UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

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

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

WINDTREE THERAPEUTICS, INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware	**000-26422**	**94-3171943**
(State or other jurisdiction of incorporation or organization)	(Commission File Number)	(I.R.S. Employer Identification Number)

2600 Kelly Road, Suite 100 **Warrington, Pennsylvania**	**18976**
(Address of Principal Executive Offices)	(Zip Code)

(215) 488-9300
(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 (*see* General Instruction A.2. below):

☐ 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))

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

Emerging growth company ☐

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.

Merger Agreement and AEROSURF® Warrant Dividend

On December 21, 2018, Windtree Therapeutics, Inc. (the "Company") and WT Acquisition Corp., an exempted company with limited liability incorporated under the laws of the Cayman Islands and a direct wholly owned subsidiary of the Company ("Merger Sub"), entered into an Agreement and Plan of Merger (the "Merger Agreement") with CVie Investments Limited, an exempted company with limited liability incorporated under the laws of the Cayman Islands ("CVie"), pursuant to which Merger Sub merged with and into CVie (the "Merger"), with CVie surviving the merger as a wholly owned subsidiary of the Company (the "Merger"). Under the terms of the Merger Agreement, the Company issued shares of its common stock, par value $0.001 per share ("Common Stock"), to CVie's former shareholders, at an exchange ratio of 0.3512 share of Common Stock for each share of CVie outstanding prior to the Merger, resulting in the issuance of 16,265,060 shares of Common Stock being issued in exchange for the shares of CVie. The Merger closed on December 21, 2018 ("Closing Date").

The Company will operate CVie, and its wholly-owned subsidiary CVie Therapeutics Limited, a Taiwan corporation organized under the laws of the Republic of China, as a business division focused on early development of drug product candidates in cardiovascular diseases. The Merger was undertaken by the Company as part of a strategic initiative to create stockholder value that resulted from a multi-year process focused on identifying strategic opportunities, including potential strategic alliances, collaborations (primarily outside the United States), joint development opportunities, acquisitions, technology licensing arrangements, as well as potential combinations (including by merger or acquisition) or other corporate transactions. Stifel, Nicolaus & Company, Incorporated acted as exclusive financial advisor to Windtree in this transaction.

In connection with the Merger, the board of directors of the Company declared a dividend to the holders of record of outstanding shares of Common Stock, and holders of certain warrants to purchase Common Stock, that were outstanding on December 20, 2018 of 0.5731 Series H AEROSURF Warrant, for each share of Common Stock held by a shareholder or each warrant held by a warrant holder, as applicable, on the record date (the "AEROSURF Warrants"). The Company expects to distribute AEROSURF Warrants that are exercisable for an aggregate of 2,962,781 shares of Common Stock. Each AEROSURF Warrant has a term of five years and provides for automatic exercise into one share of Common Stock, without any exercise price, upon the Company's public announcement of the dosing of the first human subject enrolled in the Company's Phase 3 clinical trial for AEROSURF.

On the Closing Date, the Company entered into an indemnification letter agreement (the "Indemnification Letter Agreement") with Lee's Pharmaceutical Holdings Limited ("Lee's"), pursuant to which Lee's agreed to indemnify the holders of issued and outstanding shares of Common Stock on December 20, 2018 (the "Indemnitees") for any loss, liability, damage or expense, including reasonable attorney's fees and expenses incurred by the Company in connection with or, as a result of, any material inaccuracy in any representation or warranty made by CVie in the Merger Agreement (notwithstanding that the representations and warranties made by CVie do not survive after the Effective Time). To secure Lee's performance of this indemnity obligation, 984,000 of the shares issued to Lee's affiliate in the Merger are being placed in escrow with Continental Stock Transfer & Trust Company for one year. A portion of the escrowed shares will be transferred to the Indemnitees as the sole and exclusive remedy for a successful indemnity claim.

Pursuant to the terms of the Merger Agreement, the Company agreed to file a resale registration statement with the Securities and Exchange Commission (the "Commission") to register for subsequent resale the shares of Common Stock issued to the former CVie shareholders in connection with the Merger.

The shares were issued in the Merger pursuant to Regulation S and Rule 506(b) of Regulation D of the Securities Act of 1933, as amended (the "Securities Act") and the AEROSURF Warrants were issued pursuant to a "no sale" exemption from registration under the Securities Act.

The foregoing descriptions of the Merger Agreement and the Indemnification Letter Agreement do not purport to be complete and are qualified in their entirety by reference to the full text of the Merger Agreement, which is attached as Exhibit 10.1 hereto and incorporated herein by reference, and the full text of the Indemnification Letter Agreement, which is attached as Exhibit 10.2 hereto and incorporated herein by reference. A description of the AEROSURF Warrants herein is qualified in its entirety by the text of the AEROSURF Warrants, which is filed as Exhibit 4.1 hereto.

The Merger Agreement is being filed in order to provide investors and the Company's stockholders with information regarding its terms and in accordance with applicable rules and regulations of the Commission. Pursuant to the Merger Agreement, each of the Company and CVie made customary representations, warranties and covenants solely for the benefit of each other. Accordingly, investors and stockholders should not rely on the representations, warranties and covenants. Furthermore, investors and stockholders should not rely on the representations, warranties and covenants as characterizations of the actual state of facts or continuing intentions of the parties, since they were only made as of the date of the Merger Agreement. Information concerning the subject matter of such representations, warranties and covenants may change after the date of the Merger Agreement, which subsequent information may or may not be fully reflected in the Company's reports or other filings with the Commission.

Private Placement Financing

Effective December 21, 2018, the Company entered into a Securities Purchase Agreement (the "SPA") and a Registration Rights Agreement ("Registration Rights Agreement") with select institutional investors ("Investors"), whereby the Company agreed to issue and sell to the Investors an aggregate of 11,785,540 shares of Common Stock at a price per share of $3.3132, for an aggregate cash purchase price of approximately $39.0 million (the "Financing"). In addition, Lee's (through LPH II Investments Limited ("LPH II"), an affiliate) and Battelle Memorial Institute, converted $6.0 million and $1.0 million, respectively, of existing debt obligations in the Financing on the same terms as the Investors. In connection with the Financing, the Company issued (i) Series F Warrants ("Series F Warrants") to purchase an aggregate of 2,003,541 shares of Common Stock, at an exercise price equal to $3.68 per share and (ii) Series G Warrants (the "Series G Warrants" and with the Series F Warrants, the "Financing Warrants") to purchase an aggregate of 3,889,229 shares of Common Stock, at an exercise price equal to $4.05 per share. The Series F Warrants may be exercised after the date of issuance and through the 18-month anniversary of the date of issuance and the Series G Warrants may be exercised through the 5-year anniversary of the date of issuance. The Financing Warrants may not be exercised to the extent that the holder thereof would, following such exercise or conversion, beneficially own more than 9.99% (or other percent as designated by each holder) of the Company's outstanding shares of Common Stock. The Financing Warrants contain customary provisions that adjust the Exercise Price and the number of shares of common stock into which the Financing Warrants are exercisable in the event of a corporate transaction.

Pursuant to the Registration Rights Agreement, the Company has agreed to file by May 1, 2019 a resale registration statement with the Commission to register for subsequent resale the shares of Common Stock issued in the Financing and the shares of Common Stock to be issued upon exercise of the Financing Warrants.

The description of the terms and conditions of the SPA and the Registration Rights Agreement and the rights and obligations of the Company and the Investors in connection therewith are qualified by reference in their entirety to the definitive terms and conditions of the SPA and the Registration Rights Agreement, forms of which are attached hereto as Exhibit 10.3 and Exhibit 10.4 hereto and incorporated herein by reference. A description of the Financing Warrants herein is qualified in its entirety by the text of the Series F Warrants, which is filed as Exhibit 4.2 hereto, and the text of the Series G Warrants, which is filed as Exhibit 4.3 hereto.

The SPA and the Registration Rights Agreement are being filed in order to provide investors and the Company's stockholders with information regarding their terms and in accordance with applicable rules and regulations of the Commission. Pursuant to each of the SPA and Registration Rights Agreement, each of the Company and the Investors made customary representations, warranties and covenants and agreed to indemnify each other for certain losses arising out of breaches of such representations, warranties, covenants and other specified matters. The representations, warranties and covenants were made by the parties to and solely for the benefit of each other and any expressly intended third party beneficiaries in the context of all of the terms and conditions of the agreements and in the context of the specific relationship between the parties. Accordingly, investors and stockholders should not rely on the representations, warranties and covenants. Furthermore, investors and stockholders should not rely on the representations, warranties and covenants as characterizations of the actual state of facts or continuing intentions of the parties, since they were only made as of the date of the agreements. Information concerning the subject matter of such representations, warranties and covenants may change after the date of the agreements, which subsequent information may or may not be fully reflected in the Company's reports or other filings with the Commission.

Item 2.01 Completion of Acquisition or Disposition of Assets.

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

Item 3.02 Unregistered Sales of Equity Securities.

The information set forth in Item 1.01 of this Current Report on Form 8-K regarding the Merger and the Financing is incorporated by reference into this Item 3.02.

Item 5.01 Changes in Control of Registrant.

The information set forth in Item 1.01 regarding the Merger and the Financing is incorporated by reference into this Item 5.01.

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

Appointments of Directors

On December 21, 2018, the Company's board of directors appointed James Huang and Brian Schreiber, M.D., to be directors of the Company and appointed James Huang as the Chairman of the board of directors.

Mr. Huang is currently a founding and Managing Partner to Panacea Venture. Panacea Venture is a venture capital firm that invests in early and growth stage healthcare and life sciences companies worldwide. Since 2011, Mr. Huang has served as a Managing Partner of Kleiner Perkins Caufield & Byers (KPCB) – China, focusing on the firm's life sciences practice. Mr. Huang has made more than 15 investments in China since 2007. Prior to joining KPCB China, Mr. Huang was a Managing Partner at Vivo Ventures, a venture capital firm specializing in life sciences investments. Prior to joining Vivo in 2007, Mr. Huang was president of Anesiva, a biopharmaceutical company focused on pain-management treatments. During his 20-year career in the pharmaceutical and biotech industry, Mr. Huang also held senior roles in business development, sales, marketing and R&D with Tularik Inc. (acquired by Amgen), GlaxoSmithKline LLC, Bristol-Meyers Squibb and ALZA Corp. (acquired by Johnson & Johnson). Mr. Huang is Chairman of Board at Kindstar Global, JHL Biotech and XW Laboratory and Director at ChiralQuest, Zenesis, and CASI Pharmaceuticals. Mr. Huang received an M.B.A. from the Stanford Graduate School of Business in 1992 and a B.S. degree in chemical engineering from the University of California, Berkeley.

Brian Schreiber, M.D. is a Board-Certified Nephrologist and Internist with extensive industry and clinical experience, specializing in rare diseases. Dr. Schreiber is currently the Chief Medical Officer for Cerium Pharmaceuticals, a company who leverages the basic drug discovery work performed by others and moves drug candidates through the clinical and regulatory development processes. In 2015, Dr. Schreiber was also President and Managing Partner for Metabolism Disease Consultants, focusing on drug development, clinical trial design and in-licensing clinical guidance. Dr. Schreiber also served as Vice President of Medical Development at Relypsa and spent 14 years at Sigma-Tau Pharmaceuticals as the head of its Medical Affairs Department. Dr. Schreiber's clinical experience includes his role as Chief Medical Director of Dialysis Care Inc., a multi-center dialysis chain providing services in the Northeast and Central Wisconsin and Chairman of Nephrology at LaSalle Clinic, Affinity Medical System, serving as its first president until 2001. Dr. Schreiber has also continued his activities in academia as Assistant Clinical Professor of Medicine, Department of Medicine, Division of Nephrology, Medical College of Wisconsin since 2001, and has published numerous academic papers, given a variety of lectures, and ran various symposia.

Item 8.01 Other Events.

On December 21, 2018, the Company issued a press release announcing that it had consummated the Merger and the Financing. A copy of that press release is attached to this Report as Exhibit 99.1 and is incorporated herein by reference.

All information included in the press release is presented as of the date thereof, and the Company assumes no obligation to correct or update such information in the future.

Financial Update

As of December 21, 2018, the Company has pro forma cash and cash equivalents of $29.4 million, after deducting the estimated offering and merger related expenses of approximately $3.0 million.

In connection with the Merger, the Company assumed approximately $8.0 million in CVie debt, including (i) $4.5 million in a bank credit facility currently due in March 2020, and (ii) $3.5 million due to LPH II ("Lee's Debt"). The Company is currently in discussions with Lee's regarding the timing of payment of the Lee's Debt and it is expected that payment will be made in the first quarter of 2019.

The Company currently has 42.2 million fully-diluted shares outstanding and 76.2 million available for future issuance.

Item 9.01 Financial Statements and Exhibits.

(a) Financial Statements of Businesses Acquired.

The Company intends to file with the Commission the financial statements relating to CVie under cover of Form 8-K/A, no later than 71 calendar days after the date the information provided under Item 1.01 on this Current Report on Form 8-K was required to be filed.

(b) Pro forma financial information.

The Company intends to furnish with the Commission pro forma financial information relating to the Merger described in Item 1.01 above under cover of Form 8-K/A with the Commission no later than 71 calendar days after the date the information provided under Item 1.01 on this Current Report on Form 8-K was required to be filed.

(d) Exhibits.

Exhibit No.	Exhibit Description
4.1	Form of AEROSURF Warrant
4.2	Form of Series F Warrant
4.3	Form of Series G Warrant
10.1	Merger Agreement, dated December 21, 2018, by and among the Company, WT Acquisition Corp., an exempted company with limited liability incorporated under the laws of the Cayman Islands and a direct wholly owned subsidiary of Parent, and CVie Investments Limited, an exempted company with limited liability incorporated under the laws of the Cayman Islands.*
10.2	Indemnification Letter Agreement, dated December 21, 2018 by and between the Company and Lee's Pharmaceutical Holdings Limited.
10.3	Securities Purchase Agreement, dated December 21, 2018 by and among the Company and the purchasers named on Schedule I thereto.
10.4	Registration Rights Agreement, dated December 21, 2018 by and among the Company and the purchasers named on Schedule I thereto.
99.1	Press Release of Windtree Therapeutics, Inc., dated December 21, 2018.

* Pursuant to Item 601(b)(2) of Regulation S-K, certain schedules and similar attachments have been omitted. The registrant hereby agrees to furnish a copy of any omitted schedule or similar attachment to the SEC upon request.

Cautionary Note Regarding Forward-looking Statements:

To the extent that statements in this Current Report on Form 8-K are not strictly historical, including statements as to business strategy, outlook, objectives, future milestones, plans, intentions, goals, future financial conditions, future collaboration agreements, the success of the Company's product development or otherwise as to future events, such statements are forward-looking. The forward-looking statements contained in this Current Report on Form 8-K are subject to certain risks and uncertainties that could cause actual results to differ materially from the statements made. Such risks and others are further described in the Company's filings with the Securities and Exchange Commission including the most recent reports on Forms 10-K, 10-Q and 8-K, and any amendments thereto.

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 thereunto duly authorized.

Date: December 21, 2018

Windtree Therapeutics, Inc.

By: /s/ Craig Fraser
Craig Fraser
President and Chief Executive Officer

WINDTREE THERAPEUTICS, INC.

SERIES H WARRANTS EXERCISABLE INTO COMMON STOCK

Series H Warrant No.:
Number of Shares of Common Stock:
Date of Issuance: _____, 2018 ("**Issuance Date**")

Windtree Therapeutics, Inc., a Delaware corporation (the "**Company**"), hereby certifies that, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, , the registered holder hereof (the "**Holder**") of this Series H Warrant Exercisable into Common Stock (including any Series H Warrants Exercisable into Common Stock issued in exchange or replacement hereof, the "**Warrant**"), is entitled to acquire from the Company for no consideration, subject to the terms set forth below, at the time following the date on which the Company publicly announces the first dosing of the first human subject Enrolled in the Company's Phase 3 Clinical Trial for AEROSURF® (the "**Exercisability Date**"), but not after 11:59 p.m., New York time, on the Expiration Date (as defined below), ( ) fully paid and nonassessable shares (the "**Warrant Shares**") of Common Stock.

1. EXERCISE OF WARRANT.

(a) Mechanics of Exercise. No action is required by the Holder in connection with the exercise of the Warrant. The exercise will be a Mandatory Corporate Action Event and the Warrant shall be exercised automatically upon the public announcement of the Company's first dosing of the first human subject Enrolled in the Company's Phase 3 Clinical Trial for AEROSURF, which shall be evidenced by the delivery of an instruction letter (the "Instruction Letter"), substantially in the form attached hereto as Exhibit A, by the Company to the Continental Stock Transfer & Trust Company (the "**Warrant Agent**" and "**Transfer Agent**"), which is serving as the Warrant Agent of this Warrant and as the Company's common stock transfer Agent. The Holder shall not be required to physically surrender this Warrant to receive shares of common stock upon exercise. However, provided the Transfer Agent is participating in The Depository Trust Company ("**DTC**") Fast Automated Securities Transfer Program and to the extent that Warrants are held electronically in the Depository Trust Company's ("DTC") nominee (Cede & Co) position, the Warrants will need to be returned to the Warrant Agent via a Drawdown SCL through DTC's Fast Reject and Confirmation System ("FRAC"). On or before the second (2nd) Business Day following the date on which the Warrant has been duly exercised (the "**Share Delivery Date**"), the Company or the Warrant Agent shall (X) provided the Warrants are held in DTC's nominee (Cede & Co) position, cause the underlying Warrant Shares to be credited to DTC via an Add to Balance SCL through DTC's FRAC system or (Y) issue the Warrant Shares to the Holder in Direct Registration System ("DRS") book entry format. A DRS Statement will be sent via First Class mail to each Holder. Upon exercise, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date such Warrant Shares are credited to the Holder's DTC account or the date of delivery of the Warrant Shares, as the case may be. No fractional shares of Common Stock are to be issued upon the exercise of this Warrant, but rather the number of shares to Common Stock to be issued shall be rounded down to the nearest whole number. The Company shall pay any and all taxes which may be payable with respect to the issuance and delivery of Warrant Shares upon exercise of this Warrant. The Holder shall be responsible for all other tax liability that may arise as a result of holding this Warrant or receiving Warrant Shares upon exercise hereof.

2. ADJUSTMENT OF EXERCISE PRICE AND NUMBER OF WARRANT SHARES. The number of Warrant Shares shall be adjusted from time to time as follows:

(a) Stock Splits. If after the date hereof, and subject to the provisions of Section 2(d) below, the number of outstanding shares of Common Stock is increased by a stock dividend payable in Common Stock, or by a split-up of Common Stock or other similar event, then, on the effective date of such stock dividend, split-up or similar event, the number of shares of Common Stock issuable on exercise of each Warrant shall be increased in proportion to such increase in the outstanding shares of Common Stock.

(b) Aggregation of Shares. If after the date hereof, and subject to the provisions of Section 2(d) hereof, the number of outstanding shares of Common Stock is decreased by a consolidation, combination, reverse stock split or reclassification of Common Stock or other similar event, then, on the effective date of such consolidation, combination, reverse stock split, reclassification or similar event, the number of shares of Common Stock issuable on exercise of each Warrant shall be decreased in proportion to such decrease in outstanding shares of Common Stock.

(c) No Cash Settlement. Under no circumstances will the Company be obligated to settle the Warrants in cash.

(d) Calculations. All calculations under this Section 2 shall be made to the nearest whole share, rounded down. For purposes of this Section 2, any calculation of the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall not include treasury shares, if any, notwithstanding anything to the contrary in this Section 2.

3. WARRANT HOLDER NOT DEEMED A STOCKHOLDER. Except as otherwise specifically provided herein, the Holder, solely in such Person's capacity as a holder of this Warrant, shall not be entitled to vote or be deemed the holder of share capital of the Company for any purpose, nor shall anything contained in this Warrant be construed to confer upon the Holder, solely in such Person's capacity as the Holder of this Warrant, any of the rights of a stockholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, conveyance or otherwise), receive notice of meetings, or otherwise, prior to the issuance to the Holder of the Warrant Shares which such Person is then entitled to receive upon the due exercise of this Warrant. In addition, nothing contained in this Warrant shall be construed as imposing any liabilities on the Holder to purchase any securities (upon exercise of this Warrant or otherwise) or as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company.

4. REISSUANCE OF WARRANTS.

(a) Registration of Warrant. The Company or its Transfer Agent shall register this Warrant, upon the records to be maintained by the Company or its Transfer Agent for that purpose (the "**Warrant Register**"), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary. The Company or its Transfer Agent shall also register any exchange, reissuance or cancellation of any portion of this Warrant in the Warrant Register.

(b) Lost, Stolen or Mutilated Warrant. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant, and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary form or the provision of reasonable security by the Holder to the Company and, in the case of mutilation, upon surrender and cancellation of this Warrant, the Company shall execute and deliver to the Holder a new Warrant (in accordance with Section 4(d)) representing the right to purchase the Warrant Shares then underlying this Warrant.

(c) Exchangeable for Multiple Warrants. This Warrant is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Warrant or Warrants (in accordance with Section 4(d)) representing in the aggregate the right to purchase the number of Warrant Shares then underlying this Warrant, and each such new Warrant will represent the right to purchase such portion of such Warrant Shares as is designated by the Holder at the time of such surrender; provided, however, that no Warrants for fractional shares of Common Stock shall be given.

(d) Issuance of New Warrants. Whenever the Company is required to issue a new Warrant pursuant to the terms of this Warrant, such new Warrant (i) shall be of like tenor with this Warrant, (ii) shall represent, as indicated on the face of such new Warrant, the right to exercise into the Warrant Shares then underlying this Warrant (or in the case of a new Warrant being issued pursuant to Section 4(c), the Warrant Shares designated by the Holder which, when added to the number of shares of Common Stock underlying the other new Warrants issued in connection with such issuance, does not exceed the number of Warrant Shares then underlying this Warrant), (iii) shall have an issuance date, as indicated on the face of such new Warrant which is the same as the Issuance Date and (iv) shall have the same rights and conditions as this Warrant.

5. NO TRANSFER. The Warrant may not be transferred by the Holder, and any such purported transfer shall be deemed null and void, except for Permitted Transfers. A "**Permitted Transfer**" means: (i) the transfer of all or part of the Warrant (upon the death of the Holder) by will or intestacy; (ii) transfer by instrument to an inter vivos or testamentary trust in which the Warrant are to be passed to beneficiaries upon the death of the trustee; (iii) transfers made pursuant to a court order of a court of competent jurisdiction (such as in connection with divorce, bankruptcy or liquidation); (iv) if the Holder is a partnership or limited liability company, a pro-rata distribution by the transferring partnership or limited liability company to its partners or members, as applicable; or (v) a transfer made by operation of law (including a consolidation or merger) or in connection with the dissolution, liquidation or termination of any corporation, limited liability company, partnership or other entity.

6. NOTICES. Whenever notice is required to be given to either party under this Warrant, unless otherwise provided herein, such notice shall be given in accordance with information provided by the Holder to the Company, or by the Company to the Holder, as applicable, in writing. The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Warrant, including in reasonable detail a description of such action and the reason therefor.

6. AMENDMENT AND WAIVER. The provisions of this Warrant may be amended or modified or the provisions hereof waived with the written consent of the Company and the Holders holding a majority in interest of the outstanding Warrants.

7. JURISDICTION. The validity, interpretation and performance of this Warrant shall be governed in all respects by the laws of the State of New York, without giving effect to conflicts of law principles that would result in the application of the substantive laws of another jurisdiction. Subject to Article Nine of the Company's amendment and restated certificate of incorporation providing for exclusive jurisdiction in the Court of Chancery of the State of Delaware for certain claims, the Company hereby agrees that any action, proceeding or claim against it arising out of or relating in any way to this Warrant shall be brought and enforced in the courts of the State of New York or the United States District Court for the Southern District of New York, and irrevocably submits to such jurisdiction, which jurisdiction shall be exclusive. The Company hereby waives any objection to such exclusive jurisdiction and that such courts represent an inconvenient forum. Any such process or summons to be served upon the Company may be served by transmitting a copy thereof by registered or certified mail, return receipt requested, postage prepaid, addressed to it at the address provided in accordance with Section 5 hereof. Such mailing shall be deemed personal service and shall be legal and binding upon the Company in any action, proceeding or claim.

8. CONSTRUCTION; HEADINGS. This Warrant shall be deemed to be jointly drafted by the Company and the Holder and shall not be construed against any person as the drafter hereof. The headings of this Warrant are for convenience of reference and shall not form part of, or affect the interpretation of, this Warrant.

9. CERTAIN DEFINITIONS. For purposes of this Warrant, the following terms shall have the following meanings:

(a) "**AEROSURF**" means AEROSURF® (lucinactant for inhalation), a combination drug/device product that utilizes lyophilized synthetic KL4 Surfactant with the Company's proprietary aerosol delivery system, based primarily on the Company's capillary aerosol generator technology, to produce aerosolized KL4 Surfactant for non-invasive aerosolized delivery.

(b) "**Business Day**" means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

(c) "**Clinical Trial**" means a research study in humans that is (i) conducted in accordance with international ethical and scientific quality standards for designing, conducting, recording and reporting research studies that involve the participation of human subjects, which standards are established through the guidance of the U.S. Food and Drug Administration in the United States and other regulatory bodies as applicable, and (ii) designed to generate data regarding a chemical compound or biological molecule in support of an NDA.

(d) "**Common Stock**" means (i) the Company's shares of Common Stock, par value $0.001 per share, and (ii) any share capital into which such Common Stock shall have been changed or any share capital resulting from a reclassification of such Common Stock.

(f) "**Enrolled**" means that a human research subject has met the initial screening criteria for inclusion in a Clinical Trial and has been deemed eligible to participate in such Clinical Trial, all as provided in the Clinical Trial protocol and statistical analysis plan. For clarity, human research subjects that have been screened for inclusion in a Clinical Trial and deemed ineligible based on the results of screening shall not be deemed to be "Enrolled."

(g) "**Expiration Date**" means the fifth anniversary of the Issuance Date or, if such date falls on a day other than a Business Day or on which trading does not take place on the Principal Market (a "**Holiday**"), the next date that is not a Holiday.

(h) "**KL4 Surfactant**" means a pharmaceutical composition containing the peptide known as KL4 with the following amino acid sequence KLLLLKLLLLKLLLLKLLLLK.

(j) "**NDA**" means a New Drug Application or Biologic License Application filed with the U.S. Food and Drug Administration for marketing approval of a pharmaceutical product or any successor applications or procedures, and all supplements and amendments that may be filed with respect to the foregoing. The term "NDA" shall not include applications for pricing or reimbursement approval.

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

(l) "**Phase 3 Clinical Trial**" means a Clinical Trial the design of which is intended to be sufficient for such Clinical Trial to be included as a pivotal efficacy and safety Clinical Trial in an NDA.

(m) "**Principal Market**" means the securities exchange or securities quotation service where the Common Stock is principally listed or quoted for trading.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has caused this Series H Warrant Exercisable into Common Stock to be duly executed as of the Issuance Date set out above.

WINDTREE THERAPEUTICS, INC.

By: _____
Name:
Title:

EXHIBIT A

EXERCISE NOTICE TO BE EXECUTED BY THE COMPANY
TO EXERCISE THIS SERIES H WARRANT EXERCISABLE INTO COMMON STOCK

To: CONTINENTAL STOCK TRANSFER & TRUST COMPANY
1 State Street, 30th Floor
New York NY 10004
By Email: [--]
Tel: [--]

WINDTREE THERAPEUTICS, INC., a Delaware corporation (the "**Company**") hereby confirms to Continental Stock Transfer & Trust Company, as the Warrant Agent of the Company's Series H Warrant Exercisable into Common Stock (the "**Warrant**") and the Transfer Agent of the Company's Common Stock, that the Company has publicly the first dosing of the first human subject Enrolled in the Company's Phase 3 Clinical Trial for AEROSURF®. You are hereby directed to issue to the registered Holders of the Warrant, the number of shares of Common Stock underlying the Warrants they hold. Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Warrant.

1. As per the terms of the Warrant, no payment of cash is required for the exercise of the Warrant.

2. Delivery of Warrant Shares. The Company shall deliver the Warrant Shares to the holder in accordance with the terms of the Warrant.

Date: ,
WINDTREE THERAPEUTICS, INC.

By: _____
Name:
Title:

NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED HEREBY NOR THE SECURITIES INTO WHICH THE SECURITIES REPRESENTED HEREBY ARE EXERCISABLE HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES REPRESENTED HEREBY AND THE SECURITIES INTO WHICH THE SECURITIES REPRESENTED HEREBY ARE EXERCISABLE MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED EXCEPT PURSUANT TO (A) AN EFFECTIVE REGISTRATION STATEMENT FOR SUCH SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) PURSUANT TO AN AVAILABLE EXEMPTION IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES REPRESENTED HEREBY AND THE SECURITIES INTO WHICH THE SECURITIES REPRESENTED HEREBY ARE EXERCISABLE MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY SUCH SECURITIES.

WINDTREE THERAPEUTICS, INC.

SERIES F WARRANT TO PURCHASE COMMON STOCK

Series F Warrant:
Number of Shares of Common Stock:
Date of Issuance: December 24, 2018 ("**Issuance Date**")

Windtree Therapeutics, Inc., a Delaware corporation (the "**Company**"), hereby certifies that, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, _____, the registered holder hereof or its permitted assigns (the "**Holder**"), is entitled, subject to the terms set forth below, to purchase from the Company, at the Exercise Price (as defined below) then in effect, upon surrender of this Series F Warrant to Purchase Common Stock (including any Series F Warrants to Purchase Common Stock issued in exchange, transfer or replacement hereof, the "**Warrant**"), at any time or times after the Issuance Date (the "**Exercisability Date**"), but not after 11:59 p.m., New York time, on the Expiration Date (as defined below),_____ fully paid and nonassessable shares of Common Stock (as defined below) (the "**Warrant Shares**").

1. EXERCISE OF WARRANT.

(a) Mechanics of Exercise. Subject to the terms and conditions hereof, this Warrant may be exercised by the Holder on any day on or after the Exercisability Date, in whole or in part, by (i) delivery of a written notice, in the form attached hereto as Exhibit A (the "**Exercise Notice**"), of the Holder's election to exercise this Warrant to the Company and Continental Stock Transfer & Trust Company (the "**Warrant Agent**" and "**Transfer Agent**") and (ii) if applicable, delivery of this Warrant to the Warrant Agent for cancellation. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Warrant Agent until the Holder has purchased all of the Warrant Shares available hereunder and the Warrant has been exercised in full, in which case the Holder shall surrender this Warrant to the Warrant Agent for cancellation within three (3) Trading Days of the date the final Exercise Notice is delivered to the Warrant Agent. Execution and delivery of an Exercise Notice with respect to a partial Exercise shall have the same effect as cancellation of the original Warrant and issuance of a new Warrant evidencing the right to purchase the remaining number of Warrant Shares. The Exercise Notice shall indicate if the Holder has elected a Cashless Exercise (as defined below) pursuant to Section 1(d) of this Warrant. Within two (2) Business Days following the Exercise, Holder shall deliver payment to the Company of an amount equal to the applicable Exercise Price multiplied by the number of Warrant Shares as to which this Warrant is being exercised (the "**Aggregate Exercise Price**") in cash or by wire transfer of immediately available funds, unless such Holder has elected a Cashless Exercise pursuant to Section 1(c). On or before the second (2nd) Business Day following the date on which the Warrant has been duly Exercised (the "**Share Delivery Date**"), the Company or the Warrant Agent shall (X) provided that the Company's transfer agent (the "**Transfer Agent**") is participating in The Depository Trust Company ("**DTC**") Fast Automated Securities Transfer Program, upon the request of the Holder and provided the Holder causes its prime broker to initiate a Deposit Withdrawal At Custodian ("DWAC") deposit, credit such aggregate number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the Holder's or its designee's balance account with DTC through its DWAC system, or (Y) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program or upon a cash Exercise at a time when a registration statement covering the issuance of Warrant Shares is not effective, issue and dispatch by overnight courier to the address as specified in the Exercise Notice, a certificate, registered in the Company's share register in the name of the Holder or its designee, for the number of shares of Common Stock to which the Holder is entitled pursuant to such Exercise, provided that, unless such Holder has elected a Cashless Exercise pursuant to Section 1(c), the Company shall not be obligated to deliver shares of Common Stock hereunder unless the Company has received the Aggregate Exercise Price by the Share Delivery Date. Upon Exercise, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been Exercised, irrespective of the date such Warrant Shares are credited to the Holder's DTC account or the date of delivery of the certificates evidencing such Warrant Shares, as the case may be. If this Warrant is submitted in connection with any exercise pursuant to this Section 1(a) and the number of Warrant Shares represented by this Warrant submitted for exercise is greater than the number of Warrant Shares being acquired upon an exercise, then the Company shall as soon as practicable and in no event later than five Business Days after any exercise and at its own expense, issue a new Warrant (in accordance with Section 6(d)) representing the right to purchase the number of Warrant Shares purchasable immediately prior to such exercise under this Warrant, less the number of Warrant Shares with respect to which this Warrant is exercised. No fractional shares of Common Stock are to be issued upon the exercise of this Warrant, but rather the number of shares of Common Stock to be issued shall be rounded down to the nearest whole number. The Company shall pay any and all taxes which may be payable with respect to the issuance and delivery of Warrant Shares upon exercise of this Warrant; provided, however, that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the registration of any certificates for Warrant Shares or Warrants in a name other than that of the Holder or an affiliate thereof. The Holder shall be responsible for all other tax liability that may arise as a result of holding or transferring this Warrant or receiving Warrant Shares upon exercise hereof.

(b) Exercise Price. For purposes of this Warrant, "**Exercise Price**" means a per Warrant Share price of $3.68, subject to adjustment as provided herein.

(c) Cashless Exercise. At any time six (6) months after the Issuance Date, in the event that a registration statement covering the issuance of Warrant Shares is not effective, the Holder may, at its option, exercise this Warrant in whole or in part and, in lieu of making the cash payment otherwise contemplated to be made to the Company upon such exercise in payment of the Aggregate Exercise Price, elect instead to receive upon such exercise the "Net Number" of shares of Common Stock determined according to the following formula (a "**Cashless Exercise**"):

$$\text{Net Number} = \frac{(A \times B) - (A \times C)}{B}$$

A = the total number of shares with respect to which this Warrant is then being exercised.

B = the arithmetic average of the Closing Sale Prices of the shares of Common Stock for the five (5) consecutive Trading Days ending on the Trading Day immediately preceding the date of the Exercise Notice; and

C = the Exercise Price then in effect for the applicable Warrant Shares at the time of such exercise.

The Company shall notify the Holder at any time prior to the Expiration Date that a registration statement covering the issuance of Warrant Shares is not effective. For sake of clarity, in the event that neither a registration statement nor an exemption from registration is available, there is no circumstance that requires the Company to effect a net cash settlement of the Warrant.

(e) Disputes. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the Warrant Shares, the Company shall issue to the Holder the number of Warrant Shares that are not disputed in accordance with the delivery obligations set forth in this Warrant.

(f) Beneficial Ownership. The Company shall not effect any exercise of the Warrant, and a Holder shall not have the right to exercise any portion of the Warrant, to the extent that, such Holder (together with such Holder's Affiliates, and any Persons acting as a group together with such Holder or any of such Holder's Affiliates (such Persons, "**Attribution Parties**")) would beneficially own in excess of the Beneficial Ownership Limitation (as defined below) after giving effect to such exercise, or immediately prior to giving effect to such exercise. For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by such Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock issuable upon exercise of the Warrant with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (i) exercise of the remaining, unexercised portion of this Warrant beneficially owned by such Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of unexercised or unconverted portion of any other Common Stock Equivalents of the Company that are subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by such Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 1(f), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder (the "**Exchange Act**"), it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith. To the extent that the limitation contained in this Section 1(f) applies, the determination of whether the Warrant is exercisable (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and number of shares of Common Stock issuable upon such exercise (or partial exercise) shall be in the sole discretion of such Holder, and the submission of a Notice of Exercise shall be deemed to be such Holder's determination of whether the Warrant may be exercised (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and number of shares of Common Stock issuable upon exercise (or partial exercise), in each case subject to the Beneficial Ownership Limitation. To ensure compliance with this restriction, each Holder will be deemed to represent to the Company each time it delivers a Notice of Exercise that such Notice of Exercise has not violated the restrictions set forth in this paragraph and the Company shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 1(f), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as stated in the most recent of the following: (i) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (ii) a more recent public announcement by the Company or (iii) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within two Business Days confirm orally and in writing to such Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined by the Holder after giving effect to the conversion or exercise of securities of the Company, including the Warrant, by such Holder or its Affiliates or Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. The "**Beneficial Ownership Limitation**" initially shall be 9.99% of the Company's issued and outstanding shares of Common Stock. A Holder, upon notice to the Company, may decrease or thereafter increase the Beneficial Ownership Limitation provided in this Section 1(f) applicable to such Holder's Warrant. Any such change in the Beneficial Ownership Limitation will not be effective until the 61st day after such notice is delivered to the Company and shall only apply to such Holder and no other Holder. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 1(f) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation contained herein or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of the Warrant.

2. ADJUSTMENT OF EXERCISE PRICE AND NUMBER OF WARRANT SHARES. The Exercise Price and the number of Warrant Shares shall be adjusted from time to time as follows:

(a) Adjustment upon Subdivision or Combination of Common Stock. If the Company at any time on or after the Issuance Date subdivides (by any stock split, stock dividend, recapitalization, reorganization, scheme, arrangement or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Exercise Price in effect immediately prior to such subdivision will be proportionately reduced and the number of Warrant Shares will be proportionately increased. If the Company at any time on or after the Issuance Date combines (by any stock split, stock dividend, recapitalization, reorganization, scheme, arrangement or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Exercise Price in effect immediately prior to such combination will be proportionately increased and the number of Warrant Shares will be proportionately decreased. Any adjustment under this Section 2(a) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(b) Other Events. If any event occurs of the type contemplated by the provisions of Section 2(a) but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features to the holders of the Company's equity securities), then the Company's Board of Directors will make an appropriate adjustment in the Exercise Price and the number of Warrant Shares and provide that the record date for stockholders entitled to participate in such event shall be the effective date for such adjustment so as to protect the rights of the Holder; provided that no such adjustment pursuant to this Section 2(b) will increase the Exercise Price or decrease the number of Warrant Shares as otherwise determined pursuant to this Section 2.

3. FUNDAMENTAL TRANSACTIONS. Upon the occurrence of any Fundamental Transaction, any Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Warrant referring to the "Company" shall refer instead to any Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant with the same effect as if such Successor Entity had been named as the Company herein. Upon consummation of the Fundamental Transaction, any Successor Entity shall deliver to the Holder confirmation that there shall be issued upon exercise of this Warrant at any time after the consummation of the Fundamental Transaction, in lieu of the shares of the Common Stock (or other securities, cash, assets or other property purchasable upon the exercise of the Warrant prior to such Fundamental Transaction), such shares of stock, securities, cash, assets or any other property whatsoever (including warrants or other purchase or subscription rights), if any, that the Holder would have been entitled to receive upon the happening of such Fundamental Transaction had this Warrant been exercised immediately prior to such Fundamental Transaction, as adjusted in accordance with the provisions of this Warrant. In addition to and not in substitution for any other rights hereunder, prior to the consummation of any Fundamental Transaction pursuant to which holders of shares of Common Stock are entitled to receive securities or other assets with respect to or in exchange for shares of Common Stock (a "Corporate Event"), the Company shall make appropriate provision to insure that the Holder will thereafter have the right to receive upon an exercise of this Warrant within 90 days after the consummation of the Fundamental Transaction but, in any event, prior to the Expiration Date, in lieu of the shares of the Common Stock (or other securities, cash, assets or other property) purchasable upon the exercise of the Warrant prior to such Fundamental Transaction, such shares of stock, securities, cash, assets or any other property whatsoever (including warrants or other purchase or subscription rights) which the Holder would have been entitled to receive upon the happening of such Fundamental Transaction had the Warrant been exercised immediately prior to such Fundamental Transaction. The Company shall not enter into or be a party to a Fundamental Transaction unless provision is made with respect to the holder's right under this Section 3 in a form and substance reasonably satisfactory to the Holder. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the consideration it receives upon any exercise of this Warrant following such Fundamental Transaction. The provisions of this Section 3 shall apply similarly and equally to successive Fundamental Transactions and Corporate Events and shall be applied without regard to any limitations on the exercise of this Warrant. The Holder may waive its rights under this Section 3 with respect to any particular Fundamental Transaction

4. NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its Amended and Restated Certificate of Incorporation, Amended and Restated Bylaws or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, and will at all times in good faith carry out all the provisions of this Warrant. Without limiting the generality of the foregoing, the Company (i) shall not increase the par value of any shares of Common Stock receivable upon the exercise of this Warrant above the Exercise Price then in effect, and (ii) shall, so long as this Warrant is outstanding, take all action necessary to reserve and keep available out of its authorized and unissued shares of Common Stock, solely for the purpose of effecting the exercise of this Warrant, 100% of the number of shares of Common Stock issuable upon exercise of this Warrant then outstanding (without regard to any limitations on exercise).

5. WARRANT HOLDER NOT DEEMED A STOCKHOLDER. The Holder, solely in such Person's capacity as a holder of this Warrant, shall not be entitled to vote or be deemed the holder of share capital of the Company for any purpose, nor shall anything contained in this Warrant be construed to confer upon the Holder, solely in such Person's capacity as the Holder of this Warrant, any of the rights of a stockholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, conveyance or otherwise), receive notice of meetings, or otherwise, prior to the issuance to the Holder of the Warrant Shares which such Person is then entitled to receive upon the due exercise of this Warrant. In addition, nothing contained in this Warrant shall be construed as imposing any liabilities on the Holder to purchase any securities (upon exercise of this Warrant or otherwise) or as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company.

6. REISSUANCE OF WARRANTS.

(a) Registration of Warrant. The Company or its Transfer Agent shall register this Warrant, upon the records to be maintained by the Company or its Transfer Agent for that purpose (the "**Warrant Register**"), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary. The Company or its Transfer Agent shall also register any transfer, exchange, reissuance or cancellation of any portion of this Warrant in the Warrant Register.

(b) Transfer of Warrant. If this Warrant is to be transferred in accordance with Section 13, the Holder shall surrender this Warrant to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Warrant (in accordance with Section 6(d)), registered as the Holder may request, representing the right to purchase the number of Warrant Shares being transferred by the Holder and, if less than the total number of Warrant Shares then underlying this Warrant is being transferred, a new Warrant (in accordance with Section 6(d)) to the Holder representing the right to purchase the number of Warrant Shares not being transferred.

(c) Lost, Stolen or Mutilated Warrant. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant, and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary form or the provision of reasonable security by the Holder to the Company and, in the case of mutilation, upon surrender and cancellation of this Warrant, the Company shall execute and deliver to the Holder a new Warrant (in accordance with Section 6(d)) representing the right to purchase the Warrant Shares then underlying this Warrant.

(d) Exchangeable for Multiple Warrants. This Warrant is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, together with all applicable transfer taxes, for a new Warrant or Warrants (in accordance with Section 6(d)) representing in the aggregate the right to purchase the number of Warrant Shares then underlying this Warrant, and each such new Warrant will represent the right to purchase such portion of such Warrant Shares as is designated by the Holder at the time of such surrender; provided, however, that no Warrants for fractional shares of Common Stock shall be given.

(e) Issuance of New Warrants. Whenever the Company is required to issue a new Warrant pursuant to the terms of this Warrant, such new Warrant (i) shall be of like tenor with this Warrant, (ii) shall represent, as indicated on the face of such new Warrant, the right to purchase the Warrant Shares then underlying this Warrant (or in the case of a new Warrant being issued pursuant to Section 6(a) or Section 6(c), the Warrant Shares designated by the Holder which, when added to the number of shares of Common Stock underlying the other new Warrants issued in connection with such issuance, does not exceed the number of Warrant Shares then underlying this Warrant), (iii) shall have an issuance date, as indicated on the face of such new Warrant which is the same as the Issuance Date and (iv) shall have the same rights and conditions as this Warrant.

