

Capnia, Inc.
Form 424B3
October 14, 2015

Filed Pursuant to Rule 424(b)(3) and Rule 424(c)
Registration No. 333-203843

PROSPECTUS SUPPLEMENT NO. 7

(to Prospectus dated May 19, 2015)

589,510 Shares

Common Stock

This Prospectus Supplement No. 7 supplements the prospectus dated May 19, 2015 or the prospectus that forms a part of our Registration Statement on Form S-1 (Registration Statement No. 333-203843). This prospectus supplement is being filed to update, amend and supplement the information included or incorporated by reference in the prospectus with the information contained in our Current Report on Form 8-K, filed with the Securities and Exchange Commission on September 14, 2015 (the "Current Report"). Accordingly, we have attached the Current Report to this prospectus supplement.

The prospectus and this prospectus supplement relate to the disposition from time to time by the selling stockholders identified in the prospectus, or their permitted transferees or other successors-in-interest, of an aggregate of 589,510 shares of our common stock, which are issuable upon the exercise of warrants to purchase our common stock. We are not selling any common stock under the prospectus and this prospectus supplement, and will not receive any of the proceeds from the sale of shares by the selling stockholders.

This prospectus supplement should be read in conjunction with the prospectus, which is to be delivered with this prospectus supplement. This prospectus supplement updates, amends and supplements the information included or incorporated by reference in the prospectus. If there is any inconsistency between the information in the prospectus and this prospectus supplement, you should rely on the information in this prospectus supplement.

Our common stock is traded on the NASDAQ Capital Market under the symbol "CAPN". The last reported sale price of our common stock on The NASDAQ Capital Market on October 13, 2015 was \$2.13 per share.

Investing in our common stock involves a high degree of risk. You should review carefully the risks and uncertainties described under the heading "Risk Factors" beginning on page 8 of the prospectus, and under similar headings in any amendments or supplements to the prospectus, and Part II Item 1A "Risk Factors" in our Quarterly Report on Form 10-Q for the quarter ended June 30, 2015.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities, or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this prospectus supplement is October 14, 2015

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 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)

September 8, 2015

CAPNIA, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction

of incorporation)

001-36593
(Commission

File Number)
1235 Radio Road, Suite 110

77-0523891
(IRS Employer

Identification No.)

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Redwood City, CA 94065

(Address of principal executive offices, including zip code)

(650) 213-8444

(Registrant's telephone number, including area code)

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

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

Item 1.01 Entry into a Material Definitive Agreement.

On September 8, 2015 (the Closing Date), Capnia, Inc. (the Company) through its wholly-owned subsidiary, NeoForce Acquisition, Inc. (the Sub), entered into an asset purchase agreement (the Purchase Agreement) with NeoForce Group, Inc., NeoForce Innovations, LLC (together with NeoForce Group, Inc., NFG), and Otho Boone (Mr. Boone) and, in connection with the Purchase Agreement, consummated the purchase of substantially all of the assets of NFG.

Pursuant to the Purchase Agreement, as consideration for such purchase by the Sub from NFG: (a) the Sub paid NFG \$1,000,000 in cash at the closing, minus certain expenses, and (b) each of the Company and the Sub will be obligated to pay royalties on Net Sales (as defined in the Purchase Agreement) of the Royalty Products (as defined in the Purchase Agreement) for a period of three (3) years following the Closing Date. The Purchase Agreement also includes customary representations, warranties, covenants and indemnification obligations of the parties agreed to by each of the Company and the Sub in the Purchase Agreement.

In connection with the entry into the Purchase Agreement, Mr. Boone, chief executive officer and founder of NFG, will join the Company as the General Manager of Neonatology. In connection with this appointment, Mr. Boone will receive, among other things, an annual base salary of \$150,000 and will be eligible to receive an annual bonus with a target level of 30% of his base salary. In addition, subject to the approval by the Company s board of directors, Mr. Boone will receive a grant of a stock option to purchase a number of shares of the Company s common stock under the Company s 2014 Equity Incentive Plan equal to one percent (1%) of the outstanding common stock as of the Closing Date, subject to vesting over a four (4) year period.

The foregoing description of the Purchase Agreement does not purport to be complete and is qualified in its entirety by reference to the complete text of the Purchase Agreement, which is filed as Exhibit 2.1 hereto and is incorporated herein by reference.

Item 2.01 Completion of Acquisition or Disposition of Assets.

Reference is made to the disclosure set forth under Item 1.01 of this Current Report on Form 8-K, which disclosure is incorporated herein by reference.

Item 8.01. Other Events.

The Company issued a release on September 8, 2015 announcing the transactions contemplated by the Purchase Agreement. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

Exhibit

No.

Description

- | | |
|-----|--|
| 2.1 | Asset Purchase Agreement, dated as of September 8, 2015, by and among NeoForce Acquisition, Inc., NeoForce Group, Inc., NeoForce Innovations, LLC, and Otho Boone. |
|-----|--|

99.1 Press Release of Capnia, Inc. dated September 8, 2015.

SIGNATURES

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

CAPNIA, INC.

