

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): **August 17, 2020**

**KINTARA THERAPEUTICS, INC.**  
(Exact name of registrant as specified in its charter)

**Nevada**  
(State or other jurisdiction  
of incorporation)

**001-37823**  
(Commission  
File Number)

**99-0360497**  
(IRS Employer  
Identification No.)

**12707 High Bluff Dr., Suite 200**  
**San Diego, CA 92130**  
(Address of principal executive offices)  
Registrant's telephone number, including area code: **(858) 350-4364**

**DelMar Pharmaceuticals, Inc.**  
(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock	KTRA	The Nasdaq Capital Market

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.

## Explanatory Note

As previously disclosed in the Current Report on Form 8-K filed by DelMar Pharmaceuticals, Inc., a Nevada corporation (“DelMar”), with the Securities and Exchange Commission (the “SEC”) on June 10, 2020, DelMar entered into an Agreement and Plan of Merger and Reorganization, dated as of June 9, 2020, by and among Adgero Acquisition Corp., a wholly-owned subsidiary of DelMar incorporated in the State of Delaware (“Merger Sub”), and Adgero Biopharmaceuticals Holdings, Inc., a Delaware corporation (“Adgero”), pursuant to which Merger Sub will merge with and into Adgero, with Adgero surviving the merger and becoming a direct, wholly-owned subsidiary of DelMar.

On August 19, 2020, upon the terms and subject to the conditions set forth in the Merger Agreement, Merger Sub merged with and into Adgero (the “Merger”). At the effective time of the Merger (the “Effective Time”), the separate corporate existence of Merger Sub ceased and Adgero continued its existence under Delaware law as the surviving corporation in the Merger and a wholly-owned subsidiary of DelMar.

As a result of the Merger, each issued and outstanding share of Adgero common stock, par value \$0.0001 per share (the “Adgero Common Stock”) (other than treasury shares held by Adgero), was converted automatically into the right to receive 1.5740 shares (the “Exchange Ratio”) of DelMar’s common stock, par value \$0.001 per share (the “Common Stock”), and cash in lieu of any fractional shares. Also, at the Effective Time, each outstanding warrant to purchase Adgero Common Stock was converted into a warrant exercisable for that number of shares of Common Stock equal to the product of (x) the aggregate number of shares of Adgero Common Stock for which such warrant was exercisable and (y) the Exchange Ratio.

Immediately following the Merger, DelMar changed its name to “Kintara Therapeutics, Inc.” (“Kintara”).

Unless the context otherwise requires, references herein to “we,” “us,” “our,” and the “Company” refer to Kintara (formerly DelMar) and its subsidiaries.

As a condition to the closing of the Merger, the Company conducted a private placement offering through a placement agent for shares of its newly designated convertible preferred stock (the “Investment Shares”), at a purchase price of \$1,000 per share (the “Private Placement”), pursuant to which the Company was required to sell an aggregate of a minimum of 10,000 Investment Shares, for an aggregate purchase price of at least \$10 million. The Company has the right to sell up to 20,000 Investment Shares, for an aggregate purchase price of \$20 million, with an option to sell an additional 10,000 Investment Shares, for an aggregate amount of \$30 million.

The Investment Shares will be convertible into a number of shares of Common Stock based on the respective conversion price, which will be determined at the time of each round of the Private Placement. The Investment Shares may be issued in multiple classes of Series C Preferred Stock. Each class of Series C Preferred Stock shall have identical terms, except for the conversion price of the particular class of Series C Preferred Stock, which conversion price shall be determined in accordance with Nasdaq Listing Rule 5635(d) and equal to the lesser of (i) the closing price of the Common Stock on The Nasdaq Capital Market (“Nasdaq”) on the date immediately preceding the signing of the applicable binding agreements for the applicable round of the Private Placement for which the Investment Shares are issued or (ii) the average closing price of the Common Stock on Nasdaq for the five trading days immediately preceding the signing of the applicable binding agreements for the applicable round of the Private Placement for which the Investment Shares are issued, rounded up to the nearest whole cent (the “Conversion Price”). The Investment Shares accrue dividends and have the other terms as described under Item 5.03.

In connection with the Private Placement, the placement agent is entitled to receive warrants exercisable for Investment Shares in an amount equal to ten percent of the number of Investment Shares sold in the Private Placement. In addition, at each closing of the Private Placement, the placement agent is entitled to a cash fee equal to 10% of the gross proceeds from the sale of the Investment Shares consummated at such closing, and a non-accountable expense allowance equal to 3% of the aggregate purchase price of the Investment Shares sold at such closing.

### **Item 1.01 Entry into a Material Definitive Agreement**

On August 17, 2020, the Company entered into definitive agreements with certain accredited investors (the “Investors”) in the Private Placement with respect to the sale of an aggregate of 19,587 shares (the “Shares”) of the Company’s Series C-1 Preferred Stock (the “Series C-1 Preferred Stock”), at a purchase price of \$1,000 per Share, pursuant to the terms of separate Subscription Agreements (the “Subscription Agreements”) entered into by and among the Company and the Investors. The Series C-1 Preferred Stock is convertible at a price of \$1.16 per share, for an aggregate of 16,885,345 shares of Common Stock.

The Company and the Investors also entered into a registration rights agreement (the “Registration Rights Agreement”), pursuant to which the Company agreed to file a registration statement covering the resale of shares of Common Stock issuable (i) upon conversion of the Series C-1 Preferred Stock and (ii) as dividends payable on the Series C-1 Preferred Stock, within sixty days after the date of the final closing of the Private Placement.

In connection with the Private Placement, the Company entered into a Placement Agency Agreement, (the “Placement Agency Agreement”), with Aegis Capital Corp., which acted as the Company’s exclusive placement agent (the “Placement Agent”) for the Private Placement. Pursuant to the terms of the Placement Agency Agreement, in connection with the initial closing of the Private Placement, the Company paid the Placement Agent an aggregate cash fee of \$1,958,700, a non-accountable expense allowance of \$487,610 and will issue to the Placement Agent or its designees warrants to purchase 1,959 shares of Series C-1 Preferred Stock (the “Placement Agent Warrants”). The Placement Agent Warrants have an exercise price of \$1,000 per share, provide for a cashless exercise feature and are exercisable for a period of four years from the date of the initial closing of the Private Placement. The Series C-1 Preferred Stock issuable upon exercise of the Placement Agent Warrants will be convertible into shares of Common Stock (the “Placement Agent Warrant Shares”) and will be entitled to the same dividend rights as the outstanding Series C-1 Preferred Stock. In addition, and as compensation for advisory services rendered in connection with the Merger, the Company issued 571,951 shares of Common Stock to the Placement Agent.

The Subscription Agreements contain representations and warranties that the parties made to, and solely for the benefit of, the others in the context of all of the terms and conditions of that agreement and in the context of the specific relationship between the parties. The provisions of such agreements, including the representations and warranties contained therein, are not for the benefit of any party other than the parties to such agreement and are not intended as documents for investors and the public to obtain factual information about the current state of affairs of the parties to that agreement. Rather, investors and the public should look to other disclosures contained in the Company’s filings with the U.S. Securities and Exchange Commission.

The forgoing descriptions of the Subscription Agreements, the Registration Rights Agreement and the Placement Agency Agreement, are qualified by reference to the full text of these documents. Copies of the form of Subscription Agreement, the form of Registration Rights Agreement and the Placement Agency Agreement each are filed herewith as Exhibits 10.5, 10.3, and 10.4 and incorporated herein by reference.

In connection with the pricing of the Private Placement for the Series C-1 Preferred Stock, the Company issued a press release on August 18, 2020, a copy of which is attached hereto as Exhibit 99.1.

**Item 2.01 Completion of Acquisition or Disposition of Assets.***Completion of Merger*

As described above, on August 19 2020, DelMar and Adgero completed their previously announced Merger. As a result of the Merger, Adgero became a wholly-owned subsidiary of DelMar. At the Effective Time, each issued and outstanding share of Adgero Common Stock was automatically converted into the right to receive 1.5470 shares of Common Stock, for an aggregate of 11,439,014 shares of Common Stock. Immediately following the Effective Time, DelMar filed a certificate of amendment to its articles of incorporation to change its name to Kintara Therapeutics, Inc.

Pursuant to terms of the Merger Agreement, each outstanding warrant to purchase Adgero Common Stock was assumed by the Company and converted into a warrant (the "Replacement Warrants") exercisable for that number of shares of Common Stock equal to the product of (i) the aggregate number of shares of Adgero Common Stock for which such warrant was exercisable and (ii) the Exchange Ratio (rounded down to the nearest whole share), for an aggregate of Replacement Warrants to purchase up to an aggregate of 2,313,908 shares of Common Stock. All outstanding Adgero stock options, whether vested or unvested, that had not been exercised were cancelled for no consideration.

The shares of Common Stock issued to the former stockholders of Adgero, and the shares of Common Stock issuable upon the exercise of the Replacement Warrants were registered with the SEC on a Registration Statement on Form S-4 (File No. 333-239215), as amended (the "Registration Statement").

The Common Stock is listed on the Nasdaq Capital Market and previously traded through the close of business on August 19, 2020 under the ticker symbol "DMPT" and commenced trading on the Nasdaq Capital Market under the ticker symbol "KTRA" on August 20, 2020.

The foregoing description of the Merger Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Merger Agreement that was filed as Exhibit 2.1 to the Company's Current Report on Form 8-K filed with the SEC on June 10, 2020, which is incorporated herein by reference.

In connection with the closing of the Merger, the Company issued a press release on August 20, 2020, a copy of which is attached hereto as Exhibit 99.2.

**Item 3.01***Nasdaq Compliance*

As previously disclosed, on September 26, 2019, the Company received a letter from Nasdaq notifying the Company that it did not comply with the minimum \$1.00 per share bid price requirement for continued listing over the previous consecutive 30 days, as set forth in Nasdaq Listing Rule 5550(a)(2) (the "Minimum Bid Price Requirement"). On March 25, 2020, the Company received a written notice from Nasdaq confirming the Company's eligibility for continued listing of its Common Stock on Nasdaq pursuant to an additional 180 calendar day extension through September 21, 2020. On April 20, 2020, the Company received a written notice from Nasdaq stating that, in response to the COVID-19 pandemic and related market conditions, Nasdaq had filed a rule change with the SEC to suspend the compliance period for the minimum closing bid price requirement from April 16, 2020 through June 30, 2020. As a result, the Company had until December 7, 2020 to regain compliance.

On August 18, 2020, the Company received notification from Nasdaq that the closing bid price of the Company's Common Stock has been at \$1.00 per share or greater for ten consecutive business days. Accordingly, the Company had regained compliance with the Minimum Bid Price Requirement.

In connection with receipt of this notice, the Company issued a press release on August 21, 2020, a copy of which is attached hereto as Exhibit 99.3.

### **Item 3.02 Unregistered Sales of Equity Securities**

The information set forth in Item 1.01 of this Current Report on Form 8-K with respect to the Private Placement is incorporated by reference into this Item 3.02.

The securities issued in the Private Placement, the Placement Agent Warrants and Placement Agent Warrant Shares are exempt from the registration requirements of the Securities Act of 1933, as amended (the "Securities Act") pursuant to Section 4(a)(2) of the Securities Act and/or Rule 506(b) of Regulation D promulgated thereunder because, among other things, the transaction did not involve a public offering, the investors are accredited investors, the investors are taking the securities for investment and not resale and the Company took appropriate measures to restrict the transfer of the securities. The securities have not been registered under the Securities Act and may not be sold in the United States absent registration or an exemption from registration. This Current Report on Form 8-K shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any state or jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or jurisdiction.

### **Item 3.03 Material Modification to Rights of Security Holders**

As previously disclosed, at a special meeting of the Company's stockholders held on August 14, 2020, the Company's stockholders approved an amendment to the Company's articles of incorporation, as amended (the "Articles of Incorporation") to change the corporate name of the Company from "DelMar Pharmaceuticals, Inc." to "Kintara Therapeutics, Inc." (the "Name Change").

On August 19, 2020, immediately after the Effective Time, the Company filed an amendment to the Articles of Incorporation with the Secretary of State of the State of Nevada to effect the Name Change, which changed the Company's name from "DelMar Pharmaceuticals, Inc." to "Kintara Therapeutics, Inc." The Name Change did not alter the voting powers or relative rights of the Common Stock.

On August 20, 2020, the trading symbol on the Nasdaq Capital Market for the Common Stock was changed from "DMPI" to "KTRA" solely to reflect the Name Change.

The foregoing description of the Name Change does not purport to be complete and is qualified in its entirety by reference to the complete text of the amendment filed as Exhibit 3.1 to this Current Report on Form 8-K, and incorporated herein by reference.

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

#### *Resignations of Executive Officers and Directors*

Effective on August 19, 2020, upon consummation of the Merger, Lynda Cranston and Napoleone Ferrara resigned from the Board of Directors (the "Board") of the Company and any respective committee of the Board to which they belonged, which resignations were not the result of any disagreements with the Company relating to the Company's operations, policies or practices.

#### *Appointment of Directors*

Upon consummation of the Merger, Messrs John Liatos and Keith Murphy were appointed to the Board.

**John Liatos.** Mr. Liatos (52) has served as Adgero's interim Chief Executive Officer since April 2018, Chief Financial Officer since October 11, 2017 and a director of Adgero since April 2020. Mr. Liatos has over 20 years of financial and operational experience in the private equity and venture capital industries. Since 2008, Mr. Liatos has served as Co-Founding Partner at Aceras BioMedical, LLC, an investment vehicle focused on forming and managing new companies to acquire and develop pre-commercial stage biomedical assets. While at Aceras BioMedical, LLC, Mr. Liatos was involved in the overall formation and business strategy of the Aceras BioMedical, LLC portfolio companies, including functioning as interim Chief Financial Officer and Chief Operations Officer through the first twelve to eighteen months of operations for such portfolio companies. From 2005 to 2008, Mr. Liatos served as Chief Financial Officer to Paramount Biosciences, LLC, a drug development and biotechnology investment firm. From 1997 to 2005, Mr. Liatos worked as a Senior Associate for Gefinor USA, Inc., a private equity firm. From 1995 to 1997, Mr. Liatos worked as a Senior Associate at RJR Nabisco, Inc. in Financial Reporting and Consolidations. From 1992 to 1995, Mr. Liatos served as an auditor for Richard A. Eisner & Company, LLP. Mr. Liatos earned a B.S. in Business Administration from the Citadel. Mr. Liatos' business executive knowledge and experience qualify him to serve on the combined company's board of directors.

Except with respect to the Liatos Assignment described below, there are no transactions between Mr. Liatos and the Company that would be reportable under Item 404(a) of Regulation S-K.

**Keith Murphy** (48) has served as a director of Adgero since August 2017. Mr. Murphy is Chairman, CEO and a founder of Viscient Bio, Inc., a biotech therapeutics company at the forefront of 3D human tissue disease modeling. Mr. Murphy previously was a founder and Chairman Emeritus of and served as the President, Chief Executive Officer of Organovo Holdings, Inc. from July 2007 through April 2017 and served as the Chairman of the Board from July 2007 through August 2017. Mr. Murphy previously served at Alkermes, Inc. (NASDAQ: ALKS), a biotechnology company, from July 1993 to July 1997, where he played a role on the development team for their first approved product, Nutropin (hGH) Depot. He moved to Amgen, Inc. (NASDAQ: AMGN) from August 1997 through July 2007. At Amgen, he held roles of increasing responsibility including Global Operations Leader for the osteoporosis/bone cancer drug Prolia/Xgeva (denosumab), the development of which involved several indications across multiple global Phase 3 studies. He holds a BS in Chemical Engineering from the Massachusetts Institute of Technology and is an alumnus of the UCLA Anderson School of Management. He sits on the Board of the California Life Sciences Association (CLSA).

There are no transactions between Mr. Murphy and the Company that would be reportable under Item 404(a) of Regulation S-K.

#### *Assignment of Employment Agreements*

On August 19, 2020, upon the Effective Time of the Merger, the Company entered into an Assignment of Employment Agreement with John Liatos (the “Liatos Assignment”), pursuant to which the Company agreed to assume all of the rights and obligations under Mr. Liatos prior employment agreement with Adgero, dated as of March 2018 (the “Prior Liatos Agreement”).

Pursuant to the Prior Liatos Agreement, Mr. Liatos receives a base salary of \$320,000 annually, subject to adjustments in the discretion of the board of directors and/or compensation committee. In addition, Mr. Liatos is eligible to receive an annual bonus, which is targeted at up to 35% of his base salary but which may be adjusted by the board of directors and/or compensation committee, based on his individual performance and the Company’s performance as a whole. The Prior Liatos Agreement did not provide a specified term of employment. Pursuant to the terms of the Prior Liatos Agreement, Mr. Liatos is eligible to receive, from time to time, equity awards under the Company’s existing equity incentive plan, or any other equity incentive plan the Company may adopt in the future, and the terms and conditions of such awards, if any, will be determined by the Company’s board of directors or compensation committee, in their discretion. The Liatos Employment Agreement provides for accelerated vesting of all unvested equity awards granted to Mr. Liatos upon certain terminations of employment following a change in control (as defined in the Prior Liatos Agreement). If the Company terminates Mr. Liatos’s employment without cause (as defined in the Prior Liatos Agreement) or Mr. Liatos terminates his employment for good reason (as defined in the Prior Liatos Agreement), the Company is required to provide him severance, provided his termination date is at least six months after he began employment with the Company, including: (i) continued payments of eight (8) months of his annual base salary, paid in installments in accordance with the Company’s regular payroll practices; (ii) reimbursement of healthcare continuation payments under Consolidated Omnibus Budget Reconciliation Act (“COBRA”) for a period of eight (8) months; and (iii) an additional six (6) months of service vesting credit for each of his stock options outstanding at the time of his termination, and all of his vested options will remain exercisable for up to a twelve (12) month period measured from his termination date (or earlier expiration of the options term). Notwithstanding the foregoing, Mr. Liatos’s post-employment healthcare coverage payments as described herein will cease at such time as Mr. Liatos becomes otherwise eligible to obtain alternative healthcare coverage from a new employer if such event occurs prior to the expiration of his receipt of such benefit. Mr. Liatos’s severance benefits will be subject to reduction to the extent doing so would put him in a better after-tax position after taking into account any excise tax he may incur under Section 4999 of the Code in connection with any change in control of us or his subsequent termination of employment. Mr. Liatos is also subject to non-compete and non-solicitation provisions, which will apply during the term of his employment and for a period of twelve (12) months following termination of his employment.

The terms of Mr. Liatos employment with the Company are identical to the terms of the Prior Liatos Agreement except that Mr. Liatos title will be Senior Vice President, Business Development of the Company and Mr. Liatos will work remotely.

The foregoing description of the Prior Liatos Assignment does not purport to be complete and is qualified in its entirety by reference to the complete text of the Liatos Assignment which is filed herewith as Exhibit 10.1, respectively, and incorporated herein by reference.

#### **Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year**

The information set forth in Item 3.03 of this Current Report on Form 8-K is incorporated by reference into this Item 5.03.

##### *Series C-1 Preferred Stock*

As described above, in connection with the consummation of the Merger, the Company completed the initial closing of the Private Placement, and on August 19, 2020 the Company filed a Certificate of Designation of Preferences, Rights and Limitations of Series C-1 Preferred Stock (the "Certificate of Designation") with the Secretary of State of the State of Nevada that became effective immediately. Pursuant to the Certificate of Designation, the Company designated 22,000 shares of the Company's previously undesignated preferred stock as Series C-1 Preferred Stock (the "Series C-1 Preferred Stock"). Each class of Series C Preferred Stock issued in the Private Placement shall have identical terms, except for the Conversion Price of the particular class of Series C Preferred Stock. The Series C-1 Preferred Stock has a conversion price of \$1.16 per share and otherwise has the terms as set forth below.

*Dividends.* The Series C Preferred Stock will be entitled to receive dividends, payable in shares of Common Stock at a rate of 10%, 15%, 20% and 25% of the number of shares of Common Stock issuable upon conversion of the Series C Preferred Stock, on the 12th, 24th, 36th and 48th month, anniversary of the initial closing of the Private Placement which occurred on August 19, 2020. Dividends will be payable in shares of Common Stock and will only be payable to those holders that continue to hold the Series C Preferred Stock on the respective anniversary dates of August 19, 2020. The Dividends set forth above shall be accelerated and paid (to the extent not previously paid) upon the consummation of a Fundamental Transaction (as defined in the Certificate of Designation) and upon the Mandatory Conversion Date (as defined in the Certificate of Designation), to the extent accrued as of the Mandatory Conversion Date and not previously paid as of such date. In addition, each holder of Series C Preferred Stock will be entitled to receive dividends equal, on an as-converted to shares of Common Stock basis, to and in the same form as dividends actually paid on shares of Common Stock when, as, and if such dividends are paid on shares of Common Stock.

*Rank.* The Series C Preferred Stock will rank on parity with the shares of the Company's Series A Preferred Stock and Series B Preferred Stock.

*Liquidation.* Upon any dissolution, liquidation or winding up, whether voluntary or involuntary, holders of Series C Preferred Stock, together with the Series A Preferred Stock and Series B Preferred Stock, will be entitled to receive distributions out of the Company's assets in an amount per share equal to \$1,000 with respect to the Series C Preferred Stock (and \$1.00 and \$8.00 per share, respectively, for the Series A Preferred Stock and Series B Preferred Stock) plus all accrued and unpaid dividends, whether capital or surplus before any distributions shall be made on any shares of Common Stock.

*Conversion.* Upon the earlier of (i) the four year anniversary of the initial closing of the Private Placement which occurred on August 19, 2020 or (ii) the consent to conversion by holders of at least 50.1% of all of the then-outstanding shares of Series C Preferred Stock, without any action on the part of the holder, each share of Series C Preferred Stock will automatically convert into shares of Common Stock at the Conversion Price. In addition, each share of Series C Preferred Stock will be convertible, at any time and from time to time at the option of the holder, into that number of shares of Common Stock at the Conversion Price, subject to adjustment. The Conversion Price of the Series C Preferred Stock, will equal the lesser of (i) the closing price of the Common Stock on Nasdaq on the date immediately preceding the signing of the applicable binding agreements for the applicable round of the Private Placement for which the Series C Preferred Stock is issued or (ii) the average closing price of the Common Stock on Nasdaq for the five trading days immediately preceding the signing of the applicable binding agreements for the applicable round of the Private Placement for which the Series C Preferred Stock is issued, subject to adjustment.

*Conversion Price Adjustment:*

*Stock Dividends and Stock Splits.* If we pay a stock dividend or otherwise make a distribution payable in shares of Common Stock on shares of Common Stock or any other common stock equivalents, subdivide or combine outstanding Common Stock, or reclassify Common Stock, the Conversion Price will be adjusted by multiplying the then conversion price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately before such event, and the denominator of which shall be the number of shares outstanding immediately after such event.

*Fundamental Transaction.* If we effect a fundamental transaction, then upon any subsequent conversion of Series C Preferred Stock, the holder thereof shall have the right to receive, for each share of Common Stock that would have been issuable upon such conversion immediately prior to the occurrence of such fundamental transaction, the number of shares of the successor's or acquiring corporation's common stock or of Common Stock, if we are the surviving corporation, and any additional consideration receivable as a result of such fundamental transaction by a holder of the number of shares of Common Stock into which Series C Preferred Stock is convertible immediately prior to such fundamental transaction. A fundamental transaction means: (i) a merger or consolidation with or into another entity, (ii) any sale of all or substantially all of our assets in one transaction or a series of related transactions, or (iii) any reclassification of Common Stock or any compulsory share exchange by which Common Stock is effectively converted into or exchanged for other securities, cash or property.