7. NOTICES. Whenever notice is required to be given to either party under this Warrant, unless otherwise provided herein, such notice shall be given in accordance with information provided by the Holder to the Company, or by the Company to the Holder, as applicable, in writing. The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Warrant, including in reasonable detail a description of such action and the reason therefor.

8. AMENDMENT AND WAIVER. The provisions of this Warrant may be amended or modified or the provisions hereof waived with the written consent of the Company and the Holder.

9. JURISDICTION. Except as set forth in Section 11 below, this Warrant shall be governed by and construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Warrant shall be governed by, the internal laws of the State of Delaware, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of Delaware.

10. CONSTRUCTION; HEADINGS. This Warrant shall be deemed to be jointly drafted by the Company and the Holder and shall not be construed against any person as the drafter hereof. The headings of this Warrant are for convenience of reference and shall not form part of, or affect the interpretation of, this Warrant.

11. DISPUTE RESOLUTION. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the Warrant Shares, the Company shall submit the disputed determinations or arithmetic calculations via facsimile within two (2) Business Days of receipt of the Exercise Notice giving rise to such dispute, as the case may be, to the Holder. If the Holder and the Company are unable to agree upon such determination or calculation of the Exercise Price or the Warrant Shares within three (3) Business Days of such disputed determination or arithmetic calculation being submitted to the Holder, then the Company shall, within two (2) Business Days submit via facsimile (a) the disputed determination of the Exercise Price to an independent, reputable investment bank selected by the Company and approved by the Holder or (b) the disputed arithmetic calculation of the Warrant Shares to the Company's independent, outside accountant. The Company shall cause at its expense the investment bank or the accountant, as the case may be, to perform the determinations or calculations and notify the Company and the Holder of the results no later than ten (10) Business Days from the time it receives the disputed determinations or calculations. Such investment bank's or accountant's determination or calculation, as the case may be, shall be binding upon all parties absent demonstrable error. The expenses of the investment bank and accountant will be borne by the Company.

12. REMEDIES, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF. The remedies provided in this Warrant shall be cumulative and in addition to all other remedies available under this Warrant, at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the right of the Holder to pursue actual damages for any failure by the Company to comply with the terms of this Warrant.

13. TRANSFER. Subject to compliance with any applicable securities laws and the transfer restrictions set forth herein, this Warrant may be offered for sale, sold, transferred or assigned without the consent of the Company.

14. CERTAIN DEFINITIONS. For purposes of this Warrant, the following terms shall have the following meanings:

(a) "**Bloomberg**" means Bloomberg Financial Markets.

(b) "**Business Day**" means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

(c) "**Closing Sale Price**" means, for any security as of any date, the last closing bid price and last closing trade price, respectively, for such security on the Principal Market, as reported by Bloomberg, or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing bid price or the closing trade price, as the case may be, then the last bid price or the last trade price, respectively, of such security prior to 4:00:00 p.m., New York time, as reported by Bloomberg, or, if the Principal Market is not the principal securities exchange or trading market for such security, the last closing bid price or last trade price, respectively, of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or if the foregoing do not apply, the last closing bid price or last trade price, respectively, of such security in the OTCQB® trading market operated by The OTC Markets Group, or the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no closing bid price or last trade price, respectively, is reported for such security by Bloomberg, the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the "pink sheets" by OTC Markets Group Inc. If the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Sale Price, as the case may be, of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during the applicable calculation period.

(d) "**Common Stock**" means (i) the Company's shares of Common Stock, par value $0.001 per share, and (ii) any share capital into which such Common Stock shall have been changed or any share capital resulting from a reclassification of such Common Stock.

(e) "**Common Stock Equivalents**" means any securities of the Company 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.

(f) "**Convertible Securities**" means any stock or securities (other than Options) directly or indirectly convertible into or exercisable or exchangeable for shares of Common Stock.

(g) "**Eligible Market**" means The New York Stock Exchange, Inc., The NYSE MKT LLC, The NASDAQ Global Select Market, The NASDAQ Global Market, The NASDAQ Capital Market or the OTCQB.

(h) "**Expiration Date**" means June 24, 2020 or, if such date falls on a day other than a Business Day or on which trading does not take place on the Principal Market (a "**Holiday**"), the next date that is not a Holiday.

(i) "**Fundamental Transaction**" means that (A) the Company shall, directly or indirectly, in one or more related transactions, (i) consolidate or merge with or into (whether or not the Company is the surviving corporation) another Person, or (ii) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company to another Person, or (iii) allow another Person to make a purchase, tender or exchange offer that is accepted by the holders of more than the 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the Person or Persons making or party to, or associated or affiliated with the Persons making or party to, such purchase, tender or exchange offer), or (iv) consummate a stock purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby such other Person acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock purchase agreement or other business combination), or (v) reorganize, recapitalize or reclassify the Common Stock, or (B) any "person" or "group" (as these terms are used for purposes of Sections 13(d) and 14(d) of the Exchange Act) is or shall become the "beneficial owner" (within the meaning of Rule 13d-3 under the Exchange Act), directly or indirectly, of 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock.

(j) "**Options**" means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities.

(k) "**Parent Entity**" of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common stock or equivalent equity security is quoted or listed on an Eligible Market, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

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

(m) "**Principal Market**" means the securities exchange or securities quotation service where the Common Stock is principally listed or quoted for trading.

(n) "**Successor Entity**" means the Person (or, if so elected by the Holder, the Parent Entity) formed by, resulting from or surviving any Fundamental Transaction or the Person (or, if so elected by the Holder, the Parent Entity) with which such Fundamental Transaction shall have been entered into.

(o) "**Trading Day**" means any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock is then traded; provided that "Trading Day" shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time).

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has caused this Series F Warrant to Purchase Common Stock to be duly executed as of the Issuance Date set out above.

WINDTREE THERAPEUTICS, INC.

By: /s/ Craig Fraser
Name: Craig Fraser
Title: Chief Executive Officer

EXHIBIT A

EXERCISE NOTICE TO BE EXECUTED BY THE REGISTERED HOLDER TO EXERCISE THIS SERIES F WARRANT TO PURCHASE COMMON STOCK

To: CONTINENTAL STOCK TRANSFER & TRUST COMPANY
1 State Street, 30th Floor
New York NY 10004
Attention: Compliance Department
By Email: Compliance@continentalstock.com

The undersigned holder hereby exercises the right to purchase of the shares of Common Stock ("**Warrant Shares**") of **WINDTREE THERAPEUTICS, INC.**, a Delaware corporation (the "**Company**"), evidenced by the attached Series F Warrant to Purchase Common Stock (the "**Warrant**"). Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Warrant.

1. Form of Exercise Price. The Holder intends that payment of the Exercise Price shall be made as:

a "Cash Exercise" with respect to Warrant Shares; and/or

a "Cashless Exercise" with respect to Warrant Shares

2. Payment of Exercise Price. In the event that this is a Cash Exercise with respect to some or all of the Warrant Shares to be issued pursuant hereto, the holder shall pay the Aggregate Exercise Price in the sum of $ to the Company in accordance with the terms of the Warrant.

3. Delivery of Warrant Shares. The Company shall deliver the Warrant Shares to the holder in accordance with the terms of the Warrant.

4. Representations and Warranties. By its delivery of this Exercise Notice, the undersigned represents and warrants to the Company that in giving effect to the exercise evidenced hereby the Holder will not beneficially own in excess of the number of shares of Common Stock (determined in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended) permitted to be owned under Section 1(f) of this Warrant to which this notice relates.

Date: ,
Name of Registered Holder:

By: _____
Name:
Title:
Facsimile Number for notices: _____
Address for delivery (if applicable):
Holder, or Holder's designee's account information with DTC through its DWAC system (if applicable):

ACKNOWLEDGMENT

The Company hereby acknowledges this Exercise Notice.

WINDTREE THERAPEUTICS, INC.

By: _____
Name:
Title:

NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED HEREBY NOR THE SECURITIES INTO WHICH THE SECURITIES REPRESENTED HEREBY ARE EXERCISABLE HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES REPRESENTED HEREBY AND THE SECURITIES INTO WHICH THE SECURITIES REPRESENTED HEREBY ARE EXERCISABLE MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED EXCEPT PURSUANT TO (A) AN EFFECTIVE REGISTRATION STATEMENT FOR SUCH SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) PURSUANT TO AN AVAILABLE EXEMPTION IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES REPRESENTED HEREBY AND THE SECURITIES INTO WHICH THE SECURITIES REPRESENTED HEREBY ARE EXERCISABLE MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY SUCH SECURITIES.

WINDTREE THERAPEUTICS, INC.

SERIES G WARRANT TO PURCHASE COMMON STOCK

Series G Warrant:
Number of Shares of Common Stock:
Date of Issuance: December 24, 2018 ("**Issuance Date**")

Windtree Therapeutics, Inc., a Delaware corporation (the "**Company**"), hereby certifies that, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, _____, the registered holder hereof or its permitted assigns (the "**Holder**"), is entitled, subject to the terms set forth below, to purchase from the Company, at the Exercise Price (as defined below) then in effect, upon surrender of this Series G Warrant to Purchase Common Stock (including any Series G Warrants to Purchase Common Stock issued in exchange, transfer or replacement hereof, the "**Warrant**"), at any time or times after the Issuance Date (the "**Exercisability Date**"), but not after 11:59 p.m., New York time, on the Expiration Date (as defined below), _____ fully paid and nonassessable shares of Common Stock (as defined below) (the "**Warrant Shares**").

1. EXERCISE OF WARRANT.

(a) Mechanics of Exercise. Subject to the terms and conditions hereof, this Warrant may be exercised by the Holder on any day on or after the Exercisability Date, in whole or in part, by (i) delivery of a written notice, in the form attached hereto as Exhibit A (the "**Exercise Notice**"), of the Holder's election to exercise this Warrant to the Company and Continental Stock Transfer & Trust Company (the "**Warrant Agent**" and "**Transfer Agent**") and (ii) if applicable, delivery of this Warrant to the Warrant Agent for cancellation. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Warrant Agent until the Holder has purchased all of the Warrant Shares available hereunder and the Warrant has been exercised in full, in which case the Holder shall surrender this Warrant to the Warrant Agent for cancellation within three (3) Trading Days of the date the final Exercise Notice is delivered to the Warrant Agent. Execution and delivery of an Exercise Notice with respect to a partial Exercise shall have the same effect as cancellation of the original Warrant and issuance of a new Warrant evidencing the right to purchase the remaining number of Warrant Shares. The Exercise Notice shall indicate if the Holder has elected a Cashless Exercise (as defined below) pursuant to Section 1(d) of this Warrant. Within two (2) Business Days following the Exercise, Holder shall deliver payment to the Company of an amount equal to the applicable Exercise Price multiplied by the number of Warrant Shares as to which this Warrant is being exercised (the "**Aggregate Exercise Price**") in cash or by wire transfer of immediately available funds, unless such Holder has elected a Cashless Exercise pursuant to Section 1(c). On or before the second (2nd) Business Day following the date on which the Warrant has been duly Exercised (the "**Share Delivery Date**"), the Company or the Warrant Agent shall (X) provided that the Company's transfer agent (the "**Transfer Agent**") is participating in The Depository Trust Company ("**DTC**") Fast Automated Securities Transfer Program, upon the request of the Holder and provided the Holder causes its prime broker to initiate a Deposit Withdrawal At Custodian ("DWAC") deposit, credit such aggregate number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the Holder's or its designee's balance account with DTC through its DWAC system, or (Y) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program or upon a cash Exercise at a time when a registration statement covering the issuance of Warrant Shares is not effective, issue and dispatch by overnight courier to the address as specified in the Exercise Notice, a certificate, registered in the Company's share register in the name of the Holder or its designee, for the number of shares of Common Stock to which the Holder is entitled pursuant to such Exercise, provided that, unless such Holder has elected a Cashless Exercise pursuant to Section 1(c), the Company shall not be obligated to deliver shares of Common Stock hereunder unless the Company has received the Aggregate Exercise Price by the Share Delivery Date. Upon Exercise, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been Exercised, irrespective of the date such Warrant Shares are credited to the Holder's DTC account or the date of delivery of the certificates evidencing such Warrant Shares, as the case may be. If this Warrant is submitted in connection with any exercise pursuant to this Section 1(a) and the number of Warrant Shares represented by this Warrant submitted for exercise is greater than the number of Warrant Shares being acquired upon an exercise, then the Company shall as soon as practicable and in no event later than five Business Days after any exercise and at its own expense, issue a new Warrant (in accordance with Section 6(d)) representing the right to purchase the number of Warrant Shares purchasable immediately prior to such exercise under this Warrant, less the number of Warrant Shares with respect to which this Warrant is exercised. No fractional shares of Common Stock are to be issued upon the exercise of this Warrant, but rather the number of shares of Common Stock to be issued shall be rounded down to the nearest whole number. The Company shall pay any and all taxes which may be payable with respect to the issuance and delivery of Warrant Shares upon exercise of this Warrant; provided, however, that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the registration of any certificates for Warrant Shares or Warrants in a name other than that of the Holder or an affiliate thereof. The Holder shall be responsible for all other tax liability that may arise as a result of holding or transferring this Warrant or receiving Warrant Shares upon exercise hereof.

(b) Exercise Price. For purposes of this Warrant, "**Exercise Price**" means a per Warrant Share price of $4.05, subject to adjustment as provided herein.

(c) Cashless Exercise. At any time six (6) months after the Issuance Date, in the event that a registration statement covering the issuance of Warrant Shares is not effective, the Holder may, at its option, exercise this Warrant in whole or in part and, in lieu of making the cash payment otherwise contemplated to be made to the Company upon such exercise in payment of the Aggregate Exercise Price, elect instead to receive upon such exercise the "Net Number" of shares of Common Stock determined according to the following formula (a "**Cashless Exercise**"):

$$\text{Net Number} = \frac{(A \times B) - (A \times C)}{B}$$

A = the total number of shares with respect to which this Warrant is then being exercised.

B = the arithmetic average of the Closing Sale Prices of the shares of Common Stock for the five (5) consecutive Trading Days ending on the Trading Day immediately preceding the date of the Exercise Notice; and

C = the Exercise Price then in effect for the applicable Warrant Shares at the time of such exercise.

The Company shall notify the Holder at any time prior to the Expiration Date that a registration statement covering the issuance of Warrant Shares is not effective. For sake of clarity, in the event that neither a registration statement nor an exemption from registration is available, there is no circumstance that requires the Company to effect a net cash settlement of the Warrant.

(e) Disputes. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the Warrant Shares, the Company shall issue to the Holder the number of Warrant Shares that are not disputed in accordance with the delivery obligations set forth in this Warrant.

(f) Beneficial Ownership. The Company shall not effect any exercise of the Warrant, and a Holder shall not have the right to exercise any portion of the Warrant, to the extent that, such Holder (together with such Holder's Affiliates, and any Persons acting as a group together with such Holder or any of such Holder's Affiliates (such Persons, "**Attribution Parties**")) would beneficially own in excess of the Beneficial Ownership Limitation (as defined below) after giving effect to such exercise, or immediately prior to giving effect to such exercise. For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by such Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock issuable upon exercise of the Warrant with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (i) exercise of the remaining, unexercised portion of this Warrant beneficially owned by such Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of unexercised or unconverted portion of any other Common Stock Equivalents of the Company that are subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by such Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 1(f), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder (the "**Exchange Act**"), it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith. To the extent that the limitation contained in this Section 1(f) applies, the determination of whether the Warrant is exercisable (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and number of shares of Common Stock issuable upon such exercise (or partial exercise) shall be in the sole discretion of such Holder, and the submission of a Notice of Exercise shall be deemed to be such Holder's determination of whether the Warrant may be exercised (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and number of shares of Common Stock issuable upon exercise (or partial exercise), in each case subject to the Beneficial Ownership Limitation. To ensure compliance with this restriction, each Holder will be deemed to represent to the Company each time it delivers a Notice of Exercise that such Notice of Exercise has not violated the restrictions set forth in this paragraph and the Company shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 1(f), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as stated in the most recent of the following: (i) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (ii) a more recent public announcement by the Company or (iii) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within two Business Days confirm orally and in writing to such Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined by the Holder after giving effect to the conversion or exercise of securities of the Company, including the Warrant, by such Holder or its Affiliates or Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. The "**Beneficial Ownership Limitation**" initially shall be 9.99% of the Company's issued and outstanding shares of Common Stock. A Holder, upon notice to the Company, may decrease or thereafter increase the Beneficial Ownership Limitation provided in this Section 1(f) applicable to such Holder's Warrant. Any such change in the Beneficial Ownership Limitation will not be effective until the 61st day after such notice is delivered to the Company and shall only apply to such Holder and no other Holder. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 1(f) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation contained herein or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of the Warrant.

2. ADJUSTMENT OF EXERCISE PRICE AND NUMBER OF WARRANT SHARES. The Exercise Price and the number of Warrant Shares shall be adjusted from time to time as follows:

(a) Adjustment upon Subdivision or Combination of Common Stock. If the Company at any time on or after the Issuance Date subdivides (by any stock split, stock dividend, recapitalization, reorganization, scheme, arrangement or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Exercise Price in effect immediately prior to such subdivision will be proportionately reduced and the number of Warrant Shares will be proportionately increased. If the Company at any time on or after the Issuance Date combines (by any stock split, stock dividend, recapitalization, reorganization, scheme, arrangement or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Exercise Price in effect immediately prior to such combination will be proportionately increased and the number of Warrant Shares will be proportionately decreased. Any adjustment under this Section 2(a) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(b) Other Events. If any event occurs of the type contemplated by the provisions of Section 2(a) but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features to the holders of the Company's equity securities), then the Company's Board of Directors will make an appropriate adjustment in the Exercise Price and the number of Warrant Shares and provide that the record date for stockholders entitled to participate in such event shall be the effective date for such adjustment so as to protect the rights of the Holder; provided that no such adjustment pursuant to this Section 2(b) will increase the Exercise Price or decrease the number of Warrant Shares as otherwise determined pursuant to this Section 2.

3. FUNDAMENTAL TRANSACTIONS. Upon the occurrence of any Fundamental Transaction, any Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Warrant referring to the "Company" shall refer instead to any Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant with the same effect as if such Successor Entity had been named as the Company herein. Upon consummation of the Fundamental Transaction, any Successor Entity shall deliver to the Holder confirmation that there shall be issued upon exercise of this Warrant at any time after the consummation of the Fundamental Transaction, in lieu of the shares of the Common Stock (or other securities, cash, assets or other property purchasable upon the exercise of the Warrant prior to such Fundamental Transaction), such shares of stock, securities, cash, assets or any other property whatsoever (including warrants or other purchase or subscription rights), if any, that the Holder would have been entitled to receive upon the happening of such Fundamental Transaction had this Warrant been exercised immediately prior to such Fundamental Transaction, as adjusted in accordance with the provisions of this Warrant. In addition to and not in substitution for any other rights hereunder, prior to the consummation of any Fundamental Transaction pursuant to which holders of shares of Common Stock are entitled to receive securities or other assets with respect to or in exchange for shares of Common Stock (a "Corporate Event"), the Company shall make appropriate provision to insure that the Holder will thereafter have the right to receive upon an exercise of this Warrant within 90 days after the consummation of the Fundamental Transaction but, in any event, prior to the Expiration Date, in lieu of the shares of the Common Stock (or other securities, cash, assets or other property) purchasable upon the exercise of the Warrant prior to such Fundamental Transaction, such shares of stock, securities, cash, assets or any other property whatsoever (including warrants or other purchase or subscription rights) which the Holder would have been entitled to receive upon the happening of such Fundamental Transaction had the Warrant been exercised immediately prior to such Fundamental Transaction. The Company shall not enter into or be a party to a Fundamental Transaction unless provision is made with respect to the holder's right under this Section 3 in a form and substance reasonably satisfactory to the Holder. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the consideration it receives upon any exercise of this Warrant following such Fundamental Transaction. The provisions of this Section 3 shall apply similarly and equally to successive Fundamental Transactions and Corporate Events and shall be applied without regard to any limitations on the exercise of this Warrant. The Holder may waive its rights under this Section 3 with respect to any particular Fundamental Transaction

4. NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its Amended and Restated Certificate of Incorporation, Amended and Restated Bylaws or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, and will at all times in good faith carry out all the provisions of this Warrant. Without limiting the generality of the foregoing, the Company (i) shall not increase the par value of any shares of Common Stock receivable upon the exercise of this Warrant above the Exercise Price then in effect, and (ii) shall, so long as this Warrant is outstanding, take all action necessary to reserve and keep available out of its authorized and unissued shares of Common Stock, solely for the purpose of effecting the exercise of this Warrant, 100% of the number of shares of Common Stock issuable upon exercise of this Warrant then outstanding (without regard to any limitations on exercise).

5. WARRANT HOLDER NOT DEEMED A STOCKHOLDER. The Holder, solely in such Person's capacity as a holder of this Warrant, shall not be entitled to vote or be deemed the holder of share capital of the Company for any purpose, nor shall anything contained in this Warrant be construed to confer upon the Holder, solely in such Person's capacity as the Holder of this Warrant, any of the rights of a stockholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, conveyance or otherwise), receive notice of meetings, or otherwise, prior to the issuance to the Holder of the Warrant Shares which such Person is then entitled to receive upon the due exercise of this Warrant. In addition, nothing contained in this Warrant shall be construed as imposing any liabilities on the Holder to purchase any securities (upon exercise of this Warrant or otherwise) or as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company.

6. REISSUANCE OF WARRANTS.

(a) Registration of Warrant. The Company or its Transfer Agent shall register this Warrant, upon the records to be maintained by the Company or its Transfer Agent for that purpose (the "**Warrant Register**"), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary. The Company or its Transfer Agent shall also register any transfer, exchange, reissuance or cancellation of any portion of this Warrant in the Warrant Register.

(b) Transfer of Warrant. If this Warrant is to be transferred in accordance with Section 13, the Holder shall surrender this Warrant to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Warrant (in accordance with Section 6(d)), registered as the Holder may request, representing the right to purchase the number of Warrant Shares being transferred by the Holder and, if less than the total number of Warrant Shares then underlying this Warrant is being transferred, a new Warrant (in accordance with Section 6(d)) to the Holder representing the right to purchase the number of Warrant Shares not being transferred.

(c) Lost, Stolen or Mutilated Warrant. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant, and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary form or the provision of reasonable security by the Holder to the Company and, in the case of mutilation, upon surrender and cancellation of this Warrant, the Company shall execute and deliver to the Holder a new Warrant (in accordance with Section 6(d)) representing the right to purchase the Warrant Shares then underlying this Warrant.

(d) Exchangeable for Multiple Warrants. This Warrant is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, together with all applicable transfer taxes, for a new Warrant or Warrants (in accordance with Section 6(d)) representing in the aggregate the right to purchase the number of Warrant Shares then underlying this Warrant, and each such new Warrant will represent the right to purchase such portion of such Warrant Shares as is designated by the Holder at the time of such surrender; provided, however, that no Warrants for fractional shares of Common Stock shall be given.

(e) Issuance of New Warrants. Whenever the Company is required to issue a new Warrant pursuant to the terms of this Warrant, such new Warrant (i) shall be of like tenor with this Warrant, (ii) shall represent, as indicated on the face of such new Warrant, the right to purchase the Warrant Shares then underlying this Warrant (or in the case of a new Warrant being issued pursuant to Section 6(a) or Section 6(c), the Warrant Shares designated by the Holder which, when added to the number of shares of Common Stock underlying the other new Warrants issued in connection with such issuance, does not exceed the number of Warrant Shares then underlying this Warrant), (iii) shall have an issuance date, as indicated on the face of such new Warrant which is the same as the Issuance Date and (iv) shall have the same rights and conditions as this Warrant.

7. NOTICES. Whenever notice is required to be given to either party under this Warrant, unless otherwise provided herein, such notice shall be given in accordance with information provided by the Holder to the Company, or by the Company to the Holder, as applicable, in writing. The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Warrant, including in reasonable detail a description of such action and the reason therefor.

8. AMENDMENT AND WAIVER. The provisions of this Warrant may be amended or modified or the provisions hereof waived with the written consent of the Company and the Holder.

9. JURISDICTION. Except as set forth in Section 11 below, this Warrant shall be governed by and construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Warrant shall be governed by, the internal laws of the State of Delaware, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of Delaware.

10. CONSTRUCTION; HEADINGS. This Warrant shall be deemed to be jointly drafted by the Company and the Holder and shall not be construed against any person as the drafter hereof. The headings of this Warrant are for convenience of reference and shall not form part of, or affect the interpretation of, this Warrant.

11. DISPUTE RESOLUTION. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the Warrant Shares, the Company shall submit the disputed determinations or arithmetic calculations via facsimile within two (2) Business Days of receipt of the Exercise Notice giving rise to such dispute, as the case may be, to the Holder. If the Holder and the Company are unable to agree upon such determination or calculation of the Exercise Price or the Warrant Shares within three (3) Business Days of such disputed determination or arithmetic calculation being submitted to the Holder, then the Company shall, within two (2) Business Days submit via facsimile (a) the disputed determination of the Exercise Price to an independent, reputable investment bank selected by the Company and approved by the Holder or (b) the disputed arithmetic calculation of the Warrant Shares to the Company's independent, outside accountant. The Company shall cause at its expense the investment bank or the accountant, as the case may be, to perform the determinations or calculations and notify the Company and the Holder of the results no later than ten (10) Business Days from the time it receives the disputed determinations or calculations. Such investment bank's or accountant's determination or calculation, as the case may be, shall be binding upon all parties absent demonstrable error. The expenses of the investment bank and accountant will be borne by the Company.

12. REMEDIES, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF. The remedies provided in this Warrant shall be cumulative and in addition to all other remedies available under this Warrant, at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the right of the Holder to pursue actual damages for any failure by the Company to comply with the terms of this Warrant.

13. TRANSFER. Subject to compliance with any applicable securities laws and the transfer restrictions set forth herein, this Warrant may be offered for sale, sold, transferred or assigned without the consent of the Company.

14. CERTAIN DEFINITIONS. For purposes of this Warrant, the following terms shall have the following meanings:

(a) "**Bloomberg**" means Bloomberg Financial Markets.

(b) "**Business Day**" means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

(c) "**Closing Sale Price**" means, for any security as of any date, the last closing bid price and last closing trade price, respectively, for such security on the Principal Market, as reported by Bloomberg, or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing bid price or the closing trade price, as the case may be, then the last bid price or the last trade price, respectively, of such security prior to 4:00:00 p.m., New York time, as reported by Bloomberg, or, if the Principal Market is not the principal securities exchange or trading market for such security, the last closing bid price or last trade price, respectively, of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or if the foregoing do not apply, the last closing bid price or last trade price, respectively, of such security in the OTCQB® trading market operated by The OTC Markets Group, or the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no closing bid price or last trade price, respectively, is reported for such security by Bloomberg, the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the "pink sheets" by OTC Markets Group Inc. If the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Sale Price, as the case may be, of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during the applicable calculation period.

(d) "**Common Stock**" means (i) the Company's shares of Common Stock, par value $0.001 per share, and (ii) any share capital into which such Common Stock shall have been changed or any share capital resulting from a reclassification of such Common Stock.

(e) "**Common Stock Equivalents**" means any securities of the Company 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.

(f) "**Convertible Securities**" means any stock or securities (other than Options) directly or indirectly convertible into or exercisable or exchangeable for shares of Common Stock.

(g) "**Eligible Market**" means The New York Stock Exchange, Inc., The NYSE MKT LLC, The NASDAQ Global Select Market, The NASDAQ Global Market, The NASDAQ Capital Market or the OTCQB.

(h) "**Expiration Date**" means December 24, 2023 or, if such date falls on a day other than a Business Day or on which trading does not take place on the Principal Market (a "**Holiday**"), the next date that is not a Holiday.

(i) "**Fundamental Transaction**" means that (A) the Company shall, directly or indirectly, in one or more related transactions, (i) consolidate or merge with or into (whether or not the Company is the surviving corporation) another Person, or (ii) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company to another Person, or (iii) allow another Person to make a purchase, tender or exchange offer that is accepted by the holders of more than the 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the Person or Persons making or party to, or associated or affiliated with the Persons making or party to, such purchase, tender or exchange offer), or (iv) consummate a stock purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby such other Person acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock purchase agreement or other business combination), or (v) reorganize, recapitalize or reclassify the Common Stock, or (B) any "person" or "group" (as these terms are used for purposes of Sections 13(d) and 14(d) of the Exchange Act) is or shall become the "beneficial owner" (within the meaning of Rule 13d-3 under the Exchange Act), directly or indirectly, of 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock.

(j) "**Options**" means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities.

(k) "**Parent Entity**" of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common stock or equivalent equity security is quoted or listed on an Eligible Market, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

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

(m) "**Principal Market**" means the securities exchange or securities quotation service where the Common Stock is principally listed or quoted for trading.

(n) "**Successor Entity**" means the Person (or, if so elected by the Holder, the Parent Entity) formed by, resulting from or surviving any Fundamental Transaction or the Person (or, if so elected by the Holder, the Parent Entity) with which such Fundamental Transaction shall have been entered into.

(o) "**Trading Day**" means any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock is then traded; provided that "Trading Day" shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time).

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has caused this Series G Warrant to Purchase Common Stock to be duly executed as of the Issuance Date set out above.

WINDTREE THERAPEUTICS, INC.

By: /s/ Craig Fraser
Name: Craig Fraser
Title: Chief Executive Officer

EXHIBIT A

EXERCISE NOTICE TO BE EXECUTED BY THE REGISTERED HOLDER TO EXERCISE THIS SERIES G WARRANT TO PURCHASE COMMON STOCK

To: CONTINENTAL STOCK TRANSFER & TRUST COMPANY
1 State Street, 30th Floor
New York NY 10004
Attention: Compliance Department
By Email: Compliance@continentalstock.com

The undersigned holder hereby exercises the right to purchase of the shares of Common Stock ("**Warrant Shares**") of **WINDTREE THERAPEUTICS, INC.**, a Delaware corporation (the "**Company**"), evidenced by the attached Series G Warrant to Purchase Common Stock (the "**Warrant**"). Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Warrant.

1. Form of Exercise Price. The Holder intends that payment of the Exercise Price shall be made as:

a "Cash Exercise" with respect to Warrant Shares; and/or

a "Cashless Exercise" with respect to Warrant Shares

2. Payment of Exercise Price. In the event that this is a Cash Exercise with respect to some or all of the Warrant Shares to be issued pursuant hereto, the holder shall pay the Aggregate Exercise Price in the sum of $ to the Company in accordance with the terms of the Warrant.

3. Delivery of Warrant Shares. The Company shall deliver the Warrant Shares to the holder in accordance with the terms of the Warrant.

4. Representations and Warranties. By its delivery of this Exercise Notice, the undersigned represents and warrants to the Company that in giving effect to the exercise evidenced hereby the Holder will not beneficially own in excess of the number of shares of Common Stock (determined in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended) permitted to be owned under Section 1(f) of this Warrant to which this notice relates.

Date: ,
Name of Registered Holder:

By: _____
Name:
Title:

Facsimile Number for notices: _____
Address for delivery (if applicable):
Holder, or Holder's designee's account information with DTC through its DWAC system (if applicable):

ACKNOWLEDGMENT

The Company hereby acknowledges this Exercise Notice.

WINDTREE THERAPEUTICS, INC.

By: _____
Name:
Title:

Exhibit 10.1

EXECUTION COPY

AGREEMENT AND PLAN OF MERGER

by and among

WINDTREE THERAPEUTICS, INC.,

WT ACQUISITION CORP.,

AND

CVIE INVESTMENTS LIMITED

Dated as of December 21, 2018

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Exhibits

Schedules

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this "***Agreement***") is made and entered into as of December 21, 2018, by and among Windtree Therapeutics, Inc., a Delaware corporation ("***Parent***"), WT Acquisition Corp., an exempted company with limited liability incorporated under the laws of the Cayman Islands and a direct wholly owned subsidiary of Parent ("***Merger Sub***"), and CVie Investments Limited, an exempted company with limited liability incorporated under the laws of the Cayman Islands (the "***Company***"). Certain capitalized terms used in this Agreement are defined in Section 6.13.

RECITALS

WHEREAS, Parent, Merger Sub and the Company intend to effect a merger of Merger Sub with and into the Company, with the Company as the surviving entity in the merger (the "***Merger***") in accordance with this Agreement and the Cayman Islands Companies Law (2018 Revision as amended from time to time) (the "***Cayman Companies Law***");

WHEREAS, pursuant to the terms and conditions of this Agreement, after the issuance of shares of Parent Common Stock contemplated hereby and the dividend of the AEROSURF Warrants, but prior to the Private Placement, the holders of Company Ordinary Shares immediately prior to the Closing Date will own a number of shares of Parent Common Stock equal to approximately 66.7% of the Parent Diluted Share Number and the holders of the Specified Parent Equity immediately prior to the Closing Date will own a number of shares of Parent Common Stock equal to approximately 33.3% of the Parent Diluted Share Number;

WHEREAS, the Board of Directors of Parent and Merger Sub have unanimously (a) determined that the Merger and this Agreement are advisable and in the best interests of Parent, its stockholders and Merger Sub and (b) approved this Agreement, the Merger, the issuance of shares of Parent Common Stock to the Company Shareholders pursuant to the terms of this Agreement, and the other actions contemplated by this Agreement;

WHEREAS, the Board of Directors of the Company has unanimously (a) determined that the Merger and this Agreement are advisable and in the best interests of the Company and its shareholders, (b) approved this Agreement, the Merger, and the other actions contemplated by this Agreement, and (c) has recommended that the shareholders of the Company vote to approve this Agreement, the Merger and such other actions as contemplated by this Agreement;

WHEREAS, the shareholders of the Company have voted to approve this Agreement, the Merger and such other actions as contemplated by this Agreement;

WHEREAS, immediately following the entry into this Agreement, Panacea Venture and certain other investors (collectively, the "***Investors***") will consummate the definitive agreement (in the form attached hereto as Exhibit A, as the same may be amended from time to time in accordance with the terms thereof, the "***Financing Agreement***") pursuant to which the Investors will (a) purchase a number of shares of Parent Common Stock, and warrants to purchase additional shares of Parent Common Stock and (b) convert outstanding principal and accrued interest with respect to certain loans made to Parent by Affiliates of Lee's Pharmaceutical Holdings Limited into shares of Parent Common Stock, for an aggregate purchase price of approximately $39,000,000, in each case immediately after the consummation of the Merger (the "***Private Placement***");

WHEREAS, in order to induce Parent to cause the Merger to be consummated, the holders of Company Ordinary Shares have executed lock-up agreements relating to sales and certain other dispositions of shares of Parent Common Stock and certain other securities of Parent after the Closing, each in the form of Exhibit B hereto (the "***Lock-up Agreements***"); and

WHEREAS, Parent has declared a contingent dividend, payable to holders of shares of Parent Capital Stock on the day prior to the date hereof, which dividend entitles the holders of such shares of Parent Capital Stock to receive a number of AEROSURF Warrants, each in the form of Exhibit C hereto (the "***AEROSURF Warrants***"), which AEROSURF Warrants will result in the holders of Specified Parent Equity immediately prior to the Closing Date owning approximately 33.3% of the of the Parent Diluted Share Number and which dividend will not be deemed final until the filing of a Current Report on Form 8-K with the Securities and Exchange Commission to disclose the consummation of the Merger and the Financing; and

WHEREAS, each Company Ordinary Share is uncertificated and held in book-entry form.

NOW, THEREFORE, in consideration of the representations, warranties, covenants and agreements set forth herein, the parties agree as follows:

ARTICLE 1
THE MERGER AND CERTAIN GOVERNANCE MATTERS

Section 1.1 Structure of the Merger. Upon the terms and subject to the conditions set forth in this Agreement and the Cayman Companies Law, on the Closing Date, Merger Sub shall be merged with and into the Company, and the separate existence of Merger Sub shall cease and be struck off in accordance with the Cayman Companies Law. The Company will continue as the surviving entity following the Merger (the "***Surviving Entity***").

Section 1.2 Effects of the Merger. The Merger shall have the effects set forth in this Agreement and in the applicable provisions of the Cayman Companies Law.

Section 1.3 Closing; Closing Date. On the date hereof (the "***Closing Date***") concurrently with the execution and delivery of this Agreement, the Parties shall execute and file with the Registrar of Companies of the Cayman Islands a plan of merger (the "***Plan of Merger***") with respect to the Merger, satisfying the applicable requirements of the Cayman Companies Law and in a form reasonably acceptable to Parent and the Company. The consummation of the Merger (the "***Closing***") shall take place on the Closing Date at the offices of Dentons US LLP, 1221 Avenue of the Americas, New York, NY 10020 at 4:15 p.m., Eastern Time.

Section 1.4 Memorandum and Articles of Association; Directors and Officers. On the Closing Date effective at the Closing:

(a) the Memorandum and Articles of Association of the Surviving Entity shall be amended and restated in its entirety to read as set forth on Exhibit D, and as so amended and restated, shall be the Memorandum and Articles of Association of the Surviving Entity, until thereafter amended as provided by the Cayman Companies Law;

(b) the directors and officers of the Company and each of its Subsidiaries shall resign in their capacity as a director and/or officer of the Company and each of its Subsidiaries, as applicable; and

(c) the directors and officers of the Surviving Entity, each to hold office in accordance with the Memorandum and Articles of Association of the Surviving Entity, shall be appointed by Parent.

Section 1.5 Conversion of Shares.

(a) On the Closing Date, upon the Closing and without any further action on the part of Parent, Merger Sub, the Company or any stockholder of any of the foregoing:

(i) any Company Ordinary Shares owned as treasury stock of the Company or owned by Parent or by any direct or indirect wholly owned Subsidiary of Parent immediately prior to the Closing shall be automatically canceled and retired and shall cease to exist, and no consideration shall be delivered in exchange therefor; and

(ii) subject to Section 1.5(b), each Company Ordinary Share (including all accrued but unpaid dividends thereon (if any)) outstanding immediately prior to the Closing (excluding shares to be canceled pursuant to Section 1.5(a)(i)) shall be cancelled and automatically converted solely into the right to receive a number of shares of Parent Common Stock equal to the Exchange Ratio (the "***Merger Shares***").

(b) No fractional shares of Parent Common Stock shall be issued in connection with Merger as a result of the conversion provided for in Section 1.5(a)(ii), and no certificates or scrip for any such fractional shares shall be issued. Any fractional shares of Parent Common Stock that that would be issuable as a result of the conversion provided for in Section 1.5(a)(ii) shall be rounded up to the next whole share.

(c) All of the ordinary shares of Merger Sub issued and outstanding immediately prior to the Closing shall be automatically converted into and exchanged for a single validly issued, fully paid and nonassessable ordinary share, $1.00 par value per share, of the Company as the Surviving Entity. The register of members of the Company as the Surviving Entity shall be updated accordingly and to reflect the cancellation of the Company Ordinary Shares referred to in Section 1.5(a)(ii), and each share certificate of Merger Sub evidencing ownership of any such shares shall, on the Closing Date effective as of the Closing, be cancelled and a new share certificate shall be issued to evidence ownership of one ordinary share of the Company as the Surviving Entity.

Section 1.6 Closing of the Company's Register of Members. On the Closing Date effective as of the Closing, (i) each Company Ordinary Share shall cease to be outstanding and shall represent only the right to receive shares of Parent Common Stock as contemplated by Section 1.5, and (ii) the register of members of the Company shall be closed with respect to all Company Ordinary Shares outstanding immediately prior to the Closing Date. No further transfer of any such Company Ordinary Shares shall be made on such register of members after the Closing.

Section 1.7 Exchange of Company Ordinary Shares.

(a) At the Closing and without any action on the part of any holder, all Company Ordinary Shares shall be deemed surrendered to Continental Stock Transfer & Trust Company (the "***Transfer Agent***"), and Parent shall cause the Transfer Agent to deliver to each holder of Company Ordinary Shares book-entry shares representing that number of whole shares of Parent Common Stock to which such holder is entitled pursuant to Section 1.5(a)(ii), and the Company Ordinary Shares so surrendered shall forthwith be canceled. Until surrendered as contemplated by this Section 1.7(a), each Company Ordinary Share shall be deemed at any time after the Closing Date to represent only the right to receive upon such surrender the Merger Shares. No interest shall be paid or will accrue on any payment to holders of Company Ordinary Shares pursuant to the provisions of this Article 1.

(b) No Further Ownership Rights in the Company Ordinary Shares. The Merger Shares shall be deemed to have been in full satisfaction of all rights pertaining to the Company Ordinary Shares.

(c) Withholding Rights. Parent, the Surviving Entity or the Transfer Agent shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement such amounts as Parent, the Surviving Entity or the Transfer Agent are required to deduct and withhold with respect to the making of such payment under the Code or any provision of state, local or non-U.S. Tax Law and shall be entitled to request any reasonably appropriate Tax forms, including an IRS Form W-9 (or the appropriate IRS Form W-8, as applicable), from any recipient of payments hereunder. Prior to deducting and withholding any amounts pursuant to this Section 1.7(c), and in no event later than three (3) Business Days prior to making any payment hereunder, Parent, the Surviving Entity or the Transfer Agent shall use commercially reasonable efforts to notify the payee of any amounts intended to be withheld from payments hereunder and provide the payee with reasonable support for the basis with respect to the intended withholding under applicable Tax Law. To the extent that amounts are so withheld by Parent, the Surviving Entity or the Transfer Agent, such withheld amounts (i) shall be treated for all purposes of this Agreement as having been paid to the holder of Company Ordinary Shares in respect of which such deduction and withholding was made by Parent, the Surviving Entity or the Transfer Agent, and (ii) shall be remitted by Parent, the Surviving Entity or the Transfer Agent, as the case may be, to the applicable Governmental Authority.

Section 1.8 Agreement of Fair Value. Subject to any applicable rights of dissenters set out in Section 238 of the Cayman Companies Law, each of Parent, Merger Sub and the Company, respectively, agree that the Merger Shares represent fair value for the Company Ordinary Shares for the purposes of Section 238(8) of the Cayman Companies Law.

Section 1.9 Further Action. If, at any time after the Closing Date, any further action is determined by the Surviving Entity to be necessary or desirable to carry out the purposes of this Agreement or to vest the Surviving Entity with full right, title and possession of and to all rights and property of the Company, then the officers and directors of the Surviving Entity shall be fully authorized, and shall use their commercially reasonable efforts (in the name of the Company, in the name of Merger Sub and otherwise) to take such action.

Section 1.10 Compliance With Hong King Exchange. The parties acknowledge and confirm that no warrant (including AEROSURF Warrant, Series F Warrant or Series G Warrant) has been or will be issued or granted and no arrangement on the issue or grant of any such warrant has been or will be finally confirmed under this Agreement or any transactions contemplated hereunder at any time upon or prior to the Closing on the Closing Date; and that no AEROSURF Warrant has been or will be issued or granted and no arrangement on the issue or grant of any such warrant has been or will be finally confirmed at any time upon or prior to the Closing on the Closing Date. Obligations on the negotiation of the issue or grant of any warrants (including AEROSURF Warrants) under this Agreement or any transaction contemplated hereunder and/or the issue or grant of any warrants (including AEROSURF Warrants in connection with the transactions contemplated herein or the Series F Warrant or Series G Warrant) under this Agreement or any transaction contemplated hereunder as well as the issue or grant of AEROSURF Warrants shall be subject to compliance of all applicable requirements under the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited (if applicable) and /or any requirements as imposed by the Stock Exchange of Hong Kong Limited (if any).

ARTICLE 2
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to Parent and Merger Sub as follows, except as set forth in the written disclosure schedule delivered by the Company to Parent as of even date herewith (the "***Company Disclosure Schedule***"). The Company Disclosure Schedule shall be arranged in parts and subparts corresponding to the numbered and lettered Sections and subsections contained in this Article 2. The disclosures in any part or subpart of the Company Disclosure Schedule shall qualify other Sections and subsections in this Article 2 only to the extent it is reasonably apparent from the disclosure that such disclosure is applicable to such other Sections and subsections.

Section 2.1 Organization.