By: /s/ David O Toole
David O Toole

Chief Financial Officer

Date: **September 14, 2015**

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Exhibit

No.	Description of Exhibit
2.1	Asset Purchase Agreement, dated as of September 8, 2015, by and among NeoForce Acquisition, Inc., NeoForce Group, Inc., NeoForce Innovations, LLC and Otho Boone.
99.1	Press Release of Capnia, Inc. dated September 8, 2015.

ASSET PURCHASE AGREEMENT

among

NEOFORCE GROUP, INC.,

NEOFORCE INNOVATIONS, LLC.,

for the purposes of Articles III and VI herein, OTHO BOONE,

and

NEOFORCE ACQUISITION, INC.

DATED AS OF

SEPTEMBER 8, 2015

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EXHIBITS

Exhibit A	Assignment Agreement
Exhibit B	Intellectual Property Assignment
Exhibit C	Bill of Sale

Exhibit D	Existing Products
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SCHEDULES

Schedule 2.01(a)(i)(A)	Patents and Patent Applications
Schedule 2.01(a)(i)(B)	Domain Name Registrations
Schedule 2.01(a)(ii)	Personal Property
Schedule 2.01(a)(iv)	Seller Clinical Knowledge and Data
Schedule 2.01(a)(v)	Seller Clinical Trial Data
Schedule 2.01(a)(vi)	Assigned Contracts
Schedule 2.01(b)(ii)	Inventory
Schedule 2.01(b)(iii)	Excluded Accounts Receivable and Excluded Accounts Payable
Schedule 2.03(b)	Allocation of the Cash Purchase Price
Schedule 2.05(a)	List of Seller's Creditors to be Paid from the Cash Purchase Price
Disclosure Schedules	

THIS ASSET PURCHASE AGREEMENT (this Agreement) is entered into as of September 8, 2015, by and among NeoForce Group, Inc., a Delaware corporation (the NFG), NeoForce Innovations, LLC., a Delaware limited liability company (collectively, with NFG, the Seller), for the purposes set forth in Articles III and IV herein, Otho Boone (Mr. Boone), and NeoForce Acquisition, Inc., a Delaware corporation (the Purchaser) and a wholly owned subsidiary of Capnia, Inc., a Delaware corporation. The Purchaser, Mr. Boone and the Seller are individually referred to herein as a Party and, collectively, as the Parties .

RECITALS

WHEREAS, the Seller has invented and developed technologies related to neonatal resuscitation and medical care (collectively, the Neonatal Technology); and

WHEREAS, the Purchaser desires to purchase from the Seller, and the Seller desires to sell to the Purchaser, all patents, patent applications and related intellectual property assets relating to the Neonatal Technology, and certain other assets related thereto, upon the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, intending to be legally bound and in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01. Certain Defined Terms. For purposes of this Agreement:

Acquired Assets has the meaning set forth in Section 2.01(a).

Affiliate has the meaning set forth in Rule 12b-2 of the regulations promulgated under the Securities Act of 1933, as amended.

Agreement has the meaning set forth in the preamble.

Ancillary Agreements means the Assignment Agreement, the Bill of Sale and the Intellectual Property Assignment.

Annual Financial Statements has the meaning set forth in Section 3.09.

Assigned Accounts Payable means all of the Seller's accounts payable that are not Excluded Accounts Payable.

Assigned Accounts Receivable means all of the Seller's accounts receivable that are not Excluded Accounts Receivable.

Assigned Contracts has the meaning set forth in Section 2.01(a)(iii).

Assigned Intellectual Property has the meaning set forth in Section 2.01(a)(i).

Assignment Agreement has the meaning set forth in Section 2.05(b).

Bill of Sale has the meaning set forth in Section 2.06(a).

Business Day shall mean any day on which banking institutions in New York, New York are customarily open for the purpose of transacting business.

Cash Purchase Price has the meaning set forth in Section 2.03(a).

Clinical Knowledge and Data means all inventions (whether or not patentable), invention disclosures, improvements, trade secrets, proprietary information, know how, knowledge of anatomy, computer software programs (in both source code and object code form), technology, processes, designs and specifications, technical data and customer lists, tangible or intangible proprietary information, and all documentation, books and lab notebooks, data, drawings, records, writings, computer tapes or disks, and any Intellectual Property and other physical and/or intangible manifestations or embodiments of or relating to any of the foregoing, human clinical data, animal data, cadaver data and benchtop data.

Closing has the meaning set forth in Section 2.04.

Closing Consideration Indemnification Term has the meaning set forth in Section 6.01.

Closing Date has the meaning set forth in Section 2.04.

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

Contract means any contract, agreement, lease, license, instrument, note, commitment, indenture, legally enforceable undertaking or other legally enforceable arrangement, whether written or oral.

Creditors means any and all creditors of the Company to which a balance is owed as of the Closing Date, with the exception of the Excluded Accounts Payable, as specified in Schedule 2.05(a).

Disclosure Schedules means the Disclosure Schedules delivered by the Seller concurrently with the execution and delivery of this Agreement.

Employment Agreement means the Employment Agreement between Purchaser or its Affiliates and Mr. Boone dated as of the Closing Date in the form mutually acceptable to Purchaser and its Affiliates and Mr. Boone.

Excluded Assets has the meaning set forth in Section 2.01(b).

