventures and all other agreements, commitments and legally binding arrangements, whether written or oral.

“Current Assets” means cash and cash equivalents, accounts receivable, inventory and prepaid expenses, but excluding (a) the portion of any prepaid expense of which Buyer will not receive the benefit following the Closing, (b) deferred Tax assets, and (c) receivables from any of the Company’s Affiliates, directors, employees, officers or Stockholders and any of their respective Affiliates, determined in accordance with GAAP applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Annual Financial Statements for the most recent fiscal year end as if such accounts were being prepared and audited as of a fiscal year end.

“Current Liabilities” means accounts payable, accrued Taxes and accrued expenses, but excluding payables to any of the Company’s Affiliates, directors, employees, officers or Stockholders and any of their respective Affiliates, deferred Tax liabilities, Transaction Expenses and the current portion of any Indebtedness of the Company, determined in accordance with GAAP applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Annual Financial Statements for the most recent fiscal year end as if such accounts were being prepared and audited as of a fiscal year end.

“Disclosure Schedules” means the Disclosure Schedules delivered by the Company and Buyer concurrently with the execution and delivery of this Agreement.

“Dollars or \$” means the lawful currency of the United States.

“Employment Agreement” means that certain Executive Employment Agreement dated as of the date hereof between Buyer and Dr. Stuart Rich.

“Encumbrance” means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

“Environmental Claim” means any Action, Governmental Order, lien, fine, penalty, or, as to each, any settlement or judgment arising therefrom, by or from any Person alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (a) the presence, Release of, or exposure to, any Hazardous Materials; or (b) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

“Environmental Law” means any applicable Law, and any Governmental Order or binding agreement with any Governmental Authority: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, human health or safety, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials. The term “Environmental Law” includes, without limitation, the following (including their implementing regulations and any state analogs): the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et seq.; and the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq.

“Environmental Notice” means any written directive, notice of violation or infraction, or notice respecting any Environmental Claim relating to actual or alleged non-compliance with any Environmental Law or any term or condition of any Environmental Permit.

“Environmental Permit” means any Permit, letter, clearance, consent, waiver, closure, exemption, decision or other action required under or issued, granted, given, authorized by or made pursuant to Environmental Law.

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

“ERISA Affiliate” means all employers (whether or not incorporated) that would be treated together with the Company or any of its Affiliates as a “single employer” within the meaning of Section 414 of the Code or Section 4001 of ERISA.

“Exchange Act” means the Securities and Exchange Act of 1934, as amended.

“GAAP” means United States generally accepted accounting principles in effect from time to time.

“Governmental Authority” means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

“Governmental Order” means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

“Hazardous Materials” means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or manmade, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation, and polychlorinated biphenyls.

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

“**Indebtedness**” means, without duplication and with respect to the Company, all (a) indebtedness for borrowed money; (b) obligations for the deferred purchase price of property or services (other than Current Liabilities taken into account in the calculation of Closing Working Capital), (c) long or short-term obligations evidenced by notes, bonds, debentures or other similar instruments; (d) obligations under any interest rate, currency swap or other hedging agreement or arrangement; (e) capital lease obligations; (f) reimbursement obligations under any letter of credit, banker’s acceptance or similar credit transactions; (g) guarantees made by the Company on behalf of any third party in respect of obligations of the kind referred to in the foregoing clauses (a) through (f); and (h) any unpaid interest, prepayment penalties, premiums, costs and fees that would arise or become due as a result of the prepayment of any of the obligations referred to in the foregoing clauses (a) through (g).

“**Intellectual Property**” means any and all rights in, arising out of, or associated with any of the following in any jurisdiction throughout the world: (a) issued patents and patent applications (whether provisional or non-provisional), including divisionals, continuations, continuations-in-part, substitutions, reissues, reexaminations, extensions, or restorations of any of the foregoing, and other Governmental Authority-issued indicia of invention ownership (including certificates of invention, petty patents, and patent utility models) (“**Patents**”); (b) trademarks, service marks, brands, certification marks, logos, trade dress, trade names, and other similar indicia of source or origin, together with the goodwill connected with the use of and symbolized by, and all registrations, applications for registration, and renewals of, any of the foregoing (“**Trademarks**”); (c) copyrights and works of authorship, whether or not copyrightable, and all registrations, applications for registration, and renewals of any of the foregoing (“**Copyrights**”); (d) internet domain names, whether or not Trademarks, all associated web addresses, URLs, websites and web pages, and all content and data thereon or relating thereto, whether or not Copyrights; (e) industrial designs, and all Patents, registrations, applications for registration, and renewals thereof; (f) trade secrets, know-how, inventions (whether or not patentable), discoveries, improvements, technology, business and technical information, databases, data compilations and collections, tools, methods, processes, techniques, and other confidential and proprietary information and all rights therein (“**Trade Secrets**”); (g) computer programs, operating systems, applications, firmware, and other code, including all source code, object code, application programming interfaces, data files, databases, protocols, specifications, and other documentation thereof; and (h) all other intellectual or industrial property and proprietary rights.

“**Joint Confirmation**” means a written certificate, executed and delivered by each of Buyer and the Stockholder Representative under the Certificate of Designation.

“**Knowledge of Company or Company’s Knowledge**” or any other similar knowledge qualification, means the actual or constructive knowledge of the Company or any director or officer of the Company, after due inquiry.

“**Law**” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

“**Licensed Intellectual Property**” means all Intellectual Property in which the Company holds any rights or interests granted by other Persons, including Stockholders.

“**Losses**” means losses, damages, liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers; *provided, however*, that “**Losses**” shall not include punitive damages, except to the extent actually awarded to a Governmental Authority or other third party.

“Material Adverse Effect” means any event, occurrence, fact, condition or change that is, or could reasonably be expected to become, individually or in the aggregate, materially adverse to (a) the business, results of operations, condition (financial or otherwise) or assets of the Company, or (b) the ability of the Company to consummate the transactions contemplated hereby on a timely basis; *provided, however*, that “Material Adverse Effect” shall not include any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to: (i) general economic or political conditions; (ii) conditions generally affecting the industries in which the Company operates; (iii) any changes in financial or securities markets in general; (iv) acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof; (v) any action required or permitted by this Agreement, except pursuant to Section 3.04 and 15.08; (vi) any changes in applicable Laws or accounting rules, including GAAP; or (vii) the public announcement, pendency or completion of the transactions contemplated by this Agreement; *provided further, however*, that any event, occurrence, fact, condition or change referred to in clauses (i) through (iv) immediately above shall be taken into account in determining whether a Material Adverse Effect has occurred or could reasonably be expected to occur to the extent that such event, occurrence, fact, condition or change has a disproportionate effect on the Company compared to other participants in the industries in which the Company conducts its businesses.

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

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

“Post-Closing Tax Period” means any taxable period beginning after the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period beginning after the Closing Date.

“Post-Closing Taxes” means Taxes of the Company for any Post-Closing Tax Period.

“Pre-Closing Tax Period” means any taxable period ending on or before the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period ending on and including the Closing Date.

“Pre-Closing Taxes” means Taxes of the Company for any Pre-Closing Tax Period.

“Real Property” means the real property owned, leased or subleased by the Company, together with all buildings, structures and facilities located thereon.

“Release” means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate into or through the environment (including, without limitation, ambient air (indoor or outdoor), surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture).

“Representative” means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

“SEC” means the Securities and Exchange Commission.

“**Stockholders**” means the holders of Company Common Stock as of immediately prior to the Closing.

“**Stockholders’ Accountants**” means Warady & Davis LLP.

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

“**Taxes**” means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

“**TENX Common Stock**” means Buyer’s common stock, par value \$0.0001 per share.

“**TENX Preferred Stock**” means Buyer’s Series B Convertible Preferred Stock, par value \$0.0001 per share.

“**TENX Stock Consideration**” means, collectively, all the shares of TENX Common Stock and TENX Preferred Stock comprising the Purchase Price.

“**Transaction Expenses**” means all fees and expenses incurred by the Company at or prior to the Closing in connection with the preparation, negotiation and execution of this Agreement and the Ancillary Documents, and the performance and consummation of the transactions contemplated hereby and thereby.

“**WARN Act**” means the federal Worker Adjustment and Retraining Notification Act of 1988, and similar state, local and foreign Laws related to plant closings, relocations, mass layoffs and employment losses.

ARTICLE II THE MERGER

Section 2.01 The Merger. On the terms and subject to the conditions set forth in this Agreement, and in accordance with the DGCL, at the Effective Time: (a) Merger Sub will merge with and into the Company (the “**Merger**”); (b) the separate corporate existence of Merger Sub will cease; and (c) the Company will continue its corporate existence under the DGCL as the surviving corporation in the Merger and as a subsidiary of Buyer following the Merger (sometimes referred to herein as the “**Surviving Corporation**”).

Section 2.02 Closing. Upon the terms and subject to the conditions set forth herein, the closing of the Merger (the “**Closing**”) will take place at 10:00 a.m., New York City time, as soon as practicable (and, in any event, within three Business Days after the satisfaction or, to the extent permitted hereunder, waiver of all conditions to the Merger set forth in Article VII (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or, to the extent permitted hereunder, waiver of all such conditions)), unless this Agreement has been terminated pursuant to its terms or unless another time or date is agreed to in writing by the parties hereto. The Closing shall take place remotely by exchange of documents and signatures (or their electronic counterparts), unless another place is agreed to in writing by the parties hereto. The actual date of the Closing is hereinafter referred to as the “**Closing Date**.”

Section 2.03 Effective Time. Subject to the provisions of this Agreement, at the Closing, the Company, Buyer, and Merger Sub will cause a certificate of merger (the “**Certificate of Merger**”) to be executed, acknowledged, and filed with the Secretary of State of the State of Delaware in accordance with the relevant provisions of the DGCL and shall make all other filings or recordings required under the DGCL. The Merger will become effective at such time as the Certificate of Merger has been duly filed with the Secretary of State of the State of Delaware or at such later date or time as may be agreed by the Company and Buyer in writing and specified in the Certificate of Merger in accordance with the DGCL (the effective time of the Merger being hereinafter referred to as the “**Effective Time**”).

Section 2.04 Effects of the Merger. The Merger shall have the effects set forth in this Agreement and in the applicable provisions of the DGCL. Without limiting the generality of the foregoing, and subject thereto, from and after the Effective Time, all property, rights, privileges, immunities, powers, franchises, licenses, and authority of the Company and Merger Sub shall vest in the Surviving Corporation, and all debts, liabilities, obligations, restrictions, and duties of each of the Company and Merger Sub shall become the debts, liabilities, obligations, restrictions, and duties of the Surviving Corporation.

Section 2.05 Certificate of Incorporation; By-Laws. At the Effective Time: (a) the certificate of incorporation of the Surviving Corporation shall be amended and restated so as to read in its entirety as set forth in **Exhibit A**, and, as so amended and restated, shall be the certificate of incorporation of the Surviving Corporation until thereafter amended in accordance with the terms thereof or as provided by applicable Law; and (b) the by-laws of Merger Sub as in effect immediately prior to the Effective Time shall be the by-laws of the Surviving Corporation, except that references to Merger Sub’s name shall be replaced with references to the Surviving Corporation’s name, until thereafter amended in accordance with the terms thereof, the certificate of incorporation of the Surviving Corporation, or as provided by applicable Law.

Section 2.06 Directors and Officers. The directors and officers of Merger Sub, in each case, immediately prior to the Effective Time shall, from and after the Effective Time, be the directors and officers, respectively, of the Surviving Corporation until their successors have been duly elected or appointed and qualified or until their earlier death, resignation, or removal in accordance with the certificate of incorporation and by-laws of the Surviving Corporation.

Section 2.07 Effect of the Merger on Capital Stock. At the Effective Time, as a result of the Merger and without any action on the part of Buyer, Merger Sub, or the Company or the holder of any capital stock of Buyer, Merger Sub, or the Company:

(a) Cancellation of Certain Company Common Stock. Each share of Company Common Stock that is owned by the Company (as treasury stock or otherwise) or any of its direct or indirect wholly-owned subsidiaries as of immediately prior to the Effective Time (the “**Cancelled Shares**”) will automatically be cancelled and retired and will cease to exist, and no consideration will be delivered in exchange therefor.

(b) Conversion of Certain Company Common Stock. Each share of Company Common Stock issued and outstanding immediately prior to the Effective Time (other than Cancelled Shares) will be converted into the right to receive: (i) its pro rata portion of One Million, Eight Hundred Ninety-Two Thousand, Nine Hundred Five (1,892,905) shares of TENX Common Stock, (ii) its pro rata portion of Ten Thousand, Two Hundred Thirty-Two (10,232) shares of TENX Preferred Stock (clause (i) and (ii) together, the “**Merger Consideration**” and all Merger Consideration issued in the Merger, the “**Purchase Price**”), and (iii) any cash in lieu of fractional shares of TENX Stock Consideration payable pursuant to Section 2.07(e). The issuance and sale of the TENX Stock Consideration shall not be registered under the Securities Act of 1933, as amended (the “**Securities Act**”), or any state securities laws, and shall instead be issued pursuant to private placement exemptions thereunder. All TENX Stock Consideration will be subject to restrictions on transfer as further described herein, and will be notated with appropriate restrictive legends. The payment of any TENX Stock Consideration to any Stockholder hereunder shall be expressly conditioned upon such Stockholder providing written evidence reasonably satisfactory to Buyer that such Stockholder is an Accredited Investor (including by delivery of an Accredited Investor Questionnaire in the form attached hereto as **Exhibit B** (each, an “**Accredited Investor Questionnaire**”) completed in a manner satisfactory to Buyer).

(c) Cancellation of Shares. At the Effective Time, all shares of Company Common Stock will no longer be outstanding and all shares of Company Common Stock will be cancelled and retired and will cease to exist, and each holder of: (i) a certificate formerly representing any shares of Company Common Stock (a “Certificate”) will cease to have any rights with respect thereto, except the right to receive (A) the Merger Consideration and (B) any cash in lieu of fractional shares of TENX Stock Consideration payable pursuant to Section 2.07(e).

(d) Conversion of Merger Sub Capital Stock. Each share of common stock of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and become one newly issued, fully paid, and non-assessable share of common stock, par value \$0.001 per share, of the Surviving Corporation with the same rights, powers, and privileges as the shares so converted and shall constitute the only outstanding shares of capital stock of the Surviving Corporation. From and after the Effective Time, all certificates representing shares of Merger Sub Common Stock shall be deemed for all purposes to represent the number of shares of common stock of the Surviving Corporation into which they were converted in accordance with the immediately preceding sentence.

(e) Fractional Shares. No certificates or scrip representing fractional shares of TENX Stock Consideration shall be issued upon the conversion of Company Common Stock pursuant to Section 2.07(b). Notwithstanding any other provision of this Agreement, each holder of shares of Company Common Stock converted pursuant to the Merger who would otherwise have been entitled to receive a fraction of a share of TENX Stock Consideration (after taking into account all shares of Company Common Stock exchanged by such holder) shall in lieu thereof receive a whole number of shares of TENX Stock Consideration that is rounded to the nearest whole share of the applicable class of TENX Stock Consideration; provided, however, that such a holder who would otherwise be entitled to receive a fraction equal to exactly 0.5 shares of TENX Stock Consideration shall in lieu thereof receive a whole number of shares of TENX Stock Consideration that is rounded down to the nearest whole share of the applicable class of TENX Stock Consideration.

Section 2.08 Exchange Procedures. Prior to the Effective Time, all Certificates evidencing all outstanding shares of Company Common Stock, as set forth on **Exhibit C**, shall have been deposited with Buyer together with a letter of transmittal specifying that the delivery of such Certificates shall be effected, and risk of loss and title shall pass, automatically at the Effective Time. Upon payment of the Merger Consideration pursuant to the provisions of this Article II, each Certificate so delivered shall immediately be cancelled. All Merger Consideration paid upon the delivery of Certificates in accordance with the terms hereof shall be deemed to have been paid in full satisfaction of all rights pertaining to the shares of Company Common Stock formerly represented by such Certificate, and from and after the Effective Time, there shall be no further registration of transfers of shares of Company Common Stock on the stock transfer books of the Surviving Corporation.

Section 2.09 Withholding Rights. Each of the Buyer, Merger Sub, and the Surviving Corporation shall be entitled to deduct and withhold from the consideration otherwise payable to any Person pursuant to this Article II such amounts as may be required to be deducted and withheld with respect to the making of such payment under any Tax Laws. To the extent that amounts are so deducted and withheld by the Buyer, Merger Sub, or the Surviving Corporation, as the case may be, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which the Buyer, Merger Sub, or the Surviving Corporation, as the case may be, made such deduction and withholding.

Section 2.10 Tax Treatment. For U.S. federal income Tax purposes, it is intended that the Merger qualify as a “reorganization” within the meaning of Section 368(a) of the Code, and the regulations promulgated thereunder, that this Agreement will constitute a “plan of reorganization” for purposes of Sections 354 and 361 of the Code.

Section 2.11 Purchase Price Adjustment.

(a) Closing Working Capital Estimate.

(i) At least three Business Days before the Closing, Buyer and the Company shall have mutually agreed upon in good faith a targeted amount of Closing Working Capital (the “**Target Closing Working Capital**”), which statement shall contain an estimated balance sheet of the Company as of the Closing Date (without giving effect to the transactions contemplated herein) and a calculation of Target Closing Working Capital (the “**Target Closing Working Capital Statement**”).

(b) Post-Closing Adjustment.

(i) Within 30 days after the Closing Date, Buyer shall prepare and deliver to the Stockholder Representative a statement setting forth its calculation of Closing Working Capital, which statement shall contain an audited balance sheet of the Company as of the Closing Date (without giving effect to the transactions contemplated herein), and a calculation of Closing Working Capital (the “**Closing Working Capital Statement**”).

(ii) The post-closing adjustment shall equal the amount, if any, by which the Target Closing Working Capital exceeds the Closing Working Capital (the “**Post-Closing Adjustment**”). For the avoidance of doubt, there shall be no Post-Closing Adjustment in the event that Closing Working Capital equals or exceeds the Target Closing Working Capital.

(c) Examination and Review.

(i) Examination. After receipt of the Closing Working Capital Statement, the Stockholder Representative shall have 15 days (the “**Review Period**”) to review the Closing Working Capital Statement. During the Review Period, the Stockholder Representative and the Stockholders’ Accountants shall have full access to the books and records of the Surviving Corporation, the personnel of, and work papers prepared by, Buyer and/or Buyer’s Accountants to the extent that they relate to the Closing Working Capital Statement and to such historical financial information (to the extent in Buyer’s possession) relating to the Closing Working Capital Statement as the Stockholder Representative may reasonably request for the purpose of reviewing the Closing Working Capital Statement and to prepare a Statement of Objections (defined below), *provided, that* such access shall be in a manner that does not interfere with the normal business operations of Buyer or the Company.

(ii) Objection. On or prior to the last day of the Review Period, the Stockholder Representative may object to the Closing Working Capital Statement by delivering to Buyer a written statement setting forth its objections in reasonable detail, indicating each disputed item or amount and the basis for its disagreement therewith (the “**Statement of Objections**”). If the Stockholder Representative fails to deliver the Statement of Objections before the expiration of the Review Period, the Closing Working Capital Statement and the Post-Closing Adjustment, as the case may be, reflected in the Closing Working Capital Statement shall be deemed to have been accepted by the Stockholder Representative. If the Stockholder Representative delivers the Statement of Objections before the expiration of the Review Period, Buyer and the Stockholder Representative shall negotiate in good faith to resolve such objections within 15 days after the delivery of the Statement of Objections (the “**Resolution Period**”), and, if the same are so resolved within the Resolution Period, the Post-Closing Adjustment and the Closing Working Capital Statement with such changes as may have been previously agreed in writing by Buyer and the Stockholder Representative, shall be final and binding.

(iii) Resolution of Disputes. If the Stockholder Representative and Buyer fail to reach an agreement with respect to all of the matters set forth in the Statement of Objections before expiration of the Resolution Period, then any amounts remaining in dispute (“**Disputed Amounts**” and any amounts not so disputed, the “**Undisputed Amounts**”) shall be submitted for resolution to a mutually agreed office of an impartial nationally recognized firm of independent certified public accountants other than Stockholders’ Accountants or Buyer’s Accountants (the “**Independent Accountant**”) who, acting as experts and not arbitrators, shall resolve the Disputed Amounts only and make any adjustments to the Post-Closing Adjustment, as the case may be, and the Closing Working Capital Statement. The parties hereto agree that all adjustments shall be made without regard to materiality. The Independent Accountant shall only decide the specific items under dispute by the parties and their decision for each Disputed Amount must be within the range of values assigned to each such item in the Closing Working Capital Statement and the Statement of Objections, respectively.

(iv) Fees of the Independent Accountant. The fees and expenses of the Independent Accountant shall be paid by the Stockholder Representative, on the one hand, and by Buyer, on the other hand, based upon the percentage that the amount actually contested but not awarded to the Stockholder Representative or Buyer, respectively, bears to the aggregate amount actually contested by the Stockholder Representative and Buyer.

(v) Determination by Independent Accountant. The Independent Accountant shall make a determination as soon as practicable within 30 days (or such other time as the parties hereto shall agree in writing) after their engagement, and their resolution of the Disputed Amounts and their adjustments to the Closing Working Capital Statement and/or the Post-Closing Adjustment shall be conclusive and binding upon the parties hereto.

(d) Payments of Post-Closing Adjustment. Except as otherwise provided herein, any payment of the Post-Closing Adjustment shall be made by delivering a Joint Confirmation as defined and described in the Certificate of Designation with respect to the amount of such Post-Closing Adjustment (x) within five Business Days of acceptance of the applicable Closing Working Capital Statement or (y) if there are Disputed Amounts, then within five Business Days of the resolution described in clause (v) above.

(e) Adjustments for Tax Purposes. Any payments made pursuant to Section 2.11 shall be treated as an adjustment to the Purchase Price by the parties for Tax purposes, unless otherwise required by Law.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as set forth in the correspondingly numbered Section of the Disclosure Schedules, the Company hereby represents and warrants to Merger Sub and Buyer that the statements contained in this III are true and correct as of the date hereof.

Section 3.01 Organization, Authority and Qualification of the Company. The Company is a corporation duly organized, validly existing and in good standing under the Laws of the state of Delaware and has full corporate power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its business as it has been and is currently conducted. Section 3.01 of the Disclosure Schedules sets forth each jurisdiction in which the Company is licensed or qualified to do business, and the Company is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its business as currently conducted makes such licensing or qualification necessary except where the lack of such licensing or qualification would not have a Material Adverse Effect. All corporate actions taken by the Company in connection with this Agreement and the Ancillary Documents will be duly authorized on or prior to the Closing.

Section 3.02 Capitalization.

(a) The authorized capital stock of the Company consists of 5,000 shares of common stock, \$0.001 par value per share (“**Common Stock**”), of which 3,000 shares are issued and outstanding and constitute the “**Shares**”. Each Stockholder owns the number of Shares set forth opposite such Stockholder’s name on **Exhibit C**. All of the Shares have been duly authorized, are validly issued, fully paid and non-assessable, and are owned of record and beneficially by the Stockholders as set forth on **Exhibit C**, free and clear of all Encumbrances.