*Voting Rights.* Except as otherwise provided in the certificate of designation or required by law, Series C Preferred Stock shall have no separate class voting rights. The certificate of designation provides that each share of Series C Preferred Stock will entitle its holder to vote with the Common Stock on an as-converted basis. Notwithstanding certain protections in the certificate of designation, Nevada law also provides holders of preferred stock with certain rights. The holders of the outstanding shares of Series C Preferred Stock generally will be entitled to vote as a class upon a proposed amendment to the Company's Articles of Incorporation if the amendment would:

- increase or decrease the aggregate number of authorized shares of Series C Preferred Stock;
- increase or decrease the par value of the shares of Series C Preferred Stock;
- authorize or issue an additional class or series of capital stock that ranks senior to the Series C Preferred Stock with respect to dividends, redemption or distribution of assets upon liquidation, dissolution or winding up of the Company or entering into any agreement with respect to the foregoing; or
- alter or change the powers, preferences, or special rights of the shares of Series C Preferred Stock so as to affect them adversely.

*Fractional Shares.* No fractional shares of Common Stock will be issued upon conversion of Series C Preferred Stock. Rather, we will round up to the next whole share.

The foregoing description of the terms of the Series C-1 Preferred Stock does not purport to be complete and is qualified in its entirety by reference to the complete text of the amendment to the Certificate of Designation that which is filed herewith as Exhibit 3.2, and incorporated herein by reference.

**Item 9.01. Financial Statements and Exhibits.**

(a) *Financial Statements of Businesses Acquired*

The Company intends to file the financial statements required by this Item by an amendment to this Report no later than 71 days after the date this initial report on Form 8-K must be filed.



(b) *Pro Forma Financial Information*

The Company intends to file the financial statements required by this Item by an amendment to this Report no later than 71 days after the date this initial report on Form 8-K must be filed.

(d) Exhibits.

<b>Exhibit No.</b>	<b>Exhibit</b>
2.1*	<a href="#"><u>Agreement and Plan of Merger and Reorganization, dated June 9, 2020, by and among DelMar Pharmaceuticals, Inc., Adgero Acquisition Corp. and Adgero Biopharmaceuticals Holdings, Inc. (filed as Exhibit 2.1 to the Company's Current Report on Form 8-K as filed on June 10, 2020, and incorporated herein by reference)</u></a>
3.1	<a href="#"><u>Amendment to Articles of Incorporation of the Company related to the Name Change</u></a>
3.2	<a href="#"><u>Certificate of Designation of Preferences, Rights and Limitations of Series C-1 Preferred Stock.</u></a>
10.1	<a href="#"><u>Amended and Restated Employment Agreement, dated as of March 1, 2018, by and among Adgero Biopharmaceuticals Holdings, Inc. and John Liatos (incorporated by reference to Exhibit 10.36 to the Company's Registration Statement on Form S-4 filed with the SEC on July 2, 2020).</u></a>
10.3	<a href="#"><u>Form of Registration Rights Agreement (incorporated by reference to Exhibit 10.43 to Amendment No. 1 to the Company's Registration Statement on Form S-4 filed with the SEC on July 2, 2020)</u></a>
10.4	<a href="#"><u>Placement Agency Agreement, dated as of June 24, 2020, by and among DelMar Pharmaceuticals, Inc. and Aegis Capital Corp.</u></a>
10.5	<a href="#"><u>Form of Subscription Agreement</u></a>
99.1	<a href="#"><u>Press Release dated August 18, 2020</u></a>
99.2	<a href="#"><u>Press Release dated August 20, 2020</u></a>
99.3	<a href="#"><u>Press Release dated August 21, 2020</u></a>

\*Schedule have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The Company hereby undertakes to furnish copies of any of the omitted schedules upon request by the Securities and Exchange Commission.

\*

**SIGNATURE**

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

Kintara Therapeutics, Inc.  
a Nevada corporation  
(Registrant)

Date: August 21, 2020

By: /s/ Scott Prail  
Name: Scott Prail  
Title: Chief Financial Officer





BARBARA K. CEGAVSKE  
Secretary of State  
202 North Carson Street  
Carson City, Nevada 89701-4201  
(775) 684-5708  
Website: www.nvsos.gov

**Profit Corporation:**  
**Certificate of Amendment** (PURSUANT TO NRS 78.380 & 78.385/78.390)  
**Certificate to Accompany Restated Articles or Amended and**  
**Restated Articles** (PURSUANT TO NRS 78.403)  
**Officer's Statement** (PURSUANT TO NRS 80.030)

**4. Effective Date and Time:** (Optional)

Date:  Time:

(must not be later than 90 days after the certificate is filed)

**5. Information Being Changed:** (Domestic corporations only)

Changes to takes the following effect:

- The entity name has been amended.
- The registered agent has been changed. (attach Certificate of Acceptance from new registered agent)
- The purpose of the entity has been amended.
- The authorized shares have been amended.
- The directors, managers or general partners have been amended.
- IRS tax language has been added.
- Articles have been added.
- Articles have been deleted.
- Other.

The articles have been amended as follows: (provide article numbers, if available)

Article FIRST of the Articles of Incorporation of DelMar Pharmaceuticals, Inc. is hereby deleted and replaced in its entirety with the following: "FIRST: The name of the corporation is Kintara Therapeutics, Inc."

DocuSigned by:  (attach additional page(s) if necessary)

**6. Signature:** (Required)

X Said Barrabian   
Signature of Officer or Authorized Signer Title

X Scott Prail   
Signature of Officer or Authorized Signer Title

\*If any proposed amendment would alter or change any preference or any relative or other right given to any class or series of outstanding shares, then the amendment must be approved by the vote, in addition to the affirmative vote otherwise required, of the holders of shares representing a majority of the voting power of each class or series affected by the amendment regardless to limitations or restrictions on the voting power thereof.

Please include any required or optional information in space below:  
(attach additional page(s) if necessary)

This form must be accompanied by appropriate fees.

**CERTIFICATE OF DESIGNATION OF PREFERENCES,  
RIGHTS AND LIMITATIONS  
OF  
SERIES C-1 PREFERRED STOCK  
  
OF  
  
DELMAR PHARMACEUTICALS, INC.**

It is hereby certified that:

1. The name of the Company (hereinafter called the "Company") is DelMar Pharmaceuticals, Inc., a Nevada corporation.
2. The Certificate of Incorporation of the Company authorizes the issuance of five Million (5,000,000) shares of preferred stock, \$0.001 par value per share, of which 278,530 has been designated as Series A Preferred Stock and 1,000,000 has been designated as Series B Preferred Stock, and expressly vests in the Board of Directors of the Company the authority to issue any or all of said shares in one (1) or more series and by resolution or resolutions to establish the designation and number and to fix the relative rights and preferences of each series to be issued.
3. The Board of Directors of the Company, pursuant to the authority expressly vested in it as aforesaid, has adopted the following resolutions creating a Series C-1 issue of Preferred Stock:

**RESOLVED**, that Twenty Two Thousand (22,000) of the Five Million (5,000,000) authorized shares of Preferred Stock of the Company shall be designated Series C-1 Preferred Stock, and shall possess the rights and preferences set forth below:

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

"**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 of the Securities Act. A Person shall be regarded as in control of the Company if the Company owns or directly or indirectly controls more than fifty percent (50%) of the voting stock or other ownership interest of the other person, or if it possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such person.

"**Alternate Consideration**" shall have the meaning set forth in Section 7(d).

"**Attribution Parties**" shall have the meaning set forth in Section 6(e).

"**Beneficial Ownership Limitation**" shall have the meaning set forth in Section 6(e).

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“**Business Day**” means any day except Saturday, Sunday, and any day which shall be 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. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

“**Buy-In**” shall have the meaning set forth in Section 6(d)(iv) hereto.

“**Certificate of Designations**” means this Certificate of Designation of Preferences, Rights and Limitations of Series C-1 Preferred Stock.

“**Commission**” means the United States Securities and Exchange Commission.

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

“**Common Stock Equivalents**” means any securities of the Company or the Subsidiaries of the Company, whether or not vested or otherwise convertible or exercisable into shares of Common Stock at the time of such issuance, 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 exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock, and excluding shares of Common Stock issuable upon conversion of the Series C-1 Preferred Stock.

“**Company Conversion Notice**” means a notice delivered by the Company to effect a Mandatory Conversion of all the outstanding Series C-1 Preferred Stock, provided that the effective date of such Mandatory Conversion shall be no less than ten (10) Business Days following the date that such notice is deemed to have been given.

“**Control Limitation**” shall have the meaning set forth in Section 6(f).

“**Conversion Amount**” means the Stated Value at issue.

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

“**Conversion Price**” means \$1.16, subject to adjustment as set forth in Section 7.

“**Conversion Shares**” means the shares of Common Stock issuable upon conversion of the shares of Series C-1 Preferred Stock in accordance with the terms hereof.

“**Dividend**” shall have the meaning set forth in Section 3.

“**Dividend Shares**” shall have the meaning set forth in Section 3.

“**Effective Date**” means the date that the Certificate of Designation of Preferences, Rights and Limitations of Series C-1 Preferred Stock is filed with the Secretary of State of Nevada.

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

“**First Anniversary**” shall have the meaning set forth in Section 3.

“**Fourth Anniversary**” shall have the meaning set forth in Section 3.

“**Fundamental Transaction**” shall have the meaning set forth in Section 7(d).

“**Holder**” shall mean an owner of shares of Series C-1 Preferred Stock.

“**Junior Securities**” shall be the Common Stock and any other class or series of capital stock of the Company hereafter created which does not expressly rank pari passu with or senior to the Series C-1 Preferred Stock.

“**Liquidation**” shall have the meaning set forth in Section 5(a).

“**Mandatory Conversion**” shall have the meaning set forth in Section 6(b).

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

“**Mandatory Conversion Determination**” shall have the meaning set forth in Section 6(b).

“**Nevada Courts**” shall have the meaning set forth in Section 8(d).

“**New York Courts**” shall have the meaning set forth in Section 8(d).

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

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

“**Original Issue Date**” means the date of the first issuance of any shares of Series C-1 Preferred Stock regardless of the number of transfers of any particular shares of Series C-1 Preferred Stock and regardless of the number of certificates which may be issued, if any, to evidence such Series C-1 Preferred Stock.

“**Parity Securities**” means the Series A Preferred Stock, the Series B Preferred Stock and any other class or series of capital stock of the Company hereinafter created that expressly ranks pari passu with the Series C-1 Preferred Stock.

“**Person**” means an individual, entity, corporation, partnership, association, limited liability company, limited liability partnership, joint-stock company, trust or unincorporated organization.

“**PIK Shares**” shall have the meaning set forth in Section 3.

“**Preferred Stock**” means the Company’s preferred stock, par value \$0.001 per share, and stock of any other class of securities into which such securities may hereafter be reclassified or changed into.

“**Purchase Rights**” shall have the meaning set forth in Section 7(b).

“**Second Anniversary**” shall have the meaning set forth in Section 3.

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

“**Senior Securities**” shall be any class or series of capital stock of the Company hereafter created which expressly ranks senior to the Series C-1 Preferred Stock.

“**Series A Preferred Stock**” means the Company’s Series A Preferred Stock, par value \$0.001 per share.

“**Series B Preferred Stock**” means the Company’s Series B Preferred Stock, par value \$0.001 per share.

“**Series C Preferred Stock**” means the one or more series of the Company’s preferred stock, par value \$0.001 per share, offered and sold in connection with the Placement Agency Agreement dated June 22, 2020, between the Company and Aegis Capital Corp.

“**Series C-1 Preferred Stock**” shall have the meaning set forth in Section 2.

“**Share Delivery Date**” shall have the meaning set forth in Section 6(d).

“**Stated Value**” means \$1,000.00 per share of Series C-1 Preferred Stock.

“**Subsidiary**” means any subsidiary of the Company as set forth on Exhibit 21.1 to the Company’s Annual Report on Form 10-K most recently filed with the Commission, and shall, where applicable, also include any direct or indirect subsidiary of the Company formed or acquired after the Effective Date.

“**Third Anniversary**” shall have the meaning set forth in Section 3.

“**Trading Day**” means a day on which the principal Trading Market is open for business.



“**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).

“**Transfer Agent**” means Mountain Share Transfer, Inc., the current transfer agent of the Company, with a mailing address of 2030 Powers Ferry Road SE, Suite #212, Atlanta, GA 30339, a facsimile number of (404)-816-8830 and an email address of esn@mountainsharetransfer.com, and any successor transfer agent of the Company.

Section 2. Designation and Authorized Shares. The series of Preferred Stock designated by this Certificate of Designations shall be designated as the Company’s Series C-1 Convertible Preferred Stock (the “**Series C-1 Preferred Stock**”) and the number of shares so designated shall be Twenty Two Thousand (22,000). So long as any of the Series C-1 Preferred Stock are issued and outstanding, the Company shall not issue any shares of its preferred stock that are senior to the Series C-1 Preferred Stock in Liquidation without the approval of the Holders of a majority of the issued and outstanding shares of Series C-1 Preferred Stock. The Series C-1 Preferred Stock shall not be redeemed for cash and under no circumstances shall the Company be required to net cash settle the Series C-1 Preferred Stock.

Section 3. Dividends. Holders of shares of Series C-1 Preferred Stock will be entitled to receive: (a) dividends (the “**Dividends**”) payable as follows: (i) a number of shares of Common Stock equal to ten percent (10%) of the number of shares of Common Stock issuable upon conversion of the Series C-1 Preferred Stock then held by such Holder on the 12-month anniversary of the Effective Date (the “**First Anniversary**”), (ii) a number of shares of Common Stock equal to fifteen percent (15%) of the number of shares of Common Stock issuable upon conversion of the Series C-1 Preferred Stock then held by such Holder on the 24-month anniversary of the Effective Date (the “**Second Anniversary**”), (iii) a number of shares of Common Stock equal to twenty percent (20%) of the shares of Common Stock issuable upon conversion of the Series C-1 Preferred Stock then held by such Holder on the 36-month anniversary of the Effective Date (the “**Third Anniversary**”) and (iv) a number of shares of Common Stock equal to twenty five percent (25%) of the shares of Common Stock issuable upon conversion of the Series C-1 Preferred Stock then held by such Holder on the 48-month anniversary of the Effective Date (the “**Fourth Anniversary**”) (collectively, the “**PIK Shares**”); and (b) dividends equal, on an as-if-converted to shares of Common Stock basis, to and in the same form as dividends actually paid on shares of the Common Stock when, as, and if such dividends are paid on shares of the Common Stock. The Dividends set forth in clause (a) of this Section 3 will be satisfied solely by delivery of shares of Common Stock. The Dividends set forth in clause shall be accelerated and paid (to the extent not previously paid) upon the consummation of a Fundamental Transaction. The Dividends set forth in clause (a) shall be paid upon the Mandatory Conversion Date, to the extent accrued as of the Mandatory Conversion Date and not previously paid as of such date. Notwithstanding the foregoing, to the extent that a Holder’s right to participate in any dividend of PIK Shares or any stock dividend declared on the Common Stock to which such Holder is entitled to pursuant to clause (b) of this Section 3 (“**Dividend Shares**”) would result in such Holder exceeding the Beneficial Ownership Limitation or the Control Limitation, then such Holder shall not be entitled to participate in any such dividend to such extent (or in the beneficial ownership of any PIK Shares or Dividend Shares as a result of such dividend to such extent) and the portion of such PIK Shares and/or Dividend Shares that would cause such Holder to exceed the Beneficial Ownership Limitation or the Control Limitation shall be held in abeyance by the Company for the benefit of such Holder (which shall not give the Holder any power to vote or dispose of such Dividend Shares) until such time, if ever, as such Holder’s beneficial ownership thereof would not result in such Holder exceeding the Beneficial Ownership Limitation or the Control Limitation. For the avoidance of doubt, at any time during which there is no effective registration statement for the issuance or resale of the PIK Shares or Dividend Shares, the Company may pay such dividends with unregistered Common Stock.

Section 4. Voting Rights. On any matter presented to the stockholders of the Company for their action or consideration at any meeting of stockholders of the Company (or by written consent of stockholders in lieu of meeting), and subject to the Beneficial Ownership Limitation set forth in Section 6(e) and the Control Limitation set forth in Section 6(f), each Holder of outstanding shares of Series C-1 Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Series C-1 Preferred Stock held by such holder are convertible, subject to the Beneficial Ownership Limitation set forth in Section 6(e) and the Control Limitation set forth in Section 6(f), as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the other provisions of the Certificate of Incorporation, Holders of Series C-1 Preferred Stock shall vote together with the holders of Common Stock as a single class. The Holders shall be entitled to the same notice of any regular or special meeting of the stockholders as may or shall be given to holders of Common Stock entitled to vote at such meetings. As long as any shares of Series C-1 Preferred Stock are outstanding, the Company may not, without the affirmative vote of the Holders of the majority of the then outstanding shares of the Series C-1 Preferred Stock voting as a separate class, (a) alter or change adversely the powers, preferences or rights given to the Series C-1 Preferred Stock or alter or amend this Certificate of Designation, (b) authorize or create any class of stock ranking as to dividends, redemption or distribution of assets upon a liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, that is senior to the Series C-1 Preferred Stock, (c) amend its certificate of incorporation or other charter documents in any manner that adversely affects any rights of the Holders, (d) increase the number of authorized shares of Series C-1 Preferred Stock, or (e) enter into any agreement with respect to any of the foregoing. Notwithstanding anything contained herein to the contrary, no holder of Series C-1 Preferred Stock shall be entitled to vote on any matter presented to the Company's stockholders relating to approving the conversion of such holder's Series C-1 Preferred Stock into an amount in excess of the Control Limitation.

Section 5. Liquidation.

(a) The Series C-1 Preferred Stock shall, with respect to distributions of assets and rights upon the occurrence of any liquidation, dissolution or winding-up of the Company ("**Liquidation**"), rank: (i) junior to the Senior Securities, (ii) pari passu with the Parity Securities; and (iii) senior to the Junior Securities of the Company. Upon any Liquidation, after the satisfaction in full of the debts of the Company and payment of the liquidation preference to the Senior Securities, the Holders of shares of Series C-1 Preferred Stock shall be entitled to be paid, on a pari passu basis with the payment of any liquidation preference afforded to holders of any Parity Securities, for each share of Series C-1 Preferred Stock held thereby, out of (but only to the extent) the assets of the Company are legally available for distribution to its stockholders, an amount equal to the Stated Value per share (as adjusted for stock splits, stock dividends, combinations or other recapitalizations of the Series C-1 Preferred Stock), plus any accrued but unpaid dividends before any distribution or payment may be made to the holders of any Junior Securities. If the assets of the Company available for distribution to Holders of shares of Series C-1 Preferred Stock shall be insufficient to permit payment in full to such Holders of the sums which such Holders are entitled to receive in such case and of any liquidation preference afforded to holders of any Parity Securities, then all of the assets available for distribution to holders of the Series C-1 Preferred Stock and the Parity Securities shall be distributed among and paid to such holders ratably in proportion to the amounts that would be payable to such holders if such assets were sufficient to permit payment in full.

(b) After the Holders of all shares of Series C-1 Preferred Stock shall have been paid in full the amounts to which they are entitled pursuant to paragraph 5(a), the shares of Series C-1 Preferred Stock shall not be entitled to any further participation in any distribution of assets of the Company.

Section 6. Conversion.

(a) Conversions at Option of Holder. Each share of Series C-1 Preferred Stock (or fraction thereof) shall be convertible, at any time and from time to time, from and after the Original Issue Date at the option of the Holder thereof into that number of shares of Common Stock (subject to the Beneficial Ownership Limitation set forth in Section 6(e) and the Control Limitation set forth in Section 6(f)) determined by dividing the Stated Value by the Conversion Price then in effect. Holders shall effect conversions by providing the Company and the Transfer Agent, with the form of conversion notice attached hereto as Annex A (a "**Notice of Conversion**"). Each Notice of Conversion shall specify the number of shares of Series C-1 Preferred Stock to be converted, the number of shares of Series C-1 Preferred Stock owned prior to such conversion, the number of shares of Series C-1 Preferred Stock owned subsequent to such conversion and the date on which such conversion is to be effected, which date may not be prior to the date the applicable Holder delivers such Notice of Conversion to the Company pursuant to Section 6 and in accordance with Section 9 (such date, the "**Optional Conversion Date**"). Such Holder shall be deemed for all corporate purposes to have become the holder of record of the Conversion Shares with respect to which the shares of Series C-1 Preferred Stock have been converted as of the Optional Conversion Date. If no Optional Conversion Date is specified in a Notice of Conversion, the Optional Conversion Date shall be the date that such Notice of Conversion and Cancellation Request are deemed delivered to the Company in accordance with Section 9. The calculations and entries set forth in the Notice of Conversion shall control in the absence of manifest or mathematical error. No ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion form be required. To effect conversions of shares of Series C-1 Preferred Stock, a Holder shall not be required to surrender any Certificated Series C-1 Preferred Stock to the Company unless all of the shares of Series C-1 Preferred Stock represented by any such certificate are so converted, in which case such Holder shall deliver the Certificated Series C-1 Preferred Stock promptly following the Optional Conversion Date. To the extent that the Beneficial Ownership Limitation contained in Section 6(e) or the Control Limitation contained in Section 6(f) applies to the converting Holder, the determination of whether the Series C-1 Preferred Stock is convertible (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and of how many shares of Series C-1 Preferred Stock are convertible shall be in the sole discretion of such Holder, and the submission of a Notice of Conversion shall be deemed to be such Holder's determination of whether the shares of Series C-1 Preferred Stock may be converted (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and how many shares of the Series C-1 Preferred Stock are convertible, in each case subject to the Beneficial Ownership Limitation or the Control Limitation. To ensure compliance with this restriction, each Holder will be deemed to represent to the Company each time it delivers a Notice of Conversion that such Notice of Conversion has not violated the restrictions set forth in this Section and the Company shall have no obligation to verify or confirm the accuracy of such determination.

(b) **Mandatory Conversion.** On the earliest to occur of: (i) the effective date of such conversion set forth in the Company Conversion Notice, provided that the Company may not deliver the Company Conversion Notice unless Holders of at least 50.1% of all outstanding shares of Series C Preferred Stock consented to such conversion prior to the delivery of the Company Conversion Notice; or (ii) the Fourth Anniversary (the earlier to occur of the foregoing, the “**Mandatory Conversion Date**” and together with an Optional Conversion Date, the “**Conversion Date**”), each outstanding share of Series C-1 Preferred Stock will automatically convert (subject to the Beneficial Ownership Limitation set forth in Section 6(e) and the Control Limitation contained in Section 6(f)) into such number of fully paid and non-assessable shares of Common Stock as is determined by dividing the Stated Value by the Conversion Price in effect on the Mandatory Conversion Date (a “**Mandatory Conversion**”). Within two Trading Days of (x) the Mandatory Conversion Date, if the shares of Series C-1 Preferred Stock are held in book entry form, or (y) such Holder’s surrender of Certificated Series C-1 Preferred Stock (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and an indemnity or security reasonably acceptable to the Company (which shall not include the posting of any bond) to indemnify the Company against any claim that may be made against the Company on account of the alleged loss, theft or destruction of such certificate), the Company shall deliver: (I) to each Holder, the Conversion Shares issuable upon conversion of such Holder’s Series C-1 Preferred Stock via the Certificated Preferred Stock, and (II) the PIK Shares issuable upon Mandatory Conversion under Section 3, to Holders as of the Mandatory Conversion Date; provided that, any failure by the Holder to return Certificated Series C-1 Preferred Stock, if any, will have no effect on the Mandatory Conversion pursuant to this Section 6(b), which Mandatory Conversion will be deemed to occur on the Mandatory Conversion Date. To the extent that the Beneficial Ownership Limitation contained in Section 6(e) or the Control Limitation contained in Section 6(f) applies to any Holder, such Holder shall within five Business Days of such Holder’s receipt of the Company Conversion Notice, provide the Company with a written determination (a “**Mandatory Conversion Determination**”), delivered in accordance with Section 9, of whether such Holder’s Series C-1 Preferred Stock is convertible (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and of how many shares of Series C-1 Preferred Stock are convertible, and the submission of a Mandatory Conversion Determination shall be deemed to be such Holder’s determination of the maximum number of shares of Series C-1 Preferred Stock that may be converted, subject to the Beneficial Ownership Limitation or the Control Limitation and the portion of the shares of Common Stock issuable upon such Mandatory Conversion hereunder that would cause such Holder to exceed the Beneficial Ownership Limitation or the Control Limitation shall be held in abeyance by the Company for the benefit of such Holder (which shall not give the Holder any power to vote or dispose of such shares during such abeyance period) until such time, if ever, as such Holder’s beneficial ownership thereof would not result in such Holder exceeding the Beneficial Ownership Limitation or the Control Limitation. To ensure compliance with this restriction, each Holder will be deemed to represent to the Company each time it delivers a Mandatory Conversion Determination that such determination has not violated the restrictions set forth in Section 6(e) or Section 6(f) and the Company shall have no obligation to verify or confirm the accuracy of such determination.