Excluded Accounts Payable means the Sellers' accounts payable as of August 31, 2015, as specified in Schedule 2.01(b)(iii) hereto;

Excluded Accounts Receivable means the Sellers' accounts receivable as of August 31, 2015, as specified in Schedule 2.01(b)(iii) hereto;

Excluded Assets has the meaning set forth in Section 2.01(b).

FDA has the meaning set forth in Section 3.11.

Financial Statements has the meaning set forth in Section 3.09.

GAAP means the authoritative United States generally accepted accounting principles in Financial Accounting Standards Board (FASB) Accounting Standards Codification recognized by the FASB, as may be amended from time to time.

Governmental Authority means any United States federal, state or local or any foreign government, or political subdivision thereof, or any multinational organization or authority or any authority, agency or commission entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, any court or tribunal (or any department, bureau or division thereof), or any arbitrator or arbitral body.

Indemnified Party means any Party that is asserting a claim under Article VI of this Agreement.

Indemnifying Party means any Party that is subject to a claim under Article VI of this Agreement.

Intellectual Property Assignment has the meaning set forth in Section 2.01(b).

Intellectual Property Rights means all right, title and interest in or relating to intellectual property and know-how relating to the Neonatal Technology, whether protected, created or arising under domestic or international laws, including (a) US and foreign patents, patent applications, inventions, technical knowledge or know-how, and other intellectual property rights held by the Seller or that the Seller is now or hereafter becomes entitled to obtain on account of such assignment of inventions agreements or otherwise by operation of the doctrine of work-made-for-hire or any similar doctrine or matter of law relating to the Neonatal Technology, including those patents and patent applications described on Schedule 2.01(a)(i)(A), (b) US and foreign trademarks (including service marks, trade dress, trade names, logos, slogans and product names) and applications for such trademarks and related rights relating to the Neonatal Technology, (c) moral rights and copyrights in any work of authorship relating to the Neonatal Technology, (d) all computer software and firmware (including source code, executable code, data, databases, user interfaces and related documentation) relating to the Neonatal Technology, (e) trade secrets relating to the Neonatal Technology, (f) websites, domain names and registrations relating to the Neonatal Technology, including those listed in Schedule 2.01(a)(i)(B), (g) other proprietary technology rights and goodwill relating to the Neonatal Technology, (h) any of the foregoing rights relating, pertaining or involved in connection with products being developed by the

Seller using directly or indirectly the Neonatal Technology rights, (i) any modification, improvement, enhancement of or to the Neonatal Technology rights, (j) all rights to sue and recover at law or in equity for any past, present or future infringement, misappropriation, dilution, violation or other impairment of the foregoing, and (k) all Contract rights relating to or under the foregoing.

Interim Financial Statements has the meaning set forth in Section 3.09.

Inventory has the meaning set forth in Section 2.02(b).

IP Licenses has the meaning set forth in Section 3.07(c).

Knowledge of the Seller shall mean the actual knowledge of Mr. Boone or the knowledge that Mr. Boone would reasonably be expected to have after due inquiry of the books and records of the corporation and its employees and consultants.

Laws mean all applicable federal, national, state, provincial, local or foreign laws, statutes, constitutions, treaties, judgments, decrees, treaties, rules, regulations, ordinances, directives and Orders of any Governmental Authority or any similar provisions having the force or effect of law.

Liability means, with respect to any Person, any liability, obligation or commitment of such Person, whether known or unknown, whether asserted or unasserted, whether determined, determinable or otherwise, whether absolute or contingent, whether matured or unmatured, whether accrued or unaccrued, whether liquidated or unliquidated, whether incurred or consequential, whether due or to become due and whether or not required under GAAP to be accrued on the financial statements of such Person. For avoidance of doubt, and without limiting the generality of the foregoing, the Excluded Accounts Payable, if any, is a Liability.

Lien means any mortgage, pledge, lien, security interest, charge, claim, equitable interest, encumbrance, restriction on transfer, conditional sale or other title retention device or arrangement (including a capital lease), transfer for the purpose of subjection to the payment of any indebtedness, or restriction on the creation of any of the foregoing, whether relating to any property or right or the income or profits therefrom.

Losses means fines or penalties, damages, expenses, fees, costs, or amounts suffered or incurred by an Indemnified Party or, in the case of a Third Party Claim, paid in settlement or awarded in a final judgment arising out of any claim, complaint, demand, action, suit or other Proceeding asserted or initiated or otherwise existing in respect of any matter.

Material Contracts has the meaning set forth in Section 3.08(a).

Medical Device Excise Tax has the meaning set forth in Section 4191 of the Code.

Mr. Boone has the meaning set forth in the preamble.

Net Sales means, collectively, for any applicable period, (a) the aggregate amount collected by the Purchaser and its Affiliates in connection with the license or sale of Royalty Products by or through the Purchaser and its Affiliates in the United States (exclusive of sales made

by the Purchaser to its Affiliates for resale but inclusive of sales made through sales agents and licensees, less (b) freight, duties, sales, use, excise, value added, Medical Device Excise Tax, and other similar taxes attributable to such sales (except for taxes based upon the net income of the Purchaser and its Affiliates) and discounts, rebates, chargebacks, customer returns and allowances given or taken, as appropriate, related to such sales of Royalty Products by the Purchaser and its Affiliates. Net Sales shall be calculated using the internal system of the Purchaser and its Affiliates used to calculate and report net sales for all its products.