(b) All of the Shares were issued in compliance with applicable Laws. None of the Shares were issued in violation of any agreement, arrangement or commitment to which the Company is a party or is subject to or in violation of any preemptive or similar rights of any Person.

(c) There are no outstanding or authorized options, warrants, convertible securities or other rights, agreements, arrangements or commitments of any character relating to the capital stock of the Company or obligating the Company to issue or sell any shares of capital stock of, or any other interest in, the Company. The Company does not have outstanding or authorized any stock appreciation, phantom stock, profit participation or similar rights. There are no voting trusts, stockholder agreements, proxies or other agreements or understandings in effect with respect to the voting or transfer of any of the Shares.

Section 3.03 No Subsidiaries. The Company does not own, or have any interest in any shares or have an ownership interest in any other Person.

Section 3.04 No Conflicts; Consents. The execution, delivery and performance by the Company of this Agreement and the Ancillary Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, by-laws or other organizational documents of the Company; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to the Company; (c) require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel any Contract to which the Company is a party or by which the Company is bound or to which any of their respective properties and assets are subject (including any Material Contract) or any Permit affecting the properties, assets or business of the Company; or (d) result in the creation or imposition of any Encumbrance other than Permitted Encumbrances on any properties or assets of the Company. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to the Company in connection with the execution and delivery of this Agreement and the Ancillary Document and the consummation of the transactions contemplated hereby and thereby, except for such filings as may be required under the HSR Act.

Section 3.05 Financial Statements. Complete copies of the Company’s unaudited financial statements consisting of the balance sheet of the Company as at December 31 of the year ended 2020 and the related statements of income and retained earnings, stockholders’ equity and cash flow for the years then ended (the “**Annual Financial Statements**”), and unaudited financial statements consisting of the balance sheet of the Company as at September 30, 2020 and the related statements of income and retained earnings, stockholders’ equity and cash flow for the nine-month period then ended (the “**Interim Financial Statements**” and together with the Annual Financial Statements, the “**Financial Statements**”) have been delivered to Buyer. The Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the period involved, subject, in the case of the Interim Financial Statements, to normal and recurring year-end adjustments (the effect of which will not be materially adverse) and the absence of notes (that, if presented, would not differ materially from those presented in the Annual Financial Statements). The Financial Statements are based on the books and records of the Company, and fairly present the financial condition of the Company as of the respective dates they were prepared and the results of the operations of the Company for the periods indicated. The balance sheet of the Company as of December 31, 2020 is referred to herein as the “**Balance Sheet**” and the date thereof as the “**Balance Sheet Date**.” The Company maintains a standard system of accounting established and administered in accordance with GAAP.

Section 3.06 Undisclosed Liabilities. The Company has no liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise (“**Liabilities**”), except (a) those which are adequately reflected or reserved against in the Balance Sheet as of the Balance Sheet Date, and (b) those which have been incurred in the ordinary course of business consistent with past practice since the Balance Sheet Date and which are not, individually or in the aggregate, material in amount.

Section 3.07 Absence of Certain Changes, Events and Conditions. Since the Balance Sheet Date, and other than in the ordinary course of business consistent with past practice, there has not been, with respect to the Company, any:

- (a) event, occurrence or development that has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;
- (b) amendment of the charter, by-laws or other organizational documents of the Company;
- (c) split, combination or reclassification of any shares of its capital stock;
- (d) issuance, sale or other disposition of any of its capital stock, or grant of any options, warrants or other rights to purchase or obtain (including upon conversion, exchange or exercise) any of its capital stock;
- (e) declaration or payment of any dividends or distributions on or in respect of any of its capital stock or redemption, purchase or acquisition of its capital stock;
- (f) material change in any method of accounting or accounting practice of the Company, except as required by GAAP or as disclosed in the notes to the Financial Statements;
- (g) material change in the Company’s cash management practices and its policies, practices and procedures with respect to collection of accounts receivable, establishment of reserves for uncollectible accounts, accrual of accounts receivable, inventory control, prepayment of expenses, payment of trade accounts payable, accrual of other expenses, deferral of revenue and acceptance of customer deposits;
- (h) entry into any Contract that would constitute a Material Contract;
- (i) incurrence, assumption or guarantee of any Indebtedness for borrowed money except unsecured current obligations and Liabilities incurred in the ordinary course of business consistent with past practice;
- (j) transfer, assignment, sale or other disposition of any of the assets shown or reflected in the Balance Sheet or cancellation of any debts or entitlements;
- (k) transfer or assignment of or grant of any license or sublicense under or with respect to any Company Intellectual Property or Company IP Agreements;
- (l) abandonment or lapse of or failure to maintain in full force and effect any Company IP Registration, or failure to take or maintain reasonable measures to protect the confidentiality of any Trade Secrets included in the Company Intellectual Property;

- (m) material damage, destruction or loss (whether or not covered by insurance) to its property;
- (n) any capital investment in, or any loan to, any other Person;
- (o) acceleration, termination, material modification to or cancellation of any material Contract (including, but not limited to, any Material Contract) to which the Company is a party or by which it is bound;
- (p) any material capital expenditures;
- (q) imposition of any Encumbrance upon any of the Company properties, capital stock or assets, tangible or intangible;
- (r) (i) grant of any bonuses, whether monetary or otherwise, or increase in any wages, salary, severance, pension or other compensation or benefits in respect of its current or former employees, officers, directors, independent contractors or consultants, other than as provided for in any written agreements or required by applicable Law, (ii) change in the terms of employment for any employee or any termination of any employees for which the aggregate costs and expenses exceed \$25,000, or (iii) action to accelerate the vesting or payment of any compensation or benefit for any current or former employee, officer, director, independent contractor or consultant;
- (s) hiring or promoting any person as or to (as the case may be) an officer or hiring or promoting any employee below officer except to fill a vacancy in the ordinary course of business;
- (t) adoption, modification or termination of any: (i) employment, severance, retention or other agreement with any current or former employee, officer, director, independent contractor or consultant, (ii) Benefit Plan or (iii) collective bargaining or other agreement with a Union, in each case whether written or oral;
- (u) any loan to (or forgiveness of any loan to), or entry into any other transaction with, any of its Stockholders or current or former directors, officers and employees;
- (v) entry into a new line of business or abandonment or discontinuance of existing lines of business;
- (w) adoption of any plan of merger, consolidation, reorganization, liquidation or dissolution or filing of a petition in bankruptcy under any provisions of federal or state bankruptcy Law or consent to the filing of any bankruptcy petition against it under any similar Law;
- (x) purchase, lease or other acquisition of the right to own, use or lease any property or assets for an amount in excess of \$25,000, individually (in the case of a lease, per annum) or \$50,000 in the aggregate (in the case of a lease, for the entire term of the lease, not including any option term), except for purchases of inventory or supplies in the ordinary course of business consistent with past practice;
- (y) acquisition by merger or consolidation with, or by purchase of a substantial portion of the assets or stock of, or by any other manner, any business or any Person or any division thereof;
- (z) action by the Company to make, change or rescind any Tax election, amend any Tax Return or take any position on any Tax Return, take any action, omit to take any action or enter into any other transaction that would have the effect of increasing the Tax liability or reducing any Tax asset of Buyer in respect of any Post-Closing Tax Period; or

(aa) any Contract to do any of the foregoing, or any action or omission that would result in any of the foregoing.

Section 3.08 Material Contracts.

(a) Section 3.08 of the Disclosure Schedules lists each of the following Contracts of the Company (such Contracts, together with all Contracts concerning the occupancy, management or operation of any Real Property (including without limitation, brokerage contracts) listed or otherwise disclosed in Section 3.09(b) of the Disclosure Schedules and all Company IP Agreements, being “**Material Contracts**”):

(i) each Contract of the Company involving aggregate consideration in excess of \$25,000 and which, in each case, cannot be cancelled by the Company without penalty or without more than 60 days’ notice;

(ii) all Contracts that require the Company to purchase its total requirements of any product or service from a third party or that contain “take or pay” provisions;

(iii) all Contracts that provide for the indemnification by the Company of any Person or the assumption of any Tax, environmental or other Liability of any Person;

(iv) all Contracts that relate to the acquisition or disposition of any business, a material amount of stock or assets of any other Person or any real property (whether by merger, sale of stock, sale of assets or otherwise);

(v) all broker, distributor, dealer, manufacturer’s representative, franchise, agency, sales promotion, market research, marketing consulting and advertising Contracts to which the Company is a party;

(vi) all employment agreements and Contracts with independent contractors or consultants (or similar arrangements) to which the Company is a party and which are not cancellable without material penalty or without more than 90 days’ notice;

(vii) except for Contracts relating to trade receivables, all Contracts relating to Indebtedness (including, without limitation, guarantees) of the Company;

(viii) all Contracts with any Governmental Authority to which the Company is a party (“**Government Contracts**”);

(ix) all Contracts that limit or purport to limit the ability of the Company to compete in any line of business or with any Person or in any geographic area or during any period of time;

(x) any Contracts to which the Company is a party that provide for any joint venture, partnership or similar arrangement by the Company;

(xi) all Contracts between or among the Company on the one hand and Stockholders or any Affiliate of Stockholders (other than the Company) on the other hand;

(xii) all collective bargaining agreements or Contracts with any Union to which the Company is a party; and

(xiii) any other Contract that is material to the Company and not previously disclosed pursuant to this 13.08.

(b) Each Material Contract is valid and binding on the Company in accordance with its terms and is in full force and effect. None of the Company or, to the Company's Knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under), or has provided or received any notice of any intention to terminate, any Material Contract. No event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any Material Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder. Complete and correct copies of each Material Contract (including all modifications, amendments and supplements thereto and waivers thereunder) have been made available to Buyer.

Section 3.09 Title to Assets; Real Property.

(a) The Company has good and valid (and, in the case of owned Real Property, good and marketable fee simple) title to, or a valid leasehold interest in, all Real Property and personal property and other assets reflected in the Annual Financial Statements or acquired after the Balance Sheet Date, other than properties and assets sold or otherwise disposed of in the ordinary course of business consistent with past practice since the Balance Sheet Date. All such properties and assets (including leasehold interests) are free and clear of Encumbrances except for the following (collectively referred to as "**Permitted Encumbrances**"):

- (i) liens for Taxes not yet due and payable;
- (ii) mechanics, carriers', workmen's, repairmen's or other like liens arising or incurred in the ordinary course of business consistent with past practice or amounts that are not delinquent and which are not, individually or in the aggregate, material to the business of the Company;
- (iii) easements, rights of way, zoning ordinances and other similar encumbrances affecting Real Property which are not, individually or in the aggregate, material to the business of the Company; or
- (iv) other than with respect to owned Real Property, liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business consistent with past practice which are not, individually or in the aggregate, material to the business of the Company.

(b) Section 3.09(b) of the Disclosure Schedules lists (i) the street address of each parcel of Real Property; (ii) if such property is leased or subleased by the Company, the landlord under the lease, the rental amount currently being paid, and the expiration of the term of such lease or sublease for each leased or subleased property; and (iii) the current use of such property. With respect to owned Real Property, the Company has delivered or made available to Buyer true, complete and correct copies of the deeds and other instruments (as recorded) by which the Company acquired such Real Property, and copies of all title insurance policies, opinions, abstracts and surveys in the possession of the Company and relating to the Real Property. With respect to leased Real Property, the Company has delivered or made available to Buyer true, complete and correct copies of any leases affecting the Real Property. The Company is not a sublessor or grantor under any sublease or other instrument granting to any other Person any right to the possession, lease, occupancy or enjoyment of any leased Real Property. The use and operation of the Real Property in the conduct of the Company's business do not violate in any material respect any Law, covenant, condition, restriction, easement, license, permit or agreement. No material improvements constituting a part of the Real Property encroach on real property owned or leased by a Person other than the Company. There are no Actions pending nor, to the Company's Knowledge, threatened against or affecting the Real Property or any portion thereof or interest therein in the nature or in lieu of condemnation or eminent domain proceedings.

Section 3.10 Condition and Sufficiency of Assets. The buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property of the Company are structurally sound, are in good operating condition and repair, and are adequate for the uses to which they are being put, and none of such buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost. The buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property currently owned or leased by the Company, together with all other properties and assets of the Company, are sufficient for the continued conduct of the Company's business after the Closing in substantially the same manner as conducted prior to the Closing and constitute all of the rights, property and assets necessary to conduct the business of the Company as currently conducted.

Section 3.11 Intellectual Property.

(a) Section 3.11 of the Disclosure Schedules contains a correct, current, and complete list of: (i) all Company IP Registrations, specifying as to each, as applicable: the title, mark, or design; the record owner and inventor(s), if any; the jurisdiction by or in which it has been issued, registered, or filed; the Patent, registration, or application serial number; the issue, registration, or filing date; and the current status and (ii) all unregistered Trademarks included in the Company Intellectual Property; and (iii) all proprietary software of the Company; and (iv) all other Company Intellectual Property used or held for use in the Company's business as currently conducted and as proposed to be conducted.

(b) Section 3.11 of the Disclosure Schedules contains a correct, current, and complete list of all Company IP Agreements, specifying for each the date, title, and parties thereto, and separately identifying the Company IP Agreements: (i) under which the Company is a licensor or otherwise grants to any Person any right or interest relating to any Company Intellectual Property; (ii) under which the Company is a licensee or otherwise granted any right or interest relating to the Intellectual Property of any Person; and (iii) which otherwise relate to the Company's ownership or use of Intellectual Property, in each case identifying the Intellectual Property covered by such Company IP Agreement. The Company has provided Buyer with true and complete copies (or in the case of any oral agreements, a complete and correct written description) of all Company IP Agreements, including all modifications, amendments and supplements thereto and waivers thereunder. Each Company IP Agreement is valid and binding on the Company in accordance with its terms and is in full force and effect. Neither the Company nor any other party thereto is, or is alleged to be, in breach of or default under, or has provided or received any notice of breach of, default under, or intention to terminate (including by non-renewal), any Company IP Agreement.

(c) The Company is the sole and exclusive legal and beneficial, and with respect to the Company IP Registrations, record, owner of all right, title, and interest in and to the Company Intellectual Property, and to the Knowledge of the Company has the valid and enforceable right to use all other Intellectual Property used or held for use in or necessary for the conduct of the Company's business as currently conducted and as proposed to be conducted, in each case, free and clear of Encumbrances other than Permitted Encumbrances. The Company has entered into binding, valid and enforceable, written Contracts with each current and former employee and independent contractor who is or was involved in or has contributed to the invention, creation, or development of any Intellectual Property during the course of employment or engagement with the Company whereby such employee or independent contractor (i) acknowledges the Company's exclusive ownership of all Intellectual Property invented, created, or developed by such employee or independent contractor within the scope of his or her employment or engagement with the Company; (ii) grants to the Company a present, irrevocable assignment of any ownership interest such employee or independent contractor may have in or to such Intellectual Property, to the extent such Intellectual Property does not constitute a "work made for hire" under applicable Law; and (iii) irrevocably waives any right or interest, including any moral rights, regarding any such Intellectual Property, to the extent permitted by applicable Law. The Company has provided Buyer with true and complete copies of all such Contracts. All assignments and other instruments necessary to establish, record, and perfect the Company's ownership interest in the Company IP Registrations have been validly executed, delivered, and filed with the relevant Governmental Authorities and authorized registrars.

(d) Neither the execution, delivery or performance of this Agreement, nor the consummation of the transactions contemplated hereunder, will result in the loss or impairment of, or require the consent of any other Person in respect of, the Company's right to own or use any Company Intellectual Property or Licensed Intellectual Property.

(e) All of the Company Intellectual Property and Licensed Intellectual Property are valid and enforceable, and all Company IP Registrations are subsisting and in full force and effect. The Company has taken all reasonable and necessary steps to maintain and enforce the Company Intellectual Property and Licensed Intellectual Property and to preserve the confidentiality of all Trade Secrets included in the Company Intellectual Property, including by requiring all Persons having access thereto to execute binding, written non-disclosure agreements. All required filings and fees related to the Company IP Registrations have been timely submitted with and paid to the relevant Governmental Authorities and authorized registrars. The Company has provided Buyer with true and complete copies of all file histories, documents, certificates, office actions, correspondence, assignments, and other instruments relating to the Company IP Registrations.

(f) The conduct of the Company's business as currently and formerly conducted and as proposed to be conducted, including the use of the Company Intellectual Property and Licensed Intellectual Property in connection therewith, and the products, processes and services of the Company have not to the Knowledge of the Company infringed, misappropriated or otherwise violated, and will not to the Knowledge of the Company infringe, misappropriate or otherwise violate, the Intellectual Property or other rights of any Person. To the Knowledge of the Company, no Person has infringed, misappropriated or otherwise violated any Company Intellectual Property or Licensed Intellectual Property.

(g) There are no Actions (including any opposition, cancellation, revocation, review, or other proceeding), whether settled, pending, or threatened (including in the form of offers to obtain a license): (i) alleging any infringement, misappropriation, or other violation by the Company of the Intellectual Property of any Person; (ii) challenging the validity, enforceability, registrability, patentability, or ownership of any Company Intellectual Property or Licensed Intellectual Property or the Company's right, title, or interest in or to any Company Intellectual Property or Licensed Intellectual Property; or (iii) by the Company or by the owner of any Licensed Intellectual Property alleging any infringement, misappropriation, or other violation by any Person of the Company Intellectual Property or such Licensed Intellectual Property. The Company is not aware of any facts or circumstances that could reasonably be expected to give rise to any such Action. The Company is not subject to any outstanding or prospective Governmental Order (including any motion or petition therefor) that does or could reasonably be expected to restrict or impair the use of any Company Intellectual Property or Licensed Intellectual Property.

(h) All Company IT Systems are in good working condition and are sufficient for the operation of the Company's business as currently conducted and as proposed to be conducted. In the past five years, there has been no malfunction, failure, continued substandard performance, denial-of-service, or other cyber incident, including any cyberattack, or other impairment of the Company IT Systems that has resulted or is reasonably likely to result in disruption or damage to the business of the Company and that has not been remedied. The Company has taken all commercially reasonable steps to safeguard the confidentiality, availability, security, and integrity of the Company IT Systems, including implementing and maintaining appropriate backup, disaster recovery, and software and hardware support arrangements.

(i) The Company has complied with all applicable Laws and all internal or publicly posted policies, notices, and statements concerning the collection, use, processing, storage, transfer, and security of personal information in the conduct of the Company's business. In the past five years, the Company has not (i) experienced any actual, alleged, or suspected data breach or other security incident involving personal information in its possession or control or (ii) been subject to or received any written notice of any audit, investigation, complaint, or other Action by any Governmental Authority or other Person concerning the Company's collection, use, processing, storage, transfer, or protection of personal information or actual, alleged, or suspected violation of any applicable Law concerning privacy, data security, or data breach notification, and to the Company's Knowledge, there are no facts or circumstances that could reasonably be expected to give rise to any such Action.

Section 3.12 Customers and Suppliers.

(a) Section 3.12(a) of the Disclosure Schedules sets forth (i) each customer who has paid aggregate consideration to the Company for goods or services rendered in an amount greater than or equal to \$25,000 for each of the two most recent fiscal years (collectively, the "**Material Customers**"); and (ii) the amount of consideration paid by each Material Customer during such periods. The Company has not received any notice, and has no reason to believe, that any of its Material Customers has ceased, or intends to cease after the Closing, to use its goods or services or to otherwise terminate or materially reduce its relationship with the Company.

(b) Section 3.12(b) of the Disclosure Schedules sets forth (i) each supplier to whom the Company has paid consideration for goods or services rendered in an amount greater than or equal to \$25,000 for each of the two most recent fiscal years (collectively, the "**Material Suppliers**"); and (ii) the amount of purchases from each Material Supplier during such periods. The Company has not received any notice, and has no reason to believe, that any of its Material Suppliers has ceased, or intends to cease, to supply goods or services to the Company or to otherwise terminate or materially reduce its relationship with the Company.

Section 3.13 Insurance. Section 3.13 of the Disclosure Schedules sets forth a true and complete list of all current policies or binders of fire, liability, product liability, umbrella liability, real and personal property, workers' compensation, vehicular, directors' and officers' liability, fiduciary liability and other casualty and property insurance maintained by the Company or its Affiliates and relating to the assets, business, operations, employees, officers and directors of the Company (collectively, the "**Insurance Policies**") and true and complete copies of such Insurance Policies have been made available to Buyer. Such Insurance Policies are in full force and effect and shall remain in full force and effect following the consummation of the transactions contemplated by this Agreement. Neither the Company nor any of its Affiliates has received any written notice of cancellation of, premium increase with respect to, or alteration of coverage under, any of such Insurance Policies. All premiums due on such Insurance Policies have either been paid or, if due and payable prior to Closing, will be paid prior to Closing in accordance with the payment terms of each Insurance Policy. The Insurance Policies do not provide for any retrospective premium adjustment or other experience-based liability on the part of the Company. All such Insurance Policies (a) are valid and binding in accordance with their terms; (b) are provided by carriers who are financially solvent; and (c) have not been subject to any lapse in coverage. There are no claims related to the business of the Company pending under any such Insurance Policies as to which coverage has been questioned, denied or disputed or in respect of which there is an outstanding reservation of rights. None of Company or any of its Affiliates is in default under, or has otherwise failed to comply with, in any material respect, any provision contained in any such Insurance Policy. The Insurance Policies are of the type and in the amounts customarily carried by Persons conducting a business similar to the Company and are sufficient for compliance with all applicable Laws and Contracts to which the Company is a party or by which it is bound.

Section 3.14 Legal Proceedings; Governmental Orders.

(a) There are no Actions pending or, to the Company's Knowledge, threatened (a) against or by the Company or any of its Affiliates affecting any of its properties or assets; or (b) against or by the Company or any of its Affiliates that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

(b) There are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against or affecting the Company or any of its properties or assets.

Section 3.15 Compliance With Laws; Permits.

(a) The Company has complied, and is now complying, with all Laws applicable to it or its business, properties or assets.

(b) All Permits required for the Company to conduct its business have been obtained by it and are valid and in full force and effect. All fees and charges with respect to such Permits as of the date hereof have been paid in full. Section 3.15(b) of the Disclosure Schedules lists all current Permits issued to the Company, including the names of the Permits and their respective dates of issuance and expiration. No event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any Permit set forth in Section 3.15(b) of the Disclosure Schedules.

Section 3.16 Environmental Matters.

(a) The Company is currently and has been in compliance with all Environmental Laws and has not received from any Person any: (i) Environmental Notice or Environmental Claim; or (ii) written request for information pursuant to Environmental Law, which, in each case, either remains pending or unresolved, or is the source of ongoing obligations or requirements as of the Closing Date.

(b) The Company has obtained and is in material compliance with all Environmental Permits (each of which is disclosed in Section 3.16(b) of the Disclosure Schedules) necessary for the ownership, lease, operation or use of the business or assets of the Company and all such Environmental Permits are in full force and effect and shall be maintained in full force and effect by the Company through the Closing Date in accordance with Environmental Law, and the Company is not aware of any condition, event or circumstance that might prevent or impede, after the Closing Date, the ownership, lease, operation or use of the business or assets of the Company as currently carried out. With respect to any such Environmental Permits, the Company has undertaken, or will undertake prior to the Closing Date, all measures necessary to facilitate transferability of the same, and the Company is not aware of any condition, event or circumstance that might prevent or impede the transferability of the same, nor have they received any Environmental Notice or written communication regarding any material adverse change in the status or terms and conditions of the same.

