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

FORM 8-K

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

Date of Report (Date of earliest event reported): December 11, 2017

Dextera Surgical Inc.

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

000-51772
(Commission
File Number)

94-3287832
(IRS Employer
Identification No.)

900 Saginaw Drive, Redwood City, CA
(Address of Principal Executive Offices)

94063
(Zip Code)

Registrant's telephone number, including area code: (650) 364-9975

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))

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

Emerging growth company

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

Item 1.01. Entry into a Material Definitive Agreement.

Asset Purchase Agreement

On December 11, 2017, Dexter Surgical Inc. and Aesculap, Inc. (or its designee, "***Aesculap***") entered into an Asset Purchase Agreement (the "***Asset Purchase Agreement***") pursuant to which Dexter Surgical agreed to sell substantially all of its assets to Aesculap for \$17.3 million. Of this amount: \$2.0 million will be paid into escrow to cover indemnification claims, if any; an additional amount will be placed in escrow to cover any agreed or disputed cure amounts under outstanding agreements between Dexter Surgical and other parties; an amount necessary to pay off the DIP Loan Agreement (as defined below) will be paid to Aesculap, and the remainder will be paid to Dexter Surgical. The indemnification escrow will terminate after two years, and any amounts remaining after resolution of indemnification claims, if any, will be paid to Dexter Surgical.

Under the terms of the Asset Purchase Agreement and anticipated orders of the Court (defined below), other parties will be entitled to bid for Dexter Surgical's assets, and Dexter Surgical will conduct an auction for its assets if one or more qualified bids are timely received, all under the provisions of the Bankruptcy Code and orders of the Court. See Item 1.03 below.

DIP Loan Agreement

On December 15, 2017, Dexter Surgical and Aesculap entered into a Post-Petition Loan and Security Agreement (the "DIP Loan Agreement") pursuant to which Aesculap has agreed to loan to Dexter Surgical up to \$1.5 million at an interest rate of 9.25% (subject to increase in the event of a default) to provide Dexter Surgical funds necessary to conduct its business through the process for the sale of its assets. Subject to the entry of orders of the Court, and pursuant to the DIP Loan Agreement, Dexter Surgical granted Aesculap a security interest in substantially all of its assets, subject to permitted liens. Aesculap is to be repaid the amounts loaned from the proceeds of the sale of Dexter Surgical's assets or as a credit bid by Aesculap. Currently, pursuant to an interim order by the Court entered on December 13, 2017, Dexter Surgical is authorized to borrow only up to \$750,000 under the DIP Loan Agreement pending entry of a final order. In connection with entering into the DIP Loan Agreement, Dexter Surgical executed and delivered to Aesculap a Line of Credit Note with a principal amount of the lesser of (i) \$1.5 million, the maximum amount that may be drawn under the DIP Loan Agreement, or (ii) the amount that is actually advanced by Aesculap under the DIP Loan Agreement.

Item 1.03. Bankruptcy or Receivership.

On December 11, 2017, Dexter Surgical filed a voluntary petition (the "Chapter 11 Case") for reorganization under Chapter 11 ("Chapter 11") of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Court"). The Chapter 11 Case is being administered under Dexter Surgical's name: In re Dexter Surgical Inc. (Case No. 17-12913 (KJC)). The Company intends to continue to operate its business as a "debtor-in-possession" under the jurisdiction of the Court and in accordance with the applicable provisions of the Bankruptcy Code and orders of the Court, and to sell its assets as described in Item 1.01 above.

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

The information set forth under Item 1.01 regarding the DIP Loan Agreement is incorporated by reference here.

Item 9.01. Financial Statements and Exhibits.

Exhibit Index

<u>Exhibit No.</u>	<u>Description</u>
2.1	<u>Asset Purchase Agreement, dated December 11, 2017, between Dexter Surgical Inc. and Aesculap, Inc.</u>
10.1	<u>Post-Petition Loan and Security Agreement, dated December 15, 2017, between Dexter Surgical Inc. and Aesculap, Inc.</u>
10.2	<u>Line of Credit Note, dated December 15, 2017, issued by Dexter Surgical Inc. to Aesculap, Inc.</u>

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.

Dexter Surgical Inc.

Date: December 15, 2017

/s/ Robert Y. Newell
Robert Y. Newell
Chief Financial Officer

ASSET PURCHASE AGREEMENT

dated as of

DECEMBER 11, 2017

by and between

DEXTERA SURGICAL INC.,

as Seller,

and

AESCULAP, INC.

as Buyer

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ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this “*Agreement*”) is made and entered into as of December 11, 2017, by and between DEXTERA SURGICAL INC., a Delaware corporation formerly known as “Cardica, Inc.” (“*Seller*”), and AESCULAP, INC., a California corporation (“*Buyer*”). Seller and Buyer are sometimes individually referred to herein as a “*Party*” and collectively as the “*Parties*”.

RECITALS

WHEREAS, Seller is engaged in utilizing the Purchased Assets (hereinafter defined) in the business of designing, developing, marketing, and selling certain medical devices and instruments, including the MicroCutter 5/80™ Stapler and related products, for use in open and laparoscopic surgery (including thoracic, pediatric, bariatric, colorectal and other general surgeries) and the Seller’s cardiac products (such business as conducted by Seller as of the date hereof, the “*Business*”);

WHEREAS, Seller is the owner of the Purchased Assets;

WHEREAS, upon the terms and subject to the conditions contained in the Agreement, Seller desires to sell to Buyer and Buyer desires to purchase from Seller the Purchased Assets in exchange for the payment to Seller of the Purchase Price and the assumption by Buyer of the Assumed Liabilities;

WHEREAS, promptly after the execution of the Agreement, Seller intends to file a voluntary petition for relief (the “*Petition for Relief*”) commencing a case (the “*Bankruptcy Case*”) under Chapter 11 of Title 11 of the United States Bankruptcy Code (the “*Bankruptcy Code*”) in the United States Bankruptcy Court for the District of Delaware (the “*Bankruptcy Court*”); and

WHEREAS, this Agreement, the Ancillary Documents (as hereinafter defined) and the transactions contemplated hereby and thereby (collectively, the “*Contemplated Transactions*”) are subject to the approval of the Bankruptcy Court and will be consummated only pursuant to the entry of the Approval Order to be entered in the Bankruptcy Case.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.1. Defined Terms. For purposes of this Agreement (including any Exhibits or Schedules attached hereto, unless otherwise specifically defined therein), the following terms have the meanings indicated below, unless the context clearly requires otherwise:

“**510(k) Clearances**” means, collectively, the FDA cleared 510(k) Filings relating to any Product.

“**510(k) Filings**” means, collectively, the pre-market notifications submitted by or on behalf of Seller to the FDA relating to any Product.

“**510(k) Supporting Materials**” means, collectively, all technical files, drawings and documents supporting the submissions for FDA clearances, device registrations, design files, marketing and manufacturing files, and filings and correspondence with the FDA, in each case that relate to the 510(k) Filings.

“**Affiliate**” means, with respect to a specified Person, any other Person which directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the specified Person; provided that such Person shall be deemed an Affiliate for only so long as such control exists. For purposes of this definition and the definition of Related Person, the term “**control**” includes, without limitation, the possession, directly or indirectly, of the power to direct the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Agreement**” has the meaning ascribed thereto in the Preamble.

“**Ancillary Documents**” means all other agreements, documents and instruments to be executed and delivered by Buyer and/or Seller pursuant to this Agreement.

“**Anticipated Post-Petition Business Changes**” means changes relating to the Business initiated as part of a post-petition plan of business consolidation and reduction in Seller’s business activities in connection with the entry by Seller into the bankruptcy proceedings, including a reduction in the Seller’s manufacturing and sales resulting from operating the Business with a reduced number of employees, in each case as discussed by Buyer and Seller.

“**Anti-Corruption Laws**” means all U.S. and non-U.S. laws relating to the prevention of corruption and bribery, including, without limitation, the U.S. Foreign Corrupt Practices Act of 1977, as amended.

“**Approval Order**” has the meaning ascribed thereto in Section 6.4(g).

“**Assigned Contracts**” has the meaning ascribed thereto in Section 2.1(a)(iv).

“**Assignment and Assumption Agreement**” has the meaning ascribed thereto in Section 8.2(b).

“**Assignment and Assumption of Redwood City Lease**” has the meaning ascribed thereto in Section 8.2(c).

“**Assumed Liabilities**” has the meaning ascribed thereto in Section 2.2(a).

“**Assumption and Assignment Notices**” has the meaning ascribed thereto in Section 6.4(h).

“*Avoidance Actions*” has the meaning ascribed thereto in Section 2.1(b)(xi).

“*Bankruptcy Case*” has the meaning ascribed thereto in the Recitals.

“*Bankruptcy Code*” has the meaning ascribed thereto in the Recitals.

“*Bankruptcy Court*” has the meaning ascribed thereto in the Recitals.

“*Bid Procedures*” has the meaning ascribed thereto in Section 6.4(g).

“*Bid Procedures Order*” has the meaning ascribed thereto in Section 6.4(g).

“*Bill of Sale*” has the meaning ascribed thereto in Section 8.2(a).

“*Braun Distribution Agreement*” means that certain Distribution Agreement, dated as of October 1, 2016, by and between Seller and B. Braun Surgical, S.A., an indirect parent Affiliate of Buyer.

“*Business*” has the meaning ascribed thereto in the Recitals.

“*Business Day(s)*” means calendar days other than Saturdays, Sundays and days on which banking institutions in Wilmington, Delaware are authorized by Law to close.

“*Buyer*” has the meaning ascribed thereto in the Preamble.

“*Buyer Indemnified Party*” has the meaning ascribed thereto in Section 10.1.

“*Buyer Material Adverse Effect*” means a material and adverse effect on Buyer’s ability to consummate the Contemplated Transactions.

“*CE Marks*” means the “Conformité Européenne” (European Conformity) mark examination certificates for any of the Products.

“*CE Mark Supporting Materials*” means all regulatory filings relating to the CE Marks (including all technical files, drawings and documents supporting submissions and approvals, device registrations, pre- and post- approval design files, marketing and manufacturing files and filings, and correspondence with any applicable Governmental Body).

“*Claim*” means any past, present or future claim, demand, action, request, cause of action, suit, Proceeding or Liability of any kind or nature whatsoever, whether at law or equity, known or unknown, actual or alleged, asserted or not asserted, suspected or not suspected, anticipated or unanticipated, accrued or not accrued, fixed or contingent, which has been or may be asserted by or on behalf of any Person, whether seeking damages (including compensatory, punitive or exemplary damages) or equitable, mandatory, injunctive, or any other type of relief, including cross-claims, counterclaims, third-party claims, suits, lawsuits, administrative proceedings, notices of liability or potential liability, arbitrations, actions, rights, causes of action or orders, and any other claim within the definition of a “claim” as defined in Section 101(5) of the Bankruptcy Code.

“*Claims Close Date*” has the meaning ascribed thereto in Section 10.5.

“*Closing*” has the meaning ascribed thereto in Section 8.1.

“*Closing Date*” has the meaning ascribed thereto in Section 8.1.

“*Closing Date Cash Payment*” has the meaning ascribed thereto in Section 3.1(a).

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

“*Confidential Information*” has the meaning ascribed thereto in Section 6.11(a).

“*Contemplated Transactions*” has the meaning ascribed thereto in the Recitals.

“*Contracts*” means any agreement or contract, whether written or oral.

“*Competing Bid*” has the meaning ascribed thereto in Section 2.4.

“*Cure Amount*” means, with respect to any Assigned Contract, the amount due and owing to each non-debtor counterparty to such Assigned Contract to cure any defaults required to be cured as a condition of assumption of such Assigned Contract pursuant to Section 365(b)(1) of the Bankruptcy Code.

“*Cure Escrow*” has the meaning ascribed thereto in Section 2.3(b).

“*DIP Agreement*” has the meaning ascribed thereto in Section 6.5.

“*DIP Loan*” means that certain loan in the principal amount of no more than One Million Five Hundred Thousand Dollars (\$1,500,000), to be provided to Seller by Buyer or an Affiliate of Buyer subject to approval of the Bankruptcy Court pursuant to Section 364 of the Bankruptcy Code.

“*Disputed Cure Amount*” has the meaning ascribed thereto in Section 2.3(b).

“*Employee Plan*” has the meaning ascribed thereto in Section 4.20.

“*Encumbrance*” means with respect to any asset and to the extent not a Lien, any charge, claim, equitable interest, lien, option, pledge, security interest, or right of first refusal, trust, restriction, covenant, easement, license, lease, mortgage, conditional or installment sale contract, title retention contract, transferability restriction, obligation, or title defect.

“*Environment*” has the meaning set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“*CERCLA*”), 42 U.S.C. § 9601, *et seq.*

“*Environmental Condition*” means the presence or introduction into the Environment of any Hazardous Materials (and any resulting air, soil, groundwater or surface water contamination without regard to the location to which such resulting contamination has migrated or spread) as a result of which Seller has or may become materially liable to any Person in connection with the Business or by reason of which the Purchased Assets may materially suffer.

“**Environmental Laws**” means all Laws that (i) regulate or relate to the protection or clean-up of the Environment; the use, treatment, generation, storage, transportation, handling, disposal or release of Hazardous Materials; or the preservation or protection of waterways, groundwater, drinking water, air, wildlife, plants or other natural resources; or (ii) imposes liability with respect to any of the foregoing, including the CERCLA; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.*; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. Section 2601, *et seq.*; the Clean Air Act, 42 U.S.C. Section 7401, *et seq.*; the Safe Drinking Water Act, 42 U.S.C. Section 300f, *et seq.*; or the Oil Pollution Act of 1990, 33 U.S.C. Section 2701, *et seq.*

“**Equipment**” means all molds related to the Products and any other “equipment,” as that term is defined in the UCC.

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

“**ERISA Affiliate**” means each entity that is treated as a single employer with Seller for purposes of Section 414 of the Code.

“**Escrow Agent**” has the meaning ascribed thereto in [Section 3.1\(b\)](#).

“**Escrow Agreement**” has the meaning ascribed thereto in [Section 3.1\(b\)](#).

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

“**Excluded Assets**” has the meaning ascribed thereto in [Section 2.1\(b\)](#).

“**Excluded Tax Liabilities**” has the meaning ascribed thereto in [Section 2.2\(b\)\(viii\)](#).

“**Excluded Liabilities**” has the meaning ascribed thereto in [Section 2.2\(b\)](#).

“**Ex-Im Laws**” means all U.S. and non-U.S. laws relating to export, reexport, transfer, and import controls, including, without limitation, the Export Administration Regulations, the International Traffic in Arms Regulations, and the customs and import laws administered by U.S. Customs and Border Protection.

“**FDA**” means the United States Food and Drug Administration and any successor thereto.

“**Final Order**” means an order, judgment or other decree of any Governmental Body as to which (a) the operation or effect has not been reversed, stayed, modified or amended, (b) no appeals, motions for reconsideration, petitions seeking the grant of certiorari or, if certiorari has been granted, grants of certiorari are pending, and (c) any and all appeal periods and periods to seek the grant of certiorari have expired.

“**GAAP**” means generally accepted accounting principles in the United States, consistently applied.

“**Goods**” means any “goods,” as that term is defined in the UCC.

“**Governmental Authorization**” means any consent, license, permit, certificate of authority, registration, franchise, right, Order or notice, qualification or similar right (including any 510(k) Clearances and CE Marks) issued, granted, given, or required by or under the authority of any Governmental Body or pursuant to any Laws.

“**Governmental Body**” means any federal, state, local, municipal, foreign or other governmental or quasi-governmental entity or authority of any nature, including courts and administrative agencies (including the FDA and its equivalent authority or body in any foreign jurisdiction).

“**Hazardous Materials**” means all “hazardous substances” or “toxic substances” as those terms are defined by the CERCLA.

“**Hired Employees**” has the meaning ascribed thereto in [Section 6.5\(a\)](#).

“**Hired Key Employees**” has the meaning ascribed thereto in [Section 6.5\(b\)](#).

“**Indebtedness**” means collectively any and all Claims and Liabilities including, without limitation, the following: all mortgages, restrictions (including, without limitation, any restriction on the use, voting rights, transfer rights, claims for receipt of income or other exercise of any attributes of ownership), hypothecations, charges, indentures, loan agreements, instruments, leases, licenses, options, deeds of trust, security interests, equity interests, conditional sale rights or other title retention agreements, pledges, judgments, demands, rights of first refusal, consent rights, offsets, contract rights, rights of setoff, recoupment rights, rights of recovery, reimbursement rights, contribution claims, indemnity rights, exoneration rights, product liability claims, alter-ego claims, environmental rights and claims (including, without limitation, toxic tort claims), labor rights and claims, employment rights and claims, pension rights and claims, tax claims, regulatory violations by any Governmental Body, decrees of any court or foreign or domestic Governmental Body, charges of any kind or nature, debts arising in any way in connection with any agreements, acts, or failures to act, reclamation claims, obligation claims, demands, guaranties, option rights or claims, rights, contractual or other commitment rights and claims, rights of licensees or sublicensees under Section 365(n) of the Bankruptcy Code or any similar statute, claims with respect to Excluded Liabilities and all other matters of any kind and nature, whether known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, whether arising prior to or subsequent to the commencement of the Bankruptcy Case, and whether imposed by agreement, understanding, Law, equity or otherwise, including claims otherwise arising under any theory, law or doctrine of successor liability or related theories.

“**Indemnification Escrow**” has the meaning ascribed thereto in [Section 3.1\(b\)](#).

“**Intellectual Property**” means, collectively, any and all (i) inventions (whether or not patentable and whether or not reduced to practice), records of inventions, test information, developments, applications, improvements, formulae, concepts, ideas, methods or processes, research property rights and all improvements and modifications to any of the foregoing, (ii) patents, patent rights, patent applications and patent disclosures, together with all reissuances, continuations, continuations in part, revisions, extensions and reexaminations thereof, and all improvements and modifications to any of the foregoing (“**Patents**”), (iii) trademarks, trademark rights, service marks, service mark rights, trade dress, logos, slogans, trade names, trade name rights, assumed names and corporate names, together with all translations, adaptations, derivations and combinations thereof and including all goodwill associated therewith, and all applications, registrations and renewals in connection therewith (“**Trademarks**”), (iv) copyrightable works, all copyrights and all applications, registrations and renewals in connection therewith, mask works and all applications, registrations and renewals in connection therewith (“**Copyrights**”), (v) trade secrets and confidential business information (including ideas, concepts, research and development, know-how, composition information and embodiments, technology, inventions, formulas, compositions, processes and techniques, technical and business data, designs, drawings, specifications, customer, distributor and supplier lists, pricing and cost information and business and marketing plans and proposals) (“**Trade Secrets**”), (vi) computer software (including source code, executable code, data, databases, and related software program documentation in computer-readable and hard-copy forms) (“**Software**”), (vii) computer hardware, firmware and applications (including source code, executable code, data, databases, and related programming documentation in computer-readable and hard-copy forms), (viii) web sites, web site domain names, web site sub domains, uniform resource locators and rights in telephone numbers, (ix) advertising and promotional materials, (x) all other proprietary rights and (xi) copies and tangible embodiments of the foregoing in whatever form or medium, in each case, which are owned, licensed, or used by Seller in connection with the Business anywhere in the world.

“Intellectual Property Assignment” has the meaning ascribed thereto in Section 8.2(d).

“Interest” means all (i) Liens, (ii) Encumbrances, (iii) Claims, (iv) conditional sale or other title retention agreements, (v) judgments, (vi) rights or options to effect any forfeiture, modification, repurchase, or termination of the Seller’s or Buyer’s interest in the Assigned Contracts and/or Purchased Assets, as applicable, and (vii) easements, restrictions, rights of first refusal or charges of any kind or nature, if any, including, but not limited to, any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership.

“Inventory” means any “inventory,” as that term is defined in the UCC, pertaining to the Products and the Business, including, raw materials and components, work-in-process, demonstration Products, finished goods, and other materials, spare parts, components, and supplies, as well as all packaging and labeling inventories, supplies, and materials.