Neonatal Technology has the meaning set forth in the recitals.

Noncompete Agreement means the Noncompete Agreement dated as of the Closing Date among Purchaser and its Affiliates, Seller and Mr. Boone in the form mutually acceptable to the parties thereto.

Order means any order, judgment, ruling, injunction, assessment, award, decree, writ, temporary restraining order, or any other order of any nature enacted, issued, promulgated, enforced or entered by any Governmental Authority.

Party or Parties has the meaning set forth in the preamble.

Permits means, with respect to any Person, any license, franchise, permit, registration, variance, consent, approval, right, privilege, certificate or other similar authorization issued by, or otherwise granted by, any Governmental Authority or any other Person to which or by which such Person is subject or bound or to which or by which any property, business, operation or right of such Person is subject or bound.

Person means any present or future natural person or any sole proprietorship, corporation, association, partnership, joint venture, limited liability, joint stock or other Seller, business trust, trust, organization, business or government or any governmental agency or political subdivision thereof.

Personal Property has the meaning set forth in Section 2.01(a)(iii).

Proceeding means any action, suit or proceeding at law or in equity, arbitration, or administrative or other proceeding by or before any Governmental Authority.

Purchaser has the meaning set forth in the preamble.

Purchaser Indemnified Parties has the meaning set forth in Section 6.02.

Royalty Indemnification Term has the meaning set forth in Section 6.01.

Royalty Payments has the meaning set forth in Section 2.03(c).

Royalty Products has the meaning set forth in Section 2.03(c).

Seller has the meaning set forth in the preamble.

Seller Balance Sheet has the meaning set forth in Section 3.09.

Seller Charter Documents has the meaning set forth in Section 3.03.

Seller Clinical Knowledge and Data means all Clinical Knowledge and Data that is related to the Acquired Assets and set forth on Schedule 2.01(a)(iv) hereto.

Seller Clinical Trial Data means all of the Seller's clinical trial data related to the Purchased Assets and listed on Schedule 2.01(a)(v) hereto.

Seller Indemnified Parties has the meaning set forth in Section 6.03.

Tax or Taxes means any federal, state, local, or non-U.S. income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Section 59 of the Code), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, whether computed on a separate or consolidated, unitary or combined basis or in any other manner, including any interest, penalty, or addition thereto, whether disputed or not.

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

Term Sheet means the Non-Binding Term Sheet, dated August 21, 2015, between the Seller and Capnia, Inc.

Third Party Claim has the meaning set forth in Section 6.04(b).

SECTION 1.02. Interpretation and Rules of Construction. In this Agreement, except to the extent otherwise provided or that the context otherwise requires:

- (a) when a reference is made in this Agreement to an Article, Section, Exhibit or Schedule, such reference is to an Article or Section of, or an Exhibit or Schedule to, this Agreement unless otherwise indicated;
- (b) the table of contents and headings for this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement;
- (c) whenever the words include, includes or including are used in this Agreement, they are deemed to be followed by the words without limitation ;
- (d) the words hereof, herein and hereunder and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement;

- (e) all terms defined in this Agreement have the defined meanings when used in any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein;
- (f) the definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms;
- (g) references to a Person are also to its successors and permitted assigns; and
- (h) the use of or is not intended to be exclusive unless expressly indicated otherwise.

ARTICLE II

PURCHASE AND SALE

SECTION 2.01. Purchase and Sale of Assets. Upon the terms of this Agreement, the Seller hereby sells, assigns, transfers, conveys and delivers to the Purchaser, and the Purchaser hereby purchases, acquires and accepts from the Seller, for the Cash Purchase Price and the Royalty Payments (if any), all of the Acquired Assets (other than the Excluded Assets referred to in Section 2.01(b)), free and clear of all Liens.

(a) The term Acquired Assets means the following assets and properties (together with all goodwill, rights and claims of the Seller of whatever kind and nature relating thereto):

(i) all worldwide rights, titles and interest of the Seller in all Intellectual Property Rights, including (A) those patents and patent applications described on Schedule 2.01(a)(i)(A), and any application claiming priority thereto, all continuations, continuations-in-part, divisionals, renewals, extensions, reexaminations, reissues, foreign equivalents, and international applications based thereon, and (B) the domain name registrations listed on Schedule 2.01(a)(i)(B) (collectively, the Assigned Intellectual Property);

(ii) all machinery, equipment, mechanical and spare parts, supplies, production supplies, other miscellaneous supplies and other tangible personal property listed in Schedule 2.01(a)(ii) (collectively, the Personal Property);

(iii) all Permits that relate or pertain to the Neonatal Technology;

(iv) all Seller Clinical Knowledge and Data;

(v) all Seller Clinical Trial Data;

(vi) all rights, title and interest of the Seller in, to and under (A) any and all non-disclosure, assignment of developments/inventions, confidentiality, non-competition, and similar agreements pertaining to any of the Neonatal Technology or other Acquired Assets

(including such agreements relating to the foregoing between the Seller and any of its Affiliates, stockholders, officers and directors, including founders), and which are intended to protect the rights of the Seller therein, and (B) any and all other Contracts or agreements to which the Seller is a party, including but not limited to those that are listed in Schedule 2.01(a)(vi), (collectively, the Assigned Contracts);