(c) No real property currently or formerly owned, operated or leased by the Company is listed on, or has been proposed for listing on, the National Priorities List (or CERCLIS) under CERCLA, or any similar state list.

(d) There has been no Release of Hazardous Materials in contravention of Environmental Law with respect to the business or assets of the Company or any real property currently or formerly owned, operated or leased by the Company, and the Company has not received an Environmental Notice that any real property currently or formerly owned, operated or leased in connection with the business of the Company (including soils, groundwater, surface water, buildings and other structure located on any such real property) has been contaminated with any Hazardous Material which could reasonably be expected to result in an Environmental Claim against, or a violation of Environmental Law or term of any Environmental Permit by, the Company.

(e) Section 3.16(e) of the Disclosure Schedules contains a complete and accurate list of all active or abandoned aboveground or underground storage tanks owned or operated by the Company.

(f) Section 3.16(f) of the Disclosure Schedules contains a complete and accurate list of all off-site Hazardous Materials treatment, storage, or disposal facilities or locations used by the Company and any predecessors as to which the Company may retain liability, and none of these facilities or locations has been placed or proposed for placement on the National Priorities List (or CERCLIS) under CERCLA, or any similar state list, and the Company has not received any Environmental Notice regarding potential liabilities with respect to such off-site Hazardous Materials treatment, storage, or disposal facilities or locations used by the Company.

(g) The Company has not retained or assumed, by contract or operation of Law, any liabilities or obligations of third parties under Environmental Law.

(h) The Company has provided or otherwise made available to Buyer and listed in Section 3.16(h) of the Disclosure Schedules: (i) any and all environmental reports, studies, audits, records, sampling data, site assessments, risk assessments, economic models and other similar documents with respect to the business or assets of the Company or any currently or formerly owned, operated or leased real property which are in the possession or control of the Company related to compliance with Environmental Laws, Environmental Claims or an Environmental Notice or the Release of Hazardous Materials; and (ii) any and all material documents concerning planned or anticipated capital expenditures required to reduce, offset, limit or otherwise control pollution and/or emissions, manage waste or otherwise ensure compliance with current or future Environmental Laws (including, without limitation, costs of remediation, pollution control equipment and operational changes).

(i) The Company is not aware of or reasonably anticipates, as of the Closing Date, any condition, event or circumstance concerning the Release or regulation of Hazardous Materials that might, after the Closing Date, prevent, impede or materially increase the costs associated with the ownership, lease, operation, performance or use of the business or assets of the Company as currently carried out.

Section 3.17 Employee Benefit Matters.

(a) Section 3.17(a) of the Disclosure Schedules contains a true and complete list of each pension, benefit, retirement, compensation, employment, consulting, profit-sharing, deferred compensation, incentive, bonus, performance award, phantom equity, stock or stock-based, change in control, retention, severance, vacation, paid time off (PTO), medical, vision, dental, disability, welfare, Code Section 125 cafeteria, fringe benefit and other similar agreement, plan, policy, program or arrangement (and any amendments thereto), in each case whether or not reduced to writing and whether funded or unfunded, including each “employee benefit plan” within the meaning of Section 3(3) of ERISA, whether or not tax-qualified and whether or not subject to ERISA, which is or has been maintained, sponsored, contributed to, or required to be contributed to by the Company for the benefit of any current or former employee, officer, director, retiree, independent contractor or consultant of the Company or any spouse or dependent of such individual, or under which the Company or any of its ERISA Affiliates has or may have any Liability, or with respect to which Buyer or any of its Affiliates would reasonably be expected to have any Liability, contingent or otherwise (as listed on Section 3.17(a) of the Disclosure Schedules, each, a “**Benefit Plan**”).

(b) With respect to each Benefit Plan, the Company has made available to Buyer accurate, current and complete copies of each of the following: (i) where the Benefit Plan has been reduced to writing, the plan document together with all amendments; (ii) where the Benefit Plan has not been reduced to writing, a written summary of all material plan terms; (iii) where applicable, copies of any trust agreements or other funding arrangements, custodial agreements, insurance policies and contracts, administration agreements and similar agreements, and investment management or investment advisory agreements, now in effect or required in the future as a result of the transactions contemplated by this Agreement or otherwise; (iv) copies of any summary plan descriptions, summaries of material modifications, summaries of benefits and coverage, COBRA communications, employee handbooks and any other written communications (or a description of any oral communications) relating to any Benefit Plan; (v) in the case of any Benefit Plan that is intended to be qualified under Section 401(a) of the Code, a copy of the most recent determination, opinion or advisory letter from the Internal Revenue Service and any legal opinions issued thereafter with respect to such Benefit Plan's continued qualification; (vi) in the case of any Benefit Plan for which a Form 5500 must be filed, a copy of the two most recently filed Forms 5500, with all corresponding schedules and financial statements attached; (vii) actuarial valuations and reports related to any Benefit Plans with respect to the two most recently completed plan years; (viii) the most recent nondiscrimination tests performed under the Code; and (ix) copies of material notices, letters or other correspondence from the Internal Revenue Service, Department of Labor, Department of Health and Human Services, Pension Benefit Guaranty Corporation or other Governmental Authority relating to the Benefit Plan.

(c) Each Benefit Plan and any related trust (other than any multiemployer plan within the meaning of Section 3(37) of ERISA (each a "**Multiemployer Plan**")) has been established, administered and maintained in accordance with its terms and in compliance with all applicable Laws (including ERISA, the Code and any applicable local Laws). Each Benefit Plan that is intended to be qualified within the meaning of Section 401(a) of the Code (a "**Qualified Benefit Plan**") is so qualified and received a favorable and current determination letter from the Internal Revenue Service with respect to the most recent five year filing cycle, or with respect to a prototype or volume submitter plan, can rely on an opinion letter from the Internal Revenue Service to the prototype plan or volume submitter plan sponsor, to the effect that such Qualified Benefit Plan is so qualified and that the plan and the trust related thereto are exempt from federal income taxes under Sections 401(a) and 501(a), respectively, of the Code, and nothing has occurred that could reasonably be expected to adversely affect the qualified status of any Qualified Benefit Plan. Nothing has occurred with respect to any Benefit Plan that has subjected or could reasonably be expected to subject the Company or any of its ERISA Affiliates or, with respect to any period on or after the Closing Date, Buyer or any of its Affiliates, to a penalty under Section 502 of ERISA or to tax or penalty under Sections 4975 or 4980H of the Code.

No pension plan (other than a Multiemployer Plan) which is subject to minimum funding requirements, including any multiple employer plan, (each, a "**Single Employer Plan**") in which employees of the Company or any ERISA Affiliate participate or have participated has an "accumulated funding deficiency", whether or not waived, or is subject to a lien for unpaid contributions under Section 303(k) of ERISA or Section 430(k) of the Code. No Single Employer Plan covering employees of the Company which is a defined benefit plan has an "adjusted funding target attainment percentage," as defined in Section 436 of the Code, less than 80%. All benefits, contributions and premiums relating to each Benefit Plan have been timely paid in accordance with the terms of such Benefit Plan and all applicable Laws and accounting principles, and all benefits accrued under any unfunded Benefit Plan have been paid, accrued or otherwise adequately reserved to the extent required by, and in accordance with, GAAP.

(d) Neither the Company nor any of its ERISA Affiliates has (i) incurred or reasonably expects to incur, either directly or indirectly, any material Liability under Title I or Title IV of ERISA or related provisions of the Code or applicable local Law relating to employee benefit plans; (ii) failed to timely pay premiums to the Pension Benefit Guaranty Corporation; (iii) withdrawn from any Benefit Plan; (iv) engaged in any transaction which would give rise to liability under Section 4069 or Section 4212(c) of ERISA; (v) incurred taxes under Section 4971 of the Code with respect to any Single Employer Plan; or (vi) participated in a multiple employer welfare arrangements (MEWA).

(e) With respect to each Benefit Plan (i) no such plan is a “multiple employer plan” within the meaning of Section 413(c) of the Code or a “multiple employer welfare arrangement” (as defined in Section 3(40) of ERISA); (ii) no Action has been initiated by the Pension Benefit Guaranty Corporation to terminate any such plan or to appoint a trustee for any such plan and (iii) no “reportable event,” as defined in Section 4043 of ERISA, with respect to which the reporting requirement has not been waived has occurred with respect to any such plan.

(f) Each Benefit Plan can be amended, terminated or otherwise discontinued after the Closing in accordance with its terms, without material liabilities to Buyer, the Company or any of their Affiliates other than ordinary administrative expenses typically incurred in a termination event. The Company has no commitment or obligation and has not made any representations to any employee, officer, director, independent contractor or consultant, whether or not legally binding, to adopt, amend, modify or terminate any Benefit Plan or any collective bargaining agreement, in connection with the consummation of the transactions contemplated by this Agreement or otherwise.

(g) Other than as required under Sections 601 to 608 of ERISA or other applicable Law, no Benefit Plan provides post-termination or retiree health benefits to any individual for any reason, and neither the Company nor any of its ERISA Affiliates has any Liability to provide post-termination or retiree health benefits to any individual or ever represented, promised or contracted to any individual that such individual would be provided with post-termination or retiree health benefits.

(h) There is no pending or, to the Company’s Knowledge, threatened Action relating to a Benefit Plan (other than routine claims for benefits), and no Benefit Plan has within the three years prior to the date hereof been the subject of an examination or audit by a Governmental Authority or the subject of an application or filing under or is a participant in, an amnesty, voluntary compliance, self-correction or similar program sponsored by any Governmental Authority.

(i) There has been no amendment to, announcement by the Company or any of its Affiliates relating to, or change in employee participation or coverage under, any Benefit Plan or collective bargaining agreement that would increase the annual expense of maintaining such plan above the level of the expense incurred for the most recently completed fiscal year (other than on a de minimis basis) with respect to any director, officer, employee, independent contractor or consultant, as applicable. None of the Company nor any of its Affiliates has any commitment or obligation or has made any representations to any director, officer, employee, independent contractor or consultant, whether or not legally binding, to adopt, amend, modify or terminate any Benefit Plan or any collective bargaining agreement.

(j) Each Benefit Plan that is subject to Section 409A of the Code has been administered in compliance with its terms and the operational and documentary requirements of Section 409A of the Code and all applicable regulatory guidance (including notices, rulings and proposed and final regulations) thereunder. The Company does not have any obligation to gross up, indemnify or otherwise reimburse any individual for any excise taxes, interest or penalties incurred pursuant to Section 409A of the Code.

(k) Each individual who is classified by the Company as an independent contractor has been properly classified for purposes of participation and benefit accrual under each Benefit Plan.

(l) Neither the execution of this Agreement nor any of the transactions contemplated by this Agreement will (either alone or upon the occurrence of any additional or subsequent events): (i) entitle any current or former director, officer, employee, independent contractor or consultant of the Company to severance pay or any other payment; (ii) accelerate the time of payment, funding or vesting, or increase the amount of compensation (including stock-based compensation) due to any such individual; (iii) limit or restrict the right of the Company to merge, amend, or terminate any Benefit Plan; (iv) increase the amount payable under or result in any other material obligation pursuant to any Benefit Plan; (v) result in “excess parachute payments” within the meaning of Section 280G(b) of the Code; or (vi) require a “gross-up” or other payment to any “disqualified individual” within the meaning of Section 280G(c) of the Code.

Section 3.18 Employment Matters.

(a) Section 3.18(a) of the Disclosure Schedules contains a list of all Persons who are employees, independent contractors or consultants of the Company as of the date hereof, including any employee who is on a leave of absence of any nature, paid or unpaid, authorized or unauthorized, and sets forth for each such individual the following: (i) name; (ii) title or position (including whether full-time or part-time); (iii) hire or retention date; (iv) current annual base compensation rate or contract fee; (v) commission, bonus or other incentive-based compensation; and (vi) a description of the fringe benefits provided to each such individual as of the date hereof. As of the date hereof, all compensation, including wages, commissions, bonuses, fees and other compensation, payable to all employees, independent contractors or consultants of the Company for services performed on or prior to the date hereof have been paid in full (or accrued in full on the audited balance sheet contained in the Closing Working Capital Statement) and there are no outstanding agreements, understandings or commitments of the Company with respect to any compensation, commissions, bonuses or fees.

(b) The Company is not, and has not been for the past five years, a party to, bound by, or negotiating any collective bargaining agreement or other Contract with a union, works council or labor organization (collectively, “**Union**”), and there is not, and has not been for the past five years, any Union representing or purporting to represent any employee of the Company, and no Union or group of employees is seeking or has sought to organize employees for the purpose of collective bargaining. There has never been, nor has there been any threat of, any strike, slowdown, work stoppage, lockout, concerted refusal to work overtime or other similar labor disruption or dispute affecting the Company or any of its employees. The Company has no duty to bargain with any Union.

(c) The Company is and has been in compliance with all applicable Laws pertaining to employment and employment practices, including all Laws relating to labor relations, equal employment opportunities, fair employment practices, employment discrimination, harassment, retaliation, reasonable accommodation, disability rights or benefits, immigration, wages, hours, overtime compensation, child labor, hiring, promotion and termination of employees, working conditions, meal and break periods, privacy, health and safety, workers' compensation, leaves of absence, paid sick leave and unemployment insurance. All individuals characterized and treated by the Company as independent contractors or consultants are properly treated as independent contractors under all applicable Laws. All employees of the Company classified as exempt under the Fair Labor Standards Act and state and local wage and hour Laws are properly classified. The Company is in compliance with and has complied with all immigration Laws, including Form I-9 requirements and any applicable mandatory E-Verify obligations. There are no Actions against the Company pending, or to the Company's Knowledge, threatened to be brought or filed, by or with any Governmental Authority or arbitrator in connection with the employment of any current or former applicant, employee, consultant, volunteer, intern or independent contractor of the Company, including, without limitation, any charge, investigation or claim relating to unfair labor practices, equal employment opportunities, fair employment practices, employment discrimination, harassment, retaliation, reasonable accommodation, disability rights or benefits, immigration, wages, hours, overtime compensation, employee classification, child labor, hiring, promotion and termination of employees, working conditions, meal and break periods, privacy, health and safety, workers' compensation, leaves of absence, paid sick leave, unemployment insurance or any other employment related matter arising under applicable Laws.

(d) The Company has complied with the WARN Act, and it has no plans to undertake any action in the future that would trigger the WARN Act.

(e) With respect to each Government Contract, the Company is and has been in compliance with Executive Order No. 11246 of 1965 ("E.O. 11246"), Section 503 of the Rehabilitation Act of 1973 ("Section 503") and the Vietnam Era Veterans' Readjustment Assistance Act of 1974 ("VEVRAA"), including all implementing regulations. The Company maintains and complies with affirmative action plans in compliance with E.O. 11246, Section 503 and VEVRAA, including all implementing regulations. The Company is not, and has not been for the past five years, the subject of any audit, investigation or enforcement action by any Governmental Authority in connection with any Government Contract or related compliance with E.O. 11246, Section 503 or VEVRAA. The Company has not been debarred, suspended or otherwise made ineligible from doing business with the United States government or any government contractor. The Company is in compliance with and has complied with all immigration Laws, including any applicable mandatory E-Verify obligations.

Section 3.19 Taxes.

(a) All Tax Returns required to be filed on or before the Closing Date by the Company have been, or will be, timely filed. Such Tax Returns are, or will be, true, complete and correct in all respects. All Taxes due and owing by the Company (whether or not shown on any Tax Return) have been, or will be, timely paid.

(b) The Company has withheld and paid each Tax required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, customer, shareholder or other party, and complied with all information reporting and backup withholding provisions of applicable Law.

(c) No written claim has been made by any taxing authority in any jurisdiction where the Company does not file Tax Returns that it is, or may be, subject to Tax by that jurisdiction.

(d) No extensions or waivers of statutes of limitations have been given or requested with respect to any Taxes of the Company.

(e) The amount of the Company's Liability for unpaid Taxes for all periods ending on or before December 31, 2019 does not, in the aggregate, exceed the amount of accruals for Taxes (excluding reserves for deferred Taxes) reflected on the Financial Statements. The amount of the Company's Liability for unpaid Taxes for all periods following the end of the recent period covered by the Financial Statements shall not, in the aggregate, exceed the amount of accruals for Taxes (excluding reserves for deferred Taxes) as adjusted for the passage of time in accordance with the past custom and practice of the Company (and which accruals shall not exceed comparable amounts incurred in similar periods in prior years).

(f) Section 3.19(f) of the Disclosure Schedules sets forth:

(i) the taxable years of the Company as to which the applicable statutes of limitations on the assessment and collection of Taxes have not expired;

(ii) those years for which examinations by the taxing authorities have been completed; and

(iii) those taxable years for which examinations by taxing authorities are presently being conducted.

(g) All deficiencies asserted, or assessments made, against the Company as a result of any examinations by any taxing authority have been fully paid.

(h) The Company is not a party to any Action claimed or raised by any taxing authority in a writing received by the Company. There are no pending or to the Company's Knowledge threatened Actions by any taxing authority.

(i) The Company has delivered to Buyer copies of all federal, state, local and foreign income, franchise and similar Tax Returns, examination reports, and statements of deficiencies assessed against, or agreed to by, the Company for all Tax periods ending after December 31, 2019.

(j) There are no Encumbrances for Taxes (other than for current Taxes not yet due and payable) upon the assets of the Company.

(k) The Company is not a party to, or bound by, any Tax indemnity, Tax sharing or Tax allocation agreement.

(l) No private letter rulings, technical advice memoranda or similar agreement or rulings have been requested, entered into or issued by any taxing authority with respect to the Company.

(m) The Company has not been a member of an affiliated, combined, consolidated or unitary Tax group for Tax purposes. The Company has no Liability for Taxes of any Person (other than the Company) under Treasury Regulations Section 1.1502-6 (or any corresponding provision of state, local or foreign Law), as transferee or successor, by contract or otherwise.

(n) The Company will not be required to include any item of income in, or exclude any item or deduction from, taxable income for any taxable period or portion thereof ending after the Closing Date as a result of:

(i) any change in a method of accounting under Section 481 of the Code (or any comparable provision of state, local or foreign Tax Laws), or use of an improper method of accounting, for a taxable period ending on or prior to the Closing Date;

(ii) an installment sale or open transaction occurring on or prior to the Closing Date;

(iii) a prepaid amount received on or before the Closing Date;

(iv) any closing agreement under Section 7121 of the Code, or similar provision of state, local or foreign Law; or

(v) any election under Section 108(i) of the Code.

(o) No Stockholder is a “foreign person” as that term is used in Treasury Regulations Section 1.1445-2. The Company is not, nor has it been, a United States real property holding corporation (as defined in Section 897(c)(2) of the Code) during the applicable period specified in Section 897(c)(1)(a) of the Code.

(p) The Company has not been a “distributing corporation” or a “controlled corporation” in connection with a distribution described in Section 355 of the Code.

(q) The Company is not, and has not been, a party to, or a promoter of, a “reportable transaction” within the meaning of Section 6707A(c)(1) of the Code and Treasury Regulations Section 1.6011-4(b).

(r) There is currently no limitation on the utilization of net operating losses, capital losses, built-in losses, tax credits or similar items of the Company under Sections 269, 382, 383, 384 or 1502 of the Code and the Treasury Regulations thereunder (and comparable provisions of state, local or foreign Law).

Section 3.20 Books and Records. The minute books and stock record books of the Company, all of which have been made available to Buyer, are complete and correct and have been maintained in accordance with sound business practices. The minute books of the Company contain accurate and complete records of all meetings, and actions taken by written consent of, the Stockholders, the Company Board and any committees of the Company Board, and no meeting, or action taken by written consent, of any such Stockholders, the Company Board or committee has been held for which minutes have not been prepared and are not contained in such minute books. At the Closing, all of those books and records will be in the possession of the Company.

Section 3.21 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder’s or other fee or commission in connection with the transactions contemplated by this Agreement or any other Ancillary Document based upon arrangements made by or on behalf of the Company or the Stockholders.

Section 3.22 Regulation D. The Company has disclosed to each of the Stockholders that the offer and sale of shares of TENX Stock Consideration to the Stockholders pursuant to the transaction contemplated by this Agreement is intended to be exempt from registration under Regulation D promulgated under the Securities Act (“**Regulation D**”) and such shares may not be re-offered or resold other than in conformity with the registration requirements of the Securities Act and applicable state securities Laws or pursuant to an exemption therefrom. The certificates representing shares of TENX Stock Consideration shall bear a legend to the effect described above and shall include such additional legends as necessary to comply with applicable federal and state securities Laws and other applicable restrictions. Each Stockholder is an Accredited Investor. The Company acknowledges that Buyer is relying on the foregoing and each Accredited Investor Questionnaire to determine whether the offer and sale of shares of TENX Stock Consideration to the Stockholders pursuant to the transaction contemplated by this Agreement meets the conditions of Regulation D.

Section 3.23 Full Disclosure. No representation or warranty by the Company in this Agreement and no statement contained in the Disclosure Schedules to this Agreement or any certificate or other document furnished or to be furnished to Buyer pursuant to this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading.

Section 3.24 No Other Representations and Warranties. Except for the representations and warranties contained in this Article III (including the related portions of the Disclosure Schedules), none of Stockholders, the Company or any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of Stockholders or the Company, including any representation or warranty as to the accuracy or completeness of any information regarding the Company furnished or made available to Buyer and its Representatives or as to the future revenue, profitability or success of the Company, or any representation or warranty arising from statute or otherwise in law.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER AND MERGER SUB

Buyer and Merger Sub represents and warrants to the Company that the statements contained in this IIV are true and correct as of the date hereof.

Section 4.01 Organization and Authority of Buyer. Each of Buyer and Merger Sub is a corporation duly organized, validly existing and in good standing under the Laws of the state of Delaware. Each of Buyer and Merger Sub has full corporate power and authority to enter into this Agreement and the Ancillary Documents to which it is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by each of Buyer and Merger Sub of this Agreement and any Ancillary Document to which it is a party, the performance by it of its obligations hereunder and thereunder and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Buyer or Merger Sub, as applicable. This Agreement has been duly executed and delivered by each of Buyer and Merger Sub, and this Agreement constitutes a legal, valid and binding obligation of each enforceable against each in accordance with its terms. When each Ancillary Document to which Buyer or Merger is or will be a party has been duly executed and delivered by Buyer or Merger Sub, as applicable, (assuming due authorization, execution and delivery by each other party thereto), such Ancillary Document will constitute a legal and binding obligation of Buyer or Merger Sub, as applicable, enforceable against it in accordance with its terms.

Section 4.02 No Conflicts; Consents. The execution, delivery and performance by Buyer of this Agreement and the Ancillary Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, by-laws or other organizational documents of Buyer; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Buyer; or (c) require the consent, notice or other action by any Person under any Contract to which Buyer is a party. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Buyer in connection with the execution and delivery of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby, except for such filings as may be required under the HSR Act.