“Key Employee Employment Agreements” has the meaning ascribed thereto in Section 6.5(b).

“Knowledge of Seller” and **“to Seller’s Knowledge”** means the actual knowledge of: (i) Julian Nikolchev, Seller’s President and Chief Executive Officer; (ii) Thomas Palermo, Seller’s Chief Operations Officer; (iii) Robert Y. Newell, Seller’s Vice President of Finance and Chief Financial Officer; (iv) Liam J. Burns, Seller’s Vice President of Worldwide Sales and Marketing; and (v) Gregory P. Watson, Seller’s Vice President of Operations, after due inquiry.

“Laws” means all federal, state and local laws, ordinances, rules, regulations, standards, and Orders.

“Leased Real Property” has the meaning ascribed thereto in Section 4.9(b).

“Liabilities” means liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise, including obligations and liabilities related to any Claim.

“Lien” has the meaning given to such term in the Bankruptcy Code.

“Liquidated Cure Amounts” has the meaning ascribed thereto in Section 2.3(b).

“Losses” has the meaning ascribed thereto in Section 10.1.

“Material Adverse Effect” means any event, circumstance, change, occurrence or effect that, individually or in the aggregate, has a material and adverse effect upon the assets, liabilities, financial condition or operating results of the Business or the Purchased Assets, taken as a whole; **provided, however,** that any adverse change, event, development or effect arising from or relating to any of the following shall not be deemed to constitute, and shall not be taken into account in determining whether there has been, a Material Adverse Effect: (i) the United States economy, the global economy, in each case, as a whole, or the industry or markets in which Seller operates; (ii) the filing of the Bankruptcy Case or the conduct of the Business in the Ordinary Course of Business; (iii) national or international political or social conditions, including the engagement by the United States in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon the United States, or any of its territories, possessions, or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States; (iv) financial, banking, or securities markets (including any disruption thereof and any decline in the price of any security or any market index); (v) changes in GAAP; (vi) changes in Law or Orders; (vii) the taking of any action contemplated by this Agreement or any of the Ancillary Documents; (viii) any “act of God,” including, but not limited to, weather, natural disasters and earthquakes; (ix) changes resulting from the announcement of the execution of this Agreement or any of the Contemplated Transactions; or (x) the termination of any Contract that is not an Assigned Contract.

“Material Contracts” has the meaning ascribed thereto in Section 4.10.

“Maximum Cure Amount” means the maximum Cure Amount claimed by a counterparty to an Assigned Contract in a timely objection to the Assumption and Assignment Notice applicable to such Assigned Contract.

“NDA Agreement” has the meaning ascribed thereto in Section 2.1(a)(xiii).

“Non-Competition Period” has the meaning ascribed thereto in Section 6.11(b)(ii).

“Non-Solicitation Period” has the meaning ascribed thereto in Section 6.11(c).

“**Order**” means any award, decision, injunction, judgment, order, ruling, subpoena, or verdict entered, issued, made, or rendered by any Governmental Body.

“**Ordinary Course of Business**” means the ordinary course of Seller’s Business consistent with past practice (including with respect to quantity and frequency); *provided, however*, that the Parties agree that as to periods after the Petition Date the Ordinary Course of Business shall be deemed modified by the Anticipated Post-Petition Business Changes.

“**Organizational Documents**” means (a) with respect to a corporation, the certificate or articles of incorporation and bylaws; (b) with respect to any other entity, any charter or similar document adopted or filed in connection with the creation, formation or organization of such entity; and (c) any amendment to any of the foregoing.

“**Outstanding Braun Distribution Agreement Consideration**” has the meaning ascribed thereto in Section 7.3(d).

“**Party**” and “**Parties**” has the meaning ascribed thereto in the Preamble.

“**Permitted Liens and Encumbrances**” means (i) easements, covenants, conditions and restrictions of public record; (ii) any zoning or other governmentally established restrictions or encumbrances; (iii) Liens and/or Encumbrances arising under any leases to which any leased personal property comprising of a portion of the Purchased Assets is subject; (iv) the Liens and Encumbrances listed on Schedule 1.1(a) hereto; and (v) any Encumbrances or liabilities created by this Agreement.

“**Petition Date**” has the meaning ascribed thereto in Section 6.4(f).

“**Petition for Relief**” has the meaning ascribed thereto in the Recitals.

“**Products**” means, collectively, the MicroCutter 5/80™ Stapler, products incorporating Seller’s proprietary “staple-on-a-strip” technology intended for use by thoracic, pediatric, bariatric, colorectal and general surgeons, vascular anastomosis products and all enhancements, modifications, improvements, developments and next-generation products of the foregoing, any accessories or ancillary products developed by Seller in connection therewith, Seller’s cardiac products, and any other product which has been developed and/or marketed by Seller, and “**Product**” means any one of the Products.

“**Person**” means any individual, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association, or other legal organization.

“**Proceeding**” means any action, demand, complaint, inquiry, suit, injunction, dispute, arbitration, audit, hearing, investigation, litigation, citation, notice of violation (or similar notice), or suit (whether civil or criminal) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Body.

“**Purchase Price**” has the meaning ascribed thereto in Section 3.1(a).

“**Purchased Assets**” has the meaning ascribed thereto in Section 2.1(a).

“**Redwood City Lease**” means the lease dated April 25, 2003 between the Seller and CA-Seaport Centre Limited Partnership (now HCP LS Redwood City, LLC as successor) for offices and manufacturing space located in Redwood City, California, as amended.

“**Redwood City Premises**” means the premises leased by the Seller pursuant to the Redwood City Lease.

“**Related Person**” (i) with respect to a Person who is an individual, means, (a) any other individual having a relationship with such specified individual (by blood, marriage or adoption) of grandparent, parent, child, grandchild, aunt, uncle, niece, nephew, sister, brother or first cousin (collectively, “**Relatives**”), (b) any Person that is controlled by such individual or any one or more members of such individual’s Relatives; and (c) any Person with respect to which such individual or one or more members of such individual’s Relatives serves as a director, officer, partner, or trustee (or in a similar capacity); and (ii) with respect to a specified Person other than an individual, means (a) any Affiliate of such specified Person; and (b) each Person that serves as a director, officer, partner, or trustee (or in a similar capacity) of such specified Person.

“**Representative**” means, with respect to a particular Person, any director, officer, employee, agent, consultant, advisor, or other representative of such Person, including legal counsel, accountants and financial advisors.

“**Required Notification**” has the meaning ascribed thereto in Section 6.7.

“**Sale Motion**” has the meaning ascribed thereto in Section 6.4(g).

“**Sale Hearing**” has the meaning ascribed thereto in Section 6.4(g).

“**Sanctioned Country**” means any country or region that is the subject or target of a comprehensive embargo under Sanctions Laws (including, without limitation, Cuba, Iran, North Korea, Sudan, Syria, and the Crimea region of Ukraine).

“**Sanctions Laws**” means all U.S. and non-U.S. laws relating to economic or trade sanctions, including, without limitation, the laws administered or enforced by the United States (including by OFAC or the U.S. Department of State) and the United Nations Security Council.

“**Sanctioned Person**” means any individual or entity that is the subject or target of sanctions or restrictions under Sanctions Laws or Ex-Im Laws, including: (a) any individual or entity listed on any applicable U.S. or non-U.S. sanctions- or export-related restricted party list, including, without limitation, OFAC’s Specially Designated Nationals and Blocked Persons List; (b) any entity that is, in the aggregate, fifty percent (50%) or greater owned, directly or indirectly, or otherwise controlled by a person or persons described in clause (a); or (c) any national of a Sanctioned Country.

“**Sarbanes Oxley Act**” has the meaning ascribed thereto in Section 4.24.

“**Securities Act**” means the Securities Act of 1933, as amended.

“**SEC Reports**” has the meaning ascribed thereto in Section 4.24.

“**Seller**” has the meaning ascribed thereto in the Preamble.

“**Seller Indemnified Party**” has the meaning ascribed thereto in Section 10.2.

“**Seller Intellectual Property**” has the meaning ascribed thereto in Section 2.1(a)(v).

“**Seller Licenses and Permits**” has the meaning ascribed thereto in Section 2.1(a)(vi).

“**Seller Records**” has the meaning ascribed thereto in Section 2.1(a)(vii).

“**Tail Coverage**” means an extended claims reporting provision that (i) provides, at a minimum, the same coverage (i.e., terms and limits) as exists under all primary and excess products liability and general liability insurance policies in force as of the Closing Date that cover Seller and each employee of Seller and which are written on a claims made insuring agreement, (ii) covers prior acts and omissions, (iii) names Seller, Buyer and other Persons designated by Buyer as named insureds thereunder; and (iv) has a term of at least five (5) years or such longer period as Seller may elect in its sole discretion;

“**Tax**” and “**Taxes**” means individually or collectively, as appropriate, any and all U.S. or non-U.S., federal, state, county, local, municipal or other taxes, charges, imposts, rates, fees, levies or other assessments.

“**Termination Date**” has the meaning ascribed thereto in Section 9.1(a).

“**Trade Control Laws**” has the meaning ascribed thereto in Section 4.25.

“**Transfer Taxes**” has the meaning ascribed thereto in Section 11.12(b).

“**UCC**” means the Uniform Commercial Code as in effect in the State of Delaware.

Section 1.2. Interpretation and Construction.

(a) As used herein the words “**include**”, “**includes**” and “**including**” shall be deemed to be followed by the phrase “without limitation.”

(b) As used herein, the words “**herein**”, “**hereof**”, “**hereunder**” and similar terms shall refer to this Agreement unless the context requires otherwise.

(c) For purposes of this Agreement, whenever the context so requires, the neuter gender includes the masculine and/or feminine gender, and the singular number includes the plural and vice versa.

ARTICLE II
AGREEMENTS TO SELL AND PURCHASE; RELATED MATTERS

Section 2.1. Sale of Purchased Assets.

(a) Purchased Assets. On the Closing Date, on the terms and subject to the conditions hereof and in consideration of the Purchase Price to be paid to Seller by Buyer, Buyer will purchase and acquire from Seller, and Seller will sell, convey, assign, transfer and deliver to Buyer, all of Seller's right, title and interest in and to all assets, properties, rights and interests, of any kind and description (whether real, personal or mixed, tangible or intangible, or fixed, contingent or otherwise), wherever located and by whomever possessed, owned, licensed or leased by Seller, other than the Excluded Assets (collectively, the "**Purchased Assets**"), free and clear of all Interests, other than Permitted Liens and Encumbrances and Assumed Liabilities, to the fullest extent permitted by Section 363 of the Bankruptcy Code, including the following:

(i) all of Seller's rights and interests in the Leased Real Property;

(ii) all of Seller's Inventory;

(iii) all of Seller's Equipment, including all machinery, office equipment, tooling, dies, fixtures, trade fixtures, computers and related software, furniture, office supplies, production supplies, spare parts, other miscellaneous supplies and other tangible property of any kind wherever located;

(iv) all of Seller's Contracts and business arrangements, including all leases or subleases of personal property, supply and distribution arrangements, sales and purchase orders, confidentiality, non-disclosure, non-solicitation, assignment of inventions, assignment of developments, non-disparagement, non-competition, non-interference, non-circumvention and similar agreements (and related covenants), dealership, service, maintenance, vendor, customer and service agreements, that are listed on Schedule 2.1(a)(iv) (collectively, the "**Assigned Contracts**");

(v) all of Seller's Intellectual Property, including any Intellectual Property of Seller relating, pertaining or involved in connection with the MicroCutter 5/80TM Stapler, vascular anastomosis products and other Products, and all enhancements, modifications, improvements, developments and next-generation products of the foregoing (collectively, the "**Seller Intellectual Property**");

(vi) all of Seller's Licenses and Permits (the "**Seller Licenses and Permits**"), to the extent transferable;

(vii) all of Seller's lists, records and other information pertaining to suppliers and customers (including customer lists, customer mailing lists and customer sales files), all lists, records and other information pertaining to accounts, Products, personnel and referral sources, and all drawings, plats, specifications, reports, studies, plans, books, ledgers, files, documents, correspondence and business and accounting records of every kind (including all financial, business and marketing plans and FDA and other regulatory records, submissions, forms and other files, maintenance records, financial records and books of account), in each case whether or not evidenced in writing, electronic data, computer software or otherwise (the "**Seller Records**"), including Seller Records that are part of Seller Intellectual Property;

(viii) all of Seller's advertising, marketing and promotional materials and all other printed or written materials;

(ix) all of Seller's Claims (including insurance benefits to the extent such benefits relate to a Purchased Asset or Assumed Liability), deposits, prepayments, refunds, vendor rebates, credits, causes of action, choses in action, rights of recovery, rights of recoupment and rights of set-off of any kind (other than those that are Excluded Assets);

(x) all rights with respect to any Proceeding of any nature available to or being pursued by Seller to the extent related to the Business, the Purchased Assets or the Assumed Liabilities, whether arising by way of counterclaim or otherwise, including, but not limited to, Proceedings or Claims related any of Seller Intellectual Property, past present or future;

Purchased Assets;

(xi) all of Seller's rights under warranties, indemnities and all similar rights against third parties to the extent related to any of the

Liabilities;

(xii) all insurance benefits, including rights and proceeds, that arise from or relate to the Purchased Assets or the Assumed

(xiii) all goodwill as a going concern and all other intangible property of the Business; and

(xiv) all of Seller's other assets, properties rights and interests owned by Seller as of the Closing Date, or in which Seller has an interest, which are not referred to in subsections (i) through (xiii), including all other assets, rights and interests necessary to operate the Business following the Closing Date and which are not otherwise Excluded Assets, and further including all of Seller's rights, title and interests under (including its rights to enforce), but none of its duties, obligations and Liabilities, in, to and under those certain confidentiality, non-disclosure, non-solicitation, assignment of inventions or assignment of developments Contracts (each such agreement, an "**NDA Agreement**") that are not Assigned Contracts.

Nothing in this Section 2.1(a) shall obligate Buyer to assume any Liability, whether related to the Business, the Purchased Assets or otherwise, unless Buyer expressly assumes such Liability pursuant to the terms and conditions of Section 2.2(a) hereof. Further, Buyer shall have the right, upon written notice given to Seller before Closing, to exclude any or all of the assets listed above from the definition of Purchased Assets and any assets so excluded shall be Excluded Assets. No election to revise the Purchased Assets hereunder by Buyer shall alter the Purchase Price.

(b) Excluded Assets. Notwithstanding anything contained in Section 2.1(a), the following assets, properties, rights and interests of Seller (collectively, the "**Excluded Assets**") are expressly excluded from the Contemplated Transactions and as such are not included in the Purchased Assets:

(i) the personnel and other records that Seller is required by Law to retain in its possession;

(ii) all of the Seller's Contracts other than the Assigned Contracts;

(iii) the Organizational Documents of Seller;

(iv) the minute book, stock ledger, corporate seal or related documents pertaining to the incorporation and equity ownership of Seller, together with copies of any Seller Records that Seller requires in connection with the administration of the Bankruptcy Case, it being understood that any such copies shall be subject to the provisions of Section 6.11;

(v) all of the Claims (including insurance benefits not expressly made part of the Purchased Assets), deposits, prepayments, refunds, credits, causes of action, choses in action, rights of recovery, rights of recoupment, indemnification rights, escrows and rights of set-off of Seller, in each case with respect to any of the Excluded Assets or any of the Excluded Liabilities;

(vi) all cash, cash equivalents and marketable securities, including the Outstanding Braun Distribution Agreement Consideration;

(vii) all accounts and notes receivable;

(viii) subject to Section 2.1(a)(xii) hereof, all of Seller's insurance policies;

(ix) all of Seller's Tax assets (including tax refunds and repayments and net operating losses);

(x) Seller's rights under or pursuant to this Agreement and the Ancillary Documents;

(xi) all Claims arising under Chapter 5 of the Bankruptcy Code ("***Avoidance Actions***");

(xii) all of Seller's privileges, protections, and immunities for communications, documents, or materials, including without limitation, any attorney-client privilege, work product doctrine, common interest, or joint defense privilege, and electronic and tangible documents reflecting such communications and materials;

(xiii) all stock and other ownership interests in Dextera Surgical GmbH; and

(xiv) the other assets, properties, rights and interests of Seller set forth on Schedule 2.1(b)(xiv).

Section 2.2. Assumption and Exclusion of Liabilities.

(a) Assumed Liabilities. As of the Closing Date, on the terms and subject to the conditions hereof, and as additional consideration for the Purchased Assets, Buyer shall assume and pay, perform or otherwise discharge, in accordance with their respective terms and subject to their respective conditions, only: (i) any Liabilities of Seller under any Assigned Contract, but only to the extent that such Liabilities thereunder are required to be performed after the Closing Date, were incurred in the Ordinary Course of Business and do not relate to any failure to perform, improper performance, warranty or other breach, default or violation by Seller on or prior to the Closing Date; (ii) the Liabilities of Seller specifically identified and described in Schedule 2.2(a)(ii) (collectively, the "***Assumed Liabilities***"). At least ten (10) days prior to the Sale Hearing, Buyer will provide Seller with a completed form of Schedule 2.2(a)(ii), which schedule will list all Seller Liabilities that the Buyer, in its sole discretion, shall have agreed to assume at Closing in addition to the Seller Liabilities identified in Subsection 2.2 (a)(i) above.

(b) Excluded Liabilities. Notwithstanding anything to the contrary in this Agreement, Seller shall retain and shall be responsible for paying, performing and discharging when due, and Buyer shall not assume or have any responsibility or liability for, any of Seller's Liabilities, whether or not related to the Business or the Purchased Assets, of whatever kind and nature, primary or secondary, direct or indirect, absolute or contingent, known or unknown, and whether or not accrued, not specifically identified as Assumed Liabilities pursuant to Section 2.2(a) including the following Liabilities (collectively, the "**Excluded Liabilities**"):

- (i) any Liabilities arising out of or related to the Excluded Assets;
- (ii) Seller's obligations under this Agreement and the Ancillary Documents;
- (iii) any Liabilities existing prior to the Closing Date or related to or arising out of any event, occurrence, state of facts, condition, act or omission prior to the Closing Date;
- (iv) any Liability under any Assigned Contract, to the extent (A) arising in the first instance prior to the Closing Date, under any Assigned Contract, or (B) arising after the Closing Date but relating to a breach of an Assigned Contract by Seller prior to the Closing Date;
- (v) any Liability under an NDA Agreement;
- (vi) any Indebtedness of Seller;
- (vii) all Liabilities in respect of any employees of Seller and the beneficiaries of such employees arising prior to or accrued as of the Closing including, but not limited to, any severance payments or exit bonuses payable to such employees as a result of the Closing of the Contemplated Transactions;
- (viii) all Liabilities relating to any product Liability, breach of warranty or similar claim for injury to a Person or property which arises out of or is based upon any express or implied representations, warranty, agreement or guaranty made by Seller, or by reason of the improper performance or malfunctioning of a product, improper design or manufacture, failure to adequately package label or warn of hazard or other related product defects of any products at any time manufactured or sold or any service performed by Seller before the Closing; and
- (ix) all Liabilities for professional (including broker and advisory), U.S. trustee and Bankruptcy Court fees, costs and expenses that have been incurred or that are incurred or owed by Seller (or its bankruptcy estate) in connection with the preparation and administration of the Bankruptcy Case; and
- (x) all Liabilities for Taxes imposed with respect to the Business, the assets thereof, and/or any income or gains derived with respect thereto for any taxable period, or portion thereof, ending on or before the Closing Date (the "**Excluded Tax Liabilities**").

Section 2.3. Assignment of Contracts and Rights.