(a) The Company is a corporation duly incorporated, validly existing and in good corporate standing under the Laws of the Cayman Islands. The Company has all requisite corporate power and authority to own, lease and operate all of its properties and assets and to carry on its business as it is now being conducted. The Company is duly licensed or qualified to do business and is in corporate good standing in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned, leased, or operated by it makes such licensing or qualification necessary, except where the failure to be so licensed or qualified and in corporate good standing would not, either individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect. The memorandum of association of the Company (the "***Company Memorandum***") and the articles of association of the Company (the "***Company Articles***" and, with the Company Memorandum, the "***Company Governing Documents***"), copies of which have previously been made available to Parent, are true, correct and complete copies of such documents as currently in effect and the Company is not in violation of any provision thereof. Other than the Company Governing Documents, the Company is not a party to or bound by or subject to any shareholder agreement or other similar agreement governing the voting or transfer of the Company Ordinary Shares and is not subject to a "shareholder rights" or similar plan.

(b) Each Subsidiary of the Company is a legal entity, validly existing and, if applicable, in good standing under the Laws of the jurisdiction of its formation or organization. Each of the Subsidiaries of the Company has all requisite corporate power or other power and authority to own, lease and operate all of its properties and assets and to carry on its business as it is now being conducted. Each of the Subsidiaries of the Company is duly licensed or qualified to do business in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned, leased, or operated by it makes such licensing or qualification necessary, except where the failure to be so licensed or qualified and in good standing would not, either individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect. The memorandum of association and articles of association or equivalent organizational documents of each of the Subsidiaries of the Company (collectively with the Company Governing Documents, the "***Group Governing Documents***"), copies of which have previously been made available to Parent, are true, correct and complete copies of such documents as currently in effect and no Subsidiary of the Company is in violation of any provision thereof applicable to it.

Section 2.2 Capitalization.

(a) The authorized capital stock of the Company consists of 46,306,968 Company Ordinary Shares. As of the date hereof, there are 46,306,968 Company Ordinary Shares issued and outstanding. As of the date hereof, there are no Company Ordinary Shares held in the treasury of the Company. The Company has no Company Ordinary Shares issued, reserved for issuance or outstanding other than as described in this Section 2.2. The outstanding Company Ordinary Shares have been duly authorized and are validly issued, fully paid and nonassessable, and were not issued in violation of the material terms of any agreement binding upon the Company at the time at which they were issued and were issued in compliance with the Company Governing Documents and all applicable securities Laws. Section 2.2(a) of the Company Disclosure Schedule sets forth a true, correct and complete list, as of the date hereof, of all issued and outstanding Company Ordinary Shares, on a holder-by-holder basis and no other capital stock of the Company is authorized, issued or outstanding.

(b) Except as set forth in Section 2.2(b) of the Company Disclosure Schedule, none of the Group Companies is bound by any outstanding subscriptions, options, warrants, calls, commitments, rights agreements, or agreements of any character calling for any Group Company to issue, deliver, or sell, or cause to be issued, delivered, or sold any Company Ordinary Shares or any other equity security of any Group Company or any securities convertible into, exchangeable for, or representing the right to subscribe for, purchase, or otherwise receive any Company Ordinary Shares or any other equity security of any Group Company or obligating any Group Company to grant, extend, or enter into any such subscriptions, options, warrants, calls, commitments, rights agreements, or any other similar agreements. Except as set forth in Section 2.2(b) of the Company Disclosure Schedule, there are no registration rights, repurchase or redemption rights, anti-dilutive rights, voting agreements, voting trusts, preemptive rights or restrictions on transfer relating to any shares in the capital of any Group Company to which any Group Company, or, to the Knowledge of the Company, any other Person is a party.

(c) None of the Group Companies has or maintains any stock option plan or other similar plan providing for equity compensation of any Person.

(d) Section 2.2(d) of the Company Disclosure Schedule lists each of the Subsidiaries of the Company as of the date hereof and indicates for each such Subsidiary as of such date (i) the percentage and type of equity securities owned or controlled, directly or indirectly, by the Company, and (ii) the jurisdiction of incorporation or organization. No Subsidiary of the Company has or is bound by any outstanding subscriptions, options, warrants, calls, commitments, rights agreements, or agreements of any character calling for it to issue, deliver, or sell, or cause to be issued, delivered, or sold any of its equity securities or any securities convertible into, exchangeable for, or representing the right to subscribe for, purchase or otherwise receive any such equity security or obligating such Subsidiary of the Company to grant, extend or enter into any such subscriptions, options, warrants, calls, commitments, rights agreements, or other similar agreements. There are no outstanding contractual obligations of any Subsidiary of the Company to repurchase, redeem, or otherwise acquire any of its capital stock or other equity interests. All of the shares of capital stock of each Subsidiary of the Company (A) have been duly authorized and are validly issued, fully paid (to the extent required under the applicable governing documents) and nonassessable, and (B) are owned by the Company free and clear of any Encumbrance (other than Permitted Encumbrances), or agreement with respect thereto.

Section 2.3 Authority. The Company has all requisite corporate power and authority to execute and deliver this Agreement and to consummate the Merger and perform its respective obligations hereunder. The adoption, execution, delivery and performance of this Agreement and the approval of the consummation of the Merger have been recommended by, and have been duly and validly adopted and approved by the Board of Directors of the Company, in conformity with the fiduciary duties applicable to the members of the Board of Directors. The Company has obtained unanimous approval (by action by written consent) of the outstanding shares of the Company Ordinary Shares (collectively, the "***Company Shareholder Approval***"), in compliance with the Company Governing Documents and applicable Law, to approve this Agreement and the Merger and its obligations hereunder. No other approval or consent of, or action by, the holders of the outstanding securities of the Company is required in order for the Company to execute and deliver this Agreement and to consummate the Merger and perform its obligations hereunder. Except for the filing of the Plan of Merger and the additional required documentation specified in Section 233(9) of the Cayman Companies Law with the Registrar of Companies of the Cayman Islands for the Merger and compliance with Section 238 of the Cayman Companies Law, no other corporate proceeding on the part of the Company is necessary to authorize the adoption, execution, delivery and performance of this Agreement or to consummate the Merger. This Agreement has been duly and validly executed and delivered by the Company, and (assuming due authorization, execution and delivery by the other parties hereto), constitutes the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, or other similar Laws relating to creditors' rights and general principles of equity.

Section 2.4 Non-Contravention; Consents.

(a) Except as set forth in Section 2.4(a) of the Company Disclosure Schedule, the execution and delivery of this Agreement by the Company do not, and the performance by the Company of this Agreement and the consummation by the Company of the Merger will not, (i) conflict with, or result in any violation or breach of any provision of the Group Governing Documents, (ii) conflict with, or result in any violation or breach of, or constitute (with or without notice or lapse of time, or both) a default (or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any material benefit) under, require a consent or waiver under, require the payment of a penalty under or result in the imposition of any Encumbrance on any material assets of the Group Companies under, any of the terms, conditions or provisions of any Company Material Contract, or (iii) subject to the consents, approvals and authorizations specified in clauses (i) and (ii) of Section 2.4(b) having been obtained prior to the Closing Date and all filings and notifications described in Section 2.4(b) having been made, violate any Law applicable to any of the Group Companies or any of their properties or assets.

(b) No consent, approval, license, Permit, order or authorization of, or registration, declaration, notice or filing with, any Governmental Authority is required by or with respect to any of the Group Companies in connection with the execution and delivery of this Agreement by the Company or the consummation by the Company of the Merger, except for the filing of the Plan of Merger with the Registrar of Companies of the Cayman Islands and appropriate corresponding documents with the appropriate authorities of other jurisdictions in which the Company is qualified as a foreign corporation to transact business.

(c) This Section 2.4 does not relate to (i) Tax Laws, which are governed exclusively by Section 2.13 and Section 2.14, (ii) ERISA or other Laws regarding employee benefit matters, which are governed exclusively by Section 2.14, (iii) Labor Laws, which are governed exclusively by Section 2.15, (iv) Environmental Laws, which are governed exclusively by Section 2.16, or (v) illegal payments, which are governed exclusively by Section 2.20.

Section 2.5 Financial Statements.

(a) Section 2.5(a) of the Company Disclosure Schedule includes true and complete copies of (i) the Company Taiwan Subsidiary consolidated audited balance sheet as of December 31, 2017 (the "***Company Balance Sheet***"), and the related consolidated audited statements of operations, cash flows and shareholders' equity for the twelve months ended December 31, 2017, together with the notes thereto (collectively, the "***Company Financial Statements***") and (ii) the Company Taiwan Subsidiary consolidated unaudited balance sheet as of September 30, 2018 (the "***Company Interim Balance Sheet***") and the related consolidated unaudited statements of operations, cash flows and stockholders equity for the ten months ended October 31, 2018 (collectively, the "***Company Interim Financial Statements***"). The Company Financial Statements and the Company Interim Financial Statements (i) were prepared in accordance with IFRS applied on a consistent basis (unless otherwise noted therein) throughout the periods indicated, and (ii) fairly present, in all material respects, the financial condition and operating results of the Company Taiwan Subsidiary as of the dates and for the periods indicated therein.

(b) The Company Taiwan Subsidiary has designed and maintains disclosure controls and procedures to provide reasonable assurance that material information relating to the Company Taiwan Subsidiary is made known to the Chief Executive Officer or President and the employee of the Company Taiwan Subsidiary with responsibility for preparing financial statements by others within the Company Taiwan Subsidiary. To the Knowledge of the Company, such disclosure controls and procedures are effective and are functioning as intended.

(c) Since January 1, 2015, the Company Taiwan Subsidiary has not, and, to the Knowledge of the Company, no director, officer, employee, or internal or external auditor of the Company Taiwan Subsidiary has received or otherwise had or obtained actual knowledge of any substantive material complaint, allegation, assertion or claim that the Company Taiwan Subsidiary has engaged in questionable accounting or auditing practices.

(d) The Company Taiwan Subsidiary has designed and maintains a system of internal accounting controls to provide reasonable assurance that: (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with IFRS and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Since January 1, 2015, the Company Taiwan Subsidiary has designed and maintained a system of internal control over financial reporting that provides reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with IFRS and there have been no instances of fraud, whether or not material, involving the management of the Company Taiwan Subsidiary or other employees of the Company Taiwan Subsidiary who have a significant role in the internal control over financial reporting of the Company Taiwan Subsidiary.

Section 2.6 Absence of Changes. Since the date of the Company Balance Sheet, the Group Companies have conducted their respective businesses in all material respects in the Ordinary Course of Business consistent with their past practices. Except as set forth on Section 2.6 of the Company Disclosure Schedule, after the date of the Company Balance Sheet and on or before the date hereof:

(a) there has not been any change, event, circumstance or condition to the Knowledge of the Company that, individually or in the aggregate, has had, or would reasonably be expected to have, a Company Material Adverse Effect;

(b) except as required as a result of a change in applicable Laws or IFRS or as disclosed in the notes to the Company Financial Statements, there has not been any material change in any method of accounting or accounting practice by the Company Taiwan Subsidiary;

(c) the Group Companies have not:

(i) declared, accrued, set aside or paid any dividend or made any other distribution in respect of any shares of capital stock; or repurchased, redeemed or otherwise reacquired any shares of capital stock or other securities (except for Company Ordinary Shares from terminated employees of the Company);

(ii) other than as contemplated by the Merger, sold, issued or granted, or authorized the issuance of, or made any commitments to do any of the foregoing of: (A) any capital stock or other security, (ii) any option, warrant or right to acquire any capital stock or any other security, or (iii) any instrument convertible into or exchangeable for any capital stock or other security;

(iii) amended the Company Memorandum, Company Articles or other charter or organizational documents of any of the Group Companies;

(iv) formed any Subsidiary or acquired any equity interest or other interest in any other Person;

(v) lent money to any Person; incurred or guaranteed any Indebtedness for borrowed money; issued or sold any debt securities or options, warrants, calls or other rights to acquire any debt securities; guaranteed any debt securities of others;

(vi) made any capital expenditure or commitment in excess of $100,000;

(vii) made, changed or revoked any material Tax election; filed any material amendment to any Tax Return; filed any Tax Return in a manner inconsistent with past practice, adopted or changed any material accounting method in respect of Taxes; changed any annual Tax accounting period; entered into any Tax allocation agreement, Tax sharing agreement or Tax indemnity agreement, other than commercial contracts entered into in the Ordinary Course of Business and the primary purpose of which does not relate to Taxes; entered into any closing agreement with respect to any material Tax Liability; settled or compromised any claim, notice, audit report or assessment in respect of any material Tax Liability; applied for or entered into any ruling from any Taxing Authority with respect to Taxes; surrendered any right to claim a refund of a material amount of Taxes; or consented to any extension or waiver of the statute of limitations period applicable to any material Tax claim or assessment;

(viii) entered into, amended or terminated any Company Material Contract, or amended or terminated any material Company Permit, or apply for any new material Permit under applicable Health Care Laws;

(ix) commenced a lawsuit other than for routine collection of bills;

(x) failed to make any material payment with respect to any of the Group Companies' accounts payable or Indebtedness in a timely manner in accordance with the terms thereof and consistent with past practices;

(xi) incurred any Liability not expressly permitted pursuant to clauses (i) through (xii) of this Section 2.6(c); or

(xii) agreed to take or take any of the actions specified in clauses (i) through (xi) of this Section 2.6(c).

(d) there has not been any: (i) grant of or increase in any severance or termination pay to any employee, director or other service provider of any of the Group Companies, (ii) entry into any employment, consulting, deferred or equity compensation, retention, change in control, transaction bonus, severance or other similar plan or agreement (or any amendment to any such existing agreement) with any new or current employee, director or other service provider of any if the Group Companies, (iii) change in the compensation, bonus or other benefits payable or to become payable to the directors, officers, employees or consultants of any of the Group Companies, except in the Ordinary Course of Business consistent with past practice, or as required by any pre-existing plan or arrangement set forth in Section 2.6(d) of the Company Disclosure Schedule, (iv) action to accelerate the vesting or payment of any compensation or benefit to any employee or other service provider of any of the Group Companies, (v) adoption, modification or termination of any Company Employee Program other than as required by applicable Law, or (vi) termination of any of the officers or key employees of any of the Group Companies;

(e) none of the Group Companies has acquired or sold, pledged, leased, granted any Encumbrance or otherwise disposed of any material property or assets or agreed to do any of the foregoing except in the Ordinary Course of Business;

(f) other than the grant of non-exclusive licenses in the Ordinary Course of Business, there has been no transfer (by way of a license or otherwise) of, or agreement to transfer to, any Person's rights to any of the Company Intellectual Property;

(g) there has been no notice delivered to the Company or its Subsidiaries of any claim of ownership by a third party of any of the Company Intellectual Property, or of infringement by any of the Group Companies of any Third Party Intellectual Property; and

(h) there has not been any binding agreement to do any of the foregoing.

Section 2.7 Title to Assets. The Group Companies own, and have good and valid title to, or, in the case of leased properties and assets, valid leasehold interests in, all tangible properties or assets and equipment used or held for use in their business or operations or purported to be owned by them. All of said assets are owned by one of the Group Companies free and clear of any Encumbrances, except for: (i) any lien for current Taxes not yet due and payable or for Taxes that are being contested in good faith and for which adequate reserves have been made on the Company Balance Sheet, (ii) minor liens that have arisen in the Ordinary Course of Business and that do not (in any case or in the aggregate) materially detract from the value of the assets subject thereto or materially impair the operations of any of the Group Companies and (iii) Encumbrances described in Section 2.7 of the Company Disclosure Schedule.

Section 2.8 Properties.

(a) Section 2.8(a) of the Company Disclosure Schedule contains a complete and correct list, as of the date hereof, of the Company Leased Real Property, including, with respect to each such Company Lease, the date of such Company Lease and any material amendments thereto. With respect to each Company Lease, except as would not, individually or in the aggregate, have a Company Material Adverse Effect:

(i) the Company Leases and the Company Ancillary Lease Documents are valid and in full force and effect except to the extent they have previously expired or terminated in accordance with their terms. The Company has delivered to Parent full, complete and accurate copies of each of the Company Leases and all Company Ancillary Lease Documents described in Section 2.8(a)(i) of the Company Disclosure Schedule;

(ii) none of the Company Leased Real Property is subject to any Encumbrance other than a Permitted Encumbrance;

(iii) none of the Group Companies, nor, to the Knowledge of the Company, any other party to any Company Lease or Company Ancillary Lease Document is in breach or default, and, to the Knowledge of the Company, no event has occurred which, with notice or lapse of time, would constitute such a breach or default under the Company Leases or any Company Ancillary Lease Documents;

(iv) none of the Group Companies has assigned, transferred, conveyed, mortgaged, deeded in trust or encumbered any of its rights and interest in the leasehold or subleasehold under any of the Company Leases or any Company Ancillary Lease Documents in a manner that is material to any of the Group Companies and that relates to the use or occupancy of all or any portion of the Company Leased Real Property.

(b) Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (i) the Group Companies own good title, free and clear of all Encumbrances, to all personal property and other non-real estate assets, in all cases excluding the Company Intellectual Property, necessary to conduct the Company Business, except for Permitted Encumbrances, and (ii) the Group Companies, as lessees, have the right under valid and subsisting leases to use, possess and control all personal property leased by the Group Companies as now used, possessed and controlled by the Group Companies.

(c) None of the Group Companies has any Company Owned Real Property.

Section 2.9 Intellectual Property.

(a) Section 2.9(a) of the Company Disclosure Schedule contains a complete and accurate list of all (i) Patents owned by any of the Group Companies or exclusively licensed to any of the Group Companies ("***Company Patents***"), registered and material unregistered Marks owned by any of the Group Companies ("***Company Marks***") and registered Copyrights owned by any of the Group Companies ("***Company Copyrights***"), (ii) licenses, sublicenses or other agreements under which any of the Group Companies is granted rights by others in the Company Intellectual Property ("***Company In-Licenses***") (other than commercial off the shelf software or materials transfer agreements), and (iii) licenses, sublicenses or other agreements under which any of the Group Companies has granted rights to others in the Company Intellectual Property ("***Company Out-Licenses***").

(b) With respect to the Company Intellectual Property (i) owned or purported to be owned by any of the Group Companies, one of the Group Companies exclusively owns such Company Intellectual Property, and (ii) licensed to any of the Group Companies by a third party (other than commercial off the shelf software or materials transfer agreements), the Group Companies have executed a written license or other agreement to such Company Intellectual Property; in the case of the foregoing clauses (i), and (ii) above, free and clear of all Encumbrances, other than Encumbrances resulting from the express terms of Company In-Licenses or Company Out-Licenses or Permitted Encumbrances granted by one of the Group Companies. This clause (b) is not intended to be a representation of non-infringement, which is covered exclusively by clause (g) below.

(c) To the Knowledge of the Company, all Company Patents, Company Marks and Company Copyrights are valid and enforceable.

(d) To the Knowledge of the Company, each Company Patent that has been issued by, or registered with, or is the subject of an application filed with, as applicable, the U.S. Patent and Trademark Office or any similar office or agency anywhere in the world was issued, registered, or filed, as applicable, with the correct inventorship and there has been no known misjoinder or nonjoinder of inventors.

(e) No Company Patent is now involved in any interference, reissue, re-examination or opposition proceeding.

(f) There are no claims pending or, to the Knowledge of the Company, threatened in writing against the Group Companies, or any employees of the Group Companies, alleging that the operation of the Company Business or any activity by the Group Companies, or the manufacture, sale, offer for sale, importation, infringes or violates (or in the past infringed or violated) the rights of others in or to any Intellectual Property ("***Third Party Intellectual Property***") or constitutes a misappropriation of (or in the past constituted a misappropriation of) any subject matter of any Intellectual Property of any Person or entity or that any Company Intellectual Property is invalid or unenforceable.

(g) To the Knowledge of the Company, neither the operation of the Company Business, nor any activity by the Group Companies, nor manufacture, use, importation, offer for sale infringes or violates (or in the past infringed or violated) any Third Party Intellectual Property or constitutes a misappropriation of (or in the past constituted a misappropriation of) any subject matter of any Third Party Intellectual Property.

(h) Except with respect to fees payable to third party licensors pursuant to the Company In-Licenses, none of the Group Companies have an obligation to compensate any Person for the use of any Intellectual Property. Except as set forth in Section 2.9(h) of the Company Disclosure Schedule, the Group Companies have not entered into any agreement to indemnify any other person against any claim of infringement or misappropriation of any Intellectual Property. There are no settlements, covenants not to sue, consents, judgments, or orders that: (i) restrict the rights of the Group Companies to use any Company Intellectual Property, (ii) restrict the Company Business, in order to accommodate a third party's Intellectual Property, or (iii) permit third parties to use any Company Intellectual Property (excluding any rights granted to any third parties pursuant to any of the Company Out-Licenses).

(i) All former and current employees, consultants and contractors of the Group Companies who have been involved in the creation and/or development of any Company Intellectual Property have executed written instruments with one or more of the Group Companies that assign to one or more of the Group Companies, all rights, title and interest in and to any and all Intellectual Property created and/or developed by such employee, consultant or contractor in the course of their employment or engagement with the Group Companies.

(j) To the Knowledge of the Company, (i) there is no, nor has there been any, infringement or violation by any person or entity of any Company Intellectual Property owned by, or exclusively licensed to, any of the Group Companies or the rights of any of the Group Companies therein or thereto and (ii) there is no, nor has there been any, misappropriation by any person or entity of any Company Intellectual Property owned by, or exclusively licensed to, any of the Group Companies or the subject matter thereof.

(k) Each of the Group Companies has taken reasonable security measures to protect the secrecy, confidentiality and value of all Trade Secrets owned by it or used or held for use by it in the Company Business (the "***Company Trade Secrets***").

(l) Following the Closing Date, the Surviving Entity will have substantially similar rights and privileges in the Company Intellectual Property as the Group Companies had in the Company Intellectual Property immediately prior to the Closing Date.

Section 2.10 Material Contracts. Section 2.10 of the Company Disclosure Schedule is a correct and complete list of each currently effective Company Contract described in clauses (a) through (m) below:

(a) the Company Leases and the Company Ancillary Lease Documents;

(b) for the purchase of materials, supplies, goods, services, equipment or other assets for annual payments by any of the Group Companies of, or pursuant to which in the last year any of the Group Companies paid, in the aggregate, $100,000 or more;

(c) for the sale of materials, supplies, goods, services, equipment or other assets for annual payments to any of the Group Companies of, or pursuant to which in the last year any of the Group Companies received, in the aggregate, $100,000 or more;

(d) that relates to any partnership, joint venture, strategic alliance or other similar Contract;

(e) relating to Indebtedness for borrowed money or the deferred purchase price of property (whether incurred, assumed, guaranteed or secured by any asset), except for Contracts relating to Indebtedness in an amount not exceeding $100,000 in the aggregate;

(f) any management, employment, severance, retention, transaction bonus, change in control, consulting or other similar Contract between: (i) any of the Group Companies, on the one hand, and (ii) any employee, director or other service provider of any of the Group Companies, on the other hand, other than any such Contract that is terminable "at will" or without any obligation in excess of $50,000 on the part of any of the Group Companies to make any severance, bonus, termination, change in control or similar payment or to provide any other benefit with a value in excess of $50,000 (other than benefits required to be provided by applicable Law);

(g) which by its terms limits in any respect (i) the localities in which all or any significant portion of the business and operations of any of the Group Companies or any Affiliate of any of the Group Companies (which will include Parent after the Closing), or (ii) the right of any of the Group Companies or any Affiliate of any of the Group Companies (which will include Parent after the Closing) to compete with any Person;

(h) in respect of any Company Intellectual Property that provides for annual payments of, or pursuant to which in the last year any of the Group Companies paid or received, in the aggregate, $100,000 or more;

(i) containing any royalty, dividend or similar arrangement based on the revenues or profits of any of the Group Companies;

(j) with any Governmental Authority;

(k) any Contract with (a) an executive officer or director of any of the Group Companies or any of such executive officer's or director's immediate family members, (b) an owner of more than five percent (5%) of the voting power of the outstanding capital stock of any of the Group Companies, or (c) to the Knowledge of the Company, any "related person" (within the meaning of Item 404 of Regulation S-K under the Securities Act) of any such officer, director or owner (other than any of the Group Companies);

(l) any agreement that gives rise to any material payment or benefit as a result of the performance of this Agreement or the Merger; or

(m) relating to the acquisition or disposition of any material interest in, or any material amount of, property or assets of any of the Group Companies or for the grant to any Person of any preferential rights to purchase the assets of any of the Group Companies, other than in the Ordinary Course of Business.

The Company has delivered or made available to Parent accurate and complete (except for applicable redactions thereto) copies of all the agreements, contracts or commitments to which any of the Group Companies is a party or by which it is bound of the type described in clauses (a) through (n) above or any Company Contract listed in Section 2.14 or Section 2.15 of the Company Disclosure Schedule (any such agreement, contract or commitment, a "***Company Material Contract***"). There are no material Company Contracts that are not in written form. Except as set forth on Section 2.10 of the Company Disclosure Schedule, none of the Group Companies nor, to the Knowledge of the Company, any other party to a Company Material Contract, has breached, violated or defaulted under, or received notice that it has breached, violated or defaulted under, any of the material terms or conditions of any Company Material Contract in such manner as would permit any other party to cancel or terminate any such Company Material Contract. As to the Group Companies, as of the date of this Agreement, each Company Material Contract is valid, binding, enforceable and in full force and effect, subject to: (i) Laws of general application relating to bankruptcy, insolvency and the relief of debtors, and (ii) rules of Law governing specific performance, injunctive relief and other equitable remedies. The consummation of the Merger will not (either alone or upon the occurrence of additional acts or events) result in any material payment or payments becoming due from any of the Group Companies or the Surviving Entity to any Person under any Company Material Contract or give any Person the right to terminate or materially alter the provisions of any Company Material Contract.

Section 2.11 Absence of Undisclosed Liabilities. The Group Companies have no Liability, individually or in the aggregate, except for: (a) Liabilities reflected or reserved against in the Company Balance Sheet (or the notes thereto) made available to Parent, (b) normal and recurring current Liabilities that have been incurred by the Group Companies since the date of the Company Balance Sheet in the Ordinary Course of Business, none of which are material, (c) Liabilities for performance of obligations of the Group Companies under Contracts (other than for breach thereof), (d) Liabilities described in Section 2.11 of the Company Disclosure Schedule or (e) legal expenses and accounting fees incurred with respect to the negotiation and documentation of the transactions contemplated hereby.

Section 2.12 Compliance with Laws; Regulatory Compliance.

(a) The Group Companies are, and for the past four years have been, in compliance in all material respects with all Laws or Orders. No investigation, inquiry, proceeding or similar action by any Governmental Authority with respect to any of the Group Companies is pending or, to the Knowledge of the Company, threatened in writing, nor has any Governmental Authority indicated in writing an intention to conduct the same which, in each case, would reasonably be expected to have a Company Material Adverse Effect.

(b) Each of the Group Companies holds all material Permits from the Ministry of Health and Welfare of Taiwan (the "***MHW***") and any other Governmental Authority necessary for the operating of the Company Business in material compliance with applicable Laws (the "***Company Permits***"), including all Company Permits required under any Health Care Laws of other applicable jurisdictions. All such Company Permits are valid, and in full force and effect. There has not occurred any violation of, default (with or without notice or lapse of time or both) under, or event giving to others any right of termination, amendment or cancellation of, with or without notice or lapse of time or both, any Company Permit. Each of the Group Companies is in compliance in all material respects with the terms of all Company Permits, and no event has occurred that, to the Knowledge of the Company, would reasonably be expected to result in the revocation, cancellation, non-renewal or adverse modification of any Company Permit.

(c) The Group Companies and the facilities owned or, to the Knowledge of the Company, used by each of the Group Companies have conducted, and, if still pending, are conducting, all clinical trials in compliance, in all material respects, with (i) all protocols as approved by the MHW or applicable Governmental Authorities, (ii) procedures and controls pursuant to the protocols, relevant industry standards, accepted professional and scientific standards, and (iii) all Laws implemented and/or administered by the MHW or other Governmental Authority in Taiwan or any other applicable jurisdiction relating to clinical investigations, and pre- and post-marketing adverse drug experience reporting, and all other pre- and post-marketing reporting requirements, as applicable (the "***Rules***").

(d) None of the Group Companies has made any materially false statements on, or material omissions from, any representations, reports or other submissions, whether oral, written, or electronically delivered, to any applicable Governmental Authority or in or from any other Records and documentation prepared or maintained to comply with the requirements of any of the Rules, protocols or any applicable Governmental Authority relating to any such clinical trial.

(e) None of the Group Companies, nor the facilities owned or used by any of the Group Companies are subject to any adverse inspection, finding of deficiency, finding of non-compliance, regulatory or warning letter, investigation, notice, or other compliance or enforcement action, from or by any applicable Governmental Authority. There are no pending or, to the Knowledge of the Company, threatened Legal Proceeding. To the Knowledge of the Company, there is no act, omission, event, or circumstance that would reasonably be expected to give rise to any such action, suit, demand, claim, hearing, investigation, demand letter, proceeding, complaint or request for information or any such liability. Neither any applicable Governmental Authority has commenced, or to the Knowledge of the Company, threatened to initiate, any action to place a clinical hold order on, or otherwise terminate, delay or suspend, any proposed or ongoing clinical investigation conducted or proposed to be conducted by the Group Companies. None of the Group Companies has received any written notice or correspondence from the MHW or applicable Governmental Authority requiring the termination or suspension or denying approval of a clinical trial conducted or proposed to be conducted by the Group Companies.

(f) None of the Group Companies nor, to the Knowledge of the Company, any officer, employee or agent of any of the Group Companies has been convicted of any crime or engaged in any conduct that would reasonably be expected to result in debarment under any local or foreign law or regulation, and none of the Group Companies or any such person has been so debarred.

(g) For clinical trials conducted or being conducted by the Group Companies, or the facilities owned or, to the Knowledge of the Company, used by any of the Group Companies, all investigators and, to the extent required by the Rules or protocols, employees of the Group Companies, involved in the clinical trials have disclosed in writing to the Group Companies and any institutional review board or similar authority any material potential conflict of interest that may result in personal or family gain for the investigators or employees, financial or otherwise in violation of any applicable Law. Such conflicts of interest may include, among other things, a royalty payment, a grant to fund ongoing research, compensation in the form of equipment, a retainer for ongoing consultation, honoraria, a proprietary interest (e.g., a patent, trademark, copyright or licensing agreement) in a tested product, or an equity interest in the owner of the tested product (e.g., an ownership interest or stock options). Such investigators and employees are obligated to update their disclosure to the Group Companies and any institutional review board or similar authority if any relevant changes occur during the course of the clinical trials or for one year following completion of the clinical trials.

(h) The Group Companies and the facilities used by the any of the Group Companies, are and for the past three (3) years have been in compliance with all applicable Laws in all material respects concerning privacy, security, coding, data, and transaction standards for individually identifiable information pertaining to patients and/or research subjects ("***Patient Information***").

(i) To the Knowledge of the Company, there has been no unauthorized acquisition, use, disclosure or transmission of Patient Information by any person.

(j) There are no pending or outstanding claims for compensation, threatened civil, criminal or administrative actions, suits, demands, claims, hearings, investigations, demand letters, proceedings, complaints or requests for information by any patients, any patient's family, any applicable Governmental Authority for inaccuracy, loss or unauthorized acquisition, use, disclosure or transmission of Patient Information, nor has any of the Group Companies lost or made any unauthorized acquisition, use, disclosure or transmission of any Patient Information.

Section 2.13 Taxes and Tax Returns.

(a) Each material Tax Return required to be filed by, or on behalf of, the Company Taiwan Subsidiary has been timely filed (taking into account any valid extensions). Each such Tax Return is true, correct and complete in all material respects.

(b) The Company Taiwan Subsidiary (i) has timely paid (or has had paid on its behalf) all material Taxes due and owing, whether or not shown as due on any Tax Return, and (ii) have timely and properly withheld and remitted to the appropriate Taxing Authority, or deducted or properly set aside, all material Taxes required to be deducted, withheld or paid in connection with any amounts paid, allocated, accrued or owing to or collected from any employee, independent contractor, agent, supplier, creditor, stockholder, equityholder, partner, member or other third party, and all forms and documentation with respect thereto have been properly completed and timely filed.

(c) The unpaid Taxes of the Company Taiwan Subsidiary (i) did not, as of December 31, 2017, exceed the aggregate reserve for Tax liability (rather than any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of the Company Balance Sheet (rather than in any notes thereto), and (ii) will not exceed that reserve as adjusted for operations and transactions through the Closing Date in accordance with the past custom and practice of the Company Taiwan Subsidiary in filing its Tax Returns.

(d) There are no liens for Taxes (other than Taxes not yet due and payable) upon any of the assets of the Company Taiwan Subsidiary.

(e) The Company Taiwan Subsidiary has not waived any statute of limitations with respect to any material Taxes or agreed to any extension of the period for assessment or collection of any Taxes.

(f) There is no material Tax claim, audit, investigation, suit, or administrative or judicial Tax proceeding now pending or presently in progress or threatened in writing with respect to a material Tax Return of the Group Companies.

(g) The Company Taiwan Subsidiary has not distributed stock of a corporation, or has had its stock distributed, in a transaction purported or intended to be governed in whole or in part of Sections 355 or 361 of the Code within the prior five (5) year period ending on the date of this Agreement.

(h) The Company Taiwan Subsidiary is not a party nor has any obligation under any Tax sharing agreement (whether written or not) or any Tax indemnity or other Tax allocation agreement or arrangement (other than any such agreement entered into in the Ordinary Course of Business and the primary purpose of which does not relate to Taxes).

(i) The Company Taiwan Subsidiary (A) is not nor has it ever been a member of a group of corporations that files or has filed (or has been required to file) consolidated, combined, or unitary Tax Returns, or (B) has no liability for the Taxes of any person under Treasury Regulations Section 1.1502-6 (or any similar provision of state, provincial, local or non-U.S. Law), as a transferee or successor by contract.

(j) The Company Taiwan Subsidiary has not ever participated in a listed transaction within the meaning of Treasury Regulations Section 1.6011-4(b) (or any predecessor provision).

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

(i) change in method of accounting or use of an improper method of accounting for a taxable period ending on or prior to the Closing Date;

(ii) "closing agreement" as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or non-U.S. income Tax Law) executed prior to the Closing;

(iii) installment sale or open transaction disposition made prior to the Closing;

(iv) prepaid amount received prior to the Closing Date;

(v) election with respect to income from the discharge of indebtedness under Section 108(i) of the Code; or

(vi) any deferred revenue in existence at the Closing Date.

(l) The Company Taiwan Subsidiary has not executed any power of attorney with respect to any Tax, other than powers of attorney that are no longer in force. No private letter rulings, technical advice memoranda or other similar agreements or rulings relating to Taxes or Tax Returns have been entered into, issued by, or requested from any Taxing Authority with or in respect of any Group Company.

(m) No written claim has been made by any Taxing Authority in a jurisdiction where the Company Taiwan Subsidiary does not file Tax Returns that the Company Taiwan Subsidiary is or may be subject to Tax or required to file a Tax Return in that jurisdiction and, to the Knowledge of the Company, there is no basis for any such claim to be made.

(n) The Company Taiwan Subsidiary is not an "expatriated entity" within the meaning of Section 7874 of the Code.

(o) The Company Taiwan Subsidiary is not subject to a material Tax holiday or Tax incentive or grant in any jurisdiction that based on applicable Law is subject to recapture as a result of any act or omission of the Company Taiwan Subsidiary prior to the date hereof or as a result of the transactions contemplated hereunder.

(p) The Company Taiwan Subsidiary (A) has not, nor has it ever had, a permanent establishment in any country other than the country in which it is organized and resident, (B) has not engaged in a trade or business in any country other than the country in which it is organized and resident that subjected it to Tax in such country, (C) is not, nor has it ever been, subject to Tax in a jurisdiction outside the country in which it is organized and resident.

Section 2.14 Employee Benefit Programs.

(a) Section 2.14(a) of the Company Disclosure Schedule sets forth a list of every Employee Program maintained by any of the Group Companies (the "***Company Employee Programs***"). The Company has made available to Parent correct and complete copies (or, if a plan is not written, a written description) of all Company Employee Programs and amendments thereto in each case that are in effect as of the date hereof, and, to the extent applicable, (i) all related trust agreements, funding arrangements and insurance contracts now in effect, (ii) the most recent determination letter or opinion letter received regarding the tax-qualified status of each Company Employee Program intended to be so qualified, (iii) the most recent financial statements for each Company Employee Program, (iv) the current summary plan description for each Company Employee Program, (v) all actuarial valuation reports related to any Company Employee Programs, and (vi) all material correspondence involving any Company Employee Program sent to or received from any Governmental Authority.

(b) Each Company Employee Program has been administered in all material respects in accordance with its terms and in accordance with applicable Laws. No litigation or governmental administrative proceeding (or investigation) or other proceeding (other than those relating to routine claims for benefits) is pending or, to the Knowledge of the Company, threatened in writing with respect to any such Company Employee Program. All payments and/or contributions required to have been made (under the provisions of any agreements or other governing documents or applicable Laws) with respect to all Company Employee Programs, for all periods prior to the Closing Date, either have been made or have been accrued or otherwise adequately reserved on the Company Financial Statements.

(c) Each Company Employee Program may be amended, terminated, or otherwise discontinued by the Company after the Closing Date in accordance with its terms without material liability to any of the Group Companies, Parent or any of their respective Subsidiaries.

(d) Neither the execution of this Agreement nor the consummation of the transactions contemplated by this Agreement will, either alone or in combination with another event (such as termination of employment), (i) entitle any current or former employee or other service provider to any compensatory payment or benefit, including any bonus, retention, severance, retirement or job security payment or benefit, or (ii) enhance any benefits or accelerate the time or payment or vesting or trigger any payment or funding (through a grantor trust or otherwise) of compensation or benefits under, or increase the amount payable or trigger any other obligation under, any Company Employee Program or otherwise.

(e) With respect to each Company Employee Program subject to foreign Law (i) each such Company Employee Program required to be registered has been registered and has been maintained in all material respects in accordance with applicable foreign Law, (ii) if intended to qualify for special Tax treatment, such Company Employee Program meets all material requirements for such treatment and (iii) if required under applicable Law to be funded or book reserved, such Company Employee Program is funded or book reserved, as appropriate, in all material respects to the extent so required by applicable Law. Each Company Employee Program subject to foreign Law that provides retirement benefits is a defined contribution plan.

(f) For purposes of this Section 2.14:

(i) An entity "maintains" an Employee Program if such entity sponsors, contributes to, or provides benefits under or through such Employee Program, or has any obligation (by agreement or under applicable Laws) to contribute to or provide benefits under or through such Employee Program, or if such Employee Program provides benefits to or otherwise covers or has covered current or former employees of such entity (or their spouses, dependents, or beneficiaries).

(g) Notwithstanding any other provision of this Agreement, the representations and warranties contained in Section 2.14(a) through Section 2.14(e) constitute the sole and exclusive representations and warranties of the Group Companies relating to Laws relating to employee benefits matters.

Section 2.15 Labor and Employment Matters.

(a) None of the Group Companies is a party to, or otherwise bound by, any collective bargaining agreement, contract, or other written agreement with a labor union or labor organization. None of the Group Companies is subject to, and during the past three (3) years there has not been, any charge, demand, petition, organizational campaign, or representation proceeding seeking to compel, require, or demand it to bargain with any labor union or labor organization nor is there pending any labor strike or lockout involving any of the Group Companies.

(b) (i) The Group Companies are in compliance in all material respects with all applicable material Labor Laws and other than normal accruals of wages during regular payroll cycles, there are no arrearages in the payment of wages, (ii) none of the Group Companies is delinquent in any payments to any employee or to any temporary employees, leased employees or other servants or agents employed or used with respect to the operation of the Company Business and classified by the Group Companies as other than an employee or compensated other than through wages paid by the Group Companies through its respective payroll department ("***Company Contingent Workers***"), for any wages, salaries, commissions, bonuses, fees or other direct compensation due with respect to any services performed for it to the date hereof or amounts required to be reimbursed to such employees or Company Contingent Workers, (iii) there are no grievances, complaints or charges with respect to employment or labor matters (including allegations of employment discrimination, retaliation or unfair labor practices) pending or, to the Knowledge of the Company, threatened in writing against any of the Group Companies in any judicial, regulatory or administrative forum or under any private dispute resolution procedure, (iv) all employees of the Group Companies are employed at-will and no such employees are subject to any contract with any of the Group Companies or any policy or practice of any of the Group Companies providing for right of notice of termination of employment or the right to receive severance payments or similar benefits upon the termination of employment by any of the Group Companies, (v) none of the Group Companies has experienced a "plant closing," "business closing," or "mass layoff" as defined in the Worker Adjustment and Retraining Notification Act (the "***WARN Act***") or any similar state, local or foreign Law affecting any site of employment of the Group Companies or one or more facilities or operating units within any site of employment or facility of the Group Companies, and, during the ninety (90)-day period preceding the date hereof, no employee has suffered an "employment loss," as defined in the WARN Act, with respect to the Group Companies, and (vi) there are no pending or, to the Knowledge of the Company, threatened or reasonably anticipated claims or actions against any of the Group Companies under any workers' compensation policy or long-term disability policy.

(c) Notwithstanding any other provision of this Agreement, the representations and warranties contained in Section 2.15(a) and Section 2.15(b) constitute the sole and exclusive representations and warranties of the Group Companies relating to collective bargaining matters and compliance with Labor Laws.

Section 2.16 Environmental Matters.

(a) the Group Companies are in compliance in all material respects with all Environmental Laws applicable to their operations and use of the Company Leased Real Property;

(b) the Group Companies have not generated, transported, treated, stored, or disposed of any Hazardous Material, except in material compliance with all applicable Environmental Laws, and there has been no Release or threat of Release of any Hazardous Material by the Group Companies at or on the Company Leased Real Property that requires reporting, investigation or remediation by the Company pursuant to any Environmental Law; and

(c) the Group Companies have not (i) received written notice under the citizen suit provisions of any Environmental Law, or (ii) been subject to or, to the Knowledge of the Company, threatened in writing with any governmental or citizen enforcement action with respect to any Environmental Law.

(d) Notwithstanding any other provision of this Agreement, the representations and warranties contained in Section 2.16 constitute the sole and exclusive representations and warranties of the Group Companies relating to Environmental Laws.

Section 2.17 Insurance. The Company has made available to Parent accurate and complete copies of all material insurance policies relating to the business, assets, liabilities and operations of the Group Companies, as of the date hereof. Each of such insurance policies is in full force and effect and the Group Companies are in compliance in all material respects with the terms thereof, and no notice of cancellation or modification has been received by the Group Companies, and there is no existing default or event which, with the giving of notice or lapse of time or both, would constitute a default by an insured thereunder.

Section 2.18 Transactions with Affiliates. Section 2.18 of the Company Disclosure Schedule describes any material transactions or relationships, since January 1, 2017, between, on one hand, any of the Group Companies and, on the other hand, any (a) executive officer or director of any of the Group Companies or any of such executive officer's or director's immediate family members, (b) owner of more than five percent (5%) of the voting power of the outstanding capital stock of any of the Group Companies, or (c) to the Knowledge of the Company, any "related person" (within the meaning of Item 404 of Regulation S-K under the Securities Act) of any such officer, director or owner (other than the Group Companies) in each of the case of (a), (b), or (c) that is of the type that would be required to be disclosed under Item 404 of Regulation S-K under the Securities Act.

Section 2.19 Legal Proceedings; Orders.

(a) Except as set forth in Section 2.19 of the Company Disclosure Schedule, there is no pending Legal Proceeding, and, to the Knowledge of the Company, no Person has threatened in writing to commence any Legal Proceeding: (i) that involves any of the Group Companies, any director or officer of any of the Group Companies (in his or her capacity as such) or any of the material assets owned or used by the Group Companies, or (ii) that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, the Merger. To the Knowledge of the Company, no event has occurred, and no claim, dispute or other condition or circumstance exists, that will, or that would reasonably be expected to, give rise to or serve as a basis for the commencement of any such Legal Proceeding.

(b) There is no order, writ, injunction, judgment or decree to which the Group Companies, or any of the material assets owned or used by the Group Companies, is subject. To the Knowledge of the Company, no executive officer of any of the Group Companies is subject to any order, writ, injunction, judgment or decree that prohibits such officer or other employee from engaging in or continuing any conduct, activity or practice relating to the Company Business or to any material assets owned or used by the Group Companies.