Section 4.03 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any Ancillary Document based upon arrangements made by or on behalf of Buyer.

Section 4.04 Sufficiency of Funds. Buyer has sufficient cash on hand or other sources of immediately available funds to enable it to make payment of the Purchase Price and consummate the transactions contemplated by this Agreement.

Section 4.05 Legal Proceedings. There are no Actions pending or, to Buyer's knowledge, threatened against or by Buyer or any Affiliate of Buyer that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise or serve as a basis for any such Action.

Section 4.06 SEC Filings; Financial Statements.

(a) Since January 1, 2018, Buyer has filed all forms, reports and documents required to be filed by Buyer with the SEC and (if and to the extent such forms, reports and documents are not available on EDGAR) has made available to the Company such forms, reports and documents in the form filed by it with the SEC (all such required forms, reports and documents collectively, the "Buyer SEC Reports"). The Buyer SEC Reports (i) at the time they were filed complied as to form in all material respects with the applicable requirements of the Securities Act or the Exchange Act, as the case may be, and the rules and regulations of the SEC thereunder applicable to such Buyer SEC Reports and (ii) did not at the time they were filed (or if amended or superseded by a filing prior to the date of this Agreement, then on the date of such filing) contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

(b) The consolidated financial statements (including, in each case, any related notes) contained in the Buyer SEC Reports complied as to form in all material respects with the applicable rules and regulations of the SEC with respect thereto, were prepared in accordance with generally accepted accounting principles in the United States, applied on a consistent basis throughout the periods involved (except as may be indicated in the notes to such financial statements or, in the case of unaudited statements, as permitted by the SEC) and fairly presented the consolidated financial position of Buyer as at the respective dates and the consolidated results of its operations and cash flows for the periods indicated (subject, in the case of the unaudited financial statements, to normal year-end recurring adjustments). The balance sheet of Buyer contained in the Buyer SEC Reports as of December 31, 2019 is hereinafter referred to as the "Buyer Balance Sheet." Neither Buyer nor any of its subsidiaries has any liabilities (absolute, accrued, contingent or otherwise) of a nature required to be disclosed on a balance sheet prepared in accordance with GAAP except for (i) liabilities reflected on the Buyer Balance Sheet, (ii) liabilities incurred since the date of the Buyer Balance Sheet in the ordinary course of business consistent with past practices, (iii) liabilities incurred in connection with this Agreement and (iv) liabilities that would not reasonably be expected to have a Material Adverse Effect on Buyer.

(c) Buyer has not been notified by its independent registered public accounting firm or by the staff of the SEC that such firm or the staff of the SEC, as the case may be, is of the view that any financial statement included in any registration statement filed by Buyer under the Securities Act or any periodic or current report filed by Buyer under the Exchange Act should be restated, or that Buyer should modify its accounting in future periods in a manner that would be materially adverse to Buyer.

(d) Buyer is in compliance in all material respects with the provisions of the Sarbanes-Oxley Act of 2002 (the “**Sarbanes-Oxley Act**”) that are applicable to Buyer, and any related rules and regulations promulgated by the SEC. Buyer’s disclosure controls and procedures (as defined in Rule 13a-15(e) under the Exchange Act) and internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) are effective in all material respects. Neither Buyer nor, to Buyer’s knowledge, its independent auditors have identified (i) any significant deficiency or material weakness in Buyer’s internal control over financial reporting, (ii) any fraud, whether or not material, that involves Buyer’s management or other employees who have a role in the preparation of financial statements or Buyer’s internal control over financial reporting or (iii) any claim or allegation regarding any of the foregoing. Since December 31, 2019, there has not been any change in Buyer’s internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, Buyer’s internal control over financial reporting.

Section 4.07 Valid Issuance of TENX Stock Consideration. The TENX Stock Consideration, when issued, sold and delivered in accordance with the terms and for the consideration set forth in this Agreement and the Certificate of Designation, will be validly issued, fully paid and nonassessable and free of restrictions on transfer other than restrictions on transfer under this Agreement, applicable state and federal securities laws and liens or encumbrances created by or imposed by the Stockholders. Assuming the accuracy of the representations of the Stockholders in the Accredited Investor Questionnaires, the TENX Stock Consideration will be issued in compliance with all applicable federal and state securities laws. The TENX Common Stock issuable upon conversion of the TENX Stock Consideration (as applicable) has been duly reserved for issuance, and upon issuance in accordance with the terms of the governing documents of Buyer, will be validly issued, fully paid and nonassessable and free of restrictions on transfer other than restrictions on transfer under this Agreement, applicable federal and state securities laws and liens or encumbrances created by or imposed by the Stockholders.

Section 4.08 Independent Investigation. Buyer has conducted its own independent investigation, review and analysis of the business, results of operations, prospects, condition (financial or otherwise) or assets of the Company, and acknowledges that it has been provided adequate access to the personnel, properties, assets, premises, books and records, and other documents and data of the Company for such purpose. Buyer acknowledges and agrees that: (a) in making its decision to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer has relied solely upon its own investigation and the express representations and warranties of the Company set forth in Article III of this Agreement (including the related portions of the Disclosure Schedules); and (b) none of Stockholders, the Company or any other Person has made any representation or warranty as to the Company or this Agreement, except as expressly set forth in Article III of this Agreement (including the related portions of the Disclosure Schedules).

ARTICLE V COVENANTS

Section 5.01 Conduct of Business Prior to the Closing. From the date hereof until the Closing, except as otherwise provided in this Agreement or consented to in writing by Buyer (which consent shall not be unreasonably withheld or delayed), the Company shall, (x) conduct the business of the Company in the ordinary course of business consistent with past practice; and (y) use reasonable best efforts to maintain and preserve intact the current organization, business and franchise of the Company and to preserve the rights, franchises, goodwill and relationships of its employees, customers, lenders, suppliers, regulators and others having business relationships with the Company. Without limiting the foregoing, from the date hereof until the Closing Date, the Company shall:

- (a) preserve and maintain all of its Permits;
- (b) pay its debts, Taxes and other obligations when due;
- (c) maintain the properties and assets owned, operated or used by the Company in the same condition as they were on the date of this Agreement, subject to reasonable wear and tear;
- (d) continue in full force and effect without modification all Insurance Policies, except as required by applicable Law;
- (e) defend and protect its properties and assets from infringement or usurpation;
- (f) perform all of its obligations under all Contracts relating to or affecting its properties, assets or business;
- (g) maintain its books and records in accordance with past practice;
- (h) comply in all material respects with all applicable Laws; and
- (i) not take or permit any action that would cause any of the changes, events or conditions described in Section 3.07 to occur.

Section 5.02 Access to Information. From the date hereof until the Closing, the Company shall (a) afford Buyer and its Representatives full and free access to and the right to inspect all of the Real Property, properties, assets, premises, books and records, Contracts and other documents and data related to the Company; (b) furnish Buyer and its Representatives with such financial, operating and other data and information related to the Company as Buyer or any of its Representatives may reasonably request; and (c) instruct the Representatives of the Company to cooperate with Buyer in its investigation of the Company. Any investigation pursuant to this 5.02 shall be conducted in such manner as not to interfere unreasonably with the conduct of the business of the Company. No investigation by Buyer or other information received by Buyer shall operate as a waiver or otherwise affect any representation, warranty or agreement given or made by the Company in this Agreement.

Section 5.03 No Solicitation of Other Bids.

(a) The Company shall not authorize or permit any of its Affiliates or any of its Representatives to, directly or indirectly, (i) encourage, solicit, initiate, facilitate or continue inquiries regarding an Acquisition Proposal; (ii) enter into discussions or negotiations with, or provide any information to, any Person concerning a possible Acquisition Proposal; or (iii) enter into any agreements or other instruments (whether or not binding) regarding an Acquisition Proposal. The Company shall immediately cease and cause to be terminated, and shall cause its Affiliates (including the Stockholders) and all of its and their Representatives to immediately cease and cause to be terminated, all existing discussions or negotiations with any Persons conducted heretofore with respect to, or that could lead to, an Acquisition Proposal. For purposes hereof, “**Acquisition Proposal**” shall mean any inquiry, proposal or offer from any Person (other than Buyer or any of its Affiliates) concerning (i) a merger, consolidation, liquidation, recapitalization, share exchange or other business combination transaction involving the Company; (ii) the issuance or acquisition of shares of capital stock or other equity securities of the Company; or (iii) the sale, lease, exchange or other disposition of any significant portion of the Company’s properties or assets.

(b) In addition to the other obligations under this 15.03, the Company shall promptly (and in any event within three Business Days after receipt thereof by the Company or its Representatives) advise Buyer orally and in writing of any Acquisition Proposal, any request for information with respect to any Acquisition Proposal, or any inquiry with respect to or which could reasonably be expected to result in an Acquisition Proposal, the material terms and conditions of such request, Acquisition Proposal or inquiry, and the identity of the Person making the same.

(c) The Company agrees that the rights and remedies for noncompliance with this 15.03 shall include having such provision specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach shall cause irreparable injury to Buyer and that money damages would not provide an adequate remedy to Buyer.

Section 5.04 Notice of Certain Events.

(a) From the date hereof until the Closing, the Company shall promptly notify Buyer in writing of:

(i) any fact, circumstance, event or action the existence, occurrence or taking of which (A) has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (B) has resulted in, or could reasonably be expected to result in, any representation or warranty made by the Company hereunder not being true and correct or (C) has resulted in, or could reasonably be expected to result in, the failure of any of the conditions set forth in 17.02 to be satisfied;

(ii) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;

(iii) any notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement; and

(iv) any Actions commenced or, to the Company's Knowledge, threatened against, relating to or involving or otherwise affecting the Company that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to 13.18 or that relates to the consummation of the transactions contemplated by this Agreement.

(b) Buyer's receipt of information pursuant to this 15.04 shall not operate as a waiver or otherwise affect any representation, warranty or agreement given or made by the Company in this Agreement (including 18.02 and 19.01(b)) and shall not be deemed to amend or supplement the Disclosure Schedules; *provided*, however, that if such information is a description of a matter that would give Buyer the right to terminate this Agreement and Buyer does not, within five Business Days after receipt of such information, elect to so terminate this Agreement, then such information shall be deemed to amend or supplement the Disclosure Schedules and Buyer shall have waived its right to indemnification under this Agreement with respect to such matter.

Section 5.05 Resignations. The Company shall deliver to Buyer written resignations, effective as of the Closing Date, of the officers and directors of the Company.

Section 5.06 Confidentiality. From and after the Closing, the Company shall, and shall cause its Affiliates to, hold, and shall use its reasonable best efforts to cause its or their respective Representatives to hold, in confidence any and all information, whether written or oral, concerning the Company, except to the extent that the Company can show that such information (a) is generally available to and known by the public through no fault of the Company, any of its Affiliates or their respective Representatives; or (b) is lawfully acquired by the Company, any of its Affiliates or their respective Representatives from and after the Closing from sources which are not prohibited from disclosing such information by a legal, contractual or fiduciary obligation. If the Company or any of its Affiliates or their respective Representatives are compelled to disclose any information by judicial or administrative process or by other requirements of Law, the Company shall promptly notify Buyer in writing and shall disclose only that portion of such information which the Company is advised by its counsel in writing is legally required to be disclosed, *provided that* the Company shall use reasonable best efforts to obtain an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such information.

Section 5.07 [RESERVED]

Section 5.08 Governmental Approvals and Consents.

(a) Each party hereto shall, as promptly as possible, (i) make, or cause or be made, all filings and submissions (including those under the HSR Act) required under any Law applicable to such party or any of its Affiliates; and (ii) use reasonable best efforts to obtain, or cause to be obtained, all consents, authorizations, orders and approvals from all Governmental Authorities that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement and the Ancillary Documents. Each party shall cooperate fully with the other party and its Affiliates in promptly seeking to obtain all such consents, authorizations, orders and approvals. The parties hereto shall not willfully take any action that will have the effect of delaying, impairing or impeding the receipt of any required consents, authorizations, orders and approvals.

(b) The Company and Buyer shall use reasonable best efforts to give all notices to, and obtain all consents from, all third parties that are described in Section 3.04 of the Disclosure Schedules.

(c) Without limiting the generality of the parties' undertakings pursuant to subsections (a) and (b) above, each of the parties hereto shall use all reasonable best efforts to:

(i) respond to any inquiries by any Governmental Authority regarding antitrust or other matters with respect to the transactions contemplated by this Agreement or any Ancillary Document;

(ii) avoid the imposition of any order or the taking of any action that would restrain, alter or enjoin the transactions contemplated by this Agreement or any Ancillary Document; and

(iii) in the event any Governmental Order adversely affecting the ability of the parties to consummate the transactions contemplated by this Agreement or any Ancillary Document has been issued, to have such Governmental Order vacated or lifted.

(d) If any consent, approval or authorization necessary to preserve any right or benefit under any Contract to which the Company is a party is not obtained prior to the Closing, the Stockholder Representative shall, subsequent to the Closing, cooperate with Buyer and the Company in attempting to obtain such consent, approval or authorization as promptly thereafter as practicable. If such consent, approval or authorization cannot be obtained, the Stockholder Representative shall use its reasonable best efforts to provide the Company with the rights and benefits of the affected Contract for the term thereof, and, if the Stockholder Representative provides such rights and benefits, the Company shall assume all obligations and burdens thereunder.

(e) All analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals made by or on behalf of either party before any Governmental Authority or the staff or regulators of any Governmental Authority, in connection with the transactions contemplated hereunder (but, for the avoidance of doubt, not including any interactions between Stockholders or the Company with Governmental Authorities in the ordinary course of business, any disclosure which is not permitted by Law or any disclosure containing confidential information) shall be disclosed to the other party hereunder in advance of any filing, submission or attendance, it being the intent that the parties will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals. Each party shall give notice to the other party with respect to any meeting, discussion, appearance or contact with any Governmental Authority or the staff or regulators of any Governmental Authority, with such notice being sufficient to provide the other party with the opportunity to attend and participate in such meeting, discussion, appearance or contact.

(f) Notwithstanding the foregoing, nothing in this 15.08 shall require, or be construed to require, Buyer or any of its Affiliates to agree to (i) sell, hold, divest, discontinue or limit, before or after the Closing Date, any assets, businesses or interests of Buyer, the Company or any of their respective Affiliates; (ii) any conditions relating to, or changes or restrictions in, the operations of any such assets, businesses or interests which, in either case, could reasonably be expected to result in a Material Adverse Effect or materially and adversely impact the economic or business benefits to Buyer of the transactions contemplated by this Agreement; or (iii) any material modification or waiver of the terms and conditions of this Agreement.

Section 5.09 Books and Records.

(a) In order to facilitate the resolution of any claims made against or incurred by the Company prior to the Closing, or for any other reasonable purpose, for a period of seven years after the Closing, Buyer shall:

(i) retain the books and records (including personnel files) of the Company relating to periods prior to the Closing in a manner reasonably consistent with the prior practices of the Company; and

(ii) upon reasonable notice, afford the Stockholder Representative reasonable access (including the right to make, at Stockholder's expense, photocopies), during normal business hours, to such books and records;

provided, however, that any books and records related to Tax matters shall be retained pursuant to the periods set forth in 1VI.

(b) In order to facilitate the resolution of any claims made by or against or incurred by Buyer or the Company after the Closing, or for any other reasonable purpose, for a period of seven years following the Closing, the Stockholder Representative shall:

(i) retain the books and records (including personnel files) which relate to the Company and its operations for periods prior to the Closing; and

(ii) upon reasonable notice, afford the Representatives of Buyer or the Company reasonable access (including the right to make, at Buyer's expense, photocopies), during normal business hours, to such books and records;

provided, however, that any books and records related to Tax matters shall be retained pursuant to the periods set forth in 1VI.

(c) Neither Buyer nor Stockholders shall be obligated to provide the other party with access to any books or records (including personnel files) pursuant to this 5.09 where such access would violate any Law.

Section 5.10 Closing Conditions. From the date hereof until the Closing, each party hereto shall use reasonable best efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in 1VII hereof.

Section 5.11 Public Announcements. Unless otherwise required by applicable Law (based upon the reasonable advice of counsel), no party to this Agreement shall make any public announcements in respect of this Agreement or the transactions contemplated hereby or otherwise communicate with any news media without the prior written consent of the other party (which consent shall not be unreasonably withheld or delayed), and the parties shall cooperate as to the timing and contents of any such announcement.

Section 5.12 Buyer Stockholder Approval. Not later than July 31, 2021, Buyer shall take all action necessary under the Delaware General Corporation Law, the rules of the NASDAQ Stock Market and Buyer's governing documents to call, convene and hold a meeting of the stockholders of Buyer to vote upon the conversion of the TENX Preferred Stock (the "**Conversion**") pursuant to the Certificate of Designation (the "**Buyer Stockholders' Meeting**", which for the avoidance of doubt is anticipated to be Buyer's 2020 annual meeting of stockholders). In the proxy statement or any other soliciting materials for the Buyer Stockholders' Meeting or any subsequent meeting of the stockholders of Buyer at which the Conversion will be voted upon, the Buyer Board will recommend that the stockholders of Buyer approve the Conversion (the "**Buyer Board Recommendation**") and will use reasonable best efforts to solicit from the stockholders of Buyer the affirmative vote of the holders of shares representing a majority of the shares of capital stock of Buyer voting in person or by proxy at the Buyer Stockholders' Meeting (the "**Buyer Stockholder Approval**"), except that to the extent that the Buyer Board may change such recommendation if the Buyer Board reasonably determines in good faith, after consultation with outside counsel, that it must take such action in order to comply with its fiduciary duties under applicable Law. If the Buyer does not obtain the Buyer Stockholder Approval at the Buyer Stockholders' Meeting, the Buyer shall call a meeting every 90 days thereafter to seek the Buyer Stockholder Approval until the earlier of the date the Buyer Stockholder Approval is obtained or the TENX Preferred Stock is no longer outstanding. Notwithstanding anything in this Agreement to the contrary, this Section 5.12 shall survive the Closing.

Section 5.13 Board of Directors. At Buyer's first regularly scheduled board meeting following the Closing, the Buyer Board shall appoint to the Buyer Board one (1) director designated by the Stockholder Representative. As promptly as practicable after Buyer has obtained the Buyer Stockholder Approval, the Buyer Board shall appoint to the Buyer Board two (2) additional directors designated by the Stockholder Representative.

Section 5.14 Audited Financial Statements. As promptly as practicable after the Closing, but in no event later than sixty (60) days after the Closing Date, the Stockholder Representative shall deliver to Buyer audited financial statements of the Company sufficient to enable Buyer to comply with its obligations pursuant to Item 9.01(a)(4) of Form 8-K.

Section 5.15 Further Assurances. Following the Closing, each of the parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement.

Section 5.16 Tax-Free Reorganization. Buyer has no current plan or intention to (a) reacquire any of the TENX Stock Consideration or (b) sell or otherwise dispose of any of the properties or assets of the Company, except for dispositions made in the ordinary course of business or transfers described in section 368(a)(2)(C) of the Code.

ARTICLE VI TAX MATTERS

Section 6.01 Tax Covenants.

(a) Prior to the Closing, without the prior written consent of Buyer, the Company, its Affiliates, the Stockholders and their respective Representatives shall not, to the extent it may affect, or relate to, the Company, make, change or rescind any Tax election, amend any Tax Return or take any position on any Tax Return, take any action, omit to take any action or enter into any other transaction that would have the effect of increasing the Tax liability or reducing any Tax asset of Buyer or the Company in respect of any Post-Closing Tax Period. The Company agrees that Buyer is to have no liability for any Tax resulting from any action the Company, its Affiliates or any of their respective Representatives, and agrees to indemnify and hold harmless Buyer (and, after the Closing Date, the Company) against any such Tax or reduction of any Tax asset.

(b) All transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the Ancillary Documents (including any real property transfer Tax and any other similar Tax) shall be borne and paid in equal proportions by (i) Tenax, on the one hand, and (ii) jointly and severally by the Stockholders, on the other hand, when due. The Stockholder Representative shall, at its own expense, timely file any Tax Return or other document with respect to such Taxes or fees (and Buyer shall cooperate with respect thereto as necessary).

(c) Buyer shall prepare, or cause to be prepared, all Tax Returns required to be filed by the Company after the Closing Date with respect to a Pre-Closing Tax Period other than income Tax Returns with respect to periods for which the Company was classified as a “partnership” for federal income tax purposes. Any such Tax Return shall be prepared in a manner consistent with past practice (unless otherwise required by Law) and without a change of any election or any accounting method and shall be submitted by Buyer to the Stockholder Representative (together with schedules, statements and, to the extent requested by the Stockholder Representative, supporting documentation) at least 45 days prior to the due date (including extensions) of such Tax Return. If the Stockholder Representative objects to any item on any such Tax Return, it shall, within ten days after delivery of such Tax Return, notify Buyer in writing that it so objects, specifying with particularity any such item and stating the specific factual or legal basis for any such objection. If a notice of objection shall be duly delivered, Buyer and the Stockholder Representative shall negotiate in good faith and use their reasonable best efforts to resolve such items. If Buyer and the Stockholder Representative are unable to reach such agreement within ten days after receipt by Buyer of such notice, the disputed items shall be resolved by the Independent Accountant and any determination by the Independent Accountant shall be final. The Independent Accountant shall resolve any disputed items within twenty days of having the item referred to it pursuant to such procedures as it may require. If the Independent Accountant is unable to resolve any disputed items before the due date for such Tax Return, the Tax Return shall be filed as prepared by Buyer and then amended to reflect the Independent Accountant’s resolution. The costs, fees and expenses of the Independent Accountant shall be borne equally by Buyer and the Stockholders. The preparation and filing of any Tax Return of the Company that does not relate to a Pre-Closing Tax Period shall be exclusively within the control of Buyer, other than an income Tax Return with respect to any period for which the Company was classified as a “partnership” for federal income tax purposes.

(d) Buyer will continue at least one significant historic business line of the Company, or use at least a significant portion of the Company’s historic business assets in a business, each within the meaning of Treasury Regulation section 1.368-1(d), except that Buyer may transfer the Company’s historic business assets (i) to a corporation that is a member of Buyer’s “qualified group,” within the meaning of Treasury Regulation section 1.368-1(d)(4)(ii), or (ii) to a partnership if (A) one or more members of Buyer’s “qualified group” has active and substantial management functions as a partner with respect to the Company’s historic business or (B) members of Buyer’s “qualified group” in the aggregate own an interest in the partnership representing a significant interest in the Company’s historic business, in each case within the meaning of Treasury Regulation section 1.368-1(d)(4)(iii).

(e) Each of Buyer and the Company will include a statement that complies with the requirements of Treasury Regulation section 1.368-3(a) with its federal income Tax Return for the year of the reorganization and will retain the information required to comply with Treasury Regulation section 1.368-3(d).

Section 6.02 Termination of Existing Tax Sharing Agreements. Any and all existing Tax sharing agreements (whether written or not) binding upon the Company shall be terminated as of the Closing Date. After such date none of the Company, the Stockholders nor any of their respective Affiliates and their respective Representatives shall have any further rights or liabilities thereunder.