(a) At least twenty (20) days prior to the Sale Hearing, Buyer will provide Seller with a completed form of Schedule 2.1(a)(iv). Schedule 2.1(a)(iv) will list all Contracts of Seller, that Buyer, in its sole discretion, shall have designated for assumption by Seller and assignment to Buyer at Closing. Prior to conclusion of the Sale Hearing, Buyer shall have the right, in its sole discretion, to delete Contracts from Schedule 2.1(a)(iv)

(b) At the Closing: (i) Seller shall, pursuant to the Approval Order and the Assignment and Assumption Agreement, assume and assign to Buyer (the consideration of which is included in the Purchase Price) each of the Assigned Contracts; (ii) Buyer shall pay all Cure Amounts in respect of each of the Assigned Contracts that have been allowed by Final Order of the Bankruptcy Court prior to the Closing Date (the "**Liquidated Cure Amounts**"); and (iii) to the extent that the required Cure Amount for any Assigned Contract has not been (x) allowed by Final Order of the Bankruptcy Court prior to the Closing Date or (y) otherwise agreed to by Seller and such Assigned Contract counterparty, the Maximum Cure Amount claimed by each respective Assigned Contract counterparty or the lesser amount, if any, to which the Bankruptcy Court, by Final Order, has limited the Cure Amount which may subsequently be allowed to such Assigned Contract counterparty (a "**Disputed Cure Amount**"), shall be paid by Buyer into an escrow account with the Escrow Agent (collectively, the "**Cure Escrow**"), and the allowed amount of all Disputed Cure Amounts shall be paid by the Escrow Agent from the Cure Escrow pursuant to the terms of the Escrow Agreement when and to the extent each such Disputed Cure Amount is allowed by Final Order of the Bankruptcy Court.

Section 2.4. Competing Transactions: Bankruptcy Court Approval. This Agreement is subject to approval by the Bankruptcy Court and the consideration by Seller of higher or better competing bids pursuant to the Bid Procedures Order and the Bid Procedures approved thereby (each, a "**Competing Bid**"). From the date of filing of the Sale Motion until Seller designates the Successful Bidder (as defined in the Bid Procedures), Seller is permitted to cause its Representatives and Affiliates to initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, any Person in connection with any sale or disposition of the Purchased Assets. If Buyer is designated as the Successful Bidder, Seller shall use its best efforts to obtain the Sale Order at the Sale Hearing. In soliciting Competing Bids and in conducting any auction resulting from the receipt of a Competing Bid for the Purchased Assets, Seller shall comply with the Bid Procedures Order and the Bid Procedures.

Section 2.5. No Collusive Bidding. Buyer hereby confirms that it has not engaged in any collusive bidding or violated any applicable law with respect to the auction of the Purchased Assets or that would constitute a basis for avoiding the sale or the recovery of damages under Section 363(n) of the Bankruptcy Code.

**ARTICLE III
PURCHASE PRICE**

Section 3.1. Payment of Purchase Price.

(a) Closing Date Cash Payment. The purchase price for the Purchased Assets shall be Seventeen Million Three Hundred Thousand Dollars and No Cents (\$17,300,000.00) (the "**Purchase Price**"). At the Closing, in consideration of the purchase and sale of the Purchased Assets, Buyer shall, pay the following amounts from the Purchase Price to the following Persons, in cash, by wire transfer of immediately available funds: (i) to the Escrow Agent, the Indemnification Escrow (as defined below), to be held, administered and disbursed by the Escrow Agent pursuant to the terms of the Escrow Agreement, as further described in Section 3.1(b); (ii) to the Escrow Agent, the total of all Disputed Cure Amounts, to be held, administered and disbursed by the Escrow Agent pursuant to the terms of the Escrow Agreement, as further described in Section 3.1(c); (iii) to the holders of Liquidated Cure Amounts, such Liquidated Cure Amounts, (iv) to the provider of Tail Coverage, the premium for such Tail Coverage, (v) to itself, the full balance due on account of the DIP Loan, and (vi) to Seller, a net amount equal to the Purchase Price less the items identified in subparagraph (i) – (v) above (such net amount, the "**Closing Date Cash Payment**"). All payments described above except for payment on account of the DIP Loan shall be made pursuant to written wire transfer instructions, or address information for payment by check in the case of one or more of the Liquidated Cure Amounts, delivered by Seller to Buyer at least two (2) Business Days prior to the Closing Date.

(b) Indemnification Escrow. Simultaneously with the Closing, the Parties shall enter into an escrow agreement, substantially in the form attached hereto as Exhibit A (the "**Escrow Agreement**"), with an escrow agent reasonably acceptable to Buyer and Seller (the "**Escrow Agent**"), pursuant to which Buyer will deposit with the Escrow Agent an amount equal to Two Million Dollars and No Cents (\$2,000,000.00) of the Purchase Price (the "**Indemnification Escrow**"). The Indemnification Escrow shall be Buyer's sole remedy against Seller on account of monetary damages and shall be available to Buyer to satisfy any amounts owed to Buyer pursuant to this Agreement (including any payments to be made to Buyer pursuant to Seller's indemnification obligations under Article X). The Indemnification Escrow shall be held for the period and distributed as provided in the Escrow Agreement.

(c) Cure Escrow. Simultaneously with the Closing, pursuant to the Escrow Agreement, Buyer will deposit with the Escrow Agent the total of all Disputed Cure Amounts (as calculated pursuant to Section 2.3(b)). The Cure Escrow shall be held for the period and distributed as provided in the Escrow Agreement.

Section 3.2. Tax Allocation of Purchase Price. The Purchase Price shall be allocated among the Purchased Assets in accordance with the IRS Form 8594, Asset Acquisition Statement Under Section 1060 as agreed by Seller and Buyer and their respective accountants in good faith consistent in all respects with applicable Laws. Seller and Buyer shall file their respective Tax returns in accordance with such allocation and shall not take any position inconsistent with such allocation, unless Seller or Buyer, as the case may be, reasonably determines (and notifies the other Party) that such allocation is contrary to applicable Law.

**ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller represents and warrants to Buyer as of the Effective Date (and shall be deemed to represent and warrant as of the Closing Date) as follows:

Section 4.1. Organization. Seller is a corporation duly formed, validly existing and in good standing under the laws of the State of Delaware and is duly qualified to do business as a foreign corporation and is in good standing in each other jurisdiction set forth on Schedule 4.1 where the operation of the Business by Seller requires such qualification.

Section 4.2. Power and Authority. Seller has all requisite power and authority to enter into this Agreement and, subject to and upon entry of the Approval Order by the Bankruptcy Court, shall have such power and authority to consummate the Contemplated Transactions. This Agreement has been duly executed and delivered by Seller. This Agreement constitutes a valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except (i) as to the obligation to consummate the Contemplated Transactions, entry of the Approval Order, and, as to the obligation to pay the Stalking Horse Payment if it becomes payable, entry of the Bid Procedures Order, and (ii) as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar Laws and principles of equity affecting creditors' rights and remedies generally.

Section 4.3. Non-contravention. The execution and delivery of this Agreement or any other Ancillary Document to which Seller is a party, the performance by Seller of its obligations hereunder and thereunder, will not (i) violate any provision of the Organizational Documents of Seller, (ii) subject to the entry of the Approval Order by the Bankruptcy Court, result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default or breach (or give rise to any right of termination, amendment, cancellation or acceleration) under any Contract, (iii) violate any Law or Order applicable to the Business or the Purchased Assets, or (iv) result in the imposition of any Lien or Encumbrance on the Purchased Assets (other than Permitted Liens and Encumbrances and those Liens and Encumbrances of which the Purchased Assets are sold free and clear as provided in the Approval Order).

Section 4.4. Consents. Subject to and upon entry of the Approval Order by the Bankruptcy Court, except as set forth on Schedule 4.4, no approval, consent or authorization of, or declaration, filing or registration with or any notification to any Governmental Body or any other third Person is required in connection with the execution, delivery or performance by Seller of this Agreement or the consummation by Seller of the Contemplated Transactions.

Section 4.5. Liabilities. Subject to and upon the entry of the Approval Order, Seller has no Liabilities with respect to the Purchased Assets for which Buyer will be responsible after Closing except Assumed Liabilities.

Section 4.6. Title to Assets. Seller has good and marketable title to, or a valid leasehold interest in, all of its properties and assets which comprise the Purchased Assets, which title shall be transferred to Buyer subject to and upon entry of the Approval Order free and clear of all Interests other than Permitted Liens and Encumbrances and Assumed Liabilities. Subject to and upon entry of the Approval Order, upon the completion of the Contemplated Transactions, Buyer will be vested with good and marketable title to the Purchased Assets, free and clear of all Interests other than Permitted Liens and Encumbrances, Assumed Liabilities and any Liens and Encumbrances imposed upon the Purchased Assets by Buyer or any of its creditors or other financing sources.

Section 4.7. Condition and Sufficiency of Tangible Personal Property. The material machinery, Goods, Equipment, furniture, leasehold improvements, fixtures and other tangible personal property (other than Inventory), which comprise a portion of the Purchased Assets are in good operating condition and repair, ordinary wear and tear excepted. That portion of the Purchased Assets which is comprised of finished goods Inventory consists of a non-obsolete, quality and quantity usable and, except for demonstration Inventory, salable in the Ordinary Course of Business. The tangible Purchased Assets are sufficient in nature, condition and quality for the continued conduct of the businesses conducted by Seller after the Closing in substantially the same manner as such businesses have been previously conducted and are all of the assets and properties used by Seller in the conduct of its businesses other than the Excluded Assets.

Section 4.8. Location of Inventory, Schedule 4.8 identifies all third parties that are in possession of any Purchased Assets that are Inventory and sets forth the locations of such Inventory.

Section 4.9. Real Property.

(a) The Seller does not own, and has never owned, any Real Property.

(b) Schedule 4.9(b) indicates the address and the owner of any Real Property leased by the Seller (the "**Leased Real Property**"). The Seller has made available to Buyer a complete and correct copy of each lease related to the Leased Real Property, all of which are identified on Schedule 4.9(b). Assuming good title in the applicable landlord, the Seller holds a valid, binding and enforceable leasehold interest in all of the Leased Real Property, in each case free and clear of all Liens that will not be discharged at the Closing.

(c) Except as set forth on Schedule 4.9(c), the Leased Real Property constitutes all of the Real Property currently used or occupied by the Seller in connection with or related to the Business, and the buildings and improvements thereon are in good condition and repair, normal wear and tear excepted. Such Leased Real Property and the premises located thereon occupied by the Seller, is sufficient for current Business and operational use requirements, and the Seller enjoys peaceful and undisturbed possession of such Real Property sufficient for current Business and operational use requirements.

(d) With respect to the Leased Real Property, except as reflected on Schedule 4.9(d):

(i) the Seller is in exclusive possession thereof and of all easements, licenses or rights required by applicable Law for the Seller's use and occupancy as are necessary to the conduct of the Business thereon as currently conducted by the Seller;

(ii) the buildings, plants, improvements, structures, fixtures, including heating, ventilation, air conditioning systems, roof, foundation and floors, are substantially fit for the purposes for which they are being utilized and are in adequate condition, normal wear and tear excepted, and are not in violation of any zoning, health, safety, environmental, building, land use or other Laws compliance with which is the Seller's responsibility (by Contract or otherwise) and no notice of any claimed violation of any such Laws been served on the Seller and;

(iii) all facilities thereon are supplied with utilities and other services necessary for the operation of such facilities, as presently operated;

(iv) no portion thereof is subject to any pending eminent domain, condemnation or other similar proceeding or other Proceeding by any Governmental Body, court or judicial authority adverse to the Leased Real Property and, to Seller's Knowledge, there are no Threatened condemnation or other Proceedings with respect thereto adverse thereto, either of which would adversely and materially affect the current operations at the Leased Real Property;

(v) the Seller is not a party to any agreements with owners or users of properties adjacent to any facility located on any parcel of the Leased Real Property relating to the use, operation or maintenance of such facility or any adjacent Real Property;

(vi) the Seller is not a lessor under, or otherwise a party to, any Lease, license, assignment, encumbrance, hypothecation or concession pursuant to which the Seller has granted to any Person the right to use or occupy all or any portion of the Leased Real Property; and

(vii) all real estate Taxes due and payable with respect to any Leased Real Property for which the Seller is responsible with respect thereto, have been paid in full, as and when due.

(e) To the Seller's Knowledge, there is no action, suit, arbitration, unsatisfied order or judgment, governmental investigation or Proceeding pending or, to Seller's Knowledge, Threatened, against any of the Leased Real Property which, if adversely determined, would have a material adverse impact on the Seller's interest in any Leased Real Property, or which would interfere with the consummation of the Contemplated Transactions.

Section 4.10. Material Contracts. Except as listed or described on Schedule 4.10, as of the Closing Date, Seller is not a party to or bound by any Contract of a type described below (such Contracts that are required to be listed on Schedule 4.10 are herein referred to as "**Material Contracts**");

(a) any consulting agreement or employment agreement;

(b) any collective bargaining arrangement with any labor union, any Contract or arrangement providing for Seller to indemnify any Person, and any such agreements currently in negotiation or proposed;

(c) any Contract for capital expenditures or the acquisition of fixed assets;

(d) any Contract for the furnishing of services, materials, or supplies, or the sale, purchase, lease, maintenance or acquisition of merchandise, equipment, parts or other property or services requiring remaining aggregate future payments in excess of Twenty-Five Thousand Dollars (\$25,000.00) per annum;

(e) any Contract with any independent sales representative or distributor;

- (f) any Contract with any vendor relating to any vendor rebate program;
- (g) any Contract that restricts the right of Seller to engage in any line of business, compete with any Person, solicit any customers, suppliers, employees or contractors of any other Person, or sell or purchase any product;
- (h) any Contract relating to the acquisition or disposition, directly or indirectly, of any material business, real property or other Assets, or the Equity Interests of any other Person;
- (i) any Contract relating to the borrowing of money, or the guaranty of another Person's borrowing of money or other obligation, including all notes, mortgages, indentures and other obligations, guarantees of performance, letters of credit, advances, and agreements and instruments for or relating to any lending or borrowing, including assumed indebtedness;
- (j) any Contract granting any Person a Lien on all or any of the Assets of Seller;
- (k) any Contract or group of related Contracts with any Affiliate or group of Affiliates of Seller;
- (l) any lease, license, rental or occupancy agreement, installment and conditional sale agreement, and other Contract affecting the ownership of, leasing of, licensing of, title to, use of, or any leasehold or other interest in, any real or personal property, including Seller Intellectual Property (other than any such agreement for personal property with remaining obligations of less than Twenty-Five Thousand Dollars (\$25,000));
- (m) (i) any Contract regarding the development, improvement, enhancement, modification appropriation or the non-disclosure of any Seller Intellectual Property; (ii) any Contract with an employee of Seller relating to confidentiality, non-disclosure, assignment of inventions or developments, non-solicitation, non-competition and/or similar matters; or (iii) any Contract with a Person relating to confidentiality, non-disclosure, assignment of inventions or developments, non-solicitation, non-competition and/or similar matters that is material to the conduct of the Business;
- (n) any written material warranty, guaranty, and or other similar undertaking with respect to contractual performance extended by Seller;
- (o) any Contract that requires Seller to purchase or sell a stated portion of the requirements or outputs of the Business or that contain "take or pay" provisions;
- (p) any Contract that provides for the assumption or indemnification of any Person or the assumption of any Tax, environmental or other Liability of any Person;
- (q) any joint venture, partnership or similar Contracts;
- (r) all powers of attorney with respect to the Business or any Purchased Asset;
- (s) any Contract with a Governmental Body;

(t) any Contract, agreement, commitment, application or other document relating and pertaining to Tax abatement, Tax reduction, Tax forgiveness, Tax recovery or similar benefit; and

(u) any amendment, supplement, or modification (whether oral or written) in respect of any of the foregoing.

Seller has made available to Buyer a complete and correct copy of each written Material Contract, together with all amendments, exhibits, attachments, waivers or other changes thereto, and written descriptions of each oral Contract, if any.

Section 4.11. Licenses and Permits. Schedule 2.1(a)(vii) contains an accurate list and summary description of all of the Seller Licenses and Permits relating to the ownership, development or operation of the Business, all of which, are in good standing and not subject to meritorious challenge.

Section 4.12. Assigned Contracts. Each Assigned Contract was made in the ordinary course of business, is in full force and effect and is valid, binding and enforceable against the parties thereto in accordance with its terms and may, pursuant to the Approval Order, without default or breach thereunder, be assigned to Buyer without any consent, approval or waiver from any Person. Upon payment of any applicable Cure Amount, no condition will exist and no event will have occurred which with notice or lapse of time would constitute a default under any Assigned Contract that would provide a basis for delay, nonperformance, termination modification or acceleration of maturity or performance by any counter-party thereto, *provided, however*, that, to the extent any such counter-party makes any such claim, (i) Buyer shall be entitled to make a related indemnification claim pursuant to Section 10.1 hereof, but (ii) Buyer shall not seek to enforce payment by the Escrow Agent from the Indemnification Escrow (as opposed to reservation of amounts in the Indemnification Escrow to cover the potential Losses) prior to making reasonable efforts to enforce the Approval Order against such counter-party to avoid any such delay, nonperformance, termination modification or acceleration of maturity or performance, and shall withdraw such related indemnification claim if the efforts described in (ii) in this Section 4.12 result in the enforcement of the Approval Order as to such counter-party, subject in all respects to the Buyer's right to an indemnification claim for any reasonable costs and expenses incurred in enforcing such Approval Order.

Section 4.13. Products Liability.

(a) Each product manufactured, sold or otherwise delivered by Seller has been in conformity with all applicable contractual commitments and all express and implied warranties, and Seller does not have any Liability (and there is no basis for any present or future Proceeding against Seller) for replacement or repair of any such products or other damages or other costs in connection therewith, subject only to the reserve for product warranty claims set forth in the most recent annual financial statements of the Seller. Except as set forth on Schedule 4.13(a), there have been no product recalls or withdrawals by Seller. No product manufactured, sold, leased or delivered by Seller is subject to any guaranty, warranty or other indemnity beyond the applicable standard terms and conditions of sale, lease or service, which are set forth on Schedule 4.13(a).

(b) Seller has no Liability and there is no basis for any present or future Proceeding against Seller giving rise to any Liability, arising out of any injury to Person or property as a result of the ownership, possession or use of a product designed, manufactured, assembled, repaired, sold, leased, delivered, installed or otherwise distributed, or services rendered, by Seller.

Section 4.14. Intellectual Property.

(a) Schedule 4.14(a) identifies all of Seller Intellectual Property, including, but not limited to, all Patents, Trademarks and Copyrights owned by Seller. All Seller Intellectual Property that is currently registered with any Governmental Body was done so in material compliance with applicable Laws regarding such registration. The Purchased Assets include all of the Intellectual Property rights used, or held for use primarily, in the conduct of the Business as it is currently being conducted by Seller.

(b) Schedule 4.14(b) lists all licenses, sublicenses and other agreements pursuant to which a third party authorizes Seller to use, practice any rights under, or grant sublicenses with respect to, any Intellectual Property owned by such third party, other than licenses, sublicenses or other agreements that consist solely of “shrink-wrap”, “click-to-accept” or similar commercially available or otherwise standard end-user licenses.

(c) Schedule 4.14(c) lists all licenses, sublicenses and other agreements pursuant to which Seller authorizes a third party to use, practice any rights under, or grant sublicenses with respect to, any Seller Intellectual Property or pursuant to which Seller grants rights to use or practice any rights under any Intellectual Property owned by a third party.

(d) No Intellectual Property identified on Schedule 4.14(a) has been infringed or challenged in any way, nor, to the Seller’s Knowledge, has any Proceeding been threatened with respect thereto, and (ii) except as set forth on Schedule 4.14(d), none of such Intellectual Property has infringed or infringes upon the rights of any Person nor, to the Knowledge of Seller, has been alleged to infringe upon the rights of any Person.

(e) None of Seller Intellectual Property has been or has been alleged to have been, misappropriated from any Person, and (ii) no employee, subcontractor, consultant, independent contractor, or other Person claims any rights to any of Seller Intellectual Property. Without limiting the generality of the foregoing, any and all Seller Intellectual Property conceived, invented or developed on behalf of Seller by any employee, subcontractor, consultant, independent contractor, or other Person has been duly and validly assigned and transferred to Seller pursuant to and in accordance with an assignment of inventions or similar agreements.