(c) Conversion Shares. The aggregate number of Conversion Shares which the Company shall issue upon conversion of the Series C-1 Preferred Stock (whether pursuant to Section 6(a) or 6(b)) will be equal to the number of shares of Series C-1 Preferred Stock to be converted, multiplied by the Stated Value, divided by the Conversion Price in effect at the time of the conversion. For the avoidance of doubt, at any time during which there is no effective registration statement for the issuance or resale of the Conversion Shares, the Company may settle a conversion of the Series C-1 Preferred Stock (whether pursuant to Section 6(a) or 6(b)) with unregistered Common Stock.

(d) Mechanics of Conversion.

(i) Delivery of Conversion Shares upon Conversion. Promptly after the applicable Conversion Date, but in any case within the earlier of (i) two (2) Trading Days and (ii) the Standard Settlement Period (as defined below) thereof (the "**Share Delivery Date**"), the Company shall deliver, or cause to be delivered, to the converting Holder the number of Conversion Shares being acquired upon the conversion of the Series C-1 Preferred Stock pursuant to Section 6(a) or 6(b), as applicable, any PIK Shares to which the Holder is entitled pursuant to Section 3 that have not been previously issued, if any, and a wire transfer of immediately available funds in the amount of accrued and unpaid cash dividends, if any. Conversion Shares issuable hereunder shall be transmitted by the Transfer Agent to the Holder by crediting the account of the Holder's or its designee's balance account with DTC through its Deposit or Withdrawal at Custodian system ("DWAC") if the Company is then a participant in such system and otherwise by physical delivery of a certificate, registered in the Company's share register in the name of the Holder or its designee, for the number of Conversion Shares and PIK Shares, if any, to which the Holder is entitled pursuant to such conversion to the address specified by the Holder in the Notice of Conversion or the Company Conversion Notice, as the case may be. The Company shall (A) deliver (or cause to be delivered) to the converting Holder who has converted less than all of such Holder's Certificated Series C-1 Preferred Stock (1) a certificate or certificates, of like tenor, for the number of shares of Series C-1 Preferred Stock evidenced by any surrendered certificate or certificates less the number of shares of Series C-1 Preferred Stock converted. The Company agrees to maintain a transfer agent that is a participant in the DTC's FAST program so long as any shares of Series C-1 Preferred Stock remain outstanding. As used herein, "**Standard Settlement Period**" means the standard settlement period, expressed in a number of Trading Days, on the Company's primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Conversion.

(ii) Failure to Deliver Conversion Shares upon an Optional Conversion If, in the case of any Notice of Conversion, such Conversion Shares are not delivered to or as directed by the applicable Holder by the Share Delivery Date, in addition to any other rights herein, the Holder shall be entitled to elect by written notice to the Transfer Agent, on behalf of the Company, at any time on or before its receipt of such Conversion Shares, to rescind such Conversion, in which event the Company shall promptly return to the Holder any Certificated Series C-1 Preferred Stock delivered to the Company and the Holder shall promptly return to the Company the Conversion Shares issued to such Holder pursuant to the rescinded Notice of Conversion.

(iii) Obligation Absolute; Partial Liquidated Damages. The Company's obligation to issue and deliver the Conversion Shares upon conversion of Series C-1 Preferred Stock in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by a Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by such Holder or any other Person of any obligation to the Company or any violation or alleged violation of law by such Holder or any other person, and irrespective of any other circumstance which might otherwise limit such obligation of the Company to such Holder in connection with the issuance of such Conversion Shares; provided, however, that such delivery shall not operate as a waiver by the Company of any such action that the Company may have against such Holder. In the event a Holder shall elect to convert any or all of its Series C-1 Preferred Stock, the Company may not refuse conversion based on any claim that such Holder or any one associated or affiliated with such Holder has been engaged in any violation of law, agreement or for any other reason, unless an injunction from a court, on notice to Holder, restraining and/or enjoining conversion of all or part of the Series C-1 Preferred Stock of such Holder shall have been sought and obtained, and the Company posts a surety bond for the benefit of such Holder in the amount of 150% of the Stated Value of Series C-1 Preferred Stock which is subject to the injunction, which bond shall remain in effect until the completion of arbitration/litigation of the underlying dispute and the proceeds of which shall be payable to such Holder to the extent it obtains judgment. In the absence of such injunction, the Company shall issue Conversion Shares upon a properly noticed conversion. If the Company fails to deliver to a Holder such Conversion Shares pursuant to Section 6(d)(i) on the Share Delivery Date applicable to such conversion, the Company shall pay to such Holder, in cash, as liquidated damages and not as a penalty, for each \$1,000 of Stated Value of the Series C-1 Preferred Stock being converted, \$10 per Trading Day (increasing to \$20 per Trading Day on the fifth Trading Day after such damages begin to accrue) for each Trading Day after the Share Delivery Date until such Conversion Shares are delivered or Holder rescinds such conversion. Nothing herein shall limit a Holder's right to pursue actual damages for the Company's failure to deliver Conversion Shares within the period specified herein and such Holder shall have the right to pursue all remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief. The exercise of any such rights shall not prohibit a Holder from seeking to enforce damages pursuant to any other Section hereof or under applicable law.

(iv) Compensation for Buy-In on Failure to Timely Deliver Conversion Shares Upon Conversion. In addition to any other rights available to the Holder, if the Company fails for any reason to deliver to a Holder the applicable Conversion Shares by the Share Delivery Date pursuant to Section 6(d)(i), and if after such Share Delivery Date such Holder is required by its brokerage firm to purchase (in an open market transaction or otherwise), or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by such Holder of the Conversion Shares which such Holder was entitled to receive upon the conversion relating to such Share Delivery Date (a "Buy-In"), then the Company shall (A) pay in cash to such Holder (in addition to any other remedies available to or elected by such Holder) the amount, if any, by which (x) such Holder's total purchase price (including any brokerage commissions) for the Common Stock so purchased exceeds (y) the product of (1) the aggregate number of Conversion Shares that such Holder was entitled to receive from the conversion at issue multiplied by (2) the actual sale price at which the sell order giving rise to such purchase obligation was executed (including any brokerage commissions) and (B) (I) in the case of an Optional Conversion either (a) reissue (if surrendered) the shares of Series C-1 Preferred Stock equal to the number of shares of Series C-1 Preferred Stock submitted for conversion (in which case, such conversion shall be deemed rescinded) or (b) deliver to such Holder the number of shares of Common Stock that would have been issued if the Company had timely complied with its delivery requirements under Section 6(d)(i) and (II) in the case of a Mandatory Conversion, deliver to such Holder the number of shares of Common Stock that would have been issued if the Company had timely complied with its delivery requirements under Section 6(d)(i). For example, if a Holder purchases shares of Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted conversion of shares of Series C-1 Preferred Stock with respect to which the actual sale price of the Conversion Shares (including any brokerage commissions) giving rise to such purchase obligation was a total of \$10,000 under clause (A) of the immediately preceding sentence, the Company shall be required to pay such Holder \$1,000. The Holder shall provide the Company written notice indicating the amounts payable to such Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver the Conversion Shares upon conversion of the shares of Series C-1 Preferred Stock as required pursuant to the terms hereof.

(v) Reservation of Shares Issuable Upon Conversion. The Company covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holders of the Series C-1 Preferred Stock, not less than such aggregate number of shares of the Common Stock as shall be issuable (i) upon the conversion of all outstanding shares of Series C-1 Preferred Stock (taking into account the adjustments and restrictions of Section 7) and (ii) in respect of the PIK Shares. The Company covenants that all Conversion Shares and PIK Shares shall, when issued, be duly authorized, validly issued, fully paid and nonassessable.

(vi) Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of or as dividends on the Series C-1 Preferred Stock. As to any fraction of a share which a Holder would otherwise be entitled to upon such conversion or in respect of any such dividend, the Company shall round up to the next whole share of Common Stock.

(vii) Transfer Taxes and Expenses. The issuance of Conversion Shares on conversion of this Series C-1 Preferred Stock shall be made without charge to any Holder for any Transfer Agent fees, documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such Conversion Shares, provided that the Company shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such Conversion Shares upon conversion in a name other than that of the Holders of such shares of Series C-1 Preferred Stock and the Company shall not be required to issue or deliver such Conversion Shares and shall not be responsible for partial liquidated damages under Section 6(d)(iii) or penalties under Section 6(d)(iv) unless or until the Person or Persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

(e) Beneficial Ownership Limitation. The Company shall not effect any conversion of the Series C-1 Preferred Stock, including, without limitation, a Mandatory Conversion, and a Holder shall not have the right to receive Dividend Shares hereunder or convert any portion of the Series C-1 Preferred Stock, to the extent that, after giving effect to the receipt of dividends hereunder or conversion set forth on the applicable Notice of Conversion, 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). 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 received as Dividend Shares or issuable upon conversion of the Series C-1 Preferred Stock with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (i) conversion of the remaining, unconverted Series C-1 Preferred Stock beneficially owned by such Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company subject to a limitation on conversion or exercise analogous to the limitation contained herein (including, without limitation, the Series C-1 Preferred Stock) 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 6(e), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, 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 (other than as it relates to a Holder relying on the number of shares issued and outstanding as provided by the Company pursuant to this Section). 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 6(e), 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 (which may be via email) of a Holder, the Company shall within one Trading Day confirm orally and in writing to such Holder the number of shares of Common Stock then outstanding. The "Beneficial Ownership Limitation" shall be 4.99% (or, at the written election of any Holder delivered to the Company pursuant to the terms of Section 9 prior to the issuance of any shares of Series C-1 Preferred Stock, 9.99%) of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon conversion of Series C-1 Preferred Stock held by the applicable Holder and/or the issuance of the Dividend Shares. A Holder, upon at least sixty-one (61) days advance written notice to the Company, may terminate, increase or decrease the Beneficial Ownership Limitation provisions of this Section 6(e); provided that the Beneficial Ownership Limitation in no event exceeds 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon conversion of this Series C-1 Preferred Stock held by the Holder and/or the issuance of the Dividend Shares, and the provisions of this Section 6(e) shall continue to apply. The limitations contained in this Section 6(e) shall apply to a successor holder of Series C-1 Preferred Stock. The limitations contained in this Section 6(e) and Section 7(b) shall terminate immediately at any time at which the Common Stock ceases to be an "equity security" as defined in Rule 13d-1(i) promulgated under the Exchange Act (or any successor rule).



(f) **Control Limitation.** Unless the Company obtains the approval of its stockholders for issuances of Common Stock in excess of such amount, the Company shall not effect any conversion of the Series C-1 Preferred Stock, including, without limitation, a Mandatory Conversion, and a Holder shall not have the right to receive dividends hereunder or convert any portion of the Series C-1 Preferred Stock, to the extent that, after giving effect to the receipt of dividends hereunder or conversion set forth on the applicable Notice of Conversion, the Holder, together with the Attribution Parties, would beneficially own in excess of the Control Limitation (as defined below). 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 received as dividends or issuable upon conversion of the Series C-1 Preferred Stock with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (i) conversion of the remaining, unconverted Series C-1 Preferred Stock beneficially owned by such Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company subject to a limitation on conversion or exercise analogous to the limitation contained herein (including, without limitation, the Series C-1 Preferred Stock) 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 6(f), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, 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 (other than as it relates to a Holder relying on the number of shares issued and outstanding as provided by the Company pursuant to this Section). For purposes of this Section 6(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 (which may be via email) of a Holder, the Company shall within one Trading Day confirm orally and in writing to such Holder the number of shares of Common Stock then outstanding. The "**Control Limitation**" shall be 19.99% of the number of shares of the Common Stock outstanding immediately before giving effect to the issuance of shares of Common Stock issuable upon conversion of the Series C-1 Preferred Stock and/or the issuance of the Dividend Shares. The limitations contained in this paragraph shall apply to a successor holder of the Series C-1 Preferred Stock.

## Section 7. Certain Adjustments.

(a) Stock Dividends and Stock Splits. If the Company, at any time while the Series C-1 Preferred Stock is outstanding: (A) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock on shares of Common Stock or any other Common Stock Equivalents (which, for avoidance of doubt, will not include any shares of Common Stock issued by the Company upon conversion of this Series C-1 Preferred Stock or payment of a dividend on this Series C-1 Preferred Stock); (B) subdivides outstanding shares of Common Stock into a larger number of shares; (C) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares; or (D) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Company, then the Conversion Price will be multiplied by a fraction of which the numerator will be the number of shares of Common Stock (excluding any treasury shares of the Company) outstanding immediately before such event and of which the denominator will be the number of shares of Common Stock, or in the event that clause (D) of this Section 7(a) will apply shares of reclassified capital stock, outstanding immediately after such event. Any adjustment made pursuant to this Section 7(a) will become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and will become effective immediately after the effective date in the case of a subdivision, combination or re- classification.

(b) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 7(a) above, if at any time the Company grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "**Purchase Rights**"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of such Holder's Series C-1 Preferred Stock (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation or the Control Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance by the Company for the Holder (which shall not give the Holder any power to vote or dispose of such Purchase Rights) until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation or the Control Limitation).

(c) Pro Rata Distributions. During such time as this Series C-1 Preferred Stock is outstanding, if the Company declares or makes any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "**Distribution**"), at any time after the issuance of this Series C-1 Preferred Stock, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Series C-1 Preferred Stock (without regard to any limitations on conversion hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, to the extent that the Holder's right to participate in any such Distribution would result in the Holder exceeding the Beneficial Ownership Limitation or the Control Limitation, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance by the Company for the benefit of the Holder (which shall not give the Holder any power to vote or dispose of such shares) until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation or the Control Limitation).

(d) Fundamental Transaction. If, at any time while the Series C-1 Preferred Stock is outstanding, (A) the Company effects any merger or consolidation of the Company with or into another Person, (B) the Company effects any sale of all or substantially all of its assets in one transaction or a series of related transactions, or (C) the Company effects any reclassification of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property (in any such case, a "**Fundamental Transaction**"), then, upon any subsequent conversion of the Series C-1 Preferred Stock, the Holders shall have the right to receive, for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction, the same kind and amount of securities, cash or property as it would have been entitled to receive upon the occurrence of such Fundamental Transaction if it had been, immediately prior to such Fundamental Transaction, the holder of one share of Common Stock (the "**Alternate Consideration**"). For purposes of any such conversion, the determination of the Conversion Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Company shall adjust the Conversion Price in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. 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 Holders shall be given the same choice as to the Alternate Consideration they receive upon any conversion of the Series C-1 Preferred Stock following such Fundamental Transaction. To the extent necessary to effectuate the foregoing provisions, any successor to the Company or surviving entity in such Fundamental Transaction shall file a new Certificate of Designation with the same terms and conditions and issue to the Holders new preferred stock consistent with the foregoing provisions and evidencing the Holders' right to convert such preferred stock into Alternate Consideration. The terms of any agreement pursuant to which a Fundamental Transaction is effected shall include terms requiring any such successor or surviving entity to comply with the provisions of this Section 7(d) and insuring that the Series C-1 Preferred Stock (or any such replacement security) will be similarly adjusted upon any subsequent transaction analogous to a Fundamental Transaction.

(e) Calculations. All calculations under this Section 7 will be made to the nearest cent or the nearest 1/100th of a share, as the case may be.

(f) Notice to the Holders.

(i) Adjustment to Conversion Price. Whenever the Conversion Price is adjusted pursuant to any provision of this Section 7, the Company shall promptly deliver to each Holder a notice setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment.

(ii) Notice to Allow Conversion by Holder. If (A) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company is a party, any sale or transfer of all or substantially all of the assets of the Company, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property or (B) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be filed at each office or agency maintained for the purpose of conversion of the Series C-1 Preferred Stock, and shall cause to be delivered to each Holder pursuant to Section 9, at least twenty (20) calendar days prior to the applicable record or effective date hereinafter specified, a written notice stating (x) the date on which a record is to be taken for the purpose of seeking such stockholder approval or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange, provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to convert such Holder's Series C-1 Preferred Stock pursuant to Section 6(a) (subject to the Beneficial Ownership Limitation or the Control Limitation) during the 20-day period commencing on the date of such notice through the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

## Section 8. Miscellaneous.

(a) Notices. Any and all notices or other communications or deliveries to be provided to the Holders, the Company or the Transfer Agent hereunder, including, without limitation, any Notice of Conversion or Company Conversion Notice, shall be in writing and delivered personally, by facsimile, by e-mail, or sent by a nationally recognized overnight courier service (i) if to the Holders, at the Holder's address set forth in the book and records of the Company or to another address of such Holder as may be specified by such Holder to the Company in a written notice delivered in accordance with this Section, or (ii) if to the Company, at 12707 High Bluff Dr., Suite 200, San Diego, CA 92130, email: [sprail@delmarpharma.com](mailto:sprail@delmarpharma.com) or to another address as the Company may specify for such purposes by written notice to the Holders delivered in accordance with this Section. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number or via e-mail at the e-mail address set forth in this Section prior to 5:30 p.m. (New York City time) on any date, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number or via e-mail at the e-mail address set forth in this Section on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (iii) the second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given. To the extent that any notice provided pursuant to this Certificate of Designations 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.

(b) Absolute Obligation. Except as expressly provided herein, no provision of this Certificate of Designations shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay liquidated damages and accrued dividends, as applicable, on the shares of Series C-1 Preferred Stock at the time, place, and rate, and in the coin or currency, herein prescribed.

(c) Lost or Mutilated Series C-1 Preferred Stock Certificate. If a Holder alleges that such Holder's Series C-1 Preferred Stock certificate has been lost, stolen or destroyed, the Company will only be obligated to issue a replacement certificate if the Holder delivers to the transfer agent, or the Company, as applicable: (i) a lost certificate affidavit; (ii) an indemnity bond in a form acceptable to the Company's transfer agent, or if the Company acts as its own transfer agent, an agreement reasonably acceptable to the Company to indemnify the Company against any claim that may be made against the Company on account of the alleged loss, theft or destruction of such certificate; and (iii) any other documentation that the transfer agent or the Company, if the Company acts as its own transfer agent, may reasonably require.

(d) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Certificate of Designations shall be governed by and construed and enforced in accordance with the internal laws of the State of Nevada, without regard to the principles of conflict of laws thereof. Each party agrees that all legal proceedings concerning the interpretation, enforcement and defense of the transactions contemplated by this Certificate of Designations (whether brought against a party hereto or its respective Affiliates, directors, officers, shareholders, employees or agents) shall be commenced in either (i) a state court located within the State of Nevada (or, if no state court located within the State of Nevada has jurisdiction, the federal district court for the District of Nevada) (the "**Nevada Courts**") or (ii) the state and federal courts sitting in the City of New York, Borough of Manhattan (the "**New York Courts**"). Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the Nevada Courts and the New York Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such Nevada Courts or New York Courts, or such Nevada Courts or New York Courts are improper or inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Certificate of Designations and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by applicable law. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Certificate of Designations or the transactions contemplated hereby. If any party shall commence an action or proceeding to enforce any provisions of this Certificate of Designation, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorneys' fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding.

(e) Waiver. Any waiver by the Company or a Holder of a breach of any provision of this Certificate of Designations shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Certificate of Designations or a waiver by any other Holders. The failure of the Company or a Holder to insist upon strict adherence to any term of this Certificate of Designations on one or more occasions shall not be considered a waiver or deprive that party (or any other Holder) of the right thereafter to insist upon strict adherence to that term or any other term of this Certificate of Designation. Any waiver by the Company or a Holder must be in writing.

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

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

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

(i) Status of Converted Series C-1 Preferred Stock. If any shares of Series C-1 Preferred Stock shall be converted or reacquired by the Company, such shares shall resume the status of authorized but unissued shares of preferred stock and shall no longer be designated as Series C-1 Convertible Preferred Stock.

[Signature page follows.]

**IMAGE OMITTED** IN WITNESS WHEREOF, this Certificate of Designations has been executed by a duly authorized officer of the Company as of this 18th day of August, 2020.

/s/ Saiid Zarrabian

Name: Saiid Zarrabian

Title: Chief Executive Officer

ANNEX A

NOTICE OF CONVERSION

(TO BE EXECUTED BY THE REGISTERED HOLDER IN ORDER TO CONVERT SHARES OF SERIES C-1 PREFERRED STOCK)

The undersigned hereby elects to convert the number of shares of Series C-1 Convertible Preferred Stock indicated below into shares of common stock, \$0.001 par value per share (the "Common Stock"), of DelMar Pharmaceuticals, Inc., a Nevada corporation (the "Corporation"), according to the conditions hereof, as of the date written below. If shares of Common Stock are to be issued in the name of a Person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto. No fee will be charged to the Holders for any conversion, except for any such transfer taxes.

Conversion calculations:

Date to Effect Conversion: \_\_\_\_\_

Number of shares of Series C-1 Preferred Stock owned prior to Conversion: \_\_\_\_\_

Number of shares of Series C-1 Preferred Stock to be Converted: \_\_\_\_\_

Stated Value of shares of Series C-1 Preferred Stock to be Converted: \_\_\_\_\_

Number of shares of Common Stock to be Issued: \_\_\_\_\_

Applicable Conversion Price: \_\_\_\_\_

Number of shares of Series C-1 Preferred Stock subsequent to Conversion: \_\_\_\_\_

Address for Delivery: \_\_\_\_\_

Or

DWAC Instructions:

Broker no: \_\_\_\_\_

Account no: \_\_\_\_\_

[Holder]

By: \_\_\_\_\_  
Name:  
Title:



## PLACEMENT AGENCY AGREEMENT

June 24, 2020

Aegis Capital Corp.

810 Seventh Ave, 18th Floor  
New York, NY 10019

Re: DelMar Pharmaceuticals, Inc.

Ladies and Gentlemen:

This Placement Agency Agreement (“**Agreement**”) sets forth the terms upon which Aegis Capital Corp., a New York corporation (“**Aegis**” or “**Placement Agent**”), a registered broker-dealer and member of the Financial Industry Regulatory Authority (“**FINRA**”), shall be engaged by DelMar Pharmaceuticals, Inc., a Nevada corporation (the “**Company**”) to act as exclusive Placement Agent in connection with the private placement (the “**Offering**”) of shares (the “**Shares**”) of Series C Convertible Preferred Stock, par value \$0.001 per share (the “**Series C Preferred Stock**”). The Offering will consist of a minimum of 10,000 Shares (\$10 million) (“**Minimum Offering Amount**”) and up to a maximum of 20,000 Shares (\$20 million) (“**Maximum Offering Amount**”) which shall be offered on a “reasonable efforts, all or none” basis as to the Minimum Offering Amount and a “reasonable efforts” basis for all amounts in excess of the Minimum Offering Amount. In the event the Offering is oversubscribed, the Company and Placement Agent may, in their mutual discretion, have Company sell up to 10,000 additional Shares for an additional aggregate purchase price of \$10 million (the “**Overallotment**”). For purposes hereof, the term “Shares” or “Series C Preferred Stock” shall refer to and include potentially one or more series of Series C Preferred Stock (i.e., Series C-1 Preferred Stock, Series C-2 Preferred Stock, etc.) that may be sold in the Offering, each of which shall contain identical terms except for the conversion price which may vary from series to series.