(vii) all Assigned Accounts Receivable;

(viii) all rights, claims and causes of action to the extent relating to the Neonatal Technology or any other Acquired Asset, including any such items arising under breach of Contract, tort, product warranty, insurance policies and all guarantees, warranties, indemnities and similar rights in respect of any Acquired Asset, including the right to license and enforce all Intellectual Property Rights and to bring lawsuits and recover damages for any past, present or future infringement; and

(ix) all operating data, records, prints, drawings, specifications, lab notebooks, and other information, relating to the Acquired Assets and the Neonatal Technology, including all supplier lists, credit records and information, catalogs and sales, promotional and advertising materials, product test reports, market studies, training materials and literature; and drawings, plans, specifications and other records relating to operating procedures, processes, inventions and know-how in all cases, in any form or medium.

(b) Notwithstanding anything in Section 2.01(a) to the contrary, the Seller shall not sell, convey, assign, transfer or deliver, nor cause to be sold, conveyed, assigned, transferred or delivered, to the Purchaser, and the Purchaser shall not purchase, and the Acquired Assets shall not include the following: (i) any cash in the Seller's bank account as of the date hereof, (ii) all finished goods inventories, stores, replacement and spare parts, packaging materials, operating supplies and inventory on consignment with third parties, in transit or deposited in a warehouse, in each case, to the extent listed on Schedule 2.01(b)(ii) (the Inventory), and (iii) the Excluded Accounts Receivable (items (i)-(iii) together, the Excluded Assets), and all rights of the Seller under this Agreement and the Ancillary Agreements.

SECTION 2.02. No Assumption of Liabilities.

(a) Neither the Purchaser nor its Affiliates shall assume any Liabilities, duties, obligations or commitments, of any nature whatsoever, whether known or unknown and whether absolute, accrued, liquidated, contingent or otherwise of the Purchaser or its Affiliates, and whether or not arising out of the Neonatal Technology or any operations of the Seller, all of which shall be retained and paid, performed and discharged when due by the Seller; provided, however, that the Purchaser shall assume and discharge the Assigned Accounts Payable and the obligations under the Assigned Contracts (including the Seller's real estate lease). For avoidance of doubt, it is understood that patent prosecution and patent maintenance costs that accrue after Closing for the Neonatal Technology that is part of the Acquired Assets will be the responsibility of Purchaser, and after Closing, Purchaser shall be solely responsible for its management of the Neonatal Technology that is part of the Acquired Assets, and all decisions relating to the prosecution, maintenance or otherwise of the Acquired Assets shall be in Purchaser's sole discretion.

(b) The Purchaser is acquiring the Acquired Assets free and clear of all Liabilities, and free and clear of all Liens.

SECTION 2.03. Cash Purchase Price: Royalty Payments.

(a) The consideration to be paid by the Purchaser to the Seller for the Acquired Assets is (i) cash in the aggregate amount of One Million Dollars (\$1,000,000) (the Cash Purchase Price) and (ii) the Royalty Payments, if any.

(b) The Parties agree to allocate the Cash Purchase Price among the Acquired Assets for all purposes (including financial accounting and Tax purposes) in accordance with Code Section 1060 and the applicable Treasury Regulations in the manner specified in Schedule 2.03(b).

(c) In addition to the Cash Purchase Price, Purchaser or its Affiliates will pay royalties to Seller (or Mr. Boone directly if he so indicates in writing) on Net Sales (Royalty Payments), if any, on any product currently being sold or offered for sale by the Seller, as indicated on Exhibit D, and any additional products initially conceived and invented by Mr. Boone (Royalty Products), at the applicable rate(s) set forth below:

(i) three percent (3%) of the first \$1,000,000 in Net Sales of Royalty Products by Purchaser and its Affiliates;

(ii) four percent (4%) of Net Sales of Royalty Products by Purchaser and its Affiliates in excess of the first \$1,000,000 but less than \$2,000,000; and

(iii) five percent (5%) of Net Sales of Royalty Products by Purchaser and its Affiliates in excess of \$2,000,000.

(d) Royalty Payments, if any, shall be payable on an annual basis for a term of three (3) years after the Closing Date (as defined below), regardless of when the related Royalty Products were conceived and invented. Purchaser shall pay Royalty Payments, if any, within sixty (60) days after the end of each of such three years. Purchaser shall also deliver to Seller at such time a computation of Net Sales to support its determination of the Royalty Payments. Seller shall be entitled to, on reasonable advance notice to Purchaser, cause an independent accountant engaged by it and mutually agreed upon by Seller and Purchaser to audit the books and records relating to Net Sales and the computation of Royalty Payments, and Purchaser shall provide reasonable assistance to any such audit. If any such audit indicates an underpayment of Royalty Payments, then Purchaser shall pay the shortfall within thirty (30) days of such audit and, if the shortfall exceeds \$25,000, then Purchaser shall also reimburse to Seller the reasonable out-of-pocket expenses incurred in conducting the audit within thirty (30) days of such audit.