(f) Seller has taken reasonable measures to protect the confidentiality of its trade secrets included in the Purchased Assets and no trade secrets have been disclosed to any Person other than to employees, Representatives and agents of Seller, or to third parties bound by confidentiality obligations.

(g) The consummation of the Contemplated Transactions and the Ancillary Documents will not alter, encumber, impair or extinguish any of the Intellectual Property included in the Purchased Assets.

Section 4.15. Compliance with Law, Governmental Authorizations, Etc.

(a) Except as set forth on Schedule 4.15(a): (i) since January 1, 2012, Seller has complied in all material respects with all Laws that are applicable to the Products or Seller's conduct or operation of the Business, and (ii) during the period of any applicable statute of limitations, Seller has not received any written notice from the FDA or any other Governmental Body or other Person regarding any actual, alleged, or potential violation of, or failure to comply with, any Law or any actual, alleged, or potential enforcement action by the FDA or any other Governmental Body, and, to Seller's Knowledge, no event has occurred or circumstance exists that may constitute or result in (with or without notice or lapse of time) a violation by Seller, or a failure by Seller to comply with, any Law.

(b) Schedule 4.15(b) contains a list of all CE Marks, 510(k) Clearances, other international approvals and 510(k) Filings relating and pertaining to the Business. Seller is in compliance with (i) Sec. 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 360) and Sec. 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 360e) and 21 C.F.R. Parts 807, 812 and 814, (ii) all Laws (including regulations promulgated by the FDA or any other Governmental Body) relating or pertaining to such 510(k) Clearances, 510(k) Filings, CE Marks and the Products covered thereby, (iii) all terms and conditions of such licenses or applications and (iv) other applicable Laws related to the Products, including but not limited to the Physician Payments Sunshine Act and its implementing regulations. None of the Products is (A) adulterated within the meaning of 21 U.S.C. § 351 (or other Laws), or (B) misbranded within the meaning of 21 U.S.C. § 352 (or other Laws).

(c) Seller is, and at all times has been, in possession of all Governmental Authorizations necessary to own, lease or operate its assets and properties and to carry on the Business. Schedule 4.15(c) contains a complete and accurate list of each Governmental Authorization that is held by Seller other than the CE Marks and the 510(k) Clearances which otherwise relate to the Business including the Products. Each Governmental Authorization listed on Schedule 4.15(c) is valid and in full force and effect, and Seller is in compliance with all such Governmental Authorizations. Except as disclosed in Schedule 4.15(c) and upon consummation of the Contemplated Transactions, all such Governmental Authorizations may be assigned to Buyer without the consent or approval of any Person, government or governmental agency or instrumentality (federal, state, local or foreign). Seller has not received any notice that any such Governmental Authorizations currently in effect may be revoked or may not in the ordinary course be renewed upon its expiration or that by virtue of the transactions contemplated hereby that any such Governmental Authorizations may be revoked or may not be granted, renewed or transferred to Buyer.

(d) Except as set forth in Schedule 4.15(d), Seller has never, either voluntarily or involuntarily, initiated, conducted or issued, or caused to be initiated, conducted or issued, any recall, market withdrawal or replacement, safety alert, warning notice, investigator notice or other notice or action disclosing an alleged defect or lack of safety or efficacy of any Product.

(e) The Products that are within the Purchased Assets are merchantable and fit for the purpose for which they were designed, and have been developed, manufactured, tested, distributed and marketed in compliance with all requirements under applicable Laws.

(f) Without limiting the scope of Section 4.25(a), neither Seller nor, to the Seller's Knowledge, any officer, director, employee, agent or Representative of Seller, has made, directly or indirectly, with respect to the business of Seller, any illegal political or illegal charitable contributions, payments from corporate funds not recorded on the Seller Records, payments from corporate funds that were falsely recorded on the Seller Records, payments from corporate funds to governmental officials in their individual capacities for the purpose of affecting their action or the action of the government they represent to obtain favorable treatment in securing businesses or licenses or to obtain special concessions, illegal payments from corporate funds to obtain or retain business, or payment of remuneration in violation of any applicable fraud and abuse statute.

Section 4.16. Legal Proceedings; Orders; Communications. There are no Proceedings pending or, other than the contemplated Bankruptcy Case, to Seller's Knowledge, threatened against the Purchased Assets or the Business, at law or in equity, or before or by any Governmental Body concerning the Purchased Assets, or which will impair or interfere with the ownership, use or sale by Buyer of the Purchased Assets after the Closing. There is no Proceeding pending that challenges, or that is reasonably likely to have the effect of preventing, delaying or rendering illegal any of the Contemplated Transactions. There is no Order to which the Seller, the Business or any Product is currently subject. Except as disclosed in Schedule 4.16, neither Seller nor, to the Knowledge of Seller, any officer, employee or agent of Seller, has been subject to any fine, injunction, civil penalty or other enforcement action by the FDA or any other Governmental Body. With respect to the Products, neither Seller nor, to the Knowledge of Seller, any officer, employee or agent of Seller has made an untrue statement of material fact or fraudulent statement to the FDA or any other Governmental Body, failed to disclose a material fact required to be disclosed to the FDA or any other Governmental Body, or committed any act, made a statement or failed to make a statement that, at the time such disclosure was made, could reasonably be expected to provide a basis for the FDA or any other Governmental Body to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery and Illegal Gratuities" set forth in 56 Fed Reg 46191 or any similar Law or policy of any Governmental Body.

Section 4.17. Tax Matters.

(a) Seller has filed (or has had filed on its behalf) all Tax returns required to have been filed by it in connection with the Business. All such Tax returns were and are true, complete and correct in all material respects. No claim has been made by a Governmental Body in a jurisdiction where Seller does not file Tax returns to the effect that Seller is or may be subject to taxation by that jurisdiction. Seller has not requested any extension of time within which to file any Tax return, which Tax return has not since been timely filed.

(b) Seller has, within the time and in the manner prescribed by applicable Laws, paid all Taxes that are due and payable by Seller and attributable to the Business or the Purchased Assets. No deficiency for any such Taxes has been proposed, asserted or assessed against Seller that has not been resolved and paid in full.

(c) There are no Liens or Encumbrances for Taxes upon the Purchased Assets and as of the end of the day on the Closing Date there will be no such Liens or Encumbrances. There is not and, as of the end of the day on the Closing Date there will not be, any liability for Taxes affecting the Purchased Assets for which Buyer will at any time have any liability for payment.

Section 4.18. Environmental Matters.

(a) Seller has, with respect to the Business and the Purchased Assets, complied and is in compliance with all Environmental Laws; Seller has not received any written notice, report or other information regarding any violation of, or liability under, Environmental Law with respect to the Business or the Purchased Assets. Neither Seller nor any of its predecessors or their respective Affiliates has treated, stored, disposed of, arranged for or permitted the disposal of, transported, handled, released, or exposed any Person to, any Hazardous Materials, or owned or operated the Business, the Purchased Assets or any property or facility (and no such property or facility is contaminated by any such Hazardous Materials) in a manner that has given or would give rise to any Liabilities or investigative, corrective or remedial obligations pursuant to any CERCLA or any other Environmental Law. Seller has not received any written notice of any investigation, Proceeding or Order concerning any Environmental Condition applicable to the conduct of the Business as currently conducted or the ownership and use by Seller of the Purchased Assets.

(b) Seller has furnished to Buyer all environmental audits, reports and other material environmental documents relating to the past or current operations or facilities of Seller in Seller's possession and its predecessors and Affiliates with respect to the Business and the Purchased Assets which are in its possession or under its reasonable control.

(c) Neither Seller nor any of its predecessors or their respective Affiliates, in each case with respect to the Business or the Purchased Assets, has manufactured, sold, marketed, installed, or distributed products or other items containing Hazardous Materials in a manner that has given or would give rise to any liabilities under any Environmental Law, and Seller has no liability related to or arising out of the presence of Hazardous Materials in any product or article, or at any property or facility.

Section 4.19. Employee Matters. Schedule 4.19 sets forth an accurate list of (i) all officers, directors, and employees of Seller, (ii) the position of each such individual and (iii) the rate of compensation (and the portions thereof attributable to salary, bonus and other compensation, respectively) of each of such officers, directors, and employees as of the last payroll date immediately preceding the date of this Agreement.

Section 4.20. Employee Benefit Plans. Each "employee benefit plan" as defined in Section 3(3) of ERISA, and each other benefit plan, policy, program, arrangement or agreement which is sponsored or maintained by Seller, or pursuant to which Seller is otherwise bound, for the benefit of its employees or other representatives is referred to herein as an "**Employee Plan.**" Each Employee Plan (i) has been operated and administered in compliance with its terms and all applicable requirements of ERISA, the Code and other applicable Laws and (ii) intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the IRS. Neither Seller nor any of its ERISA Affiliates maintains, sponsors or is required to contribute to, either currently or at any time in the past, or otherwise any Liability with respect to, any employee benefit plan that (i) is a "multiemployer plan" within the meaning of Section 3(37) of ERISA, (ii) is subject to the funding requirements of Section 412 of the Code or Title IV of ERISA, or (iii) provides for post-retirement medical, life insurance or other welfare-type benefits (other than as required by Part 6 of Subtitle B of Title I of ERISA or Section 4980B of the Code or under a similar state Law).

Section 4.21. Labor Matters. Except as set forth on Schedule 4.21, there is no, and within the three (3) year period prior to the Closing Date, Seller has not experienced any, material labor dispute, allegation, charge, grievance or complaint of unfair labor practice, employment discrimination or, to Seller's Knowledge, union organizational activity; nor, to Seller's Knowledge, is any such action Threatened against Seller. Seller is not a party to any collective bargaining agreement and Seller has not received notice of any organizational effort presently being made on behalf of any labor union with respect to the Business. Seller has complied in all respects with all applicable Laws relating to the employment of labor, including, but not limited to, provisions thereof relating to immigration status, wages, hours, equal opportunity, collective bargaining, disability and the payment of social security and employment Taxes.

Section 4.22. Insurance.

(a) Schedule 4.22(a) contains a complete and accurate list of all policies and binders of insurance (including, without limitation, property, casualty, liability, professional liability, life, health, accident, workers' compensation and disability insurance and bonding arrangements) owned by or maintained for the benefit of Seller or under which Seller or any member, shareholder, director, trustee, officer or employee thereof is a party or is covered.

(b) Seller is not a party to any contract or arrangement, other than a policy of insurance or a third party payor contract, that provides for the transfer to, or sharing of, any risk by Seller.

(c) Schedule 4.22(c) sets forth, by year for the current policy year and each of the three (3) preceding policy years:

(i) a summary of the loss experience under each policy required to be disclosed under subparagraph (a) above;

(ii) a list of all claims under each such insurance policy for an amount in excess of Twenty-Five Thousand Dollars (\$25,000) (or Fifty Thousand Dollars (\$50,000) in the case of property and auto insurance); and

(iii) a statement describing the loss experience for all claims that were self-insured, including the number and aggregate cost of such claims.

(d) Schedule 4.22(d) describes all obligations of Seller to provide insurance coverage to third parties (such as, for example, under leases or service agreements) and identifies the policy under which such coverage is provided.

(e) Schedule 4.22(e) describes any self-insurance or loss retention arrangements by or affecting Seller, including any reserves established thereunder.

(f) Except as disclosed in Schedule 4.22(f):

(i) All policies to which Seller is a party or that provide coverage to Seller or a trustee or director thereof: (A) are valid, outstanding, and enforceable; and (B) are sufficient for compliance with all Laws and Contracts to which Seller is a party or by which Seller is bound.

(ii) Seller has not received (A) any refusal of coverage or any notice that a defense will be afforded with reservation of rights; (B) any notice that an issuer of any insurance policy has filed for protection under applicable bankruptcy or insolvency laws or is otherwise in the process of liquidating or has been liquidated; (C) any notice of cancellation or any other indication that any insurance policy is no longer in full force and effect or that the issuer of any policy is not willing or able to perform its obligations thereunder; or (D) any notice from an insurer to discontinue any coverage afforded to Seller or a director, trustee, officer or employee of Seller.

(iii) Seller has paid all premiums due, and has otherwise performed its obligations, under each policy listed or required to be listed in Schedule 4.22(a).

(iv) Seller has given timely notice to the insurer of all existing claims.

Section 4.23. Material Customers and Suppliers.

(a) Schedule 4.23(a) sets forth a list of the ten (10) largest customers and distributors of Seller, as measured by the revenue therefrom, during the fiscal year ended June 30, 2017, showing the total sales by Seller to each customer during such fiscal year. Except to the extent caused by the filing of the Bankruptcy Case or Anticipated Post-Petition Business Changes, since November 30, 2017, and excluding B. Braun Surgical, S.A., (i) no customer listed on Schedule 4.23(a) has terminated or advised the Seller that it intends to terminate its relationship with Seller, (ii) the Seller has not materially reduced its pricing to any customer listed on Schedule 4.23(a) nor has any such customer advised the Seller that it intends to seek any such reductions, and (iii) the other material terms governing each relationship between the customer listed on Schedule 4.23(a) and the Seller have not changed in any manner materially adverse to the Seller nor has any such customer advised the Seller that it intends to seek any such changes.

(b) Schedule 4.23(b) sets forth a list of the ten (10) largest suppliers and vendors of the Business, as measured by the purchases made by Seller therefrom, during each of the fiscal year ended June 30, 2017, showing the total spend by Seller to each supplier or vendor during such fiscal year. Except to the extent caused by the filing of the Bankruptcy Case or Anticipated Post-Petition Business Changes, since November 30, 2017, (i) no supplier or vendor listed on Schedule 4.23(b) has terminated or advised the Seller that it intends to terminate its relationship with Seller, (ii) the Seller has not materially increased its pricing to any supplier or vendor listed on Schedule 4.23(b) nor has any such supplier or vendor advised the Seller that it intends to seek any such increases, and (iii) the other material terms governing each relationship between the suppliers and vendors listed on Schedule 4.23(b) and the Seller have not changed in any manner materially adverse to the Seller nor has any such supplier or vendor advised the Seller that it intends to seek any such changes.

Section 4.24. Financial Statements and SEC Reports. From January 1, 2014 through November 30, 2017, Seller had timely (it being understood that a filing made in reliance on, and within the timeframes prescribed by, Rule 12b-25 under the Securities Exchange Act of 1934 are for this purpose deemed timely filed) filed or furnished all reports, schedules, forms, statements and other documents required to be filed or furnished by it with the Securities and Exchange Commission (collectively, the “*SEC Reports*”), all of which have complied as of their respective filing dates with all applicable requirements of the Securities Act, the Exchange Act and the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated thereunder (the “*Sarbanes-Oxley Act*”). The audited and unaudited financial statements (including the related notes thereto) of Seller included (or incorporated by reference) in the SEC Reports have been prepared in accordance with GAAP applied on a consistent basis throughout the periods involved and fairly present the financial position and the results of operations, changes in stockholders’ equity and cash flows of Seller as of their respective dates (subject, in the case of any unaudited or interim statements therein, to normal year-end audit adjustments and to any other adjustments set forth therein and lack of footnotes).

Section 4.25. International Trade and Anti-Corruption.

(a) Neither Seller, nor any of its officers, directors or employees, nor to the Knowledge of Seller, any agent or other third party representative acting on behalf of Seller, is currently, or has been in the last five years: (i) a Sanctioned Person; (ii) organized, resident or located in a Sanctioned Country; (iii) engaging in any dealings or transactions with any Sanctioned Person or in any Sanctioned Country, to the extent such activities violate applicable Sanctions Laws or Ex-Im Laws; (iv) engaging in any export, reexport, transfer or provision of any goods, software, technology, data or service without, or exceeding the scope of, any required or applicable licenses or authorizations under all applicable Ex-Im Laws; or (v) otherwise in violation of applicable Sanctions Laws, Ex-Im Laws, or the anti-boycott laws administered by the U.S. Department of Commerce and the U.S. Department of Treasury’s Internal Revenue Service (collectively, “*Trade Control Laws*”).

(b) Neither Seller, nor any of its officers, directors or employees, nor to the Knowledge of Seller, any agent or other third party representative acting on behalf of Seller, has at any time made any unlawful payment or given, offered, promised, or authorized or agreed to give, any money or thing of value, directly or indirectly, to any Government Official or other Person in violation of any applicable Anti-Corruption Laws. Seller has maintained complete and accurate Seller Records, including records of payments to any agents, consultants, representatives, third parties and Government Officials.

(c) During the five years prior to the date hereof, Seller has not, in connection with or relating to the Business, received from any Governmental Body or any other Person any notice, inquiry, or internal or external allegation; made any voluntary or involuntary disclosure to a Governmental Body; or conducted any internal investigation or audit concerning any actual or potential violation or wrongdoing related to Trade Control Laws or Anti-Corruption Laws.

Section 4.26. Brokers and Finders. Other than JMP Securities LLC, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the Contemplated Transactions based upon arrangements made by or on behalf of Seller and such fees shall be paid by Seller or be an administrative claim in the Bankruptcy Case.

Section 4.27. Scheduled Assets and Contracts v. Purchased Assets and Assigned Contracts. Notwithstanding that some disclosure schedules hereto may include assets and contracts which are not Purchased Assets or Assigned Contracts, it is understood and agreed that Buyer is purchasing only Purchased Assets and assuming only the Assigned Contracts hereunder.

Section 4.28. No Other Representations and Warranties. NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT TO THE CONTRARY, EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS ARTICLE IV, NEITHER THE SELLER NOR ANY REPRESENTATIVE THEREOF HAS MADE OR IS MAKING ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, TO THE BUYER OR ANY REPRESENTATIVE OF THE BUYER WITH RESPECT TO THE BUSINESS, THE COMPANY OR THE FINANCIAL CONDITION, ASSETS, LIABILITIES OR OTHER MATTERS RELATING TO THE COMPANY, AND ALL SUCH OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS AND IMPLIED, ARE HEREBY DISCLAIMED. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS SECTION 4.28, NOTHING IN THIS AGREEMENT WILL LIMIT THE LIABILITY OF SELLER FOR ACTUAL FRAUD THAT HAS BEEN DETERMINED BY A FINAL ORDER OR NON-APPEALABLE JUDGMENT BY A COURT OF COMPETENT JURISDICTION.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF BUYER.

Buyer represents and warrants to Seller as of the Effective Date as follows:

Section 5.1. Organization. Buyer is a corporation duly incorporated, validly existing and in good standing under the laws of the State of California and has all requisite corporate power and authority to conduct its business and own and operate its properties.

Section 5.2. Power and Authority. Subject, prior to December 9, 2017, to approval by the Buyer's Board of Directors, Buyer has all requisite corporate power and authority to enter into this Agreement and the Ancillary Documents and to consummate the Contemplated Transactions[, including, without limitation, to satisfy on behalf of Buyer and B. Braun Surgical, S.A. the requirements of Section 7.3(d) with respect to the Braun Distribution Agreement]. This Agreement has been duly executed and delivered by Buyer. This Agreement is a valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms.

Section 5.3. Non-contravention. The execution and delivery of this Agreement or any other Ancillary Document to which Buyer is a party, will not (i) violate any provision of the Organizational Documents of Buyer, or (ii) violate any Law or Order applicable to Buyer.

Section 5.4. No Proceedings. There are no Proceedings pending, or to the actual knowledge of Buyer, threatened, before or by any Governmental Body, against Buyer that would affect Buyer's ability to proceed with the Contemplated Transactions.

Section 5.5. Bankruptcy Matters. Buyer is capable of satisfying the adequate assurance of future performance conditions contained in Section 365(f)(2)(B) of the Bankruptcy Code with respect to each Assigned Contract.

Section 5.6. Consents. No consent, waiver, authorization or approval of any person or declaration, filing or registration with any Governmental Body or other Person is required in connection with the execution and delivery by Buyer of this Agreement or the performance by Buyer of its obligations hereunder or thereunder, other than approval by the Buyer's board of directors.