The purchase price for the Shares will be \$1,000 per Share (the “**Offering Price**”), with a minimum investment of \$100,000; *provided, however*, that subscriptions for lesser amounts may be accepted in the Company’s and Placement Agent’s joint discretion. The Placement Agent shall accept subscriptions only from persons or entities who qualify as “accredited investors,” as such term is defined in Rule 501 of Regulation D (“**Regulation D**”) as promulgated by the United States Securities and Exchange Commission (the “**SEC**”) under Section 4(a)(2) of the Securities Act of 1933, as amended (the “**Securities Act**”). The Shares will be offered until the earlier of (i) the termination of the Offering as provided herein, (ii) the time that all Shares offered in the Offering are sold or (iii) August 31, 2020 (“**Initial Offering Period**”), which date may be extended by the Placement Agent and the Company in their joint discretion until September 30, 2020 (this additional period and the Initial Offering Period shall be referred to as the “**Offering Period**”). The date on which the Offering expires or is terminated shall be referred to as the “**Termination Date**.”

With respect to the Offering, the Company shall provide the Placement Agent, on terms set forth herein, the right to offer and sell all of the Shares being offered. Purchases of Shares may be made by officers, directors, employees and affiliates of the Placement Agent. All such purchases, together with purchases by officers, directors, employees and affiliates of the Company, shall be included in calculations as to whether the Minimum Offering Amount, Maximum Offering Amount or Overallotment has been sold in the Offering. The Company, in its sole discretion, may accept or reject, in whole or in part, any prospective investment in the Shares. Notwithstanding anything to the contrary set forth herein, it is understood that no sale shall be regarded as effective unless and until accepted by the Company. The Company and the Placement Agent shall mutually agree with respect to allotting any prospective subscriber less than the number of Shares that such subscriber desires to purchase.

The Offering will be made by the Company solely pursuant to the Memorandum (as defined below), which at all times will be in form and substance reasonably acceptable to the Company, the Placement Agent and their respective counsel and contain such legends and other information as Company, the Placement Agent and their respective counsel, may, from time to time, deem necessary or desirable to be set forth therein. “**Memorandum**” as used in this Agreement means Company’s Confidential Private Placement Memorandum dated on or about June 24, 2020, inclusive of all annexes, and all amendments, supplements and appendices thereto.

1. Appointment of Placement Agent. On the basis of the representations and warranties provided herein, and subject to the terms and conditions set forth herein, the Placement Agent is appointed as exclusive placement agent for the Company during the Offering Period to assist the Company in finding qualified subscribers for the Offering. The Placement Agent may sell Shares through other broker-dealers who are FINRA members, as well as through foreign finders pursuant to applicable FINRA rules, and may reallocate all or a portion of the Agent Compensation (as defined in Section 3(b) below) it receives to such other broker-dealers or foreign finders. On the basis of such representations and warranties and subject to such terms and conditions, the Placement Agent hereby accepts such appointment and agrees to perform its services hereunder diligently and in good faith and in a professional and businesslike manner and to use its reasonable efforts to assist the Company in (A) finding subscribers of Shares who qualify as “accredited investors,” as such term is defined in Rule 501 of Regulation D, and (B) completing the Offering. The Placement Agent has no obligation to purchase any of the Shares. Unless sooner terminated in accordance with this Agreement, the engagement of the Placement Agent hereunder shall continue until the later of the Termination Date or the Final Closing (as defined below).

2. Representations, Warranties and Covenants of the Company. Except as set forth in the Memorandum, the SEC Reports (as defined herein) or in the schedule of exceptions delivered to the Placement Agent on the date hereof (the “**Schedule of Exceptions**”), the representations and warranties of the Company contained in this Section 2 are true and correct as of the date of this Agreement.

(a) The Memorandum has been prepared by the Company in compliance in all material respects with Regulation D and Section 4(a)(2) of the Act and the requirements of all other rules and regulations (the “**Regulations**”) relating to offerings of the type contemplated by the Offering, and the applicable securities laws and the rules and regulations of those jurisdictions wherein the Placement Agent notifies the Company that the Shares are to be offered and sold excluding any foreign jurisdictions. The Shares will be offered and sold pursuant to the registration exemptions provided by Regulation D and Section 4(a)(2) of the Act as a transaction not involving a public offering and the requirements of any other applicable state securities laws and the respective rules and regulations thereunder in those United States jurisdictions in which the Placement Agent notifies the Company that the Shares are being offered for sale. To the extent that Shares are offered in jurisdictions outside of the United States, such Shares will be offered and sold in compliance with all applicable laws that govern private securities offerings in the applicable country and in all local jurisdictions in which such Shares are offered. None of the Company, its affiliates, or any person acting on its or their behalf (other than the Placement Agent, its affiliates or any person acting on its behalf, in respect of which no representation is made) has taken nor will it take any action that conflicts with the conditions and requirements of, or that would make unavailable with respect to the Offering, the exemption(s) from registration available pursuant to Rule 506(b) of Regulation D or Section 4(a)(2) of the Act, or knows of any reason why any such exemption would be otherwise unavailable to it. None of the Company, its predecessors or affiliates has been subject to any order, judgment or decree of any court of competent jurisdiction temporarily, preliminarily or permanently enjoining such person for failing to comply with Section 503 of Regulation D. The Company has not, for a period of six months prior to the commencement of the offering of Shares, sold, offered for sale or solicited any offer to buy any of its securities in a manner that would be integrated with the offer and sale of the Shares pursuant to this Agreement and would cause the exemption from registration set forth in Rule 506(b) of Regulation D to become unavailable with respect to the offer and sale of the Shares pursuant to this Agreement in the United States. For purposes of this Agreement, “**to the Company’s Knowledge**” or similar phrases means (a) the actual knowledge of any of Saiid Zarrabian and Scott Prail of a fact or matter after making reasonable inquiry.

(b) The Memorandum does not include 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; provided, however, the foregoing does not apply to any statements or omissions made solely in reliance on and in conformity with written information furnished to the Company by the Placement Agent specifically for use in the preparation thereof. None of the statements, documents, certificates or other items made, prepared or supplied by the Company with respect to the transactions contemplated hereby contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements contained therein not misleading in light of the circumstances in which they were made. There are no facts, circumstances or conditions which the Company has not disclosed in the Memorandum and of which the Company is aware that has had or that could reasonably be expected to have a Company Group Material Adverse Effect (as defined in Section 2(c) below). Notwithstanding anything to the contrary herein, the Company makes no representation or warranty with respect to any estimates, projections and other forecasts and plans (including the reasonableness of the assumptions underlying such estimates, projections and other forecasts and plans) that may have been delivered to the Placement Agent or its representatives or that are contained in the Memorandum, except that such estimates, projections and other forecasts and plans have been prepared in good faith on the basis of assumptions stated therein, which assumptions were believed to be reasonable at the time of such preparation. Any statistical and market-related data included in the Memorandum are based on or derived from sources that the Company believes, after reasonable inquiry, to be reliable and accurate in all material respects and, to the extent required, the Company has obtained the written consent to the use of such data from such sources.

(c) The Company is a corporation duly incorporated and validly existing in good standing under the laws of the State of Nevada and has the requisite power and authority to own its properties and to carry on its business as described in the Memorandum. Del Mar Pharmaceuticals (BC) Ltd., 0959454 B.C. Ltd. and 0959456 B.C. Ltd. are the only entities owned or controlled, by the Company (each a “**Subsidiary**” and collectively, the “**Subsidiaries**”), each of which is duly incorporated, validly existing and in good standing under the laws of British Columbia, Canada. Except as described in the Memorandum, neither the Company nor its Subsidiaries (i) owns or controls, directly or indirectly, any interest in any other corporation, association or other business entity or (ii) participates in any joint venture, partnership or similar arrangement. Each of the Company and the Subsidiaries (collectively referred to herein as the “**Company Group**”) is qualified or licensed to do business in all jurisdictions in which the character of the properties owned or held under lease by it or the nature of its business makes qualification necessary, except where the failure to be so qualified or licensed would not reasonably be expected to result in a Company Group Material Adverse Effect. No member of the Company Group is in violation of any provision of any of its organizational documents. As used in this Agreement, “**Company Group Material Adverse Effect**” means any event, circumstance, change or effect that, individually or in the aggregate with all other events, circumstances, changes and effects, is or is reasonably likely to be materially adverse to (i) the business, condition (financial or otherwise), assets, liabilities or results of operations of the Company and its Subsidiaries taken as a whole or (ii) the ability of the Company to consummate the transactions contemplated by this Agreement and to perform its obligations under the Transaction Documents; provided, however, that clause (i) shall not include any event, circumstance, change or effect resulting from (y) changes in general economic conditions or changes in securities markets in general that do not have a materially disproportionate effect (relative to other industry participants) on the Company or its Subsidiaries or (z) general changes in the industries in which the Company and the Company Subsidiaries operate, except those events, circumstances, changes or effects that adversely affect the Company and its Subsidiaries to a materially greater extent than they affect other entities operating in such industries.

(d) The Company has all requisite corporate power and authority to enter into and perform its obligations under this Agreement, the Registration Rights Agreement substantially in the form of Exhibit B to the Memorandum (the “**Registration Rights Agreement**”), the Subscription Agreement substantially in the form of Exhibit A to the Memorandum (the “**Subscription Agreement**”), the Escrow Agreement (as hereinafter defined) and the other agreements contemplated hereby (this Agreement, the Subscription Agreement, the Registration Rights Agreement and the other agreements contemplated hereby that the Company is executing and delivering hereunder are collectively referred to herein as the “**Transaction Documents**”).

(e) The Shares to be purchased by investors pursuant to the Memorandum and the Agent Warrants (as defined in Section 3(b)) to be issued to the Placement Agent pursuant to the terms of this Agreement have been duly authorized for issuance and sale pursuant to this Agreement and, when issued and delivered by the Company pursuant to this Agreement against payment of the consideration set forth herein, will be duly and validly issued, fully paid and non-assessable and will have the rights, preferences and priorities set forth in the Company’s Certificate of Incorporation (including the Certificate of Designation, as defined below). The shares of common stock, par value \$0.001 of the Company (“**Common Stock**”) issuable upon conversion of the Shares and Agent Warrant Shares (as defined in Section 3(b)) (collectively, the “**Conversion Shares**”) have been duly authorized and reserved for issuance and when issued by the Company upon valid conversion of the Shares and Agent Warrant Shares, will be duly and validly issued, fully paid and nonassessable. The shares of Common Stock which will be issued as dividends on the Shares (collectively, the “**Dividend Shares**”) have been duly authorized and reserved for issuance, and when issued by the Company in payment of dividends on the Shares, will be duly and validly issued, fully paid and nonassessable. The Agent Warrant Shares have been duly authorized and reserved for issuance and when issued by the Company pursuant to the terms of the Agent Warrants, will be duly and validly issued, fully paid and nonassessable. The issuance of the Shares, Conversion Shares, Dividend Shares, Agent Warrants and Agent Warrant Shares are not subject to any preemptive or other similar rights of any securityholder of the Company. The capital stock of the Company conforms in all material respects to all statements relating thereto contained in the Memorandum. No holder of Shares or Agent Warrants will be subject to personal liability solely by reason of being such a holder.

(f) Prior to the First Closing, each of the Transaction Documents (other than this Agreement, which has already been authorized) will have been duly authorized. This Agreement has been duly authorized, executed and delivered and constitutes, and each of the other Transaction Documents, upon due execution and delivery, will constitute, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms (i) except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect related to laws affecting creditors’ rights generally, including the effect of statutory and other laws regarding fraudulent conveyances and preferential transfers, and except that no representation is made herein regarding the enforceability of the Company’s obligations to provide indemnification and contribution remedies under the securities laws and (ii) subject to the limitations imposed by general equitable principles (regardless of whether such enforceability is considered in a proceeding at law or in equity).

(g) Neither the execution and the delivery of this Agreement or any Transaction Document, nor the consummation of the transactions contemplated hereby, will (with or without the passage of time or giving of notice): (i) violate any injunction, judgment, order, decree, ruling, charge or other restriction, or any Law (as defined below) applicable to any member of the Company Group, (ii) violate any provisions of any of the charter documents of any member of the Company Group, (iii) violate or constitute a default (or any event which, with or without due notice or lapse of time, or both, would constitute a violation or default) under, result in the termination of, accelerate the performance required by any of the terms, conditions or provisions of any Material Contract (as defined in Section 2(n) below) of any member of the Company Group, or by which any member of the Company Group, or any of its respective operating assets, is bound or (iv) result in the creation of any lien, charge or other encumbrance on the assets or properties of any member of the Company Group. “**Law**” means any applicable federal, national, regional, state, municipal or local law, statute, treaty, rule, regulation, ordinance, order, code, judgment, decree, directive, injunction, writ or similar action or decision.

(h) Except as set forth on Schedule 2(h) of the Schedule of Exceptions, 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 Securities and Exchange Act of 1934, as amended (the “**Exchange Act**”), including pursuant to Section 13(a) or 15(d) thereof, for the two years preceding the date hereof (or such shorter period as the Company was required by law or regulation to file such material) (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the “**SEC Reports**”) on a timely basis 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. 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. Except as set forth on Schedule 2(h) of the Schedule of Exceptions, 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 accordance with United States generally accepted accounting principles applied on a consistent basis during the periods involved (“**GAAP**”), except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements may not contain all footnotes required by GAAP, and fairly present in all material respects the financial position of the Company and its 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) Except as disclosed on Schedule 2(i) of the Schedule of Exceptions, since the date of the latest audited financial statements included within the SEC Reports, (i) there has been no event, occurrence or development that has had or that could reasonably be expected to result in a Company Group Material Adverse Effect, (ii) the Company has not incurred any liabilities (contingent or otherwise) other than (A) trade payables and accrued expenses incurred in the ordinary course of business consistent with past practice and (B) liabilities not required to be reflected in the Company’s financial statements pursuant to GAAP or disclosed in filings made with the SEC, (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 (as defined below), except pursuant to existing Company stock option plans. The Company does not have pending before the Commission any request for confidential treatment of information. Except for the issuance of the Shares contemplated by the Memorandum and this Agreement or as set forth in the SEC Reports, no event, liability, fact, circumstance, occurrence or development has occurred or exists or is reasonably expected to occur or exist with respect to the Company or its Subsidiaries or their respective businesses, prospects, properties, operations, assets or financial condition, that would be required to be disclosed by the Company under applicable securities laws at the time this representation is made or deemed made that has not been publicly disclosed at least 1 Trading Day prior to the date that this representation is made. For purpose hereof, “**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.

(j) The capitalization of the Company as of the date hereof is as set forth in the SEC Reports. The Company has not issued any capital stock since its most recently filed periodic report under the Exchange Act, other than pursuant to the exercise of employee stock options under the Company's stock option plans, the issuance of shares of Common Stock to employees or consultants pursuant to the Company's employee stock purchase plans and pursuant to the conversion and/or exercise of Common Stock Equivalents (as defined below) outstanding as of the date of the most recently filed periodic report under the Exchange Act. No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by the Transaction Documents. Except as a result of the purchase and sale of the Shares and, as disclosed in the Company's SEC Reports and Schedule 2(j) of the Schedule of Exceptions, 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 the capital stock of any Subsidiary, 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 or capital stock of any Subsidiary. Except as set forth on Schedule 2(i) of the Schedule of Exceptions, the issuance and sale of the Shares will not obligate the Company or any Subsidiary to issue shares of Common Stock or other securities to any Person. Except as disclosed in the SEC Reports, there are no outstanding securities or instruments of the Company or any Subsidiary with any provision that adjusts the exercise, conversion, exchange or reset price of such security or instrument upon an issuance of securities by the Company or any Subsidiary. There are no outstanding securities or instruments of the Company or any Subsidiary that contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to redeem a security of the Company or such Subsidiary. The Company does not have any stock appreciation rights or "phantom stock" plans or agreements or any similar plan or agreement. 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 others is required for the issuance and sale of the Securities, except for shareholder approval to increase the number of authorized shares of Common Stock. 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. "**Common Stock Equivalents**" means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

(k) The Certificate of Designation on the Series C Preferred Stock, the proposed form of which is attached to the Memorandum as Exhibit C (the "**Certificate of Designation**"), has been duly authorized by the Company and will have been duly executed and delivered by the Company and duly filed with the Secretary of State of the State of Nevada before the First Closing. The holders of the Series C Preferred Stock will have the rights set forth in the Certificate of Designation upon filing of the Certificate of Designation with the Secretary of State of the State of Nevada.

(l) The conduct of business by members of the Company Group as presently and proposed to be conducted is not subject to continuing oversight, supervision, regulation or examination by any governmental official or body of the United States, or any other jurisdiction wherein any such members currently conduct such business, except as described in the SEC Reports or the Memorandum. Neither the Company, nor any other member of the Company Group has received any notice of any violation of, or noncompliance with, any Law applicable to its business, the violation of, or noncompliance with, which would have or would reasonably be expected to have a Company Group Material Adverse Effect, and the Company knows of no facts or set of circumstances which could give rise to such a notice.

(m) The Company and the Subsidiaries possess all certificates, authorizations and permits issued by the appropriate federal, state, local or foreign regulatory authorities necessary to conduct their respective businesses as described in the SEC Reports, except where the failure to possess such permits could not reasonably be expected to result in a Company Group 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) Except as disclosed in the Memorandum or in the SEC Reports, no breach or default by any member of the Company Group or, to the Company’s Knowledge, any other party, exists in the due performance under any of the terms of any note, bond, indenture, mortgage, deed of trust, lease, rental agreement, material contract, material purchase or sales order or other material agreement or instrument to which any member of the Company Group is a party or by which it or its property is bound or affected (each of the foregoing, a “**Material Contract**”), and there exists no condition, event or act which constitutes, nor which after notice, the lapse of time or both, could constitute a default under any of the foregoing, except as would not, individually or in the aggregate, has had or is reasonably be expected to have an Company Group Material Adverse Effect. The Material Contracts disclosed in the Memorandum are accurately described in the Memorandum and are in full force and effect in accordance with their respective terms, subject to any applicable bankruptcy, insolvency or other laws affecting the rights of creditors generally and to general equitable principles and the availability of specific performance.

(o) Except as set forth on Schedule 2(o) of the Schedule of Exceptions, the Company and the Subsidiaries have, or have rights to use, all patents, patent applications, trademarks, trademark applications, service marks, trade names, trade secrets, inventions, copyrights, licenses and other intellectual property rights and similar rights necessary or required for use in connection with their respective businesses as described in the SEC Reports and which the failure to so have could have a Company Group Material Adverse Effect (collectively, the “**Intellectual Property Rights**”). None of, and neither the Company nor any Subsidiary has received a notice (written or otherwise) that any of, the Intellectual Property Rights has expired, terminated or been abandoned, or is expected to expire or terminate or be abandoned, within two (2) years from the date of this Agreement. 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 could 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 infringement by another Person of any of the Intellectual Property Rights. The Company and its Subsidiaries have taken reasonable security measures to protect the secrecy, confidentiality and value of all of their intellectual properties, except where failure to do so could not, individually or in the aggregate, reasonably be expected to have a Company Group Material Adverse Effect. The Company and/or its Subsidiaries has secured, by valid written assignments from all of Company Group’s current and former consultants, independent contractors and employees who were involved in, or who contributed to, the creation or development of any Intellectual Property Rights, unencumbered and unrestricted exclusive ownership of each such third party’s Intangibles in their respective contributions. No current or former employee, officer, director, consultant or independent contractor of any member of the Company Group has any right, license, claim or interest whatsoever in or with respect to any Intellectual Property Rights.

(p) Except as set forth in the Memorandum or the SEC Reports, no member of the Company Group is a party to any collective bargaining agreement nor does it employ any member of a union. No executive officer of any member of the Company Group has provided written notice that such officer intends to leave the Company Group or otherwise terminate such officer's employment with the Company Group. No executive officer of any member of the Company Group, to the Company's Knowledge, is in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement, non-competition agreement, or any other contract or agreement or any restrictive covenant, and the continued employment of each such executive officer does not subject the Company Group to any material liability with respect to any of the foregoing matters. Each member of the Company Group is in compliance with all federal, state, local and foreign laws and regulations respecting labor, employment and employment practices and benefits, terms and conditions of employment and wages and hours, except where failure to be in compliance would not, either individually or in the aggregate, reasonably be expected to result in a Company Group Material Adverse Effect. No labor dispute with the employees of the Company or any of its subsidiaries exists or, to the Company's Knowledge, is threatened, and the Company has no knowledge of any existing or imminent labor dispute by the employees of any of its principal suppliers, manufacturers, customers or contractors.

(q) Except (i) as set forth in the Memorandum, (ii) may be required under state securities or Blue Sky laws, (iii) as may be required under the Securities Act, the rules and regulations of the Commission under the Securities Act (the "**Securities Act Regulations**"), the Exchange Act, the rules and regulations of the SEC under the Exchange Act (the "**Exchange Act Regulations**"), the rules of Nasdaq (the "**Exchange**") or (iv) will have been obtained or made on or prior to the First Closing, no consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with any court or governmental authority or other Person on the part of any member of the Company Group is required in connection with the issuance or sale of the Shares or the consummation of the transactions contemplated herein or in the other Transaction Documents.

(r) Subsequent to the respective dates as of which information is given in the Memorandum, each of the members of the Company Group has operated their respective businesses in the ordinary course and, except as may otherwise be set forth in the Memorandum or in the SEC Reports, there has been no: (i) Company Group Material Adverse Effect; (ii) transaction otherwise than in the ordinary course of business consistent with past practice; (iii) issuance of any securities (debt or equity) or any rights to acquire any such securities other than pursuant to equity incentive plans approved by its board of directors; (iv) damage, loss or destruction, whether or not covered by insurance, with respect to any asset or property of any members of the Company Group or (v) agreement to permit any of the foregoing.

(s) 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 Shares or (ii) could, if there were an unfavorable decision, have or reasonably be expected to result in a Company Group Material Adverse Effect. 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. There has not been, and to the knowledge of the Company, there is not pending or contemplated, any investigation by the Commission involving the Company or any current or former director or officer of the Company. The Commission has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company or any Subsidiary under the Exchange Act or the Securities Act.



(t) No member of the Company Group is: (i) in violation of its charter documents, (ii) in violation of any statute, rule or regulation applicable to such member, the violation of which would have or would reasonably be expected to have a Company Group Material Adverse Effect; or (iii) in violation of any judgment, decree or order of any court or governmental body having jurisdiction over such member of the Company Group, which violation or violations individually, or in the aggregate, could reasonably be expected to have a Company Group Material Adverse Effect.

(u) Except as set forth in the SEC Reports and Schedule 2(u) of the Schedule of Exceptions, none of the officers or directors of the Company or any Subsidiary and, to the Company's Knowledge, 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 salary or consulting fees for services rendered, (ii) reimbursement for expenses incurred on behalf of the Company and (iii) other employee benefits, including stock option agreements under any stock option plan of the Company.