(e) Seller shall retain ownership of the Inventory through the Closing and agrees to sell the Inventory, subject to availability, to Purchaser or its Affiliates in such amounts as may be requested by Purchaser or its Affiliates via one or more purchase orders. The price paid by Purchaser or its Affiliates for any such Inventory shall be the Seller's cost basis in the inventory as

of the Closing Date as set forth in Schedule 2.01(b)(ii). Seller shall not sell any Inventory to any third party without the prior written permission of Purchaser or its Affiliates. To the extent that any Inventory purchased by Purchaser or its Affiliates is subsequently sold by Purchaser or its Affiliates to a third party, Seller shall receive Royalty Payments as set forth in Sections 2.03(c) and (d) and subject to the limitations set forth therein and elsewhere in this Agreement. For avoidance of doubt, neither the Purchaser nor its Affiliates has no obligation to purchase any of the Inventory.

(f) If Mr. Boone conceives of any new products that Purchaser approves, then Purchaser commits in good faith to invest up to \$500,000 in the aggregate toward the development and commercialization of any such new products.

(g) All periodic cash payments and receipts related to the Acquired Assets or Assumed Liabilities (but excluding the accounts receivable), including rents and utilities, shall be prorated as of the Closing Date, with Seller entitled to the benefits and responsible for the burdens thereof to the extent such items relate to any time period up to and including the Closing Date and Purchaser entitled to the benefits and responsible for the burdens thereof to the extent such items relate to periods subsequent to the Closing Date.

SECTION 2.04. Closing. The closing of the sale and purchase of the Acquired Assets (the Closing) shall take place remotely via the exchange of documents and signatures simultaneously upon execution and delivery of this Agreement and the Ancillary Agreements. The date upon which the Closing occurs is referred to herein as the Closing Date .

SECTION 2.05. Closing Deliveries by the Purchaser. At the Closing, the Purchaser shall:

(a) pay the Cash Purchase Price by wire transfer of immediately available funds (i) into the accounts of the Seller's Creditors the amounts due to each as set forth in Schedule 2.05(a), and (ii) if there are any amounts remaining after making the payments contemplated by clause (i), into an account designated by the Seller in writing; and

(b) deliver to the Seller executed counterparts of each Ancillary Agreement to which Purchaser is a party, including the Assignment Agreement, attached hereto as Exhibit A (the Assignment Agreement), the Intellectual Property Assignment, attached hereto as Exhibit B (the Intellectual Property Assignment), the Noncompete Agreement, the Employment Agreement, employment offer letters to certain other employees of the Seller, and such other instruments, in form and substance reasonably satisfactory to Purchaser, as may be reasonably requested by Purchaser or necessary under applicable Law to effect the transfer of the Assigned Assets to Purchaser and to evidence such transfer in the public records, in each case duly executed by Seller.

SECTION 2.06. Closing Deliveries by the Seller. At the Closing, the Seller shall deliver to the Purchaser:

(a) the Bill of Sale, attached hereto as Exhibit C (the Bill of Sale), duly executed by the Seller;

(b) counterparts to each Ancillary Agreement to which Seller or its Affiliates is a Party, including the Assignment Agreement, the Patent Agreement, the Noncompete Agreement, the Employment Agreement, and the employment offer letters to certain other employees of the Seller, duly executed by the Seller;

(c) all consents, waivers and approvals referred to in Schedule 3.04;

(d) a certificate from the Secretary of the Seller, dated as of the Closing Date, certifying true, accurate and complete copies of (i) resolutions of the board of directors of the Seller unanimously approving the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby and (ii) resolutions of the stockholders of the Seller unanimously approving consummation of the transactions contemplated herein;

(e) pay off letters from each of the Seller's Creditors, and such other bills of sale, assignments, certificates of title, documents and other instruments of transfer and conveyance as may reasonably be requested by the Purchaser or its Affiliates, each in form and substance satisfactory to the Purchaser and its Affiliates and its legal counsel and executed by Seller.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE SELLER AND MR. BOONE

The Seller and Mr. Boone hereby jointly and severally represent and warrant to the Purchaser and its Affiliates, as of the date hereof or, if a representation or warranty is made as of a specified date, as of such date, that the statements made in this Article III are correct and complete, except as otherwise set forth in the Disclosure Schedules. The Disclosure Schedules shall be arranged in sections corresponding to the numbered and lettered Sections of this Article III, and the disclosures of any section of the Disclosure Schedules shall provide information regarding, and qualify only, the corresponding numbered and lettered section of this Article III, unless and to the extent that (a) cross references to other sections are set forth in the Disclosure Schedules or (b) it is reasonably apparent due to the nature of the disclosure that such disclosure qualifies one or more of the numbered or lettered sections of this Article III.

SECTION 3.01. Organization, Authority and Qualification of the Seller; Capacity of Mr. Boone.

(a) Each of the Seller business entities — a corporation and a limited liability company — are duly organized, validly existing and in good standing under the laws of the State of Delaware. The Seller has all corporate power and authority to carry on the activities in which it is engaged and to own, lease and use the assets and properties owned, leased and used by it, and to enter into this Agreement, the Ancillary Agreements and any document, instrument or certificate specifically contemplated by this Agreement or the Ancillary Agreements to which it is a party, and to perform its obligations hereunder and thereunder and to consummate the transactions contemplated by this Agreement and the Ancillary Agreements to which it is a party. The Seller is duly qualified or licensed as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its

activities makes such qualification or licensing necessary. The execution, delivery and performance by the Seller of this Agreement and the Ancillary Agreements and consummation of the transactions contemplated herein and therein have been duly authorized by the unanimous consent of the board of directors of the Seller and the unanimous consent of the stockholders of the Seller. This Agreement has been, and upon their execution each of the Ancillary Agreements to which Seller is a party will be, duly executed and delivered by the Seller and constitutes the legal, valid and binding obligation of the Seller, enforceable against the Seller in accordance with their terms.