Section 5.7. Financing. Buyer has cash on hand, availability under existing lines of credit, or other immediately available financial resources sufficient to pay the Purchase Price at the Closing.

Section 5.8. Certain Relationships. Neither Buyer nor any officer, director, manager, member, Representative or Affiliate of Buyer is an officer or director of Seller or a Related Person of any officer, director or key employee of Seller. Neither Buyer nor any officer, director, manager, member, Representative or Affiliate of Buyer has entered into any Contract with any officer, director or key employee of Seller.

Section 5.9. Brokers and Finders. No Person has acted, directly or indirectly, as a broker, finder or financial advisor for Buyer in connection with the Contemplated Transactions and no Person is entitled to any fee or commission or like payment in respect thereof.

ARTICLE VI COVENANTS OF THE PARTIES

Section 6.1. Operation of the Business by Seller Pending Closing. From the date hereof until the Closing Date, except as otherwise provided in this Agreement or consented to in writing by Buyer (which consent shall not be unreasonably withheld, conditioned or delayed), and subject in all respects to the Bankruptcy Code and orders of the Bankruptcy Court (including, without limitation, the Approval Order), Seller shall: (a) conduct the Business in the Ordinary Course of Business; and (b) use its commercially reasonable efforts to preserve intact its business relationships with customers, suppliers, and other Persons having business dealings with it relating to the Business, and to keep available the services of its officers and key employees, consistent with the Ordinary Course of Business.

Section 6.2. Notice of Breach. From and after the date hereof and until the earlier to occur of the Closing Date or the termination of this Agreement pursuant to Article IX hereof, Seller shall promptly give notice upon having Seller's Knowledge of:

(a) the existence of any event or circumstance that would be likely to cause any condition to the obligations of Buyer to effect the Contemplated Transactions not to be satisfied;

(b) any written notice or, to Seller's Knowledge, other communication, received by or made to Seller, from any Person alleging that the consent of such Person is or may be required in connection with the Contemplated Transactions; and

(c) any Proceedings commenced, or, to Seller's Knowledge, threatened against, relating to or involving Seller or the Business, the Purchased Assets or the Assumed Liabilities that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 4.16 or that relates to the consummation of the Contemplated Transactions.

Buyer's receipt of information pursuant to this Section 6.2 shall not operate as a waiver or otherwise affect any representation, warranty or agreement given or made by any Seller in this Agreement and shall not be deemed to amend or supplement the disclosures made in the Schedules attached hereto.

Section 6.3. Negative Covenants of Seller. Without the prior written approval of Buyer, which shall not be unreasonably withheld, Seller shall not, between the date hereof and the Closing: (i) dissolve, liquidate or merge or affiliate with any other entity or (ii) enter into any Contract or modify or terminate any existing Contract, in each case that would have a Material Adverse Effect on the Business.

Section 6.4. Affirmative Covenants of Seller. Between the date of this Agreement and the Closing, Seller shall:

(a) maintain the Leased Real Property, including the grounds and physical plant, in substantially the state of repair, order and condition as on the date hereof, reasonable wear and tear or loss by casualty excepted;

(b) maintain in full force and effect all Licenses, currently in effect with respect to the Business;

(c) maintain in full force and effect the insurance policies and binders currently in effect with respect to the Business;

(d) utilize commercially reasonable efforts to preserve intact the present business organization of the Seller, keep available the services of present employees and agents, and any other employees and agents employed in connection with the Business, and maintain Seller's relations and goodwill with the suppliers, customers, employees, affiliated personnel and anyone having business relating to the Business, consistent with the Ordinary Course of Business;

(e) maintain all of the Seller Records relating to the Business in accordance with its past practices;

(f) not later than the second (2nd) Business Day following the execution of this Agreement (the "**Petition Date**"), file the Petition for Relief;

(g) not later than the second (2nd) Business Day following on the Petition Date, file a motion with the Bankruptcy Court, in form and substance satisfactory to Buyer, (the "**Sale Motion**") seeking (i) entry of an order (the "**Bid Procedures Order**") in the form attached hereto as Exhibit B establishing procedures for potential competing offers to purchase the Purchased Assets (the "**Bid Procedures**") and setting a hearing (the "**Sale Hearing**") to consider entry of an order (the "**Approval Order**") in the form attached hereto as Exhibit C approving the Contemplated Transactions, and (ii) approval of the Contemplated Transaction, subject to higher and better offers pursuant to the Bid Procedures;

(h) within five (5) days of entry of the Bid Procedures Order, provide notice to the counter-parties to all executory contracts and unexpired leases, in form and substance satisfactory to Buyer (the “*Assumption and Assignment Notices*”), advising each such counter-party that its Contract with Seller has been designated for potential assumption by Seller and assignment to Buyer pursuant to the terms of this Agreement, stating the Cure Amount which Seller contends will be due to such counter-party upon assumption and advising such counterparty of the deadline for any objections to such assumption and assignment and to the stated Cure Amounts and that the Bankruptcy Court will consider Seller’s request to assume such Contract and assign it to Buyer and any such objections at the Sale Hearing;

(i) prior to the Closing Date, obtain Tail Coverage to take effect as of the Closing Date, the cost of which Tail Coverage will be paid by the Buyer at Closing and deducted from the Purchase Price as set forth in Section 3.1(a);

(j) provide Buyer with drafts of all pleadings to be filed with any Governmental Body relating to the sale contemplated by this Agreement at least one (1) business days in advance of filing and as-filed copies of all such pleadings immediately after filing; and

(k) serve notice of the Sale Motion, and such other notices and pleadings related to the Contemplated Transaction as the Bankruptcy Court requires, on (i) all of Seller’s creditors, (ii) all holders of Interests, and (iii) on all other parties in interest, as required by the Bankruptcy Code and all orders of the Bankruptcy Court, including the Bid Procedures Order, in each case within the time periods provided under the Bankruptcy Code and such orders.

Section 6.5. RESERVED.

Section 6.6. Employees.

(a) Employees Generally. At least five (5) days prior to the date of the Sale Hearing, Buyer shall deliver to Seller a list of Seller’s employees to whom Buyer, effective as of the Closing Date, shall offer employment to at such rates of compensation and upon such other terms and conditions as Buyer shall determine in its sole discretion (all such employees who accept such offer of employment, the “*Hired Employees*”); *provided, however,* that nothing set forth in this Section 6.6 shall create, or be deemed to create, any duty or obligation on the part of Buyer to (i) continue the employment of any such Hired Employee after the Closing Date, or (ii) make offers to any such Business Employees who are, as of the Closing Date, on an extended leave of absence, disability, sick leave or lay off status. Buyer shall have the right to terminate the employment of any or all of the Hired Employees, with or without cause, at any time, it being expressly understood that each Hired Employee shall be employed following the Closing Date as an “at-will” employee of Buyer.

(b) Certain Key Employees. Buyer may, at its option and on or before the date of execution of this Agreement, designate up to seven (7) employees of Seller (the “*Initial Employees*”) provided that, for at least three (3) of such employees, Buyer designates at least one alternate employee who, in the event the applicable Initial Employee does not accept an offer of employment, would replace such Initial Employee (the Initial Employees and any alternate that so replaces an Initial Employee, the “*Designated Employees*”). Buyer shall offer employment to the Designated Employees pursuant to employment agreements to become effective as of the Closing Date (such employees who ultimately accept and execute such employment agreements, the “*Hired Key Employees*”, and such agreements with the Hired Key Employees, the “*Key Employee Employment Agreements*”). The Key Employee Employment Agreements shall be in such form as is reasonably satisfactory to Buyer; *provided*, that the Key Employee Employment Agreements shall provide for compensation and employment by Buyer on competitive market terms reasonably satisfactory to Buyer.

Section 6.7. Access to Information. Seller shall permit Buyer’s Representatives to have, upon prior written notice, reasonable access during normal business hours and under reasonable circumstances, and in a manner so as not to interfere with the normal business operations of Seller, to the premises, personnel, books, records, and documents of or pertaining to the Business; *provided*, that Seller may restrict the foregoing access to the extent that in the reasonable judgment of Seller, any Laws applicable to Seller require it to restrict access to any of its business, properties, information or personnel; and *provided, further*, that such access shall not unreasonably disrupt the operations of Seller. Buyer shall comply with, and shall cause its Representatives to comply with, all of its obligations under the any non-disclosure agreement with respect to the terms and conditions of this Agreement and the Contemplated Transactions and the information of Seller and the Business disclosed or accessed pursuant to this Section 6.7, which agreement shall remain in full force and effect until the Closing Date. Notwithstanding anything to the contrary contained in this Agreement, Seller shall not be required to provide any information or access that Seller reasonably believes could violate applicable Law.

Section 6.8. Further Actions and Assurances. To more effectively convey, assign and transfer to and vest in Buyer, its successors and assigns, full legal right, title and interest in and actual possession of the Purchased Assets, and to generally carry out the purposes and intent of this Agreement, Seller shall from time to time after the Closing execute and deliver such further instruments as may be accurately prepared and reasonably requested by Buyer, and to take such other action as it is reasonably capable of performing, to make effective the transactions contemplated by this Agreement and the Ancillary Documents. Buyer shall from time to time after the Closing, execute and deliver such further instruments as may be accurately prepared and reasonably requested by Seller, any statutory committee, trustee, liquidating trust or similar entity, and to take such other action as it is reasonably capable of performing, to make effective the transactions contemplated by this Agreement and the Ancillary Documents.

Section 6.9. Cooperation. Subject in all respects to the Bankruptcy Code, the Parties shall use their respective commercially reasonable efforts not involving litigation to (a) take or cause to be taken all actions, and to do or cause to be done all other things, necessary, proper or advisable to expeditiously satisfy the closing conditions set forth in Article VII and to consummate the Contemplated Transactions as promptly as practicable, and (b) obtain in a timely manner all necessary waivers, consents and approvals and to effect all necessary registrations and filings in connection with the foregoing. Seller also agrees to assist Buyer in negotiations for any modifications to the Redwood City Lease that Buyer seeks to obtain. Following the Closing, Seller agrees to communicate with customers, suppliers, vendors, and employees as reasonably requested by Buyer to assist in transitioning such relationships to Buyer.

Section 6.10. Records Retention and Access. For a period of thirty (30) months following the Closing, Buyer shall furnish to Seller, to the extent in Buyer's possession and following receipt of a reasonable, written request therefor, information, including financial data of the Seller with respect to the period prior to the Closing, that is necessary for Seller or other estate representative to prepare for, prosecute or defend against any Proceeding related to the Business, to validate claims filed in the Bankruptcy Case, carry out the continuing administration of the Chapter 11 Case (including, without limitation, the pursuit of any Avoidance Action by Seller or other estate representative and the filing of pleadings or reports with the Bankruptcy Court of the U.S. Trustee), and/or to enable Seller and its Representatives to prepare, complete and file all required federal, state and local Tax returns in accordance with applicable Laws. Should there be any requests for materials for discovery or materials requiring electronic discovery beyond four (4) hours effort by an employee of Buyer, Seller shall bear Buyer's reasonable cost of compliance with such requests.

Section 6.11. Confidentiality; Non-Competition; Non-Solicitation.

(a) Confidentiality. From and after the Closing, Seller shall not, directly or indirectly, disclose or use at any time (and shall cause their respective Affiliates and Representatives not to use or disclose) any Confidential Information (whether or not such information is or was developed by Seller), except to the extent that such disclosure or use is directly related to and required by the performance of Seller's duties to Buyer or as required by Law (including in connection with the Bankruptcy Case) or as otherwise provided hereunder. Seller further agrees to take commercially reasonable steps, to the extent within its control, to safeguard such Confidential Information and to protect it against disclosure, misuse, espionage, loss and theft. In the event Seller is required by Law to disclose any Confidential Information, Seller shall promptly notify Buyer in writing, which notification shall include the nature of the legal requirement and the extent of the required disclosure, and shall cooperate, at Buyer's sole cost and expense, with Buyer's reasonable requests to preserve the confidentiality of such Confidential Information consistent with applicable Law; *provided*, that, to the extent the Seller is required to make a disclosure hereunder as required by applicable Law, Seller shall (i) disclose only that portion of such Confidential Information which Seller is advised by its counsel in writing that it is legally required to disclose and (ii) use reasonable best efforts to obtain an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such Confidential Information. For purposes of this Agreement, "**Confidential Information**" means all information of a confidential or proprietary nature (whether or not specifically labeled or identified as "confidential"), in any form or medium, that relates to the Business or its suppliers, distributors, customers, independent contractors or other business relations. Confidential Information includes the following as they relate to the Business and, in each case, to the extent the Business obtains a commercial benefit from the secret nature of such information: internal business information (including information relating to strategic and staffing plans and practices, business, training, marketing, promotional and sales plans and practices, cost, rate and pricing structures, accounting and business methods and potential acquisition candidates); identities of, individual requirements of, and specific contractual arrangements with, the Business's suppliers, distributors, customers, independent contractors or other business relations and their confidential information; trade secrets, know-how, compilations of data and analyses, techniques, systems, formulae, research, records, reports, manuals, documentation, models, data and data bases relating thereto; and inventions, innovations, improvements, developments, methods, designs, analyses, drawings, and reports. Notwithstanding the foregoing, Confidential Information does not include such information which: (i) at the time of disclosure is publicly available or thereafter becomes publicly available through no act or omission of Seller in violation of this Section 6.11(a); (ii) is thereafter disclosed or furnished to Seller by a third party who is not known by Seller to have acquired the information under an obligation of confidentiality; (iii) is independently developed by Seller without the use of or reference to Confidential Information after the Closing Date; or (iv) is disclosed by Seller (subject to compliance with the applicable provisions of this Section 6.11(a)) under compulsion of applicable Law. Confidential Information shall not include information required to be included by the Seller in the schedules, statement of financial affairs, mailing matrix, service lists or affidavits of service, or similar documents filed in the Bankruptcy Case.

(b) Non-Competition.

(i) Seller is familiar with the trade secrets related to the Business and with other Confidential Information concerning the Business, including all (A) inventions, technology and research and development related to the Business, (B) customers and clients and customer and client lists (and prospective customers and prospective clients) related to the Business, (C) products (including products under development) and services related to the Business and related costs and pricing structures and manufacturing techniques, (D) accounting and business methods and practices related to the Business and (E) similar and related confidential information and trade secrets related to the Business. Seller acknowledges and agrees that the Business would be irreparably damaged if Seller were to directly or indirectly provide services to any Person competing with the Business or engaging in a similar business and that such direct or indirect competition by Seller would result in a significant loss of goodwill by the Business.

(ii) In further consideration for the Buyer's payment of the Purchase Price under this Agreement (in respect of which payment Seller expressly acknowledges that it derives a substantial and direct benefit), and in order to protect the value of the Business acquired by the Buyer hereunder (including the goodwill inherent in the Business as of the Closing Date), Seller hereby agrees that during the period commencing on the Closing Date and ending on the five (5) year anniversary of the Closing Date (the "***Non-Competition Period***"), Seller shall not acquire or hold any economic or financial interest in, act as a partner, member, stockholder, or Representative of, render any services to, or otherwise operate or hold an interest in any Person (other than the Buyer) having any location in the world which entity, enterprise or other Person primarily engages in, or engages in the management or operation of any Person that primarily engages in any business that competes with the Business; ***provided, however***, that nothing contained herein shall be construed to prohibit Seller from purchasing (1) up to an aggregate of one percent (1%) of any class of the outstanding voting securities of a publicly traded corporation (but only if such investment is held on a purely passive basis) or (2) any securities of the Buyer or any of its Affiliates.

(c) Non-Solicitation; Non-Disparagement. During the period commencing on the Closing Date and ending on the five (5) year anniversary of the Closing Date (the "Non-Solicitation Period"), Seller shall not, directly or indirectly, either individually or acting in concert with another Person or Persons:

(i) request, induce or attempt to influence any distributor, supplier, vendor, sales representative or customer of goods or services of the Business to curtail, cancel or refrain from maintaining or increasing the amount or type of business such distributor, supplier or customer of goods or services is currently transacting, or may be transacting during the Non-Solicitation Period, with the Business or modify its pricing or other terms of sale with the Business;

(ii) solicit or induce any individual who is or was an employee of the Seller or the Buyer to terminate his or her employment or offer employment to or hire or otherwise engage any such individual, whether as an independent contractor, consultant or otherwise;

(iii) influence or attempt to influence any Person who is an employee of the Business during the Non-Solicitation Period to terminate his or her employment with the Buyer; or

(iv) make any negative, derogatory or disparaging statements or communications regarding the Buyer, the Business, or the Affiliates or Representatives of the Buyer.

(d) Severability. Notwithstanding anything to the contrary in this Agreement, if at any time, in any judicial or arbitration proceeding, any of the restrictions stated in this Section 6.11 are found by a final order of a court of competent jurisdiction or arbitrator to be unreasonable or otherwise unenforceable under circumstances then existing, the Parties each agree that the period, scope or geographical area, as the case may be, shall be reduced to the extent necessary to enable the court to enforce the restrictions to the extent such provisions are allowable under applicable Law, giving effect to the agreement and intent of the Parties that the restrictions contained herein shall be effective to the fullest extent permissible. Seller agrees that the restrictions contained in this Agreement are reasonable in all respects and necessary to protect the Buyer's interest in, and the value of, the Business.

(e) Specific Performance; Injunctive Relief. Seller acknowledges and agrees that in the event of a breach by Seller of any of the provisions of this Section 6.11, the Buyer would suffer irreparable harm, no adequate remedy at law would exist for the Buyer, and damages would be difficult to determine. Consequently, in the event of any such breach, the Buyer or its successors or assigns may, in addition to other rights and remedies existing in their favor, apply to any court of law or equity of competent jurisdiction for specific performance or injunctive or other relief in order to enforce or prevent any violations of the provisions hereof, in each case without the requirement of posting a bond or proving actual damages.

(f) Tolling of Non-Competition Period and Non-Solicitation Period. The Non-Competition Period and the Non-Solicitation Period shall automatically be extended for any period of time during which the Seller is not in compliance with the covenants and agreements set forth in this Section 6.11.

Section 6.12. Certain Agreements. From the date hereof through the Closing Date, Seller shall not enter into any Contract outside the Ordinary Course of Business other than those which are specifically contemplated by this Agreement or the Ancillary Documents or relate to the administration of the Bankruptcy Case.

Section 6.13. Post-Closing Cash Receipts. After the Closing Date, Seller shall, and shall cause its Affiliates to, promptly (but in no event later than three (3) Business Days after the receipt thereof) deliver to Buyer any proceeds that they may receive from the use or disposition of any Purchased Assets. In addition, if, during the thirty (30) days after the Closing Date, any distributor fails to remit to Buyer any proceeds that they may receive from the use or disposition of any Purchased Assets after the Closing Date, upon written request by Buyer, Seller shall issue to such distributor a letter directing such distributor to remit such proceeds to Buyer. After the Closing Date, Buyer shall, and shall cause its Affiliates to, promptly (but in no event later than three (3) Business Days after the receipt thereof) deliver to Seller any proceeds that they may receive from the use or disposition of any of the Excluded Assets. In addition, if, during the thirty (30) days after the Closing Date, any distributor fails to remit to Seller any proceeds that they may receive from the use or disposition of any of the Excluded Assets, including accounts receivable, after the Closing Date, upon written request by Seller, Buyer shall issue to such distributor a letter directing such distributor to remit such proceeds to Seller

ARTICLE VII CONDITIONS TO CLOSING

Section 7.1. Conditions to Obligations of Each Party. The respective obligations of each Party to consummate the Contemplated Transactions shall be subject to the satisfaction at or prior to the Closing of the following conditions:

(a) Proceedings; Orders. No Governmental Body of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any Law or Order (whether temporary, preliminary or permanent) that (i) is in effect and (ii) has the effect of making the Contemplated Transactions illegal or otherwise prohibiting consummation of such transactions.

(b) Approval Order. The Bankruptcy Court shall have entered the Approval Order.

Section 7.2. Additional Conditions to Obligations of Buyer. The obligations of Buyer to effect the Contemplated Transactions are subject to satisfaction or waiver of the following additional conditions:

(a) Representations and Warranties; Covenants.