(v) Except as disclosed in the Memorandum, no director, officer or manager of the Company or any Subsidiary (i) owns, directly or indirectly, any interest in any Person which is a competitor, supplier or customer of any member of the Company Group (unless such person is a publicly traded company), (ii) owns, directly or indirectly, in whole or in part, any property, asset or right, real, personal or mixed, tangible or intangible (including any of the Intangibles) which is utilized by or in connection with the business of any member of the Company Group, (iii) is a customer of, or supplier to, any member of the Company Group or (iv) directly or indirectly has an interest in or is a party to any Material Contract pertaining or relating to any member of the Company Group. In addition, no director, officer or employee of the Company or any Shareholder, nor, to the Company's Knowledge, any Affiliate of any such person is presently, directly or indirectly through his/her affiliation with any other person or entity, a party to any loan from any member of the Company Group.

(w) Each of the Company and the Subsidiaries has filed, on a timely basis, each federal, state, local and foreign tax return, report and declarations that were required to be filed, or has requested an extension therefor and has paid all taxes and all related assessments, charges, penalties and interest to the extent that the same have become due. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company know of no basis for any such claim. Neither the Company nor any Subsidiary has executed any waiver with respect to the statute of limitations relating to the assessment or collection of any foreign, federal, state or local tax. To the Company's Knowledge, none of the Company Group's tax returns is presently being audited by any taxing authority. No liens have been filed and no claims are being asserted by or against any member of the Company Group with respect to any taxes (other than liens for taxes not yet due and payable). The Company has received no notice of assessment or proposed assessment of any taxes claimed to be owed by it or any other Person on its behalf. Neither the Company nor any Subsidiary is a party to any tax sharing or tax indemnity agreement or any other agreement of a similar nature that remains in effect. The Company and the Subsidiaries have complied in all material respects with all applicable legal requirements relating to the payment and withholding of taxes and, within the time and in the manner prescribed by law, has withheld from wages, fees and other payments and paid over to the proper governmental or regulatory authorities all amounts required.

(x) The Company and the Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which the Company and the Subsidiaries are engaged, including, but not limited to, directors and officers insurance coverage in amounts prudent for their public company status. 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.

(y) The Company and its Subsidiaries (i) are in compliance with all federal, state, local and foreign laws relating to pollution or protection of human health or the environment (including ambient air, surface water, groundwater, land surface or subsurface strata), including laws relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, or toxic or hazardous substances or wastes (collectively, "**Hazardous Materials**") into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, as well as all authorizations, codes, decrees, demands, or demand letters, injunctions, judgments, licenses, notices or notice letters, orders, permits, plans or regulations, issued, entered, promulgated or approved thereunder ("**Environmental Laws**"); (ii) have received all permits licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses; and (iii) are in compliance with all terms and conditions of any such permit, license or approval where in each clause (i), (ii) and (iii), the failure to so comply could be reasonably expected to have, individually or in the aggregate, a Company Group Material Adverse Effect.

(z) 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 therefor in accordance with GAAP and, the payment of which is neither delinquent nor subject to penalties. 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.

(aa) Each stock option granted by the Company under the Company's stock option plan was granted (i) in accordance with the terms of the Company's stock option plan and (ii) with an exercise price at least equal to the fair market value of the Common Stock on the date such stock option would be considered granted under GAAP and applicable law. No stock option granted under the Company's stock option plan has been backdated. The Company has not knowingly granted, and there is no and has been no Company policy or practice to knowingly grant, stock options prior to, or otherwise knowingly coordinate the grant of stock options with, the release or other public announcement of material information regarding the Company or its Subsidiaries or their financial results or prospects.

(bb) Each member of the Company Group and any “employee benefit plan” (as defined under the Employee Retirement Income Security Act of 1974, as amended, and the regulations and published interpretations thereunder (collectively, “**ERISA**”)) established or maintained by the Company, the Subsidiaries or their “ERISA Affiliates” (as defined below) are in compliance in all material respects with ERISA. “**ERISA Affiliate**” means, with respect to the Company or a Subsidiary, any member of any group of organizations described in Sections 414(b), (c), (m) or (o) of the Internal Revenue Code of 1986, as amended, and the regulations and published interpretations thereunder (the “**Code**”) of which the Company or such Subsidiary is a member. Each “employee benefit plan” established or maintained by the Company, its Subsidiaries or any of their ERISA Affiliates that is intended to be qualified under Section 401(a) of the Code is so qualified and nothing has occurred, whether by action or failure to act, which would cause the loss of such qualification.

(cc) Neither the Company, any Subsidiary, nor, to the Company’s Knowledge, any director, officer, agent, employee or other Person acting on behalf of any of such entities has, in the course of its actions for, or on behalf of, the Company or any Subsidiary has taken any action, directly or indirectly, that would result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the “**FCPA**”), including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any “foreign official” (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA and the Company, its Subsidiaries and, to the Company’s Knowledge, its and their respective Affiliates have conducted their businesses in compliance with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

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

(ee) 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**”).

(ff) Except as disclosed to the Placement Agent in writing, no member of the Company Group is obligated to pay, and has not obligated the Placement Agent to pay, a finder’s or origination fee in connection with the Offering (other than to the Placement Agent), and the Company hereby agrees to indemnify the Placement Agent from any such claim made by any other person, as more fully set forth in Section 8 hereof. Except as disclosed to the Placement Agent, the Company has not offered for sale or solicited offers to purchase the Shares except for negotiations with the Placement Agent.

(gg) Except as disclosed in the Memorandum or 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 SEC thereunder that are effective as of the date hereof and as of each Closing. Except as disclosed 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. 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) that have materially affected, or is reasonably likely to materially affect, the internal control over financial reporting of the Company and its Subsidiaries.

(hh) Each of the Company and the Subsidiaries is insured by recognized, financially sound and reputable institutions with policies in such amounts and with such deductibles and covering such risks as are prudent and customary in the business in which it is engaged, including directors and officers liability.

(ii) The Company's Common Stock is registered pursuant to Section 12(b) of the Exchange Act and is listed on the Exchange; the Company has taken no action designed to, or likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act or delisting the Common Stock from the Exchange; except as set forth in the Memorandum or the SEC Reports, the Company has not received any notice that it is out of compliance with the listing or maintenance requirements of the Exchange and the Company is, and will continue to be, in material compliance with all such listing and maintenance requirements; and the Company has not received any notification that the SEC or the Exchange is contemplating terminating the registration of the Common Stock under the Exchange Act or delisting the Common Stock from the Exchange.

(jj) The Company, as well as all Company Related Persons (as defined below) are not subject to any of the disqualifications set forth in Rule 506(d) of Regulation D (each a "**Disqualification Event**"). The Company has exercised reasonable care to determine whether any Company Related Person is subject to a Disqualification Event. The Memorandum contains a true and complete description of the matters required to be disclosed with respect to the Company and the Company Related Persons pursuant to the disclosure requirements of Rule 506(e) of Regulation D, to the extent applicable. As used herein, "**Company Related Persons**" means any predecessor of the Company, any affiliated Company, any director, executive officer, other officer of the Company participating in the Offering, any general partner or managing member of the Company, any beneficial owner of 20% or more of the Company's outstanding voting equity securities, calculated on the basis of voting power, and any "promoter" (as defined in Rule 405 under the Act) connected with the Company in any capacity. The Company agrees to promptly notify the Placement Agent in writing of (i) any Disqualification Event relating to any Company Related Person and (ii) any event that would, with the passage of time, become a Disqualification Event relating to any Company Related Person.

(kk) No representation or warranty by the Company contained in Section 2 of this Agreement and no statement by the Company contained in the Schedule of Exceptions to this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in the light of the circumstances in which they are made, not misleading.

(ll) Until the earlier of (i) the Termination Date and (ii) the Final Closing, the Company will not issue any press release, grant any interview, or otherwise communicate with the media in any manner whatsoever with respect to the Offering without the Placement Agent's prior consent, which consent will not unreasonably be withheld, delayed or conditioned.

**2A. Representations, Warranties and Covenants of Placement Agent.** The Placement Agent represents and warrants to Company that the following representations and warranties are true and correct as of the date of this Agreement:

(a) Aegis is a corporation duly organized, validly existing and in good standing under the laws of the State of New York and has all requisite corporate power and authority to enter into this Agreement and to carry out and perform its obligations under the terms of this Agreement.

(b) This Agreement has been duly authorized, executed and delivered by the Placement Agent, and upon due execution and delivery by the Company, this Agreement will be a valid and binding agreement of the Placement Agent enforceable against it in accordance with its terms, except as may be limited by principles of public policy and, as to enforceability, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws relating to or affecting creditor's rights from time to time in effect and subject to general equity principles.

(c) The Placement Agent is a member in good standing of FINRA and is registered as a broker-dealer under the Exchange Act, and under the securities acts of each state into which it is making offers or sales of the Shares. The Placement Agent is in compliance with all applicable rules and regulations of the SEC and FINRA, except to the extent that such noncompliance would not have a material adverse effect on the transactions contemplated hereby. None of the Placement Agent or its affiliates, or any person acting on behalf of the foregoing (other than Company or its affiliates or any person acting on its or their behalf, in respect of which no representation is made) has taken nor will it take any action that conflicts with the conditions and requirements of, or that would make unavailable with respect to the Offering, the exemption(s) from registration available pursuant to Rule 506 of Regulation D or Section 4(a)(2) of the Act, or knows of any reason why any such exemption would be otherwise unavailable to it.

(d) None of the execution and delivery of or performance by the Placement Agent under this Agreement or any other agreement or document entered into by the Placement Agent in connection herewith or the consummation of the transactions herein or therein contemplated conflicts with or violates, any agreement or other instrument to which the Placement Agent is a party or by which its assets may be bound, or any term of its certificate of incorporation or by-laws, or any license, permit, judgment, decree, order, statute, rule or regulation applicable to Placement Agent or any of its assets, except in each case as would not have a material adverse effect on the transactions contemplated hereby.

(e) Neither Placement Agent nor any Placement Agent Related Persons (as defined below) are subject to any Disqualification Event. Placement Agent has exercised reasonable care to determine whether any Placement Agent Related Person is subject to a Disqualification Event. The Memorandum contains a true and complete description of the matters required to be disclosed with respect to Placement Agent and Placement Agent Related Persons pursuant to the disclosure requirements of Rule 506(e) of Regulation D, to the extent applicable. As used herein, "**Placement Agent Related Persons**" means any director, general partner, managing member, executive officer, or other officer of Placement Agent participating in the Offering. Placement Agent agrees to promptly notify the Company in writing of (i) any Disqualification Event relating to any Placement Agent Related Person and (ii) any event that would, with the passage of time, become a Disqualification Event relating to any Placement Agent Related Person.

### 3. Placement Agent Compensation.

(a) In connection with the Offering, the Company will pay at each Closing (as defined in Section 4(e) below) a cash fee (the “**Agent Cash Fee**”) to the Placement Agent equal to 10% of the gross proceeds from the sale of the Shares consummated at such Closing.

(b) As additional compensation, at or within ten (10) business days following the Final Closing, the Company will issue to the Placement Agent (or its designee(s)) for nominal consideration, five-year warrants (the “**Agent Warrants**”) to purchase such number of shares of the Company’s Series C Preferred Stock as is equal to 10% of the shares of Series C Preferred Stock sold in the Offering (and in the particular series sold at each Closing) at an exercise price equal to \$1,000 per share (the Agent Cash Fee and Agent Warrants are sometimes referred to herein collectively as “**Agent Compensation**”). The Agent Warrants will be exercisable on a “cashless” basis and for the five year period following issuance. The dividends on the Series C Preferred shall commence to accrue to the holder upon issuance of the Agent Warrants and shall continue to accrue as long as such warrants or underlying Series C Preferred is held, and subject to payment upon conversion events as set forth in the Series C Preferred. The Agent Warrants will be in such authorized denominations and will be registered in such names as the Placement Agent shall request in an instruction letter (the “**Agent Warrant Instruction Letter**”) to be delivered to the Company promptly following the Final Closing and the Company shall deliver such Agent Warrants to the Placement Agent within ten (10) business days following the delivery of the Agent Warrant Instruction Letter.

(c) At each Closing, the Company will pay Aegis a non-accountable expense allowance equal to 3% of the aggregate purchase price of the Shares sold at such Closing (the “**Agent Expense Allowance**”). The Agent Expense Allowance payable at the First Closing shall be reduced by the \$25,000 advance paid to Aegis previously (the “**Legal Advance**”). The Placement Agent will not bear any of Company’s legal, accounting, printing or other expenses in connection with any transaction contemplated hereby. Aegis will pay for its own expenses, including all of its legal fees and expenses, from the Agent Expense Allowance.

(d) The Company shall also pay and issue to the Placement Agent the Agent Compensation calculated according to the percentages set forth in Sections 3(a) and (b) of this Agreement, if any person or entity contacted by the Placement Agent and provided with a Memorandum during the Offering Period and with whom the Placement Agent has discussions regarding a potential investment in the Offering, invests in the Company (other than through open or public market purchases or securities purchased in any underwritten public offering) and irrespective of whether such potential investor purchased Shares in the Offering (the “**Tail Investors**”) at any time prior to the earlier of the date that is six (6) months after the Termination Date or the Final Closing (“**Tail Period**”), whichever is applicable. The names of Tail Investors shall be provided in writing by the Placement Agent to the Company upon written request following the Termination Date or the Final Closing, as the case may be (the “**Tail Investor List**”). The Company acknowledges and agrees that the Tail Investor List is proprietary to the Placement Agent, shall be maintained in strict confidence by the Company and those persons/entities on such list shall not be contacted by the Company without the Placement Agent’s prior written consent; *provided, however*, that such restrictions shall not apply to ordinary course shareholder communications by the Company to its shareholders, including those Tail Investors that are shareholders of the Company. In the event the Placement Agent exercises its right of first refusal with respect to an offering pursuant to the provisions of Section 3(e) below, the specific compensation terms to the Placement Agent that are negotiated in such offering shall govern and the provisions of this Section 3(d) will not be operative with respect to such offering.

(e) Effective upon the First Closing, the Company hereby grants to Aegis, for a period of six (6) months following the Final Closing (the **“ROFR Term”**), the irrevocable preferential right of first refusal to act as lead or co-placement agent for any proposed private placement of the Company’s securities (equity or debt) that is proposed to be consummated with the assistance of a registered broker dealer. In that regard, it is understood that if the Company determines to pursue such a financing during the ROFR Term and wishes to engage a placement agent to assist in connection with such offering, the Company shall promptly provide the Placement Agent with a written notice of such intention and statement of terms (the **“Notice”**). If, within ten (10) business days of the receipt of the Notice, the Placement Agent does not accept in writing such offer to act as lead or co-placement agent with respect to such offering upon the terms proposed, then the Company shall be entitled to engage a placement agent other than Aegis; provided that the terms of the compensation to be paid to such other placement agent or underwriter are not materially less favorable to the Company than the terms included in the Notice. The Placement Agent’s failure to exercise these preferential rights in any situation shall not affect its preferential rights to any subsequent offering during the ROFR Term. The Company represents and warrants that no other person has any right to participate in any offer, sale or distribution of the Company’s securities to which Aegis’ preferential rights shall apply.

(f) Upon the First Closing, the Company will enter into a two-year non-exclusive financial advisory agreement with Placement Agent (**“FA Agreement”**) for the purpose of providing advice and making introductions related to mergers, acquisitions, joint ventures, licensing agreements, and business development opportunities from potential corporate strategic partners (any of the foregoing, a **“Transaction”**). Pursuant to this FA Agreement, if the Company enters into any of such Transactions with a party (or affiliate of such party) that was introduced to it by Placement Agent during the term of such agreement or within six (6) months thereafter, the Company will pay or cause to be paid to Aegis a fee payable at the closing of a Transaction not to exceed 5% of the consideration paid in a Transaction to be specified in the FA Agreement.

(g) For introductory and other services provided by SternAegis in connection with the Merger described in the S-4 Registration Statement (as defined below), the Company shall issue to SternAegis and its designees, at the closing of the Merger, the Success Fee Shares as defined in the S-4 Registration Statement.

#### 4. Subscription and Closing Procedures.

(a) The Company shall cause to be delivered to the Placement Agent copies of the Memorandum, consents to the use of such copies for the purposes permitted by the Act and applicable securities laws and in accordance with the terms and conditions of this Agreement, and hereby authorizes Placement Agent and its agents and employees to use the Memorandum in connection with the offering of the Shares until the earlier of (i) the Termination Date or (ii) the Final Closing. No person or entity is or will be authorized to give any information or make any representations other than those contained in the Memorandum or to use any offering materials other than those contained in the Memorandum in connection with the sale of the Shares.

(b) During the Offering Period, the Company shall make available to the Placement Agent and its representatives such information as may be reasonably requested in making a reasonable investigation of the Company Group and their respective affairs and shall provide access to such employees during normal business hours as shall be reasonably requested by the Placement Agent.

(c) Each prospective purchaser will be required to complete and execute signature pages to the Subscription Agreement (the “**Subscription Documents**”), which will be forwarded or delivered to the Placement Agent at the Placement Agent’s offices at the address set forth in Section 12 hereof, together with the subscriber’s wire transfer in the full amount of the purchase price for the number of Shares desired to be purchased, subject to the Escrow Agent’s (as defined below) right to accept a check in lieu of a wire transfer.

(d) All funds for subscriptions received by the Placement Agent from the Offering (not otherwise wired directly to the Escrow Agent) will be promptly forwarded by the Placement Agent and deposited into a non-interest bearing escrow account (the “**Escrow Account**”) established for such purpose with Signature Bank, New York, New York (the “**Escrow Agent**”). All such funds for subscriptions will be held in the Escrow Account pursuant to the terms of an escrow agreement among the Company, the Placement Agent and the Escrow Agent (the “**Escrow Agreement**”). The Company will pay all fees related to the establishment and maintenance of the Escrow Account and comply with procedures required by the Escrow Agent. The Company will either accept or reject, for any or no reason, the Subscription Documents in a timely fashion and at each Closing, the Company will countersign the Subscription Documents and provide duplicate copies of such documents to the Placement Agent for distribution to the subscribers. The Placement Agent, on the Company’s behalf, will promptly return to subscribers incomplete, improperly completed, improperly executed and rejected subscriptions.

(e) If subscriptions for at least the Minimum Offering Amount have been accepted prior to the Termination Date, the funds therefor have been collected by the Escrow Agent and all of the conditions set forth elsewhere in this Agreement are fulfilled, the First Closing shall be held promptly with respect to Shares sold. Thereafter remaining Shares will continue to be offered and sold until the Termination Date and additional closings (each a “**Closing**”) may from time to time be conducted at times mutually agreed to by the Placement Agent and the Company with respect to additional Shares sold, with the final closing (“**Final Closing**”) to occur within ten (10) days after the earlier of the Termination Date and the date on which the all Shares has been fully subscribed for. Delivery of payment for the accepted subscriptions for Shares from funds held in the Escrow Account will be made at each Closing against delivery of the Shares by the Company. The Shares will be issued to the investors in the Offering in book entry format at each Closing.

(f) If Subscription Documents for at least the Minimum Offering Amount have not been received and accepted by the Company on or before the Termination Date for any reason, the Offering will be terminated, no Shares will be sold, and pursuant to the terms of the Escrow Agreement, the Escrow Agent will, at the Company’s and the Placement Agent’s written direction, cause all monies received from subscribers for the Shares to be promptly returned to such subscribers without interest, penalty, expense or deduction and the Placement Agent and Company will promptly cooperate to accomplish the foregoing, including providing Escrow Agent with any requested written instructions in such regard.

5. Further Covenants. The Company hereby covenants and agrees that:

(a) Except upon prior written notice to the Placement Agent, the Company shall not, at any time prior to the Final Closing, knowingly take any action which would cause any of the representations and warranties made by it in this Agreement not to be complete and correct in all material respects on and as of each Closing Date with the same force and effect as if such representations and warranties had been made on and as of each such date (except to the extent any representation or warranty relates to an earlier date).



(b) If, at any time prior to the Final Closing, any event shall occur that causes a Company Group Material Adverse Effect or otherwise which as a result it becomes necessary to amend or supplement the Memorandum so that the representations and warranties herein remain true and correct in all material respects, or in case it shall be necessary to amend or supplement the Memorandum to comply with Regulation D or any other applicable securities laws or regulations, the Company will promptly notify the Placement Agent and shall, at its sole cost, prepare and furnish to the Placement Agent copies of appropriate amendments and/or supplements in such quantities as the Placement Agent may reasonably request for delivery by the Placement Agent to potential subscribers. The Company will not at any time before the Final Closing prepare or use any amendment or supplement to the Memorandum of which the Placement Agent will not previously have been advised and furnished with a copy, or which is not in compliance in all material respects with the Act and other applicable securities laws. As soon as the Company is advised thereof, the Company will advise the Placement Agent and its counsel, and confirm the advice in writing, of any order preventing or suspending the use of the Memorandum, or the suspension of any exemption for such qualification or registration thereof for offering in any jurisdiction, or of the institution or threatened institution of any proceedings for any of such purposes, and the Company will use its reasonable best efforts to prevent the issuance of any such order and, if issued, to obtain as soon as reasonably possible the lifting thereof.

(c) The Company shall comply with the Act, the Exchange Act and the rules and regulations thereunder, all applicable state securities laws and the rules and regulations thereunder in the states in which the Company's blue sky counsel has advised the Placement Agent that the Shares are qualified or registered for sale or exempt from such qualification or registration, so as to permit the continuance of the sales of the Shares, and will file or cause to be filed with the SEC, and shall promptly thereafter forward or cause to be forwarded to the Placement Agent, any and all reports on Form D as are required.

(d) The Company shall forward to the Placement Agent all correspondence from and to Nasdaq regarding the implementation of the reverse stock split and other matters with respect to regaining compliance with the minimum bid requirement and other criteria mandated for continued listing of its Common Stock on the Exchange.

(e) The Company shall use its best efforts to qualify the Shares for sale under the securities laws of such jurisdictions in the United States as may be mutually agreed to by the Company and the Placement Agent, and Company will make or cause to be made such applications and furnish information as may be required for such purposes, provided that Company will not be required to qualify as a foreign corporation in any jurisdiction or execute a general consent to service of process. The Company will, from time to time, prepare and file such statements and reports as are or may be required to continue such qualifications in effect for so long a period as the Placement Agent may reasonably request with respect to the Offering.

(f) The Company shall place a legend on the certificates representing the Shares and the Agent Warrants that the securities evidenced thereby have not been registered under the Act or applicable state securities laws, setting forth or referring to the applicable restrictions on transferability and sale of such securities under the Act and applicable state laws.

(g) The Company shall apply the net proceeds from the sale of the Shares for the purposes substantially as described in the Memorandum. Except as set forth in the Memorandum, the Company shall not use any of the net proceeds of the Offering to repay indebtedness to officers (other than accrued salaries incurred in the ordinary course of business), directors or shareholders of the Company without the prior written consent of the Placement Agent.

(h) During the Offering Period, the Company shall afford each prospective purchaser of Shares the opportunity to ask questions of and receive answers from an officer of the Company concerning the terms and conditions of the Offering and the opportunity to obtain such other additional information necessary to verify the accuracy of the Memorandum to the extent the Company possesses such information or can acquire it without unreasonable expense. In addition, to the extent that any purchaser of Shares has inquiries concerning any of the business or operations of any member of the Company Group, the Company shall use reasonable best efforts to ensure that officers of such members are made available to respond to such inquiries.

(i) Except upon obtaining the prior written consent of Aegis, which consent shall not be unreasonably withheld, the Company shall not, at any time prior to the earlier of the Final Closing or the Termination Date, except as contemplated by the Memorandum (i) engage in or commit to engage in any transaction outside the ordinary course of business, (ii) issue, agree to issue or set aside for issuance any securities (debt or equity) or any rights to acquire any such securities; *provided*, that the Company shall be permitted to issue stock options and/or restricted stock to officers, advisors, directors and employees of the Company pursuant to its existing equity incentive plan as described in the SEC Reports, (ii) incur, outside of the ordinary course of business, any material indebtedness, (iii) dispose of any material assets, (iv) make any acquisition (except to the extent specifically referenced in the Memorandum) or (v) change its business or operations.