Section 6.03 Tax Indemnification. Except to the extent treated as a liability in the calculation of Closing Working Capital, the Stockholders shall, jointly and severally, indemnify the Company, Buyer, and each Buyer Indemnitee and hold them harmless from and against (a) any Loss attributable to any breach of or inaccuracy in any representation or warranty made in 13.19; (b) any Loss attributable to any breach or violation of, or failure to fully perform, any covenant, agreement, undertaking or obligation in 1VI; (c) all Taxes of the Company or relating to the business of the Company for all Pre-Closing Tax Periods; (d) all Taxes of any member of an affiliated, consolidated, combined or unitary group of which the Company (or any predecessor of the Company) is or was a member on or prior to the Closing Date by reason of a liability under Treasury Regulation Section 1.1502-6 or any comparable provisions of foreign, state or local Law; and (e) any and all Taxes of any person imposed on the Company arising under the principles of transferee or successor liability or by contract, relating to an event or transaction occurring before the Closing Date. In each of the above cases, together with any out-of-pocket fees and expenses (including attorneys' and accountants' fees) incurred in connection therewith, the Stockholders shall reimburse Buyer for any Taxes of the Company that are the responsibility of the Stockholders pursuant to this 16.03 within ten Business Days after payment of such Taxes by Buyer or the Company.

Section 6.04 Straddle Period. In the case of Taxes that are payable with respect to a taxable period that begins before and ends after the Closing Date (each such period, a "**Straddle Period**"), the portion of any such Taxes that are treated as Pre-Closing Taxes for purposes of this Agreement shall be:

(a) in the case of Taxes (i) based upon, or related to, income, receipts, profits, wages, capital or net worth, (ii) imposed in connection with the sale, transfer or assignment of property, or (iii) required to be withheld, deemed equal to the amount which would be payable if the taxable year ended with the Closing Date; and

(b) in the case of other Taxes, deemed to be the amount of such Taxes for the entire period multiplied by a fraction the numerator of which is the number of days in the period ending on the Closing Date and the denominator of which is the number of days in the entire period.

Section .05 Contests. Buyer agrees to give prompt written notice to the Stockholder Representative of the receipt of any written notice by the Company, Buyer or any of Buyer's Affiliates which involves the assertion of any claim, or the commencement of any Action, in respect of which an indemnity may be sought by Buyer pursuant to this 1VI (a "**Tax Claim**"); *provided, that* failure to comply with this provision shall not affect Buyer's right to indemnification hereunder. Buyer shall control the contest or resolution of any Tax Claim; *provided, however,* that Buyer shall obtain the prior written consent of the Stockholder Representative (which consent shall not be unreasonably withheld or delayed) before entering into any settlement of a claim or ceasing to defend such claim; and, *provided further,* that Stockholders shall be entitled to participate in the defense of such claim and to employ counsel of their choice for such purpose, the fees and expenses of which separate counsel shall be borne solely by Stockholders.

Section 6.06 Cooperation and Exchange of Information. The Stockholders and Buyer shall provide each other with such cooperation and information as either of them reasonably may request of the other in filing any Tax Return pursuant to this 1VI or in connection with any audit or other proceeding in respect of Taxes of the Company. Such cooperation and information shall include providing copies of relevant Tax Returns or portions thereof, together with accompanying schedules, related work papers and documents relating to rulings or other determinations by tax authorities. Each of the Stockholder Representative and Buyer shall retain all Tax Returns, schedules and work papers, records and other documents in its possession relating to Tax matters of the Company for any taxable period beginning before the Closing Date until the expiration of the statute of limitations of the taxable periods to which such Tax Returns and other documents relate, without regard to extensions except to the extent notified by the other party in writing of such extensions for the respective Tax periods. Prior to transferring, destroying or discarding any Tax Returns, schedules and work papers, records and other documents in its possession relating to Tax matters of the Company for any taxable period beginning before the Closing Date, the Stockholder Representative or Buyer (as the case may be) shall provide the other party with reasonable written notice and offer the other party the opportunity to take custody of such materials.

Section 6.07 Tax Treatment of Indemnification Payments. Any indemnification payments pursuant to this 1VI shall be treated as an adjustment to the Purchase Price by the parties for Tax purposes, unless otherwise required by Law.

Section 6.08 Payments to Buyer. Within five Business Days after the determination that an amount is payable to Buyer pursuant to this Article VI, the parties shall execute and deliver a Joint Confirmation pursuant to Section 7 of the Certificate of Designation with respect to such amount. Any amounts payable to Buyer pursuant to this Article VI shall be satisfied: (i) first by the adjustment mechanism set forth in Section 7 of the Certificate of Designation with the Certificate of Designation; and (ii) to the extent such amounts exceed the available adjustments pursuant to Section 7 of the Certificate of Designation, from the Stockholders.

Section 6.09 Amended Returns and Retroactive Elections. Buyer shall not, and shall not cause or permit the Company to, (i) amend any Tax Returns filed with respect to any tax year ending on or before the Closing Date or with respect to any Straddle Period or (ii) make any Tax election that has retroactive effect to any such year or to any Straddle Period, in each such case without the prior written consent of the Stockholder Representative. For the avoidance of doubt, nothing in this Section 6.09 shall prevent Buyer from filing the necessary Tax Returns for the Company for the period ending December 31, 2020 to the extent required by Section 6.01(c).

Section 6.10 Survival. Notwithstanding anything in this Agreement to the contrary, the provisions of Section 3.19 and this 1VI shall survive for the full period of all applicable statutes of limitations (giving effect to any waiver, mitigation or extension thereof) plus 60 days.

Section 6.11 Overlap. To the extent that any obligation or responsibility pursuant to 1VIII may overlap with an obligation or responsibility pursuant to this 1VI, the provisions of this 1VI shall govern.

ARTICLE VII CONDITIONS TO CLOSING

Section 7.01 Conditions to Obligations of All Parties. The obligations of each party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions:

(a) The filings of Buyer and the Company pursuant to the HSR Act, if any, shall have been made and the applicable waiting period and any extensions thereof shall have expired or been terminated.

(b) No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Governmental Order which is in effect and has the effect of making the transactions contemplated by this Agreement illegal, otherwise restraining or prohibiting consummation of such transactions or causing any of the transactions contemplated hereunder to be rescinded following completion thereof.

Section 7.02 Conditions to Obligations of Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Buyer's waiver, at or prior to the Closing, of each of the following conditions:

(a) Other than the representations and warranties of the Company contained in Section 3.01, Section 3.02, Section 3.05, Section 3.21 and Section 3.22, the representations and warranties of the Company contained in this Agreement, the Ancillary Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). The representations and warranties of the Company contained in Section 3.01, Section 3.02, Section 3.03, Section 3.05, Section 3.21 and Section 3.22 shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects).

(b) The Company shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the Ancillary Documents to be performed or complied with by it prior to or on the Closing Date; *provided, that*, with respect to agreements, covenants and conditions that are qualified by materiality, the Company shall have performed such agreements, covenants and conditions, as so qualified, in all respects.

(c) No Action shall have been commenced against Buyer, Merger Sub or the Company, which would prevent the Closing. No injunction or restraining order shall have been issued by any Governmental Authority, and be in effect, which restrains or prohibits any transaction contemplated hereby.

(d) All approvals, consents and waivers that are listed on Section 3.04 of the Disclosure Schedules shall have been received, and executed counterparts thereof shall have been delivered to Buyer at or prior to the Closing.

(e) From the date of this Agreement, there shall not have occurred any Material Adverse Effect, nor shall any event or events have occurred that, individually or in the aggregate, with or without the lapse of time, could reasonably be expected to result in a Material Adverse Effect.

(f) The Ancillary Documents shall have been executed and delivered by the parties thereto and true and complete copies thereof shall have been delivered to Buyer.

(g) Buyer shall have received resignations of the directors and officers of the Company pursuant to 15.05.

(h) Each of the Stockholders other than Vanderbilt University shall have duly executed and delivered a Restrictive Covenant Agreement (collectively, the “**Restrictive Covenant Agreements**”) in the form attached as **Exhibit D**.

(i) At least three Business Days before Closing, the Company shall have delivered to Buyer the Closing Indebtedness Certificate and the Closing Transaction Expenses Certificate.

(j) The Company and Buyer shall have agreed on the Target Closing Working Capital Statement contemplated in 12.11(a)(i).

(k) The Company shall have delivered to Buyer a good standing certificate (or its equivalent) for the Company from the secretary of state or similar Governmental Authority of the jurisdiction under the Laws in which the Company is organized.

(l) Buyer shall have received duly completed and executed Accredited Investor Questionnaires from all Stockholders.

(m) The Certificates shall have deposited with the Buyer pursuant to Section 2.08.

(n) Buyer shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of the Company, that each of the conditions set forth in 17.02(a) and 17.02(b) have been satisfied.

(o) The Company shall have delivered to Buyer such other documents or instruments as Buyer reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.

Section 7.03 Conditions to Obligations of the Company. The obligations of the Company to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or the Company’s waiver, at or prior to the Closing, of each of the following conditions:

(a) Other than the representations and warranties of Buyer and the Merger Sub contained in 14.01 and 14.04, the representations and warranties of Buyer and the Merger Sub contained in this Agreement, the Ancillary Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). The representations and warranties of Buyer and the Merger Sub contained in 14.01 and 14.04 shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date.

(b) Buyer and the Merger Sub shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the Ancillary Documents to be performed or complied with by it prior to or on the Closing Date; *provided, that*, with respect to agreements, covenants and conditions that are qualified by materiality, Buyer shall have performed such agreements, covenants and conditions, as so qualified, in all respects.

(c) No injunction or restraining order shall have been issued by any Governmental Authority, and be in effect, which restrains or prohibits any material transaction contemplated hereby.

(d) The Ancillary Documents shall have been executed and delivered by the parties thereto and true and complete copies thereof shall have been delivered to the Stockholder Representative.

(e) Buyer shall have delivered to third parties by wire transfer of immediately available fund that amount of money due and owing from the Company to such third parties as Transaction Expenses as set forth on the Closing Transaction Expenses Certificate.

(f) Buyer shall have delivered to holders of outstanding Indebtedness, if any, by wire transfer of immediately available funds that amount of money due and owing from the Company to such holder of outstanding Indebtedness as set forth on the Closing Indebtedness Certificate.

(g) The Company shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Buyer and Merger Sub, that each of the conditions set forth in 17.03(a) and 17.03(b) have been satisfied.

(h) Buyer shall have submitted a Listing of Additional Shares Notification form to the Nasdaq Stock Market, LLC (“NASDAQ”) with respect to the transactions contemplated by this Agreement in the time and manner required by applicable NASDAQ rules, and shall have received written notification from NASDAQ that it has completed its review of such form.

(i) Buyer shall have delivered to the Company and/or the Stockholder Representative such other documents or instruments as they may reasonably request and are reasonably necessary to consummate the transactions contemplated by this Agreement.

ARTICLE VIII INDEMNIFICATION

Section 8.01 Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein (other than any representations or warranties contained in Section 3.19 which are subject to 1VI) shall survive the Closing and shall remain in full force and effect until the date that is two years from the Closing Date; *provided, that* the representations and warranties in (a) Section 3.02, Section 3.21, Section 3.22, 14.01, 14.04 and Section 4.07 shall survive indefinitely, (b) Section 3.18 shall survive for a period of five years after the Closing, and (c) Section 3.19 shall survive for the full period of all applicable statutes of limitations (giving effect to any waiver, mitigation or extension thereof) plus 60 days. All covenants and agreements of the parties contained herein (other than any covenants or agreements contained in 1VI which are subject to 1VI) shall survive the Closing indefinitely or for the period explicitly specified therein. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching party to the breaching party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant representation or warranty and such claims shall survive until finally resolved.

Section 8.02 Indemnification By Stockholders. Subject to the other terms and conditions of this 1VIII, Stockholders shall, jointly and severally, indemnify and defend each of Buyer and its Affiliates (including the Company) and their respective Representatives (collectively, the “**Buyer Indemnitees**”) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Buyer Indemnitees based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of the Company contained in this Agreement or in any certificate or instrument delivered by or on behalf of the Company pursuant to this Agreement (other than in respect of Section 3.19, it being understood that the sole remedy for any such inaccuracy in or breach thereof shall be pursuant to 1VI), as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date);

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by the Company pursuant to this Agreement (other than any breach or violation of, or failure to fully perform, any covenant, agreement, undertaking or obligation in 1VI, it being understood that the sole remedy for any such breach, violation or failure shall be pursuant to 1VI); or

(c) any Transaction Expenses or Indebtedness of the Company outstanding as of the Closing to the extent not deducted from the Purchase Price in the determination of the Post-Closing Adjustment pursuant to Section 2.11(d).

Section 8.03 Certain Limitations. The indemnification provided for in 18.02 shall be subject to the following limitations:

(a) The Stockholders shall not be liable to the Buyer Indemnitees for indemnification under 18.02(a) until the aggregate amount of all Losses in respect of indemnification under 18.02(a) exceeds \$50,000 (the “**Basket**”), in which event the Stockholders shall be required to pay or be liable for all such Losses from the first dollar. Any Losses payable to a Buyer Indemnitee pursuant to this 1VIII shall be satisfied solely by the adjustment mechanism set forth in Section 7 of the Certificate of Designation, regardless of whether the amount of Losses exceeds the available adjustments pursuant to Section 7 of the Certificate of Designation.

(b) Notwithstanding the foregoing, the limitations set forth in 18.04(a) shall not apply to Losses based upon, arising out of, with respect to or by reason of any inaccuracy in or breach of any representation or warranty in Section 3.01, Section 3.02, Section 3.18, Section 3.19, Section 3.21 or Section 3.22.

(c) For purposes of this 1VIII, any inaccuracy in or breach of any representation or warranty shall be determined without regard to any materiality, Material Adverse Effect or other similar qualification contained in or otherwise applicable to such representation or warranty.

Section 8.04 Indemnification Procedures. The party making a claim under this 1VIII is referred to as the “**Indemnified Party**”, and the party against whom such claims are asserted under this 1VIII is referred to as the “**Indemnifying Party**”.

(a) **Third Party Claims.** If any Indemnified Party receives notice of the assertion or commencement of any Action made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a Representative of the foregoing (a “**Third Party Claim**”) against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than 30 calendar days after receipt of such notice of such Third Party Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Third Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party, to assume the defense of any Third Party Claim at the Indemnifying Party’s expense and by the Indemnifying Party’s own counsel, and the Indemnified Party shall cooperate in good faith in such defense; *provided, that* if the Indemnifying Party is a Stockholder, such Indemnifying Party shall not have the right to defend or direct the defense of any such Third Party Claim that (x) is asserted directly by or on behalf of a Person that is a supplier or customer of the Company, or (y) seeks an injunction or other equitable relief against the Indemnified Party. In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to 18.05(b), it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any Third Party Claim with counsel selected by it subject to the Indemnifying Party’s right to control the defense thereof. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party, *provided, that* if in the reasonable opinion of counsel to the Indemnified Party, (A) there are legal defenses available to an Indemnified Party that are different from or additional to those available to the Indemnifying Party; or (B) there exists a conflict of interest between the Indemnifying Party and the Indemnified Party that cannot be waived, the Indemnifying Party shall be liable for the reasonable fees and expenses of counsel to the Indemnified Party in each jurisdiction for which the Indemnified Party determines counsel is required. If the Indemnifying Party elects not to compromise or defend such Third Party Claim, fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, or fails to diligently prosecute the defense of such Third Party Claim, the Indemnified Party may, subject to 18.05(b), pay, compromise, defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third Party Claim. The Stockholders and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available (subject to the provisions of 15.06) records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

(b) **Settlement of Third Party Claims.** Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party, except as provided in this 18.05(b). If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party. If the Indemnified Party fails to consent to such firm offer within ten days after its receipt of such notice, the Indemnified Party may continue to contest or defend such Third Party Claim and in such event, the maximum liability of the Indemnifying Party as to such Third Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third Party Claim, the Indemnifying Party may settle the Third Party Claim upon the terms set forth in such firm offer to settle such Third Party Claim. If the Indemnified Party has assumed the defense pursuant to 18.05(a), it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

(c) **Direct Claims.** Any Action by an Indemnified Party on account of a Loss which does not result from a Third Party Claim (a “**Direct Claim**”) shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than 30 days after the Indemnified Party becomes aware of such Direct Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have 30 days after its receipt of such notice to respond in writing to such Direct Claim. The Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party’s investigation by giving such information and assistance (including access to the Company’s premises and personnel and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its professional advisors may reasonably request. If the Indemnifying Party does not so respond within such 30 day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

(d) **Tax Claims.** Notwithstanding any other provision of this Agreement, the control of any claim, assertion, event or proceeding in respect of Taxes of the Company (including, but not limited to, any such claim in respect of a breach of the representations and warranties in 13.19 hereof or any breach or violation of or failure to fully perform any covenant, agreement, undertaking or obligation in 1VI) shall be governed exclusively by 1VI hereof.

Section 8.05 Payments. Once a Loss is agreed to by the Indemnifying Party or finally adjudicated to be payable pursuant to this 1VIII, the Indemnifying Party shall satisfy its obligations within five Business Days of such final, non-appealable adjudication by executing and delivering a Joint Confirmation with respect to the amount of such Loss in accordance with the Certificate of Designation. To the extent that a Loss is not subject to the limitations set forth in Section 8.04(a) and the amount of such Loss exceeds the available adjustments pursuant to Section 7 of the Certificate of Designation, the amount of excess shall be paid by the Stockholders.

Section 8.06 Tax Treatment of Indemnification Payments. All indemnification payments made under this Agreement shall be treated by the parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

Section 8.07 Effect of Investigation. The representations, warranties and covenants of the Indemnifying Party, and the Indemnified Party’s right to indemnification with respect thereto, shall not be affected or deemed waived by reason of any investigation made by or on behalf of the Indemnified Party (including by any of its Representatives) or by reason of the fact that the Indemnified Party or any of its Representatives knew or should have known that any such representation or warranty is, was or might be inaccurate or by reason of the Indemnified Party’s waiver of any condition set forth in 17.02 or 17.03, as the case may be.

Section 8.08 Exclusive Remedies. Subject to 12.11(c) and 110.11, the parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than claims arising from fraud, criminal activity or willful misconduct on the part of a party hereto in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in 1VI and this 1VIII. In furtherance of the foregoing, each party hereby waives, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other parties hereto and their Affiliates and each of their respective Representatives arising under or based upon any Law, except pursuant to the indemnification provisions set forth in 1VI and this 1VIII. Nothing in this 18 shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled or to seek any remedy on account of any party's fraudulent, criminal or intentional misconduct.

Section 8.09 Stockholder Representative; Power of Attorney.

(a) Appointment. By virtue of the adoption of this Agreement and the approval of the Merger by the Stockholders, each Stockholder (regardless of whether or not such Stockholder votes in favor of the adoption of this Agreement and the approval of the Merger, whether at a meeting or by written consent in lieu thereof) hereby initially appoints, as of the Agreement Date, Stuart Rich (together with his permitted successors, the "Stockholder Representative"), as his, her or its true and lawful agent and attorney-in-fact to enter into the transactions contemplated hereby and any other agreements in connection with such transactions, and to: (i) give and receive notices and communications to or from Buyer (on behalf of itself or any other Buyer Indemnitee) relating to this Agreement or any of the transactions and other matters contemplated hereby or thereby; (ii) execute and deliver Joint Confirmations; (iii) object to any claims by Buyer or any other Buyer Indemnitee; (iv) consent or agree to, negotiate, enter into settlements and compromises of, and agree to arbitration and comply with orders of courts and awards of arbitrators with respect to such claims; (v) assert, negotiate, enter into settlements and compromises of, and agree to arbitration and comply with orders of courts and awards of arbitrators with respect to, any other claim by any Buyer Indemnitee against any such Stockholder or by any such Stockholder against any Buyer Indemnitee or any dispute between any Buyer Indemnitee and any such Stockholder, in each case relating to this Agreement or the transactions contemplated hereby; (vi) amend this Agreement; (vii) take any and all actions and do any and all things that this Agreement specifies that the Stockholder Representative can or shall do; and (viii) take all actions necessary or appropriate in the judgment of the Stockholder Representative for the accomplishment of the foregoing, in each case without having to seek or obtain the consent of any Person under any circumstance.

(b) Acceptance. Stuart Rich hereby accepts his appointment as Stockholder Representative.

(c) Replacement. The Person serving as the Holder Representative may be replaced from time to time by the holders of Stockholders that (immediately before the Closing) held a majority of the Shares upon not less than ten (10) days' prior written notice to Buyer. No bond shall be required of the Stockholder Representative, and the Stockholder Representative shall receive no compensation for his services.

(d) No Liability. The Stockholder Representative shall not be liable to any Stockholder for any act done or omitted under this Agreement as the Stockholder Representative while acting in good faith and any act done or omitted pursuant to the advice of counsel shall be conclusive evidence of such good faith. Each Stockholder, severally and not jointly in accordance with his, her or its pro rata ownership (as of immediately before the Closing) of Shares, shall indemnify the Stockholder Representative and hold him harmless against any loss, liability or expense incurred without gross negligence or bad faith on the part of the Stockholder Representative and arising out of or in connection with the acceptance or administration of her duties hereunder.

(e) Notice. Any notice or communication given or received by, and any decision, action, failure to act within a designated period of time, agreement, consent, settlement, resolution or instruction of, the Stockholder Representative shall constitute a notice or communication to or by, or a decision, action, failure to act within a designated period of time, agreement, consent, settlement, resolution or instruction of all the Stockholders and shall be final, binding and conclusive upon each such Stockholder; and each Buyer Indemnitee shall be entitled to rely upon any such notice, communication, decision, action, failure to act within a designated period of time, agreement, consent, settlement, resolution or instruction as being a notice or communication to or by, or a decision, action, failure to act within a designated period of time, agreement, consent, settlement, resolution or instruction of, each and every such Stockholder.

Section 8.10 Limitation of Vanderbilt Liability. Notwithstanding anything in this Agreement to the contrary, any indemnification obligations of Vanderbilt University pursuant to this Agreement (including but not limited to any payment obligations under Article VI and/or Article VIII) shall be satisfied solely by the adjustment mechanism set forth in Section 7 of the Certificate of Designation, regardless of whether (i) the amount of such obligations exceeds the available adjustments pursuant to Section 7 of the Certificate of Designation and/or (ii) such obligations arise from fraud, criminal activity or willful misconduct of any party.

ARTICLE IX TERMINATION

Section 9.01 Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by the mutual written consent of the Company and Buyer;

(b) by Buyer by written notice to the Company if:

(i) Buyer and Merger Sub is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by the Company pursuant to this Agreement that would give rise to the failure of any of the conditions specified in 1VII and such breach, inaccuracy or failure has not been cured by the Company within ten days of the Company receipt of written notice of such breach from Buyer; or

(ii) any of the conditions set forth in 17.01 or 17.02 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by January 31, 2021, unless such failure shall be due to the failure of Buyer or Merger Sub to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing;

(c) by the Company by written notice to Buyer if:

(i) the Company is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Buyer or Merger Sub pursuant to this Agreement that would give rise to the failure of any of the conditions specified in 1VII and such breach, inaccuracy or failure has not been cured by Buyer or Merger Sub, as applicable, within ten days of Buyer's or Merger Sub's, as applicable, receipt of written notice of such breach from the Company; or

(ii) any of the conditions set forth in 17.01 or 17.03 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by January 31, 2021, unless such failure shall be due to the failure of the Company to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing; or

(d) by Buyer, Merger Sub or the Company in the event that (i) there shall be any Law that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited or (ii) any Governmental Authority shall have issued a Governmental Order restraining or enjoining the transactions contemplated by this Agreement, and such Governmental Order shall have become final and non-appealable.