(i) The representations and warranties of Seller set forth in this Agreement shall be true and correct (without giving effect to any limitation as to “materiality” or “Material Adverse Effect” or similar qualifications) as of the Closing Date, as if made as of such time (except to the extent that such representations and warranties expressly speak as of another date, in which case such representations and warranties shall be true and correct as of such date), except where the failure of such representations and warranties to be so true and correct would not, individually or in the aggregate, have a Material Adverse Effect.

(ii) Each and all of the terms, covenants and agreements to be complied with or performed by Seller on or before the Closing Date shall have been complied with and performed.

(iii) Seller shall have obtained Tail Coverage to take effect as of the Closing Date following the payment by Buyer of the premium for such Tail Coverage from the proceeds of the Purchase Price pursuant to Section 3.10(a)(iv).

(b) Documents. All of the documents, instruments and agreements required to be executed and/or delivered by Seller on or prior to Closing pursuant to Section 8.2 of this Agreement shall have been executed by the parties thereto other than Buyer and delivered to Buyer.

(c) Pre Closing Confirmations and Contractual Consents. Buyer shall have obtained documentation or other evidence reasonably satisfactory to Buyer that:

(i) Seller and Buyer have received all consents, permits, approvals, authorizations and clearances of Governmental Authorities required to consummate the Transactions, if any.

(ii) Each and all of the terms, covenants and agreements to be complied with or performed by Seller on or before the Closing Date shall have been complied with and performed in all material respects (without regard to any materiality qualification also stated in any such term, covenant or agreement).

(d) Approval Order. The Approval Order shall have become a Final Order, unless the finality of the Approval Order has been waived by Buyer.

(e) No Litigation. No litigation shall have been filed alleging manufacturing design or other defects in the Products that are within the Purchased Assets between the date of the Agreement and the Closing Date and which litigation could reasonably be expected materially to interfere with the ability of Buyer to conduct the Business, as modified by any Anticipated Post-Petition Business Changes.

(f) No Material Adverse Effect. From the date of this Agreement, there shall not have occurred any Material Adverse Effect, nor shall any event or events have occurred that, individually or in the aggregate, with or without the lapse of time, could reasonably be expected to result in a Material Adverse Effect.

(g) Designated Employees. The Designated Employees shall have become Hired Key Employees.

(h) Dextera Surgical GmbH. Buyer shall have received evidence satisfactory to Buyer in the exercise of its reasonable discretion establishing that Dextera Surgical GmbH does not own inventory or any other assets (excluding cash, cash equivalents and marketable securities) with a fair market value in excess of Fifty Thousand Dollars (\$50,000). Buyer and Dextera Surgical GmbH shall have entered into an agreement pursuant to which any employee of Dextera Surgical GmbH to whom Buyer offers employment on or after the Closing Date is released from any non-competition, non-disclosure and related agreements which, in the reasonable judgment of Buyer, could interfere with the ability of such employee to perform duties for the Buyer or any Affiliate of Buyer. Buyer and Dextera Surgical GmbH shall also have entered into an agreement pursuant to which Dextera Surgical GmbH agrees to be bound by the provisions of Section 6.10 hereof to the same extent as if it were the Seller hereunder.

Section 7.3. Additional Conditions to Obligations of Seller. The obligations of Seller to effect the Contemplated Transactions are subject to satisfaction or waiver by Seller of the following additional conditions:

(a) Representations and Warranties. The representations and warranties of Buyer set forth in this Agreement shall be true and correct (without giving effect to any limitation as to “materiality” or similar qualifications) as of the Closing Date, as if made as of such time (except to the extent that such representations and warranties expressly speak as of another date, in which case such representations and warranties shall be true and correct as of such date), except where the failure of such representations and warranties to be so true and correct would not, individually or in the aggregate, have a Buyer Material Adverse Effect.

(b) Agreements and Covenants. Buyer shall have performed and complied with all of its covenants hereunder in all material respects through the Closing.

(c) Documents. All of the documents, instruments and agreements required to be executed and/or delivered by Buyer on or prior to Closing pursuant to Section 8.3 of this Agreement shall have been executed by the parties thereto other than Seller and delivered to Seller.

(d) Braun Distribution Agreement. The Braun Distribution Agreement shall have remained in full force and effect and shall be, as of the Closing, at Buyer’s option, either: (i) terminated without further liability on the part of Seller; or (ii) designated as an Assigned Contract hereunder, it being understood that the Cure Amount for the Braun Distribution Agreement shall be Zero Dollars (\$0.00). In either case of subsection (i) or (ii) above, Braun Surgical shall pay Seller at the Closing all amounts then outstanding under the Braun Distribution Agreement (the “**Outstanding Braun Distribution Agreement Consideration**”), and such Outstanding Braun Distribution Agreement Consideration shall be an Excluded Asset hereunder.

ARTICLE VIII CLOSING; DELIVERIES AT THE CLOSING

Section 8.1. Closing. The closing of the Contemplated Transactions (the “**Closing**”) shall take place at the offices of 620 Freedom Business Center, Suite 200, King of Prussia, PA 19406, or such other place or remotely by mail, e-mail and/or wire transfer, in each case to the extent acceptable to each of the Parties, as soon as practicable following the satisfaction or waiver of the conditions set forth in Article VII hereof and in any event within three (3) Business Days thereafter (the date on which the Closing occurs, the “**Closing Date**”). The Closing shall be deemed to have occurred at 12:01 A.M., Eastern Standard Time, on the Closing Date.

Section 8.2. Deliveries by Seller at the Closing. At the Closing, Seller shall furnish and deliver to Buyer the following:

- (a) a bill of sale, substantially in the form attached hereto as Exhibit F (the “*Bill of Sale*”), duly executed by Seller;
- (b) an assignment and assumption agreement for the Assigned Contracts, if any, substantially in the form attached hereto as Exhibit G (the “*Assignment and Assumption Agreement*”), duly executed by Seller;
- (c) an assignment and assumption agreement for the Redwood City Lease, in a form satisfactory to each of the Parties (the “*Assignment and Assumption of Redwood City Lease*”), duly executed by Seller;
- (d) an assignment agreement for Seller Intellectual Property, in a form satisfactory to each of the Parties (the “*Intellectual Property Assignment*”), duly executed by Seller;
- (e) the Escrow Agreement, duly executed by Seller;
- (f) a non-foreign certification executed by Seller in form and substance reasonably satisfactory to Buyer and that satisfies the requirements of Treasury Regulation § 1.1445-2(b)(2);
- (g) Key Employee Employment Agreements;
- (h) a certificate of an authorized officer of Seller certifying (i) as to the incumbency and signatures of the officers of Seller executing this Agreement and the Ancillary Agreements, (ii) that attached to such certificate are true and correct copies of the certificate of incorporation and by-laws of Seller, (iii) that attached to such certificate are true and correct copies of resolutions duly adopted or consented to by the board of directors of Seller approving Seller’s execution and delivery of this Agreement and any Ancillary Documents to which it is a party and to the completion of all of the Contemplated Transactions, and (iv) that attached to such certificate is a good standing certificate for Seller issued by the Secretary of State of the State of Delaware, and a good standing, subsistence or similar certificate, as appropriate, issued by the secretary of state of each jurisdiction in which Seller is qualified or authorized to do business as a foreign corporation, in each case dated as of a date that is within thirty (30) Business Days of the Closing Date;
- (i) a certificate, dated as of the Closing Date and signed Seller, certifying that each of the conditions set forth in Section 7.1 and Section 7.2 have been satisfied; and
- (j) all other certificates, instruments and documents required to be delivered by Seller pursuant to this Agreement or any of the Ancillary Documents.

Section 8.3. Deliveries by Buyer at the Closing. At the Closing, Buyer shall furnish and deliver to Seller the following:

- (a) the Closing Date Cash Payment, by wire transfer of immediately available funds to an account designated in writing by Seller;
- (b) the Assignment and Assumption Agreement, duly executed by Buyer;
- (c) the Assignment and Assumption of Redwood City Lease;
- (d) the Intellectual Property Assignment, duly executed by Buyer
- (e) the Escrow Agreement, duly executed by Buyer
- (f) a certificate, dated as of the Closing Date and signed Buyer, certifying that each of the conditions set forth in Sections 7.3 have been satisfied; and
- (g) all other certificates, instruments and documents required to be delivered by Buyer pursuant to this Agreement or any of the Ancillary Documents.

ARTICLE IX TERMINATION

Section 9.1. Termination. This Agreement may be terminated at any time prior to the Closing:

- (a) by Buyer if the Closing shall not have occurred by the close of business ninety (90) days after the Petition Date (the "**Termination Date**"); **provided, however**, that if the Closing shall not have occurred on or before the Termination Date due to a material breach of any representations, warranties, covenants or agreements contained in this Agreement by Buyer, then Buyer may not terminate this Agreement pursuant to this Section 9.1(a);
- (b) by mutual written consent of Seller and Buyer;
- (c) automatically, and without further action by any Party, upon the issuance of a Final Order to restrain, enjoin or otherwise prohibit the closing of the Contemplated Transactions provided that neither Seller nor Buyer shall take any action to support entry of such an order;
- (d) by Buyer or Seller if the Seller accepts a Competing Bid;
- (e) automatically, and without further action by any Party, if the Bankruptcy Case is converted into a case under Chapter 7 of the Bankruptcy Code or is dismissed, provided that neither Seller nor Buyer shall take any action to support such conversion or dismissal;
- (f) by Buyer, if any condition to the obligations of Buyer set forth in Section 7.2 shall have become incapable of fulfillment other than as a result of a breach by Buyer of any covenant or agreement contained in this Agreement, and such condition is not waived by Buyer;

(g) by Seller, if any condition to the obligations of Seller set forth in Section 7.3 shall have become incapable of fulfillment other than as a result of a breach by Seller of any covenant or agreement contained in this Agreement, and such condition is not waived by Seller;

(h) by Buyer, if there shall be a material breach by Seller of any representation or warranty, or any covenant or agreement contained in this Agreement which would result in a failure of a condition set forth in Section 7.2 and which breach has not been cured by the earlier of (i) ten (10) Business Days after the giving of written notice by Buyer to Seller of such breach and (ii) the Termination Date;

(i) by Seller, if there shall be a material breach by Buyer of any representation or warranty, or any covenant or agreement contained in this Agreement which would result in a failure of a condition set forth in Section 7.3 and which material breach has not been cured by the earlier of (i) ten (10) business days after the giving of written notice by Seller to Buyer of such breach and (ii) the Termination Date;

(j) by Buyer, if: (i) the Bankruptcy Case is not filed within two (2) Business Days of the date hereof; (ii) the Sale Motion is not filed by Seller with the Bankruptcy Court on or before two (2) Business Days following the Petition Date; (iii) the Bid Procedures Order is not entered by the Bankruptcy Court on or before twenty-eight (28) days following the Petition Date; (iv) the Approval Order is not entered by the Bankruptcy Court on or before fourteen (14) Business Days following the bid deadline set forth in the Bid Procedures Order; or (v) Seller seeks approval of any debtor-in-possession financing before offering to Buyer the right to provide such financing on terms substantially as favorable to Seller; and

(k) by Buyer, by written notice to Seller delivered on or before December 9, 2017 (subject to extension by Seller in its sole discretion), stating that the board of directors of Buyer has not approved the Contemplated Transactions.

Section 9.2. Effect of Termination and Breach.

(a) If this Agreement is terminated pursuant to Section 9.1, except pursuant to Sections 9.1(h) or (i), neither Seller nor Buyer shall be entitled to any damages, losses, or payment from the other party, and Seller and Buyer shall have no further obligation or liability of any kind to the other party, any of their Affiliates, or any third party on account of this Agreement.

(b) If there shall be a material breach by Seller of any representation or warranty, or any covenant or agreement contained in this Agreement which would entitle Buyer to terminate this Agreement pursuant to Section 9.1(h), Buyer may elect to (i) terminate this Agreement pursuant to Section 9.1(h), in which case such termination shall be the sole remedy of Buyer on account of such breach, or (ii) enforce specific performance of this Agreement against the Seller including Buyer's reasonable costs and attorneys' fees and court costs actually incurred in connection therewith, as the sole remedy of Buyer.

(c) If there shall be a material breach by Buyer of any representation or warranty, or any covenant or agreement contained in this Agreement which would entitle Seller to terminate this Agreement pursuant to Section 9.1(i), Seller may elect to (i) terminate this Agreement pursuant to Section 9.1(i), in which case such termination shall be the sole remedy of Seller on account of such breach, or (ii) enforce specific performance of this Agreement against the Buyer including Seller's reasonable costs and attorneys' fees and court costs actually incurred in connection therewith, as the sole remedy of Seller.

**ARTICLE X
INDEMNIFICATION**

Section 10.1. Indemnification by Seller. Subject to this Article X and consummation of the Closing, Seller shall, to the extent permitted by law, indemnify, defend and hold harmless Buyer and Buyer's officers, directors, trustees, members, employees, agents, Representatives and Affiliates (each, a "**Buyer Indemnified Party**") against and in respect of any and all losses, costs, expenses (including, without limitation, costs of investigation and defense and attorneys' fees), claims, damages, obligations, liabilities or diminutions in value, whether or not involving a third party claim (collectively, "**Losses**"), (a) resulting from any Liability, obligation, duty or contingency of Seller, whether arising before, on or after the Closing Date, except for the Assumed Liabilities, or, without limiting the immediately preceding clause, (b) arising out of, based upon or otherwise in respect of: (i) any inaccuracy in or breach of any representation or warranty of Seller made in or under this Agreement or any of the Schedules attached hereto, or in any of the certificates or other instruments or documents furnished to Buyer by Seller pursuant to this Agreement (determined in each case without regard to any qualification with respect to materiality, Material Adverse Effect, Material Adverse Change or similar qualification); **provided**, that the Seller shall not have any liability under this clause (b)(i) of Section 10.1 (other than with respect to the representations and warranties contained in Sections 4.1, 4.2, 4.3, 4.6 and 4.17 and other than with respect to any willful breach of any representation or warranty made by the Seller in this Agreement) unless the aggregate of all Losses relating thereto for which Seller would, but for this proviso, be liable exceeds on a cumulative basis an amount equal to Fifty Thousand Dollars (\$50,000.00), at which time the Seller shall be liable for the full amount of all such Losses from and including the first dollar of any Losses; (ii) any nonfulfillment or breach of any covenant or agreement by the Seller under this Agreement or any of the Schedules attached hereto; (iii) any Liability or obligation of Seller which is an Excluded Liability; (iv) the ownership of any of the Excluded Assets by Seller after the Closing Date; and (vi) any of the matters set forth on Schedule 10.1 attached hereto.

NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT TO THE CONTRARY, THE SOLE REMEDY OF ANY BUYER INDEMNIFIED PARTY AGAINST SELLER UNDER THIS ARTICLE X FOR MONETARY DAMAGES, INCLUDING, WITHOUT LIMITATION, COSTS OF INVESTIGATION AND DEFENSE AND ATTORNEYS' FEES, SHALL BE A TIMELY CLAIM BY BUYER AGAINST THE INDEMNIFICATION ESCROW PURSUANT TO THE ESCROW AGREEMENT, EXCEPT TO THE EXTENT DAMAGES WERE CAUSED BY ACTUAL FRAUD OF SELLER THAT HAS BEEN DETERMINED BY A FINAL ORDER OR NON-APPEALABLE JUDGMENT BY A COURT OF COMPETENT JURISDICTION.

Section 10.2. Indemnification by Buyer. Subject to this Article X and consummation of the Closing, Buyer shall indemnify, defend and hold harmless Seller, Seller's present, former, and future officers, directors, trustees, members, employees, agents, Representatives and Affiliates (each a, "**Seller Indemnified Party**"), against and in respect of any and all Losses arising out of, based upon or otherwise in respect of: (a) any inaccuracy in or breach of any representation or warranty of Buyer made in or under this Agreement or any of the Schedules attached hereto, or in any of the certificates or other instruments or documents furnished to Seller by Buyer pursuant to this Agreement; (b) any nonfulfillment or breach of any covenant or agreement by Buyer under this Agreement or any of the Schedules attached hereto; and (c) any of the Assumed Liabilities pursuant to this Agreement.

Section 10.3. Third Party Claims.

(a) Within forty five (45) days after receipt by an indemnified party of written notice of the commencement of any Proceeding against it to which the indemnification in this Article X relates, such indemnified party shall, if a claim is to be made against an indemnifying party under this Article X, give notice to the indemnifying party of the commencement of such Proceeding.

(b) If any Proceeding referred to in paragraph (a) above is brought against a Seller Indemnified Party and it gives notice to Buyer of the commencement of such Proceeding, Buyer will be entitled to participate in such Proceeding and, to the extent that it wishes, assume the defense of such Proceeding with counsel reasonably satisfactory to such Seller Indemnified Party and, after notice from Buyer to such Seller Indemnified Party of its election to assume the defense of such Proceeding, Buyer will not, as long as it diligently conducts such defense, be liable to such Seller Indemnified Party under this Article X for any fees or other counsel or any other expenses with respect to the defense of such Proceeding, in each case subsequently incurred by such Seller Indemnified Party in connection with the defense of such Proceeding subject to the limitations contained in Section 10.1 hereof, other than reasonable costs of investigation. If Buyer assumes the defense of a Proceeding, (A) it will be conclusively established for purposes of this Agreement that the claims made in that Proceeding are within the scope of and subject to indemnification; and (B) no compromise or settlement of such claims may be effected by Buyer without such Seller Indemnified Party's consent unless (1) there is no finding or admission of any violation of law by such Seller Indemnified Party (or any Affiliate thereof) or any violation of the rights of any Person and no effect on any other claims that may be made against such Seller Indemnified Party, and (2) the sole relief provided is monetary damages that are paid in full by Buyer. Such Seller Indemnified Party will have no liability with respect to any compromise or settlement of the claims underlying such Proceeding effected without its consent. If notice is given to Buyer by a Seller Indemnified Party of the commencement of any Proceeding for which such Seller Indemnified Party seeks indemnification hereunder and Buyer does not, within ten (10) days after such notice is received, give notice to such Seller Indemnified Party of Buyer's election to assume the defense of such Proceeding, Buyer will be bound by any determination made in such Proceeding or any compromise or settlement effected by such Seller Indemnified Party.

(c) If any Proceeding referred to in paragraph (a) above is brought against a Buyer Indemnified Party, Seller shall be entitled to participate in such Proceeding at its own expense. However, such Buyer Indemnified Party shall, in all respects, control the defense and settlement of such Proceeding and Seller shall be liable for all fees and expenses incurred by such Buyer Indemnified Party and for any liability established by any order of a Governmental Body of competent jurisdiction and for any liability established by any settlement or compromise agreed to by such Buyer Indemnified Party, in the exercise of its reasonable discretion.

Section 10.4. Other Claims. A claim for any matter not involving a third party claim may be asserted by notice to the Party from whom indemnification is sought.

Section 10.5. Seller Indemnification Claim Period. Except as may otherwise expressly be provided in this Agreement and in the absence of fraud or intentional misrepresentation by Seller, no claim for indemnification pursuant to Section 10.1 shall be made unless a claim arises and written notice pursuant to Section 10.3 or Section 10.4 is delivered to Seller on or before the second (2nd) anniversary of the Closing Date (the "**Claims Close Date**") and the indemnity with respect thereto shall survive the Claims Close Date if notice of the inaccuracy or breach or potential inaccuracy or breach thereof giving rise to such right or alleged right of indemnity shall have been given to Seller against whom such indemnity may be sought prior to the Claims Close Date. For the avoidance of doubt, nothing herein is intended to limit any rights to equitable relief to which the Buyer or any Buyer Indemnified Party may be entitled.