Section 2.20 Illegal Payments.

(a) Each of the Group Companies, their respective directors, officers and, to the Knowledge of the Company, their employees and agents, are now and have been for the past five years in compliance with the U.S. Foreign Corrupt Practices Act of 1977 and all other applicable Laws relating to anti-bribery and anti-corruption, Sanctions (as defined below) and export/import controls, and the Group Companies have instituted and maintain policies and procedures designed to provide reasonable assurance of compliance with such Laws.

(b) The Group Companies have maintained and currently maintain books, records and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Group Companies.

(c) None of the Group Companies, any of their respective directors, officers, nor, to the Knowledge of the Company, their employees or agents is a Person that is, or is owned or controlled by Persons that are: (A) the subject of any sanctions administered by the U.S. Department of Treasury's Office of Foreign Assets Control or the U.S. Department of State, the United Nations Security Council, the European Union, or other relevant sanctions authority (collectively, "***Sanctions***"), or (B) located, organized or resident in a country or territory that is the subject of Sanctions (currently, Cuba, Crimea, Iran, North Korea, and Syria).

(d) For the past five years, none of the Group Companies has engaged in, and none of the Group Companies are now engaged in, directly or indirectly, any dealings or transactions with any Person, or in any country or territory, that, at the time of the dealing or transaction, is or was the subject of Sanctions.

(e) In the past five years, none of the Group Companies has been penalized for, threatened to be charged with, or given notice of, or, to the Knowledge of the Company, under investigation with respect to, any violation of, any Laws relating to anti-corruption or anti-bribery, Sanctions, or export/import controls.

Section 2.21 Inapplicability of Anti-Takeover Statutes. Except as set forth on Section 2.21 of the Company Disclosure Schedule, none of the Group Companies is a party to a shareholder rights agreement, "poison pill" or similar agreement or plan. To the Company's knowledge, no takeover statute is applicable to the Group Companies, the Company Ordinary Shares, the Merger or the other transactions contemplated by this Agreement, except for the Cayman Companies Law.

Section 2.22 No U.S. Operations. None of the Group Companies currently owns, and has never owned, any assets or properties, carried on any business, conducted any operations or incurred any Liabilities in the United States or its territories. None of the Group Companies has now, or have ever in the past had, any employees in the United States or its territories.

Section 2.23 No Financial Advisor. Except as set forth on Section 2.23 of the Company Disclosure Schedule, no broker, finder or investment banker is entitled to any brokerage fee, finder's fee, opinion fee, success fee, transaction fee or other fee or commission in connection with the Merger based upon arrangements made by or on behalf of the Group Companies.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF PARENT

Parent represents and warrants to the Company as follows, except as set forth in (x) the Parent SEC Reports filed after January 1, 2015 and prior to the date hereof (other than any disclosures contained or referenced therein under the captions "Risk Factors," "Forward-Looking Statements," "Quantitative and Qualitative Disclosures About Market Risk" and any other disclosures contained or referenced therein of information, factors or risks that are cautionary, predictive or forward-looking in nature), or (y) the written disclosure schedule delivered by Parent to the Company as of even date herewith (the "***Parent Disclosure Schedule***"). The Parent Disclosure Schedule shall be arranged in parts and subparts corresponding to the numbered and lettered Sections and subsections contained in this Article 3. The disclosures in any part or subpart of the Parent Disclosure Schedule shall qualify other Sections and subsections in this Article 3 only to the extent it is reasonably apparent from the disclosure that such disclosure is applicable to such other Sections and subsections.

Section 3.1 Organization.

(a) Parent is a corporation duly incorporated, validly existing and in good corporate standing under the Laws of the State of Delaware. Parent has all requisite corporate power and authority to own, lease and operate all of its properties and assets and to carry on its business as it is now being conducted. Parent is duly licensed or qualified to do business and is in corporate good standing in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned, leased, or operated by it makes such licensing or qualification necessary, except where the failure to be so licensed or qualified and in corporate good standing would not, either individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect. The Parent Charter and Parent Bylaws, copies of which have previously been made available to the Company, are true, correct and complete copies of such documents as currently in effect and Parent is not in violation of any provision thereof. Other than the Parent Charter and Parent Bylaws, Parent is not a party to or bound by or subject to any stockholder agreement or other similar agreement governing the voting or transfer of the capital stock of Parent and is not subject to a stockholder rights plan.

(b) Merger Sub is an exempt company incorporated in the Cayman Islands, validly existing and in good corporate standing under the Laws of the Cayman Islands. Merger Sub was formed solely for the purpose of consummating the Merger. The authorized share capital of Merger Sub is fifty thousand US dollars (US$50,000.00) divided into fifty thousand (50,000) shares of a nominal or par value of one US dollar (US$1.00), which are owned, beneficially and of record, by Parent, free and clear of any Encumbrance, or agreement with respect thereto. Except for obligations and liabilities incurred in connection with its incorporation and the Merger, Merger Sub has not, and will not have, incurred, directly or indirectly, any obligations or liabilities or engaged in any business activities of any type or kind whatsoever or entered into any agreements or arrangements with any Person. The Memorandum of Association and Articles of Association of Merger Sub, copies of which have previously been made available to the Company, are true, correct and complete copies of such documents as currently in effect and Merger Sub is not in violation of any provision thereof.

(c) Each Subsidiary of Parent is a corporation or legal entity, validly existing and, if applicable, in good standing under the Laws of the jurisdiction of its organization. Each Subsidiary of Parent has all requisite corporate power or other power and authority to own, lease and operate all of its properties and assets and to carry on its business as it is now being conducted. Each Subsidiary of Parent is duly licensed or qualified to do business in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned, leased, or operated by it makes such licensing or qualification necessary, except where the failure to be so licensed or qualified and in good standing would not, either individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect. The certificate of incorporation and bylaws or equivalent organizational documents of each of Parent's Subsidiaries (other than Merger Sub), copies of which have previously been made available to the Company, are true, correct and complete copies of such documents as currently in effect and such Subsidiaries of Parent are not in violation of any provision thereof.

Section 3.2 Capitalization.

(a) The authorized capital stock of Parent consists of 120,000,000 shares of Parent Common Stock and 5,000,000 shares Parent Preferred Stock. As of December 20, 2018, there are 3,904,138 shares of Parent Common Stock issued and outstanding and 0 shares of Parent Preferred Stock issued and outstanding. As of December 20, 2018, there are 1,624,382 shares of Parent Common Stock reserved for issuance under the Parent Stock Option Plan, 82,339 shares of Parent Common Stock issuable under outstanding options, 189,995 shares of Parent Common Stock subject to Parent Restricted Stock Units, 993,521 shares of Parent Common Stock issuable under Parent Warrants and 375,000 shares of Parent Common Stock issuable upon conversion of the Parent Convertible Preferred Note. As of December 20, 2018, there were 74 shares of Parent Common Stock held in the treasury of Parent. Parent has no shares of Parent Common Stock or Parent Preferred Stock issued, reserved for issuance or outstanding other than as described herein or in the Parent Disclosure Schedule. The outstanding shares of Parent Common Stock have been duly authorized and are validly issued, fully paid and nonassessable, and were not issued in violation of the material terms of any agreement binding upon Parent at the time at which they were issued and were issued in compliance with the Parent Charter and Parent Bylaws and all applicable securities Laws.

(b) Except for the Parent Stock Option Plan, the Parent Warrants, the Parent Convertible Preferred Note, Parent Preferred Stock and as set forth in Section 3.2(b) of the Parent Disclosure Schedule, Parent does not have and is not bound by any outstanding subscriptions, options, warrants, calls, commitments, rights agreements, or agreements of any character calling for Parent to issue, deliver, or sell, or cause to be issued, delivered, or sold any shares of Parent Common Stock or any other equity security of Parent or any Subsidiary of Parent or any securities convertible into, exchangeable for, or representing the right to subscribe for, purchase, or otherwise receive any shares of Parent Common Stock or any other equity security of Parent or any Subsidiary of Parent or obligating Parent or any such Subsidiary to grant, extend, or enter into any such subscriptions, options, warrants, calls, commitments, rights agreements, or any other similar agreements. There are no registration rights, repurchase or redemption rights, anti-dilutive rights, voting agreements, voting trusts, preemptive rights or restrictions on transfer relating to any capital stock of Parent.

(c) Section 3.2(c) of the Parent Disclosure Schedule sets forth a true, correct and complete list, as of the date hereof, of (i) the name of the holder of each Parent Stock Option, (ii) the date each Parent Stock Option was granted, (iii) the number, issuer and type of securities subject to each such Parent Stock Option, (iv) the expiration date of each such Parent Stock Option, (v) the vesting schedule of each such Parent Stock Option, (vi) the price at which each such Parent Stock Option (or each component thereof, if applicable) may be exercised, (vii) the number of shares of Parent Common Stock issuable upon the exercise of such, or upon the conversion of all securities issuable upon the exercise of such, Parent Stock Options, and (viii) whether and to what extent the exercisability of each Parent Stock Option will be accelerated upon consummation of the Merger or any termination of employment thereafter.

(d) Section 3.2(d) of the Parent Disclosure Schedule sets forth a true, correct and complete list, as of the date hereof of (i) the name of the holder of each Parent Warrant, (ii) the date each Parent Warrant was issued, (iii) the number, issuer and type of securities subject to each Parent Warrant, (iv) the expiration date of each such Parent Warrant, (v) the vesting schedule of each such Parent Warrant, (vi) the price at which each such Parent Warrant (or each component thereof, if applicable) may be exercised, (vii) the number of shares of Parent Common Stock issuable upon the exercise of such, or upon the conversion of all securities issuable upon the exercise of such, Parent Warrants and (viii) whether and to what extent the exercisability of each Parent Warrant will be accelerated upon consummation of the Merger or any termination of employment thereafter.

(e) Except as set forth in Section 3.2(e) of the Parent Disclosure Schedule, as of the date hereof, there are no shares of Parent Common Stock subject to lapsing forfeiture rights under outstanding Parent Restricted Stock Units. Section 3.2(d) of the Parent Disclosure Schedule sets forth a true, correct and complete list, as of the date hereof, of (i) the name of the holder of each Parent Restricted Stock Unit, (ii) the number of shares of Parent Common Stock subject to the award, (iii) the vesting schedule of each such Parent Restricted Stock Unit, and (iv) whether and to what extent the vesting of each Parent Restricted Stock Unit will be accelerated upon consummation of the Merger or any termination of employment thereafter.

(f) Section 3.2(f) of the Parent Disclosure Schedule lists each Subsidiary of Parent, other than Merger Sub, as of the date hereof and indicates for each such Subsidiary as of such date (i) the percentage and type of equity securities owned or controlled, directly or indirectly, by Parent, and (ii) the jurisdiction of incorporation or organization. No Subsidiary of Parent has or is bound by any outstanding subscriptions, options, warrants, calls, commitments, rights agreements, or agreements of any character calling for it to issue, deliver, or sell, or cause to be issued, delivered, or sold any of its equity securities or any securities convertible into, exchangeable for, or representing the right to subscribe for, purchase or otherwise receive any such equity security or obligating such Subsidiary to grant, extend or enter into any such subscriptions, options, warrants, calls, commitments, rights agreements, or other similar agreements. There are no outstanding contractual obligations of any Subsidiary of Parent to repurchase, redeem, or otherwise acquire any of its capital stock or other equity interests. All of the shares of capital stock of each of the Subsidiaries of Parent (A) have been duly authorized and are validly issued, fully paid (to the extent required under the applicable governing documents) and nonassessable, and (B) are owned by Parent free and clear of any Encumbrance (other than Permitted Encumbrances), or agreement with respect thereto.

Section 3.3 Authority. Each of Parent and Merger Sub has all requisite corporate power and authority to execute and deliver this Agreement and to consummate the Merger and perform its respective obligations hereunder. The adoption, execution, delivery and performance of this Agreement and the approval of the consummation of the Merger, the issuance of the Merger Shares and the Private Placement have been duly and validly adopted and approved by the Board of Directors of each of Parent and Merger Sub, in conformity with the fiduciary duties applicable to the members of each Board of Directors. No other approval or consent of, or action by, the holders of the outstanding securities of Parent or Merger Sub is required in order for Parent or Merger Sub to execute and deliver this Agreement and to consummate the Merger, the issuance of the Merger Shares and the Private Placement and perform their obligations hereunder. The Board of Directors of each of Parent and Merger Sub have declared this Agreement advisable and the Board of Directors of Merger Sub has recommended that the sole stockholder of Merger Sub adopt this Agreement and approve the Merger. Except for the filing of the Plan of Merger and the additional required documentation specified in Section 233(9) of the Cayman Companies Law with the Registrar of Companies of the Cayman Islands for the Merger and compliance with Section 238 of the Cayman Companies Law, no other corporate or other proceeding on the part of Parent or Merger Sub is necessary to authorize the adoption, execution, delivery and performance of this Agreement or to consummate the Merger. This Agreement has been duly and validly executed and delivered by Parent and Merger Sub, and (assuming due authorization, execution and delivery by the other parties hereto), constitutes the legal, valid and binding obligations of Parent and Merger Sub, enforceable against Parent and Merger Sub in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, or other similar Laws relating to creditors' rights and general principles of equity.

Section 3.4 Non-Contravention; Consents.

(a) Except as set forth on Section 3.4 of the Parent Disclosure Schedule, the execution and delivery of this Agreement by Parent and Merger Sub do not, and the performance by Parent and Merger Sub and the consummation by Parent and Merger Sub of the Merger, the issuance of the Merger Shares and the Private Placement will not, (i) conflict with, or result in any violation or breach of any provision of the Parent Charter or Parent Bylaws or of the charter, bylaws, or other organizational document of any Subsidiary of Parent, (ii) conflict with, result in any violation or breach of, or constitute (with or without notice or lapse of time, or both) a default (or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any material benefit) under, require a consent or waiver under, require the payment of a penalty under or result in the imposition of any Encumbrances on Parent's or any of its Subsidiaries' material assets under, any of the terms, conditions or provisions of any Parent Material Contract, or (iii) subject to obtaining the consents, approvals and authorizations specified in clauses (i) through (v) of Section 3.4(b) having been obtained prior to the Closing Date and all filings and notifications described in Section 3.4(b) having been made, violate any Law applicable to Parent or any of its Subsidiaries or any of its or their properties or assets.

(b) No consent, approval, license, permit, order or authorization of, or registration, declaration, notice or filing with, any Governmental Authority is required by or with respect to Parent or any of its Subsidiaries in connection with the execution and delivery of this Agreement by Parent, Merger Sub or the consummation by Parent and Merger Sub of the Merger, except for the filing of the Plan of Merger with the Registrar of Companies of the Cayman Islands, (ii) any filings required to be made with the SEC in connection with this Agreement and the Merger (including (A) filing of a Shelf Registration Statement with the SEC in accordance with the Exchange Act, and (B) the filing of a Form D Notice of Exempt Offering of Securities or other related filings in reliance on an exemption provided in Regulation D of the Securities Act), and (iii) such consents, approvals, orders, authorizations, registrations, declarations, notices and filings as may be required under applicable state securities Laws.

(c) This Section 3.4 does not relate to (i) Tax Laws, which are governed exclusively by Section 3.13 and Section 3.13(m), (ii) ERISA or other Laws regarding employee benefit matters, which are governed exclusively by Section 3.13(m), (iii) Labor Laws, which are governed exclusively by Section 3.15, (iv) Environmental Laws, which are governed exclusively by Section 3.16, or (v) illegal payments; Anticorruption Laws, which are governed exclusively by Section 3.21.

Section 3.5 SEC Filings; Financial Statements.

(a) Parent has filed or furnished, as applicable, on a timely basis all forms, statements, certifications, reports and documents required to be filed or furnished by it with the SEC under the Exchange Act or the Securities Act since January 1, 2015 (the forms, statements, reports and documents filed or furnished since January 1, 2015 and those filed or furnished subsequent to the date hereof, including any amendments thereto, the "***Parent SEC Reports***"). Each of the Parent SEC Reports, at the time of its filing or being furnished, complied in all material respects with the applicable requirements of the Securities Act, the Exchange Act and the Sarbanes-Oxley Act, and any rules and regulations promulgated thereunder applicable to the Parent SEC Reports. As of their respective dates (or, if amended prior to the date hereof, as of the date of such amendment), the Parent SEC Reports did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances in which they were made, not misleading.

(b) As of the date of this Agreement, Parent has timely responded to all comment letters of the staff of the SEC relating to the Parent SEC Reports, and the SEC has not advised Parent that any final responses are inadequate, insufficient or otherwise non-responsive. Parent has made available to the Company true, correct and complete copies of all comment letters, written inquiries and enforcement correspondence between the SEC, on the one hand, and Parent and any of its Subsidiaries, on the other hand, occurring since January 1, 2015. To the Knowledge of Parent, as of the date of this Agreement, none of the Parent SEC Reports is the subject of ongoing SEC review or outstanding SEC comment.

(c) Each of the consolidated financial statements (including, in each case, any notes or schedules thereto) included in or incorporated by reference into the Parent SEC Reports fairly presents, in all material respects, the consolidated financial position of Parent and its consolidated Subsidiaries as of its date, and each of the consolidated statements of income, changes in stockholders' equity (deficit) and cash flows included in or incorporated by reference into the Parent SEC Reports (including any related notes and schedules) fairly presents in all material respects, the results of operations, retained earnings (loss) and changes in financial position, as the case may be, of such companies for the periods set forth therein (except as indicated in the notes thereto, and in the case of unaudited statements, as may be permitted by the rules of the SEC, and subject to normal year-end audit adjustments that will not be material in amount or effect), in each case in accordance with GAAP consistently applied during the periods involved, except as may be noted therein (the "***Parent Financial Statements***").

(d) Parent has designed and maintains a system of internal accounting controls to provide reasonable assurance that: (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Since January 1, 2017, Parent and each of its Subsidiaries has designed and maintained a system of internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) sufficient to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP and there have been no instances of fraud, whether or not material, involving the management of Parent or other employees of Parent who have a significant role in the internal control over financial reporting of Parent, and such system is effective in providing such assurance. Since January 1, 2017, Parent and each of its Subsidiaries (i) has had in place disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act) designed and maintained to ensure that information (both financial and non-financial) required to be disclosed by Parent in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified by the SEC's rules and forms and, to the Knowledge of Parent, such disclosure controls and procedures are effective (ii) has disclosed, based on the most recent evaluation of its chief executive officer and its chief financial officer prior to the date hereof, to Parent's auditors and the audit committee of the Board of Directors of Parent (and made summaries of such disclosures available to the Company) (A) (i) any significant deficiencies in the design or operation of internal control over financial reporting that would adversely affect in any material respect Parent's ability to record, process, summarize and report financial information, and (ii) any material weakness in internal control over financial reporting, and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in Parent's internal controls over financial reporting. Each of Parent and its Subsidiaries have materially complied with or substantially addressed such deficiencies, material weaknesses or fraud. Parent is in compliance in all material respects with all effective provisions of the Sarbanes-Oxley Act.

(e) Each of the principal executive officer of Parent and the principal financial officer of Parent (or each former principal executive officer of Parent and each former principal financial officer of Parent, as applicable) has made all certifications required by Rule 13a-14 or 15d-14 under the Exchange Act or Sections 302 and 906 of the Sarbanes-Oxley Act and the rules and regulations of the SEC promulgated thereunder with respect to the Parent SEC Reports, and the statements contained in such certifications were true and correct on the date such certifications were made. For purposes of this Section 3.5(e), "principal executive officer" and "principal financial officer" have the meanings given to such terms in the Sarbanes-Oxley Act. None of Parent or any of its Subsidiaries has outstanding, or has arranged any outstanding, "extensions of credit" to directors or executive officers in violation of Section 402 of the Sarbanes-Oxley Act.

(f) Neither the Parent or any of its Subsidiaries nor, to the Knowledge of Parent any director, officer, employee, or internal or external auditor of Parent or any of its Subsidiaries has received or otherwise had or obtained actual knowledge of any substantive material complaint, allegation, assertion or claim, whether written or oral, that Parent or any of its Subsidiaries has engaged in questionable accounting or auditing practices.

Section 3.6 Absence of Changes. Since December 31, 2017, Parent and each of its Subsidiaries have conducted their respective businesses in all material respects in the Ordinary Course of Business consistent with their past practices. Except as set forth (x) in Parent SEC Reports, and (y) on Section 3.6 of the Parent Disclosure Schedule, after December 31, 2017 and on or before the date hereof:

(a) there has not been any change, event, circumstance or condition to the Knowledge of Parent that, individually or in the aggregate, has had, or would reasonably be expected to have, a Parent Material Adverse Effect;

(b) except as required as a result of a change in applicable Laws or GAAP or as disclosed in the notes to the Parent Financial Statements, there has not been any material change in any method of accounting or accounting practice by Parent or any of its Subsidiaries;

(c) none of Parent or any Subsidiary of Parent has:

(i) declared, accrued, set aside or paid any dividend or made any other distribution in respect of any shares of capital stock; or repurchased, redeemed or otherwise reacquired any shares of capital stock or other securities (except for Parent Common Stock from terminated employees of Parent);

(ii) other than as contemplated by the Merger, sold, issued or granted, or authorized the issuance of, or made any commitments to do any of the foregoing of: (A) any capital stock or other security, (ii) any option, warrant or right to acquire any capital stock or any other security, or (iii) any instrument convertible into or exchangeable for any capital stock or other security;

(iii) amended the certificate of incorporation, bylaws or other charter or organizational documents of Parent or any Subsidiary of Parent;

(iv) formed any Subsidiary or acquired any equity interest or other interest in any other Person;

(v) lent money to any Person; incurred or guaranteed any Indebtedness for borrowed money; issued or sold any debt securities or options, warrants, calls or other rights to acquire any debt securities; guaranteed any debt securities of others;

(vi) made any capital expenditure or commitment in excess of $100,000;

(vii) made, changed or revoked any material Tax election; filed any material amendment to any Tax Return; filed any Tax Return in a manner inconsistent with past practice, adopted or changed any material accounting method in respect of Taxes; changed any annual Tax accounting period; entered into any Tax allocation agreement, Tax sharing agreement or Tax indemnity agreement, other than commercial contracts entered into in the Ordinary Course of Business and the primary purpose of which does not relate to Taxes; entered into any closing agreement with respect to any material Tax Liability; settled or compromised any claim, notice, audit report or assessment in respect of any material Tax Liability; applied for or entered into any ruling from any Taxing authority with respect to Taxes; surrendered any right to claim a refund of a material amount of Taxes; or consented to any extension or waiver of the statute of limitations period applicable to any material Tax claim or assessment;

(viii) entered into, amended or terminated any Parent Material Contract, or amended or terminated any material Parent Permit, or apply for any new material Permit under applicable Health Care Laws;

(ix) commenced a lawsuit other than for routine collection of bills;

(x) failed to make any material payment with respect to any of Parent's accounts payable or Indebtedness in a timely manner in accordance with the terms thereof and consistent with past practices;

(xi) incurred any Liability not expressly permitted pursuant to clauses (i) through (xii) of this Section 3.6(c); or

(xii) agreed to take or take any of the actions specified in clauses (i) through (xi) of this Section 3.6(c);

(d) there has not been any (i) grant of or increase in any severance or termination pay to any employee, director or other service provider of Parent or its Subsidiaries, (ii) entry into any employment, consulting, deferred or equity compensation, retention, change in control, transaction bonus, severance or other similar plan or agreement (or any amendment to any such existing agreement) with any new or current employee, director or other service provider of Parent or any of its Subsidiaries, (iii) change in the compensation, bonus or other benefits payable or to become payable to its directors, officers, employees or consultants, except in the Ordinary Course of Business consistent with past practice, or as required by any pre-existing plan or arrangement set forth in Section 3.6(d) of the Parent Disclosure Schedule, (iv) action to accelerate the vesting or payment of any compensation or benefit to any Parent Employee Program, (v) adoption, modification or termination of any Parent Employee Program other than as required by applicable Law, or (vi) termination of any officers or key employees of Parent or any of its Subsidiaries;

(e) neither Parent nor any Subsidiary of Parent has acquired or sold, pledged, leased, granted any Encumbrance or otherwise disposed of any material property or assets or agreed to do any of the foregoing except in the Ordinary Course of Business;

(f) other than the grant of non-exclusive licenses in the Ordinary Course of Business, there has been no transfer (by way of a license or otherwise) of, or agreement to transfer to, any Person's rights to any of the Parent Intellectual Property;

(g) there has been no notice delivered to Parent or any Subsidiary of Parent of any claim of ownership by a third party of any of the Parent Intellectual Property, or of infringement by Parent of any Third Party Intellectual Property; and

(h) there has not been any binding agreement to do any of the foregoing.

Section 3.7 Title to Assets. Each of Parent and its Subsidiaries owns, and has good and valid title to, or, in the case of leased properties and assets, valid leasehold interests in, all tangible properties or assets and equipment used or held for use in its business or operations or purported to be owned by it. All of said assets are owned by Parent or a Subsidiary of Parent free and clear of any Encumbrances, except for: (i) any lien for current Taxes not yet due and payable or for Taxes that are being contested in good faith and for which adequate reserves have been made on Parent's audited consolidated balance sheet at December 31, 2017, (ii) minor liens that have arisen in the Ordinary Course of Business and that do not (in any case or in the aggregate) materially detract from the value of the assets subject thereto or materially impair the operations of Parent and its Subsidiaries, taken as a whole, and (iii) Encumbrances described in Section 3.7 of the Parent Disclosure Schedule.

Section 3.8 Properties.

(a) Section 3.8(a) of the Parent Disclosure Schedule contains a complete and correct list, as of the date hereof, of the Parent Leased Real Property, including with respect to each such Parent Lease the date of such Parent Lease and any material amendments thereto. With respect to each Parent Lease, except as would not, individually or in the aggregate, have a Parent Material Adverse Effect:

(i) the Parent Leases and the Parent Ancillary Lease Documents are valid and in full force and effect except to the extent they have previously expired or terminated in accordance with their terms. Parent and its Subsidiaries have delivered to Parent full, complete and accurate copies of each of the Parent Leases and all Parent Ancillary Lease Documents described in Section 3.8(a) of the Parent Disclosure Schedule;

(ii) none of the Parent Leased Real Property is subject to any Encumbrance other than a Permitted Encumbrance;

(iii) none of Parent or its Subsidiaries, nor, to the Knowledge of Parent, any other party to any Parent Lease or Parent Ancillary Lease Document is in breach or default, and, to the Knowledge of Parent, no event has occurred which, with notice or lapse of time, would constitute such a breach or default under the Parent Leases or any Parent Ancillary Lease Documents;

(iv) none of Parent or its Subsidiaries has assigned, transferred, conveyed, mortgaged, deeded in trust or encumbered any of its rights and interest in the leasehold or subleasehold under any of the Parent Leases or any Parent Ancillary Lease Documents in a manner that is material to Parent and that relates to the use or occupancy of all or any portion of the Parent Leased Real Property.

(b) Except as would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, (i) Parent and its Subsidiaries own good title, free and clear of all Encumbrances, to all personal property and other non-real estate assets, in all cases excluding the Parent Intellectual Property, necessary to conduct the Parent Business, except for Permitted Encumbrances, and (ii) Parent and its Subsidiaries, as lessees, have the right under valid and subsisting leases to use, possess and control all personal property leased by Parent and its Subsidiaries as now used, possessed and controlled by Parent or its Subsidiaries, as applicable.

(c) None of Parent or its Subsidiaries has any Parent Owned Real Property.

Section 3.9 Intellectual Property.

(a) Section 3.9(a) of the Parent Disclosure Schedule contains a complete and accurate list of all (i) Patents owned by Parent or any of its Subsidiaries or exclusively licensed to Parent or any of its Subsidiaries ("***Parent Patents***"), registered and material unregistered Marks owned by Parent or any of its Subsidiaries ("***Parent Marks***") and registered Copyrights owned by Parent or any of its Subsidiaries ("***Parent Copyrights***"), (ii) licenses, sublicenses or other agreements under which Parent or any of its Subsidiaries is granted rights by others in the Parent Intellectual Property ("***Parent In-Licenses***") (other than commercial off the shelf software or materials transfer agreements), and (iii) licenses, sublicenses or other agreements under which Parent or any of its Subsidiaries has granted rights to others in the Parent Intellectual Property ("***Parent Out-Licenses***").

(b) With respect to the Parent Intellectual Property (i) owned or purported to be owned by Parent or any of its Subsidiaries, Parent or one of its Subsidiaries exclusively owns such Parent Intellectual Property, and (ii) licensed to Parent or any of its Subsidiaries by a third party (other than commercial off the shelf software or materials transfer agreements), Parent or its Subsidiaries has executed a written license or other agreement to such Parent Intellectual Property; in the case of the foregoing clauses (i), and (ii) above, free and clear of all Encumbrances, other than Encumbrances resulting from the express terms of Parent In-Licenses or Parent Out-Licenses or Permitted Encumbrances granted by Parent or one of its Subsidiaries. This clause (b) is not intended to be a representation of non-infringement, which is covered exclusively by clause (g) below.

(c) To the Knowledge of Parent, all Parent Patents, Parent Marks and Parent Copyrights are valid and enforceable.

(d) To the Knowledge of Parent, each Parent Patent that has been issued by, or registered with, or is the subject of an application filed with, as applicable, the U.S. Patent and Trademark Office or any similar office or agency anywhere in the world was issued, registered, or filed, as applicable, with the correct inventorship and there has been no known misjoinder or nonjoinder of inventors.

(e) Except as set forth in Section 3.9(e) of the Parent Disclosure Schedule, no Parent Patent is now involved in any interference, reissue, re-examination or opposition proceeding.

(f) There are no pending or, to the Knowledge of Parent, threatened claims against Parent or any of its Subsidiaries or any of their employees alleging that the operation of the Parent Business or any activity by Parent or its Subsidiaries, or the manufacture, sale, offer for sale, importation, infringes or violates (or in the past infringed or violated) any Third Party Intellectual Property or constitutes a misappropriation of (or in the past constituted a misappropriation of) any subject matter of any Intellectual Property of any person or entity or that any Parent Intellectual Property is invalid or unenforceable.

(g) To the Knowledge of Parent, neither the operation of the Parent Business, nor any activity by Parent or any of its Subsidiaries, nor manufacture, use, importation, offer for sale infringes or violates (or in the past infringed or violated) any Third Party Intellectual Property or constitutes a misappropriation of (or in the past constituted a misappropriation of) any subject matter of any Third Party Intellectual Property.

(h) Except with respect to fees payable to third party licensors pursuant to the Parent In-Licenses, none of Parent or any of its Subsidiaries has any obligation to compensate any person for the use of any Intellectual Property. Except as set forth in Section 3.9(h) of the Parent Disclosure Schedule, neither Parent nor any of its Subsidiaries has entered into any agreement to indemnify any other person against any claim of infringement or misappropriation of any Intellectual Property. There are no settlements, covenants not to sue, consents, judgments, or orders that: (i) restrict Parent's or any of its Subsidiaries' rights to use any Parent Intellectual Property, (ii) restrict the Parent Business, in order to accommodate a third party's Intellectual Property, or (iii) permit third parties to use any Parent Intellectual Property (excluding any rights granted to any third parties pursuant to the Parent Out-Licenses).

(i) All former and current employees, consultants and contractors of Parent and its Subsidiaries who have been involved in the creation and/or development of any Parent Intellectual Property have executed written instruments with Parent or one or more of its Subsidiaries that assign to Parent all rights, title and interest in and to any and all Intellectual Property created and/or developed by such employee, consultant or contractor in the course of their employment or engagement with Parent or the applicable Subsidiary.

(j) To the Knowledge of Parent, (i) there is no, nor has there been any, infringement or violation by any person or entity of any Parent Intellectual Property owned by, or exclusively licensed to, Parent or any of its Subsidiaries, or the rights of Parent or any of its Subsidiaries therein or thereto and (ii) there is no, nor has there been any, misappropriation by any person or entity of any Parent Intellectual Property owned by, or exclusively licensed to, Parent or any of its Subsidiaries, or the subject matter thereof.

(k) Parent and each of its Subsidiaries has taken reasonable security measures to protect the secrecy, confidentiality and value of all Trade Secrets owned by Parent or any of its Subsidiaries or used or held for use by Parent or any of its Subsidiaries in the Parent Business (the "***Parent Trade Secrets***").

(l) Following the Closing Date, the Surviving Entity will have substantially similar rights and privileges in the Parent Intellectual Property as Parent and its Subsidiaries had in the Parent Intellectual Property immediately prior to the Closing Date.

Section 3.10 Material Contracts. Section 3.10 of the Parent Disclosure Schedule is a correct and complete list of each currently effective Parent Contract described in clauses (a) through (m) below:

(a) the Parent Leases and the Parent Ancillary Lease Documents;

(b) for the purchase of materials, supplies, goods, services, equipment or other assets for annual payments by Parent or any of its Subsidiaries of, or pursuant to which in the last year Parent or any of its Subsidiaries paid, in the aggregate, $100,000 or more;

(c) for the sale of materials, supplies, goods, services, equipment or other assets for annual payments to Parent or any of its Subsidiaries of, or pursuant to which in the last year Parent or any of its Subsidiaries received, in the aggregate, $100,000 or more;

(d) that relates to any partnership, joint venture, strategic alliance or other similar Contract;

(e) relating to Indebtedness for borrowed money or the deferred purchase price of property (whether incurred, assumed, guaranteed or secured by any asset), except for Contracts relating to Indebtedness in an amount not exceeding $100,000 in the aggregate;

(f) any management, employment, severance, retention, transaction bonus, change in control, consulting or other similar Contract between: (i) Parent or any of its Subsidiaries, on the one hand, and (ii) any employee, director or other service provider of Parent or its Subsidiaries, on the other hand, other than any such Contract that is terminable "at will" or without any obligation in excess of $50,000 on the part of Parent or any of its Subsidiaries to make any severance, bonus, termination, change in control or similar payment or to provide any other benefit with a value in excess of $50,000 (other than benefits required to be provided by applicable Law);

(g) which by its terms limits in any respect (i) the localities in which all or any significant portion of the business and operations of Parent or any Affiliate of Parent (which will include the Surviving Entity after the Closing), or (ii) the right of Parent or any Affiliate of Parent (which will include the Surviving Entity after the Closing) to compete with any Person;

(h) in respect of any Parent Intellectual Property that provides for annual payments of, or pursuant to which in the last year Parent or any of its Subsidiaries paid or received, in the aggregate, $100,000 or more;

(i) containing any royalty, dividend or similar arrangement based on the revenues or profits of Parent or any of its Subsidiaries;

(j) with any Governmental Authority;

(k) any Contract with (a) an executive officer or director of Parent or any of its Subsidiaries or any of such executive officer's or director's immediate family members, (b) an owner of more than five percent (5%) of the voting power of the outstanding capital stock of Parent or any of its Subsidiaries, or (c) to the Knowledge of Parent, any "related person" (within the meaning of Item 404 of Regulation S-K under the Securities Act) of any such officer, director or owner (other than Parent or its Subsidiaries);

(l) any agreement that gives rise to any material payment or benefit as a result of the performance of this Agreement or the Merger, the issuance of the Merger Shares or the Private Placement; or

(m) relating to the acquisition or disposition of any material interest in, or any material amount of, property or assets of Parent or any of its Subsidiaries or for the grant to any Person of any preferential rights to purchase any of their assets, other than in the Ordinary Course of Business.

There are no material Parent Contracts that are not in written form. Except as set forth on Section 3.10 of the Parent Disclosure Schedule, neither Parent nor any Subsidiary of Parent, nor, to the Knowledge of Parent, any other party to a Parent Material Contract (as defined below), has breached, violated or defaulted under, or received notice that it has breached, violated or defaulted under, any of the terms or conditions of any of the agreements, contracts or commitments to which Parent or its Subsidiaries is a party or by which it is bound of the type described in clauses (a) through (m) above or any Parent Contract listed in Section 3.13(m) or Section 3.15 of the Parent Disclosure Schedule (any such agreement, contract or commitment, a "***Parent Material Contract***") in such manner as would permit any other party to cancel or terminate any such Parent Material Contract. As to Parent and its Subsidiaries, as of the date of this Agreement, each Parent Material Contract is valid, binding, enforceable and in full force and effect, subject to: (i) Laws of general application relating to bankruptcy, insolvency and the relief of debtors, and (ii) rules of Law governing specific performance, injunctive relief and other equitable remedies. The consummation of the Merger, the issuance of the Merger Shares and the Private Placement will not (either alone or upon the occurrence of additional acts or events) result in any material payment or payments becoming due from Parent to any Person under any Parent Material Contract or give any Person the right to terminate or alter the provisions of any Parent Material Contract.

Section 3.11 Absence of Undisclosed Liabilities. As of the date hereof, neither Parent nor any Subsidiary of Parent has any Liability, individually or in the aggregate, except for: (a) Liabilities reflected or reserved against in the most recent consolidated balance sheet of Parent (or notes thereto) made available to the Company, (b) normal and recurring current Liabilities that have been incurred by Parent since the date of Parent's audited consolidated balance sheet at December 31, 2015 in the Ordinary Course of Business, none of which are material, (c) Liabilities for performance of obligations of Parent or any Subsidiary of Parent under Contracts (other than for breach thereof), (d) Liabilities described in Section 3.11 of the Parent Disclosure Schedule, or (e) legal, accounting and financial advisory fees and expenses incurred with respect to the negotiation, documentation and consummation of the transactions contemplated hereby.

Section 3.12 Compliance with Laws; Regulatory Compliance.

(a) Each of Parent and each of its Subsidiaries is, and for the past four years has been, in compliance with all Laws or Orders. No investigation, inquiry, proceeding or similar action by any Governmental Authority with respect to Parent or any of its Subsidiaries is pending or, to the Knowledge of Parent, threatened in writing, nor has any Governmental Authority indicated in writing an intention to conduct the same which, in each case, would reasonably be expected to have a Parent Material Adverse Effect.

(b) Each of Parent and each of its Subsidiaries holds all material Permits from the Food and Drug Administration (the "***FDA***") and any other Governmental Authority (any such Governmental Authority, a "***Parent Regulatory Agency***") necessary for the operating of the Parent Businesses in material compliance with applicable Laws (the "***Parent Permits***"), including all Parent Permits required under the Federal Food, Drug and Cosmetic Act of 1938, and the regulations of the FDA promulgated thereunder (the "***FDCA***") and the Public Health Service Act of 1944, as amended, and the regulations of the FDA promulgated thereunder (the "***PHSA***") and any comparable Laws of other applicable jurisdictions. All such Parent Permits are valid, and in full force and effect. There has not occurred any violation of, default (with or without notice or lapse of time or both) under, or event giving to others any right of termination, amendment or cancellation of, with or without notice or lapse of time or both, any Parent Permit. Each of Parent and each of its Subsidiaries is in compliance in all material respects with the terms of all Parent Permits, and no event has occurred that, to the Knowledge of Parent, would reasonably be expected to result in the revocation, cancellation, non-renewal or adverse modification of any Parent Permit.

(c) None of Parent or its Subsidiaries nor, to the Knowledge of Parent, any director, officer, employee or agent thereof, has made any untrue statement of material fact or a fraudulent statement to the FDA or any other Parent Regulatory Agency, or failed to disclose a material fact required to be disclosed to the FDA or other such Parent Regulatory Agency, or committed an act, made a statement, or failed to make a statement, that, at the time such disclosure was made, would reasonably be expected to provide a basis for the FDA to invoke its policy with respect to "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities," as set forth in 56 Fed. Reg. 46191 (Sept. 10, 1991) and any amendments thereto. None of Parent or its Subsidiaries nor, to the Knowledge of Parent, any director, officer, employee or agent thereof, has engaged in any activity prohibited under any U.S. federal or state criminal or civil health care Laws, including the U.S. federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)), the Anti-Inducement Law (42 U.S.C. § 1320a-7a(a)(5)), the False Claims Act (31 U.S.C. §§ 3729 et seq.), the Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.), as amended by the Health Information, Technology for Economic and Clinical Health Act of 2009, the civil monetary penalty laws (42 U.S.C. § 1320a-7a), the FDCA, the PHSA, the regulations promulgated pursuant to such Laws, and any equivalent applicable Laws of other jurisdictions (each a "**Health Care Law**"). There is no civil, criminal, administrative or other proceeding, notice or demand pending, received, or, to the Knowledge of Parent, threatened against Parent or any of its Subsidiaries that asserts an alleged violation, in any material respect, of any Health Care Law. None of Parent or any of its Subsidiaries or any employee or agent thereof has, under any Health Care Law, been debarred, excluded, suspended, or otherwise determined to be ineligible to participate in any health care programs of any Governmental Authority, convicted of any crime, or, to the Knowledge of Parent, engaged in any conduct that has resulted or would reasonably be expected to result in any such debarment, exclusion, suspension, ineligibility, or conviction, including any debarment mandated by 21 U.S.C. § 335a(a) or any similar Law or authorized by 21 U.S.C. § 335a(b) or any similar Law. Neither Parent nor any of its Subsidiaries is a party to any consent decrees (including plea agreements) or similar actions to which Parent or any of its Subsidiaries or, to the Knowledge of Parent, any director, officer, employee or agent thereof, are bound.

(d) Parent and each of its Subsidiaries is in compliance in all material respects with all applicable Laws enforced by, and Orders of, the FDA and any other Parent Regulatory Agency with respect to the labeling, storing, testing, development, manufacture, packaging, distribution and promotion of its products. All required pre-clinical toxicology studies conducted by or, to the Knowledge of Parent, on behalf of Parent or any of its Subsidiaries and all clinical trials sponsored by Parent or any of its Subsidiaries are being conducted in compliance in all material respects with applicable Parent Permits and applicable Laws, including, the applicable requirements of the FDCA and the regulations of the FDA promulgated thereunder, including, any applicable requirements of 21 C.F.R. Parts 50, 54, 56, 58, 210, 211, and 312. The material results of any such studies, tests and trials, and all other material information related to such studies, tests and trials, have been made available to the Company. Each clinical trial conducted by or, to the Knowledge of Parent, on behalf of Parent or any of its Subsidiaries has been conducted in compliance in all material respects with all applicable Laws, including the FDCA and the regulations of the FDA promulgated thereunder, including, any applicable requirements of 21 C.F.R. Parts 50, 54, 56, 58, 210, 211, and 312. Parent and each of its Subsidiaries has filed with applicable Parent Regulatory Agencies all material notices required to be filed (and made available to the Company copies thereof) of adverse drug experiences, injuries or deaths relating to clinical trials conducted by or on behalf of Parent or any of its Subsidiaries.

(e) None of Parent or its Subsidiaries has received any written notice that the FDA or any other Parent Regulatory Agency has initiated, or threatened in writing to initiate, any action to suspend any clinical trial, suspend or terminate any Investigational New Drug Application or similar Health Care Law permit sponsored by Parent or any of its Subsidiaries or otherwise materially restrict the pre-clinical research or clinical study of any drug product being developed by or on behalf of Parent or any of its Subsidiaries, or to recall, suspend or otherwise materially restrict the development or manufacture of any drug product, except as has not had, and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect. To the Knowledge of Parent, there is no act, omission, event or circumstance that would reasonably be expected to give rise to any such action.

(f) With respect to the Parent Business, Parent and its Subsidiaries have made available to the Company for review copies of any and all material regulatory applications and submissions (and any supplements or amendments thereto) under applicable Health Care Laws, Parent Permits, written notices of inspectional observations, and establishment inspection reports of Parent Regulatory Agencies, notifications, communications, correspondence, registrations, master files, and/or other filings made to, received from or otherwise conducted with a Parent Regulatory Agency, reports or other documents of Parent or its Subsidiaries that assert or address lack of material compliance with any Health Care Laws, or the likelihood or timing of marketing approval of any drug product, records and other materials maintained to comply with applicable Health Care Laws (e.g., regarding good laboratory practice, good clinical practice, and good manufacturing practice), and records that are necessary or advisable in order to obtain Parent Permits or other approvals from Parent Regulatory Agencies. Such books and records are complete and correct in all material respects and have been maintained in accordance with sound business practices, including the maintenance of an adequate system of internal controls.

Section 3.13 Taxes and Tax Returns.