(j) The Company shall pay all reasonable expenses incurred in connection with the preparation and printing of all necessary offering documents and instruments related to the Offering and the issuance of the Shares and the Agent Warrants and will also pay its own expenses for accounting fees, legal fees and other costs involved with the Offering. All blue sky filings related to this Offering and Federal Form D filing shall be prepared by the Company's counsel, at the Company's expense, with copies of all filings to be promptly forwarded to the Placement Agent. Further, as promptly as practicable after the Final Closing, the Company shall prepare, at its own expense, velobound "closing binders" relating to the Offering and will distribute one such binder to each of the Placement Agent and its counsel.

(k) Until the earlier of the Termination Date or the Final Closing, the Company will not, nor will any person or entity acting on Company's behalf, negotiate with any other placement agent or underwriter with respect to a private or public offering of such entity's debt or equity securities. Neither the Company nor anyone acting on the Company's behalf will, until the earlier of the Termination Date or the Final Closing, without the prior written consent of the Placement Agent, offer for sale to, or solicit offers to subscribe for any securities of the Company from, or otherwise approach or negotiate in respect thereof with, any other person.

**5A. Placement Agent Further Covenants.** The Placement Agent shall not, at any time during the Offering Period, knowingly take any action which would cause any of the representations and warranties made by it in this Agreement not to be complete and correct in all material respects on and as of each Closing Date with the same force and effect as if such representations and warranties had been made on and as of each such date (except to the extent any representation or warranty relates to an earlier date). Offers and sales of the Shares by the Placement Agent will be made in accordance with this Agreement and in compliance with the provisions of Regulation D, Regulation S, if applicable, and the Securities Act.

**6. Conditions of Placement Agent's Obligations.** The obligations of the Placement Agent hereunder to effect a Closing are subject to the fulfillment, at or before each Closing, of the following additional conditions:

(a) Each of the representations and warranties made in this Agreement by the Company qualified as to materiality shall be true and correct at all times prior to and on each Closing Date, except to the extent any such representation or warranty expressly relates to an earlier date, in which case such representation or warranty shall be true and correct as of such earlier date, and the representations and warranties made by the Company not qualified as to materiality shall be true and correct in all material respects at all times prior to and on each Closing Date, except to the extent any such representation or warranty expressly relates to an earlier date, in which case such representation or warranty shall be true and correct in all material respects as of such earlier date.

(b) The Company shall have performed and complied in all material respects with all agreements, covenants and conditions required to be performed and complied with by the Company at or before the Closing.

(c) The Memorandum shall not, and as of the date of any amendment or supplement thereto will not, include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

(d) The Company shall have obtained all consents, waivers and approvals required to be obtained by such parties in connection with the consummation of the transactions contemplated hereby.

(e) No order suspending the use of the Memorandum or enjoining the Offering or sale of the Shares shall have been issued, and no proceedings for that purpose or a similar purpose shall have been initiated or pending, or, to Company's knowledge, threatened.

(f) The Placement Agent shall have received a certificate of an officer of the Company, dated as of the date of such Closing, certifying, as to the fulfillment of the conditions set forth in subparagraphs (a), (b), (c), (d) and (e) above.

(g) Prior to the First Closing, the Company shall have delivered to the Placement Agent: (i) a certified charter document and good standing certificate for the Company and each Subsidiary, each dated as of a date within ten (10) days prior to the First Closing from the secretary of state of its jurisdiction of incorporation or formation, as applicable, (ii) resolutions of the Company's board of directors approving the Merger, the reverse stock split, this Agreement and the transactions and agreements contemplated by this Agreement, certified by the Chief Executive Officer of the Company and (iii) resolutions of the Company's stockholders approving the proposals set forth in the S-4 Registration Statement (as defined below), certified by the Chief Executive Officer of the Company..

(h) At each Closing, the Company shall pay and/or issue to the Placement Agent the Agent Cash Fee and Agent Expense Allowance earned in such Closing.

(i) At each Closing, the Company shall deliver to the Placement Agent signed opinions of Lowenstein Sandler LLP and/or Fennemore Craig, P.C., counsels to the Company, dated as of each such Closing Date, in the forms reasonably acceptable to the Placement Agent. Such opinions shall contain, among other items, opinions on matters relating to organization and good standing, corporate power and authority and exemption of the Offering from the registration requirements of the Securities Act.

(j) Prior to the First Closing, the Company shall receive requisite shareholder approval for the proposals set forth in the Company's Registration Statement on Form S-4 which was filed with the SEC on June 16, 2020 (the "**S-4 Registration Statement**") and the merger transaction with Adgero Biopharmaceuticals described therein (the "**Merger**") shall have been consummated.

(k) Concurrent with the First Closing, the Success Fee Shares as defined in the S-4 Registration Statement shall be issued and delivered to SternAegis Ventures (or its designees).

(l) Prior to the First Closing, the Company shall receive Nasdaq approval with respect to the reverse stock split contemplated in the S-4 Registration Statement and such reverse split shall be effectuated by all necessary corporate action. With respect to said reverse stock split, the Company shall consult with the Placement Agent on the specific reverse stock split ratio prior to the time said reverse stock split is effectuated.

(m) Prior to the First Closing, the Company shall provide evidence of the filing of the Certificate of Designation on the Series C Preferred Stock with the State of Nevada. Prior to each subsequent Closing, the Company shall provide evidence of the filing of the Certificate of Designation on the Series C Preferred Stock with the State of Nevada to the extent required.

(n) All proceedings taken at or prior to any Closing in connection with the authorization, issuance and sale of the Shares will be reasonably satisfactory in form and substance to the Placement Agent and its counsel, and such counsel shall have been furnished with all such documents and certificates as it may reasonably request upon reasonable prior notice in connection with the transactions contemplated hereby.

(o) At each Closing, the Company shall provide irrevocable instructions to its transfer agent to issue into treasury shares, and reserve for future and automatic issuance upon the requested conversion of the Shares by any holder, such number of shares of Common Stock issuable upon the conversion of the Shares sold in such Closing.

7. Conditions of Company's Obligations. The obligations of the Company hereunder to effect a Closing are subject to the fulfillment, at or before such Closing, of the following additional conditions or subject to the waiver of such condition or conditions by the Company:

(a) Each of the representations and warranties made in this Agreement by the Placement Agent qualified as to materiality shall be true and correct at all times prior to and on each Closing Date, except to the extent any such representation or warranty expressly relates to an earlier date, in which case such representation or warranty shall be true and correct as of such earlier date, and the representations and warranties made by the Placement Agent not qualified as to materiality shall be true and correct in all material respects at all times prior to and on each Closing Date, except to the extent any such representation or warranty expressly relates to an earlier date, in which case such representation or warranty shall be true and correct in all material respects as of such earlier date.

(b) The Placement Agent shall have performed and complied in all material respects with all agreements, covenants and conditions required to be performed and complied with by it at or before the Closing.

(c) The Company shall have received a certificate of an officer of the Placement Agent, dated as of the Closing Date, certifying, as to the fulfillment of the conditions set forth in subparagraphs (a) and (b) above.

(d) No order suspending the use of the Memorandum or enjoining the Offering or sale of the Shares shall have been issued, and no proceedings for that purpose or a similar purpose shall have been initiated or pending, or, to the Company's knowledge, be contemplated or threatened.

## 8. Indemnification.

(a) The Company will: (i) indemnify and hold harmless the Placement Agent, its officers, directors, partners, employees, agents (including subagents and selected dealers) and each person, if any, who controls the Placement Agent within the meaning of the Section 15 of the Act or Section 20(a) of the Exchange Act (each an “**Indemnitee**”) against, and pay or reimburse each Indemnitee for, any and all losses, claims, damages, liabilities or expenses whatsoever (or actions or proceedings or investigations in respect thereof), joint or several (which will, for all purposes of this Agreement, include, but not be limited to, all reasonable costs of defense and investigation and all reasonable attorneys’ fees, including appeals), to which any Indemnitee may become subject under the Act or otherwise, in connection with the offer and sale of the Shares, insofar as such losses, claims, damages, liabilities or expenses arise out of or relate to a breach of any representation, warranty or covenant made by the Company herein, regardless of whether such losses, claims, damages, liabilities or expenses shall result from any claim by any Indemnitee or by any third party; and (ii) reimburse each Indemnitee for any legal or other expenses reasonably incurred in connection with investigating or defending against any such loss, claim, action, proceeding or investigation; *provided, however*, that the Company will not be liable in any such case to the extent that any such claim, damage or liability is finally judicially determined to have resulted primarily and directly from (A) an untrue statement or alleged untrue statement of a material fact made in the Memorandum, or an omission or alleged omission to state therein 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, made solely in reliance upon and in conformity with written information furnished to the Company by the Placement Agent specifically for use in the Memorandum, (B) any violations by the Placement Agent of the Act, state securities laws or any rules or regulations of FINRA, which does not result from a violation thereof by the Company or any of its affiliates, or (C) the Placement Agent’s willful misconduct or gross negligence. In addition to the foregoing agreement to indemnify and reimburse, the Company will indemnify and hold harmless each Indemnitee against any and all losses, claims, damages, liabilities or expenses whatsoever (or actions or proceedings or investigations in respect thereof), joint or several (which shall, for all purposes of this Agreement, include, but not be limited to, all reasonable costs of defense and investigation and all reasonable attorneys’ fees, including appeals) to which any Indemnitee may become subject insofar as such costs, expenses, losses, claims, damages or liabilities arise out of or are based upon the claim of any person or entity that he or it is entitled to broker’s or finder’s fees from any Indemnitee in connection with the Offering, other than fees due to the Placement Agent. The foregoing indemnity agreements will be in addition to any liability the Company may otherwise have.

(b) Aegis will indemnify and hold harmless the Company and its officers, directors, and each person, if any, who controls such entity within the meaning of Section 15 of the Act or Section 20(a) of the Exchange Act against, and pay or reimburse any such person for, any and all losses, claims, damages, liabilities or expenses whatsoever (or actions, proceedings or investigations in respect thereof) to which the Company or any such person may become subject under the Act or otherwise, whether such losses, claims, damages, liabilities or expenses shall result from any claim of the Company or by any third party, but only to the extent that such losses, claims, damages or liabilities are finally judicially determined to have resulted primarily from or as a result of (i) any untrue statement or alleged untrue statement of any material fact contained in the Memorandum made in reliance upon and in conformity with information contained in the Memorandum relating to the Placement Agent, or an omission or alleged omission to state therein 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, in either case, if made or omitted in reliance upon and in conformity with written information furnished to the Company by the Placement Agent, specifically for use in the Memorandum or (ii) any violations by the Placement Agent of the Act or state securities laws which does not result from a violation thereof by the Issuer, the Operating Company or any of their respective affiliates, the Placement Agent’s willful misconduct or gross negligence. The Placement Agent will reimburse the Company, the Company and any such person for any legal or other expenses reasonably incurred in connection with investigating or defending against any such loss, claim, damage, liability or action, proceeding or investigation to which such indemnity obligation applies. The foregoing indemnity agreements are in addition to any liability which the Placement Agent may otherwise have. Notwithstanding the foregoing, in no event shall the Placement Agent’s indemnification obligation hereunder exceed the aggregate amount of the Agent Cash Fee actually received by the Placement Agent hereunder.

(c) Promptly after receipt by an indemnified party under this Section 8 of notice of the commencement of any action, claim, proceeding or investigation (the “**Action**”), such indemnified party, if a claim in respect thereof is to be made against the indemnifying party under this Section 8, will notify the indemnifying party of the commencement thereof, but the omission to so notify the indemnifying party will not relieve it from any liability that it may have to any indemnified party under this Section 8 unless the indemnifying party has been substantially prejudiced by such omission. The indemnifying party will be entitled to participate in and, to the extent that it may wish, jointly with any other indemnifying party, to assume the defense thereof subject to the provisions herein stated, with counsel reasonably satisfactory to such indemnified party. The indemnified party will have the right to employ separate counsel in any such Action and to participate in the defense thereof, but the fees and expenses of such counsel will not be at the expense of the indemnifying party if the indemnifying party has assumed the defense of the Action with counsel reasonably satisfactory to the indemnified party, *provided, however*, that if the indemnified party shall be requested by the indemnifying party to participate in the defense thereof or shall have concluded in good faith and specifically notified the indemnifying party either that there may be specific defenses available to it that are different from or additional to those available to the indemnifying party or that such Action involves or could have a material adverse effect upon it with respect to matters beyond the scope of the indemnity agreements contained in this Agreement, then the counsel representing it, to the extent made necessary by such defenses, shall have the right to direct such defenses of such Action on its behalf and in such case the reasonable fees and expenses of such counsel in connection with any such participation or defenses shall be paid by the indemnifying party. No settlement of any Action against an indemnified party will be made without the consent of the indemnifying party and the indemnified party, which consent shall not be unreasonably withheld, delayed or conditioned in light of all factors of importance to such party, and no indemnifying party shall be liable to indemnify any person for any settlement of any such claim effected without such indemnifying party’s consent.

9. Contribution. To provide for just and equitable contribution, if: (i) an indemnified party makes a claim for indemnification pursuant to Section 8 hereof and it is finally determined, by a judgment, order or decree not subject to further appeal that such claims for indemnification may not be enforced, even though this Agreement expressly provides for indemnification in such case; or (ii) any indemnified or indemnifying party seeks contribution under the Act, the Exchange Act, or otherwise, then each indemnifying party shall contribute to such amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Company on the one hand and the Placement Agent on the other in connection with the statements or omissions which resulted in such losses, claims, damages, liabilities or expenses (or actions in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Placement Agent on the other shall be deemed to be in the same proportion as the total net proceeds from the Offering (before deducting expenses) received by the Company bear to the total Agent Cash Fees received by the Placement Agent. The relative fault, in the case of an untrue statement, alleged untrue statement, omission or alleged omission will be determined by, among other things, whether such statement, alleged statement, omission or alleged omission relates to information supplied by the Company or by the Placement Agent, and the parties’ relative intent, knowledge, access to information and opportunity to correct or prevent such statement, alleged statement, omission or alleged omission. The Company and the Placement Agent agree that it would be unjust and inequitable if the respective obligations of the Company and the Placement Agent for contribution were determined by *pro rata* allocation of the aggregate losses, liabilities, claims, damages and expenses or by any other method or allocation that does not reflect the equitable considerations referred to in this Section 9. No person guilty of a fraudulent misrepresentation (within the meaning of Section 10(f) of the Act) will be entitled to contribution from any person who is not guilty of such fraudulent misrepresentation. For purposes of this Section 9, each person, if any, who controls the Placement Agent within the meaning of the Act will have the same rights to contribution as the Placement Agent, and each person, if any, who controls the Company within the meaning of the Act will have the same rights to contribution as the Company, subject in each case to the provisions of this Section 9. Anything in this Section 9 to the contrary notwithstanding, no party will be liable for contribution with respect to the settlement of any claim or action effected without its written consent. This Section 9 is intended to supersede, to the extent permitted by law, any right to contribution under the Act, the Exchange Act or otherwise available.

#### 10. Termination.

(a) The Offering may be terminated by the Placement Agent at any time prior to the expiration of the Offering Period in the event that: (i) any of the representations, warranties or covenants of the Company contained herein or in the Memorandum shall prove to have been false or misleading in any material respect when actually made; (ii) the Company shall have failed to perform any of its material obligations hereunder or under any other Transaction Documents; (iii) there shall occur any event that could reasonably be expected to result in a Company Material Adverse Effect or (iv) the Placement Agent determines that it is reasonably likely that any of the conditions to Closing set forth herein will not, or cannot, be satisfied, including without limitation, the Company's inability to close the Merger, due to its failure to obtain the requisite shareholder approval or any other reason. In the event of any such termination by the Placement Agent pursuant to the above, the Placement Agent shall be entitled to retain any Agent Compensation and Agent Expense Allowance already earned (if any, at such point in time) and receive from the Company, within five (5) business days of the Termination Date, in addition to other rights and remedies it may have hereunder, at law or otherwise, an amount equal to (x ) the sum of \$75,000 (but only if such termination occurs prior to the First Closing (the "**PA Termination Amount** ") and the Placement Agent shall retain the Legal Advance previously paid and shall not be entitled to any further reimbursement of its actual out-of-pocket expenses related to the Offering. The provisions of Sections 3(d) and 3(e) shall survive in full force and effect upon any termination under this Section 10(a).

(b) This Offering may be terminated by the Company at any time prior to the expiration of the Offering Period on account of the Placement Agent's fraud, willful misconduct or gross negligence. In the event of any such termination pursuant to this Section 10(b), the Placement Agent shall not be entitled to any further compensation pursuant to these termination provisions.

(c) In the event the Company unilaterally decides for any reason (other than pursuant to Section 10(b) above or Section 10(d) below) to terminate the Offering at any time prior to the earlier of the First Closing or the Termination Date (the "**Company Unilateral Termination**"), the Placement Agent shall be entitled to receive from the Company within five (5) business days of such termination an amount equal to (x ) the sum of \$200,000 (but only if such termination occurs prior to the First Closing (the "**Company Unilateral Termination Amount**"), plus upon presentation of a written accounting in reasonable detail, reimbursement of Placement Agent's reasonable and actual out-of-pocket expenses related to the Offering which have not been previously paid, including but not limited to fees and expenses of its legal counsel and due diligence related expenditures (not to exceed \$100,000 in the aggregate, less the Legal Advance) (the "**Company Unilateral Termination PA Expense Reimbursement**") In addition, if within twelve (12) months after the Company Unilateral Termination, the Company conducts a public or private offering of its securities, then upon the closing of any such transaction, the Company shall pay the Placement Agent in cash, within five (5) business days of the closing of any such transaction an amount equal to 2% of the gross proceeds from such private or public offering, provided that such percentage shall be the applicable percentages set forth in section 3(d) hereto with respect to any gross proceeds from Tail Investors.

(d) This Offering may be terminated upon mutual agreement of the Company and the Placement Agent, at any time prior to the expiration of the Offering Period. In addition, upon the expiration of the Offering Period, the Offering shall terminate without any further action of the parties hereto. If the Offering is terminated pursuant to this Section 10(d), then in cases in which no Closing had been theretofore consummated, the Company's sole obligation to the Placement Agent shall be to reimburse the Placement Agent's reasonable and actual out-of-pocket expenses related to the Offering which have not been previously paid, including but not limited to fees and expenses of its legal counsel and due diligence related expenditures (not to exceed \$75,000 in the aggregate, less the Legal Advance) which shall be paid within five (5) business days of such termination.

(e) Before any termination by the Placement Agent under Section 10(a) or by the Company under Section 10(b) shall become effective, the terminating party shall give written notice to the other party of its intention to terminate the Offering, which shall set forth the specific grounds for the proposed termination (the "**Termination Notice**"). If the specified grounds for termination, or their resulting adverse effect on the transactions contemplated hereby, are curable, then the other party shall have ten (10) days from the Termination Notice within which to remove such grounds or to eliminate all of their material adverse effects on the transactions contemplated hereby; otherwise, the Offering shall terminate.

(f) Upon any termination pursuant to this Section 10, the parties to this Agreement will promptly instruct Escrow Agent to cause all monies received with respect to the subscriptions for Shares not closed upon to be promptly returned to such subscribers without interest, penalty or deduction.

#### 11. Survival.

(a) The obligations of the parties to pay any costs and expenses hereunder and to provide indemnification and contribution as provided herein shall survive any termination hereunder. In addition, the provisions of 8 through 16 shall survive the sale of the Shares or any termination of the Offering hereunder, and the provisions of Sections 3(d) and 3(e) shall survive the sale of the Shares or any termination of the Offering (other than a termination under Section 10(b)).

(b) The respective indemnities, covenants, representations, warranties and other statements of Company and the Placement Agent set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation made by or on behalf of, and regardless of any access to information by, the Company or the Placement Agent, or any of their respective officers or directors or any controlling person thereof, and will survive the sale of the Shares or any termination of the Offering hereunder for a period of two (2) years from the earlier to occur of the Final Closing or the termination of the Offering.

12. Notices. All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed to have been duly given or made as of the date delivered personally, or the date mailed if mailed by registered or certified mail (postage prepaid, return receipt requested) to the parties at the following addresses (or at such other address for a party as shall be specified by like changes of address which shall be effective upon receipt) or sent by facsimile transmission, with confirmation received. If sent to the Placement Agent, such notice will be mailed, delivered or telefaxed and confirmed to Aegis Capital Corp., 810 Seventh Ave, 11th Floor, New York, New York 10019, Attention: Adam K. Stern, telefax number (646) 390-9122, with a copy (which shall not constitute notice) to: Littman Krooks LLP, 655 Third Avenue, 20<sup>th</sup> Floor, New York, NY 10017 Attention: Steven Uslaner, Esq., telefax number (212) 490-2990, if sent to Company, such notice will be mailed, delivered or telefaxed and confirmed to DelMar Pharmaceuticals, Inc., 12707 High Bluff Dr., Suite 200, San Diego, CA 92130, Attention: Saiid Zarrabian, CEO, Email: [saiid@delmarpharma.com](mailto:saiid@delmarpharma.com), with a copy (which shall not constitute notice) to: Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, New York 10020, Attention: Steven M. Skolnick, Esq., Email: [sskolnick@lowenstein.com](mailto:sskolnick@lowenstein.com).



13. Governing Law, Jurisdiction. This Agreement shall be deemed to have been made and delivered in New York City and shall be governed as to validity, interpretation, construction, affect and in all other respects by the internal laws of the State of New York. **THE PARTIES AGREE THAT ANY DISPUTE, CLAIM OR CONTROVERSY DIRECTLY OR INDIRECTLY RELATING TO OR ARISING OUT OF THIS AGREEMENT, THE TERMINATION OR VALIDITY HEREOF, ANY ALLEGED BREACH OF THIS AGREEMENT OR THE ENGAGEMENT CONTEMPLATED HEREBY (ANY OF THE FOREGOING, A "CLAIM") SHALL BE SUBMITTED TO THE JUDICIAL ARBITRATION AND MEDIATION SERVICES, INC. ("JAMS"), OR ITS SUCCESSOR, IN NEW YORK, FOR FINAL AND BINDING ARBITRATION IN FRONT OF A PANEL OF THREE ARBITRATORS WITH JAMS IN NEW YORK, NEW YORK UNDER THE JAMS COMPREHENSIVE ARBITRATION RULES AND PROCEDURES (WITH EACH OF THE PLACEMENT AGENT AND THE COMPANY CHOOSING ONE ARBITRATOR, AND THE CHOSEN ARBITRATORS CHOOSING THE THIRD ARBITRATOR). THE ARBITRATORS SHALL, IN THEIR AWARD, ALLOCATE ALL OF THE COSTS OF THE ARBITRATION, INCLUDING THE FEES OF THE ARBITRATORS AND THE REASONABLE ATTORNEYS' FEES OF THE PREVAILING PARTY, AGAINST THE PARTY WHO DID NOT PREVAIL. THE AWARD IN THE ARBITRATION SHALL BE FINAL AND BINDING. THE ARBITRATION SHALL BE GOVERNED BY THE FEDERAL ARBITRATION ACT, 9 U.S.C. SEC. 1-16, AND THE JUDGMENT UPON THE AWARD RENDERED BY THE ARBITRATORS MAY BE ENTERED BY ANY COURT HAVING JURISDICTION THEREOF. THE COMPANY AND THE PLACEMENT AGENT AGREE AND CONSENT TO PERSONAL JURISDICTION, SERVICE OF PROCESS AND VENUE IN ANY FEDERAL OR STATE COURT WITHIN THE STATE AND COUNTY OF NEW YORK IN CONNECTION WITH ANY ACTION BROUGHT TO ENFORCE AN AWARD IN ARBITRATION.**

14. Miscellaneous. No provision of this Agreement may be changed or terminated except by a writing signed by the party or parties to be charged therewith. Unless expressly so provided, no party to this Agreement will be liable for the performance of any other party's obligations hereunder. Either party hereto may waive compliance by the other with any of the terms, provisions and conditions set forth herein; *provided, however,* that any such waiver shall be in writing specifically setting forth those provisions waived thereby. No such waiver shall be deemed to constitute or imply waiver of any other term, provision or condition of this Agreement. Neither party may assign its rights or obligations under this Agreement to any other person or entity without the prior written consent of the other party.