Section 9.02 Effect of Termination. In the event of the termination of this Agreement in accordance with this Article, this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto except:

- (a) as set forth in this 11X and 15.06 and 1X hereof; and
- (b) that nothing herein shall relieve any party hereto from liability for any willful breach of any provision hereof.

ARTICLE X MISCELLANEOUS

Section 10.01 Expenses. Except as otherwise expressly provided herein, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred.

Section 10.02 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this 110.02):

If to the Company:

3621 Grove Street
Skokie, IL 60076
E-mail: stuart.rich@phpremed.com
Attention: Stuart Rich, President

with a copy to:

GTC Law Group PC & Affiliates
One University Ave. Suite 302B
Westwood, MA 02090
E-mail: themnes@gtclawgroup.com
Attention: Thomas Hemnes

If to Buyer:

Tenax Therapeutics, Inc.
One Copley Parkway, Suite 490
Morrisville, NC 27560
E-mail: m.jebesen@tenaxthera.com
Attention: Michael Jebesen

with a copy to:

K&L Gates LLP
4350 Lassiter at North Hills Avenue, Suite 300
Raleigh, NC 27609
E-mail: Margaret.Rosenfeld@klgates.com and Mikal.Shaikh@klgates.com
Attention: Margaret Rosenfeld and Mikal Shaikh

Section 10.03 Interpretation. For purposes of this Agreement, (a) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Disclosure Schedules and Exhibits mean the Articles and Sections of, and Disclosure Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Disclosure Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

Section 10.04 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 10.05 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 10.06 Entire Agreement. This Agreement and the Ancillary Documents constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the Ancillary Documents, the Exhibits and Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

Section 10.07 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. No assignment shall relieve the assigning party of any of its obligations hereunder.

Section 10.08 No Third-party Beneficiaries. Except as provided in 16.03 and 1VIII, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 10.09 Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each of Buyer, Merger Sub, the Stockholder Representative and, at any time prior to the Effective Time, the Company. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 10.10 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction).

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE ANCILLARY DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA OR THE COURTS OF THE STATE OF DELAWARE, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE ANCILLARY DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE ANCILLARY DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.10(c).

Section 10.11 Specific Performance. The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

Section 10.12 Conflict Waiver; Attorney-Client Privilege.

(a) Conflict of Interest. If the Stockholder Representative so desires, acting on behalf of the Stockholders and without the need for any consent or waiver by the Company or Buyer, GTC Law Group PC and Affiliates and Foley Hong LLP (each, a “**Seller Counsel Firm**”) shall be permitted to represent Stockholders and the Stockholder Representative after the Closing in connection with any matter, including without limitation, anything related to the Merger, any other agreements referenced herein or any disagreement or dispute relating thereto. Without limiting the generality of the foregoing, after the Closing, each Seller Counsel Firm shall be permitted to represent the Stockholders, any of their agents and Affiliates, or any one or more of them, in connection with any negotiation, transaction or dispute (including any litigation, arbitration or other adversary proceeding) with Buyer, the Surviving Corporation or any of their agents or Affiliates under or relating to this Agreement, the Merger, and any related matter, such as claims or disputes arising under other agreements entered into in connection with this Agreement, including with respect to any indemnification claims. Upon and after the Closing, the Company shall cease to have any attorney-client relationship with each Seller Counsel Firm, unless and to the extent such Seller Counsel Firm is specifically engaged in writing by the Company to represent the Company after the Closing and either such engagement involves no conflict of interest with respect to the Stockholders or the Stockholder Representative consents in writing at the time to such engagement. Any such representation of the Company by a Seller Counsel Firm after the Closing shall not affect the foregoing provisions hereof.

(b) Attorney-Client Privilege. Buyer and the Company agree that any attorney-client privilege, attorney work-product protection, and the expectation of client confidence attaching as a result of counsel’s (whether external or internal) representation of the Company in connection with the Merger and all information and documents covered by such privilege or protection (the “**Covered Materials**”), shall belong to and be controlled by the Stockholder Representative, and not by the Surviving Corporation, following the Closing, and may be waived only by the Stockholder Representative, and not the Surviving Corporation, and shall not pass to or be claimed or used by Buyer or the Surviving Corporation. Absent the consent of the Stockholder Representative (such consent not to be unreasonably withheld, conditioned or delayed), neither Buyer nor the Surviving Corporation shall have a right to access the Covered Materials following the Closing and, in the event Buyer or the Surviving Corporation accesses Covered Materials in violation of this sentence, such access will not waive or otherwise affect the rights of the Stockholder Representative with respect to the related privilege or protection. Notwithstanding the foregoing, if a dispute arises between Buyer or the Surviving Corporation, on the one hand, and a third party other than (and unaffiliated with) the Stockholders and the Stockholder Representative, on the other hand, after the Closing, then the Surviving Corporation may assert such attorney-client privilege to prevent disclosure of any such Covered Materials; provided, further, that Buyer and the Surviving Corporation may not waive such privilege without the prior written consent of the Stockholder Representative

Section 10.13 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

COMPANY:

PHPrecisionMed Inc.

By: /s/ Stuart Rich

Name: Stuart Rich

Title: President

BUYER:

Tenax Therapeutics, Inc.

By: /s/ Anthony DiTonno

Name: Anthony DiTonno

Title: Chief Executive Officer

MERGER SUB:

Life Newco II, Inc.

By: /s/ Michael Jebsen

Name: Michael Jebsen

Title: President

STOCKHOLDER REPRESENTATIVE:

/s/ Stuart Rich

Dr. Stuart Rich

TENAX THERAPEUTICS, INC.

**CERTIFICATE OF DESIGNATION OF PREFERENCES,
RIGHTS AND LIMITATIONS
OF
SERIES B CONVERTIBLE PREFERRED STOCK**

PURSUANT TO SECTION 151 OF THE
DELAWARE GENERAL CORPORATION LAW

The undersigned, Michael B. Jebsen and Nancy Hecox, do hereby certify that:

1. They are the President and Secretary, respectively, of Tenax Therapeutics, Inc., a Delaware corporation (the “Corporation”).
2. The Corporation is authorized to issue 10,000,000 shares of preferred stock.
3. The following resolutions were duly adopted by the board of directors of the Corporation (the “Board of Directors”):

WHEREAS, the certificate of incorporation of the Corporation provides for a class of its authorized stock known as preferred stock, consisting of 10,000,000 shares, \$0.0001 par value per share, issuable from time to time in one or more series;

WHEREAS, the Board of Directors is authorized to fix the dividend rights, dividend rate, voting rights, conversion rights, rights and terms of redemption and liquidation preferences of any wholly unissued series of preferred stock and the number of shares constituting any series and the designation thereof, of any of them; and

WHEREAS, it is the desire of the Board of Directors, pursuant to its authority as aforesaid, to fix the rights, preferences, restrictions and other matters relating to a series of the preferred stock, which shall consist of, except as otherwise set forth in the Merger Agreement, up to 10,232 shares of the preferred stock which the Corporation has the authority to issue, as follows:

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors does hereby provide for the issuance of a series of preferred stock for cash or exchange of other securities, rights or property and does hereby fix and determine the rights, preferences, restrictions and other matters relating to such series of preferred stock as follows:

TERMS OF PREFERRED STOCK

Section 1. Definitions. For the purposes hereof, the following terms shall have the following meanings:

“Base Conversion Shares” means initially 881.5 shares of Common Stock issuable upon conversion of the shares of Preferred Stock in accordance with the terms hereof, and delivered in accordance with Section 6(b)(i), and subject to adjustment as provided herein.

“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.

“Buyer Stockholder Approval” shall have the meaning set forth in the Merger Agreement.

“Common Stock” means the Corporation’s common stock, par value \$0.0001 per share, and stock of any other class of securities into which such securities may hereafter be reclassified or changed.

“Common Stock Equivalents” means any securities of the Corporation or its subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, rights, options, warrants 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.

“Conversion Date” shall have the meaning set forth in Section 6(a).

“Conversion Shares” shall mean, collectively, the Base Conversion Shares and Holdback Conversion Shares.

“Deemed Common Stock Value” shall mean an amount initially equal to \$1.78, representing the closing price of the Corporation’s Common Stock on January 14, 2021, which amount shall be subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Common Stock.

“Holdback Conversion Shares” means initially 118.5 shares of Common Stock issuable upon conversion of the shares of Preferred Stock in accordance with the terms hereof, and delivered in accordance with Section 6(b)(ii), and subject to adjustment as provided herein.

“Holdback Release Date” means the date that is twenty-four (24) months after the Original Issue Date.

“Holder” shall have the meaning given such term in Section 2.

“Joint Confirmation” means a written certificate, executed and delivered by each of the Corporation and the PHPM Representative, confirming that certain events have occurred and/or actions should occur hereunder.

“Liquidation” shall have the meaning set forth in Section 5.

“Merger Agreement” means the Agreement and Plan of Merger, dated January 15, 2021, by and among the Corporation, Life Newco II, Inc., PHPrecisionMed Inc., and the Stockholder Representative, as amended, modified or supplemented from time to time in accordance with its terms.

“Original Issue Date” means the date of the first issuance of any shares of the Preferred Stock regardless of the number of transfers of any particular shares of Preferred Stock and regardless of the number of certificates which may be issued to evidence such Preferred Stock.

“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 Stock” shall have the meaning set forth in Section 2.

“Purchase Rights” shall have the meaning set forth in Section 8(b).

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

“Senior Preference” means the stated value of all outstanding Senior Securities, plus any other fees, liquidated damages or dividends then due and owing thereon.

“Senior Securities” means shares of the Corporation’s Series A Convertible Preferred Stock.

“Stockholder Representative” shall have the meaning ascribed thereto in the Merger Agreement.

Section 2. Designation, Amount and Par Value. The series of preferred stock shall be designated as its Series B Convertible Preferred Stock (the “Preferred Stock”) and the number of shares so designated shall be up to 10,232 (which shall not be subject to increase without the written consent of all of the holders of the Preferred Stock (each, a “Holder” and collectively, the “Holders”). Each share of Preferred Stock shall have a par value of \$0.0001 per share.

Section 3. Dividends. Holders shall be entitled to receive, and the Corporation shall pay, dividends on shares of Preferred Stock equal (on an as-if-converted-to-Common-Stock basis) to and in the same form as dividends (other than dividends in the form of Common Stock) actually paid on shares of the Common Stock when, as and if such dividends (other than dividends in the form of Common Stock) are paid on shares of the Common Stock. Other than as set forth in the previous sentence, no other dividends shall be paid on shares of Preferred Stock; and the Corporation shall pay no dividends (other than dividends in the form of Common Stock) on shares of the Common Stock unless it simultaneously complies with the previous sentence.

Section 4. Voting Rights. On any matter presented to the stockholders of the Corporation for their action or consideration (other than the Buyer Stockholder Approval (as defined in the Merger Agreement)) at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting), each holder of outstanding shares of Preferred Stock shall be entitled to cast a number of votes determined in accordance with the following formula:

$$V = PH \times ((MV - CV) \div PI)$$

Where:

“V” shall mean the number of votes a Holder of Preferred Stock is entitled to cast on a 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); provided, however, that V shall be deemed to equal zero (0) with respect to the Buyer Stockholder Approval;

“PH” shall mean the number of shares of Preferred Stock held by such Holder as of the record date for determining stockholders entitled to vote on such matter;

“MV” shall mean 19.99% of the number of shares of Common Stock outstanding as of immediately prior to Closing (as defined in the Merger Agreement) (as adjusted for any subsequently effective stock split, reverse stock split, or share dividend);

“CV” shall mean the aggregate number of shares of TENX Common Stock included in the Purchase Price pursuant to and as defined in the Merger Agreement (as adjusted for any subsequently effective stock split, reverse stock split, or share dividend); and

“PI” shall mean the aggregate number of shares of Preferred Stock issued pursuant to the Merger Agreement.

Fractional votes shall not be permitted and any fractional voting rights available after application of the foregoing formula shall be rounded down to the nearest whole number. Except as otherwise provided herein or as otherwise required by law, holders of Preferred Stock shall, after application of the foregoing formula, vote together with the holders of Common Stock as a single class and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation. In addition, as long as any shares of Preferred Stock are outstanding, the Corporation shall not, without the affirmative vote of the Holders of a majority of the then outstanding shares of the Preferred Stock, (a) alter or change adversely the powers, preferences or rights given to the Preferred Stock or alter or amend this Certificate of Designation, (b) amend its certificate of incorporation or other charter documents in any manner that adversely affects any rights of the Holders, (c) increase the number of authorized shares of Preferred Stock, or (d) enter into any agreement with respect to any of the foregoing.

Section 5. Liquidation. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, after the payment in full of the Senior Preference, the holders of shares of Preferred Stock then outstanding shall share, together with the holders of Common Stock, in any distribution of the remaining funds and assets available for distribution to the stockholders to the Corporation, pro rata based on the number of shares of Common Stock such holders would have received had the conversion of such Preferred Stock occurred immediately prior to such liquidation, dissolution or winding up.

Section 6.

a) Automatic Conversion. Each share of Preferred Stock shall be automatically converted on the business day immediately following the date the Buyer Stockholder Approval is obtained (such date, the "Conversion Date") into the Base Conversion Shares and the Holdback Conversion Shares per share of Preferred Stock. The Corporation shall provide to each Holder prompt written notice of the occurrence of the Conversion Date, whereupon such Holder shall deliver the certificate representing such shares of Preferred Stock promptly following receipt of such notice. Shares of Preferred Stock converted into Common Stock in accordance with the terms hereof shall be canceled and shall not be reissued.

b) Mechanics of Conversion

i. Delivery of Base Conversion Shares Upon Conversion. Not later than ten (10) Business Days after the Conversion Date, the Corporation shall deliver, or cause to be delivered, to such Holder a certificate or certificates representing the number of Base Conversion Shares being acquired upon the conversion of the Preferred Stock, which Base Conversion Shares shall contain or be subject to, as applicable, the restrictive legends, and transfer restrictions described in the Merger Agreement.

ii. Delivery of Holdback Conversion Shares Upon Conversion. Not later than ten (10) Business Days after the later of (i) the Conversion Date and (ii) the Holdback Release Date, the Corporation shall deliver, or cause to be delivered, to such Holder a certificate or certificates representing the number of Holdback Conversion Shares (determined as of the Holdback Release Date) being acquired upon the conversion of the Preferred Stock, which Holdback Conversion Shares shall contain or be subject to, as applicable, the restrictive legends, and transfer restrictions set forth in the Merger Agreement.

iii. Reservation of Shares Issuable Upon Conversion. The Corporation covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock for the sole purpose of issuance upon conversion of the Preferred Stock as herein provided, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holder (and the other holders of the Preferred Stock), not less than such aggregate number of shares of the Common Stock as shall be issuable (taking into account the adjustments of Section 7 and Section 8) upon the conversion of the then outstanding shares of Preferred Stock hereunder. The Corporation covenants that all shares of Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and nonassessable.

iv. Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of the Preferred Stock, and instead the number of shares issued shall be rounded down to the next whole share.

v. Transfer Taxes and Expenses. The issuance of Conversion Shares on conversion of this Preferred Stock shall be made without charge to any Holder for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such Conversion Shares, provided that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such Conversion Shares upon conversion in a name other than that of the Holders of such shares of Preferred Stock and the Corporation shall not be required to issue or deliver such Conversion Shares unless or until the Person or Persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid.

Section 7.

Adjustment to Holdback Conversion Shares.

a) Post-Closing Adjustment. Upon the completion of a Joint Confirmation stating that there has been a final determination of the Post-Closing Adjustment, if any, to be paid pursuant to Section 2.11(d) of the Merger Agreement, the then-current number of Holdback Conversion Shares shall be adjusted in accordance with the formula set forth in Section 7(c) by the amount of the Post-Closing Adjustment.

b) Indemnification-Related Claims. At any time and from time to time on or prior to the Holdback Release Date, if any Loss (as defined in the Merger Agreement) is payable by the Sellers pursuant to and in accordance with the Merger Agreement and a Joint Confirmation is delivered with respect thereto and as provided therein, the then-current number of Holdback Conversion Shares shall be automatically reduced pursuant to the formula in Section 7(c) by the amount of the Loss set forth in such Joint Confirmation.

c) Adjustment Formula. Any adjustment to be made to the then-current number of Holdback Conversion Shares pursuant to this Section 7 shall be made in accordance with the following formula:

$$H1 = H0 - (A \div (B \times C))$$

Where:

“H1” means the number of Holdback Conversion Shares immediately after giving effect to the applicable adjustment under this Section 7; provided, however, that if the application of the foregoing formula results in H1 being less than zero (0), H1 shall be deemed to equal zero (0);

“H0” means the number of Holdback Conversion Shares immediately prior to giving effect to the applicable adjustment under this Section 7;

“A” means the U.S. Dollar amount of the adjustment to be made pursuant to this Section 7 which, for the avoidance of doubt, may not be a negative number;

“B” means the Deemed Common Stock Value;

“C” means the number of outstanding shares of Preferred Stock plus any shares of Preferred Stock previously converted pursuant to Section 6;

d) Calculations. All calculations under this Section 7 shall be made to the nearest 1/100th of a share.

Section 8. Certain Other Adjustments.

a) Stock Dividends and Stock Splits. If the Corporation, at any time while this Preferred Stock is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock on shares of Common Stock or any other Common Stock Equivalents (which shall not include any shares of Common Stock issued as dividends on or upon the conversion of any Senior Securities), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Corporation, then the number of Conversion Shares shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock outstanding immediately after such event, and of which the denominator shall be the number of shares of Common Stock outstanding immediately before such event. Any adjustment made pursuant to this Section 8(a) shall become effective (1) with respect to a dividend or distribution, immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and (2) with respect to a subdivision, combination or re-classification, immediately after the effective date of such event.

b) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 7(a) above, if at any time the Corporation grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the “Purchase Rights”), then the Holder will, upon the conversion of such Holder’s shares of Preferred Stock, be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder would have acquired had such conversion occurred immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights.

c) Adjustment for Merger or Consolidation. If there shall occur any consolidation or merger involving the Corporation in which the Common Stock (but not a series of the Corporation’s preferred stock) is converted into or exchanged for securities, cash, or other property (other than a transaction covered by Sections 8(a) or 8(b)), then, following any such consolidation or merger, provision shall be made that each share of 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 Preferred Stock immediately prior to such 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) shall be made in the application of the provisions in this Section 8 with respect to the rights and interests thereafter of the holders of the Preferred Stock, to the end that the provisions set forth in this Section 8 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 Preferred Stock.

d) Adjustments After Conversion But Prior to Full Delivery. To the extent that a transaction covered by Section 8(a), 8(b) and/or 8(c) shall occur after the delivery of the Base Conversion Shares but prior to the delivery of the Holdback Conversion Shares, appropriate adjustment (as determined in good faith by the Board of Directors) shall be made in the application of the provisions in this Section 8 with respect to the rights and interests thereafter of the holders of the Preferred Stock, to the end that the provisions set forth in this Section 8 shall thereafter be applicable, as nearly as reasonably may be, in relation only to the Holdback Conversion Shares.

e) Calculations. All calculations under this Section 8 shall be made to the nearest 1/100th of a share. For purposes of this Section 8, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Corporation) issued and outstanding.

Section 9. Miscellaneous.

a) Notices. Any and all notices or other communications or deliveries to be provided by the Holders hereunder shall be in writing and delivered personally, by facsimile, or sent by a nationally recognized overnight courier service, addressed to the Corporation, at the address set forth above Attention: Michael B. Jebsen, facsimile number (919) 855-2133, or such other facsimile number or address as the Corporation may specify for such purposes by notice to the Holders delivered in accordance with this Section 9. Any and all notices or other communications or deliveries to be provided by the Corporation hereunder shall be in writing and delivered personally, by facsimile, or sent by a nationally recognized overnight courier service addressed to each Holder at the facsimile number or address of such Holder appearing on the books of the Corporation, or if no such facsimile number or address appears on the books of the Corporation, at the principal place of business of such Holder, as set forth in the Merger Agreement.

b) Lost or Mutilated Preferred Stock Certificate. If a Holder's Preferred Stock certificate shall be mutilated, lost, stolen or destroyed, the Corporation shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated certificate, or in lieu of or in substitution for a lost, stolen or destroyed certificate, a new certificate for the shares of Preferred Stock so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such certificate, and of the ownership hereof reasonably satisfactory to the Corporation.

c) 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 conflict of laws thereof. Each of the Corporation and each Holder irrevocably submits to the exclusive jurisdiction of (a) the Court of Chancery of the State of Delaware, and (b) the United States District Court sitting in New Castle County in the State of Delaware, for the purposes of any action arising out of this Certificate of Designation or any transaction contemplated hereby. Each party agrees that all legal proceedings concerning the interpretation, enforcement and defense of the transactions contemplated hereby shall be commenced either in the Court of Chancery of the State of Delaware or if such Action may not be brought in such court for jurisdictional reasons, in the United States District Court sitting in New Castle County in the State of Delaware. 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 applicable law. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Certificate of Designation or the transactions contemplated hereby. 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 or proceeding shall be reimbursed by the other party for its attorneys' fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding.

d) Waiver. Any of the rights, powers, privileges and other terms of the Preferred Stock set forth in this Certificate of Designation may be waived prospectively or retrospectively on behalf of all holders of Preferred Stock by the affirmative written consent or vote of the Holders of a majority of the then outstanding shares of the Preferred Stock.

e) Severability. If any provision of this Certificate of Designation is invalid, illegal or unenforceable, the balance of this Certificate of Designation shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any interest or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law.

f) Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

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

h) Status of Converted or Redeemed Preferred Stock. Shares of Preferred Stock may only be issued pursuant to the Merger Agreement. If any shares of Preferred Stock shall be converted, redeemed or reacquired by the Corporation, such shares shall resume the status of authorized but unissued shares of preferred stock and shall no longer be designated as Series B Convertible Preferred Stock.

RESOLVED, FURTHER, that the Chairman, the president or any vice-president, and the secretary or any assistant secretary, of the Corporation be and they hereby are authorized and directed to prepare and file this Certificate of Designation of Preferences, Rights and Limitations in accordance with the foregoing resolution and the provisions of Delaware law.

IN WITNESS WHEREOF, the undersigned have executed this Certificate this 15th day of January, 2021.

/s/ Michael Jebsen
Name: Michael B. Jebsen
Title: President

/s/ Nancy Hecox
Name: Nancy Hecox
Title: Corporate Secretary

EXECUTIVE EMPLOYMENT AGREEMENT

THIS EXECUTIVE EMPLOYMENT AGREEMENT (this “**Agreement**”), is made as of the Effective Date (as defined below) by and between Tenax Therapeutics, Inc., a Delaware corporation, with its principal place of business in North Carolina (the “**Company**”), and Stuart Rich, MD (the “**Executive**”).