(a) Each material Tax Return required to be filed by, or on behalf of, Parent or any of its Subsidiaries, and each material Tax Return in which Parent or any of its Subsidiaries was required to be included, has been timely filed (taking into account any valid extensions). Each such Tax Return is true, correct and complete in all material respects.

(b) Parent and each of its Subsidiaries (i) has timely paid (or has had paid on its behalf) all material Taxes due and owing, whether or not shown as due on any Tax Return, and (ii) has timely and properly withheld and remitted to the appropriate Taxing Authority, or deducted or properly set aside, all material Taxes required to be deducted, withheld or paid in connection with any amounts paid, allocated, accrued or owing to or collected from any employee, independent contractor, agent, supplier, creditor, stockholder, equity holder, partner, member or other third party, and all forms required with respect thereto have been properly completed and timely filed.

(c) The unpaid Taxes of Parent and its Subsidiaries (A) did not, as of December 31, 2017, exceed the reserve for Tax liability (rather than any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of the Parent Financial Statements (rather than in any notes thereto), and (B) will not exceed that reserve as adjusted for operations and transactions through the Closing Date in accordance with the past custom and practice of Parent and its Subsidiaries in filing their Tax Returns.

(d) There are no liens for Taxes (other than Taxes not yet due and payable) upon any of the assets of Parent or any of its Subsidiaries.

(e) None of Parent or any of its Subsidiaries has waived any statute of limitations with respect to any material Taxes or agreed to any extension of the period for assessment or collection of any Taxes.

(f) There is no material Tax claim, audit, investigation, suit, or administrative or judicial Tax proceeding now pending or presently in progress or threatened in writing with respect to a material Tax Return of Parent or any of its Subsidiaries.

(g) None of Parent or any of its Subsidiaries has distributed stock of a corporation, or has had its stock distributed, in a transaction purported or intended to be governed in whole or in part by Sections 355 or 361 of the Code within the five (5) year period ending on the date of this Agreement.

(h) None of Parent or any of its Subsidiaries is party to or has any obligation under any Tax sharing agreement (whether written or not) or any Tax indemnity or other Tax allocation agreement or arrangement (other than any such agreement entered into in the Ordinary Course of Business and the primary purpose of which does not relate to Taxes).

(i) None of Parent or any of its Subsidiaries (A) is or has ever been a member of a group of corporations that files or has filed (or has been required to file) consolidated, combined, or unitary Tax Returns, other than a group the common parent of which was Parent, or (B) has any liability for the Taxes of any person (other than Parent or any of its Subsidiaries) under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or non-U.S. Law), as a transferee or successor by contract.

(j) None of Parent or any of its Subsidiaries has participated in a listed transaction within the meaning of Treasury Regulations Section 1.6011-4(b) (or any predecessor provision).

(k) None of Parent or any of its Subsidiaries will be required to include any material item of income in, or exclude any material item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any:

(i) change in method of accounting or use of an improper method of accounting for a taxable period ending on or prior to the Closing Date;

(ii) "closing agreement" as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or non-U.S. income Tax Law) executed prior to the Closing;

(iii) installment sale or open transaction disposition made prior to the Closing;

(iv) prepaid amount received prior to the Closing Date;

(v) election with respect to income from the discharge of indebtedness under Section 108(i) of the Code; or

(vi) any deferred revenue in existence at the Closing Date.

(l) None of Parent or any of its Subsidiaries has executed any power of attorney with respect to any Tax, other than powers of attorney that are no longer in force. No private letter rulings, technical advice memoranda or other similar agreements or rulings relating to Taxes or Tax Returns have been entered into, issued by, or requested from any Taxing Authority with or in respect of the Parent or any of its Subsidiaries.

(m) No written claim has been made by any Taxing Authority in a jurisdiction where it does not file Tax Returns that Parent or any of its Subsidiaries is or may be subject to Tax or required to file a Tax Return in that jurisdiction and, to the Knowledge of Parent or any of its Subsidiaries, there is no basis for any such claim to be made.

(n) Neither Parent nor any Subsidiary is an "expatriated entity" within the meaning of Section 7874 of the Code.

(o) Neither Parent nor any Subsidiary is subject to a material Tax holiday or Tax incentive or grant in any jurisdiction that based on applicable Law is subject to recapture as a result of any act or omission of Parent or a Subsidiary (as applicable) prior to the date hereof or as a result of the transactions contemplated hereunder.

(p) Neither Parent nor any Subsidiary (A) has, or has ever had, a permanent establishment in any country other than the country in which it is organized and resident, (B) has engaged in a trade or business in any country other than the country in which it is organized and resident that subjected it to Tax in such country, (C) is, or has ever been, subject to Tax in a jurisdiction outside the country in which it is organized and resident.

(q) None of Parent or any of its Subsidiaries is or has been a party to any joint venture, partnership, or other contract or arrangement that could be treated as a partnership for U.S. federal income Tax purposes.

Section 3.14 Employee Benefit Programs.

(a) Section 3.14(a) of the Parent Disclosure Schedule sets forth a list of every Employee Program maintained by Parent or any of its Subsidiaries (the "***Parent Employee Programs***"). Parent has made available to the Company correct and complete copies (or, if a plan is not written, a written description) of all Parent Employee Programs and amendments thereto in each case that are in effect as of the date hereof, and, to the extent applicable, (i) all related trust agreements, funding arrangements and insurance contracts now in effect, (ii) the most recent determination letter or opinion letter received regarding the tax-qualified status of each Parent Employee Program intended to be so qualified, (iii) the most recent financial statements for each Parent Employee Program, (iv) the Form 5500 Annual Returns/Reports for the most recent plan year for each Parent Employee Program, (v) the current summary plan description for each Parent Employee Program, (vi) all actuarial valuation reports related to any Parent Employee Programs, and (vii) all material correspondence involving any Parent Employee Program sent to or received from any Governmental Authority.

(b) Each Parent Employee Program that is intended to qualify under Section 401(a) of the Code has received a favorable determination or approval letter from the IRS with respect to such qualification, or may rely on an opinion letter issued by the IRS with respect to a prototype plan adopted in accordance with the requirements for such reliance. To the Knowledge of Parent no event or omission has occurred that would reasonably be expected to cause any Parent Employee Program to lose its qualification or otherwise fail to satisfy the relevant requirements to provide tax-favored benefits under the applicable Code Section (including without limitation Code Sections 105, 125, 401(a) and 501(c)(9)).

(c) Each Parent Employee Program has been administered in all material respects in accordance with its terms and in accordance with ERISA, the Code and other applicable Laws. With respect to any Parent Employee Program, there has been no (i) non-exempt "prohibited transaction," as defined in Section 406 of ERISA or Code Section 4975, (ii) breach of fiduciary duty, or (iii) non-deductible contribution. No litigation or governmental administrative proceeding (or investigation) or other proceeding (other than those relating to routine claims for benefits) is pending or, to the Knowledge of Parent, threatened in writing with respect to any Parent Employee Program. All payments and/or contributions required to have been made (under the provisions of any agreements or other governing documents or applicable Laws) with respect to all Parent Employee Programs, for all periods prior to the Closing Date, either have been made or have been accrued or otherwise adequately reserved on the Parent Financial Statements.

(d) No Parent Employee Program has been or is subject to Section 302 or Title IV of ERISA and/or Code Section 412, including a Multiemployer Plan, and Parent does not have any liability for any Employee Program that is subject to Title IV of ERISA or that is or has been maintained, contributed to, or required to be contributed to by an ERISA Affiliate of Parent. None of the Parent Employee Programs provides (or has ever provided) health care or any other welfare benefits to any employees after their employment is terminated (other than as required by part 6 of subtitle B of title I of ERISA or state continuation Laws to which the former employee pays all required premiums) or has ever promised to provide such post-termination benefits. Neither Parent nor any of its Subsidiaries is a party to any Contract (including any Parent Employee Program) that has resulted or would reasonably be expected to result, separately or in the aggregate, in the payment of any amount the deduction for which would be disallowed under Section 162(m) of the Code.

(e) Each Parent Employee Program may be amended, terminated, or otherwise discontinued by Parent after the Closing Date in accordance with its terms without material liability to Parent, any of the Group Companies or any of their respective Subsidiaries.

(f) Neither the execution of this Agreement nor the consummation of the transactions contemplated by this Agreement will, either alone or in combination with another event (such as termination of employment), (i) entitle any current or former employee or other service provider to any compensatory payment or benefit, including any bonus, retention, severance, retirement or job security payment or benefit, or (ii) enhance any benefits or accelerate the time or payment or vesting or trigger any payment or funding (through a grantor trust or otherwise) of compensation or benefits under, or increase the amount payable or trigger any other obligation under, any Parent Employee Program or otherwise.

(g) Except as set forth in Section 3.14(g) of the Parent Disclosure Schedule, there is no Contract, plan, agreement or arrangement covering any employee of or other service provider to Parent or its Subsidiaries that, by itself or collectively, would give rise to any parachute payment subject to Section 280G of the Code, nor has Parent or its Subsidiaries made any such payment, and the consummation of the transactions contemplated herein shall not obligate Parent or its Subsidiaries to make any parachute payment subject to Section 280G of the Code.

(h) Each Parent Employee Program that is a "nonqualified deferred compensation plan" within the meaning of Section 409A of the Code has been operated and maintained in material compliance with all operational and documentary requirements of Section 409A of the Code in all material respects since January 1, 2005, based upon a good faith, reasonable interpretation of Section 409A of the Code, the regulations and other guidance issued thereunder. No stock option granted under the Parent Stock Option Plan has any exercise price that was less than the fair market value of the underlying stock as of the date the option was granted, or has any feature for the deferral of compensation other than the deferral of recognition of income until the later of exercise or disposition of such option. Parent has no Liability to gross-up or indemnify any individual with respect to any Tax imposed pursuant to Code Sections 409A or 4999.

(i) With respect to each Parent Employee Program subject to foreign Law (i) each such Parent Employee Program required to be registered has been registered and has been maintained in all material respects in accordance with applicable foreign Law, (ii) if intended to qualify for special Tax treatment, such Parent Employee Program meets all material requirements for such treatment and (iii) if required under applicable Law to be funded or book reserved, such Parent Employee Program is funded or book reserved, as appropriate, in all material respects to the extent so required by applicable Law. Each Parent Employee Program subject to foreign Law that provides retirement benefits is a defined contribution plan.

(j) For purposes of this Section 3.14:

(i) An entity "maintains" an Employee Program if such entity sponsors, contributes to, or provides benefits under or through such Employee Program, or has any obligation (by agreement or under applicable Laws) to contribute to or provide benefits under or through such Employee Program, or if such Employee Program provides benefits to or otherwise covers or has covered current or former employees of such entity (or their spouses, dependents, or beneficiaries).

(ii) An entity is an "ERISA Affiliate" of Parent if it would have ever been considered a single employer with Parent or any Subsidiary of Parent under ERISA Section 4001(b) or Code Section 414(b), (c), or (m).

(k) Notwithstanding any other provision of this Agreement, the representations and warranties contained in Section 3.14(a) through Section 3.14(i) constitute the sole and exclusive representations and warranties of Parent and its Subsidiaries relating to ERISA and other Laws relating to employee benefits matters.

Section 3.15 Labor and Employment Matters. Except as set forth on Section 3.15 of the Parent Disclosure Schedule:

(a) None of Parent or any of its Subsidiaries is a party to, or otherwise bound by, any collective bargaining agreement, contract, or other written agreement with a labor union or labor organization. Neither Parent nor any of its Subsidiaries is subject to, and during the past three (3) years there has not been, any charge, demand, petition, organizational campaign, or representation proceeding seeking to compel, require, or demand it to bargain with any labor union or labor organization nor is there pending any labor strike or lockout involving Parent or any of its Subsidiaries.

(b) (i) Parent and its Subsidiaries are in compliance in all material respects with all applicable material Labor Laws and other than normal accruals of wages during regular payroll cycles, there are no arrearages in the payment of wages, (ii) neither Parent nor any of its Subsidiaries is delinquent in any payments to any employee or to any temporary employees, leased employees or other servants or agents employed or used with respect to the operation of the Parent Business and classified by Parent or any of its Subsidiaries as other than an employee or compensated other than through wages paid by Parent or any of its Subsidiaries through its respective payroll department ("***Parent Contingent Workers***"), for any wages, salaries, commissions, bonuses, fees or other direct compensation due with respect to any services performed for it to the date hereof or amounts required to be reimbursed to such employees or Parent Contingent Workers, (iii) there are no grievances, complaints or charges with respect to employment or labor matters (including allegations of employment discrimination, retaliation or unfair labor practices) pending or, to the Knowledge of Parent, threatened in writing against Parent or any of its Subsidiaries in any judicial, regulatory or administrative forum or under any private dispute resolution procedure, (iv) all employees of Parent and each of its Subsidiaries are employed at-will and no such employees are subject to any contract with Parent or any of its Subsidiaries or any policy or practice of Parent or any of its Subsidiaries providing for right of notice of termination of employment or the right to receive severance payments or similar benefits upon the termination of employment by Parent or any of its Subsidiaries, and (v) neither Parent nor any of its Subsidiaries has experienced a "plant closing," "business closing," or "mass layoff" as defined in the WARN Act or any similar state, local or foreign Law affecting any site of employment of Parent or any of its Subsidiaries or one or more facilities or operating units within any site of employment or facility of Parent or any of its Subsidiaries, and, during the ninety (90)-day period preceding the date hereof, no employee has suffered an "employment loss," as defined in the WARN Act, with respect to Parent or any of its Subsidiaries, and (vi) there are no pending or, to the Knowledge of Parent, threatened or reasonably anticipated claims or actions against Parent or any of its Subsidiaries under any workers' compensation policy or long-term disability policy.

(c) Notwithstanding any other provision of this Agreement, the representations and warranties contained in Section 3.15(a) and Section 3.15(b) constitute the sole and exclusive representations and warranties of Parent and its Subsidiaries relating to collective bargaining matters and compliance with Labor Laws.

Section 3.16 Environmental Matters.

(a) Parent and its Subsidiaries are in compliance with all Environmental Laws applicable to their operations and use of the Parent Leased Real Property;

(b) none of Parent or any of its Subsidiaries has generated, transported, treated, stored, or disposed of any Hazardous Material, except in material compliance with all applicable Environmental Laws, and there has been no Release or threat of Release of any Hazardous Material by Parent or its Subsidiaries at or on the Parent Leased Real Property that requires reporting, investigation or remediation by Parent or its Subsidiaries pursuant to any Environmental Law; and

(c) none of Parent or any of its Subsidiaries has (i) received written notice under the citizen suit provisions of any Environmental Law, or (ii) been subject to or, to the Knowledge of Parent, threatened in writing with any governmental or citizen enforcement action with respect to any Environmental Law.

(d) Notwithstanding any other provision of this Agreement, the representations and warranties contained in Section 3.16 constitute the sole and exclusive representations and warranties of Parent and its Subsidiaries relating to Environmental Laws.

Section 3.17 Insurance. Parent has made available to the Company accurate and complete copies of all material insurance policies relating to the business, assets, liabilities and operations of Parent and each Subsidiary of Parent, as of the date hereof. Each of such insurance policies is in full force and effect and Parent and each Subsidiary of Parent are in compliance in all material respects with the terms thereof, and no notice of cancellation or modification has been received by Parent or any Subsidiary and there is no existing default or event which, with the giving of notice or lapse of time or both, would constitute a default by an insured thereunder.

Section 3.18 Books and Records. Each of the minute and record books of Parent and its Subsidiaries has been made available to the Company and contains, in all material respects, complete and accurate minutes of all meetings of, and copies of all bylaws and resolutions passed by, or consented to in writing by, the directors (and any committees thereof) and stockholders of Parent, since January 1, 2015 and which are required to be maintained in such books under applicable Laws; all such meetings were duly called and held and all such bylaws and resolutions were duly passed or enacted.

Section 3.19 Transactions with Affiliates. Except as set forth in the Parent SEC Reports filed prior to the date of this Agreement, since the date of Parent's last proxy statement filed in 2017 with the SEC, no event has occurred that would be required to be reported by Parent pursuant to Item 404 of Regulation S-K promulgated by the SEC. Section 3.19 of the Parent Disclosure Schedule identifies each Person who is (or who may be deemed to be) an "affiliate" (as that term is used in Rule 12b-2 under the Exchange Act) of Parent as of the date of this Agreement.

Section 3.20 Legal Proceedings; Orders.

(a) Except as set forth in Section 3.20 of the Parent Disclosure Schedule, there is no pending Legal Proceeding, and, to the Knowledge of Parent, no Person has threatened in writing to commence any Legal Proceeding: (i) that involves Parent, any Subsidiary of Parent or any director or officer of Parent (in his or her capacity as such) or any of the material assets owned or used by Parent and/or any Subsidiary, or (ii) that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with the Merger, the issuance of the Merger Shares or the Private Placement. To the Knowledge of Parent, no event has occurred, and no claim, dispute or other condition or circumstance exists, that will, or that would reasonably be expected to, give rise to or serve as a basis for the commencement of any such Legal Proceeding.

(b) There is no order, writ, injunction, judgment or decree to which Parent or any Subsidiary of Parent, or any of the material assets owned or used by Parent or any Subsidiary of Parent, is subject. To the Knowledge of Parent, no executive officer of Parent or any Subsidiary of Parent is subject to any order, writ, injunction, judgment or decree that prohibits such officer or other employee from engaging in or continuing any conduct, activity or practice relating to the Parent Business or to any material assets owned or used by Parent or any Subsidiary of Parent.

Section 3.21 Illegal Payments; Anti-Corruption.

(a) None of Parent, any of its Subsidiaries, or, to the Knowledge of Parent, any of their respective directors, officers, employees or agents have, directly or indirectly, made, offered, promised or authorized any payment or gift of any money or anything of value to or for the benefit of any foreign official, foreign political party or official thereof or candidate for foreign political office for the purpose of: (i) influencing any act or decision of such foreign official in his, her or its official capacity, including a decision to fail to perform his, her or its official duties or functions, or (ii) inducing such foreign official to use his, her or its influence with any Governmental Authority to affect or influence any act or decision of such Governmental Authority, or to obtain an improper advantage in order to assist Parent, any of its Subsidiaries or any other Person in obtaining or retaining business for or with, or directing business to, Parent or any of its Subsidiaries.

(b) Parent and its Subsidiaries, and their directors, officers, employees, and to the Knowledge of Parent, agents, are now and have been for the past five years in compliance with the U.S. Foreign Corrupt Practices Act of 1977 and all other applicable Laws relating to anti-bribery and anti-corruption, Sanctions and export/import controls, and Parent and its Subsidiaries have instituted and maintain policies and procedures designed to ensure compliance with such Laws.

(c) Parent and its Subsidiaries have maintained and currently maintain books, records and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of Parent and its Subsidiaries.

(d) None of Parent or its Subsidiaries, or any of their directors, officers, employees, or, to the Knowledge of Parent, agents is a Person that is, or is owned or controlled by Persons that are: (A) the subject of any Sanctions, or (B) located, organized or resident in a country or territory that is the subject of Sanctions (currently, Cuba, Crimea, Iran, North Korea, and Syria).

(e) For the past five years, Parent and its Subsidiaries have not engaged in, and neither Parent nor any of its Subsidiaries are now engaged in, directly or indirectly, any dealings or transactions with any Person, or in any country or territory, that, at the time of the dealing or transaction, is or was the subject of Sanctions.

(f) In the past five years, Parent and its Subsidiaries have not been penalized for, threatened to be charged with, or given notice of, or, to the Knowledge of Parent, under investigation with respect to, any violation of, any Laws relating to anti-corruption or anti-bribery, Sanctions, or export/import controls.

Section 3.22 No Financial Advisor. Except as set forth on Section 3.22 of the Parent Disclosure Schedule, no broker, finder or investment banker is entitled to any brokerage fee, finder's fee, opinion fee, success fee, transaction fee or other fee or commission in connection with the Merger based upon arrangements made by or on behalf of Parent or any Subsidiary of Parent.

Section 3.23 Directors and Officers of Parent. At and immediately after the Closing Date, the size of the Board of Directors of Parent is five (5), and the initial directors to serve on the Board of Directors of the Parent are as specified in Schedule 3.23(a). Within thirty (30) days after the Closing Date, the size of the Board of Directors will be increased to seven (7) and the Board of Directors will be reconstituted to be composed of the Persons specified in Schedule 3.23(b). From their appointment, each such Person shall serve as a director until his or her respective successors are duly elected or appointed and qualified or their earlier death, resignation or removal. At and immediately after the Closing Date, the officers of Parent are as specified in Schedule 3.23.

ARTICLE 4
ADDITIONAL AGREEMENTS OF THE PARTIES

Section 4.1 Filings; Other Actions. Parent and the Company shall use reasonable best efforts to take or cause to be taken such actions as may be required to be taken under the Securities Act, the Exchange Act, any other federal securities Laws, any applicable state securities or "blue sky" Laws and any stock exchange requirements in connection with the Merger and the other transactions contemplated by this Agreement.

Section 4.2 Tax Matters. The Company shall bear all transfer, value-added, documentary, sales, excise, use, stamp, registration and other such Taxes, and all conveyance fees, recording charges and other fees and charges (including any penalties and interest) incurred in connection with the consummation of the transactions contemplated by this Agreement, and Parent shall file all necessary Tax Returns and other documentation with respect to all such Taxes and, if required by applicable Law or to the extent reasonably requested, each party shall, cooperate in the preparation and filing and join in the execution of any such Tax Returns and other documentation.

Section 4.3 Cooperation. Each Party shall cooperate reasonably with the other Party and shall provide the other Party with such assistance as may be reasonably requested for the purpose of facilitating the performance by each Party of their obligations under this Agreement.

Section 4.4 Amendment to Parent Incentive Plan; Information Statement. Within one Business Day of the date hereof, the Board of Directors of Parent will approve an amendment to the Parent Stock Option Plan (the "***Plan Amendment***") to reserve for issuance an additional number of shares of Parent Common Stock equal to 10% of the total number of shares of Parent Common Stock outstanding immediately after the Merger and the Private Placement (the "***New Incentive Plan Shares***"). Stockholders of Parent have approved, on the date hereof, pursuant to a written consent executed by stockholders of Parent sufficient to approve the Plan Amendment (after giving effect to the Merger and the Private Placement). Within five (5) days of the Closing, Parent shall prepare and cause to be filed with the SEC a Schedule 14C Information Statement disclosing stockholder approval of the Plan Amendment, which Plan Amendment will become effective 20 calendar days from the date of the filing of a Schedule 14C Information Statement disclosing stockholder approval of the Plan Amendment.

Section 4.5 Registration Rights.

(a) On or before May 1, 2019 (the "***Filing Deadline"***), Parent will prepare and file with the SEC a Form S-1 Registration Statement covering the resale of the shares of Parent Common Stock issued pursuant to Section 1.5(a) (the "***Registrable Securities***"). In the event that Parent files the Form S-1 Registration Statement and thereafter becomes eligible to use a Shelf Registration Statement on Form S-3 (an "***S-3 Registration Statement***"; and together with the Form S-1 Registration Statement, a "***Shelf Registration Statement***"), Parent shall use its reasonable best efforts to convert the Form S-1 Registration Statement to an S-3 Registration Statement (which shall be an Automatic Shelf Registration Statement if Parent is a well-known seasoned issuer as defined in Rule 405 of the Securities Act) within ninety (90) after Parent becomes so eligible. Parent will use reasonable best efforts to cause the Shelf Registration Statement to be declared effective prior to the first anniversary of the Closing Date (the "***Effectiveness Deadline***") and be maintained effective until the earliest to occur of: (i) the date as of which the Company Shareholders may sell all of the Registrable Securities covered by the Shelf Registration Statement without restriction, including any volume restriction, pursuant to Rule 144 (or any successor thereto) promulgated under the Securities Act, or (ii) the date that all of the shares of Parent Common Stock issued pursuant to Section 1.5(a) have actually been sold (the "***Registration Period***"). If a Form S-1 Registration Statement was converted to an S-3 Registration Statement and Parent thereafter became ineligible to use an S-3 Registration Statement, Parent shall file a Form S-1 Registration Statement not later than thirty (30) Business Days after the date of such ineligibility, and shall use its reasonable best efforts to have such Form S-1 Registration Statement declared effective by the later of (x) the Effectiveness Deadline and (y) the date that is sixty (60) days after the date of such filing.

(b) The Company Shareholders shall have the right to select one legal counsel to review and oversee any registration pursuant to this Section 4.5 ("***Legal Counsel***"). Parent and Legal Counsel shall reasonably cooperate with each other in performing Parent's obligations under this Section 4.5.

(c) If (a) a Shelf Registration Statement covering all of the Registrable Securities required to be covered thereby and required to be filed by Parent pursuant to this Agreement is not declared effective by the SEC on or before the Effectiveness Deadline (an "***Effectiveness Failure***") or (b) on any day after the Shelf Effective Date, sales of all of the Registrable Securities required to be included on such Shelf Registration Statement cannot be made (other than during an Allowable Grace Period) pursuant to such Shelf Registration Statement (including, without limitation, because of a failure to keep such Shelf Registration Statement effective, to disclose such information as is necessary for sales to be made pursuant to such Shelf Registration Statement or to register a sufficient number of shares of Parent Common Stock) (a "***Maintenance Failure***") then, as partial relief to any holder by reason of any such delay in or reduction of its ability to sell the underlying shares of Parent Common Stock (which remedy shall be exclusive of any other remedies available at law or in equity), Parent shall pay to each holder of Registrable Securities relating to such Shelf Registration Statement an amount in cash equal to one percent (1.0%) of the value of such holder's pro rata Share of the Merger Shares (based on the Parent Share Price) on each of the following dates: (i) the day of an Effectiveness Failure and on every thirtieth day (pro-rated for periods totaling less than thirty (30) days) thereafter until such Effectiveness Failure is cured; and (ii) the initial day of a Maintenance Failure and on every thirtieth day (pro-rated for periods totaling less than thirty (30) days) thereafter until such Maintenance Failure is cured. The payments to which a holder shall be entitled pursuant to this Section 4.5 are referred to herein as "***Registration Delay Payments***." The first such Registration Delay Payment shall be paid within ten (10) Business Days after the event or failure giving rise to such Registration Delay Payment occurred and all other Registration Delay Payments shall be paid on the earlier of (I) the last day of the calendar month during which such Registration Delay Payments are incurred and (II) the fifth (5^{th}) Business Day after the event or failure giving rise to the Registration Delay Payments is cured. Notwithstanding anything to the contrary in this Section 4.5(c), no Registration Delay Payments will be due and payable by Parent in the event that an Effectiveness Failure occurs as a result of (x) any action by the SEC to delay the effectiveness of the Shelf Registration Statement (or to require the filing of a new Shelf Registration Statement) in connection with General Instruction I.B.6 to Form S-3 or any related rule or policy or (y) as result of any action or inaction of any of the Company Shareholders or any delay in responding by Legal Counsel. In no event will the aggregate Registration Delay Payments exceed an amount equal to $500,000.

(d) At such time as Parent is obligated to file a Shelf Registration Statement with the SEC pursuant to this Section 4.5, Parent will use its reasonable best efforts to effect the registration of the Registrable Securities in accordance with the intended method of disposition thereof and, pursuant thereto, Parent shall have the following obligations:

(i) Parent shall ensure that each Shelf Registration Statement (including any amendments or supplements thereto and prospectuses contained therein) shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein (in the case of prospectuses, in the light of the circumstances in which they were made) not misleading.

(ii) Parent shall use its reasonable best efforts to prepare and file with the SEC such amendments (including post-effective amendments) and supplements to a Shelf Registration Statement and the prospectus used in connection with such Shelf Registration Statement, which prospectus is to be filed pursuant to Rule 424 promulgated under the Securities Act, as may be necessary to keep such Shelf Registration Statement effective at all times during the Registration Period, and, during such period, comply with the provisions of the Securities Act with respect to the disposition of all Registrable Securities of Parent covered by such Shelf Registration Statement until such time as all of such Registrable Securities shall have been disposed of in accordance with the intended methods of disposition by the seller or sellers thereof as set forth in such Shelf Registration Statement.

(iii) Parent shall (A) permit Legal Counsel to review and comment upon (1) a Shelf Registration Statement at least five (5) Business Days prior to its filing with the SEC and (2) all amendments and supplements to any Shelf Registration Statement within a reasonable number of days prior to their filing with the SEC, and (B) not file any Shelf Registration Statement or amendment or supplement thereto in a form to which Legal Counsel reasonably objects. Parent shall not submit a request for acceleration of the effectiveness of a Shelf Registration Statement or any amendment or supplement thereto without the prior approval of Legal Counsel, which consent shall not be unreasonably withheld. Parent shall furnish to Legal Counsel, without charge, (A) copies of any correspondence from the SEC or the staff of the SEC to the Parent or its Representatives relating to any Shelf Registration Statement, (B) promptly after the same is prepared and filed with the CEC, one copy of any Shelf Registration Statement and any amendment(s) thereto, including financial statements and schedules, all documents incorporated therein by reference, if requested by the Company Shareholders, and all exhibits and (C) upon the effectiveness of any Shelf Registration Statement, one copy of the prospectus included in such Shelf Registration Statement and all amendments and supplements thereto. Parent shall reasonably cooperate with Legal Counsel in performing Parent's obligations pursuant to this Section 4.5.

(iv) Parent shall furnish to the Company Shareholders, without charge (A) promptly after the Shelf Registration Statement is prepared and filed with the SEC, at least one copy of the such Shelf Registration Statement and any amendment(s) thereto, including financial statements and schedules, all documents incorporated therein by reference, if requested by the Company Shareholder, all exhibits and each preliminary prospectus, (ii) upon the effectiveness of any Shelf Registration Statement, ten (10) copies of the prospectus included in such Shelf Registration Statement and all amendments and supplements thereto and (iii) such other documents, including copies of any preliminary or final prospectus, as the Company Shareholder may reasonably request from time to time in order to facilitate the disposition of the Registrable Securities.

(v) Parent shall use its reasonable best efforts to (A) register and qualify, unless an exemption from registration and qualification applies, the resale by the holders of the Registrable Securities covered by a Shelf Registration Statement under such other securities or "blue sky" laws of all applicable jurisdictions in the United States, (B) prepare and file in those jurisdictions, such amendments (including post-effective amendments) and supplements to such registrations and qualifications as may be necessary to maintain the effectiveness thereof during the Registration Period, (C) take such other actions as may be necessary to maintain such registrations and qualifications in effect at all times during the Registration Period, and (D) take all other actions reasonably necessary or advisable to qualify the Registrable Securities for sale in such jurisdictions; provided, however, that Parent shall not be required in connection therewith or as a condition thereto to (A) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 4.5(d)(iv), (B) subject itself to general taxation in any such jurisdiction, or (C) file a general consent to service of process in any such jurisdiction. Parent shall promptly notify Legal Counsel and the Company Shareholders of the receipt by Parent of any notification with respect to the suspension of the registration or qualification of any of the Registrable Securities for sale under the securities or "blue sky" laws of any jurisdiction in the United States or its receipt of notice of the initiation or threatening of any proceeding for such purpose.

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

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

(viii) If a Company Shareholder is required under applicable securities law to be described in the Shelf Registration Statement as an underwriter, at the reasonable request of such Company Shareholder, Parent shall use its reasonable best efforts to furnish to such Company Shareholder, on the date of the effectiveness of the Shelf Registration Statement and thereafter from time to time on such dates as such Company Shareholder may reasonably request (i) a letter, dated such date, from Parent's independent certified public accountants in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to such Company Shareholder, and (ii) an opinion, dated as of such date, of counsel representing Parent for purposes of the such Shelf Registration Statement, in form, scope and substance as is customarily given in an underwritten public offering, addressed to such Company Shareholder.

(ix) If a Company Shareholder is required under applicable securities law to be described in the Shelf Registration Statement as an underwriter, upon the written request of the Company Shareholder in connection with the Company Shareholder's due diligence requirements, if any, Parent shall make available for inspection by (i) the Company Shareholder, (ii) Legal Counsel and (iii) one firm of accountants or other agents retained by the Company Shareholder (collectively, the "***Inspectors***"), all pertinent financial and other records, and pertinent corporate documents and properties of the Company (collectively, the "***Records***"), as shall be reasonably deemed necessary by each Inspector, and cause Parent's officers, directors and employees to supply all information which any Inspector may reasonably request; provided, however, that each Inspector shall agree to hold in strict confidence and shall not make any disclosure (except to the Company Shareholder) or use of any Record or other information which Parent determines in good faith to be confidential, and of which determination the Inspectors are so notified, unless (a) the disclosure of such Records is necessary to avoid or correct a misstatement or omission in any Shelf Registration Statement or is otherwise required under the Securities Act, (b) the release of such Records is ordered pursuant to a final, non-appealable subpoena or order from a court or government body of competent jurisdiction, or (c) the information in such Records has been made generally available to the public other than by disclosure in violation of this Agreement. Each Company Shareholder agrees that it shall, upon learning that disclosure of such Records is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt notice to Parent and allow Parent, at its expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, the Records deemed confidential. Nothing herein (or in any other confidentiality agreement between Parent and the Company Shareholder) shall be deemed to limit the Company Shareholder's ability to sell Registrable Securities in a manner which is otherwise consistent with applicable Laws.

(x) Parent shall use its best efforts to cause all of the Registrable Securities covered by a Shelf Registration Statement to be listed on each securities exchange on which securities of the same class or series issued by Parent are then listed, if any, if the listing of such Registrable Securities is then permitted under the rules of such exchange. Parent shall pay all fees and expenses in connection with satisfying its obligation under this Section 4.5(d)(x).

(xi) Parent shall cooperate with the Company Shareholders and, to the extent applicable, facilitate the timely preparation and delivery of certificates (not bearing any restrictive legend) representing the Registrable Securities to be offered pursuant to a Shelf Registration Statement and enable such certificates to be in such denominations or amounts, as the case may be, as the Company Shareholders may reasonably request and registered in such names as the Company Shareholders may request.

(xii) If requested by a Company Shareholder, Parent shall (A) as soon as practicable incorporate in a prospectus supplement or post-effective amendment such information as the Company Shareholder reasonably requests to be included therein relating to the sale and distribution of Registrable Securities, including, without limitation, information with respect to the number of Registrable Securities being offered or sold, the purchase price being paid therefor and any other terms of the offering of the Registrable Securities to be sold in such offering; (B) as soon as practicable make all required filings of such prospectus supplement or post-effective amendment after being notified of the matters to be incorporated in such prospectus supplement or post-effective amendment; and (C) as soon as practicable, supplement or make amendments to any Shelf Registration Statement if reasonably requested by the Company Shareholder.

(xiii) Parent shall use its best efforts to cause the Registrable Securities covered by a Shelf Registration Statement to be registered with or approved by such other governmental agencies or authorities as may be necessary to consummate the disposition of such Registrable Securities.

(xiv) Parent shall otherwise use its best efforts to comply with all applicable rules and regulations of the SEC in connection with any registration hereunder.

(xv) Within two (2) Business Days after a Shelf Registration Statement is ordered effective by the SEC, Parent shall deliver, and shall cause Legal Counsel for Parent to deliver, to the Transfer Agent for such Registrable Securities (with copies to the Company Shareholders) confirmation that such Shelf Registration Statement has been declared effective by the SEC.

(xvi) Notwithstanding anything to the contrary herein, at any time after the Shelf Effective Date, Parent may delay the disclosure of material, non-public information concerning Parent the disclosure of which at the time is not, in the good faith opinion of the Board of Directors and its counsel, in the best interest of Parent and, in the opinion of counsel to Parent, otherwise required (a "***Grace Period***"); provided, that the Company shall promptly (A) notify the Company Shareholders in writing of the existence of material, non-public information giving rise to a Grace Period (provided that in each notice Parent will not disclose the content of such material, non-public information to the Company Shareholders) and the date on which the Grace Period will begin, and (B) notify the Company Shareholders in writing of the date on which the Grace Period ends; and, provided further, that the Grace Periods shall not exceed an aggregate of twenty (20) Business Days during any three hundred sixty five (365) day period and the first day of any Grace Period must be at least thirty (30) days after the last day of any prior Grace Period (each, an "***Allowable Grace Period***"). For purposes of determining the length of a Grace Period above, the Grace Period shall begin on and include the date the Company Shareholders receive the notice referred to in clause (A) and shall end on and include the later of the date the Company Shareholders receive the notice referred to in clause (B) and the date referred to in such notice. The provisions of this Section 4.5(d)(xvi) shall not be applicable during the period of any Allowable Grace Period. Upon expiration of the Grace Period, the Company shall again be bound by the first sentence of Section 4.5(d)(v) with respect to the information giving rise thereto unless such material, non-public information is no longer applicable. Notwithstanding anything to the contrary, Parent shall cause its transfer agent to deliver unlegended shares of Parent Common Stock to a transferee of any Company Shareholder in accordance with the terms of this Agreement in connection with any sale of Registrable Securities with respect to which a Company Shareholder has entered into a contract for sale, and delivered a copy of the prospectus included as part of the applicable Shelf Registration Statement (unless an exemption from such prospectus delivery requirement exists), prior to the Company Shareholder's receipt of the notice of a Grace Period and for which the Company Shareholder has not yet settled.

(e) All reasonable expenses, other than underwriting discounts and commissions incurred in connection with registrations, filings or qualifications pursuant to Section 4.5(c) and Section 4.5(d), including, without limitation, all registration, listing and qualification fees, printers and accounting fees, and reasonable fees and disbursements of the Legal Counsel, shall be paid by Parent; provided that the aggregate reasonable fees and disbursements of Legal Counsel to be paid by Parent shall not exceed $75,000 in the aggregate.

(f) With a view to making available to the Company Shareholders the benefits of Rule 144 promulgated under the Securities Act or any other similar rule or regulation of the SEC that may at any time permit the Company Shareholders to sell securities of Parent to the public without registration ("***Rule 144***"), the Parent agrees to (A) make and keep public information available, as those terms are understood and defined in Rule 144, (B) file with the SEC in a timely manner all reports and other documents required of Parent under the Exchange Act so long as Parent remains subject to such requirements and the filing of such reports and other documents is required for the applicable provisions of Rule 144, and (C) furnish to the Company Shareholders so long as any Company Shareholder owns Registrable Securities, promptly upon request, (i) a written statement by Parent, if true, that it has complied with the reporting requirements of Rule 144, the Securities Act and the Exchange Act, (ii) a copy of the most recent annual or quarterly report of Parent and such other reports and documents so filed by Parent and (iii) such other information as may be reasonably requested to permit the Company Shareholders to sell such securities pursuant to Rule 144 without registration.

(g) The rights under this Section 4.5 shall be automatically assignable by a Company Shareholder to any transferee of all or any portion of the Company Shareholder's Registrable Securities if: (A) each Company Shareholder agrees in writing with the transferee or assignee to assign such rights and a copy of such agreement is furnished to Parent within a reasonable time after such assignment; (B) Parent is, within a reasonable time after such transfer or assignment, furnished with written notice of (i) the name and address of such transferee or assignee and (ii) the securities with respect to which such registration rights are being transferred or assigned; (C) immediately following such transfer or assignment the further disposition of such securities by the transferee or assignee is restricted under the Securities Act or applicable state securities laws; (D) at or before the time Parent receives the written notice contemplated by clause (B) of this sentence the transferee or assignee agrees in writing with Parent to be bound by all of the provisions contained herein; and (E) such transfer shall have been made in accordance with the applicable requirements of this Agreement.

(h) Parent will indemnify each Company Shareholder who holds Registrable Securities, each of its officers and directors, partners, members and each person controlling such Company Shareholder within the meaning of Section 15 of the Securities Act, against all expenses, claims, losses, damages or liabilities (or actions in respect thereof), including any of the foregoing incurred in settlement of any litigation, commenced or threatened, arising out of or based on (A) any untrue statement (or alleged untrue statement) of a material fact contained in any Shelf Registration Statement, prospectus, offering circular or other document, or any amendment or supplement thereto, incident to any such Shelf Registration Statement, or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, or (B) any violation by Parent of the Securities Act, the Exchange Act, state securities laws or any rule or regulation promulgated under such laws applicable to Parent in connection with any such registration, and in each case, Parent will reimburse each such Company Shareholder, each of its officers and directors, partners, members and each person controlling such Company Shareholder, for any legal and any other expenses reasonably incurred, as such expenses are incurred, in connection with investigating, preparing or defending any such claim, loss, damage, liability or action, *provided* that Parent will not be liable in any such case to the extent that any such claim, loss, damage, liability or expense arises out of or is based on (X) any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with written information furnished to Parent by an instrument duly executed by such Company Shareholder or controlling person, and stated to be specifically for use therein, (Y) the use by a Company Shareholder of an outdated or defective prospectus after Parent has notified such Company Shareholder in writing that the prospectus is outdated or defective or (Z) a Company Shareholder's (or any other indemnified person's) failure to send or give a copy of the prospectus or supplement (as then amended or supplemented), if required, pursuant to Rule 172 under the Securities Act (or any successor rule) to the Persons asserting an untrue statement or alleged untrue statement or alleged untrue statement or omission or alleged omission at or prior to the written confirmation of the sale of Registrable Securities to such person if such statement or omission was corrected in such prospectus or supplement; *provided, further,* that the indemnity agreement contained in this Section 4.5(h) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of Parent (which consent shall not be unreasonably withheld).

(i) Each Company Shareholder holding Registrable Securities will, if Registrable Securities held by such Company Shareholder are included in the securities as to which such registration is being effected, severally and not jointly, indemnify Parent, each of its directors and officers, other holders of Parent's securities covered by such Shelf Registration Statement, each person who controls Parent within the meaning of Section 15 of the Securities Act, and each such holder, each of its officers and directors and each person controlling such holder within the meaning of Section 15 of the Securities Act, against all claims, losses, damages and liabilities (or actions in respect thereof) arising out of or based on: (A) any untrue statement (or alleged untrue statement) of a material fact contained in any such Shelf Registration Statement, prospectus, offering circular or other document, or any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, to the extent, and only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in such Shelf Registration Statement, prospectus, offering circular or other document in reliance upon and in conformity with written information furnished to Parent by an instrument duly executed by such Company Shareholder and stated to be specifically for use therein, or (B) any violation by such Company Shareholder of the Securities Act, the Exchange Act, state securities laws or any rule or regulation promulgated under such laws applicable to such Company Shareholder, and in each case, such Company Shareholder will reimburse Parent, each other holder, and directors, officers, persons, underwriters or control persons of Parent and the other holders for any legal or any other expenses reasonably incurred, as such expenses are incurred, in connection with investigating or defending any such claim, loss, damage, liability or action; *provided*, that the indemnity agreement contained in this Section 4.5(i) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of such indemnifying Company Shareholder (which consent shall not be unreasonably withheld or delayed). The liability of any Company Shareholder for indemnification under this Section 4.5(i) in its capacity as a seller of Registrable Securities shall not exceed the amount of net proceeds to such Company Shareholder of the securities sold in any such registration.

(j) Each party entitled to indemnification under this Section 4.5 (the "***Indemnified Party***") shall give written notice to the party required to provide indemnification (the "***Indemnifying Party***") promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought, and shall permit the Indemnifying Party to assume the defense of any such claim or any litigation resulting therefrom, provided that counsel for the Indemnifying Party, who shall conduct the defense of such claim or litigation, shall be approved by the Indemnified Party (whose approval shall not unreasonably be withheld), and the Indemnified Party may participate in such defense at such party's expense, and provided further that the failure of any Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this Agreement unless the failure to give such notice is materially prejudicial to an Indemnifying Party's ability to defend such action and provided further, that the Indemnifying Party shall not assume the defense for matters as to which there is a conflict of interest or there are separate and different defenses. No Indemnifying Party, in the defense of any such claim or litigation, shall, except with the consent of each Indemnified Party (whose consent shall not be unreasonably withheld), consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect to such claim or litigation.