(b) Mr. Boone has full legal capacity to enter into this Agreement, to carry out and perform his obligations hereunder and to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by Mr. Boone and constitutes the legal, valid and binding obligation of Mr. Boone, enforceable against him in accordance with its terms.

SECTION 3.02. Title to Assets: Sufficiency of the Assets. Immediately prior to the effectiveness of the assignment made hereunder, the Seller is the exclusive owner of, or holds valid contract rights to, and has good, valid and marketable title to, all of the Acquired Assets, free and clear of any Liens. The Acquired Assets constitute all of the assets, property, contractual rights, other rights and claims of whatever kind and nature, tangible or intangible that are used in or intended to be used in the operation or conduct of, or related to, the Neonatal Technology in its current phase. Other than the Excluded Assets, the Acquired Assets are sufficient for the Purchaser or its Affiliates to continue to operate the business involving the Neonatal Technology, immediately following the Closing, in substantially the same manner as that business is presently conducted by Seller.

SECTION 3.03. Corporate Records. The Seller has made available to the Purchaser a true, correct and complete copy of the Seller's certificate of incorporation and by-laws (or similar organizational instruments), each as in effect on the date hereof (collectively, the Seller Charter Documents). All transactions entered into by the Seller have been duly authorized by the Board of Directors of the Seller (or similar governing body).

SECTION 3.04. No Violation or Approval: Consents. The execution, delivery and performance by each of the Seller and Mr. Boone of this Agreement and the consummation by each of the Seller and Mr. Boone of the transactions contemplated hereby does not and will not conflict with, or result in a material violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination or cancellation under any provision of (a) the Seller Charter Documents; (b) any agreement to which the Seller or Mr. Boone is a party or by which any of the properties or assets of the Seller or Mr. Boone are bound, including the Assigned Contracts, or (c) any Law or Order applicable to the Seller or Mr. Boone or any of the properties or assets of the Seller. Except as set forth on Schedule 3.04, no notice to, filing with, or authorization, registration, consent or approval of, any Governmental Authority or other Person is necessary for the execution, delivery or performance by the Seller or Mr. Boone of this Agreement, any other Seller Charter Document, any Assigned Contract, or the consummation of the transactions contemplated hereby or thereby by the Seller or Mr. Boone.

SECTION 3.05. No Material Changes. With respect to the Neonatal Technology, there has not been since December 31, 2014: (a) any change, event, effect or occurrence that has had or is reasonably expected to have a material effect on the Neonatal Technology; (b) any material damage, destruction, casualty or loss with respect to any of the Acquired Assets; (c) entry into any Contract that would constitute a Material Contract; (d) acceleration, termination, material modification to or cancellation of any Material Contract; or (e) any sale or licenses of assets, including the Assigned Intellectual Property.

SECTION 3.06. Compliance with Laws. In relation to the Neonatal Technology (a) the Seller has been in compliance in all material respects with all Laws applicable to its development, testing, operations or assets during the three year period preceding the date hereof, (b) Seller has not received any written notification or communication from any Governmental Authority (i) asserting that the Seller is not in compliance with any Laws or Orders or (ii) threatening to terminate, revoke or cancel any material Permit held by the Seller, or any other Person and (c) no Person has entered into or been subject to any Order with respect to any material aspect of the development, testing, operations or assets or received any written notice from any Governmental Authority commencing or threatening any formal administrative inquiry, investigation or Proceeding with respect to any of the foregoing.

SECTION 3.07. Intellectual Property.

(a) Schedule 2.01(a)(i)(A) and 2.01(a)(i)(B) set forth a complete and accurate list of all trade names, brand names, trademarks, patents, domain names, and all applications for the foregoing included in the Assigned Intellectual Property. All necessary registration, maintenance, renewal, and other relevant filing fees due through the date hereof in connection with the items set forth on Schedule 2.01(a)(i)(A) and 2.01(a)(i)(B) have been timely paid and all necessary documents and certificates in connection therewith have been timely filed in the name of the Seller with the relevant patent or other authorities in the United States or foreign jurisdictions, as the case may be, for the purposes of maintaining such Intellectual Property Rights in full force and effect. Schedule 2.01(a)(i)(A) and 2.01(a)(i)(B) include an accurate copy of a docket report listing all patents and domain names, respectively, within the Assigned Intellectual Property indicating among other things the filings, payments or similar actions that must be taken within sixty (60) days of the Closing Date for the purposes of obtaining, maintaining, perfecting or renewing any patent or patent application or domain name registration.

(b) The Seller is the exclusive owner of all rights, titles and interest in and to and has valid and continuing rights to use all of the Assigned Intellectual Property, All US and foreign patents, patent applications, and other registered intellectual property that are included in the Assigned Intellectual Property are valid, enforceable and subsisting. The Seller has not licensed or transferred the Assigned Intellectual Property to any third party.