WITNESSETH:

WHEREAS, the Executive was formerly an owner and founder of PH Precision Med. (“**PHPM**”);

WHEREAS, the Company is entering into that certain Agreement and Plan of Merger (the “**Transaction Agreement**”) with PHPM through which the Company will enter into a merger agreement with PHPM (the “**Transaction**”);

WHEREAS, in connection with the Transaction, the Company desires to employ the Executive as its Chief Medical Officer and provide adequate assurances to the Executive and the Executive desires to accept such employment on the terms set forth below;

WHEREAS, this Agreement is conditioned upon the closing of the Transaction, and in the event the Transaction does not close, this Agreement shall be *void ab initio* and of no effect;

WHEREAS, the terms of this Agreement supersede and replace any prior agreements, representations, arrangements or understandings (whether written, oral, implied or otherwise) between the Executive and the Company or PHPM regarding the subject matter set forth herein; provided that the Transaction Agreement is expressly preserved; and

WHEREAS, this Agreement shall be effective as of the Closing Date of the Merger (as defined in the Transaction Agreement) (the “**Effective Date**”).

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises herein, and of other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the Company and the Executive agree as follows:

1. **Employment.** Effective as of the Effective Date, the Company hereby employs the Executive and the Executive hereby accepts employment as Chief Medical Officer of the Company upon the terms and conditions of this Agreement. The position is a remote position.
2. **Duties.** The Executive will have such authority, and will faithfully perform all of the duties, normally associated with the position of Chief Medical Officer, including but not limited to all duties set forth in this Agreement, and all additional duties consistent with such position that are reasonably prescribed from time to time by the Chief Executive Officer of the Company. The Executive shall devote such business time and attention as reasonably necessary to perform his duties and responsibilities on behalf of the Company and in furtherance of its best interests; provided, however, that he, subject to his obligations hereunder, shall be permitted to make personal investments, perform reasonable volunteer services, serve on the board of one or more charitable organizations, and serve on the board of one for profit, publicly traded company so long as it is not in competition with the Company. The Executive shall comply with all Company policies, standards, rules and regulations (the “**Company Policies**”) as may exist from time-to-time and all applicable government laws, rules and regulations that are now or hereafter in effect.

3. Term. Unless earlier terminated as provided herein, the initial term of this Agreement shall commence on the Effective Date and shall continue until the one-year anniversary of the Effective Date (the “**Initial Term**”). After the Initial Term, this Agreement shall automatically renew for successive one-year terms on the same terms and conditions set forth herein unless: (a) earlier terminated or amended as provided herein; or (b) either party gives the other written notice of non-renewal at least ninety (90) days prior to the end of the Initial Term or any renewal term of this Agreement, in which case, this Agreement shall terminate on the expiration of the then-current Term. The Initial Term of this Agreement and all applicable renewals thereof are referred to herein as the “**Term**.”

4. Compensation. During the Term, as compensation for the services rendered by the Executive under this Agreement, the Executive shall be entitled to receive the following (all payments are subject to applicable withholdings):

(a) Base Salary. The Executive shall receive an annual salary of Three Hundred Thousand Dollars and 00/100 Dollars (\$300,000.00) (less applicable withholdings) (“**Base Salary**”) payable in accordance with the payroll policies of the Company as set forth in the Company Policies. The Chief Executive Officer of the Company shall review, on an annual basis, the Executive’s salary and may increase or decrease such salary as the Chief Executive Officer deems appropriate; provided, however, that any decrease shall only be effective if it is a result of an across-the-board decrease affecting all senior executives as a group.

(b) Bonuses. Each fiscal year during the Term, the Executive shall be entitled to an annual bonus the amount of which is based on percentage achievement of annual goals set by the Company, after consultation with the Executive, at the beginning of each fiscal year for such fiscal year (“**Annual Bonus**”), which achievement shall be determined as of the last day of such fiscal year. If the Executive achieves one hundred percent (100%) of the annual goals, the Annual Bonus shall be forty percent (40%) of his Base Salary (“**Target Bonus**”). There is no cap on the Annual Bonus for exceeding one hundred percent (100%) of annual goals; for example, an achievement of two hundred percent (200%) of annual goals would result in an Annual Bonus equal to eighty percent (80%) of his Base Salary. The Annual Bonus shall be paid in accordance with the Company’s regular bonus payment procedures, and, in all events, will be paid no later than seventy-five (75) days following the end of the fiscal year in which the Annual Bonus was earned. Except as otherwise set forth in Section 5(d)(ii)(C), in order to be eligible to receive the Annual Bonus, the Executive must be employed by the Company on the last day of the fiscal year in which the Annual Bonus was earned.

(c) Benefits. The Executive shall be entitled to receive those benefits provided from time to time to other executive employees of the Company, in accordance with the terms and conditions of the applicable plan documents, provided that the Executive meets the eligibility requirements thereof. All such benefits are subject to amendment or termination from time to time by the Company without the consent of the Executive or any other employee of the Company.

(d) Business Expenses. The Company shall pay, or reimburse the Executive for, all reasonable expenses incurred by the Executive directly related to conduct of the business of the Company; provided that the Executive complies with the Company's Policies for the reimbursement or advancement of business expenses that are now or hereafter in effect. The Company shall provide such payments or reimbursements within thirty (30) days following the Executive's incurrence of the expense.

(e) Option Award. The Board of Directors of the Company (the "**Board**") has approved a nonstatutory stock option entitling the Executive to purchase up to 250,000 shares of Company Common Stock (the "**Option**") at the fair market value as of the date of grant as determined by the Board in its sole discretion. The terms and conditions, including vesting, for the Option will be set forth in a Nonstatutory Stock Option Agreement between the Executive and the Company in the form set forth on **Exhibit A**.

5. Termination and Obligations of the Company upon Termination. This Agreement and the Executive's employment by the Company shall or may be terminated, as the case may be, as set forth below.

(a) Termination upon Expiration of the Term. This Agreement and the Executive's employment by the Company shall terminate upon the expiration of the Term in the event either party gives the other party timely written notice of non-renewal in accordance with Section 3 of this Agreement.

(b) Termination by the Executive. The Executive may terminate this Agreement and his employment with the Company as follows:

(i) Voluntary Resignation. For any reason other than Good Reason (as defined below), thirty (30) days after written notice of the Executive's resignation is received by the Company ("**Voluntary Resignation**").

(ii) For Good Reason. For purposes of this Agreement, the Executive's termination of his employment will be deemed to have been for "**Good Reason**" if the Executive resigns within six (6) months after any of the following conditions having arisen without his prior written consent and after having given the Company written notice of the existence of such condition within ninety (90) days of the Executive's knowledge of the existence of the condition and providing the Company with thirty (30) days to remedy the condition:

- (A) a material diminution in the Executive's Base Salary;
- (B) a material diminution in the Executive's authority, duties, or responsibility by the assignment to him of authority, duties, or responsibilities materially inconsistent with his position as Chief Medical Officer;

(C) any breach by the Company of any material provision of this Agreement or any other written agreement with the Executive.

(c) Termination by the Company. The Company may terminate this Agreement and the Executive's employment by the Company immediately upon written notice to the Executive (or his personal representative):

(i) Without Cause. At any time and for any reason other than reasons set forth in Sections 5(c)(ii) (Death), (iii) (Disability) or (iv) (Cause) ("**Without Cause**");

(ii) Death. Upon the death of the Executive, in which case this Agreement shall terminate immediately; provided that, such termination shall not prejudice any benefits payable to the Executive's spouse or beneficiaries which are fully vested as of the date of death ("**Death**");

(iii) Disability. If the Executive is permanently disabled (as defined herein), in which case this Agreement shall terminate immediately; provided that, such termination shall not prejudice any benefits payable to the Executive, the Executive's spouse or beneficiaries which are fully vested as of the date of the termination of this Agreement. For purposes of this Agreement, the Executive shall be considered "**permanently disabled**" when a qualified medical doctor mutually acceptable to the Company and the Executive or the Executive's personal representative shall have certified in writing that the Executive has been unable, because of a medically determinable physical or mental disability, to perform substantially all of the Executive's duties, with or without a reasonable accommodation, for more than one hundred eighty (180) calendar days measured from the last full day of work ("**Disability**");

(iv) For Cause. The term "**Cause**", as used herein, shall mean:

- (A) Any willful material breach of the terms of this Agreement, or of any other written agreement with the Executive, by the Executive, which breach is not cured by the Executive within thirty (30) days after the Company provides the Executive with written notice specifying the nature of such breach;
- (B) The Executive's material misappropriation of the Company's tangible or intangible property, or material and intentional breach of the Confidentiality Agreement (as defined below) (provided, however, that for this purpose, the Executive will not be deemed to have breached the Confidentiality Agreement in connection with any disclosure made pursuant to a court order, subpoena or other legal obligation);

- (C) The Executive's material failure to comply with the Company Policies or any other reasonable policies and/or directives of the Board, which failure is not cured by the Executive within thirty (30) days after the Company provides the Executive with written notice specifying the nature of such failure;
- (D) The Executive's abuse of illegal drugs or any illegal substance, or the Executive's abuse of alcohol in any manner that materially interferes with the performance of the Executive's duties under this Agreement;
- (E) Any dishonest or illegal action (including, without limitation, embezzlement) by the Executive which is detrimental to the interest and well-being of the Company, including, without limitation, harm to its reputation; or
- (F) The Executive's failure to disclose any conflict of interest known to the Executive that the Executive may have with the Company in a transaction between the Company and any third party which failure is detrimental to the interest and well-being of the Company.

(d) Obligations upon Termination.

(i) Upon the termination of this Agreement and the Executive's employment with the Company pursuant to the expiration of the Term following the Executive's notice of non-renewal pursuant to Section 3, by the Executive pursuant to Section 5(b)(i) (Voluntary Resignation), or by the Company pursuant to Section 5(c)(ii) (Death), (iii) (Disability) or (iv) (Cause), the Company shall have no further obligations hereunder other than the payment of all compensation and other benefits payable to the Executive (or his estate or heirs) through the date of such termination in accordance with the Company's normal payroll cycle and terms of the applicable benefit plans and programs in existence at the time the Executive's employment is terminated.

(ii) Upon termination of this Agreement and the Executive's employment with the Company by the Company pursuant to Section 5(c)(i) (Without Cause), upon expiration of the Term following the Company's notice of non-renewal pursuant to Section 3, or by the Executive pursuant to Section 5(b)(ii) (Good Reason), the Executive shall be entitled to the following, with those benefits described in Sections 5(d)(ii)(B), (C) and (D) specifically conditioned upon Executive's execution and nonrevocation of a valid release under Section 6 and compliance with his obligations under Section 7:

- (A) payment of all compensation and other benefits payable to the Executive through the date of such termination in accordance with the Company's normal payroll cycle and terms of the applicable benefit plans and programs in existence at the time the Executive's employment is terminated;

- (B) payment of an amount equal to twelve (12) months of his then current Base Salary (less applicable withholdings), payable in a lump sum on the sixtieth (60th) day following the date of the Executive's separation from service (the "**Severance Payment Date**");
 - (C) a lump sum payment in an amount equal to the Target Bonus for the fiscal year in which such termination occurred, multiplied by a fraction, the numerator of which is the number of days during which the Executive was employed by the Company in the fiscal year of his termination and the denominator of which is 365 (less applicable withholdings), with such payment to be made on the Severance Payment Date;
 - (D) all outstanding equity-based compensation awards shall become fully vested and the restrictions thereon shall lapse; provided that, any delays in the settlement or payment of such awards that are set forth in the applicable award agreement and that are required under Section 409A ("**Section 409A**") of the Internal Revenue Code of 1986, as amended (the "**Code**") shall remain in effect; and
 - (E) reimbursement for premium payments the Executive makes under the Consolidated Budget Reconciliation Act ("**COBRA**") to continue the Executive and, if applicable, the Executive's family's health insurance coverage under the Company's group health insurance plan for twelve (12) months from the date of termination. Reimbursements for COBRA premium payments shall begin on the Severance Payment Date and shall be made as soon as possible following the Executive's submission to the Company of proof of timely payments, but not later than thirty (30) days after the Executive's submission of proof of timely payments; provided, however, all such claims for reimbursement shall be submitted by the Executive and paid by the Company no later than fifteen (15) months following the termination of the Executive's employment. Any obligation for the Company to make payments for COBRA reimbursement under this Agreement shall immediately cease when the Executive becomes eligible for health insurance from a subsequent employer, and the Executive shall promptly notify the Company of such subsequent eligibility. If the Executive desires COBRA coverage, the Executive shall bear full responsibility for applying for COBRA coverage and nothing herein shall constitute a guarantee of COBRA benefits. Under no circumstances will the Executive be entitled to a cash payment or other benefit in lieu of reimbursements for the actual costs of premiums for COBRA continuation hereunder. The amount of expenses eligible for reimbursement during any calendar year shall not be affected by the amount of expenses eligible for reimbursement in any other calendar year.
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6. Release of Claims. Notwithstanding any provision of this Agreement to the contrary (other than the last sentence of this Section 6), the Company's obligation to provide the payments and benefits under Section 5(d)(ii)(B), (C) and (D) of this Agreement is conditioned upon the Executive's timely execution and non-revocation of an enforceable release of claims and his compliance with his obligations under Section 7 of this Agreement. If the Executive chooses not to execute such a release, timely revokes his execution of the release, or fails to comply with his obligations under Section 7 of this Agreement, then the Company's obligation to compensate him ceases upon the termination of his employment except as to amounts due at the time pursuant to Section 5(d)(ii)(A). The Company shall provide the release of claims to the Executive within seven (7) days of his separation from service, and the Executive must execute it within the time period specified in the release (which shall not be longer than forty five (45) days from the date of receipt). Such release shall not be effective until any applicable revocation period has expired.

7. Confidential Information and Competitive Business Activities. The Executive acknowledges that by virtue of his employment and position with the Company, he has or will have access to confidential information of the Company, including valuable information about its business operations and entities with which it does business in various locations, and has developed or will develop relationships with parties with whom it does business in various locations. The Executive also acknowledges that the confidential information and competitive business activities provisions set forth in the Employee Non-Disclosure, Invention Assignment, and Competitive Business Activities Agreement effective as of the Effective Date hereof (the "**Confidentiality Agreement**"), are reasonably necessary to protect the Company's legitimate business interests, are reasonable as to the time, territory and scope of activities which are restricted, do not interfere with public policy or public interest and are described with sufficient accuracy and definiteness to enable him to understand the scope of the restrictions imposed on him. The Executive acknowledges that his failure to abide by the provisions set forth in Section 3 of the Confidentiality Agreement would cause irreparable harm to the Company for which legal remedies would be inadequate. Therefore, in addition to any legal or other relief to which the Company may be entitled by virtue of the Executive's failure to abide by the provisions set forth in Section 3 of the Confidentiality Agreement: (i) the Company will be released of its obligations under this Agreement to make any post-termination payments; (ii) the Company may seek legal and equitable relief, including but not limited to preliminary and permanent injunctive relief, for the Executive's actual or threatened failure to abide by these provisions; (iii) the Executive will return all post-termination payments received pursuant to this Agreement; and (iv) the Executive will indemnify the Company for all reasonable and documented expenses, including attorneys' fees, incurred by it in successfully enforcing these provisions. In the event that the Company exercises its right to discontinue payments under this provision and/or the Executive returns all post-termination payments received pursuant to this Agreement, the Executive shall remain obligated to abide by the provisions set forth in Section 3 in the Confidentiality Agreement.

8. Representations and Warranties.

(a) The Executive represents and warrants to the Company that the Executive's performance of this Agreement and as an employee of the Company does not and will not breach any noncompetition agreement or any agreement to keep in confidence proprietary information acquired by the Executive in confidence or in trust prior to the Executive's employment by the Company. The Executive represents and warrants to the Company that the Executive has not entered into, and agrees not to enter into, any agreement that conflicts with or violates this Agreement.

(b) The Executive represents and warrants to the Company that the Executive has not brought and shall not bring with the Executive to the Company, or use in the performance of the Executive's responsibilities for the Company, any materials or documents of a former employer which are not generally available to the public or which did not belong to the Executive prior to the Executive's employment with the Company, unless the Executive has obtained written authorization from the former employer or other owner for their possession and use and provided the Company with a copy thereof.

9. Notices. All notices, requests, consents, approvals, and other communications to, upon, and between the parties shall be in writing and shall be deemed to have been given, delivered, made, and received when: (a) personally delivered; (b) deposited for next day delivery by Federal Express, or other similar overnight courier services; (c) transmitted via telefacsimile or other similar device to the attention of the Company's Chief Financial Officer with receipt acknowledged; or (d) three (3) days after being sent or mailed by certified mail, postage prepaid and return receipt requested, addressed as follows:

If to the Company:

Tenax Therapeutics, Inc.
Attn: Chief Financial Officer
One Copley Parkway
Suite 490
Morrisville, NC 27560

If to the Executive:

Stuart Rich
3621 Grove Street
Skokie, IL 60076

10. Choice of Law/Choice of Venue/Effect/Assignment. This Agreement shall be interpreted and governed under the laws of the State of North Carolina, without regard to its choice of law rules, and shall be binding on and inure to the respective benefit of the Company and its successors and assigns and the Executive and his personal representatives. The exclusive jurisdiction for any dispute arising under or relating to this Agreement shall be the state or federal courts sitting in Wake County, North Carolina, and each party hereby irrevocably consents to the personal jurisdiction of such courts. The Company shall require any successor (whether direct or indirect, by purchase, merger, consolidation, reorganization or otherwise) to all or substantially all of the business or assets of the Company, within fifteen (15) days of such succession, expressly to assume and agree to perform this Agreement in the same manner and to the same extent as the Company would be required to perform if no such succession had taken place. The Executive may not assign this Agreement or delegate his obligations hereunder. As used in this Agreement, “**Company**” shall mean the Company and any such successor which assumes and agrees to perform the duties and obligations of the Company under this Agreement by operation of law or otherwise.

11. Entire Agreement. Except as expressly provided in this Agreement and except for the Confidentiality Agreement, this Agreement: (i) supersedes all other understandings and agreements, oral or written, between the parties with respect to the subject matter of this Agreement; and (ii) constitutes the sole agreement between the parties with respect to this subject matter; provided that the Transaction Agreement is expressly preserved. Each party acknowledges that: (A) no representations, inducements, promises or agreements, oral or written, have been made by any party or by anyone acting on behalf of any party, which are not embodied in this Agreement; and (B) no agreement, statement or promise not contained in this Agreement shall be valid. No change or modification of this Agreement shall be valid or binding upon the parties unless such change or modification is in writing and is signed by the parties.

12. Severability. If a court of competent jurisdiction holds that any provision or sub-part thereof contained in this Agreement is invalid, illegal or unenforceable, that invalidity, illegality or unenforceability shall not affect any other provision in this Agreement.

13. Amendment and Waiver. No provision of this Agreement, including the provisions of this Section, may be amended, modified, deleted, or waived in any manner except by a written agreement executed by the parties. Further, the Company’s or the Executive’s waiver of any breach of a provision of this Agreement shall not waive any subsequent breach by the other party.

14. Counterparts. This Agreement may be executed in more than one counterpart, each of which shall be deemed an original, and all of which shall be deemed a single agreement.

15. Headings. The headings herein are for convenience only and shall not affect the interpretation of this Agreement.

16. Taxes.

(a) Section 409A of the Internal Revenue Code.

(i) Parties' Intent. The parties intend that the provisions of this Agreement comply with Section 409A of the Internal Revenue Code of 1986, as amended (the "**Code**"), and the regulations thereunder (collectively, "**Section 409A**"), or an exemption, and all provisions of this Agreement shall be construed in a manner consistent with the requirements for avoiding taxes or penalties under Section 409A. If any provision of this Agreement (or of any award of compensation, including equity compensation or benefits) would cause the Executive to incur any additional tax or interest under Section 409A, the Company shall, upon the specific request of the Executive, use its reasonable business efforts to in good faith reform such provision to comply with Code Section 409A; provided, that to the maximum extent practicable, the original intent and economic benefit to the Executive and the Company of the applicable provision shall be maintained. The Company shall timely use its reasonable business efforts to amend any plan or program in which the Executive participates to bring it in compliance with Section 409A.

(ii) Separation from Service. A termination of employment shall not be deemed to have occurred for purposes of any provision of this Agreement relating to the payment of any amounts or benefits upon or following a termination of employment unless such termination also constitutes a "Separation from Service" within the meaning of Section 409A and, for purposes of any such provision of this Agreement, references to a "termination," "termination of employment," "separation from service" or like terms shall mean Separation from Service.

(iii) Separate Payments. Each installment payment required under this Agreement shall be considered a separate payment for purposes of Section 409A.

(iv) Delayed Distribution to Specified Employees. If the Company determines in accordance with Sections 409A and 416(i) of the Code and the regulations promulgated thereunder, in the Company's sole discretion, that the Executive is a specified employee of the Company, determined in accordance with Section 409A, any payments and/or benefits provided under this Agreement that constitute "nonqualified deferred compensation" subject to Section 409A that are provided to Executive on account of his Separation from Service shall not be provided until the day after the six-month anniversary of Executive's termination date ("**Specified Employee Payment Date**"). The aggregate amount of any payments that would otherwise have been made to Executive during such six-month period shall be paid in a lump sum to Executive on the Specified Employee Payment Date without interest and, thereafter, any remaining reimbursements shall be paid without delay in accordance with their original schedule.

(b) Withholdings. The Company shall withhold any amounts required from any payment due the Executive hereunder in accordance with state and federal tax law requirements.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have executed this Employment Agreement as of the day and year first above written.

Tenax Therapeutics, Inc.

By: /s/ Anthony DiTonno
Name: Anthony DiTonno
Title: Chief Executive Officer

Stuart Rich, MD

 /s/ Stuart Rich

[Signature Page to Executive Employment Agreement]

Exhibit A

Nonstatutory Stock Option Agreement

**TENAX THERAPEUTICS INC.
2016 STOCK INCENTIVE PLAN**

AWARD AGREEMENT

THIS AWARD AGREEMENT (this “Agreement”) is made by and between Tenax Therapeutics, Inc., a Delaware corporation (the “Company”), and Stuart Rich, M.D. (the “Optionee”) in accordance with the employment inducement grant exception to the shareholder approval requirements of the Nasdaq Stock Market LLC (“Nasdaq”) set forth in Nasdaq Listing Rule 5635(c)(4). Capitalized terms not defined in this Agreement shall have the meanings given to them in the Tenax Therapeutics, Inc. 2016 Stock Incentive Plan (the “Plan”).

WITNESSETH:

WHEREAS, the Optionee is providing, or has agreed to provide, services to the Company, or Affiliate or a Subsidiary of the Company, as an Employee or Third Party Service Provider;

WHEREAS, the Company considers it desirable and in its best interests that the Optionee be given a personal stake in the Company’s growth, development and financial success through the grant of an option to purchase shares of the \$0.0001 par value common stock of the Company (the “Shares”); and

WHEREAS, the Compensation Committee of the Company’s Board of Directors desires to award a stock option to Optionee as an employment inducement grant (within the meaning of Nasdaq Listing Rule 5635(c)(4)).