(k) If the indemnification provided for in this Section 4.5 is held by a court of competent jurisdiction to be unavailable to an Indemnified Party with respect to any losses, claims, damages or liabilities referred to herein, the Indemnifying Party, in lieu of indemnifying such Indemnified Party thereunder, shall to the extent permitted by applicable law contribute to the amount paid or payable by such Indemnified Party as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party on the one hand and of the Indemnified Party on the other in connection with the untrue statement or omission that resulted in such loss, claim, damage or liability, as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party and of the Indemnified Party shall be determined by a court of law by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the Indemnifying Party or by the Indemnified Party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission; provided, that in no event shall any contribution by a Company Shareholder hereunder exceed the proceeds from the offering received by such Company Shareholder. The amount paid or payable by a party as a result of any loss, claim, damage or liability shall be deemed to include, subject to the limitations set forth in this Agreement, any reasonable attorneys' or other reasonable fees or expenses incurred by such party in connection with any proceeding to the extent such party would have been indemnified for such fees or expenses if the indemnification provided for in this Section 4.5 was available to such party in accordance with its terms.

(l) The Parties hereto acknowledge and agree that the Company Shareholders are express third-party beneficiaries to this Section 4.5 and each is entitled to the rights and benefits under this Section 4.5 and may enforce such provision as if it were a party hereto. Section 4.5 cannot be amended, modified or waived without the express written consent of the Company Shareholders. The obligations under this Section 4.5 shall survive completion of any offering of Registrable Securities in a Shelf Registration Statement and the termination of this Agreement. The indemnity and contribution agreements in this Section 4.5 are in addition to any liability that the Indemnifying Parties may have to the Indemnified Parties and are not in diminution or limitation of other remedies or causes of action that the parties may have under this Agreement.

ARTICLE 5
NO INDEMNIFICATION

Section 5.1 No Indemnification by Parent or the Surviving Entity. Neither Parent nor the Surviving Entity shall have any obligation to indemnify the Company Shareholders for any breach of any representation or warranty made by, or any covenant or agreement of, Parent or Merger Sub in this Agreement. For the avoidance of any doubt, this Section 5.1 shall not be deemed to limit in any way Parent's obligation to indemnify the Company Shareholders pursuant to the terms of Section 4.5(h).

Section 5.2 No Indemnification by the Company. The Company shall not have any obligation to indemnify Parent or any Parent Stockholders for any breach of any representation or warranty made by, or any covenant or agreement of, the Company in this Agreement.

ARTICLE 6
MISCELLANEOUS PROVISIONS

Section 6.1 Non-Survival of Representations and Warranties. The representations and warranties of the Company and Parent contained in this Agreement or any certificate or instrument delivered pursuant to this Agreement shall terminate effective as of the Closing, and only the covenants that by their terms survive the Closing and Article 5 and this Article 6 shall survive the Closing.

Section 6.2 Amendment. At any time prior to the Closing Date, the parties hereto may modify or amend this Agreement, by written agreement executed and delivered by duly authorized officers of the respective parties.

Section 6.3 Waiver.

(a) No failure on the part of any Party to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any Party in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy, and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy.

(b) No Party shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such Party, and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

Section 6.4 Entire Agreement. This Agreement and the other agreements referred to in this Agreement constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, among or between any of the Parties with respect to the subject matter hereof and thereof; provided, however, that the Confidentiality Agreement shall not be superseded and shall remain in full force and effect in accordance with its terms.

Section 6.5 Counterparts; Exchanges Electronic Transmission. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The exchange of a fully executed Agreement (in counterparts or otherwise) by all Parties by electronic transmission via ".pdf" shall be sufficient to bind the Parties to the terms and conditions of this Agreement.

Section 6.6 Applicable Law; Jurisdiction. This Agreement shall be governed by, and construed in accordance with, the Laws of the State of Delaware, regardless of the Laws that might otherwise govern under applicable principles of conflicts of Laws, except that the following matters arising out of or relating to this Agreement shall be construed, performed and enforced in accordance with the Laws of the Cayman Islands in respect of which the Parties hereby irrevocably submit to the non-exclusive jurisdiction of the courts of the Cayman Islands: the Merger, the vesting of the rights, property, choses in action, business, undertaking, goodwill, benefits, immunities and privileges, contracts, obligations, claims, debts and liabilities of Merger Sub in the Company, the cancellation of the Company Ordinary Shares in consideration of the issue of the Merger Shares, the fiduciary or other duties of the Company's Board of Directors; and the internal corporate affairs of the Company. Except as provided in the prior sentence, any action or proceeding between any of the parties arising out of or relating to this Agreement or the Merger, each of the parties: (i) irrevocably and unconditionally consents and submits to the exclusive jurisdiction and venue of the Court of Chancery of the State of Delaware or to the extent such court does not have subject matter jurisdiction, the Superior Court of the State of Delaware or the United States District Court for the District of Delaware, (ii) agrees that all claims in respect of such action or proceeding shall be heard and determined exclusively in accordance with clause (i) of this Section 6.6, (iii) waives any objection to laying venue in any such action or proceeding in such courts, (iv) waives any objection that such courts are an inconvenient forum or do not have jurisdiction over any party, and (v) agrees that service of process upon such party in any such action or proceeding shall be effective if notice is given in accordance with Section 6.9 of this Agreement.

Section 6.7 Expenses; Attorneys' Fees. Except otherwise set forth herein, all fees and expenses incurred in connection with this Agreement and the Merger shall be paid by the Party incurring such expenses. In any action at Law or suit in equity to enforce this Agreement or the rights of any of the parties under this Agreement, the prevailing Party in such action or suit shall be entitled to receive a reasonable documented sum for its attorneys' fees and all other reasonable documented costs and expenses incurred in such action or suit.

Section 6.8 Assignability. This Agreement shall be binding upon, and shall be enforceable by and inure solely to the benefit of, the parties hereto and their respective successors and assigns; provided, however, that neither this Agreement nor any of a Party's rights or obligations hereunder may be assigned or delegated by such Party without the prior written consent of the other Party, and any attempted assignment or delegation of this Agreement or any of such rights or obligations by such Party without the other Party's prior written consent shall be void and of no effect. Nothing in this Agreement, express or implied, is intended to or shall confer upon any Person (other than (a) the parties hereto, and (b) as provided in Section 4.5(h), which is intended for the benefit of Company Shareholders) any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 6.9 Notices. Any notice or other communication required or permitted to be delivered to any Party under this Agreement shall be in writing and shall be deemed properly delivered, given and received when delivered by hand, by registered mail, by courier or express delivery service to the address set forth beneath the name of such Party below (or to such other address as such Party shall have specified in a written notice given to the other parties hereto):

if to Parent or Merger Sub:

Windtree Therapeutics, Inc.
2600 Kelly Road, Suite 100
Warrington, PA 18976
Attention: Legal Department
Email: mtempleton@windtreetx.com
Telephone: (215) 488-9300

with a copy to:

Dentons US LLP
1221 Avenue of the Americas
New York, NY 10020-1089
Email: ira.kotel@dentons.com
Attention: Ira Kotel, Esq.

if to the Company:

CVie Investments Limited
1/F Building 20E Phase 3 Hong Kong Science Park
Shatin Hong Kong
Attention: Jason Chow
Email: jason.chow@leespharm.com
Telephone: +852 2314 6500

with a copy to:

Ropes & Gray LLP
Prudential Tower
800 Boylston Street
Boston, MA 02199
Attention: Arthur C. Mok
Christopher D. Comeau
Email: arthur.mok@ropesgray.com
christopher.comeau@ropesgray.com

Section 6.10 Cooperation. Each Party agrees to cooperate fully with the other Party and to execute and deliver such further documents, certificates, agreements and instruments and to take such other actions as may be reasonably requested by the other Party to evidence or reflect the Merger and to carry out the intent and purposes of this Agreement.

Section 6.11 Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions of this Agreement or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If a final judgment of a court of competent jurisdiction declares that any term or provision of this Agreement is invalid or unenforceable, the Parties agree that the court making such determination shall have the power to limit such term or provision, to delete specific words or phrases or to replace such term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be valid and enforceable as so modified. In the event such court does not exercise the power granted to it in the prior sentence, the Parties agree to replace such invalid or unenforceable term or provision with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term or provision.

Section 6.12 Construction.

(a) For purposes of this Agreement, whenever the context requires: the singular number shall include the plural, and vice versa; the masculine gender shall include the feminine and neuter genders; the feminine gender shall include the masculine and neuter genders, and the neuter gender shall include masculine and feminine genders.

(b) The Parties are each represented by legal counsel and have participated jointly in the negotiation and drafting of this Agreement and the agreements contemplated hereby. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.

(c) As used in this Agreement, the words "include" and "including," and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words "without limitation." The words, "herein," "hereto," "hereof" and words of similar import refer to this Agreement as a whole and not to any particular Article, Section or paragraph hereof.

(d) Except as otherwise indicated, all references in this Agreement to "Sections," "Exhibits" and "Schedules" are intended to refer to Sections of this Agreement and Exhibits and Schedules to this Agreement, respectively.

(e) The table of contents and bold-faced headings contained in this Agreement are for convenience of reference only, shall not be deemed to be a part of this Agreement and shall not be referred to in connection with the construction or interpretation of this Agreement.

(f) Any reference to any Laws will be deemed also to refer to such Laws and all rules and regulations promulgated thereunder, in each case as amended, modified, codified, replaced or reenacted, in whole or in part.

(g) A reference to any Person in this Agreement or any other agreement or document shall include such Person's predecessors-in-interest, successors and permitted assigns.

(h) Each accounting term used herein that is not specifically defined herein shall have the meaning given to it under GAAP.

Section 6.13 Definitions. As used in this Agreement (except as specifically otherwise defined):

"**AEROSURF Warrants**" has the meaning set forth in the Recitals.

"**Affiliate**" means with respect to any Person, any other Person controlling, controlled by, or under common control with such Person. As used in this definition, "control" (including, with its correlative meanings, "controlled by" and "under common control with") means the possession, directly or indirectly, of 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.

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

"**Allowable Grace Period**" has the meaning set forth in Section 4.5(d)(xvi).

"**Anticorruption Laws**" means the FCPA and all similar anti-bribery Laws applicable to the Company or Parent and its Subsidiaries, as applicable.

"**Business Day**" means any day other than (a) a Saturday or Sunday, or (b) a day on which banking and savings and loan institutions are authorized or required by Laws to be closed in the Commonwealth of Massachusetts.

"**Cayman Companies Law**" has the meaning set forth in the Recitals.

"**Closing**" has the meaning set forth in Section 1.3.

"**Closing Date**" has the meaning set forth in Section 1.3.

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

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

"**Company Ancillary Lease Documents**" means all subleases, overleases and other ancillary agreements or documents pertaining to the tenancy at each such parcel of the Company Leased Real Property that materially affect or may materially affect the tenancy at any Parent Leased Real Property.

"**Company Articles**" has the meaning set forth in Section 2.1(a).

"**Company Balance Sheet**" has the meaning set forth in Section 2.5(a).

"**Company Business**" means the business of the Group Companies as currently conducted.

"**Company Contingent Workers**" has the meaning set forth in Section 2.15(b).

"**Company Contract**" means any Contract together with any amendments, waivers or other modifications thereto, to which any of the Group Companies is a party.

"**Company Copyrights**" has the meaning set forth in Section 2.9(a).

"**Company Disclosure Schedule**" has the meaning set forth in Article 2.

"**Company Employee Program**" has the meaning set forth in Section 2.14(a).

"**Company Financial Statements**" has the meaning set forth in Section 2.5(a).

"**Company Governing Documents**" has the meaning set forth in Section 2.1(a).

"**Company In-Licenses**" has the meaning set forth in Section 2.9(a).

"**Company Intellectual Property**" means all Intellectual Property owned by any of the Group Companies or used or held for use by any of the Group Companies in the Company Business. "Company Intellectual Property" includes, without limitation, Company Patents, Company Marks, Company Copyrights and Company Trade Secrets.

"**Company Interim Balance Sheet**" has the meaning set forth in Section 2.5(a).

"**Company Interim Financial Statements**" has the meaning set forth in Section 2.5(a).

"**Company Leased Real Property**" means the real property leased, subleased or licensed by the any of the Group Companies that is related to or used in connection with the Company Business, and the real property leased, subleased or licensed by any of the Group Companies as tenant, subtenant, licensee or other similar party, together with, to the extent leased, licensed or owned by any of the Group Companies, all buildings and other structures, facilities or leasehold improvements, currently or hereafter located thereon.

"**Company Leases**" means the lease, license, sublease or other occupancy agreements and all amendments, modifications, supplements, and assignments thereto, together with all exhibits, addenda, riders and other documents constituting a part thereof for each parcel of the Company Leased Real Property.

"**Company Marks**" has the meaning set forth in Section 2.9(a).

"**Company Material Adverse Effect**" means any change, circumstance, condition, development, effect, event, occurrence, result or state of facts that, individually or when taken together with any other such change, circumstance, condition, development, effect, event, occurrence, result or state of facts, has or would reasonably be expected to (a) have a material adverse effect on the business, financial condition, assets, liabilities or results of operations of the Group Companies, taken as a whole, or (b) prevent or materially delay the ability of any of the Group Companies to consummate the Merger.

"**Company Material Contract**" has the meaning set forth in Section 2.10.

"**Company Memorandum**" has the meaning set forth in Section 2.1(a).

"**Company Ordinary Shares**" means the ordinary shares, $0.0001 par value per share, of the Company.

"**Company Out-Licenses**" has the meaning set forth in Section 2.9(a).

"**Company Owned Real Property**" means the real property in which any of the Group Companies has any fee title (or equivalent).

"**Company Patents**" has the meaning set forth in Section 2.9(a).

"**Company Permits**" has the meaning set forth in Section 2.12(b).

"**Company Shareholder Approval**" has the meaning set forth in Section 2.3.

"**Company Shareholders**" means holders of ordinary shares of the Company immediately prior to the Closing.

"**Company Taiwan Subsidiary**" means CVie Therapeutics Limited, a Taiwan corporation organized under the laws of the Republic of China.

"**Company Trade Secrets**" has the meaning set forth in Section 2.9(k).

"**Confidentiality Agreement**" means that certain confidential disclosure agreement, dated as of December 14, 2017, by and between the Company Taiwan Subsidiary and Parent.

"**Contract**" means any loan or credit agreement, bond, debenture, note, mortgage, indenture, lease, supply agreement, license agreement, development agreement or other contract, agreement, arrangement, understanding, obligation, commitment or instrument that is legally binding, whether written or oral.

"Effectiveness Deadline" has the meaning set forth in Section 4.5(a).

"**Effectiveness Failure**" has the meaning set forth in Section 4.5(c).

"**Employee Program**" means (A) all employee benefit plans within the meaning of ERISA Section 3(3), including multiple employer welfare arrangements (within the meaning of ERISA Section 3(40)), plans to which more than one unaffiliated employer contributes and employee benefit plans (such as foreign or excess benefit plans) which are not subject to ERISA, and (B) all employment, consulting, salary, equity and equity-based compensation, retention, bonus, incentive, severance, deferred compensation, supplemental income, vacation, profit sharing, executive compensation, change in control, material fringe benefit, vacation, retiree benefit, health or other medical, dental, vision, life, disability or other insurance plan, program, agreement or arrangement and all other written employee benefit plans, agreements, and arrangements not described in (A) above, including without limitation, any arrangement intended to comply with Code Section 125, 127, 129 or 137 or any arrangement intended to qualify for special Tax treatment under the provisions of applicable foreign Law. In the case of an Employee Program funded through a trust described in Code Section 401(a) or an organization described in Code Section 501(c)(9), or any other funding vehicle, each reference to such Employee Program shall include a reference to such trust, organization or other vehicle.

"**Encumbrance**" means any mortgage, deed of trust, pledge, security interest, attachment, hypothecation, lien (statutory or otherwise), charge, lease, option, right of first offer, right of first refusal, encumbrance, servient easement, deed restriction, adverse claim, or similar condition restriction or any agreement to file any of the foregoing, and any filing or agreement to file any financing statement as debtor under the Uniform Commercial Code or any similar statute.

"**Environment**" means soil, surface waters, groundwater, land, stream sediments, surface or subsurface strata and ambient air and biota living in or on such media.

"**Environmental Laws**" means Laws relating to protection of the Environment or the protection of human health as it relates to the Environment, including the federal Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Clean Air Act, the Clean Water Act, the Toxic Substances Control Act, the Endangered Species Act and similar foreign, federal, state and local Laws as in effect on the Closing Date.

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

"**ERISA Affiliate**" has the meaning ascribed thereto in Section 3.14(j)(ii), as applicable.

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

"**Exchange Ratio**" means 0.3512.

"**FDA**" has the meaning set forth in Section 3.12(b).

"**FDCA**" has the meaning set forth in Section 3.12(b).

"**Filing Deadline**" has the meaning set forth in Section 4.5(a).

"**Financing Agreement**" has the meaning set forth in the Recitals.

"**Form S-1 Registration Statement**" means the registration statement on Form S-1 to be filed with the SEC by Parent in connection with issuance of Parent Common Stock in the Merger, as said registration statement may be amended.

"**GAAP**" means generally accepted accounting principles and practices in effect from time to time within the United States applied consistently throughout the period involved.

"**Governmental Authority**" means any U.S. or foreign, federal, state, or local governmental commission, board, body, bureau, or other regulatory authority, agency, including courts and other judicial bodies, or any self-regulatory body or authority, including any instrumentality or entity designed to act for or on behalf of the foregoing.

"**Grace Period**" has the meaning set forth in Section 4.5(d)(xvi).

"**Group Companies**" means the Company and its Subsidiaries.

"**Group Governing Documents**" has the meaning set forth in Section 2.1(b).

"**Hazardous Material**" means any pollutant, toxic substance, hazardous waste, hazardous materials, hazardous substances, petroleum or petroleum-containing products as defined in, or listed under, any Environmental Law.

"**Health Care Law**" has the meaning set forth in Section 3.12(c).

"**IFRS**" means International Financial Reporting Standards, as in effect from time to time and applied on a consistent basis throughout the periods involved.

"**Indebtedness**" means Liabilities (a) for borrowed money, (b) evidenced by bonds, debentures, notes or similar instruments, (c) under leases required to be accounted for as capital leases under GAAP, (d) all obligations in respect of outstanding letters of credit, (e) issued or assumed as the deferred purchase price of property (other than trade payables or accruals in the Ordinary Course of Business), (f) for the reimbursement of any obligor on any letter of credit or banker's acceptance; or (g) guarantees relating to any such Liabilities.

"**Indemnified Party**" has the meaning set forth in Section 4.5(j).

"Indemnifying Party" has the meaning set forth in Section 4.5(j).

"**Inspectors**" has the meaning set forth in Section 4.5(d)(ix).

"**Intellectual Property**" means any and all of the following, as they exist throughout the world: (A) patents, patent applications of any kind, patent rights, inventions, discoveries and invention disclosures (whether or not patented) (collectively, "***Patents***"), (B) rights in registered and unregistered trademarks, service marks, trade names, trade dress, logos, packaging design, slogans and Internet domain names, and registrations and applications for registration of any of the foregoing (collectively, "***Marks***"), (C) copyrights in both published and unpublished works, including without limitation all compilations, databases and computer programs, manuals and other documentation and all copyright registrations and applications, and all derivatives, translations, adaptations and combinations of the above (collectively, "***Copyrights***"), (D) rights in know-how, trade secrets, confidential or proprietary information, research in progress, algorithms, data, designs, processes, formulae, drawings, schematics, blueprints, flow charts, models, strategies, prototypes, techniques, Beta testing procedures and Beta testing results (collectively, "***Trade Secrets***"), (E) any and all other intellectual property rights and/or proprietary rights relating to any of the foregoing, and (F) goodwill, franchises, licenses, permits, consents, approvals, and claims of infringement and misappropriation against third parties.

"**Investors**" has the meaning set forth in the Recitals.

"**IRS**" means the Internal Revenue Service of the United States.

"**Knowledge of Parent**" means the actual knowledge of the chief executive officer, chief financial officer and chief medical officer of Parent, after reasonable inquiry.

"**Knowledge of the Company**" means the actual knowledge of the chairman, president and chief operating officer, finance manager and chief scientific officer of the Company Taiwan Subsidiary, after reasonable inquiry.

"**Labor Laws**" means all Laws regarding labor, employment, fair employment practices, work safety and health, terms and conditions of employment, and wages and hours, including Title VII of the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1967, as amended, the Age Discrimination in Employment Act of 1967, as amended, the Americans with Disabilities Act, as amended, the Fair Labor Standards Act, as amended, any bargaining or other obligations under the National Labor Relations Act, and any comparable or similar state or local Laws or foreign Laws (including, without limitation, the laws of Taiwan).

"**Law**" or "**Laws**" means any federal, state, local, municipal, foreign (including foreign political subdivisions) or other law, Order, statute, constitution, principle of common law or equity, resolution, ordinance, code, writ, edict, decree, consent, approval, concession, franchise, permit, rule, regulation, judicial or administrative ruling, franchise, license, judgment, injunction, treaty, convention or other governmental certification, authorization or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Authority, and the term "applicable" with respect to such Laws and in the context that refers to one or more Persons means that such Laws apply to such Person or Persons or its or their business, undertaking, property or security and put into effect by or under the authority of a Governmental Authority having jurisdiction over the Person or Persons or its or their business, undertaking, property or security.

"**Leased Real Property**" means Company Leased Real Property or Parent Leased Real Property.

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

"**Legal Proceeding**" means any action, arbitration, cause of action, claim, complaint, criminal prosecution, demand letter, governmental or other examination or investigation, hearing, inquiry, administrative or other proceeding commenced, brought, conducted or heard by or before, or otherwise involving any Governmental Authority.

"**Liability**" means any liability, Indebtedness, obligation, expense, claim, deficiency, guaranty or endorsement of any kind, whether accrued, absolute, contingent, determined, matured or unmatured (whether or not required to be reflected in the financial statements in accordance with GAAP or IFRS, as applicable).

"**Lock-up Agreements**" has the meaning set forth in the Recitals.

"**Maintenance Failure**" has the meaning set forth in Section 4.5(c).

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

"**Merger Shares**" has the meaning set forth in Section 1.5.

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

"**MHW**" has the meaning set forth in Section 2.12(b).

"**Multiemployer Plan**" means an employee pension benefit plan or welfare benefit plan described in Section (3)(37) of ERISA.

"**New Incentive Plan Shares**" has the meaning set forth in Section 4.4.

"**Order**" means any judgment, order, writ, injunction, ruling, decision or decree of, or any settlement under the jurisdiction of, any Court or Governmental Authority.

"**Ordinary Course of Business**" means with respect to a Party, the ordinary and usual course of normal day-to-day operations of such Party, consistent with past practice.

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

"**Parent Ancillary Lease Documents**" means all subleases, overleases and other ancillary agreements or documents pertaining to the tenancy at each such parcel of the Parent Leased Real Property that materially affect or may materially affect the tenancy at any Parent Leased Real Property.

"**Parent Business**" means the business of Parent and any Subsidiary as currently conducted and currently proposed to be conducted.

"**Parent Bylaws**" means the Restated Bylaws of Parent, as amended and in effect on the date hereof.

"**Parent Capital Stock**" means Parent Common Stock and Parent Preferred Stock.

"**Parent Charter**" means the Restated Certificate of Incorporation of Parent, as amended and in effect on the date hereof.

"**Parent Common Stock**" means the common stock, par value $0.001 per share, of Parent.

"**Parent Contingent Workers**" has the meaning set forth in Section 3.15(b).

"**Parent Contract**" means any Contract together with any amendments, waivers or other modifications thereto, to which Parent is a party.

"**Parent Convertible Preferred Note**" means that certain convertible preferred promissory note in favor of Panacea Venture Management Company Ltd. on July 2, 2018.

"**Parent Copyrights**" has the meaning set forth in Section 3.9(a).

"**Parent Diluted Share Number**" means 24,397,834, which is equal to: (a) the number of shares of Parent Common Stock outstanding immediately prior to the Closing Date, *plus* (b) the number of shares of Parent Common Stock to be issued upon conversion of any Parent Preferred Stock (if any) *plus* (c) the number of shares of Parent Common Stock to be issued to holders of Company Ordinary Shares pursuant to Section 1.5(a)(ii), *plus* (d) the number of shares of Parent Common Stock to be issued pursuant to the Parent Restricted Stock Units, *plus* (e) the number of shares of Parent Common Stock to be issued upon the exercise of any Parent Stock Options, *plus* (f) the number of shares of the Parent Common Stock to be issued upon the exercise of any Parent Warrants, *plus* (g) the shares of Parent Common Stock to be issued upon exercise of the AEROSURF Warrants. For the avoidance of doubt, the Parent Diluted Share Number does not include the number of shares of Parent stock to be issued in the Private Placement.

"**Parent Disclosure Schedule**" has the meaning set forth in Article 3.

"**Parent Employee Programs**" has the meaning set forth in Section 3.14(a).

"**Parent Financial Statements**" has the meaning set forth in Section 3.5(c).

"**Parent In-Licenses**" has the meaning set forth in Section 3.9(a).

"**Parent Intellectual Property**" means all Intellectual Property owned by Parent or any of its Subsidiaries or used or held for use by Parent or any of its Subsidiaries in the Parent Business. "Parent Intellectual Property" includes, without limitation, Parent Patents, Parent Marks, Parent Copyrights and Parent Trade Secrets.

"**Parent Leased Real Property**" means the real property leased, subleased or licensed by Parent, or any Subsidiary thereof, that is related to or used in connection with the Parent Business, and the real property leased, subleased or licensed by Parent or any Subsidiary thereof, in each case, as tenant, subtenant, licensee or other similar party, together with, to the extent leased, licensed or owned by Parent or any Subsidiary thereof, all buildings and other structures, facilities or leasehold improvements, currently or hereafter located thereon.

"**Parent Leases**" means the lease, license, sublease or other occupancy agreements and all amendments, modifications, supplements, and assignments thereto, together with all exhibits, addenda, riders and other documents constituting a part thereof for each parcel of Parent Leased Real Property.

"**Parent Marks**" has the meaning set forth in Section 3.9(a).

"**Parent Material Adverse Effect**" means any change, circumstance, condition, development, effect, event, occurrence, result or state of facts that, individually or when taken together with any other such change, circumstance, condition, development, effect, event, occurrence, result or state of facts, has or would reasonably be expected to (a) have a material adverse effect on the business, financial condition, assets, liabilities or results of operations of Parent and its Subsidiaries, taken as a whole, or (b) prevent or materially delay the ability of Parent and Merger Sub to consummate the Merger.

"**Parent Material Contract**" has the meaning set forth in Section 3.10.

"**Parent Out-Licenses**" has the meaning set forth in Section 3.9(a).

"**Parent Owned Real Property**" means the real property in which Parent or any of its Subsidiaries has any fee title (or equivalent).

"**Parent Patents**" has the meaning set forth in Section 3.9(a).

"**Parent Permits**" has the meaning set forth in Section 3.12(b).

"**Parent Preferred Stock**" means the preferred stock, par value $0.001 per share, of Parent.

"**Parent Regulatory Agency**" has the meaning set forth in Section 3.12(b).

"**Parent Restricted Stock Unit**" or "**Parent Restricted Stock Units**" means awards of restricted stock units with respect to Company Ordinary Shares, whether issued under of the Parent Stock Option Plan or assumed by the Company in connection with any merger, acquisition or similar transaction or otherwise issued or granted.

"**Parent SEC Reports**" has the meaning set forth in Section 3.5(a).

"**Parent Share Price**" means $4.15.

"**Parent Stock Option Plan**" means Parent's 2011 Long-Term Incentive Compensation Plan, as amended from time to time.

"**Parent Stock Options**" means options to purchase Parent Common Stock issued under the Parent Stock Option Plan.

"**Parent Stockholders**" means the holders of the capital stock of Parent.

"**Parent Trade Secrets**" has the meaning set forth in Section 3.9(k).

"**Parent Warrants**" means each outstanding warrant to purchase shares of Parent Common Stock.

"**Party**" or "**Parties**" means Parent, Merger Sub and the Company.

"**Patient Information**" has the meaning set forth in Section 2.12(h).

"**Permit**" means any franchise, authorization, approval, Order, consent, license, certificate, permit, registration, qualification or other right or privilege.

"**Permitted Encumbrances**" means (i) Encumbrances for Taxes or other governmental charges, assessments or levies that are not yet due and payable or being contested in good faith by appropriate proceedings, and which have been adequately reserved under GAAP or IFRS, as applicable to Parent or the Company, respectively, (ii) statutory landlord's, mechanic's, carrier's, workmen's, repairmen's or other similar Encumbrances arising or incurred in the Ordinary Course of Business, the existence of which does not, and would not reasonably be expected to, materially impair the marketability, value or use and enjoyment of the asset subject to such Encumbrances, and (iii) Encumbrances and other conditions, easements and reservations of rights, including rights of way, for sewers, electric lines, telegraph and telephone lines and other similar purposes, and affecting the fee title to any real property leased by the Company and being transferred to Parent or Merger Sub at Closing which are of record as of the date of this Agreement and the existence of which does not, and would not reasonably be expected to, materially impair use and enjoyment of such real property, and (iv) with respect to Leased Real Property only, Encumbrances (including Indebtedness) encumbering the fee title interested in any Leased Real Property which are not attributable to the Company.

"**Person**" means any individual, corporation, firm, partnership, joint venture, association, trust, company, Governmental Authority, syndicate, body corporate, unincorporated organization, or other legal entity, or any governmental agency or political subdivision thereof.

"**PHSA**" has the meaning set forth in Section 3.12(b).

"**Plan Amendment**" has the meaning set forth in Section 4.4.

"**Plan of Merger**" has the meaning set forth in Section 1.3.

"**Private Placement**" has the meaning set forth in the Recitals.

"**Records**" has the meaning set forth in Section 4.5(d)(ix).

"Registrable Securities" has the meaning set forth in Section 4.5(a).

"**Registration Delay Payments**" has the meaning set forth in Section 4.5(c).

"Registration Period" has the meaning set forth in Section 4.5(a).

"**Release**" means any releasing, disposing, discharging, injecting, spilling, leaking, pumping, dumping, emitting, escaping or emptying of a Hazardous Material into the Environment.

"**Representatives**" means the directors, officers, employees, Affiliates, investment bankers, financial advisors, attorneys, accountants, brokers, finders or representatives of the Group Companies, Parent, Merger Sub, or any of their respective Subsidiaries, as the case may be.

"**Rule 144**" has the meaning set forth in Section 4.5(f).

"**Rules**" has the meaning set forth in Section 2.12(c).

"**S-3 Registration Statement**" has the meaning set forth in Section 4.5(a).

"**Sanctions**" has the meaning set forth in Section 2.20(c).

"**Sarbanes-Oxley Act**" means the Sarbanes-Oxley Act of 2002.

"**SEC**" means the Securities and Exchange Commission.

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

"**Shelf Effective Date**" means the date a Shelf Registration Statement has been declared effective by the SEC.

"**Shelf Registration Statement**" has the meaning set forth in Section 4.5(a).

"**Specified Parent Equity**" means shares of Parent Common Stock, shares of Parent Preferred Stock, shares of Parent Common Stock to be issued pursuant to the Parent Restricted Stock Units, Parent Stock Options, and Parent Warrants.

"**Subsidiary**" or "**Subsidiaries**" means, when used with reference to a party, any corporation or other organization, whether incorporated or unincorporated, of which such party or any other subsidiary of such party is a general partner (excluding partnerships the general partnership interests of which held by such party or any subsidiary of such party do not have a majority of the voting interests in such partnership) or serves in a similar capacity, or, with respect to such corporation or other organization, at least 50% of the securities or other interests having by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions is directly or indirectly owned or controlled by such party or by any one or more of its subsidiaries, or by such party and one or more of its subsidiaries.

"**Surviving Entity**" has the meaning set forth in Section 1.1.

"**Tax**" or "**Taxes**" means any and all taxes or other like governmental charges in the nature of taxes, including taxes based upon or measured by income, gross receipts, excise, real or personal property, ad valorem, value added, estimated, alternative minimum or add-on, stamp, sales, withholding, social security (or similar), unemployment, disability, occupation, premium, escheat, windfall, use, service, service use, license, net worth, customs duties, registration, equalization, payroll, pension, franchise, environmental (including taxes under Section 59A of the Code as in effect or tax years prior to January 1, 2018), severance, transfer, capital stock and recording taxes and charges, imposed by the IRS or any other Taxing Authority (whether U.S. or non-U.S. including any state, county, local, or non-U.S. government or any subdivision or taxing agency thereof (including a United States possession)), whether computed on a separate, consolidated, unitary, combined, or any other basis, and such term shall include any interest, fines, penalties, or additional amounts attributable to, or imposed upon, or with respect to, any such amounts, whether disputed or not.

"**Tax Return**" means any report, return, document, declaration, election, schedule or other information or filing, or any amendment thereto, required to be supplied to any Taxing Authority or jurisdiction (foreign or domestic) with respect to Taxes, including information returns and any documents with respect to or accompanying payments of estimated Taxes or requests for the extension of time in which to file any such report, return, document, declaration, or other information.

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

"**Third Party Intellectual Property**" has the meaning set forth in Section 2.9(f).

"**Transfer Agent**" has the meaning set forth in Section 1.7(a).

"**WARN Act**" has the meaning set forth in Section 2.15(b).

(Signature Page Follows)

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above written.

WINDTREE THERAPEUTICS, INC.

By: /s/ Craig Fraser
Name: Craig Fraser
Title: President and Chief Executive Officer

WT ACQUISITION CORP.

By: /s/ John Tattory
Name: John Tattory
Title: Director

CVIE INVESTMENTS LIMITED

By: /s/ Dr. Benjamin Li
Name: Dr. Benjamin Li
Title: Authorized Signatory

Exhibit 10.2

December 21, 2018

Windtree Therapeutics, Inc.
2600 Kelly Road, Suite 100
Warrington, PA 18976
Attention: Legal Department

Ladies and Gentlemen:

Reference is hereby made to that certain Agreement and Plan of Merger, dated as of the date hereof (the "**Merger Agreement**"), by and among Windtree Therapeutics, Inc., a Delaware corporation ("**Parent**"), WT Acquisition Corp., an exempted company with limited liability incorporated under the laws of the Cayman Islands and a direct wholly owned subsidiary of Parent ("**Merger Sub**"), and CVie Investments Limited, an exempted company with limited liability incorporated under the laws of the Cayman Islands (the "**Company**"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Merger Agreement.

This indemnification letter agreement (this "**Agreement**") is being executed by Lee's Pharmaceutical Holdings Limited ("**LPHL**"), effective as of the effective time of the merger contemplated by the Merger Agreement (the "**Effective Time**"), in its capacity as a significant stockholder of each of Parent and the Company, for the benefit of (i) the holders of issued and outstanding shares of Common Stock of Parent (and, for the avoidance of any doubt, not the warrantholders of Parent) as of the day prior to the day of the Effective Time other than LPHL, LPH Investments Limited and LPH II Investments Limited (referred to herein as the "**Indemnitees**") and (ii) solely with respect to Section 9, the directors and officers prior to the date hereof of the Company and CVie Therapeutics Limited, a Taiwan corporation organized under the laws of the Republic of China (the "**Company Taiwan Subsidiary**").

LPHL hereby agrees as follows:

1. **Indemnification**. For a period of twelve (12) months from beginning on the Closing Date (the "**Indemnity Period**"), LPHL, solely from the Escrow Shares (as defined below) and subject to the limitations set forth in Section 3 below, hereby agrees to indemnify the Indemnitees for any loss, liability, damage or expense, including reasonable attorney's fees and expenses (collectively, "**Losses**") incurred by Parent in connection with or, as a result of, any material inaccuracy in any representation or warranty made by the Company in the Merger Agreement (notwithstanding that the representations and warranties made by the Company do not survive after the Effective Time). Losses shall not include punitive damages unless payable to a third party.

2. **Escrow Shares**. To secure LPHL's performance of its indemnity obligations under Section 1, on the Closing Date, Parent shall deposit with an escrow agent mutually acceptable to Parent and LPHL (the "**Escrow Agent**") 984,000 shares of Parent Common Stock which are to be issued to an Affiliate of LPHL pursuant to the Merger Agreement (such shares, the "**Escrow Shares**"). The Escrow Shares shall be held pursuant to the terms of this Agreement and a mutually agreed upon escrow agreement to be executed by the Escrow Agent, Parent and LPHL.

3. **Indemnification Limitations**.

3.1. LPHL shall have no obligation to indemnify the Indemnitees under Section 1 unless and until the total amount of all Losses exceeds $500,000 in the aggregate, in which event LPHL shall only be obligated to indemnify the Indemnitees for Losses in excess of $500,000.

3.2. IT IS UNDERSTOOD AND AGREED THAT THE INDEMNITY OBLIGATIONS OF LPHL PURSUANT TO THIS AGREEMENT, THE MERGER AGREEMENT, OR OTHERWISE, SHALL BE LIMITED TO, AND SHALL BE SATISFIED SOLELY AND EXCLUSIVELY THROUGH, THE DISTRIBUTION OF, ESCROW SHARES TO THE INDEMNITEES PURSUANT TO SECTION 4 HEREOF.

3.3. The calculation of any Loss subject to indemnification under this Agreement will reflect and be offset by any insurance proceeds, indemnification payments, contribution payments, or reimbursements received or receivable by Parent in connection with such Loss, net of any cost or increase in premiums resulting therefrom.

4. **Indemnity Claim Procedure**.

4.1. Any claim for indemnification by Parent, which shall be made solely on behalf of the Indemnitees, shall be made, if made at all, during the Indemnity Period.

4.2. Any claim for indemnification, which shall be made solely on behalf of the Indemnitees, shall be made solely by a majority of the independent members of Parent's board of directors who are unaffiliated with LPHL (the "**Independent Board Members**").

4.3. Upon such determination by the Independent Board Members to seek indemnification against LPHL for the benefit of the Indemnitees, Parent shall give LPHL prompt written notice of the claim for indemnification under Section 1 whether arising directly or as a result of a third party claim (each, a "**Claim**"), promptly after learning of such Claim, together with a statement setting forth in reasonable detail the nature and basis of such Claim and providing copies of the relevant documents evidencing such Claim, the amount of the Claim (such notice, statement and documents together, the "**Claim Notice**"). The failure to give a Claim Notice to LPHL shall not relieve LPHL of any liability hereunder unless is materially prejudiced thereby.

4.4. Upon receipt of a Claim Notice, LPHL shall provide written notice to Parent that it is either: (i) assuming responsibility for the Claim, or (ii) disputing the Claim (such notice, the "**Response Notice**"). A Response Notice must be provided by LPHL to Parent within forty-five (45) days after receipt of a Claim Notice. Parent shall conduct the defense and compromise and settle any Claim that is a third party claim in any manner Parent may deem reasonably appropriate; provided that Parent shall not approve of the entry of any judgment or enter into any settlement or compromise with respect to such third party claim unless Parent has obtained LPHL's prior written approval (which approval must not be unreasonably withheld, delayed or conditioned).

4.5. If LPHL notifies Parent in a Response Notice that it does not dispute the Claim described in the applicable Claim Notice, the Loss in the amount specified in the Claim Notice shall be conclusively deemed an indemnifiable Loss of LPHL.

4.6. If LPHL notifies Parent in a Response Notice that it disputes the Claim (such dispute, a "**Dispute**"), or fails to notify Parent within forty-five (45) days after delivery of a Claim Notice that is disputing the Claim, which failure to notify is deemed a Dispute, such Dispute shall be resolved by mutual agreement of LPHL and Parent (as determined by the Independent Board Members), or in the absence of such agreement, by a court or other tribunal of competent jurisdiction.

5. **Distribution of Escrow Shares**. If Parent makes a Claim and such Claim is either agreed to be assumed by LPHL in a Response Notice or is otherwise determined to be an obligation of LPHL pursuant to Section 4, Parent and LPHL shall direct the Escrow Agent to distribute a number of the Escrow Shares to the Indemnitees that is equal to the value of the applicable Claim, based upon the then current trading price of Parent Common Stock, and subject always to the limitations set forth in Section 3. Such distribution shall be made by the Escrow Agent on a pro rata basis to the Indemnitees based upon the number of AEROSURF Warrants held by the Indemnitees. For each Indemnitee, the number of Escrow Shares shall be rounded down to the nearest whole share.

6. **Release of Escrow Shares**. Within five (5) Business Days following the expiration of the Indemnity Period, the Escrow Agent shall release to LPHL all of the remaining Escrow Shares; provided that the Escrow Agent shall retain a number of Escrow Shares that is necessary to satisfy all unresolved, unsatisfied or disputed Claims specified in any valid Claim Notice delivered to LPHL before the expiration of the Indemnity Period. Within five (5) Business Days following resolution of all unresolved, unsatisfied or disputed Claims, the Escrow Agent shall release to LPHL any Escrow Shares that are not required to satisfy such claims.

7. **Treatment of Escrow Shares**.

7.1. All dividends or distributions payable in respect of any Escrow Shares (other than shares of common stock of Parent issued as a result of a duly authorized stock split in respect of any Escrow Shares) shall be distributed directly to LPHL.

7.2. LPHL shall be entitled to vote the Escrow Shares.

7.3. No Escrow Shares, or any beneficial interest therein, may be pledged, encumbered, sold, assigned or transferred (including any transfer by operation of law) by LPHL.

8. **EXCLUSIVE REMEDY**. PARENT AGREES THAT FROM AND AFTER THE EFFECTIVE TIME, PARENT'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY AND ALL CLAIMS RELATING TO THE COMPANY'S BREACH OF REPRESENTATIONS AND WARRANTIES IN THE MERGER AGREEMENT SHALL BE INDEMNIFICATION FOR THE BENEFIT OF THE INDEMNITEES PURSUANT TO THIS AGREEMENT.

9. **D&O Policy**. LPHL will continue to provide and keep in place, for an aggregate period of not less than six (6) years from the Effective Time, for the benefit of the Company's and the Company Taiwan Subsidiary's directors and officers prior to the date hereof, an insurance and indemnification policy with respect to claims arising from facts or events that existed or occurred prior to or at the Effective Time and that provides coverage that is at least as protective to such directors and officers as the coverage provided by the LPHL policy currently applicable to the Company (the "**D&O Insurance**"). LPHL will cause such D&O Insurance to be maintained in full force and effect for its full term, and cause all obligations thereunder to be honored by the LPHL. Notwithstanding the foregoing, LPHL may substitute a single prepaid six (6) year "tail" policy with respect to the D&O Insurance for the benefit of the Company's and the Company Taiwan Subsidiary's directors and officers prior to the date hereof with respect to claims arising from facts or events that existed or occurred prior to the Effective Time and that provides coverage that is at least as protective to such directors and officers as the coverage provided by the LPHL policy currently applicable to the Company. The parties hereto acknowledge and agree that the Company's and the Company Taiwan Subsidiary's directors and officers prior to the date hereof are express third-party beneficiaries to this Section 9 and each is entitled to the rights and benefits under this Section 9 and may enforce such provision as if he or she were a party hereto. This Section 9 cannot be amended, modified or waived without the express written consent of the Company's and the Company Taiwan Subsidiary's directors and officers prior to the date hereof. For the avoidance of any doubt, this Section 9 shall not provide the Company's and the Company Taiwan Subsidiary's directors and officers prior to the date hereof shall have no rights with respect to any of the Escrow Shares for any reason, including in the event of any breach of the terms of this Section 9.

10. **Compliance with Rules of the Stock Exchange of Hong Kong Limited**. This Agreement, and LPHL's obligations hereunder, shall be effected in a manner that complies with all applicable Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited and any requirement imposed by the Stock Exchange of Hong Kong Limited on LPHL.

11. **Miscellaneous**.

11.1. **Applicable Law; Jurisdiction**. This Agreement shall be governed by, and construed in accordance with, the Laws of the State of Delaware, regardless of the Laws that might otherwise govern under applicable principles of conflicts of Laws. Any action or proceeding between any of the parties arising out of or relating to this Agreement, each of the parties: (i) irrevocably and unconditionally consents and submits to the exclusive jurisdiction and venue of the Court of Chancery of the State of Delaware or to the extent such court does not have subject matter jurisdiction, the Superior Court of the State of Delaware or the United States District Court for the District of Delaware, (ii) agrees that all claims in respect of such action or proceeding shall be heard and determined exclusively in accordance with clause (i) of this Section 10.1, (iii) waives any objection to laying venue in any such action or proceeding in such courts, (iv) waives any objection that such courts are an inconvenient forum or do not have jurisdiction over any party, and (v) agrees that service of process upon such party in any such action or proceeding shall be effective if notice is given in accordance with Section 10.3 of this Agreement.