Section 10.6. Buyer Indemnification Claim Period. Except as may otherwise expressly be provided in this Agreement and in the absence of fraud or knowing misrepresentation by Buyer, no claim for indemnification pursuant to Section 10.2 shall be made unless a claim arises and written notice pursuant to Section 10.3 or Section 10.4 is delivered to Buyer on or before the Claims Close Date. For the avoidance of doubt, nothing herein is intended to limit any rights to equitable relief to which the Seller or any Seller Indemnified Party may be entitled

Section 10.7. Payment from Indemnification Escrow. If a Buyer Indemnified Party becomes entitled to indemnification from Seller hereunder, such Buyer Indemnified Party shall be entitled to receive the amount of Losses in cash from the Indemnification Escrow in accordance with the Escrow Agreement. Except for Buyer's set-off rights under Section 10.8(b), the Indemnification Escrow shall be the sole and exclusive remedy for indemnification hereunder of a Buyer Indemnified Party. For the avoidance of doubt, nothing herein is intended to limit any rights to equitable relief to which the Buyer or any Buyer Indemnified Party may be entitled.

Section 10.8. Miscellaneous Indemnification Provisions.

(a) Disclosures made after the date hereof and any knowledge that is acquired about the accuracy or inaccuracy of or compliance with any representation, warranty, covenant or obligation set forth herein shall not in any manner affect rights to indemnification hereunder based on any such representation, warranty, covenant, or obligation. The waiver of any condition based on the accuracy of any representation or warranty, or compliance with any covenant or obligation, will not affect any right to indemnification based on such representations, warranties, covenants and obligations unless otherwise expressly agreed in writing by the party or parties entitled to the benefit thereto.

(b) Buyer shall have the right, upon ten (10) business days' written notice, to set-off, against any amount which may be owed by Buyer to Seller, any amount owed by Seller to Buyer pursuant to this Article X; **provided**, that Seller and Buyer shall jointly instruct the Escrow Agent to reduce the available Indemnification Escrow by the amount of such set-off.

(c) In any litigation over the applicability of the indemnification provisions in this Article X or entitlement to the Indemnification Escrow, the prevailing party shall be entitled to receive from the other party its costs and expenses incurred in pursuing such litigation, provided however, that Buyer or a Buyer Indemnified Party shall be limited to recovery therefor by making a claim against the Indemnification Escrow.

**ARTICLE XI
MISCELLANEOUS**

Section 11.1. Survival of Representations, Warranties. The parties hereto agree that the representations and warranties contained in this Agreement shall survive until two (2) years after the Closing Date hereunder, and, except due to fraud or intentional misconduct, neither of the Parties shall have any liability to each other after such time for any breach thereof except as relates to Claims which have been asserted prior thereto and Claims for equitable relief. The Parties hereto agree that the covenants contained in this Agreement to be performed at or after the Closing shall survive the Closing hereunder, and each party hereto shall be liable to the other after the Closing for any breach thereof pursuant to the terms of this Agreement and the Escrow Agreement.

Section 11.2. Successors; Assignment. This Agreement will be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and permitted assigns, but will not be assignable or delegable by Seller without the prior written consent of Buyer or by Buyer without the prior written consent of Seller; **provided, however**, that Buyer may assign this Agreement in whole or in part (i) upon written notice to Seller, to any of its Affiliates or to any Person which becomes a successor in interest (by purchase of assets or stock, or by merger or otherwise) to Buyer, and (ii) without any requirement for written notice to Seller, to its financing sources and, after Closing, Seller may assign this Agreement, but only in whole, upon written notice to Buyer, to any of its Affiliates or to any Person which becomes a successor in interest to Seller, including a liquidating trustee, liquidating trust, or other estate representative.

Section 11.3. Notices. All notices, requests and other communications under this Agreement shall be in writing and shall be either (a) delivered in person, (b) sent by certified mail, return-receipt requested, (c) delivered by a recognized delivery service or (d) sent by facsimile transmission and addressed as follows:

If intended for Buyer:

Aesculap, Inc.
3773 Corporate Parkway
Center Valley, PA 18034
Attn: Michael F. Barra
Email: mike.barra@aesculap.com

With a copies to:

Aesculap, Inc.
3773 Corporate Parkway
Center Valley, PA 18034
Attn: Scarlett Spence, Esq.
Email: scarlett.spence@aesculap.com

Stevens & Lee, P.C.
620 Freedom Business Center
Suite 200
King of Prussia, PA., 19406
Attention: Robert Lapowsky, Esq.
Email: rl@stevenslee.com
Facsimile: (610) 371-7958

If intended for Seller:

Dextera Surgical Inc.
900 Saginaw Drive
Redwood City, CA 94063
Attn: Julian Nikolchev
Email: jnikolchev@dexterasurgical.com

With a copy to:

Cooley LLP
101 California Street
5th Floor
San Francisco, CA 94111-5800
Attention: Robert L. Eisenbach III, Esq.
Email: reisenbach@cooley.com
Facsimile: (415) 693-2222

or at such other address, and to the attention of such other person, as the parties shall give notice as herein provided. A notice, request and other communication shall be deemed to be duly received if delivered in person or by a recognized delivery service, when delivered to the address of the recipient, if sent by mail, on the date of receipt by the recipient as shown on the return receipt card, or if sent by facsimile, upon receipt by the sender of an acknowledgment or transmission report generated by the machine from which the facsimile was sent indicating that the facsimile was sent in its entirety to the recipient's facsimile number; provided that if a notice, request or other communication is served by hand or is received by facsimile on a day which is not a Business Day, or after 5:00 P.M. on any Business Day at the addressee's location, such notice or communication shall be deemed to be duly received by the recipient at 9:00 A.M. on the first Business Day thereafter.

Section 11.4. Entire Agreement; Modifications; Waivers. This Agreement (together with the Exhibits and Schedules hereto) and the Ancillary Documents (a) constitute the entire agreement between the Parties with respect to the subject matter hereof and thereof and supersedes all prior understandings of the Parties with respect to the subject matter hereof and thereof and (b) are not intended to and do not confer upon any Person other than the Parties and their respective successors and assigns any legal or equitable rights or remedies. No supplement, modification or amendment of this Agreement will be binding unless executed in writing by each Party. No waiver of any of the provisions of this Agreement will be deemed to be or will constitute a continuing waiver. No waiver will be binding unless executed in writing by the Party making the waiver.

Section 11.5. Applicable Law; Jurisdiction and Venue; Jury Trial Waiver. THIS AGREEMENT AND THE CONTEMPLATED TRANSACTIONS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE. The Parties agree that jurisdiction and venue for any litigation arising out of this Agreement shall be in the Bankruptcy Court; *provided, however*, that if at the time of commencement of any such litigation, there is no longer a pending Bankruptcy Case or the Bankruptcy Court does not have jurisdiction or declines to exercise jurisdiction, jurisdiction and venue for any litigation arising out of this Agreement, provided jurisdiction may be obtained under applicable law, shall be in the state or federal courts in Delaware, and the Parties each hereby waive any objections they may have with respect thereto (including any objections based upon *forum non conveniens*). EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT, ANY ANCILLARY DOCUMENT, OR THE CONTEMPLATED TRANSACTIONS OR THEREBY.

Section 11.6. Headings and Captions. The headings and captions in this Agreement are inserted for convenience of reference only and in no way define, describe, or limit the scope or intent or otherwise affect the interpretation of, this Agreement or any of the provisions hereof.

Section 11.7. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

Section 11.8. Time is of the Essence. With respect to all provisions of this Agreement, time is of the essence. However, if the first date or last date of any period which is set out in any provision of this Agreement falls on a day which is not a Business Day, then, in such event, the time of such period shall be extended to the next day which is a Business Day.

Section 11.9. Remedies Cumulative. Except as herein expressly set forth, no remedy conferred upon a Party by this Agreement is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given herein or now or hereafter existing at law, in equity or by statute.

Section 11.10. Estoppel. Each Party confirms and agrees that (a) it has read and understood all of the provisions of this Agreement; (b) it is familiar with major sophisticated transactions such as those contemplated by this Agreement; (c) it has negotiated with the other Party at arm's length with equal bargaining power; and (d) it has been advised by competent legal counsel of its own choosing.

Section 11.11. Joint Preparation. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

Section 11.12. Expenses; Transfer Taxes.

(a) Except as otherwise expressly provided in this Agreement, and subject to compliance with stalking horse payment provisions set forth in the Bid Procedures Order, if and to the extent that such payment becomes payable, each Party will bear its respective expenses incurred in connection with the preparation, negotiation, execution, and performance of this Agreement and the Contemplated Transactions, including all fees and expenses of agents, Representatives, counsel, and accountants.

(b) Buyer and Seller shall each pay one-half (1/2) of all sales, use, transfer, real property transfer, documentary, recording and similar Taxes and fees, and any deficiency, interest or penalty asserted with respect thereof arising out of or in connection with the Contemplated Transactions ("**Transfer Taxes**").

Section 11.13. Counterparts; Electronic Mail and Facsimile Signatures. This Agreement may be executed simultaneously in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. This Agreement, any and all agreements and instruments executed and delivered in accordance herewith, along with any amendments hereto or thereto, to the extent signed and delivered by means of E-mail, a facsimile machine or other means of electronic transmission, shall be treated in all manner and respects and for all purposes as an original signature, agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

Section 11.14. Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced under any Law or as a matter of public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect.

Section 11.15. Public Announcements. Neither Party, nor any of its Affiliates or Representatives shall (orally or in writing) publicly disclose, issue any press release or make any other public statement, or otherwise communicate with the media, concerning the existence of this Agreement or the Contemplated Transactions, without the prior written approval of the other Party (which shall not be unreasonably withheld, conditioned or delayed), except if and to the extent that such Party is required to make any public disclosure or filing regarding the subject matter of this Agreement (i) by applicable Law, (ii) pursuant to any rules or regulations of any securities exchange of which the securities of such party or any of its Affiliates is listed or traded or (iii) in connection with enforcing its rights under this Agreement. The foregoing limitations on public disclosures shall not be interpreted to apply to pleadings filed in the Bankruptcy Case.

[Signature page follows]

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

SELLER:

DEXTERA SURGICAL INC.

By: /s/ Julian Nikolchev

Name: Julian Nikolchev

Title: President and CEO

BUYER:

AESULAP, INC.

By: /s/ Keith Moser

Name: Keith Moser

Title: VP of Corporate Financial and IT Services

and

By: /s/ Charles A. DiNardo

Name: Charles A. DiNardo

Title: President

Signature Page to Asset Purchase Agreement

The following exhibits and schedules to this Agreement have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The Company will furnish supplementally copies of these omitted exhibits and schedules to the Securities and Exchange Commission upon request.

Exhibit A - Escrow Agreement

Exhibit B - Bid Procedures Order

Exhibit C - Approval Order

Exhibit D - Bill of Sale

Exhibit E - Assignment and Assumption Agreement

Disclosure Schedules listing assets and exceptions to representations and warranties.

POST-PETITION LOAN AND SECURITY AGREEMENT

DATED AS OF

December 15, 2017

By and Between

DEXTERA SURGICAL INC.,

As Borrower,

And

AESCULAP, INC., or its designee

as Lender

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POST-PETITION LOAN AND SECURITY AGREEMENT

This POST-PETITION LOAN AND SECURITY AGREEMENT (this “*Agreement*”) is made and entered into December 15, 2017, between DEXTERA SURGICAL INC., a Delaware corporation formerly known as “Cardica, Inc.” (“*Borrower*”), and AESCULAP, INC., a California corporation, or its designee (“*Lender*”).

RECITALS

WHEREAS, Borrower is a debtor-in-possession under Chapter 11 of the Bankruptcy Code in a case (the “*Reorganization Case*”) pending in the United States Bankruptcy Court for the District of Delaware (together with any other court having jurisdiction over the Reorganization Case or any proceedings therein from time to time, the “*Bankruptcy Court*”), as Case No. 17-12913-KJC. Borrower has requested that Lender extend financing to Borrower in connection with the Reorganization Case in accordance with the provisions of this Agreement.

WHEREAS, Lender is willing to make the Post-Petition Loan to Borrower, subject to the terms and conditions of this Agreement and subject to the terms and conditions set forth in the orders of the Bankruptcy Court approving the proposed financing.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

SECTION 1. DEFINITIONS.

1.1 General Provisions. Unless expressly provided otherwise in this Agreement or in the Loan Documents, or unless the context requires otherwise:

(a) all accounting terms used in this Agreement and in the Loan Documents shall have the meanings given to them in accordance with GAAP;

(b) all terms used herein and in the Loan Documents that are defined in the UCC, shall have the meanings set forth therein;

(c) all capitalized terms defined in this Agreement shall have the defined meanings when used in the Loan Documents and in any other documents made or delivered pursuant to this Agreement;

(d) the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders;

(e) all references to any particular party defined herein shall be deemed to refer to each and every person defined herein as such party individually, and to all of them, collectively, jointly and severally, as though each were named wherever the applicable defined term is used;

(f) all references to “Sections” and “Subsections”, unless the context to such reference clearly indicates otherwise, shall refer to provisions of this Agreement;

(g) all references to time herein shall mean Eastern Standard Time or Eastern Daylight Time, as then in effect; and

(h) all references to sections, subsections, paragraphs or other provisions of statutes or regulations shall be deemed to include successor, amended, renumbered and replacement provisions.

1.2 Defined Terms. As used herein, the following terms shall have the meanings indicated, unless the context otherwise requires:

“**Account**” has the meaning stated in in the UCC, including all rights to payment for goods sold or leased, or for services rendered.

“**Accumulated Funding Deficiency**” shall mean any accumulated funding deficiency as defined in ERISA §302(a).

“**Affiliate**” means, with respect to a specified Person, any other Person which directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the specified Person; provided that such Person shall be deemed an Affiliate for only so long as such control exists. For purposes of this definition and the definition of Related Person, the term “control” includes, without limitation, the possession, directly or indirectly, of the power to direct the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Agreement**” shall mean this Agreement and any future amendments, restatements, modifications or supplements hereof or hereto.

“**APA**” means the Asset Purchase Agreement between Borrower and the Lender (or an Affiliate of the Lender) dated December 11, 2017, together with the Schedules and Exhibits thereto, and any future amendments, restatements, modifications or supplements thereof or thereto.

“**Authorized Officer**” means, collectively, the President, Chief Financial Officer, or any other officer of the Borrower designated as an Authorized Officer in writing to the Lender by the President of the Borrower.

“**Bankruptcy Code**” means the United States Bankruptcy Code, Title 11 of the United States Code, as amended, or any successor law thereto, and any rules promulgated in connection therewith.

“**Bankruptcy Court**” has the meaning stated in the Recitals hereof.

“**Borrower**” has the meaning stated in the preamble hereof.

“**Borrowing Notice**” has the meaning stated in Section 2.1(b) hereof.

“**Budget**” means a thirteen (13) week cash-flow budget of the Borrower, which shall include a list of expenses to be incurred by the Borrower during such thirteen (13) week period and a liquidity forecast, in a form acceptable to the Lender.

“**Business Day**” means any day other than a Saturday, Sunday or legal holiday under the laws of the Commonwealth of Pennsylvania.

“**Chattel Paper**” has the meaning stated in in the UCC.

“**Closing Date**” means the date the Interim DIP Order is entered.

“**Code**” means the Internal Revenue Code of 1986, as amended, or any successor law thereto, and any regulations promulgated thereunder.

“**Collateral**” has the meaning stated in Section 2.11 hereof.

“**Commercial Tort Claim**” has the meaning stated in in the UCC.

“**Committee**” has the meaning stated in Section 7.2(b) hereof.

“**Contamination**” means the presence of any Hazardous Substance which may require Remedial Actions under applicable law.

“**Contract Rate**” means the fixed annual rate of nine and one quarter percent (9.25%) per annum.

“**Controlled Group Member**” means:

- (a) any corporation included with the Borrower in a controlled group of corporations within the meaning of Code §414(b);
- (b) any trade or business (whether or not incorporated) which is under common control with a Borrower within the meaning of Code §414(c); and
- (c) any member of an affiliated service group of which a Borrower is a member within the meaning of Code §414(m).

“**Copyrights**” means, collectively, all of the Borrower’s right, title and interest in and to (i) all copyrights (including, without limitation, all sales literature, promotional literature, software, databases and firmware), whether statutory or common law, and whether or not the underlying works of authorship have been published, (ii) all copyright registrations and copyright applications (including, without limitation, each of the copyright registrations and copyright applications set forth on Schedule “A” hereto) and all works of authorship and other intellectual property rights therein, (iii) all copyrights of works based on, incorporated in, derived from or relating to works covered by such copyrights, (iv) all rights to make and exploit all derivative works based on or adopted from works covered by such copyrights, and (v) any extensions or renewals thereof, including, but not limited to, (A) the right to print, publish and distribute any of the foregoing, (B) the right to sue or otherwise recover for any and all past, present and future infringements, misappropriations and other violations thereof, (C) all income, royalties, damages, settlements and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages, settlements and payments for past or future infringements thereof) and (D) all rights corresponding thereto throughout the world and all other rights of the Company of any kind whatsoever accruing thereunder or pertaining thereto.

“Debt” means, with respect to any Person at any applicable time (without duplication), (i) all obligations of such Person for borrowed money, (ii) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (iii) all obligations of such Person under conditional sale or other title retention agreements relating to property purchased by such Person to the extent of the value of such property (other than customary reservations or retentions of title under agreements with suppliers entered into in the ordinary course of business), (iv) all obligations, other than intercompany items, of such Person issued or assumed as the deferred purchase price of property or services purchased by such Person which would appear as liabilities on a balance sheet of such Person, (v) all Debt of others secured by (or for which the holder of such Debt has an existing right, contingent or otherwise, to be secured by) any Lien on, or payable out of the proceeds of production from, property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed, (vi) all Guaranty Obligations of such Person, (vii) the principal portion of all capital lease obligations, (viii) all obligations of such Person in respect of interest rate protection agreements, foreign currency exchange agreements, or other interest or exchange rate or commodity price hedging agreements, (ix) the maximum amount of all performance and standby letters of credit issued or bankers’ acceptances facilities created for the account of such Person and, without duplication, all drafts drawn thereunder (to the extent unreimbursed), (x) all preferred stock issued by such Person and required by the terms thereof to be redeemed, or for which mandatory sinking fund payments are due, by a fixed date, and (xi) any other item of indebtedness that would be reflected on the liabilities side of a balance sheet of such Person in accordance with GAAP. The Debt of any Person shall also include the Debt of any partnership or unincorporated joint venture in which such Person is legally obligated or has a reasonable expectation of being liable with respect thereto.

“Default” means any event specified in Section 7.1, whether or not any requirement for notice or lapse of time or any other condition has been satisfied.

“Default Rate” means the Contract Rate plus five percent (5%) per annum.

“Deposit Account” has the meaning stated in in the UCC.

“Document” has the meaning stated in in the UCC.

“Employee Pension Plan” means any employee pension benefit plan as defined in ERISA § 3(2) and which is (i) maintained by a Borrower or any Controlled Group Member, and (ii) qualified under Code §401.

“Environmental Law” and **“Environmental Laws”** means, individually and collectively, as appropriate, any current or future legal requirement of any Governmental Body pertaining to (i) the protection of health, safety, and the environment, (ii) the conservation, management or use of natural resources and wildlife, (iii) the protection or use of surface water and groundwater or (iv) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, release, threatened release, abatement, removal, remediation or handling of, or exposure to, any hazardous or toxic substance or material and includes, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 USC 9601 et seq., Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and Hazardous and Solid Waste Amendment of 1984, 42 USC 6901 et seq., Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 USC 1251 et seq., Clean Air Act of 1966, as amended, 42 USC 7401 et seq., Toxic Substances Control Act of 1976, 15 USC 2601 et seq., Hazardous Materials Transportation Act, 49 USC App. 1801 et seq., Occupational Safety and Health Act of 1970, as amended, 29 USC 651 et seq., Oil Pollution Act of 1990, 33 USC 2701 et seq., Emergency Planning and Community Right-to-Know Act of 1986, 42 USC 11001 et seq., National Environmental Policy Act of 1969, 42 USC 4321 et seq., Safe Drinking Water Act of 1974, as amended, 42 USC 300(f) et seq., and any analogous implementing or successor law, and any amendment, rule, regulation, order or directive issued thereunder.