(c) Schedule 3.07(c) sets forth all Contracts granting to the Seller a license to any Assigned Intellectual Property that are used in the Neonatal Technology (the IP Licenses). Each of the IP Licenses is in full force and effect. The Seller is not in default under any IP License, nor, to the Knowledge of the Seller, is any other party to an IP License in default thereunder, and to the Knowledge of the Seller no event has occurred that with the lapse of time or the giving of notice or both would constitute a default thereunder. No party to any of the IP Licenses has exercised any

termination rights with respect thereto. Following the consummation of the Closing and assignment of the IP Licenses to the Purchaser, the Purchaser will have the right to exercise all of the current rights of the Seller under the IP Licenses to the same extent and in the same manner the Seller would have been able to had the transactions contemplated by this Agreement not occurred, and without the payment of any additional consideration or third party consents as a result of such transactions. The Seller has delivered to the Purchaser true, correct and complete copies of each Contract set forth on Schedule 3.07(c) together with all amendments, modifications or supplements thereto.

(d) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby will not constitute a breach of any instrument or agreement governing any Assigned Intellectual Property, will not cause the forfeiture or termination or give rise to a right of forfeiture or termination of any Assigned Intellectual Property or impair the right of the Seller to use, sell or license any Assigned Intellectual Property or portion thereof.

(e) To Seller's Knowledge, the conduct of the Neonatal Technology as presently conducted and as currently proposed to be conducted by Seller before the date hereof, including, testing, development, licensing, or use of any products and services in connection with such Neonatal Technology do not infringe, constitute an unauthorized use of, misappropriate, dilute or violate any Intellectual Property Rights, right of publicity, right of privacy, or other similar rights of any Person. There is no pending or, to the Knowledge of the Seller, threatened, claim or litigation contesting the validity, ownership or right to use any Seller IP Right. The Seller has not received any notice asserting that any Seller IP Right or the proposed use thereof conflicts or will conflict with the rights of any Person, nor to the Knowledge of the Seller, there any facts or circumstances that would form the basis for any such claim or challenge.

(f) To the Knowledge of the Seller, no Person is infringing, violating, misusing or misappropriating any Assigned Intellectual Property, and no such claims have been made against any Person by the Seller.

(g) No confidential information contained in the Assigned Intellectual Property has been authorized to be disclosed or has been actually disclosed by the Seller or Mr. Boone to any non-employee third Person other than pursuant to a non-disclosure agreement restricting the disclosure and use of the Assigned Intellectual Property. The Seller and Mr. Boone have taken reasonable security measures to protect the secrecy, confidentiality and value of all the Intellectual Property Rights included in the Assigned Intellectual Property and all of its other non-public, proprietary information, which measures are reasonable in the industry in which the Neonatal Technology operates. Each employee and independent contractor currently or previously employed or retained on behalf of the Seller has executed a non-disclosure and inventions agreement.

(h) The conduct of the Neonatal Technology is in compliance in all respects with any and all applicable Laws relating to privacy, data protection and security, export, transfer and the collection and use of personal information and neither the Seller nor Mr. Boone have received any written notice of any claims or been charged with the violation of any such Laws.

SECTION 3.08. Material Contracts. (a) Schedule 3.08(a) lists each of the following Contracts, in each case solely to the extent still effective, related to the Neonatal Technology (such Contracts, together with all Contracts relating to Assigned Intellectual Property set forth on Schedule 3.07(c), being Material Contracts):

- (i) all consulting, commercialization and product testing Contracts and Contracts with independent contractors, consultants or Persons (or similar arrangements) to which the Seller is a party;
- (ii) each Contract granting any Person any preferential right to purchase any of its assets;
- (iii) each Contract relating to the acquisition or disposition (by merger, purchase of stock or assets or otherwise) by the Seller of any business, equity or assets of any other Person or any real property;
- (iv) each Contract relating to the incurrence, assumption or guarantee of any indebtedness or imposing a Lien on any of the assets of the Seller, including indentures, guarantees, loan or credit agreements, sale and leaseback agreements, purchase money obligations incurred in connection with the acquisition of property, mortgages, pledge agreements, security agreements, or conditional sale or title retention agreements;
- (v) each Contract providing for the exclusive right to develop, test or distribute products of the Seller in any geographic region or distribution channel;
- (vi) each Contract pursuant to which the Seller may be obligated to pay for goods and services to be delivered or performed;
- (vii) all Contracts involving any lease by the Seller (as lessor or lessee) of any Personal Property;
- (viii) all Contracts that require the Seller to purchase its total requirements of any product or service from a third party or that contain take or pay provisions;
- (ix) all IP Licenses; and
- (x) any other Contract that is material to the Seller and not previously disclosed pursuant to this Section 3.08.

(b) The Seller has heretofore made available to the Purchaser a true, complete and correct copy of each Material Contract and all amendments and supplements thereto and all waivers thereunder. None of the Seller or, to the Knowledge of the Seller, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under) in any material respect, or has provided or received any notice of any intention to terminate, any Material Contract, and no event has occurred that (with or without notice, lapse of time or both) would constitute such a breach or default by the Seller or, to the Knowledge of the Seller, any other party thereto. Each Material Contract is in full force and effect and is a legal, valid and binding agreement of the Seller,