11.2. **Expenses; Attorneys' Fees**. In any action at Law or suit in equity to enforce this Agreement or the rights of any of the parties under this Agreement, the prevailing party in such action or suit shall be entitled to receive a reasonable documented sum for its attorneys' fees and all other reasonable documented costs and expenses incurred in such action or suit.

11.3. **Notices**. Any notice or other communication required or permitted to be delivered to any party under this Agreement shall be in writing and shall be deemed properly delivered, given and received when delivered by hand, by registered mail, by courier or express delivery service or by facsimile to the address or facsimile telephone number set forth beneath the name of such party below (or to such other address or facsimile telephone number as such party shall have specified in a written notice given to the other parties hereto):

if to Parent:

Windtree Therapeutics, Inc.
2600 Kelly Road, Suite 100
Warrington, PA 18976
Attention: Legal Department
Email: mtempleton@windtreetx.com
Telephone: (215) 488-9300

with a copy to:

Dentons US LLP
1221 Avenue of the Americas
New York, NY 10020-1089
Email: ira.kotel@dentons.com
Attention: Ira Kotel, Esq.

if to LPHL:

Lee's Pharmaceutical Holdings Limited
1/F, Building 20E, Phase 3
Hong Kong Science Park, Shatin, Hong Kong
Attention: Benjamin Li
Email: drli@leespharm.com
Telephone: +852 2314 6500

with a copy to:

King & Wood Mallesons, LLP
500 5th Ave., 50th Floor
New York, NY 10110
Email: laura.luo@us.kwm.com
Attention: Laura Hua Luo, Esq.

11.4. **Assignability**. This Agreement shall be binding upon, and shall be enforceable by and inure solely to the benefit of, the parties hereto and their respective successors and assigns; provided, however, that neither this Agreement nor any of a party's rights or obligations hereunder may be assigned or delegated by such party without the prior written consent of the other party, and any attempted assignment or delegation of this Agreement or any of such rights or obligations by such party without the other party's prior written consent shall be void and of no effect.

Sincerely,

LEE'S PHARMACEUTICAL HOLDINGS LIMITED

By: /s/
Name:
Title:

Agreed to and accepted by:

WINDTREE THERAPEUTICS, INC.

By: /s/ John Tattory
Name: John Tattory
Title: SVP and CFO

Exhibit 10.3

SECURITIES PURCHASE AGREEMENT

This Securities Purchase Agreement (this "Agreement") is dated as of December 21, 2018, between Windtree Therapeutics, Inc., a Delaware corporation (the "Company"), and each purchaser identified on the signature pages hereto (each, including its successors and assigns, a "Purchaser" and collectively the "Purchasers").

WHEREAS, subject to the terms and conditions set forth in this Agreement, the Company desires to issue and sell to each Purchaser, and each Purchaser, severally and not jointly, desires to purchase from the Company, securities of the Company as more fully described in this Agreement.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Company and each Purchaser agree as follows:

ARTICLE I.
DEFINITIONS

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

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

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

"Agreement" has the meaning set forth in the preamble

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

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

"Business Combination" means transactions contemplated by the Merger Agreement.

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

"Closing Date" means the Trading Day on which all of the Transaction Documents have been executed and delivered by the applicable parties thereto, and all conditions precedent to (i) the Purchasers' obligations to pay the Subscription Amount and (ii) the Company's obligations to deliver the Securities, in each case, have been satisfied or waived, but in no event later than the second Trading Day following the date hereof.

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

"Common Stock" means the common stock of the Company, par value $0.001 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

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

"Company Counsel" means Dentons US LLP, with offices located at 1221 Avenue of the Americas, New York, NY 10020.

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

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

"Escrow Account" means the account of an escrow agent designated by the Company, which account shall have the wire information as follows: Continental Stock Transfer & Trust Company as Agent for Windtree Therapeutics, Inc. 2018 Escrow, 1 State Street, 30th Floor, New York, NY 10004; JPMorgan Chase Bank, N.A. 4 NYP, Floor 15, New York NY 10004, Account Number 475-476069 (ABA 021000021, Swift Code CHASUS33) attention Patrick Small, SPAC & Escrow Administrator, Continental Stock Transfer & Trust Company, Accounting Department, 1 State Street, 30th Floor, New York, NY 10004 (office 212-845-5284, fax 212 616-7620, email psmall@continentalstock.com)

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

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

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

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

"Material Adverse Effect" shall have the meaning assigned to such term in Section 3.1(b).

"Merger Agreement" means that certain Agreement and Plan of Merger, dated as of the Closing Date hereof, by and among the Company, WT Acquisition Corp., an exempted company with limited liability incorporated under the laws of the Cayman Islands, and CVie Investments Limited, an exempted company with limited liability incorporated under the laws of the Cayman Islands and parent company of CVie Therapeutics, Inc., a Taiwan corporation organized under the laws of the Republic of China.

"Per Share Purchase Price" equals $3.3132.

"Per Share 15-Trading Day Average Price" equals the lesser of (i) the volume-weighted average share price as displayed under the heading Bloomberg VWAP on Bloomberg page "WINT" <Equity> AQR for the 15-trading day period ending on and including December 17, 2018, and (ii) the average closing share price (disregarding volume) for the 15-trading day period ending and including the last trading day prior to the date hereof.

"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.

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

"Purchaser Party" shall have the meaning ascribed to such term in Section 4.4.

"Registration Rights Agreement" means the Registration Rights Agreement, dated as of the Closing Date, by and among the Company and the Purchasers, as such agreement may be amended, restated or modified from time to time.

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

"Rule 144" means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

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

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

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

"Series F Warrants" means the Series F warrants, the form of which is attached as Exhibit A hereto, issued or issuable to each Purchaser pursuant to this Agreement. Each Series F Warrant is an 18-month warrant to purchase 0.17 share of common stock at an exercise price equal to the Per Share 15-Trading Day Average Price.

"Series G Warrants" means the Series G warrants, the form of which is attached as Exhibit B hereto, issued or issuable to each Purchaser pursuant to this Agreement. Each Series G Warrant is a five-year warrant to purchase 0.33 share of common stock at an exercise price equal to the Per Share 15-Trading Day Average Price plus 10%.

"Shares" means the shares of Common Stock issued or issuable to each Purchaser pursuant to this Agreement.

"Securities" means the Shares, the Warrants and the Warrant Shares, collectively.

"Short Sales" means all "short sales" as defined in Rule 200 of Regulation SHO under the Exchange Act (but shall not be deemed to include the location and/or reservation of borrowable shares of Common Stock).

"Subscription Amount" means, as to each Purchaser, the aggregate amount to be paid for Shares purchased hereunder as specified below such Purchaser's name on the signature page of this Agreement and next to the heading "Subscription Amount," in United States dollars and in immediately available funds.

"Subsidiary" means any significant subsidiary (as defined under Regulation S-X) of the Company as set forth in the SEC Reports, and shall, where applicable, also include any direct or indirect significant subsidiary of the Company formed or acquired after the date hereof.

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

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

"Transaction Documents" means this Agreement, the Warrants and the Registration Rights Agreement.

"Transfer Agent" means Continental Stock Transfer & Trust Company, the current transfer agent of the Company, with a mailing address of 1 State Street, 30th Floor, New York, NY 10004-1561, and any successor transfer agent of the Company.

"Warrants" means the Series F warrants and Series G warrants, collectively.

"Warrant Shares" means the shares of Common Stock issued or issuable upon exercise of the Warrants.

ARTICLE II.
PURCHASE AND SALE

2.1 Closing. On the Closing Date, upon the terms and subject to the conditions set forth herein, substantially concurrent with the execution and delivery of this Agreement by the parties hereto, the Company agrees to sell, and the Purchasers, severally and not jointly, agree to purchase, up to an aggregate of $39,300,000 of Shares. The Per Share Purchase Price shall be a price that is 10% less than the Per Share 15-Trading Day Average Price. For each Share purchased, a Purchaser shall also receive on the trading day next following the Closing Date a Series F Warrant to purchase 0.17 share of common stock and a Series G Warrant to purchase 0.33 share of common stock. Only a whole number of Series F and Series G Warrants will be issued; fractional warrants will be rounded down. Prior to the Closing Date, each Purchaser shall deliver to the Company, via wire transfer to the Escrow Account, immediately available funds equal to such Purchaser's Subscription Amount as set forth on the signature page hereto executed by such Purchaser and unless a Purchaser requests in writing that delivery of the Securities be made in certificate form, the Company shall issue via electronic book entry to each Purchaser its respective Securities as determined pursuant to Section 2.2(a) and the Company and each Purchaser shall deliver the other items set forth in Section 2.2 deliverable at the Closing. Upon satisfaction of the covenants and conditions set forth in Sections 2.2 and 2.3, the Closing shall occur at the offices of Company Counsel or such other location as the parties shall mutually agree.

2.2 Deliveries.

(a) On the date hereof, the Company shall deliver or cause to be delivered to each Purchaser the following:

(i) this Agreement duly executed by the Company; and

(ii) the Registration Rights Agreement.

(b) On or prior to the Closing Date, the Company shall deliver or cause to be delivered to each Purchaser the following:

(i) a copy of the irrevocable instructions to the Transfer Agent instructing the Transfer Agent to issue on an expedited basis via electronic book entry, the number of Shares equal to such Purchaser's Subscription Amount divided by the Per Share Purchase Price, registered in the name of such Purchaser, as well as, on the trading day next following the Closing Date, the appropriate number of Series F Warrants and the Series G Warrants.

(c) On the date hereof, each Purchaser shall deliver or cause to be delivered to the Company the following:

(i) this Agreement duly executed by such Purchaser.

(d) On or prior to the Closing Date, each Purchase shall deliver or cause to be delivered to the Company the following:

(i) to the Company, such Purchaser's Subscription Amount by wire transfer to Escrow Account.

2.3 Closing Conditions.

(a) The obligations of the Company hereunder in connection with the Closing are subject to the following conditions being met:

(i) the accuracy in all material respects (or, to the extent representations or warranties are qualified by materiality or Material Adverse Effect, in all respects) on the Closing Date of the representations and warranties of the Purchasers contained herein (unless as of a specific date therein in which case they shall be accurate as of such date);

(ii) all obligations, covenants and agreements of each Purchaser required to be performed at or prior to the Closing Date shall have been performed;

(iii) the delivery by each Purchaser of the items set forth in Section 2.2(c) of this Agreement; and

(iv) the consummation of the Business Combination.

(b) The respective obligations of the Purchasers hereunder in connection with the Closing are subject to the following conditions being met:

(i) the accuracy in all material respects (or, to the extent representations or warranties are qualified by materiality or Material Adverse Effect, in all respects) when made and on the Closing Date of the representations and warranties of the Company contained herein (unless as of a specific date therein);

(ii) all obligations, covenants and agreements of the Company required to be performed at or prior to the Closing Date shall have been performed;

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

(iv) the consummation of the Business Combination.

ARTICLE III.
REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Company. The Company hereby makes the following representations and warranties to each Purchaser:

(a) Subsidiaries. All of the significant subsidiaries (as defined in Regulation S-X) of the Company immediately prior consummation of the Business Combination are set forth in the SEC Reports. Except as set forth in the SEC Reports, the Company owns, directly or indirectly, all of the capital stock or other equity interests of each Subsidiary free and clear of any Liens except for standard blanket security interests from lenders as described in the SEC Reports, and all of the issued and outstanding shares of capital stock of each Subsidiary are validly issued and are fully paid, non-assessable and free of preemptive and similar rights to subscribe for or purchase securities.

(b) Organization and Qualification. The Company and each of the Subsidiaries is an entity duly incorporated or otherwise organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted. Neither the Company nor any Subsidiary is in violation nor default of any of the provisions of its respective certificate or articles of incorporation, bylaws or other organizational or charter documents. Each of the Company and the Subsidiaries is duly qualified to conduct business and is in good standing as a foreign corporation or other entity in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, would not have or reasonably be expected to result in: (i) a material adverse effect on the legality, validity or enforceability of any Transaction Document, (ii) a material adverse effect on the results of operations, assets, business, or financial condition of the Company and the Subsidiaries, taken as a whole, or (iii) a material adverse effect on the Company's ability to perform in any material respect on a timely basis its obligations under any Transaction Document (any of (i), (ii) or (iii), a "Material Adverse Effect") and, to the Company's knowledge, no Proceeding has been instituted in any such jurisdiction revoking, limiting or curtailing or seeking to revoke, limit or curtail such power and authority or qualification.

(c) Authorization; Enforcement. The Company has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by this Agreement and each of the other Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement and each of the other Transaction Documents by the Company and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of the Company and no further action is required by the Company, the Board of Directors or the Company's stockholders in connection herewith or therewith. This Agreement and each other Transaction Document to which it is a party has been (or upon delivery will have been) duly executed by the Company and, when delivered in accordance with the terms hereof and thereof, will constitute the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

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

(e) Filings, Consents and Approvals. The Company is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority or other Person in connection with the execution, delivery and performance by the Company of the Transaction Documents, other than: (i) the filings required pursuant to Section 4.1 of this Agreement, and (ii) any filings as are required to be made under applicable federal or state securities laws.

(f) Issuance of the Securities. The Securities are duly authorized and, when issued and paid for in accordance with the applicable Transaction Documents, will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company. The Company has reserved from its duly authorized capital stock the maximum number of Shares issuable pursuant to the Warrants.

(g) Capitalization. The capitalization of the Company is as set forth in the in Schedule 3.1(g). Other than as set forth in Schedule 3.1(g), no Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by this Agreement. Except as a result of the purchase and sale of the Share or described in this Agreement or the SEC Reports, there are no outstanding options, warrants, scrip rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire, any shares of Common Stock, or contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to issue additional shares of Common Stock or Common Stock Equivalents. The issuance and sale of the Securities will not obligate the Company or any Subsidiary to issue shares of Common Stock or other securities to any Person (other than the Purchasers) and will not result in a right of any holder of Company securities to adjust the exercise, conversion, exchange or reset price under any of such securities. All of the outstanding shares of capital stock of the Company are duly authorized, validly issued, fully paid and nonassessable, have been issued in compliance with all federal and state securities laws, and none of such outstanding shares was issued in violation of any preemptive rights or similar rights to subscribe for or purchase securities. No further approval or authorization of any stockholder, the Board of Directors or is required for the issuance and sale of the Securities. There are no stockholders agreements, voting agreements or other similar agreements with respect to the Company's capital stock to which the Company is a party or, to the knowledge of the Company, between or among any of the Company's stockholders.

(h) SEC Reports; Financial Statements. The Company has filed all reports, schedules, forms, statements and other documents required to be filed by the Company under the Securities Act and the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, for the one year preceding the date hereof (the "SEC Reports") on a timely basis or has received a valid extension of such time of filing and has filed any such SEC Reports prior to the expiration of any such extension. As of their respective dates, the SEC Reports complied in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable, and none of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The financial statements of the Company included in the SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the Commission with respect thereto as in effect at the time of filing. Such financial statements have been prepared in all material respects in accordance with United States generally accepted accounting principles applied on a consistent basis during the periods involved ("GAAP"), except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements do not contain all items required by GAAP, and fairly present in all material respects the financial position of the Company and its consolidated Subsidiaries as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, immaterial, year-end audit adjustments.

(i) Material Changes. Other than as described in Schedule 3.1(i), since the date of the latest audited financial statements included within the SEC Reports, except as specifically disclosed in a subsequent SEC Report filed prior to the date hereof, (i) there has been no event, occurrence or development that has had or that would reasonably be expected to result in a Material Adverse Effect, (ii) the Company has not incurred any material liabilities (contingent or otherwise), (iii) the Company has not altered its method of accounting, (iv) the Company has not declared or made any dividend or distribution of cash or other property to its stockholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock and (v) the Company has not issued any equity securities to any officer, director or Affiliate, except pursuant to existing Company stock incentive plans or pursuant to the exercise/conversion of outstanding Common Stock Equivalents.

(j) Litigation. Other than actions described in the most recent SEC Report, there is no action, suit, inquiry, notice of violation, proceeding or investigation pending or, to the knowledge of the Company, threatened against or affecting the Company, any Subsidiary or any of their respective properties before or by any court, arbitrator, governmental or administrative agency or regulatory authority (federal, state, county, local or foreign) (collectively, an "Action") which (i) adversely affects or challenges the legality, validity or enforceability of any of the Transaction Documents or the Securities or (ii) would, if there were an unfavorable decision, have or reasonably be expected to result in a Material Adverse Effect. Other than actions described in the SEC Reports, neither the Company nor any Subsidiary, nor any director or officer thereof, is or has been the subject of any Action involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty.

(k) Labor Relations. No labor dispute exists or, to the knowledge of the Company, is imminent with respect to any of the employees of the Company, which would reasonably be expected to result in a Material Adverse Effect. None of the Company's or its Subsidiaries' employees is a member of a union that relates to such employee's relationship with the Company or such Subsidiary, and neither the Company nor any of its Subsidiaries is a party to a collective bargaining agreement, and the Company and its Subsidiaries believe that their relationships with their employees are good. The Company and its Subsidiaries are in material compliance with all U.S. federal, state, local and foreign laws and regulations relating to employment and employment practices, terms and conditions of employment and wages and hours, except where the failure to be in compliance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

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

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

(n) Title to Assets. The Company and the Subsidiaries have good and marketable title in fee simple to all real property owned by them and good and marketable title in all personal property owned by them that is material to the business of the Company and the Subsidiaries, in each case free and clear of all Liens, except for (i) Liens as do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company and the Subsidiaries and (ii) Liens for the payment of federal, state or other taxes, for which appropriate reserves have been made in accordance with GAAP and, the payment of which is not delinquent. Any real property and facilities held under lease by the Company and the Subsidiaries are held by them under valid, subsisting and enforceable leases with which the Company and the Subsidiaries are in compliance, except for matters which are not expected to cause a Material Adverse Effect.

(o) Intellectual Property. The Company and the Subsidiaries have, or have rights to use, all material patents, patent applications, trademarks, trademark applications, service marks, trade names, trade secrets, inventions, copyrights, licenses and other intellectual property rights and similar rights necessary or required for use in connection with their respective businesses as described in the SEC Reports and which the failure to so have would have a Material Adverse Effect (collectively, the "Intellectual Property Rights"). Neither the Company nor any Subsidiary has received, since the date of the latest audited financial statements included within the SEC Reports, a written notice of a claim or otherwise has any knowledge that the Intellectual Property Rights violate or infringe upon the rights of any Person, except as would not have or reasonably be expected to not have a Material Adverse Effect. To the knowledge of the Company, all such Intellectual Property Rights are enforceable and there is no existing material infringement by another Person of any of the Intellectual Property Rights.

(p) Insurance. The Company and the Subsidiaries are insured against such losses and risks and in such amounts as the Company believes to be adequate, including, but not limited to, directors and officers insurance coverage at least equal to the aggregate Subscription Amount. Neither the Company nor any Subsidiary has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business without a significant increase in cost.

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

(r) Sarbanes-Oxley; Internal Accounting Controls. Except as set forth in the SEC Reports, the Company and the Subsidiaries are in compliance with any and all applicable requirements of the Sarbanes-Oxley Act of 2002 that are effective as of the date hereof, and any and all applicable rules and regulations promulgated by the Commission thereunder that are effective as of the date hereof and as of the Closing Date. Except as set forth in the SEC Reports, the Company and the Subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that: (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Except as set forth in the SEC Reports, the Company and the Subsidiaries have established disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the Company and the Subsidiaries and designed such disclosure controls and procedures to ensure that information required to be disclosed by the Company in the reports it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms. The Company's certifying officers have evaluated the effectiveness of the disclosure controls and procedures of the Company and the Subsidiaries as of the end of the period covered by the most recently filed periodic report under the Exchange Act (such date, the "Evaluation Date"). The Company presented in its most recently filed periodic report under the Exchange Act the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of the Evaluation Date. Since the Evaluation Date, there have been no changes in the internal control over financial reporting (as such term is defined in the Exchange Act) of the Company and its Subsidiaries that have materially affected, or is reasonably likely to materially affect, the internal control over financial reporting of the Company and its Subsidiaries.

(s) Certain Fees. Other than a placement fee paid to Rui Jin (HK) Consulting Management Company Limited, an entity affiliated with James Huang, in connection with the offer and sale of the Company's securities pursuant to this Agreement with respect to certain investments by non-U.S. persons ("Foreign Purchasers," excluding Kingsbridge Capital Ltd., Panacea Venture Management Company Ltd., and their respective affiliates) in an amount equal to 2.5% of the cash amount invested by the Foreign Purchasers (excluding any amount invested in connection with cancellation of existing debt owed to the Company), payable in shares of common stock of the Company in accordance with a Placement Agent Agreement dated as of the date hereof, no brokerage or finder's fees or commissions are or will be payable by the Company or any Subsidiary to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by the Transaction Documents. The Purchasers shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this Section that may be due in connection with the transactions contemplated by the Transaction Documents.

(t) Investment Company. The Company is not, and is not an Affiliate of, and immediately after receipt of payment for the Securities, will not be or be an Affiliate of, an "investment company" within the meaning of the Investment Company Act of 1940, as amended. The Company shall conduct its business in a manner so that it will not become an "investment company" subject to registration under the Investment Company Act of 1940, as amended.

(u) Registration Rights. Except as set forth in the SEC Reports, no Person has any right to cause the Company or any Subsidiary to effect the registration under the Securities Act of any securities of the Company or any Subsidiary.

(v) Listing and Maintenance Requirements. The Common Stock is registered pursuant to Section 12(b) or 12(g) of the Exchange Act, and the Company has taken no action designed to, or which to its knowledge is likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act nor has the Company received any notification that the Commission is contemplating terminating such registration. The Common Stock is currently eligible for electronic transfer through the Depository Trust Company or another established clearing corporation and the Company is current in payment of the fees to the Depository Trust Company (or such other established clearing corporation) in connection with such electronic transfer.

(w) Acknowledgment Regarding Purchasers' Purchase of Securities. The Company acknowledges and agrees that each of the Purchasers is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated thereby. The Company further acknowledges that no Purchaser is acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated thereby and any advice given by any Purchaser or any of their respective representatives or agents in connection with the Transaction Documents and the transactions contemplated thereby is merely incidental to the Purchasers' purchase of the Securities. The Company further represents to each Purchaser that the Company's decision to enter into this Agreement and the other Transaction Documents has been based solely on the independent evaluation of the transactions contemplated hereby by the Company and its representatives.

(x) Office of Foreign Assets Control. Neither the Company nor any Subsidiary nor, to the Company's knowledge, any director, officer, agent, employee or affiliate of the Company or any Subsidiary is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("OFAC").

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

3.2 Representations and Warranties of the Purchasers. Each Purchaser, for itself and for no other Purchaser, hereby represents and warrants as of the date hereof and as of the Closing Date to the Company as follows (unless as of a specific date therein):

(a) Organization; Authority. Such Purchaser is either an individual or an entity duly incorporation or formation, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation with full right, corporate, partnership, limited liability company or similar power and authority to enter into and to consummate the transactions contemplated by this Agreement and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement and performance by such Purchaser of the transactions contemplated by this Agreement have been duly authorized by all necessary corporate, partnership, limited liability company or similar action, as applicable, on the part of such Purchaser. Each Transaction Document to which it is a party has been duly executed by such Purchaser, and when delivered by such Purchaser in accordance with the terms hereof, will constitute the valid and legally binding obligation of such Purchaser, enforceable against it in accordance with its terms, except: (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(b) Understandings or Arrangements. Such Purchaser is acquiring the Securities as principal for its own account and has no direct or indirect arrangement or understandings with any other persons to distribute or regarding the distribution of such Securities. Such Purchaser is acquiring the Securities hereunder in the ordinary course of business.

(c) Purchaser Status. At the time such Purchaser was offered the Securities, it was, and as of the date hereof it is, either: (i) an "accredited investor" as defined in Rule 501(a)(1), (a)(2), (a)(3), (a)(7) or (a)(8) under the Securities Act, (ii) a "qualified institutional buyer" as defined in Rule 144A(a) under the Securities Act or (iii) a not a "U.S. Person as defined in Rule 902(k) of Regulation S of the Securities Act.

(d) Experience of Such Purchaser. Such Purchaser, either alone or together with its representatives, has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks of the prospective investment in the Securities, and has so evaluated the merits and risks of such investment. Such Purchaser is able to bear the economic risk of an investment in the Securities and, at the present time, is able to afford a complete loss of such investment.

(e) Access to Information. Such Purchaser acknowledges that it has had the opportunity to review the Transaction Documents (including all exhibits and schedules thereto) and the SEC Reports and has been afforded, subject to the requirements of Regulation FD, (i) the opportunity to ask such questions as it has deemed necessary of, and to receive answers from, representatives of the Company concerning the terms and conditions of the offering of the Securities and the merits and risks of investing in the Securities; (ii) access to information about the Company and its financial condition, results of operations, business, properties, management and prospects sufficient to enable it to evaluate its investment; and (iii) the opportunity to obtain such additional information that is necessary to make an informed investment decision with respect to the investment. Purchaser further acknowledges that the Company is not making any assurance of the accuracy and completeness of any information provided by any third party.

(f) Certain Transactions and Confidentiality. Other than consummating the transactions contemplated hereunder, such Purchaser has not, nor has any Person acting on behalf of or pursuant to any understanding with such Purchaser, directly or indirectly executed any purchases or sales, including Short Sales, of the securities of the Company during the period commencing as of the time that such Purchaser first received knowledge of the transactions contemplated hereunder and ending immediately prior to the execution hereof. Notwithstanding the foregoing, in the case of a Purchaser that is a multi-managed investment vehicle whereby separate portfolio managers manage separate portions of such Purchaser's assets and the portfolio managers have no direct knowledge of the investment decisions made by the portfolio managers managing other portions of such Purchaser's assets, the representation set forth above shall only apply with respect to the portion of assets managed by the portfolio manager that made the investment decision to purchase the Securities covered by this Agreement. Other than to other Persons party to this Agreement or to such Purchaser's representatives, including, without limitation, its officers, directors, partners, legal and other advisors, employees, agents and Affiliates, such Purchaser has maintained the confidentiality of all disclosures made to it in connection with this transaction (including the existence and terms of this transaction). Notwithstanding the foregoing, for avoidance of doubt, nothing contained herein shall constitute a representation or warranty, or preclude any actions, with respect to the identification of the availability of, or securing of, available shares to borrow in order to effect Short Sales or similar transactions in the future.

(g) Validity. The execution and delivery of the Transaction Documents to which such Purchaser is a party and the consummation by it of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary action on the part of such Purchaser and no further consent or authorization of such Purchaser or its members (or shareholders) is required.

ARTICLE IV.
OTHER AGREEMENTS OF THE PARTIES

4.1 Stock Exchange of Hong Kong Limited Listing Rules. The parties acknowledge and confirm that no warrant (including AEROSURF Warrant, Series F Warrant or Series G Warrant) has been or will be issued or granted and no arrangement on the issue or grant of any such warrant has been or will be finally confirmed under this Agreement or any transactions contemplated hereunder at any time upon or prior to the Closing on the Closing Date; and that no AEROSURF Warrant has been or will be issued or granted and no arrangement on the issue or grant of any such warrant has been or will be finally confirmed at any time upon or prior to the Closing on the Closing Date. Obligations on the negotiation of the issue or grant of any warrants (including AEROSURF Warrants) under this Agreement or any transaction contemplated hereunder and/or the issue or grant of any warrants (including AEROSURF Warrants in connection with the transactions contemplated herein or the Series F Warrant or Series G Warrant) under this Agreement or any transaction contemplated hereunder as well as the issue or grant of AEROSURF Warrants shall be subject to compliance of all applicable requirements under the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited (if applicable) and /or any requirements as imposed by the Stock Exchange of Hong Kong Limited (if any)..

4.2 Securities Laws Disclosure; Publicity. The Company shall (a) by 9:30 a.m. (New York City time) on the third Trading Day immediately following the date hereof, issue a press release disclosing the material terms of the transactions contemplated hereby, and (b) file a Current Report on Form 8-K, including the Transaction Documents as exhibits thereto, with the Commission within the time required by the Exchange Act (the "8-K Filing"). From and after the issuance of such press release, the Company represents to the Purchasers that it shall have publicly disclosed all material, non-public information delivered to any of the Purchasers by the Company or any of its Subsidiaries, or any of their respective officers, directors, employees or agents.

4.3 Use of Proceeds. The Company shall use the net proceeds from the sale of the Securities hereunder to fund operations including activities to transition Istaroxime to phase 3 (including global regulatory interactions and study start up activity), AEROSURF bridge study start up and execution activities, Rostafuroxin formulation and clinical development, preclinical and proof-of-concept activities related to cardiovascular and KL4 pipeline programs and to address existing obligations, and general working capital purposes.

4.4 Indemnification of Purchasers. In consideration of the Purchaser's execution and delivery of the Transaction Documents and acquiring the Securities thereunder and in addition to all of the Company's other obligations under the Transaction Documents, the Company shall defend, protect, indemnify and hold harmless the Purchaser, any affiliate of Purchaser and each of their respective partners, members, officers, directors, employees and investors and any of the foregoing Persons' accounting and legal representatives retained in connection with the transactions contemplated by this Agreement (collectively, the "Indemnitees") from and against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages, and expenses in connection therewith (irrespective of whether any such Indemnitee is a party to the action for which indemnification hereunder is sought), and including reasonable attorneys' fees and disbursements (the "Indemnified Liabilities"), incurred by any Indemnitee as a result of, or arising out of, or relating to (a) any misrepresentation or breach of any representation or warranty made by the Company in the Transaction Documents or any other certificate, instrument or document contemplated thereby, or (b) any breach of any covenant, agreement or obligation of the Company contained in the Transaction Documents or any certificate, instrument or document contemplated thereby. To the extent that the foregoing undertaking by the Company may be unenforceable for any reason, the Company shall make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law.

4.5 Reservation of Common Stock. As of the date hereof, the Company has reserved and the Company shall continue to reserve and keep available at all times, free of preemptive rights, a sufficient number of shares of Common Stock for the purpose of enabling the Company to issue Shares pursuant to this Agreement.

4.6 Equal Treatment of Purchasers. No consideration (including any modification of any Transaction Document) shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of the Transaction Documents unless the same consideration is also offered to all of the parties to such Transaction Document. For clarification purposes, this provision constitutes a separate right granted to each Purchaser by the Company and negotiated separately by each Purchaser, and is intended for the Company to treat the Purchasers as a class and shall not in any way be construed as the Purchasers acting in concert or as a group with respect to the purchase, disposition or voting of Securities or otherwise.

4.7 Certain Transactions and Confidentiality. Each Purchaser, severally and not jointly with the other Purchasers, covenants that neither it nor any Affiliate acting on its behalf or pursuant to any understanding with it will execute any purchases or sales, including Short Sales of any of the Company's securities during the period commencing with the execution of this Agreement and ending at such time that the transactions contemplated by this Agreement are first publicly announced pursuant to the initial press release as described in Section 4.1. Each Purchaser, severally and not jointly with the other Purchasers, covenants that until such time as the transactions contemplated by this Agreement are publicly disclosed by the Company pursuant to the initial press release as described in Section 4.1, such Purchaser will maintain the confidentiality of the existence and terms of this transaction. Notwithstanding the foregoing and notwithstanding anything contained in this Agreement to the contrary, the Company expressly acknowledges and agrees that (i) no Purchaser makes any representation, warranty or covenant hereby that it will not engage in effecting transactions in any securities of the Company after the time that the transactions contemplated by this Agreement are first publicly announced pursuant to the initial press release as described in Section 4.1, (ii) no Purchaser shall be restricted or prohibited from effecting any transactions in any securities of the Company in accordance with applicable securities laws from and after the time that the transactions contemplated by this Agreement are first publicly announced pursuant to the initial press release as described in Section 4.1 and (iii) no Purchaser shall have any duty of confidentiality or duty not to trade in the securities of the Company to the Company or its Subsidiaries after the issuance of the initial press release as described in Section 4.1. Notwithstanding the foregoing, in the case of a Purchaser that is a multi-managed investment vehicle whereby separate portfolio managers manage separate portions of such Purchaser's assets and the portfolio managers have no direct knowledge of the investment decisions made by the portfolio managers managing other portions of such Purchaser's assets, the covenant set forth above shall only apply with respect to the portion of assets managed by the portfolio manager that made the investment decision to purchase the Securities covered by this Agreement.

ARTICLE V.
MISCELLANEOUS

5.1 Termination. This Agreement may be terminated by any Purchaser, as to such Purchaser's obligations hereunder only and without any effect whatsoever on the obligations between the Company and the other Purchasers, by written notice to the other parties, if the Closing has not been consummated on or before January 15, 2019; provided, however, that no such termination will affect the right of any party to sue for any breach by any other party (or parties).

5.2 Fees and Expenses. Except as expressly set forth in the Transaction Documents to the contrary, each party shall pay the fees and expenses of its advisers, counsel, accountants and other experts, if any, and all other expenses incurred by such party incident to the negotiation, preparation, execution, delivery and performance of this Agreement. The Company shall pay all Transfer Agent fees (including, without limitation, any fees required for same-day processing of any instruction letter delivered by the Company and any exercise notice delivered by a Purchaser), stamp taxes and other taxes and duties levied in connection with the delivery of any Securities to the Purchasers.

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

5.4 Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of: (a) the date of transmission, if such notice or communication is delivered via facsimile or email attachment at the facsimile number or email address as set forth on the signature pages attached hereto at or prior to 5:30 p.m. (New York City time) on a Trading Day, (b) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile or email attachment at the facsimile number or email address as set forth on the signature pages attached hereto on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (c) the second (2^{nd}) Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service or (d) upon actual receipt by the party to whom such notice is required to be given. The address for such notices and communications shall be as set forth on the signature pages attached hereto. To the extent that any notice provided pursuant to any Transaction Document constitutes, or contains, material, non-public information regarding the Company or any Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K.

5.5 Amendments; Waivers. No provision of this Agreement may be waived, modified, supplemented or amended except in a written instrument signed, in the case of an amendment, by the Company and the Purchasers who purchased at least a majority in interest of the Shares based on the initial Subscription Amounts hereunder or, in the case of a waiver, by the party against whom enforcement of any such waived provision is sought, provided that if any amendment, modification or waiver disproportionately and adversely impacts a Purchaser (or group of Purchasers), the consent of such disproportionately impacted Purchaser (or group of Purchasers) shall also be required. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right. Any proposed amendment or waiver that disproportionately, materially and adversely affects the rights and obligations of any Purchaser relative to the comparable rights and obligations of the other Purchasers shall require the prior written consent of such adversely affected Purchaser. Any amendment effected in accordance with accordance with this Section 5.5 shall be binding upon each Purchaser and holder of Securities and the Company.

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

5.7 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. The Company may not assign this Agreement or any rights or obligations hereunder without the prior written consent of each Purchaser (other than by merger). Any Purchaser may assign any or all of its rights under this Agreement to any Person to whom such Purchaser assigns or transfers any Securities, provided that such transferee agrees in writing to be bound, with respect to the transferred Securities, by the provisions of the Transaction Documents that apply to the "Purchasers."

5.8 No Third-Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, except as otherwise set forth in Section 4.4 and this Section 5.8.

5.9 Governing Law. All questions concerning the construction, validity, enforcement and interpretation of the Transaction Documents shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal Proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and any other Transaction Documents (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any Action or Proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such Action or Proceeding is improper or is an inconvenient venue for such Proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such Action or Proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law. If any party shall commence an Action or Proceeding to enforce any provisions of the Transaction Documents, then, in addition to the obligations of the Company under Section 4.4, the prevailing party in such Action or Proceeding shall be reimbursed by the non-prevailing party for its reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such Action or Proceeding.

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

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

5.12 Replacement of Securities. If any certificate or instrument evidencing any Securities is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation thereof (in the case of mutilation), or in lieu of and substitution therefor, a new certificate or instrument, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction. The applicant for a new certificate or instrument under such circumstances shall also pay any reasonable third-party costs (including customary indemnity) associated with the issuance of such replacement Securities.

5.13 Independent Nature of Purchasers' Obligations and Rights. The obligations of each Purchaser under any Transaction Document are several and not joint with the obligations of any other Purchaser, and no Purchaser shall be responsible in any way for the performance or non-performance of the obligations of any other Purchaser under any Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by any Purchaser pursuant hereto or thereto, shall be deemed to constitute the Purchasers as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Purchasers are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by the Transaction Documents. Each Purchaser shall be entitled to independently protect and enforce its rights including, without limitation, the rights arising out of this Agreement or out of the other Transaction Documents, and it shall not be necessary for any other Purchaser to be joined as an additional party in any Proceeding for such purpose. Each Purchaser has been represented by its own separate legal counsel in its review and negotiation of the Transaction Documents. The Company has elected to provide all Purchasers with the same terms and Transaction Documents for the convenience of the Company and not because it was required or requested to do so by any of the Purchasers. It is expressly understood and agreed that each provision contained in this Agreement and in each other Transaction Document is between the Company and a Purchaser, solely, and not between the Company and the Purchasers collectively and not between and among the Purchasers.

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

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

5.16 **WAIVER OF JURY TRIAL. IN ANY ACTION, SUIT, OR PROCEEDING IN ANY JURISDICTION BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY, THE PARTIES EACH KNOWINGLY AND INTENTIONALLY, TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY AND EXPRESSLY WAIVES FOREVER TRIAL BY JURY.**

(Signature Pages Follow)

IN WITNESS WHEREOF, the parties hereto have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

WINDTREE THERAPEUTICS, INC.

By: Craig Fraser
Name: Craig Fraser
Title: Chief Executive Officer

Address for Notice:

Fax:

E-mail:

With a copy to (which shall not constitute notice):

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOR PURCHASER FOLLOWS]

[PURCHASER SIGNATURE PAGES TO SECURITIES PURCHASE AGREEMENT]

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

Name of Purchaser: _____

Signature of Authorized Signatory of Purchaser: _____

Name of Authorized Signatory: _____

Title of Authorized Signatory: _____

Email Address of Authorized Signatory: _____

Facsimile Number of Authorized Signatory: _____

Address for Notice to Purchaser:

Subscription Amount:_____

Shares: _____

EIN or other identifier:_____

REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (this "Agreement") is made and entered into as of December 21, 2018, between Windtree Therapeutics, Inc., a Delaware corporation (the "Company"), and each of the several purchasers signatory hereto (each such purchaser, a "Purchaser" and, collectively, the "Purchasers").

This Agreement is made pursuant to the Securities Purchase Agreement, dated as of the date hereof, between the Company and each Purchaser (the "Purchase Agreement").

The Company and each Purchaser hereby agrees as follows:

1. Definitions.

Capitalized terms used and not otherwise defined herein that are defined in the Purchase Agreement shall have the meanings given such terms in the Purchase Agreement. As used in this Agreement, the following terms shall have the following meanings:

"Advice" shall have the meaning set forth in Section 6(d).

"Affiliate" or "affiliate" means a Person (means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization and a government or any department or agency thereof) that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the first mentioned Person. A Person shall be deemed to control another Person if such first Person possesses directly or indirectly the power to direct, or cause the direction of, the management and policies of the second Person, whether through the ownership of voting securities, by contract or otherwise. With respect to a Purchaser, an Affiliate shall include any general or limited partner, managing member, officer or director of such Purchaser, or any venture capital fund now or hereafter existing which is controlled by one or more general partners or managing members of, or shares the same management company with, such Purchaser.

"Effectiveness Date" means, with respect to the Initial Registration Statement required to be filed hereunder, the 120th calendar day following the date hereof (or, in the event of a "full review" by the SEC, the 180th calendar day following the date hereof) and with respect to any additional Registration Statements which may be required pursuant to Section 2(c) or Section 3(c), the 90th calendar day following the date on which an additional Registration Statement is required to be filed hereunder (or, in the event of a "full review" by the SEC, the 120th calendar day following the date such additional Registration Statement is required to be filed hereunder); provided, however, that in the event the Company is notified by the SEC that one or more of the above Registration Statements will not be reviewed or is no longer subject to further review and comments, the Effectiveness Date as to such Registration Statement shall be the fifth Trading Day following the date on which the Company is so notified if such date precedes the dates otherwise required above, provided, further, if such Effectiveness Date falls on a day that is not a Trading Day, then the Effectiveness Date shall be the next succeeding Trading Day.

"Effectiveness Period" shall have the meaning set forth in Section 2(a).

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

"Filing Date" means, with respect to the Initial Registration Statement required hereunder, May 1, 2019 and, with respect to any additional Registration Statements which may be required pursuant to Section 2(c) or Section 3(c), the earliest practical date on which the Company is permitted by SEC Guidance to file such additional Registration Statement related to the Registrable Securities.

"Holder" or "Holders" means the holder or holders, as the case may be, from time to time of Registrable Securities.

"Indemnified Party" shall have the meaning set forth in Section 5(c).

"Indemnifying Party" shall have the meaning set forth in Section 5(c).

"Initial Registration Statement" means the initial Registration Statement filed pursuant to this Agreement.

"Losses" shall have the meaning set forth in Section 5(a).

"Plan of Distribution" shall have the meaning set forth in Section 2(a).

"Prospectus" means the prospectus included in a Registration Statement (including, without limitation, a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated by the SEC pursuant to the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by a Registration Statement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

"Registrable Securities" means, as of any date of determination, (a) all Shares, (b) all Warrant Shares then issued and issuable upon exercise of the Warrants (assuming on such date the Warrants are exercised in full without regard to any exercise limitations therein), (c) any additional shares of Common Stock issued and issuable in connection with any anti-dilution provisions in the Warrants (in each case, without giving effect to any limitations on exercise set forth in the Warrants) (d) any securities issued or then issuable upon any stock split, dividend or other distribution, recapitalization or similar event with respect to the foregoing; and (e) any securities that are registrable under the Company's Registration Rights Agreements, dated October 27, 2017 with LPH Investments Limited, and dated March 30, 2018 with LPH II Investments Limited respectively, provided, however, that any such Registrable Securities shall cease to be Registrable Securities (and the Company shall not be required to maintain the effectiveness of any, or file another, Registration Statement hereunder with respect thereto) upon the occurrence of the following: (i) a Registration Statement with respect to the sale of such Registrable Securities is declared effective by the SEC under the Securities Act and such Registrable Securities have been disposed of by the Holder in accordance with such effective Registration Statement, (ii) such Registrable Securities have been previously sold in accordance with Rule 144, or (iii) such securities become eligible for resale by the Holder under Rule 144 without the requirement for the Company to be in compliance with the volume or manner-of-sale restrictions and without current public information pursuant to a written opinion letter to such effect, addressed, delivered and acceptable to the Company's transfer agent.

"Registration Statement" means any registration statement required to be filed hereunder pursuant to Section 2(a) and any additional registration statements contemplated by Section 2(c) or Section 3(c), including (in each case) the Prospectus, amendments and supplements to any such registration statement or Prospectus, including pre- and post-effective amendments, all exhibits thereto, and all material incorporated by reference or deemed to be incorporated by reference in any such registration statement.

"Rule 415" means Rule 415 promulgated by the SEC pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the SEC having substantially the same purpose and effect as such Rule.

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

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

"SEC Guidance" means (i) any publicly-available written or oral guidance of the SEC staff, or any comments, requirements or requests of the SEC staff and (ii) the Securities Act.

"Selling Stockholder Questionnaire" shall have the meaning set forth in Section 3(a).