15. Entire Agreement; Severability. This Agreement together with any other agreement referred to herein supersedes all prior understandings and written or oral agreements between the parties with respect to the Offering and the subject matter hereof. If any portion of this Agreement shall be held invalid or unenforceable, then so far as is reasonable and possible (i) the remainder of this Agreement shall be considered valid and enforceable and (ii) effect shall be given to the intent manifested by the portion held invalid or unenforceable.

16. 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 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.

*[Signatures on following page.]*

If the foregoing is in accordance with your understanding of the agreement between the Company and the Placement Agent, kindly sign and return this Agreement, whereupon it will become a binding agreement between the Company and the Placement Agent in accordance with its terms.

**DELMAR PHARMACEUTICALS, INC.**

By: /s/ Saiid Zarrabian  
Saiid Zarrabian  
Chief Executive Officer

Accepted and agreed to this  
24th day of June 2020:

**AEGIS CAPITAL CORP.**

By: /s/ Adam K. Stern  
Adam K. Stern  
Head of Private Equity Banking

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**SCHEDULE OF EXCEPTIONS**

**NONE**

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## SUBSCRIPTION AGREEMENT

DelMar Pharmaceuticals, Inc.  
12707 High Bluff Drive, Suite 200  
San Diego, CA 92130

Ladies and Gentlemen:

1. **Subscription.** The undersigned (the “Purchaser”), intending to be legally bound, hereby irrevocably agrees to purchase from DelMar Pharmaceuticals, Inc., a Nevada corporation (the “Company”), the number of shares of Series C Convertible Preferred Stock, par value \$0.001 (the “Shares”) set forth on the signature page hereof at a purchase price of \$1,000 per Share (“Share Price”), with a minimum investment amount of \$100,000 which minimum investment may be waived at the discretion of the Company and the Placement Agent. The Shares are being sold in the Offering (as defined below), the initial closing of which, will close contemporaneously with the merger of Adgero Biopharmaceuticals Holdings, Inc., a Delaware corporation (“Adgero”), into a wholly-owned subsidiary of the Company (the “Merger”) as more fully described in the Memorandum (as defined below). The terms of the Shares are set forth in the Certificate of Designations of Preferences, Rights and Limitations of Series C Convertible Preferred Stock (the “Certificate of Designations”), which is annexed to the Memorandum (as defined below) as Exhibit C. This Subscription Agreement (this “Subscription Agreement”) is one in a series of similar subscription agreements (collectively, the “Subscription Agreements”) entered into pursuant to the Offering. Adgero, along with the Company’s existing subsidiaries, DelMar Pharmaceuticals (BC) Ltd., 0959454 B.C. Ltd. and 0959456 B.C. Ltd, are sometimes collectively referred to herein as the “Subsidiaries.”

2. **The Offering.**

(a) This subscription is submitted to you in accordance with and subject to the terms and conditions described in this Subscription Agreement and the Confidential Private Placement Memorandum of the Company dated June 24, 2020, as amended or supplemented from time to time, including all attachments, schedules and exhibits thereto (the “Memorandum”), relating to the offering (the “Offering”) by the Company of a minimum of 10,000 Shares (\$10,000,000) (the “Minimum Offering Amount”), and up to a maximum of 20,000 Shares (\$20,000,000) (the “Maximum Offering Amount”). In the event that the Maximum Offering Amount is sold, the Placement Agent (as defined below) and the Company shall have the right to sell up to an additional 10,000 Shares (\$10,000,000) to cover over-allotments.

(b) Aegis Capital Corp. (“Aegis”) has been engaged as exclusive placement agent in connection with the Offering (sometimes referred to as the “Placement Agent”). The terms of the Offering are more completely described in the Memorandum and such terms are incorporated herein in their entirety.

**3. Deliveries and Payment; Escrow of Funds.** Simultaneously with the execution hereof, the Purchaser shall: (a) deliver to Aegis in accordance with the Subscription Instructions attached hereto, (i) one (1) completed and executed Omnibus Signature Page to this Subscription Agreement and the Registration Rights Agreement (page 14), (ii) a completed Accredited Investor Certification (pages 15-16), (iii) a completed Investor Profile (pages 17 & 18) and (iv) one (1) completed and executed Tax Certification for U.S. Persons or Non-U.S. Persons, as applicable (beginning on page 20); and (b) make a wire transfer payment to, "Signature Bank, Escrow Agent for DelMar Pharmaceuticals, Inc." in an amount equal to the product of (i) the number of Shares being subscribed for by the Purchaser in the Offering as set forth on the signature page hereof, multiplied by (ii) the Share Price. Wire transfer instructions are set forth on page 12 hereof under the heading "To subscribe for Shares in the private offering of DelMar Pharmaceuticals, Inc. Such funds will be held for the Purchaser's benefit in a non-interest-bearing escrow account (the "Escrow Account") until the earliest to occur of (a) a closing of the sale of the Minimum Offering Amount or more (the "First Closing"), (b) the rejection of such subscription, or (c) the termination of the Offering by the Company or the Placement Agent. The Company and the Placement Agent may continue to offer and sell the Shares and conduct additional closings for the sale of additional Shares after the First Closing and until the termination of the Offering.

**4. Acceptance of Subscription.** The Purchaser understands and agrees that the Company, in its sole discretion, reserves the right to accept or reject this or any other subscription for Shares, in whole or in part, notwithstanding prior receipt by the Purchaser of notice of acceptance of this subscription. In furtherance of the foregoing, the Company shall have the right to require potential subscribers to supply additional information and execute additional documents in a satisfactory manner, which determination shall be at the sole discretion of the Company, prior to the acceptance of this Subscription Agreement. The Company shall have no obligation hereunder until the Company shall execute and deliver to the Purchaser an executed copy of this Subscription Agreement. If this subscription is rejected in whole, the Offering of Shares is terminated or the Minimum Offering Amount is not raised, all funds received from the Purchaser will be returned without interest or offset, and this Subscription Agreement shall thereafter be of no further force or effect. If this subscription is rejected in part, the funds for the rejected portion of this subscription will be returned without interest or offset, and this Subscription Agreement will continue in full force and effect to the extent this subscription was accepted.

**5. Representations and Warranties.**

The Purchaser hereby acknowledges, represents, warrants, and agrees as follows:

(a) None of the Shares or the shares of common stock of the Company issuable upon conversion of the Shares (the "Conversion Securities) or payable as dividends on the Shares (the "Dividend Securities") offered pursuant to the Memorandum are registered under the Securities Act of 1933, as amended (the "Securities Act"), or any state securities laws. The Purchaser understands that the offering and sale of the Shares is intended to be exempt from registration under the Securities Act, by virtue of Section 4(a) (2) thereof and the provisions of Regulation D ("Regulation D") as promulgated by the United States Securities and Exchange Commission (the "SEC") thereunder, based, in part, upon the representations, warranties and agreements of the Purchaser contained in this Subscription Agreement.

(b) The Purchaser understands that, as further described in the Memorandum, the Series C Preferred Stock being offered may be sold at one or more closings and the applicable Conversion Price of the Series C Preferred being sold at each closing may vary from closing to closing since such Conversion Price will be measured at the time of each Closing. Accordingly, the Purchaser acknowledges the risk that the Conversion Price of the particular series of Series C Preferred Stock that it purchases may be higher than the Conversion Price paid by other investors who participate in a different closing.

(c) Prior to the execution of this Subscription Agreement, the Purchaser and the Purchaser's attorney, accountant, purchaser representative and/or tax adviser, if any (collectively, the "Advisers"), have received the Memorandum and all other documents requested by the Purchaser, have carefully reviewed them and understand the information contained therein.

(d) Neither the SEC nor any state securities commission or other regulatory authority has approved the Shares, the Conversion Securities or the Dividend Securities or passed upon or endorsed the merits of the Offering or confirmed the accuracy or determined the adequacy of the Memorandum. The Memorandum has not been reviewed by any federal, state or other regulatory authority.

(e) All documents, records, and books pertaining to the investment in the Shares (including, without limitation, the Memorandum) have been made available for inspection by such Purchaser and its Advisers, if any.

(f) The Purchaser and its Advisers, if any, have had a reasonable opportunity to ask questions of and receive answers from a person or persons acting on behalf of the Company and the Subsidiaries concerning the offering of the Shares and the business, financial condition and results of operations of the Company and the Subsidiaries, and all such questions have been answered to the full satisfaction of the Purchaser and its Advisers, if any.

(g) In evaluating the suitability of an investment in the Company and the Shares, the Purchaser has not relied upon any representation or information (oral or written) other than as stated in the Memorandum and the Purchaser and its Advisers have had access, through the Memorandum and/or the EDGAR system, to true and complete copies of the Company's most recent Annual Report on Form 10-K for the fiscal year ended June 30, 2019 (the "10-K") and all other reports filed by the Company pursuant to the Securities Exchange Act of 1934, as amended, since the filing of the 10-K and prior to the date hereof and has reviewed such filings, including the Company's Registration Statement on Form S-4 relating to the Merger (the "S-4 Registration Statement" and together with the Company's other filings with the SEC, the "SEC Reports").

(h) The Purchaser is unaware of, is in no way relying on, and did not become aware of the Offering through or as a result of, any form of general solicitation or general advertising including, without limitation, through the S-4 Registration Statement or any article, notice, advertisement or other communication published in any newspaper, magazine or similar media or broadcast over television, radio or the Internet (including, without limitation, internet "blogs," bulletin boards, discussion groups and social networking sites) in connection with the Offering and is not subscribing for the Shares and did not become aware of the Offering through or as a result of any seminar or meeting to which the Purchaser was invited by, or any solicitation of a subscription by, a person not previously known to the Purchaser in connection with investments in securities generally.

(i) The Purchaser has taken no action that would give rise to any claim by any person for brokerage commissions, finders' fees or the like relating to this Subscription Agreement or the transactions contemplated hereby (other than commissions to be paid by the Company to the Placement Agent or as otherwise described in the Memorandum).

(j) The Purchaser, together with its Advisers, if any, has such knowledge and experience in financial, tax, and business matters, and, in particular, investments in securities, so as to enable it to utilize the information made available to it in connection with the Offering to evaluate the merits and risks of an investment in the Shares and the Company and to make an informed investment decision with respect thereto.

(k) The Purchaser is not relying on the Company, the Subsidiaries, the Placement Agent or any of their respective employees or agents with respect to the legal, tax, economic and related considerations of an investment in the Company and the Shares, and the Purchaser has relied on the advice of, or has consulted with, only its own Advisers.

(l) The Purchaser is acquiring the Shares solely for such Purchaser's own account for investment purposes only and not with a view to or intent of resale or distribution thereof, in whole or in part. The Purchaser has no agreement or arrangement, formal or informal, with any person to sell or transfer all or any part of the Shares or the Conversion Securities, and the Purchaser has no plans to enter into any such agreement or arrangement.

(m) The Purchaser must bear the substantial economic risks of the investment in the Shares indefinitely because none of the Shares, Conversion Securities or Dividend may be sold, hypothecated or otherwise disposed of unless subsequently registered under the Securities Act and applicable state securities laws or an exemption from such registration is available. Legends shall be placed on the securities included in the to the effect that they have not been registered under the Securities Act or applicable state securities laws and appropriate notations thereof will be made in the Company's stock books. Stop transfer instructions will be placed with the transfer agent of the Shares, if any. The Company has agreed that purchasers of the Shares will have, with respect to the Conversion Securities and Dividend Securities, the registration rights described in the Registration Rights Agreement. Notwithstanding such registration rights, there can be no assurance that there will be any market for resale of the Shares, the Conversion Securities or the Dividend Securities, nor can there be any assurance that such securities will be freely transferable at any time in the foreseeable future.

(n) The Purchaser has adequate means of providing for such Purchaser's current financial needs and foreseeable contingencies and has no need for liquidity from its investment in the Shares for an indefinite period of time.

(o) The Purchaser is aware that an investment in the Shares is high risk, involving a number of very significant risks and has carefully read and considered the matters set forth under the caption "Risk Factors" in the Memorandum and in the SEC Reports, and, in particular, acknowledges that the Company and the Subsidiaries each has a limited operating history, significant operating losses since inception, no revenues from operations to date, limited assets and are engaged in a highly competitive business.

(p) The Purchaser meets the requirements of at least one of the suitability standards for an “accredited investor” as that term is defined in Regulation D and as set forth on the Accredited Investor Certification contained herein.

(q) The Purchaser (i) if a natural person, represents that the Purchaser has reached the age of 21 and has full power and authority to execute and deliver this Subscription Agreement and all other related agreements or certificates and to carry out the provisions hereof and thereof; (ii) if a corporation, partnership, or limited liability company or partnership, or association, joint stock company, trust, unincorporated organization or other entity, represents that such entity was not formed for the specific purpose of acquiring the Shares, such entity is duly organized, validly existing and in good standing under the laws of the state of its organization, the consummation of the transactions contemplated hereby is authorized by, and will not result in a violation of state law or its charter or other organizational documents, such entity has full power and authority to execute and deliver this Subscription Agreement and all other related agreements or certificates and to carry out the provisions hereof and thereof and to purchase and hold the Shares, the execution and delivery of this Subscription Agreement has been duly authorized by all necessary action, this Subscription Agreement has been duly executed and delivered on behalf of such entity and is a legal, valid and binding obligation of such entity; or (iii) if executing this Subscription Agreement in a representative or fiduciary capacity, represents that it has full power and authority to execute and deliver this Subscription Agreement in such capacity and on behalf of the subscribing individual, ward, partnership, trust, estate, corporation, or limited liability company or partnership, or other entity for whom the Purchaser is executing this Subscription Agreement, and such individual, partnership, ward, trust, estate, corporation, or limited liability company or partnership, or other entity has full right and power to perform pursuant to this Subscription Agreement and make an investment in the Company, and represents that this Subscription Agreement constitutes a legal, valid and binding obligation of such entity. The execution and delivery of this Subscription Agreement will not violate or be in conflict with any order, judgment, injunction, agreement or controlling document to which the Purchaser is a party or by which it is bound.

(r) The Purchaser and the Advisers, if any, have had the opportunity to obtain any additional information, to the extent the Company and/or the Subsidiaries have such information in their possession or could acquire it without unreasonable effort or expense, necessary to verify the accuracy of the information contained in the Memorandum and all documents received or reviewed in connection with the purchase of the Shares and have had the opportunity to have representatives of the Company and the Subsidiaries provide them with such additional information regarding the terms and conditions of this particular investment and the financial condition, results of operations, and business of the Company and the Subsidiaries deemed relevant by the Purchaser or the Advisers, if any, and all such requested information, to the extent the Company and the Subsidiaries had such information in their possession or could acquire it without unreasonable effort or expense, has been provided to the full satisfaction of the Purchaser and the Advisers, if any.

(s) Any information which the Purchaser has heretofore furnished or is furnishing herewith to the Company, the Subsidiaries or the Placement Agent is complete and accurate and may be relied upon by the Company, the Subsidiaries and the Placement Agent in determining the availability of an exemption from registration under federal and state securities laws in connection with the offering of securities as described in the Memorandum. The Purchaser further represents and warrants that it will notify and supply corrective information to the Company, the Subsidiaries and the Placement Agent immediately upon the occurrence of any change therein occurring prior to the Company's issuance of the Shares.



(t) The Purchaser has significant prior investment experience, including investment in non-listed and non-registered securities. The Purchaser is knowledgeable about investment considerations in development-stage companies with limited operating histories. The Purchaser has a sufficient net worth to sustain a loss of its entire investment in the Company and the Shares in the event such a loss should occur. The Purchaser's overall commitment to investments which are not readily marketable is not excessive in view of the Purchaser's net worth and financial circumstances and the purchase of the Shares will not cause such commitment to become excessive. Investment in the Company and the Shares as contemplated by this Subscription Agreement is suitable for the Purchaser.

(u) The Purchaser is satisfied that the Purchaser has received adequate information with respect to all matters which it or the Advisers, if any, consider material to its decision to make an investment in the Company and the Shares as contemplated by this Subscription Agreement.

(v) The Purchaser acknowledges that it has been provided with, and has reviewed, Aegis' Regulation Best Interest Supplement in the form of Exhibit A hereto (the "BI Supplement") and has had a reasonable opportunity to ask questions of and receive answers from a person or persons acting on behalf of Aegis concerning the BI Supplement.

(w) The Purchaser acknowledges that any estimates or forward-looking statements or projections included in the Memorandum were prepared by the Company and the Subsidiaries in good faith but that the attainment of any such projections, estimates or forward-looking statements cannot be guaranteed by the Company or the Subsidiaries and should not be relied upon.

(x) No oral or written representations have been made, or oral or written information furnished, to the Purchaser or the Advisers, if any, in connection with the Offering which are in any way inconsistent with the information contained in the Memorandum.

(y) Within five (5) days after receipt of a request from the Company, the Subsidiaries or the Placement Agent, the Purchaser will provide such information and deliver such documents as may reasonably be necessary to comply with any and all laws and ordinances to which the Company, the Subsidiaries or the Placement Agent is subject.

(z) The Purchaser's substantive relationship with either the Company, the Placement Agent or subagent through which the Purchaser is subscribing for Shares predates such Placement Agent's or such subagent's contact with the Purchaser regarding an investment in the Shares.

(aa) THE SHARES OFFERED HEREBY (INCLUDING THE CONVERSION SECURITIES AND DIVIDEND SECURITIES) HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS AND ARE BEING OFFERED AND SOLD IN RELIANCE ON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF SAID ACT AND SUCH LAWS. SUCH SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER SAID ACT AND SUCH LAWS PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. SUCH SECURITIES HAVE NOT BEEN RECOMMENDED, APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION, ANY STATE SECURITIES COMMISSION OR ANY OTHER REGULATORY AUTHORITY, NOR HAVE ANY OF THE FOREGOING AUTHORITIES PASSED UPON OR ENDORSED THE MERITS OF THIS OFFERING OR THE ACCURACY OR ADEQUACY OF THE MEMORANDUM OR THIS SUBSCRIPTION AGREEMENT. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

(bb) In making an investment decision in the Company and the Shares investors must rely on their own examination of the Company, the Subsidiaries and the terms of the Offering, including the merits and risks involved. The Purchaser should be aware that it will be required to bear the financial risks of investment in the Company and the Shares for an indefinite period of time.

(cc) **(For ERISA plans only)** The fiduciary of the ERISA plan (the “Plan”) represents that such fiduciary has been informed of and understands the Company’s investment objectives, policies and strategies, and that the decision to invest “plan assets” (as such term is defined in ERISA) in the Company is consistent with the provisions of ERISA that require diversification of plan assets and impose other fiduciary responsibilities. The Purchaser fiduciary or Plan (a) is responsible for the decision to invest in the Company; (b) is independent of the Company or any of its affiliates; (c) is qualified to make such investment decision; and (d) in making such decision, the Purchaser fiduciary or Plan has not relied primarily on any advice or recommendation of the Company or any of its affiliates.

(dd) **The Purchaser should check the Office of Foreign Assets Control (“OFAC”) website at <<http://www.treas.gov/ofac>> before making the following representations.** The Purchaser represents that the amounts invested by it in the Company in the Offering were not and are not directly or indirectly derived from activities that contravene federal, state or international laws and regulations, including anti-money laundering laws and regulations. Federal regulations and Executive Orders administered by OFAC prohibit, among other things, the engagement in transactions with, and the provision of services to, certain foreign countries, territories, entities and individuals. The lists of OFAC prohibited countries, territories, persons and entities can be found on the OFAC website at <<http://www.treas.gov/ofac>>. In addition, the programs administered by OFAC (the “OFAC Programs”) prohibit dealing with individuals<sup>1</sup> or entities in certain countries regardless of whether such individuals or entities appear on the OFAC lists.

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<sup>1</sup> These individuals include specially designated nationals, specially designated narcotics traffickers and other parties subject to OFAC sanctions and embargo programs.

(ee) To the best of the Purchaser's knowledge, none of: (1) the Purchaser; (2) any person controlling or controlled by the Purchaser; (3) if the Purchaser is a privately-held entity, any person having a beneficial interest in the Purchaser; or (4) any person for whom the Purchaser is acting as agent or nominee in connection with this investment is a country, territory, individual or entity named on an OFAC list, or a person or entity prohibited under the OFAC Programs. Please be advised that the Company may not accept any amounts from a prospective investor if such prospective investor cannot make the representation set forth in the preceding paragraph. The Purchaser agrees to promptly notify the Company, the Subsidiaries and the Placement Agent should the Purchaser become aware of any change in the information set forth in these representations. The Purchaser understands and acknowledges that, by law, the Company may be obligated to "freeze the account" of the Purchaser, either by prohibiting additional subscriptions from the Purchaser, declining any redemption requests and/or segregating the assets in the account in compliance with governmental regulations, and the Placement Agent may also be required to report such action and to disclose the Purchaser's identity to OFAC. The Purchaser further acknowledges that the Company may, by written notice to the Purchaser, suspend the redemption rights, if any, of the Purchaser if the Company reasonably deems it necessary to do so to comply with anti-money laundering regulations applicable to the Company and the Placement Agent or any of the Company's other service providers. These individuals include specially designated nationals, specially designated narcotics traffickers and other parties subject to OFAC sanctions and embargo programs.

(ff) To the best of the Purchaser's knowledge, none of: (1) the Purchaser; (2) any person controlling or controlled by the Purchaser; (3) if the Purchaser is a privately-held entity, any person having a beneficial interest in the Purchaser; or (4) any person for whom the Purchaser is acting as agent or nominee in connection with this investment is a senior foreign political figure,<sup>2</sup> or any immediate family<sup>3</sup> member or close associate<sup>4</sup> of a senior foreign political figure, as such terms are defined in the footnotes below.

(gg) If the Purchaser is affiliated with a non-U.S. banking institution (a "Foreign Bank"), or if the Purchaser receives deposits from, makes payments on behalf of, or handles other financial transactions related to a Foreign Bank, the Purchaser represents and warrants to the Company that: (1) the Foreign Bank has a fixed address, other than solely an electronic address, in a country in which the Foreign Bank is authorized to conduct banking activities; (2) the Foreign Bank maintains operating records related to its banking activities; (3) the Foreign Bank is subject to inspection by the banking authority that licensed the Foreign Bank to conduct banking activities; and (4) the Foreign Bank does not provide banking services to any other Foreign Bank that does not have a physical presence in any country and that is not a regulated affiliate.

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<sup>2</sup> A "senior foreign political figure" is defined as a senior official in the executive, legislative, administrative, military or judicial branches of a foreign government (whether elected or not), a senior official of a major foreign political party, or a senior executive of a foreign government-owned corporation. In addition, a "senior foreign political figure" includes any corporation, business or other entity that has been formed by, or for the benefit of, a senior foreign political figure.

<sup>3</sup> "Immediate family" of a senior foreign political figure typically includes the figure's parents, siblings, spouse, children and in-laws.

<sup>4</sup> A "close associate" of a senior foreign political figure is a person who is widely and publicly known to maintain an unusually close relationship with the senior foreign political figure, and includes a person who is in a position to conduct substantial domestic and international financial transactions on behalf of the senior foreign political figure.