NOW, THEREFORE, in consideration of the premises and the mutual agreements set forth herein, the parties agree as follows:

1. Grant of Option. Effective as of January 15, 2021 (the “Date of Grant”), the Company hereby grants to the Optionee, an option (the “Option”) to purchase Two Hundred Fifty Thousand (250,000) Shares at the Option Price per Share of \$1.78 (the “Option Price”), subject to the terms and conditions of this Agreement and in accordance with the employment inducement grant exception to the shareholder approval requirements set forth in NASDAQ Listing Rule 5635(c)(4). It is understood that the grant of such Option is not made pursuant to the Plan or any other equity-based incentive plan of the Company; provided, however, that, unless inconsistent with the express terms of this Agreement, this Agreement shall be interpreted, and the Option shall be administered, consistent with the provisions of the Plan, the terms of which are herein incorporated by reference. The future value of such Shares is unknown and cannot be predicted with certainty. If such Shares do not increase in value, the Option will have no value.

2. Term of Option. Subject to earlier termination under Section 4 hereof, the term of the Option shall be ten (10) years (the “Term”).

3. Vesting Schedule. The Option shall vest and become exercisable as to:

- (a) Sixty-Two Thousand Five Hundred (62,500) Shares from and after the start of a Phase 3 clinical trial (the “Trial”);
- (b) Sixty-Two Thousand Five Hundred (62,500) Shares from and after the database lock with respect to the Trial;
- (c) Sixty-Two Thousand Five Hundred (62,500) Shares from and after the opening of an Investigational New Drug Application with the U.S. Food and Drug Administration (the “FDA”);
- (d) Sixty-Two Thousand Five Hundred (62,500) Shares from and after the approval from the FDA.

In no event will any portion of the Option that is not vested and exercisable at the time of the termination of the Optionee’s service relationship become vested and exercisable following such termination. Further, notwithstanding any provision of the Plan or this Agreement to the contrary, in no event will any portion of the Option that is not vested and exercisable immediately prior to the time of a Sale of the Company become vested and exercisable because of such event.

4. Termination of Option. Except as otherwise provided herein, the Option shall terminate on the earliest to occur of the following:

- (e) The expiration of the Term of the Option.
- (f) The 91st day after termination of the Optionee’s service relationship for any reason other than one specified in (c) or (d) below.
- (g) The 366th day after termination of the Optionee’s service relationship as a result of the Optionee’s death, or a disability, retirement or redundancy that is approved by the Committee for this purpose.
- (h) Termination of the Optionee’s employment relationship by the Company for Cause, or of the Optionee’s service relationship by the Company for reasons that would constitute Cause if the Optionee were an employee.

5. Exercise of Option. The vested portion of the Option may be exercised in whole or in part by delivery of an exercise notice in the form attached as Exhibit A (the “Exercise Notice”) which shall state the election to exercise the Option and set forth the number of Shares with respect to which the Option is being exercised. The Exercise Notice shall be accompanied by payment of an amount equal to the aggregate Option Price as to all exercised Shares. Payment of such amount shall be by any of the following methods, or combination thereof, at the election of the Optionee: (a) in cash or its equivalent; (b) by tendering (either by actual delivery or attestation) previously acquired Shares having an aggregate Fair Market Value at the time of exercise equal to the Option Price; (c) by a cashless (broker-assisted) exercise; or (d) any other method approved or accepted by the Committee in its sole discretion. The Option shall be deemed to be exercised upon receipt by the Company of such fully executed Exercise Notice accompanied by the aggregate Option Price.

In connection with such exercise, the Company shall have the right to require that the Optionee make such provision, or furnish the Company such authorization, as may be necessary or desirable so that the Company may satisfy any obligation it has under applicable income tax laws to withhold for income or other taxes due upon or incident to such exercise. The Committee may, in its discretion, permit such withholding obligation to be satisfied through the withholding of Shares that would otherwise be delivered upon exercise of the Option.

6. Non-Transferability of Option. This Option may not be transferred in any manner otherwise than by will or the laws of descent and distribution and, during the Optionee's lifetime, may only be exercised by the Optionee.

7. Restrictions on Shares. This Agreement shall be subject to all applicable laws, rules, and regulations, and to such approvals by any governmental agencies or stock exchange as may be required. The Optionee agrees to take all steps the Committee determines are necessary to comply with all applicable provisions of federal and state securities law in exercising his or her rights under this Agreement. The Committee may impose such restrictions on any Shares acquired pursuant to the exercise of this Option as it deems advisable, including, without limitation, minimum holding period requirements, restrictions under applicable federal securities laws, under the requirements of any stock exchange or market upon which such Shares are then listed and/or traded, or under any blue sky or state securities laws as may be applicable to such Shares.

8. Forfeiture. Where an Optionee engages in certain competitive activity or is terminated by the Company for Cause, his or her Option and Shares are subject to forfeiture conditions under Section 11.3 of the Plan. Upon the occurrence of any of the events set forth in Section 11.3 of the Plan, in addition to the remedies provided in Section 11.3, the Company shall be entitled to issue a stop transfer order and other documents implementing the forfeiture to its transfer agent, the depository or any of its nominees, and any other person with respect to this Option and the Shares.

9. Successors and Assigns. The Company may assign any of its rights under this Agreement to single or multiple assignees, and this Agreement shall inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer herein set forth, the terms and conditions of the Plan and this Agreement shall be binding upon the Optionee and his or her heirs, executors, administrators, successors and assigns.

10. Interpretation. Any dispute regarding the interpretation of this Agreement shall be submitted by the Optionee or by the Company forthwith to the Committee, which shall review such dispute at its next regular meeting. The resolution of such a dispute by the Committee shall be final and binding on all parties.

11. Tax Consequences. The exercise of this Option and the subsequent disposition of the Shares may cause the Optionee to be subject to federal, state and/or foreign taxation. The Optionee should consult a tax advisor before exercising this Option or disposing of the Shares purchased hereunder.

12. Acknowledgement. The Optionee acknowledges and agrees: (i) that the Plan is discretionary in nature and may be suspended or terminated by the Company at any time; (ii) that the grant of the Option does not create any contractual or other right to receive future grants of options or any right to continue an employment or other relationship with the Company (for the vesting period or otherwise); (iii) that the Optionee remains subject to discharge from such relationship to the same extent as if the Option had not been granted; (iv) that all determinations with respect to any such future grants, including, but not limited to, when and on what terms they shall be made, will be at the sole discretion of the Committee; (v) that participation in the Plan is voluntary; (vi) that the value of the Option is an extraordinary item of compensation that is outside the scope of the Optionee's employment contract if any; and (vii) that the Option is not part of normal or expected compensation for purposes of calculating any severance, resignation, redundancy, end of service payments, bonuses, long-service awards, pension or retirement benefits or similar benefits.

13. Employee Data Privacy. As a condition of the grant of this Option, the Optionee consents to the collection, use and transfer of personal data as described in this paragraph. The Optionee understands that the Company and its Affiliates hold certain personal information about the Optionee, including but not limited to the Optionee's name, home address and telephone number, date of birth, social security number, salary, nationality, job title, shares of common stock or directorships held in the Company, details of all Options or other entitlement to shares of common stock awarded, cancelled, exercised, vested, unvested or outstanding in the Optionee's favor for the purpose of managing and administering the Plan ("Data"). The Optionee further understands that the Company and/or its Affiliates will transfer Data amongst themselves as necessary for the purposes of implementation, administration and management of the Optionee's participation in the Plan, and that the Company and/or any of its Affiliates may each further transfer Data to any third parties assisting the Company in the implementation, administration and management of the Plans. The Optionee understands that these recipients may be located in the Optionee's country of residence or elsewhere. The Optionee authorizes them to receive, possess, use, retain and transfer Data in electronic or other form, for the purposes of implementing, administering and managing the Optionee's participation in the Plan, including any requisite transfer of such Data as may be required for the administration of the Plan and/or the subsequent holding shares of common stock on the Optionee's behalf to a broker or other third party with whom the shares acquired on exercise may be deposited. The Optionee understands that the Optionee may, at any time, view the Data, require any necessary amendments to it or withdraw the consent herein in writing by contacting the local human resources representative.

14. Confidentiality. The Optionee agrees not to disclose the terms of this offer to anyone other than the members of the Optionee's immediately family or the Optionee's counsel or financial advisors and agrees to advise such persons of the confidential nature of this offer.

15. Entire Agreement; Governing Law. The Plan is incorporated herein by reference. The Plan and this Agreement constitute the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Company and the Optionee with respect to the subject matter hereof, and may not be modified adversely to the Optionee's interest except by means of a writing signed by the Company and Optionee. This Agreement is governed by the internal substantive laws but not the choice of law rules of Delaware.

OPTIONEE

TENAX THERAPEUTICS, INC.

Signature

By:
Name:
Title:

Exhibit A

**FORM OF
EXERCISE NOTICE FOR 2016 STOCK INCENTIVE PLAN**

Tenax Therapeutics, Inc.
One Copley Parkway, Suite 490
Morrisville, North Carolina 27560
Attention: Stock Plan Administrator

1. Exercise of Option. Effective as of today, _____, 20___, the undersigned (the "Optionee") hereby elects to exercise the Optionee's option (the "Option") to purchase _____ shares of the Common Stock (the "Shares") of Tenax Therapeutics, Inc. (the "Company") under and pursuant to the Tenax Therapeutics, Inc. 2016 Stock Incentive Plan (the "Plan") and the Award Agreement with a grant date of [____], 2020 (the "Award"). The Grant Number of the Option is [____], and the per share exercise price is \$[____].

2. Delivery of Payment. The Optionee herewith delivers to the Company the aggregate exercise price of the Option, as set forth in the Award, by means of (**check one**):

a check in U.S. dollars made payable to Tenax Therapeutics, Inc. or bank transfer;
or

(i) a share certificate (or certificates) representing previously acquired shares and (ii) a check in U.S. Dollars made payable to Tenax Therapeutics, Inc. or bank transfer that, in combination, have an aggregate value (the Fair Market Value of the shares delivered plus the check or bank transfer amount) equal to the aggregate exercise price of the Option.

3. Representations of Optionee. The Optionee acknowledges that the Optionee has received, read and understood the Plan and the Award and agrees to abide by and be bound by their terms and conditions. In making the decision to exercise the option(s) the Optionee has relied upon his or her own independent investigations or those made by his or her representatives, if any (including professional, financial, tax, legal and other advisors). The Optionee (and his or her representatives, if any) has had an opportunity to review information with respect to the Company, desires no further additional information concerning the Company or its operations, and deems such information reviewed adequate to evaluate the merits and risks of the Optionee's investment in the Company.

The Optionee acknowledges that the Company is relying upon each of the above representations in connection with the exercise of the option and the issuance of the underlying Shares.

4. Rights as Shareholder. Until the issuance of the Shares (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a shareholder shall exist with respect to the Shares, notwithstanding the exercise of the Option. The Shares shall be issued to the Optionee as soon as practicable after the Option is exercised. No adjustment shall be made for a dividend or other right for which the record date is prior to the date of issuance except as provided in the Plan.

5. Tax Consultation and Withholding. The Optionee understands that the Optionee may suffer adverse tax consequences as a result of the Optionee's purchase or disposition of the Shares. The Optionee represents that the Optionee has consulted with any tax consultants the Optionee deems advisable in connection with the purchase or disposition of the Shares and that the Optionee is not relying on the Company for any tax advice. The Optionee further understands that the Optionee's purchase of the Shares may give rise to an obligation on the part of the Company to withhold for income or other taxes due and agrees to make a payment to the Company in the amount necessary to allow the Company to satisfy any withholding obligations.

6. Restrictive Legends. The Optionee understands and agrees that the Company shall cause the legends set forth below or legends substantially equivalent thereto, to be placed upon any certificate(s) evidencing ownership of the Shares together with any other legends that may be required by the Company or by state or federal securities laws:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE TENAX THERAPEUTICS, INC. 2016 STOCK INCENTIVE PLAN, AS SUCH PLAN MAY BE ALTERED, AMENDED, RESTATED OR MODIFIED FROM TIME TO TIME, AND ANY TRANSFEREE OF THESE SECURITIES SHALL BE SUBJECT TO THE TERMS OF SUCH PLAN. COPIES OF THE FOREGOING PLAN ARE MAINTAINED WITH THE CORPORATE RECORDS OF THE ISSUER AND ARE AVAILABLE FOR INSPECTION AT THE PRINCIPAL OFFICES OF THE ISSUER.

THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE ALSO SUBJECT TO AN AWARD AGREEMENT BETWEEN THE ISSUER AND THE HOLDER, AS SUCH AGREEMENT MAY BE AMENDED, RESTATED OR MODIFIED FROM TIME TO TIME, AND ANY TRANSFEREE OF THESE SECURITIES SHALL BE SUBJECT TO THE TERMS OF SUCH AGREEMENT. COPIES OF THE FOREGOING AGREEMENT ARE MAINTAINED WITH THE CORPORATE RECORDS OF THE ISSUER AND ARE AVAILABLE FOR INSPECTION AT THE PRINCIPAL OFFICES OF THE ISSUER.

7. Governing Law. This Agreement shall be governed by the internal substantive laws but not the choice of law rules of Delaware.

8. Entire Agreement. The Plan and Award are incorporated herein by reference. This Agreement, the Plan, and the Award constitute the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Company and the Optionee with respect to the subject matter hereof, and may not be modified adversely to the Optionee's interest except by means of a writing signed by the Company and the Optionee.

Submitted by:

Accepted by:

OPTIONEE

TENAX THERAPEUTICS, INC.

Signature
Name:

By:
Name:
Title:
Date:



Tenax Therapeutics, Inc. Announces Transformative Acquisition of PH Precision Med

- *Expands pipeline into Pulmonary Arterial Hypertension (PAH), a progressive, fatal orphan disease without a cure*
- *Imatinib, a tyrosine kinase inhibitor (TKI), has been shown to block critical disease promoting pathways and has demonstrated improved exercise capacity and hemodynamics in patients with advanced PAH*
- *Acquisition strengthens leadership team with appointment of Dr. Stuart Rich as Chief Medical Officer*

Morrisville, NC, January 19, 2021 - Tenax Therapeutics, Inc. (Nasdaq: TENX), a specialty pharmaceutical company focused on identifying, developing, and commercializing products for the critical care market, today announced the acquisition of PH Precision Med (PHPM), a privately-held clinical stage biotech company focused on developing imatinib for the treatment of pulmonary arterial hypertension (PAH). The FDA has granted Orphan Drug Designation for imatinib for the treatment of PAH, an indication with a high unmet medical need.

The acquisition expands Tenax's pulmonary hypertension pipeline with the addition of imatinib, a Phase 3 ready candidate. Imatinib is a tyrosine kinase inhibitor (TKI) that transformed the treatment of cancer by blocking the underlying pathways resulting in long lasting remissions. Subsequent preclinical and clinical studies in PAH indicate that imatinib may provide antiproliferative and disease-modifying effects in PAH patients through its ability to inhibit several growth factors including platelet-derived growth factor (PDGF). PDGF regulates vascular smooth muscle cell proliferation in PAH and is thought to be associated with the disease progression. Multiple clinical studies of imatinib in PAH patients provide convincing evidence that imatinib can provide impressive improvements in exercise capacity and hemodynamics in patients with advanced PAH. The strong efficacy results from these trials, combined with imatinib's antiproliferative mechanism action, have raised the possibility that imatinib may work by modifying the underlying PAH disease process. Pursuant to the acquisition, Tenax's clinical development plan includes advancing a delayed release oral formulation of imatinib, designed to avoid the gastric irritation, into a single pivotal trial pursuant to the 505(b)(2) pathway.

"The acquisition of PHPM immediately expands Tenax's pipeline to include a second de-risked Phase 3 ready candidate with the potential to be the first disease modifying treatment of pulmonary arterial hypertension," said Anthony DiTonno, Chief Executive Officer of Tenax. "The previous clinical trial designs led to high dropout rates and raised questions related to safety and tolerability, which limited further development of imatinib in PAH. We believe that PHPM's innovative clinical development plan, which includes a novel formulation that mitigates the side effects without diminishing the bioavailability, has the potential to yield positive clinical outcomes in a single pivotal Phase 3 trial requisite for regulatory approval."

Stuart Rich, MD, co-founder of PHDM, has been appointed Chief Medical Officer of Tenax Therapeutics. Dr. Rich currently serves as Professor of Medicine at Northwestern University Feinberg School of Medicine, and Director of the Pulmonary Vascular Disease Program at the Bluhm Cardiovascular Institute. He previously served as FDA Cardio-Renal Advisory Committee Member.

Mr. DiTonno continued, "In addition to this transformative asset, we are also pleased to welcome PHPM's co-founder Dr. Rich to the Tenax management team. Dr. Rich is a pioneer in the field of pulmonary hypertension and its treatments. In addition, his many years of experience as an FDA advisory committee member provides Tenax with extraordinary knowledge of pulmonary hypertension disease mechanisms and modern regulatory strategies. I am confident this strengthened team is well positioned to maximize the clinical potential of imatinib and advance the clinical development of levosimendan for PH-HFpEF, which together have the potential to address significant unmet needs and large market opportunities."

At the next regularly scheduled Board meeting, Dr. Rich is expected to be appointed to Tenax's Board of Directors. In addition, in connection with Tenax's 2021 Annual Meeting of Stockholders, two additional co-founders of PHPM, Declan Doogan, MD and Michael Davidson, MD, are expected to be nominated to join to Tenax's Board of Directors. Dr. Doogan is a drug development executive with more than 30 years of experience in the pharmaceutical industry. After retiring from Pfizer in 2007 as the Senior VP Head of World Drug Development he was Head of R&D at Amarin where he helped raised \$100 million to fund the reorganization leading to completion of a Phase 3 program and approval for Vascepa. He is cofounder and Chair of Biohaven (BHVN: NYSE) and co-founder of the healthy aging company Juvenescence. Dr. Davidson was founder of Omthera Pharmaceuticals, co-founder of Corvidia Therapeutics, Inc., and is currently Chief Executive Officer of New Amsterdam Pharma. Together they bring extensive experience of successful biotech development and leadership.

Dr. Rich remarked, "This acquisition by Tenax, a clinical-stage publicly traded company with a pulmonary hypertension focus, is testament to the PHPM team's success in developing our novel and highly innovative clinical development plan. We will now focus advancing therapeutic candidates for Group 1 and Group 2 pulmonary hypertension with a precision medicine approach, to allow us to achieve the optimal treatment effects in our clinical trials. I look forward to joining the Tenax team to unlock the clinical potential of imatinib for patients with severe PAH."

In connection with his appointment, on January 15, 2021, Dr. Rich was awarded an option to purchase 250,000 shares of the Company's common stock. This award was made in accordance with the employment inducement award exemption provided by Nasdaq Rule 5635(c)(4) and was therefore not awarded under the Company's stockholder approved equity plan. The option award will vest as follows: 25% upon initiation of a Phase 3 trial; 25% upon database lock; 25% upon acceptance for review of an NDA; and 25% upon approval. The options have a 10-year term and an exercise price of \$1.78 per share, the January 15, 2021 closing price of the Company's common stock.

In connection with the acquisition, Tenax will issue to PHPM's stockholders in a private placement an aggregate of approximately 12.1 million unregistered shares of common stock and securities convertible into common stock. These securities were issued as follows at closing:

- (i) 1,892,905 shares of Tenax Common Stock, representing approximately 15% of Tenax's outstanding Common Stock prior to closing, and
- (ii) 10,232 shares of Class B Preferred Stock that, following stockholder approval, will be converted into up to 10,232,000 shares of Common Stock. The Preferred Stock will have voting rights equal to approximately 4.99% of the Company's pre-transaction shares outstanding, such that the total voting rights of shares issued in the transaction prior to stockholder approval will not exceed 19.99% of the pre-transaction outstanding common stock.

Stockholder approval was not required and was not sought for the consummation of the acquisition; however, Tenax intends to seek stockholder approval for the full issuance of the securities contemplated in the transaction. A more complete description of the acquisition is available in the Form 8-K filed by Tenax Therapeutics with the Securities and Exchange Commission (the "SEC") on January 19, 2021. This press release is neither an offer to sell nor a solicitation of an offer to buy any of the Tenax Therapeutics' securities. No offer, solicitation, or sale will be made in any jurisdiction in which such offer, solicitation, or sale is unlawful. The terms and conditions of the transactions described in this press release are qualified in their entirety by reference to the transaction documents, which were filed on January 19, 2021 with the SEC on Form 8-K.

About Tenax Therapeutics

Tenax Therapeutics, Inc., is a specialty pharmaceutical company focused on identifying, developing, and commercializing products that address cardiovascular and pulmonary diseases with high unmet medical need. The Company has a world-class scientific advisory team including recognized global experts in pulmonary hypertension. The Company owns North American rights to develop and commercialize levosimendan and has recently released topline data regarding their Phase 2 clinical trial for the use of levosimendan in the treatment of Pulmonary Hypertension associated with Heart Failure and preserved Ejection Fraction (PH-HFpEF). For more information, visit www.tenaxthera.com.

About Levosimendan

Levosimendan is a calcium sensitizer that works through a unique triple mechanism of action. It initially was developed for intravenous use in hospitalized patients with acutely decompensated heart failure. It was discovered and developed by Orion Pharma, Orion Corporation of Espoo Finland, and is currently approved in over 60 countries for this indication and not available in the United States. Tenax Therapeutics acquired North American rights to develop and commercialize levosimendan from Phyxius Pharma, Inc.

About Imatinib

Imatinib is an antiproliferative agent developed to target the BCR-ABL tyrosine kinase in patients with chronic myeloid leukemia. The inhibitory effects of imatinib on PDGF receptors and c-KIT suggested that it may be efficacious in PAH. Imatinib reversed experimentally induced pulmonary hypertension and has pulmonary vasodilatory effects in animal models and proapoptotic effects on pulmonary artery smooth muscle cells from patients with idiopathic PAH. In a phase 3 clinical trial imatinib produced significant improvements in exercise capacity, but a high rate of dropouts attributed largely to gastric intolerance prevented regulatory approval.

Caution Regarding Forward-Looking Statements

This news release contains certain forward-looking statements by the Company that involve risks and uncertainties and reflect the Company's judgment as of the date of this release. The forward-looking statements are subject to a number of risks and uncertainties, including, but not limited to matters beyond the Company's control that could lead to delays in the clinical study, new product introductions and customer acceptance of these new products; matters beyond the Company's control that could impact the Company's continued compliance with Nasdaq listing requirements; the impact of management changes on the Company's business and unanticipated charges, costs and expenditures not currently contemplated that may occur as a result of management changes; and other risks and uncertainties as described in the Company's filings with the Securities and Exchange Commission, including in its annual report on Form 10-K filed on March 30, 2020, and its quarterly report of Form 10-Q filed on November 16, 2020, as well as its other filings with the SEC. The Company disclaims any intent or obligation to update these forward-looking statements beyond the date of this release. Statements in this press release regarding management's future expectations, beliefs, goals, plans or prospects constitute forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995.

Contacts

Investor Contact:

Westwicke, an ICR Company

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