2. Shelf Registration.

(a) On or prior to each Filing Date, the Company shall prepare and file with the SEC a Registration Statement covering the resale of all of the Registrable Securities that are not then registered on an effective Registration Statement for an offering to be made on a continuous basis pursuant to Rule 415. Each Registration Statement filed hereunder shall be on Form S-3 (except if the Company is not then eligible to register for resale the Registrable Securities on Form S-3, in which case such registration shall be on another appropriate form in accordance herewith, subject to the provisions of Section 2(e)) and shall contain (unless otherwise directed by at least 85% in interest of the Holders) substantially the "Plan of Distribution" attached hereto as Annex A; provided, however, that no Holder shall be required to be named as an "underwriter" without such Holder's express prior written consent. Subject to the terms of this Agreement, the Company shall use its commercially reasonable efforts to cause a Registration Statement filed under this Agreement (including, without limitation, under Section 3(c)) to be declared effective under the Securities Act as promptly as possible after the filing thereof, but in any event no later than the applicable Effectiveness Date, and shall use its commercially reasonable efforts to keep such Registration Statement continuously effective under the Securities Act until the date that all Registrable Securities covered by such Registration Statement (i) have been sold, thereunder or pursuant to Rule 144, or (ii) may be sold without volume or manner-of-sale restrictions pursuant to Rule 144 and without the requirement for the Company to be in compliance with the current public information requirement under Rule 144, as determined by the counsel to the Company pursuant to a written opinion letter to such effect, addressed and acceptable to the Company's transfer agent and the affected Holders (the "Effectiveness Period"). The Company shall telephonically request effectiveness of a Registration Statement as of 5:00 p.m. Eastern Time on a Trading Day. The Company shall immediately notify the Holders via facsimile or by e-mail of the effectiveness of a Registration Statement on the same Trading Day that the Company telephonically confirms effectiveness with the SEC, which shall be the date requested for effectiveness of such Registration Statement. The Company shall, by 9:30 a.m. Eastern Time on the Trading Day after the effective date of such Registration Statement, file a final Prospectus with the SEC as required by Rule 424..

(b) Notwithstanding the registration obligations set forth in Section 2(a), if the SEC informs the Company that all of the Registrable Securities cannot, as a result of the application of Rule 415, be registered for resale as a secondary offering on a single registration statement, the Company agrees to promptly inform each of the Holders thereof and use its commercially reasonable efforts to (i) file amendments to the Initial Registration Statement and/or (ii) withdraw the Initial Registration Statement and file a file a new registration statement (a "New Registration Statement"), in either case as required by the SEC, covering the maximum number of Registrable Securities permitted to be registered by the SEC, on Form S-3 or such other form available to register for resale the Registrable Securities as a secondary offering, provided, however, that prior to filing such amendment or New Registration Statement, the Company shall be obligated to use commercially reasonable efforts to advocate with the SEC for the registration of all of the Registrable Securities in accordance with the SEC Guidance, including without limitation, Compliance and Disclosure Interpretation 612.09.

(c) Notwithstanding any other provision of this Agreement, if the SEC or any SEC Guidance sets forth a limitation on the number of Registrable Securities permitted to be registered on a particular Registration Statement as a secondary offering (and notwithstanding that the Company used diligent efforts to advocate with the SEC for the registration of all or a greater portion of Registrable Securities), unless otherwise directed in writing by a Holder as to its Registrable Securities, the number of Registrable Securities to be registered on such Registration Statement will be reduced as follows:

a. First, the Company shall reduce or eliminate any securities other than Registrable Securities on a pro rata basis based on the total number of such securities;

b. Second, the Company shall reduce Registrable Securities represented by Warrant Shares (applied, in the case that some Warrant Shares may be registered, to the Holders on a pro rata basis based on the total number of unregistered Warrant Shares held by such Holders); and

c. Third, the Company shall reduce Registrable Securities represented by Shares (applied, in the case that some Shares may be registered, to the Holders on a pro rata basis based on the total number of unregistered Shares held by such Holders, subject to a determination by the SEC or SEC Guidance that certain Holders must be reduced first based on the number of Shares held by such Holders).

In the event of a cutback hereunder, the Company shall give the Holder at least five (5) Trading Days prior written notice along with the calculations as to such Holder's allotment. In the event the Company amends the Initial Registration Statement or files a New Registration Statement in accordance with the foregoing, the Company will use its commercially reasonable efforts to file with the SEC, as promptly as allowed by SEC or SEC Guidance provided to the Company or to registrants of securities in general, one or more registration statements on Form S-3 or such other form available to register for resale those Registrable Securities that were not registered for resale on the Initial Registration Statement, as amended, or the New Registration Statement (the "Remainder Registration Statements") provided that the Company shall not be requested to file more than one Remainder Registration Statement with respect to the Registrable Securities in any 12-month period.

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

(e) Notwithstanding anything to the contrary contained herein, in no event shall the Company be permitted to name any Holder or affiliate of a Holder as any Underwriter without the prior written consent of such Holder.

3. Registration Procedures.

In connection with the Company's registration obligations hereunder, the Company shall:

(a) Not less than five (5) Trading Days prior to the filing of each Registration Statement and not less than one (1) Trading Day prior to the filing of any related Prospectus or any amendment or supplement thereto (including any document that would be incorporated or deemed to be incorporated therein by reference), the Company shall (i) furnish to each Holder copies of all such documents proposed to be filed, which documents (other than those incorporated or deemed to be incorporated by reference) will be subject to the review of such Holders, and (ii) cause its officers and directors, counsel and independent registered public accountants to respond to such inquiries as shall be necessary, in the reasonable opinion of respective counsel to each Holder, to conduct a reasonable investigation within the meaning of the Securities Act. The Company shall not file a Registration Statement or any such Prospectus or any amendments or supplements thereto to which the Holders of a majority of the Registrable Securities shall reasonably object in good faith, provided that, the Company is notified of such objection in writing no later than five (5) Trading Days after the Holders have been so furnished copies of a Registration Statement or one (1) Trading Day after the Holders have been so furnished copies of any related Prospectus or amendments or supplements thereto. Each Holder agrees to furnish to the Company a completed questionnaire in the form attached to this Agreement as Annex B (a "Selling Stockholder Questionnaire") on a date that is not less than two (2) Trading Days prior to the Filing Date or by the end of the fourth (4^{th}) Trading Day following the date on which such Holder receives draft materials in accordance with this Section.

(b) (i) Prepare and file with the SEC such amendments, including post-effective amendments, to a Registration Statement and the Prospectus used in connection therewith as may be necessary to keep a Registration Statement continuously effective as to the applicable Registrable Securities for the Effectiveness Period and prepare and file with the SEC such additional Registration Statements in order to register for resale under the Securities Act all of the Registrable Securities, (ii) cause the related Prospectus to be amended or supplemented by any required Prospectus supplement (subject to the terms of this Agreement), and, as so supplemented or amended, to be filed pursuant to Rule 424, (iii) respond as promptly as reasonably possible to any comments received from the SEC with respect to a Registration Statement or any amendment thereto and provide as promptly as reasonably possible to the Holders true and complete copies of all correspondence from and to the SEC relating to a Registration Statement (provided that, the Company shall excise any information contained therein which would constitute material non-public information regarding the Company or any of its Subsidiaries), and (iv) comply in all material respects with the applicable provisions of the Securities Act and the Exchange Act with respect to the disposition of all Registrable Securities covered by a Registration Statement during the applicable period in accordance (subject to the terms of this Agreement) with the intended methods of disposition by the Holders thereof set forth in such Registration Statement as so amended or in such Prospectus as so supplemented.

(c) At any time, and from time to time, after the 180th day following the date of this Agreement, but in any event not more than (i) once in each 12-month period if the Company is not then eligible to register for resale the Registrable Securities on Form S-3, or (ii) twice in each 12-month period if the Company is then eligible to register for resale the Registrable Securities on Form S-3, the Holder(s) of a majority of the then unregistered Registrable Securities may request the registration by the Company under the Securities Act of all or part of the Registrable Securities outstanding that are not registered under an effective registration statement under the Securities Act.

(d) Notify the Holders of Registrable Securities to be sold (which notice shall, pursuant to clauses (iii) through (vi) hereof, be accompanied by an instruction to suspend the use of the Prospectus until the requisite changes have been made) as promptly as reasonably possible (and, in the case of (i)(A) below, not less than one (1) Trading Day prior to such filing) and (if requested by any such Person) confirm such notice in writing no later than one (1) Trading Day following the day (i)(A) when a Prospectus or any Prospectus supplement or post-effective amendment to a Registration Statement is proposed to be filed, (B) when the SEC notifies the Company whether there will be a "review" of such Registration Statement and whenever the SEC comments in writing on such Registration Statement, and (C) with respect to a Registration Statement or any post-effective amendment, when the same has become effective, (ii) of any request by the SEC or any other federal or state governmental authority for amendments or supplements to a Registration Statement or Prospectus or for additional information, (iii) of the issuance by the SEC or any other federal or state governmental authority of any stop order suspending the effectiveness of a Registration Statement covering any or all of the Registrable Securities or the initiation of any Proceedings for that purpose, (iv) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction, or the initiation or threatening of any Proceeding for such purpose, (v) of the occurrence of any event or passage of time that makes the financial statements included in a Registration Statement ineligible for inclusion therein or any statement made in a Registration Statement or Prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires any revisions to a Registration Statement, Prospectus or other documents so that, in the case of a Registration Statement or the Prospectus, as the case may be, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and (vi) of the occurrence or existence of any pending corporate development with respect to the Company that the Company believes may be material and that, in the determination of the Company, makes it not in the best interest of the Company to allow continued availability of a Registration Statement or Prospectus, provided however, that any suspension on the use of the Prospectus under subclauses (iii) through (vi) hereof (each a "Grace Period") shall not exceed twenty Business Days in any three hundred sixty-five day period, and each Grace Period must commence no earlier than thirty days after the prior Grace Period, if any. In no event shall any notice pursuant to subclasuses (i) through (vi) hereto contain any information which would constitute material, non-public information regarding the Company or any of its Subsidiaries.

(e) Use its commercially reasonable efforts to avoid the issuance of, or, if issued, obtain the withdrawal of (i) any order stopping or suspending the effectiveness of a Registration Statement, or (ii) any suspension of the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction, at the earliest practicable moment.

(f) Furnish to each Holder, without charge, at least one conformed copy of each such Registration Statement and each amendment thereto, including financial statements and schedules, all documents incorporated or deemed to be incorporated therein by reference to the extent requested by such Person, and all exhibits to the extent requested by such Person (including those previously furnished or incorporated by reference) promptly after the filing of such documents with the SEC; provided, that any such item which is available on the EDGAR system (or successor thereto) need not be furnished in physical form.

(g) Subject to the terms of this Agreement, the Company hereby consents to the use of such Prospectus and each amendment or supplement thereto by each of the selling Holders in connection with the offering and sale of the Registrable Securities covered by such Prospectus and any amendment or supplement thereto, except after the giving of any notice pursuant to Section 3(d).

(h) Prior to any resale of Registrable Securities by a Holder, use its commercially reasonable efforts to register or qualify or cooperate with the selling Holders in connection with the registration or qualification (or exemption from the Registration or qualification) of such Registrable Securities for the resale by the Holder under the securities or Blue Sky laws of such jurisdictions within the United States as any Holder reasonably requests in writing, to keep each registration or qualification (or exemption therefrom) effective during the Effectiveness Period and to do any and all other acts or things reasonably necessary to enable the disposition in such jurisdictions of the Registrable Securities covered by each Registration Statement, provided that the Company shall not be required to qualify generally to do business in any jurisdiction where it is not then so qualified, subject the Company to any material tax in any such jurisdiction where it is not then so subject or file a general consent to service of process in any such jurisdiction.

(i) If requested by a Holder, cooperate with such Holder to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be delivered to a transferee pursuant to a Registration Statement, which certificates shall be free, to the extent permitted by the Purchase Agreement, of all restrictive legends, and to enable such Registrable Securities to be in such denominations and registered in such names as any such Holder may request.

(j) Upon the occurrence of any event contemplated by Section 3(d), as promptly as reasonably possible under the circumstances taking into account the Company's good faith assessment of any adverse consequences to the Company and its stockholders of the premature disclosure of such event, prepare a supplement or amendment, including a post-effective amendment, to a Registration Statement or a supplement to the related Prospectus or any document incorporated or deemed to be incorporated therein by reference, and file any other required document so that, as thereafter delivered, neither a Registration Statement nor such Prospectus will contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. If the Company notifies the Holders in accordance with clauses (iii) through (vi) of Section 3(d) above to suspend the use of any Prospectus until the requisite changes to such Prospectus have been made, then the Holders shall suspend use of such Prospectus. The Company will use its commercially reasonable efforts to ensure that the use of the Prospectus may be resumed as promptly as is practicable.

(k) Otherwise use commercially reasonable efforts to comply with all applicable rules and regulations of the SEC under the Securities Act and the Exchange Act, including, without limitation, Rule 172 under the Securities Act, file any final Prospectus, including any supplement or amendment thereof, with the SEC pursuant to Rule 424 under the Securities Act, promptly inform the Holders in writing if, at any time during the Effectiveness Period, the Company does not satisfy the conditions specified in Rule 172 and, as a result thereof, the Holders are required to deliver a Prospectus in connection with any disposition of Registrable Securities and take such other actions as may be reasonably necessary to facilitate the registration of the Registrable Securities hereunder.

(l) The Company shall use its commercially reasonable efforts to maintain eligibility for use of Form S-3 (or any successor form thereto) for the registration of the resale of Registrable Securities.

(m) The Company may require each selling Holder to furnish to the Company a certified statement as to the number of shares of Common Stock beneficially owned by such Holder and, if required by the SEC, the natural persons thereof that have voting and dispositive control over the shares.

(n) The Holders shall have the right to select one legal counsel to review and oversee any Registration Statement filed pursuant to this Agreement.

4. Registration Expenses. All fees and expenses incident to the Company's performance of or compliance with, this Agreement shall be borne by the Company whether or not any Registrable Securities are sold pursuant to a Registration Statement. The fees and expenses referred to in the foregoing sentence shall include, without limitation, (i) all registration and filing fees (including, without limitation, fees and expenses of the Company's counsel and independent registered public accountants) (A) with respect to filings made with the SEC, (B) with respect to filings required to be made with any Trading Market on which the Common Stock is then listed for trading, and (C) in compliance with applicable state securities or Blue Sky laws reasonably agreed to by the Company in writing (including, without limitation, fees and disbursements of counsel for the Company in connection with Blue Sky qualifications or exemptions of the Registrable Securities), (ii) printing expenses (including, without limitation, expenses of printing certificates for Registrable Securities), (iii) messenger, telephone and delivery expenses, (iv) fees and disbursements of counsel for the Company, (v) Securities Act liability insurance, if the Company so desires such insurance, and (vi) fees and expenses of all other Persons retained by the Company in connection with the consummation of the transactions contemplated by this Agreement. In addition, the Company shall be responsible for all of its internal expenses incurred in connection with the consummation of the transactions contemplated by this Agreement (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit and the fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange as required hereunder. In no event shall the Company be responsible for any broker or similar commissions of any Holder or, except to the extent provided for in the Transaction Documents, any legal fees or other costs of the Holders.

5. Indemnification.

(a) Indemnification by the Company. The Company will indemnify, hold harmless and defend (i) the Holder and (ii) the directors, officers, partners, managers, members, employees, agents and each Person who controls the Holder within the meaning of the Securities Act or the Exchange Act, if any (each, an "Indemnified Person"), against any joint or several losses, claims, damages, liabilities or expenses (collectively, together with actions, proceedings or inquiries by any regulatory or self-regulatory organization, whether commenced or threatened, in respect thereof, "Claims") to which any of them may become subject insofar as such Claims arise out of or are based upon: (i) any untrue statement or alleged untrue statement of a material fact in the Registration Statement or the omission or alleged omission to state therein a material fact required to be stated or necessary to make the statements therein not misleading; (ii) any untrue statement or alleged untrue statement of a material fact contained in any prospectus (preliminary, final, free writing or otherwise), or any amendment thereof or supplement thereto, or the omission or alleged omission to state therein any material fact necessary to make the statements made therein, in light of the circumstances under which the statements therein were made, not misleading; or (iii) any violation or alleged violation by the Company of the Securities Act, the Exchange Act, any other law, including, without limitation, any state securities law, or any rule or regulation thereunder relating to the offer or sale of the Registrable Securities (the matters in the foregoing clauses (i) through (iii) being, collectively, "Violations"). The Company shall reimburse the Indemnified Person, promptly as such expenses are incurred and are due and payable, for any reasonable legal fees or other reasonable expenses incurred by them in connection with investigating or defending any such Claim. Notwithstanding anything to the contrary contained herein, the indemnification provision contained in this Section 7(a) shall not apply (i) to a Claim arising out of or based upon a Violation to the extent that such Violation occurs in reliance upon and in conformity with information furnished in writing to the Company by or on behalf of any Indemnified Person for use in connection with the preparation of such Registration Statement or any such amendment thereof or supplement thereto, or (ii) to any amounts paid in settlement of any Claim effected without the prior written consent of the Company, which consent shall not be unreasonably withheld or delayed. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Indemnified Person and shall survive the sale of the Registrable Securities by the Holder. Promptly after receipt by an Indemnified Person under this Section 5 of notice of the commencement of any action (including any governmental action), such Indemnified Person shall, if a Claim in respect thereof is to be made against the Company under this Section 5, deliver to the Company a written notice of the commencement thereof, and the Company shall have the right to participate in, and, to the extent the Company so desires, to assume control of the defense thereof with counsel mutually satisfactory to the Company and the Indemnified Person, as the case may be. Provided, however, that an Indemnified Person shall have the right to retain its own counsel with the reasonable fees and expenses to be paid by the Company, if, in the opinion of counsel for the Holder, the representation by such counsel of the Indemnified Person and the Company would be inappropriate due to actual or potential differing interests between such Indemnified Person and any other party represented by such counsel in such proceeding. The Company shall pay for only one separate legal counsel (as well as local counsel) for the Indemnified Persons, and such legal counsel shall be selected by Holder. The failure to deliver written notice to the Company within a reasonable time of the commencement of any such action shall not relieve the Company of any liability to the Indemnified Person under this Section 5, except to the extent that the Company is actually prejudiced in its ability to defend such action, and shall not otherwise relieve the Company of any liability. The Company shall not, without the prior written consent of the Indemnified Persons, consent to entry of any judgment or enter into any settlement or other compromise with respect to any Claim in respect of which indemnification or contribution may be or has been sought hereunder (whether or not any such Indemnified Party is an actual or potential party to such action or claim) which does not include as an unconditional term thereof the giving by the claimant or plaintiff to the Indemnified Persons of a full release from all liability with respect to such Claim or which includes any admission as to fault or culpability on the part of any Indemnified Person.

(b) Indemnification by Holders. Each Holder will, severally and not jointly indemnify, hold harmless and defend (i) the Company, and (ii) the directors, officers, partners, managers, members, employees, or agents of the Company, if any (each, a "Company Indemnified Person"), against any Claims to which any of them may become subject insofar as such Claims arise out of or are based upon any Violation which occurs due to the inclusion by the Company in a Registration Statement of false or misleading information about the Holder, where such information was furnished in writing to the Company by the Holder or on behalf of the Holder for the purpose of inclusion in such Registration Statement. Notwithstanding anything herein to the contrary, the indemnity agreement contained in this Section 5(b) shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Holder, which consent shall not be unreasonably withheld or delayed; and provided, further, however, that a Holder shall be liable under this Section 5(b) for only that amount of an Indemnity Claim as does not exceed the net amount of proceeds received by such Holder as a result of the sale of Registrable Securities pursuant to such Registration Statement. Promptly after receipt by a Company Indemnified Person under this Section 5 of notice of the commencement of any action (including any governmental action), such Company Indemnified Person shall, if a Claim in respect thereof is to be made against a Holder under this Section 5, deliver to such Holder a written notice of the commencement thereof, and such Holder shall have the right to participate in, and, to the extent such Holder so desires, to assume control of the defense thereof with counsel mutually satisfactory to such Holder and the Company Indemnified Person, as the case may be. Provided, however, that a Company Indemnified Person shall have the right to retain its own counsel at its own cost, if, in the reasonable opinion of counsel for the Company, the representation by such counsel of the Company Indemnified Person and the Holder would be inappropriate due to actual or potential differing interests between the Company Indemnified Person and any other party represented by such counsel in such proceeding. Such legal counsel shall be selected in the reasonable judgment of the Company.

(c) The indemnification required by this Section 5 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as such expense, loss, damage or liability is incurred and is due and payable.

6. Miscellaneous.

(a) HKSE Matters. Parties will enter into/attend to negotiation on the issue or grant of any warrant on or after the closing of this Agreement. For the avoidance of doubt, no warrant is, will or has been issued or granted and no arrangement on the issue or grant of warrant is, will or has been finally confirmed as at any time upon or prior to the closing of this Agreement. Obligations on the negotiation of the issue or grant of warrants hereunder and/or the issue or grant of any warrants under this Agreement shall be subject to compliance of all applicable requirements under the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited (if applicable) and /or any requirements as imposed by the Stock Exchange of Hong Kong Limited (if any).

(b) Remedies. In the event of a breach by the Company or by a Holder of any of their respective obligations under this Agreement, each Holder or the Company, as the case may be, in addition to being entitled to exercise all rights granted by law and under this Agreement, including recovery of damages, shall be entitled to specific performance of its rights under this Agreement. Each of the Company and each Holder agrees that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by it of any of the provisions of this Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, it shall not assert or shall waive the defense that a remedy at law would be adequate.

(c) Discontinued Disposition. By its acquisition of Registrable Securities, each Holder agrees that, upon receipt of a notice from the Company of the occurrence of any event of the kind described in Section 3(d)(iii) through (vi), such Holder will forthwith discontinue disposition of such Registrable Securities under a Registration Statement until it is advised in writing (the "Advice") by the Company that the use of the applicable Prospectus (as it may have been supplemented or amended) may be resumed. The Company will use its commercially reasonable efforts to ensure that the use of the Prospectus may be resumed as promptly as is practicable.

(d) Piggy-Back Registrations. If, at any time during the Effectiveness Period, there is not an effective Registration Statement covering all of the Registrable Securities and the Company shall determine to prepare and file with the SEC a registration statement relating to an offering for its own account or the account of others under the Securities Act of any of its equity securities, other than on Form S-4 or Form S-8 (each as promulgated under the Securities Act) or their then equivalents relating to equity securities to be issued solely in connection with any acquisition of any entity or business or equity securities issuable in connection with the Company's stock option or other employee benefit plans, then the Company shall deliver to each Holder a written notice of such determination and, if within fifteen days after the date of the delivery of such notice, any such Holder shall so request in writing, the Company shall include in such registration statement all or any part of such Registrable Securities such Holder requests to be registered; provided, however, that the Company shall not be required to register any Registrable Securities pursuant to this Section 6(c) that are eligible for resale pursuant to Rule 144 (without volume restrictions or current public information requirements) promulgated by the SEC pursuant to the Securities Act or that are the subject of a then effective Registration Statement that is available for resales or other dispositions by such Holder.

(e) Amendments and Waivers. The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the same shall be in writing and signed by the Company and the Holders of 51% or more of the then outstanding Registrable Securities (for purposes of clarification, this includes any Registrable Securities issuable upon exercise or conversion of any Security), provided that, if any amendment, modification or waiver disproportionately and adversely impacts a Holder (or group of Holders), the consent of such disproportionately impacted Holder (or group of Holders) shall be required. If a Registration Statement does not register all of the Registrable Securities pursuant to a waiver or amendment done in compliance with the previous sentence, then the number of Registrable Securities to be registered for each Holder shall be reduced pro rata among all Holders and each Holder shall have the right to designate which of its Registrable Securities shall be omitted from such Registration Statement. Notwithstanding the foregoing, a waiver or consent to depart from the provisions hereof with respect to a matter that relates exclusively to the rights of a Holder or some Holders and that does not directly or indirectly affect the rights of other Holders may be given only by such Holder or Holders of all of the Registrable Securities to which such waiver or consent relates; provided, however, that the provisions of this sentence may not be amended, modified, or supplemented except in accordance with the provisions of the first sentence of this Section 6(d). No consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of this Agreement unless the same consideration also is offered to all of the parties to this Agreement.

(f) Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be delivered as set forth in the Purchase Agreement.

(g) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of each of the parties and shall inure to the benefit of each Holder. The Company may not assign (except by merger) its rights or obligations hereunder without the prior written consent of all of the Holders of the then outstanding Registrable Securities. Each Holder may assign their respective rights hereunder in the manner and to the Persons as permitted under Section 9(g) of the Purchase Agreement.

(h) No Inconsistent Agreements. Neither the Company nor any of its Subsidiaries has entered, as of the date hereof, nor shall the Company or any of its Subsidiaries, on or after the date of this Agreement, enter into any agreement with respect to its securities, that would have the effect of impairing the rights granted to the Holders in this Agreement or otherwise conflicts with the provisions hereof. Except as set forth on Schedule 6(i), neither the Company nor any of its Subsidiaries has previously entered into any agreement granting any registration rights with respect to any of its securities to any Person that have not been satisfied in full.

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

(j) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be determined in accordance with the provisions of the Purchase Agreement.

(k) Cumulative Remedies. The remedies provided herein are cumulative and not exclusive of any other remedies provided by law.

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

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

(n) Independent Nature of Holders' Obligations and Rights. The obligations of each Holder hereunder are several and not joint with the obligations of any other Holder hereunder, and no Holder shall be responsible in any way for the performance of the obligations of any other Holder hereunder. Nothing contained herein or in any other agreement or document delivered at any closing, and no action taken by any Holder pursuant hereto or thereto, shall be deemed to constitute the Holders as a partnership, an association, a joint venture or any other kind of group or entity, or create a presumption that the Holders are in any way acting in concert or as a group or entity with respect to such obligations or the transactions contemplated by this Agreement or any other matters, and the Company acknowledges that the Holders are not acting in concert or as a group, and the Company shall not assert any such claim, with respect to such obligations or transactions. Each Holder shall be entitled to protect and enforce its rights, including without limitation the rights arising out of this Agreement, and it shall not be necessary for any other Holder to be joined as an additional party in any proceeding for such purpose. The use of a single agreement with respect to the obligations of the Company was solely in the control of the Company, not the action or decision of any Holder, and was done solely for the convenience of the Company and not because it was required or requested to do so by any Holder. It is expressly understood and agreed that each provision contained in this Agreement is between the Company and a Holder, solely, and not between the Company and the Holders collectively and not between and among Holders.

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(Signature Pages Follow)

IN WITNESS WHEREOF, the parties have executed this Registration Rights Agreement as of the date first written above.

WINDTREE THERAPEUTICS, INC.

By:_____
Name:
Title:

[SIGNATURE PAGE OF HOLDERS FOLLOWS]

[SIGNATURE PAGE OF HOLDERS TO WINT RRA]

Name of Holder: _____

Signature of Authorized Signatory of Holder: _____

Name of Authorized Signatory: _____

Title of Authorized Signatory: _____

[SIGNATURE PAGES CONTINUE]

Annex A

Plan of Distribution

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

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

The Selling Stockholders may also sell securities under Rule 144 or any other exemption from registration under the Securities Act of 1933, as amended (the "Securities Act"), if available, rather than under this prospectus.

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

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

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

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

We agreed to keep this prospectus effective until the earlier of (i) the date on which the securities may be resold by the Selling Stockholders without registration and without regard to any volume or manner-of-sale limitations by reason of Rule 144, without the requirement for the Company to be in compliance with the current public information under Rule 144 under the Securities Act or any other rule of similar effect or (ii) all of the securities have been sold pursuant to this prospectus or Rule 144 under the Securities Act or any other rule of similar effect. The resale securities will be sold only through registered or licensed brokers or dealers if required under applicable state securities laws. In addition, in certain states, the resale securities covered hereby may not be sold unless they have been registered or qualified for sale in the applicable state or an exemption from the registration or qualification requirement is available and is complied with.

Under applicable rules and regulations under the Exchange Act, any person engaged in the distribution of the resale securities may not simultaneously engage in market making activities with respect to the common stock for the applicable restricted period, as defined in Regulation M, prior to the commencement of the distribution. In addition, the Selling Stockholders will be subject to applicable provisions of the Exchange Act and the rules and regulations thereunder, including Regulation M, which may limit the timing of purchases and sales of the common stock by the Selling Stockholders or any other person. We will make copies of this prospectus available to the Selling Stockholders and have informed them of the need to deliver a copy of this prospectus to each purchaser at or prior to the time of the sale (including by compliance with Rule 172 under the Securities Act).

Annex C

Windtree Therapeutics, Inc.

Selling Stockholder Notice and Questionnaire

The undersigned beneficial owner of common stock (the "Registrable Securities") of Windtree Therapeutics, Inc., a Delaware corporation (the "Company"), understands that the Company has filed or intends to file with the Securities and Exchange Commission (the "Commission") a registration statement (the "Registration Statement") for the registration and resale under Rule 415 of the Securities Act of 1933, as amended (the "Securities Act"), of the Registrable Securities, in accordance with the terms of the Registration Rights Agreement (the "Registration Rights Agreement") to which this document is annexed. A copy of the Registration Rights Agreement is available from the Company upon request at the address set forth below. All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Registration Rights Agreement.

Certain legal consequences arise from being named as a selling stockholder in the Registration Statement and the related prospectus. Accordingly, holders and beneficial owners of Registrable Securities are advised to consult their own securities law counsel regarding the consequences of being named or not being named as a selling stockholder in the Registration Statement and the related prospectus.

NOTICE

The undersigned beneficial owner (the "Selling Stockholder") of Registrable Securities hereby elects to include the Registrable Securities owned by it in the Registration Statement.

The undersigned hereby provides the following information to the Company and represents and warrants that such information is accurate:

QUESTIONNAIRE

1. Name.

(a) Full Legal Name of Selling Stockholder

_____

(b) Full Legal Name of Registered Holder (if not the same as (a) above) through which Registrable Securities are held:

_____

(c) Full Legal Name of Natural Control Person (which means a natural person who directly or indirectly alone or with others has power to vote or dispose of the securities covered by this Questionnaire):

_____

2. Address for Notices to Selling Stockholder:

_____

_____

_____

Telephone:

Fax:

Contact Person:

3. Broker-Dealer Status:

(a) Are you a broker-dealer?

Yes ☐ No ☐

(b) If "yes" to Section 3(a), did you receive your Registrable Securities as compensation for investment banking services to the Company?

Yes ☐ No ☐

Note: If "no" to Section 3(b), the Commission's staff has indicated that you should be identified as an underwriter in the Registration Statement.

(c) Are you an affiliate of a broker-dealer?

Yes ☐ No ☐

(d) If you are an affiliate of a broker-dealer, do you certify that you purchased the Registrable Securities in the ordinary course of business, and at the time of the purchase of the Registrable Securities to be resold, you had no agreements or understandings, directly or indirectly, with any person to distribute the Registrable Securities?

Yes ☐ No ☐

Note: If "no" to Section 3(d), the Commission's staff has indicated that you should be identified as an underwriter in the Registration Statement.

4. Beneficial Ownership of Securities of the Company Owned by the Selling Stockholder.

Except as set forth below in this Item 4, the undersigned is not the beneficial or registered owner of any securities of the Company other than the securities issuable pursuant to the Purchase Agreement.

(a) Type and Amount of other securities beneficially owned by the Selling Stockholder:

_____

_____

5. Relationships with the Company:

Except as set forth below, neither the undersigned nor any of its affiliates, officers, directors or principal equity holders (owners of 5% of more of the equity securities of the undersigned) has held any position or office or has had any other material relationship with the Company (or its predecessors or affiliates) during the past three years.

State any exceptions here:

_____

_____

The undersigned agrees to promptly notify the Company of any material inaccuracies or changes in the information provided herein that may occur subsequent to the date hereof at any time while the Registration Statement remains effective; provided, that the undersigned shall not be required to notify the Company of any changes to the number of securities held or owned by the undersigned or its affiliates.

By signing below, the undersigned consents to the disclosure of the information contained herein in its answers to Items 1 through 5 and the inclusion of such information in the Registration Statement and the related prospectus and any amendments or supplements thereto. The undersigned understands that such information will be relied upon by the Company in connection with the preparation or amendment of the Registration Statement and the related prospectus and any amendments or supplements thereto.

IN WITNESS WHEREOF the undersigned, by authority duly given, has caused this Notice and Questionnaire to be executed and delivered either in person or by its duly authorized agent.

Date: _____ Beneficial Owner: _____

By: /s/ _____
Name:
Title:

PLEASE FAX A COPY (OR EMAIL A .PDF COPY) OF THE COMPLETED AND EXECUTED NOTICE AND QUESTIONNAIRE TO:

Exhibit 99.1

Windtree Therapeutics and CVie Therapeutics Announce Merger to Create a Global Acute Care Company Targeting Cardiovascular and Respiratory Diseases

Windtree Also Completes $39.0 Million Private Placement of Common Stock and Warrants

Company to Hold Investor Call Thursday, January 3, 2019 at 8:00 a.m. EST

Warrington, PA and Taipei, Taiwan – December 21, 2018 - Windtree Therapeutics, Inc. (OTCQB: WINT), a biotechnology company focused on developing aerosolized KL4 surfactant therapies for respiratory diseases, and CVie Investments Limited (CVie), together with its wholly-owned subsidiary, CVie Therapeutics Limited, a privately-held company focused on developing drugs to treat cardiovascular diseases, today announced the closing of a definitive agreement for the merger of a Windtree Therapeutics subsidiary and CVie in an all-stock transaction. The combined company, which will retain the name Windtree Therapeutics, will be a fully-integrated and diversified acute care company with four mid-to-late clinical stage product assets and multiple preclinical assets and programs. Led by Windtree management, the merged company will continue to be headquartered in Warrington, PA with pre-clinical operations in Taipei, Taiwan and Milan, Italy

Simultaneous with the closing of the merger, Windtree completed a $39.0 million private placement transaction of common stock shares at an offering price of $3.3132. Net proceeds, after deducting the estimated offering and merger related expenses, is expected to be approximately $36.0 million.

“This CVie merger is highly complementary and successfully meets our goal to create a company with multiple high-quality product assets focused on significant unmet medical needs in important acute cardiovascular and acute respiratory markets” commented Craig Fraser, President and Chief Executive Officer of Windtree. “We enter 2019 with a broad clinical and preclinical pipeline that creates numerous value generating opportunities to the benefit of patients and shareholders alike. This transaction and the investment it has attracted places the company on a significantly improved trajectory. We look forward to keeping our investors updated on our execution and progress.”

"The merger allows CVie to leverage Windtree’s experienced management team, significant drug and business development capabilities and as a U.S. publicly-traded company, access to a broader range of investors,” commented James Huang, a former Director of CVie and Managing Partner, KPCB China and newly appointed Chairman for Windtree’s board of directors. “These attributes are essential to the next stage of development of our novel cardiovascular programs including Istaroxime, which just successfully completed phase 2b for acute heart failure, and Rostafuroxin for genetically related hypertension. Furthermore, as a potentially transformative therapy for acute Respiratory Distress Syndrome, AEROSURF is a highly attractive program with significant potential. We believe this merger creates a new and exciting global biopharmaceutical company”.

Clinical Stage Product Pipeline of Combined Company:

- **Istaroxime:** Istaroxime is a first-in-class luso-inotropic agent under development for the treatment of acute decompensated heart failure. Istaroxime is a potent positive inotropic agent that increases myocardial contractility through inhibition of Na^+/K^+-ATPase. In addition, it facilitates myocardial relaxation through activation of the SERCA2a calcium pump on the sarcoplasmic reticulum and reduction in cytoplasmic calcium. Based on its mechanism of action, preclinical studies and clinical findings to date, Istaroxime has the potential to deliver the desired clinical effects in decompensated heart failure without the deleterious effects of conventional inotropes, i.e., increased heart rate, increased oxygen consumption, increased risk of arrhythmia and hypotension. Istaroxime recently completed a successful phase 2b clinical trial and top line results demonstrated a statistically significant ($p<0.05$) improvement in the primary endpoint of left ventricle function assessed by echocardiography, by both doses of Istaroxime. Windtree will provide a more detailed data presentation during its January 3, 2019 investor conference call.

- **AEROSURF®:** AEROSURF is a combination drug/device product that combines Windtree's proprietary KL4 surfactant and innovative aerosolization technologies being developed to potentially reduce or eliminate the need for endotracheal intubation and mechanical ventilation in the treatment of premature infants with respiratory distress syndrome (RDS). Windtree recently reported positive results from phase 2 trials suggesting reduced rates of Bronchopulmonary Dysplasia in AEROSURF treated neonates and plans to initiate a clinical study in 2019 with its recently validated phase 3 / commercial platform aerosol delivery system (ADS) as a bridging study transition to phase 3.
- **Rostafuroxin:** Rostafuroxin is a novel, phase 2 precision medicine targeting hypertensive patients with certain genetic profiles focused on the large and important resistant hypertension market. Rostafuroxin recently completed a second phase 2b clinical trial and Windtree plans to review clinical progress to date, additional required ongoing development work and the licensing strategy, during its January 3, 2019 investor conference call.
- **Lucinactant LS:** Lucinactant LS is a lyophilized, KL4 surfactant that is a new, improved formulation of Windtree's previously FDA-approved product. Lucinactant LS offers a synthetic formulation with no warming requirement in contrast to current animal derived surfactant products and greater stability and lower viscosity than the previous liquid KL4 formulation. The initial focus will be the RDS population that require invasive administration (and therefore are not candidates for AEROSURF treatment).

Preclinical Product Pipeline

In addition to its clinical stage product candidates, the combined company will pursue the advancement of other preclinical product assets and programs:

- **SERCA2a activators** with pure stimulatory activity, devoid of any Na^+/K^+ ATPase inhibitory activity.
- **Oral, dual-mechanism Na/K channel and SERCA2a** drug candidate that would serve as a follow-on or complementary, chronic heart failure drug to acute i.v. Istaroxime.
- **Eleison ILC research collaboration** studying Windtree's ADS delivery of liposomal cisplatin (with or without KL4 surfactant) building upon Eleison's phase 2 clinical work in metastatic osteosarcoma with a future focus in non-small cell lung cancer.
- **KL4 platform research** continuing research in preventing acute lung injury due to radiation and viral infections as well as advancing drug delivery pre-clinical studies.

About the Merger

In connection with the Merger, Windtree and a direct wholly owned subsidiary of Windtree (Merger Sub), entered into an Agreement and Plan of Merger (Merger Agreement) with CVie, an exempted company with limited liability incorporated under the laws of the Cayman Islands, pursuant to which Merger Sub merged with and into CVie, with CVie surviving as a wholly-owned subsidiary of Windtree. Windtree issued shares of its common stock to CVie's former shareholders, at an exchange ratio of .3512 share of Windtree's common stock, in exchange for each share of CVie outstanding prior to the Merger resulting in the issuance of 16,265,060 shares of common stock. Windtree plans to operate CVie and CVie Therapeutics Limited, a Taiwan corporation organized under the laws of the Republic of China, as a business division focused on early development of drug product candidates in cardiovascular diseases

Stifel, Nicolaus & Company, Incorporated acted as exclusive financial advisor to Windtree in this transaction.

On December 20, 2018, Windtree declared a dividend to the holders of record of Windtree's common stock on that date, as well as to holders of certain warrants to purchase common stock, of Series H AEROSURF Warrants, which will be exercisable without any exercise price for .5731 additional shares of Windtree common stock for each share of common stock outstanding on the record date (the AEROSURF Warrants). The AEROSURF Warrants will be automatically exercised upon Windtree's public announcement of the first dosing of the first human subject enrolled in the Company's Phase 3 clinical trial for AEROSURF®.

In connection with the Merger, Lee's Pharmaceutical Holdings Limited (Lee's), which owned 49.58% of the outstanding shares of CVie prior to the Merger, agreed to indemnify the Windtree shareholders of record on December 20, 2018 (the Indemnitees) for losses resulting from any material inaccuracy in any representation or warranty made by CVie in the Merger Agreement and placed in escrow 984,000 shares of the Merger consideration issued to Lee's affiliate in the Merger for one year. A portion of the escrowed shares will be transferred to the Indemnitees, as the sole and exclusive remedy for a successful indemnity claim.

About the Private Placement

Effective December 21, 2018, Windtree conducted a securities offering and entered into a Securities Purchase Agreement (the SPA) and Registration Rights Agreement (Registration Rights Agreement) with select institutional investors (Investors), pursuant to which Windtree issued an aggregate of 11,785,540 shares of its common stock at a price per share of $3.3132, for an aggregate purchase price of approximately $39.0 million (approximately $36 million net of expenses) (the Financing). In addition, Lee's (through LPH II, an affiliate) and Battelle Memorial Institute converted $6.0 million and $1.0 million, respectively, of existing debt obligations in the Financing on the same terms as the Investors. For each share of common stock issued, Windtree issued (i) an 18-month Series F Warrant to purchase 0.17 share of common stock with an exercise price of $3.68 per share and (ii) a five-year Series G Warrants to purchase 0.33 share of common stock, at an exercise price of $4.05 per share. Both existing and new investors participated in this financing.

The Company conducted the Financing pursuant to Regulation S, Rule 506(b) of Regulation D and Section 4(a)(2) of the Securities Act.

This press release shall not constitute an offer to sell or the solicitation of an offer to buy these securities, nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to the registration or qualification under the securities laws of any such jurisdiction.

The securities issued in connection with the Merger and the Financing have not been registered under the Securities Act of 1933, as amended, or state securities laws and may not be offered or sold in the United States absent registration with the Securities and Exchange Commission or an applicable exemption from such registration requirements. The former CVie shareholders have entered into Lock-up Agreements for a one-year period.

Notice to Reader

Readers are referred to, and encouraged to read in its entirety, Windtree's Form 8-K which is expected to be filed with the Securities and Exchange Commission on or before December 21, 2018, and which includes discussions about the Merger and Private Placement.

Conference Call and Webcast Details

The Company will host a conference call and webcast (including a slide presentation) on Thursday, January 3, 2019 at 8:00 am EST to review and discuss the merger, financing and plans for 2019.

The live webcast, including a slide presentation, can be accessed at http://windtreetx.investorroom.com/events . To participate in the live call and take part in the question and answer session, dial (844) 802-2436 (domestic) or (412) 317-5129 (international).

A replay of the conference call will be accessible one hour after completion through December 28, 2018 by dialing (877) 344-7529 (domestic) or (412) 317-0088 (international) and referencing conference number 10127199. An archive of the webcast will be available on the Company's website at http://windtreetx.investorroom.com/events.

About Windtree Therapeutics
Windtree Therapeutics, Inc. is a clinical-stage biotechnology company focused on developing novel surfactant therapies for respiratory diseases and other potential applications. Windtree's proprietary technology platform includes a synthetic, peptide-containing surfactant (KL4 surfactant) that is structurally similar to endogenous pulmonary surfactant and novel drug-delivery technologies being developed to enable noninvasive administration of aerosolized KL4 surfactant. Windtree is focused initially on improving the management of respiratory distress syndrome (RDS) in premature infants and believes that its proprietary technology may make it possible, over time, to develop a pipeline of KL4 surfactant product candidates to address a variety of respiratory diseases for which there are few or no approved therapies.

For more information, please visit the Company's website at www.windtreetx.com.

About CVie Therapeutics
CVie is a Taiwan-based company founded in 2013 by Lee's Pharmaceutical Holdings Limited and renowned venture capitals from the US and Taiwan. It is a stand-alone drug development company specialized in cardiovascular diseases. CVie currently owns two phase IIb assets that target cardiovascular diseases with significant unmet medical need. Rostafuroxin is a novel precision medicine targeting hypertensive patients with certain genetic profiles with better efficacy and safety than conventional therapies. Istaroxime is a first-in-class luso-inotropic medicine for the treatment of acute heart failure and will have fewer adverse effects than conventional inotropes, namely, increased heart rate, arrhythmia, increased oxygen consumption, hypotension.

Forward-Looking Statements

To the extent that statements in this press release are not strictly historical, all such statements are forward-looking, and are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. These forward-looking statements are subject to certain risks and uncertainties that could cause actual results to differ materially from the statements made. Examples of such risks and uncertainties include those risks related to the post-merger integration of CVie, including with respect to having two international locations, Windtree's product development programs, which are expected to involve time-consuming and expensive clinical trials that may be subject to potentially significant delays or regulatory holds, or fail; risks related to the development of aerosol delivery systems (ADS) and related components; risks related to the manufacture by contract manufacturers or suppliers of drug products, drug substances, ADS and other materials on a timely basis and in sufficient amounts; risks relating to rigorous regulatory requirements, including those of the U.S. Food and Drug Administration or other regulatory authorities that may require significant additional activities, or may not accept or may withhold or delay consideration of applications, or may not approve or may limit approval of Windtree's products; and other risks and uncertainties described in Windtree's filings with the Securities and Exchange Commission including the most recent reports on Forms 10-K, 10-Q and 8-K, and any amendments thereto.

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