**6. Indemnification.** The Purchaser agrees to indemnify and hold harmless the Company, and the Subsidiaries, the Placement Agent (including its selected dealers, if any), and their respective officers, directors, employees, agents, control persons and affiliates from and against all losses, liabilities, claims, damages, costs, fees and expenses whatsoever (including, but not limited to, any and all expenses incurred in investigating, preparing or defending against any litigation commenced or threatened) based upon or arising out of any actual or alleged false acknowledgment, representation or warranty, or misrepresentation or omission to state a material fact, or breach by the Purchaser of any covenant or agreement made by the Purchaser herein or in any other document delivered in connection with this Subscription Agreement.

**7. Irrevocability; Binding Effect.** The Purchaser hereby acknowledges and agrees that the subscription hereunder is irrevocable by the Purchaser, except as required by applicable law, and that this Subscription Agreement shall survive the death or disability of the Purchaser and shall be binding upon and inure to the benefit of the parties and their heirs, executors, administrators, successors, legal representatives, and permitted assigns. If the Purchaser is more than one person, the obligations of the Purchaser hereunder shall be joint and several and the agreements, representations, warranties, and acknowledgments herein shall be deemed to be made by and be binding upon each such person and such person's heirs, executors, administrators, successors, legal representatives, and permitted assigns.

**8. Modification.** This Subscription Agreement shall not be modified or waived except by an instrument in writing signed by the party against whom any such modification or waiver is sought.

**9. Immaterial Modifications to the Registration Rights Agreement.** The Company may, at any time prior to the First Closing, modify the Registration Rights Agreement if necessary to clarify any provision therein, without first providing notice or obtaining prior consent of the Purchaser, if, and only if, such modification is not material in any respect.

**10. Notices.** Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party notified, (b) when sent by confirmed email or facsimile if sent during normal business hours of the recipient, if not confirmed, then on the next business day, (c) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. The Company and the Purchaser hereby consent to the delivery of communications and notices to such parties at their respective address, email or facsimile number set forth on the signature page hereto, or to such other address as such party shall have furnished in writing in accordance with the provisions of this Section 10.

**11. Assignability.** This Subscription Agreement and the rights, interests and obligations hereunder are not transferable or assignable by the Purchaser and the transfer or assignment of the Shares, the Conversion Securities or the Dividend Securities shall be made only in accordance with all applicable laws.

**12. Applicable Law.** This Subscription Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts to be wholly-performed within said State.

13. **Arbitration.** The parties agree to submit all controversies to arbitration in accordance with the provisions set forth below and understand that:

(a) Arbitration is final and binding on the parties.

(b) The parties are waiving their right to seek remedies in court, including the right to a jury trial.

(c) Pre-arbitration discovery is generally more limited and different from court proceedings.

(d) The arbitrator's award is not required to include factual findings or legal reasoning and any party's right to appeal or to seek modification of rulings by arbitrators is strictly limited.

(e) The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.

(f) All controversies which may arise between the parties concerning this Subscription Agreement shall be determined by arbitration pursuant to the rules then pertaining to the Financial Industry Regulatory Authority, Inc. ("FINRA") in New York City, New York. Judgment on any award of any such arbitration may be entered in the Supreme Court of the State of New York or in any other court having jurisdiction of the person or persons against whom such award is rendered. Any notice of such arbitration or for the confirmation of any award in any arbitration shall be sufficient if given in accordance with the provisions of this Agreement. The parties agree that the determination of the arbitrators shall be binding and conclusive upon them.

14. **Blue Sky Qualification.** The purchase of Shares under this Subscription Agreement is expressly conditioned upon the exemption from qualification of the offer and sale of the Shares from applicable federal and state securities laws. The Company shall not be required to qualify this transaction under the securities laws of any jurisdiction and, should qualification be necessary, the Company shall be released from any and all obligations to maintain its offer, and may rescind any sale contracted, in the jurisdiction.

15. **Use of Pronouns.** All pronouns and any variations thereof used herein shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons referred to may require.

16. **Confidentiality.** The Purchaser acknowledges and agrees that any information or data the Purchaser has acquired from or about the Company or the Subsidiaries, not otherwise properly in the public domain, was received in confidence. The Purchaser agrees not to divulge, communicate or disclose, except as may be required by law or for the performance of this Agreement, or use to the detriment of the Company or the Subsidiaries or for the benefit of any other person or persons, or misuse in any way, any confidential information of the Company or the Subsidiaries, including any scientific, technical, trade or business secrets of the Company or the Subsidiaries and any scientific, technical, trade or business materials that are treated by the Company or the Subsidiaries as confidential or proprietary, including, but not limited to, ideas, discoveries, inventions, developments and improvements belonging to the Company or the Subsidiaries and confidential information obtained by or given to the Company or the Subsidiaries about or belonging to third parties.

**17. Miscellaneous.**

(a) This Subscription Agreement, together with the Registration Rights Agreement, constitutes the entire agreement between the Purchaser and the Company with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings, if any, relating to the subject matter hereof. The terms and provisions of this Subscription Agreement may be waived, or consent for the departure therefrom granted, only by a written document executed by the party entitled to the benefits of such terms or provisions.

(b) The representations and warranties of the Purchaser made in this Subscription Agreement shall survive the execution and delivery hereof and delivery of the Shares.

(c) Each of the parties hereto shall pay its own fees and expenses (including the fees of any attorneys, accountants, appraisers or others engaged by such party) in connection with this Subscription Agreement and the transactions contemplated hereby whether or not the transactions contemplated hereby are consummated.

(d) This Subscription Agreement may be executed in one or more counterparts each of which shall be deemed an original, but all of which shall together constitute one and the same instrument.

(e) Each provision of this Subscription Agreement shall be considered separable and, if for any reason any provision or provisions hereof are determined to be invalid or contrary to applicable law, such invalidity or illegality shall not impair the operation of or affect the remaining portions of this Subscription Agreement.

(f) Paragraph titles are for descriptive purposes only and shall not control or alter the meaning of this Subscription Agreement as set forth in the text.

**18. Omnibus Signature Page.** This Subscription Agreement is intended to be read and construed in conjunction with the Registration Rights Agreement pertaining to the issuance by the Company of the Shares to subscribers pursuant to the Memorandum. Accordingly, pursuant to the terms and conditions of this Subscription Agreement and such related agreements it is hereby agreed that the execution by the Purchaser of this Subscription Agreement, in the place set forth herein, shall constitute agreement to be bound by the terms and conditions hereof and the terms and conditions of the Registration Rights Agreement, with the same effect as if each of such separate but related agreement were separately signed.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**DELMAR PHARMACEUTICALS, INC.**  
OMNIBUS SIGNATURE PAGE TO THE  
SUBSCRIPTION AGREEMENT AND REGISTRATION RIGHTS AGREEMENT

Subscriber hereby elects to subscribe under the Subscription Agreement for a total of \$\_\_\_\_\_ of Shares at a price of \$1,000.00 per Share (NOTE: to be completed by subscriber) and, by execution and delivery hereof, Subscriber hereby executes the Subscription Agreement and agrees to be bound by the terms and conditions of the Subscription Agreement and the Registration Rights Agreement.

If the Purchaser is an INDIVIDUAL, and if purchased as JOINT TENANTS, as TENANTS IN COMMON, or as COMMUNITY PROPERTY:

\_\_\_\_\_  
Print Name(s) Social Security Number(s)

\_\_\_\_\_  
Signature(s) of Subscriber(s) Signature

\_\_\_\_\_  
Date Address

If the Purchaser is a PARTNERSHIP, CORPORATION, LIMITED LIABILITY COMPANY or TRUST:

\_\_\_\_\_  
Name of Entity Federal Taxpayer Identification Number

By: \_\_\_\_\_  
Name: State of Organization  
Title:

\_\_\_\_\_  
Date Address

\_\_\_\_\_  
Fax Number Email Address

DELMAR PHARMACEUTICALS, INC. AEGIS CAPITAL CORP.

By: \_\_\_\_\_ By: \_\_\_\_\_  
Authorized Officer Authorized Officer

**DelMar Announces \$19.6 Million Private Placement Priced At-The-Market**

**SAN DIEGO, August 18, 2020** — DelMar Pharmaceuticals, Inc. (Nasdaq: DMPH) (“DelMar” or the “Company”) announced today that it has entered into definitive agreements with investors providing for the sale and issuance of up to 19,587 shares of its Series C Convertible Preferred Stock (the “Preferred Stock”) at a purchase price of \$1,000 per share in a private placement offering priced at-the-market under the rules of the Nasdaq Stock Market. The Preferred Stock is convertible into shares of DelMar common stock at a conversion price of \$1.16 per share. The offering is expected to result in gross proceeds to DelMar of up to approximately \$19.6 million.

The private placement is expected to close concurrently with DelMar’s previously announced proposed merger with Adgero Biopharmaceuticals Holdings, Inc. (“Adgero”) on or about August 19, 2020, subject to the satisfaction of customary closing conditions. Upon closing of the transactions, DelMar will change its name to “Kintara Therapeutics, Inc.” and it is anticipated that the shares of common stock will commence trading on the Nasdaq Capital Market under the ticker symbol “KTRA.”

The Company intends to use the net proceeds from the offering for the previously announced registration study for VAL-083 in newly diagnosed and recurrent glioblastoma multiforme (GBM), the 15-patient REM-001 confirmatory lead-in study intended to continue seamlessly into a full Phase 3 pivotal study for Cutaneous Metastatic Breast Cancer (CMBC) and for working capital. Also, as previously disclosed, the GBM trial will be executed through the Company’s partnership with Global Coalition for Adaptive Research (GCAR) through the Glioblastoma Adaptive Global Innovative Learning Environment (GBM AGILE) Study, an adaptive clinical trial platform in GBM.

The Preferred Stock accrues dividends payable in shares of DelMar common stock on the first four anniversaries of the closing of the private placement as long as the Preferred Stock has not been converted with percentages ranging from 10% in year one to 25% in year four.

The shares of Preferred Stock described above were offered in a private placement pursuant to an applicable exemption from the registration requirements of the Securities Act of 1933, as amended (the “Act”), and, along with the common shares issuable upon their exercise or payable as dividends pursuant to the Preferred Stock, have not been registered under the Act, and may not be offered or sold in the United States absent registration with the SEC or an applicable exemption from such registration requirements.

This press release shall not constitute an offer to sell or the solicitation of an offer to buy any securities, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. No offering of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended.

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## **About DelMar**

Located in San Diego, California, DelMar is focused on the development and commercialization of new therapies for cancer patients who have limited or no treatment options. By focusing on understanding tumor biology and mechanisms of treatment resistance, DelMar identifies biomarkers to personalize new therapies in indications where patients are failing, or are unable to tolerate, standard-of-care treatments.

DelMar's current pipeline is based around VAL-083, a "first-in-class", small-molecule chemotherapeutic with a novel mechanism of action that has demonstrated clinical activity against a range of cancers, including central nervous system, ovarian and other solid tumors (e.g. NSCLC, bladder cancer, head and neck) in U.S. clinical trials sponsored by the National Cancer Institute (NCI). Based on DelMar's internal research programs and these prior NCI-sponsored clinical studies, DelMar is conducting clinical trials to support the development and commercialization of VAL-083 to solve significant unmet medical needs.

VAL-083 is being studied in two collaborator-supported, biomarker-driven Phase 2 clinical trials for MGMT-unmethylated GBM. Overcoming MGMT-mediated resistance represents a significant unmet medical need in the treatment of GBM. In addition, DelMar has announced the allowance of a separate IND for VAL-083 as a potential treatment for platinum-resistant ovarian cancer.

## **About Adgero**

Adgero is a biopharmaceutical company focused on building a pipeline by advancing its proprietary late stage photodynamic therapy ("PDT") platform that holds promise as a localized cutaneous or visceral tumor treatment. Additionally, PDT has immune activating properties and has potential therapeutic utility in oncology as a combination therapy in conjunction with immunotherapies. It is also being investigated in the cardiovascular setting as treatment for hemodialysis access failure. Adgero's lead product candidate, REM-001 therapy, has been previously studied in four Phase 2/3 clinical trials in patients with CMBC, who had previously received chemotherapy and/or failed radiation therapy. With clinical efficacy to date of 80% complete responses of CMBC evaluable lesions and with an existing robust safety database of approximately 1,100 patients across multiple indications, Adgero is currently focused on advancing the REM-001 program to late stage pivotal testing.

## **Forward-Looking Statements**

This press release contains forward-looking statements based upon DelMar's and Adgero's current expectations. This communication contains "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements are identified by terminology such as "may," "should," "expects," "plans," "anticipates," "could," "intends," "target," "projects," "contemplates," "believes," "estimates," "predicts," "potential" or "continue" or the negative of these terms or other similar words. These statements are only predictions. DelMar and Adgero have based these forward-looking statements largely on their then-current expectations and projections about future events, as well as the beliefs and assumptions of management. Forward-looking statements are subject to a number of risks and uncertainties, many of which involve factors or circumstances that are beyond each of DelMar's and Adgero's control, and actual results could differ materially from those stated or implied in forward-looking statements due to a number of factors, including but not limited to: (i) risks associated with the timing of the closing of the proposed private placement and merger transaction, including the risks that a condition to closing would not be satisfied within the expected timeframe or at all or that the closing of the proposed merger transaction will not occur; (ii) the outcome of any legal proceedings that may be instituted against the parties and others related to the merger agreement; (iii) the occurrence of any event, change or other circumstance or condition that could give rise to the termination of the merger agreement, (iv) unanticipated difficulties or expenditures relating to the proposed merger transaction, the response of business partners and competitors to the announcement of the proposed merger transaction, and/or potential difficulties in employee retention as a result of the announcement and pendency of the proposed merger transaction; (v) whether the combined business of Adgero and DelMar will be successful, and (vi) those risks detailed in DelMar's most recent Annual Report on Form 10-K and subsequent reports filed with the SEC, as well as other documents that may be filed by DelMar from time to time with the SEC. Accordingly, you should not rely upon forward-looking statements as predictions of future events. Neither DelMar nor Adgero can assure you that the events and circumstances reflected in the forward-looking statements will be achieved or occur, and actual results could differ materially from those projected in the forward-looking statements. The forward-looking statements made in this communication relate only to events as of the date on which the statements are made. Except as required by applicable law or regulation, DelMar and Adgero undertake no obligation to update any forward-looking statement to reflect events or circumstances after the date on which the statement is made or to reflect the occurrence of unanticipated events. Investors should not assume that any lack of update to a previously issued "forward-looking statement" constitutes a reaffirmation of that statement.

## **Additional Information and Where to Find It**

This press release is for informational purposes only and does not constitute an offer to buy or sell or the solicitation of an offer to buy or sell any securities or a solicitation of any vote or approval. This press release relates to the proposed merger of DelMar and Adgero. In connection with the proposed merger, DelMar filed a registration statement on Form S-4 (No. 333-239215), which includes the joint proxy statement/prospectus. The registration statement was declared effective by the SEC on July 2, 2020, and DelMar commenced mailing the Joint Proxy Statement/Prospectus on or about July 2, 2020. DelMar will file other documents regarding the proposed merger transaction with the U.S. Securities and Exchange Commission (the "SEC"). No offering of securities shall be made, except by means of a prospectus meeting the requirements of Section 10 of the U.S. Securities Act of 1933, as amended. INVESTORS AND SECURITY HOLDERS ARE URGED TO READ THE PROXY STATEMENT/PROSPECTUS AND OTHER RELEVANT DOCUMENTS FILED WITH THE SEC CAREFULLY AND IN THEIR ENTIRETY, WHEN THEY BECOME AVAILABLE, BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION THAT STOCKHOLDERS SHOULD CONSIDER BEFORE MAKING ANY DECISION REGARDING THE PROPOSED MERGER. A definitive proxy statement/prospectus will be sent to DelMar's stockholders. Investors and security holders will be able to obtain these documents (when available) free of charge from the SEC's website at [www.sec.gov](http://www.sec.gov). The documents filed by DelMar with the SEC may also be obtained free of charge from DelMar by requesting them by mail at DelMar Pharmaceuticals, Inc., 12707 High Bluff Drive, Suite 200, San Diego, CA 92130.

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**Kintara Therapeutics (Formerly DelMar Pharmaceuticals) Announces Completion of Merger with Adgero Biopharmaceuticals and Closing of \$19.6 Million Private Placement Priced At-The-Market**

- **DelMar Pharmaceuticals, Inc. Name Change to Kintara Therapeutics, Inc.**
- **Kintara Therapeutics to Trade on Nasdaq Capital Market under the Ticker Symbol “KTRA”**

**SAN DIEGO, August 20, 2020** — Kintara Therapeutics, Inc. (formerly DelMar Pharmaceuticals, Inc.) (“Kintara” or the “Company”) (Nasdaq: KTRA) announced today that it has completed its merger with Adgero Biopharmaceuticals Holdings, Inc. (Adgero). Commencing today, August 20, 2020, the combined company will operate as Kintara Therapeutics, Inc. and its shares of common stock will commence trading on the Nasdaq Capital Market under the ticker symbol “KTRA”. Kintara is a diversified biopharmaceutical company with multiple oncology product candidates in development, including VAL-083 for the treatment of drug-resistant solid tumors such as glioblastoma multiforme (GBM) and REM-001 for the treatment of cutaneous metastatic breast cancer (CMBC).

Concurrent with the closing of the merger, the Company closed its previously announced private placement with investors providing for the sale and issuance of 19,587 shares of its Series C Convertible Preferred Stock (the “Preferred Stock”) at a purchase price of \$1,000 per share priced at-the-market under the rules of the Nasdaq Stock Market. The Preferred Stock is convertible into shares of the Company’s common stock at a conversion price of \$1.16 per share. The offering resulted in gross proceeds to the Company of approximately \$19.6 million.

The Company intends to use the net proceeds from the offering to fund the previously announced registration study for VAL-083 in newly diagnosed and recurrent GBM, the 15-patient REM-001 confirmatory lead-in study intended to continue seamlessly into a full Phase 3 pivotal study for CMBC, and for working capital. Also, as previously disclosed, the GBM trial will be executed through the Company’s partnership with Global Coalition for Adaptive Research (GCAR) through the Glioblastoma Adaptive Global Innovative Learning Environment (GBM AGILE) Study, an adaptive clinical trial platform in GBM.

The Preferred Stock accrues dividends payable in shares of the Company’s common stock on the first four anniversaries of the closing of the private placement as long as the Preferred Stock has not been converted, with percentages ranging from 10% in year one to 25% in year four.

The board of directors of Kintara is now comprised of Robert Hoffman, Laura Johnson, Rob Toth and Saïd Zarrabian, who are current directors of the Company, and John Liatos and Keith Murphy from Adgero.

The shares of Preferred Stock described above were offered in a private placement pursuant to an applicable exemption from the registration requirements of the Securities Act of 1933, as amended (the “Act”), and, along with the common shares issuable upon their exercise or payable as dividends pursuant to the Preferred Stock, have not been registered under the Act, and may not be offered or sold in the United States absent registration with the SEC or an applicable exemption from such registration requirements.

This press release shall not constitute an offer to sell or the solicitation of an offer to buy any securities, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. No offering of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended.

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## **About Kintara**

Located in San Diego, California, Kintara is dedicated to the development of novel cancer therapies for patients with unmet medical needs.

Kintara is developing two late-stage, Phase 3-ready therapeutics for clear unmet medical needs with reduced risk development programs. The two programs are VAL-083 for GBM and REM-001 for CMBC.

VAL-083 is a “first-in-class”, small-molecule chemotherapeutic with a novel mechanism of action that has demonstrated clinical activity against a range of cancers, including central nervous system, ovarian and other solid tumors (e.g. NSCLC, bladder cancer, head and neck) in U.S. clinical trials sponsored by the National Cancer Institute (NCI). Based on Kintara’s internal research programs and these prior NCI-sponsored clinical studies, Kintara is currently conducting clinical trials to support the development and commercialization of VAL-083 in GBM.

Kintara is also advancing its proprietary late stage photodynamic therapy (PDT) platform that holds promise as a localized cutaneous or visceral tumor treatment as well as in other potential indications. REM-001 therapy, has been previously studied in four Phase 2/3 clinical trials in patients with CMBC, who had previously received chemotherapy and/or failed radiation therapy. With clinical efficacy to date of 80% complete responses of CMBC evaluable lesions and with an existing robust safety database of approximately 1,100 patients across multiple indications, Kintara is advancing the REM-001 CMBC program to late stage pivotal testing.

## **Forward-Looking Statements**

This press release contains “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995 based upon Kintara’s current expectations. Forward-looking statements are identified by terminology such as “may,” “should,” “expects,” “plans,” “anticipates,” “could,” “intends,” “target,” “projects,” “contemplates,” “believes,” “estimates,” “predicts,” “potential” or “continue” or the negative of these terms or other similar words. These statements are only predictions. Kintara has based these forward-looking statements largely on its then-current expectations and projections about future events, as well as the beliefs and assumptions of management. Forward-looking statements are subject to a number of risks and uncertainties, many of which involve factors or circumstances that are beyond Kintara’s control, and actual results could differ materially from those stated or implied in forward-looking statements due to a number of factors, including but not limited to: the impacts of the COVID-19 pandemic, including on the Company’s ability to conduct and complete its clinical trials, the parties ability to implement their integration strategies, whether or not the combined businesses will be successful, whether or not the parties will be able to execute their business plan, and those risks detailed in Kintara’s most recent Annual Report on Form 10-K and subsequent reports filed with the SEC, as well as other documents that may be filed by Kintara from time to time with the SEC. Accordingly, you should not rely upon forward-looking statements as predictions of future events. Kintara cannot assure you that the events and circumstances reflected in the forward-looking statements will be achieved or occur, and actual results could differ materially from those projected in the forward-looking statements. The forward-looking statements made in this communication relate only to events as of the date on which the statements are made. Except as required by applicable law or regulation, Kintara undertakes no obligation to update any forward-looking statement to reflect events or circumstances after the date on which the statement is made or to reflect the occurrence of unanticipated events. Investors should not assume that any lack of update to a previously issued “forward-looking statement” constitutes a reaffirmation of that statement.

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**Kintara Therapeutics (formerly DelMar Pharmaceuticals) Regains Compliance with NASDAQ Minimum Bid Price Requirement**

**SAN DIEGO, August 21, 2020** — Kintara Therapeutics, Inc. (formerly DelMar Pharmaceuticals, Inc.) (“Kintara” or the “Company”) (Nasdaq: KTRA) announced today that it has regained compliance with the minimum bid price requirement for continued listing on the NASDAQ Capital Market pursuant to Listing Rule 5550(a)(2) (the “Minimum Bid Price Rule”). On August 19, 2020, Kintara received a letter from the Listing Qualifications Department of The Nasdaq Stock Market, Inc. stating that because Kintara’s shares had a closing bid price at or above \$1.00 per share for a minimum of ten (10) consecutive business days, Kintara’s stock had regained compliance with the Minimum Bid Price Rule and the matter is now closed.

**About Kintara**

Located in San Diego, California, Kintara is dedicated to the development of novel cancer therapies for patients with unmet medical needs.

Kintara is developing two late-stage, Phase 3-ready therapeutics for clear unmet medical needs with reduced risk development programs. The two programs are VAL-083 for GBM and REM-001 for CMBC.

VAL-083 is a “first-in-class”, small-molecule chemotherapeutic with a novel mechanism of action that has demonstrated clinical activity against a range of cancers, including central nervous system, ovarian and other solid tumors (e.g. NSCLC, bladder cancer, head and neck) in U.S. clinical trials sponsored by the National Cancer Institute (NCI). Based on Kintara’s internal research programs and these prior NCI-sponsored clinical studies, Kintara is currently conducting clinical trials to support the development and commercialization of VAL-083 in GBM.

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