“Equipment” has the meaning stated in in the UCC.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and any regulations issued thereunder by the United States Department of Labor or the PBGC.

“Event of Default” means any event specified in Section 7.1, provided that any requirement for notice or lapse of time or any other condition has been satisfied.

“Facility Fee” has the meaning stated in Section 2.15 hereof.

“Final DIP Order” means the order of the Bankruptcy Court entered in the Reorganization Case granting final approval of this Agreement and the other Loan Documents and granting the Liens and superpriority claims set forth in Section 2.11, substantially in the form of Exhibit A or otherwise in form and substance satisfactory to the Borrower and Lender.

“Final Order” means an order, judgment or other decree of any Governmental Body as to which (a) the operation or effect has not been reversed, stayed, modified or amended, (b) no appeals, motions for reconsideration, petitions seeking the grant of certiorari or, if certiorari has been granted, grants of certiorari are pending, and (c) any and all appeal periods and periods to seek the grant of certiorari have expired

“GAAP” means, at any particular time, generally accepted accounting principles as in effect at such time, provided, however, that, if employment of more than one principle shall be permissible at such time in respect of a particular accounting matter, GAAP shall refer to the principle which is then employed by the Borrower with the agreement of its independent certified public accountants.

“General Intangibles” has the meaning stated in in the UCC.

“Goods” has the meaning stated in in the UCC.

“Governmental Body” means any federal, state, local, municipal, foreign or other governmental or quasi-governmental entity or authority of any nature, including courts and administrative agencies (including the FDA and its equivalent authority or body in any foreign jurisdiction).

“Hazardous Substances” means all materials of any kind which are flammable, explosive, toxic, radioactive or otherwise hazardous to animal or plant life or the environment, including, without limitation, **“hazardous wastes,” “hazardous substances”** and **“contaminants,”** as such terms are defined by Environmental Laws. The term **“Hazardous Substances”** shall also include: (a) petroleum, crude oil, gasoline, natural gas, liquefied natural gas, synthetic fuel, and all other petroleum, oil, or gas based products; (b) nuclear, radioactive, or atomic substances, mixtures, wastes, compounds, materials, elements, products or matters; (c) asbestos, asbestos containing materials, polychlorinated biphenyls, and (d) any other substance, mixture, waste, compound, material, element, product or matter that presents an imminent and substantial danger to the public health or welfare or to the environment upon its Release.

“Instrument” has the meaning stated in in the UCC.

“Intellectual Property Collateral” means, collectively, (i) Copyrights, (ii) Patents, (iii) Proprietary Works, (iv) Trademarks, (v) Software, and (vi) Licenses.

“Interim DIP Order” means that certain order of the Bankruptcy Court authorizing the Borrower to enter into this Agreement subject to certain limitations applicable until entry of the Final DIP Order, substantially in the form of Exhibit B or otherwise in form and substance satisfactory to the Borrower and Lender. .

“Investment Property” has the meaning stated in in the UCC.

“Law(s)” shall mean any federal, state, local and other law(s) (including common law), constitution, statute, treaty, regulation, rule, ordinance, opinion, issued guidance, release, ruling, order, executive order, injunction, writ, decree, bond judgment authorization or approval, lien or award of or any settlement arrangement, by agreement, consent or otherwise, with any Governmental Body, foreign or domestic.

“Lender” has the meaning stated in the preamble hereof.

“Letter-of-Credit Right” has the meaning stated in in the UCC.

“Licenses” means, collectively, all of the Borrower’s right, title and interest in and to all license agreements with any other Person in connection with any of the Patents, Proprietary Works, Copyrights, and/or Trademarks, whether the Borrower is a licensor or a licensee under any such license agreement (including, without limitation, each license set forth on Schedule “A” hereto), and any right to prepare for sale, sell and advertise for sale all Inventory now or hereafter owned by the Borrower and now or hereafter covered by such licenses, including, but not limited to, (i) the right to sue or otherwise recover for any and all past, present and future breaches and other violations thereof, (ii) all income, royalties, damages, settlements and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, damages, settlements and payments for past or future breaches and infringements thereof) and (iii) all rights of the Borrower corresponding thereto throughout the world and all other rights of the Borrower of any kind whatsoever accruing thereunder or pertaining thereto

“Lien” means, collectively, any mortgage, pledge, hypothecation, assignment, deposit arrangement, security interest, encumbrance, lien (statutory or otherwise), preference, priority or charge of any kind, including, without limitation, any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease in the nature thereof.

“Line of Credit” means the non-revolving line of credit facility described in Section 2.1.

“Line of Credit Commitment” means, as at any applicable time, the Borrower’s maximum credit availability under the Line of Credit, as established in Section 2.1(a) whether or not then fully extended.

“Line of Credit Note” means the promissory note described in Section 2.2 and any future amendments, restatements, modifications or supplements thereof or thereto.

“Line of Credit Termination Date” means the earliest of (i) May 15, 2018, (ii) Closing under the APA, (iii) termination of the APA, other than as a result of the acceptance by the Borrower of a Competing Bid (as defined in the APA), (iv) sale of any material amount of the Purchased Assets to a buyer other than the Lender, and (v) the occurrence of an Event of Default.

“Loan” means the non-revolving line of credit facility made available to the Borrower pursuant to this Agreement.

“Loan Account” means, collectively, the account or accounts of the Borrower on the books of Lender in which are recorded the Loan and the payments of principal interest and other charges made by the Borrower to Lender thereon.

“Loan Documents” means this Agreement, the Line of Credit Note and all other documents executed and delivered to the Lender by or on behalf of the Borrower in connection therewith and any modifications, amendments, restatements, substitutions and replacements of or for any of the foregoing.

“Obligations” means, collectively, all liabilities, duties and obligations of the Borrower to the Lender with respect to any covenants, representations or warranties herein or in the Loan Documents, with respect to the principal of and interest on the Loan, the Facility Fee and all other present and future fixed and/or contingent obligations of the Borrower to the Lender hereunder and under the Loan Documents.

“Patents” means, collectively, all of the Borrower’s right, title and interest in and to all patents, patent applications and patentable inventions (including, without limitation, each patent and patent application set forth on Schedule “A” hereto), including, but not limited to, (i) all inventions and improvements described and claimed therein, (ii) the right to sue or otherwise recover for any infringements and other violations thereof, (iii) all income, royalties, damages, settlements and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages, settlements and payments for past and future infringements thereof) and (iv) all rights corresponding thereto throughout the world and all reissues, divisions, continuations, continuations-in-part, provisional applications, substitutes, renewals and extensions thereof, all improvements thereon and all other rights of the Borrower of any kind whatsoever accruing thereunder or pertaining thereto.

“Payment Intangible” has the meaning stated in in the UCC.

“PBGC” means the Pension Benefit Guaranty Corporation.

“Permitted Debt” means any and all Debt permitted under Section 6.1.

“Permitted Encumbrances” has the meaning stated in Section 6.2(a) hereof.

“Permitted Expense” has the meaning stated in Section 3.6 hereof.

“Petition Date” means the date of filing of the Petition for Relief commencing the Reorganization Case.

“Person” means an individual, a corporation, a partnership, a joint venture, a trust or unincorporated organization, a joint stock company or other similar organization, a government or any political subdivision thereof, or any other legal entity.

“Post-Petition Obligation” means an obligation of the Borrower which is not a Pre-Petition Obligation.

“Pre-Petition Obligation” means any obligation of the Borrower arising, or deemed to have arisen pursuant to the Bankruptcy Code, before the Petition Date.

“Proceeds” means, collectively, whatever is received when any of the Collateral is sold, exchanged, leased, collected, or otherwise disposed of, including cash, insurance proceeds, negotiable instruments and other instruments for the payment of money, chattel paper, security agreements, other documents, and other noncash proceeds.

“Purchased Assets” means the assets to be sold by the Borrower to the Lender or an Affiliate of the Lender pursuant to the APA.

“Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, or dumping.

“Remedial Actions” means:

- (a) clean-up or removal of Hazardous Substances;
- (b) such actions as may be necessary to monitor, assess, or evaluate the Release or threatened Release of Hazardous Substances;
- (c) proper disposal or removal of Hazardous Substances;
- (d) the taking of such other actions as may be necessary to prevent, minimize, or mitigate the damages caused by a Release or threatened Release of Hazardous Substances to the public health or welfare or to the environment; and
- (e) the providing of emergency assistance after a Release.

Remedial Actions include, but are not limited to, such actions at the location of a Release as: storage; confinement; perimeter protection using dikes, trenches, or ditches; clay cover; neutralization; clean-up of Hazardous Substances or contaminated materials; recycling or reuse; diversion; destruction; segregation of reactive wastes; dredging or excavation; repair or replacement of leaking containers; collection of leachate and runoff; onsite treatment or incineration; providing alternative water supplies; and any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment.

“Reorganization” means reorganization as defined in ERISA §4241(a).

“Reorganization Case” has the meaning stated in the Recitals hereof.

“Reportable Event” means with respect to any Employee Pension Plan, an event described in ERISA §4043(b).

“Security Documents” means, individually and collectively, any instruments now or hereafter executed and delivered to the Lender to secure, or to assure, payment or performance, of the Obligations, and any future amendments, restatements, modifications or supplements thereof or thereto.

“Site Assessments” has the meaning stated in Section 7.5 hereof.

“Site Reviewers” has the meaning stated in Section 7.5 hereof.

“Software” has the meaning stated in in the UCC.

“Trademarks” means, collectively, all of the Borrower’s right, title and interest in and to (i) all trademarks, service marks, trade names, corporate names, Borrower names, business names, fictitious names, trade dress, service marks, trade styles, logos and other designs or sources of business identifiers or other indicia of trade origin, (ii) all trademark and service mark registrations and applications for trademark or service mark registrations (including, without limitation, each registration and application set forth on Schedule “A” hereto) and (iii) any and all extensions and renewals of or with respect to any of the foregoing, including, but not limited to, (A) the right to sue or otherwise recover for any and all past, present and future infringements, misappropriations and other violations thereof, (B) all income, royalties, damages, settlements and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages, settlements and payments for past or future infringements thereof) and (C) all rights of the Borrower corresponding thereto throughout the world and all other rights of the Borrower of any kind whatsoever accruing thereunder or pertaining thereto, together in each case with the goodwill of the business connected with the use of, and symbolized by, any or all of the foregoing throughout the world, but excluding any United States intent-to-use trademark application prior to the filing of a Statement of Use or an amendment to allege use in connection therewith to the extent that a valid lien and security interest may not be taken in such an intent-to-use application under applicable law.

“*UCC*” means the Uniform Commercial Code as in effect in the State of Delaware or, when the laws of any other jurisdiction govern the perfection or enforcement of any Lien, the Uniform Commercial Code of such jurisdiction.

“*Withdrawal Liability*” means any withdrawal liability, as defined in ERISA §4201.

SECTION 2. AMOUNT AND TERMS OF LOAN.

2.1 Line of Credit.

(a) Subject to, and in accordance with, the terms and conditions of this Agreement, the Lender agrees to extend credit to the Borrower by making loans to it, from time to time during the period commencing on the Closing Date and ending on the Line of Credit Termination Date, in an aggregate outstanding amount that shall not exceed, at any one time, the lesser of:

(i) One Million Five Hundred Thousand Dollars (\$1,500,000.00) in principal; or

(ii) (A) Prior to entry of the Final DIP Order, the amount authorized by the Interim DIP Order, and (B) on and after the date of entry of the Final DIP Order, the Final DIP Order.

(b) The Borrower shall notify the Lender in writing at least one Business Day in advance of the date of each proposed borrowing under the Line of Credit, which borrowing date shall also be a Business Day. Each borrowing request hereunder shall be made pursuant to a borrowing notice, in form and substance acceptable to the Borrower and Lender (a “*Borrowing Notice*”). Each such borrowing shall be in an amount which does not exceed (a) Three Hundred Thousand Dollars (\$300,000.00), minus (b) the Borrower’s projected book balance of cash and cash equivalents as of the close of business on Friday of the week following the date of such borrowing notice (without taking into account any such borrowing). The Borrower shall be limited to one borrowing per week. The Borrower authorize and direct the Lender to disburse the proceeds of each such borrowing by wire transfer to Borrower’s demand deposit account maintained with Silicon Valley Bank.

(c) The Line of Credit Termination Date may be extended or renewed by the Lender, in its sole discretion, on a day-to-day basis or otherwise, based on a letter to such effect from the Lender to the Borrower or by a written agreement between the parties hereto; provided, however, the Lender shall have no duty or obligation, express or implied, to extend the Line of Credit Termination Date or consider any request for such an extension and further provided that an extension of the Line of Credit Termination Date after the occurrence of a Default or Event of Default shall not constitute a waiver of such Default or Event of Default.

(d) Notwithstanding anything contained herein to the contrary, the Line of Credit shall be a non-revolving loan facility and, therefore, each advance under the Line of Credit shall permanently reduce, dollar for dollar, the Borrower's credit availability under the Line of Credit and the Borrower will not have the ability to re-borrow hereunder.

2.2 Line of Credit Note. On the Closing Date, the Borrower shall execute and deliver to the Lender its promissory note, which shall evidence the Borrower's obligation to repay the principal of, interest on, and other amounts due in connection with the Line of Credit and the Obligations, and which shall:

(a) be dated the Closing Date and be payable to the Lender's order in the principal amount of One Million Five Hundred Thousand Dollars (\$1,500,000.00).

(b) require the payment of interest on the unpaid principal amount of any funds advanced and outstanding under the Line of Credit from the dates of such advances and, prior to the occurrence of an Event of Default, at an annual rate equal to the Contract Rate and, on and after (i) Line of Credit Termination Date, or (ii) the date of occurrence of an Event of Default, at an annual rate equal to the Default Rate, in each case whether prior to or after judgment against the Borrower;

(c) not require any payment of principal or interest prior to the Line of Credit Termination Date and be payable in full as to the entire unpaid principal balance, all accrued interest and other sums due thereunder on the Line of Credit Termination Date; and

(d) be secured by the Security Documents and the Collateral.

2.3 Loan Account. The Lender shall record in one or more Loan Accounts, the Loans, all advances to and all payments made by Borrower on account of the Loans, and all other appropriate debits and credits.

2.4 Computation of Interest. Interest shall be calculated on the basis of a 365-day year for actual days elapsed. Any change in the interest rate on the Note resulting from a change from the Contract Rate to the Default Rate shall become effective as of the opening of business on the day on which such change shall occur.

2.5 Maximum Legal Rate. Borrower shall not be obligated to pay and Lender shall not collect interest on any Obligation at a rate in excess of the maximum permitted by law or the maximum that will not subject Lender to any civil or criminal penalties. If, because of the acceleration of maturity, the payment of interest in advance or any other reason, the Borrower is required, under the provisions of any Loan Document or otherwise, to pay interest at a rate in excess of such maximum rate, the rate of interest under such provisions shall immediately and automatically be reduced to such maximum rate, and any payment made in excess of such maximum rate, together with interest thereon at the rate provided herein from the date of such payment, shall be immediately and automatically applied to the reduction of the unpaid principal balance of the Obligations as of the date on which such excess payment was made. If the amount to be so applied to reduction of the unpaid principal balance exceeds the unpaid principal balance, the amount of such excess shall be refunded by Lender to Borrower.

2.6 Payments. All payments by the Borrower hereunder shall be made at the Lender's address set forth in Section 8.2, or such other place or places as the Lender may direct, prior to 5:00 P.M. on the date of payment, in lawful money of the United States of America, and in immediately available funds.

2.7 Application of Payments. All payments shall be applied first to the payment in full of any expenses incurred by the Lender and permitted to be charged to the Borrower, including (without limitation) reasonable attorneys' fees, then to the payment in full of any late charges, then to the payment in full of accrued, unpaid interest and finally to the reduction of the unpaid principal balance. The portion of any payment applied to the reduction of the unpaid principal balance shall permanently reduce the Line of Credit Commitment by the amount of such payment and may not be borrowed.

2.8 Voluntary and Mandatory Payments. The Obligations may pre-paid, in whole or in part and without penalty, at any time prior to the Line of Credit Termination Date. If the unpaid principal balance of the Line of Credit Note thereon exceeds the Line of Credit Commitment at any time, the Borrower shall immediately pay to the Lender for application to the Line of Credit Note an amount equal to such excess. All Obligations shall be due and payable in full on the Line of Credit Termination Date.

2.9 Additional Security. In addition to the security provided herein and in the Security Documents, Borrower also grants Lender, as further security for payment of the Obligations, a lien upon and security interest in any and all debts or other obligations Lender or any Affiliate of Lender may owe to Borrower from time to time.

2.10 Administrative Status of Obligations. In addition to being secured by the Collateral, the Obligations shall be allowed administrative expenses in the Reorganization Case, pursuant to Section 503(b)(1) of the Bankruptcy Code, with priority over all other administrative expenses, pursuant to Section 364(c)(1) of the Bankruptcy Code.

2.11 Grant of Security Interest. To secure the payment to the Lender and the prompt performance of the Obligations, the Borrower hereby grants to Lender (i) a first priority security interest in all of the Borrower's assets not subject to Permitted Encumbrances, including all such presently owned or hereafter acquired Accounts, Chattel Paper, Commercial Tort Claims, Deposit Accounts, Documents, Equipment, Fixtures, General Intangibles, all Intellectual Property Collateral, Goods, Inventory, Instruments, Investment Property, Letter of Credit Rights, Payment Intangible, Supporting Obligations, insurance policies, all books and records (including customer lists, files, correspondence, tapes, computer programs, print-outs and computer records) pertaining to the foregoing, and all Products and Proceeds (including cash collateral, as defined in Section 363 of the Bankruptcy Code and all accessions to, substitutions for, and all replacements, products, and cash and non-cash proceeds of the foregoing, including proceeds of and unearned premiums with respect to insurance policies, and claims against any Person for loss, damage or destruction of any Collateral) but excluding all causes of action under Sections 544, 545, 547, 548, 549 or 550 of the Bankruptcy Code and the proceeds thereof, and (ii) a security interest in all assets of the Borrower subject to Permitted Encumbrances, junior only to such Permitted Encumbrances (collectively, items (i) and (ii) above are referred to as the "**Collateral**"). The Borrower agrees that the aforesaid grant of security interests is intended as a contemporaneous exchange for value given to the Borrower.

2.12 Perfection of Security Interests. The Interim DIP Order and the Final DIP Order shall, without the necessity of any further action or filings by the Lender, the Debtor or any other Person, perfect the Lender's security interests in the Collateral. Notwithstanding the foregoing, the Borrower shall, at its cost and expense, execute and deliver to Lender, concurrently with the execution of this Agreement, and at any time or times hereafter at the request of the Lender, all financing statements and all other agreements, instruments and documents that the Lender may reasonably request, in form and substance satisfactory to the Lender, and shall take any and all other steps reasonably requested by the Lender, in order to perfect and maintain the security interest and liens granted herein by the Borrower to the Lender and in order to fully consummate all of the transactions contemplated herein and under any other Loan Documents.

2.13 Additional Collateral; Right of Set-Off. Collateral of any nature and the cash and noncash Proceeds thereof owned by the Borrower or in which the Borrower has an interest, which now or hereafter are in the possession or control of the Lender, shall at all times constitute additional security and Collateral for the Obligations and may be set off against the Obligations upon the occurrence of an Event of Default.

2.14 Right to Credit Bid. In connection with any sale of Collateral, the Lender shall have the right to credit bid the Obligations.

2.15 Facility Fee. On the Line of Credit Termination Date, the Borrower shall pay to the Lender an amount equal to one percent (1%) of the amount of the Line of Credit Commitment. The amount payable by the Borrower pursuant to this Section 2.15 is referred to herein as the "**Facility Fee**".

SECTION 3. BORROWER REPRESENTATIONS AND WARRANTIES. To induce Lender to enter into this Agreement and to make the Loans, the Borrower represents and warrants to Lender that:

3.1 Organization and Qualification. The Borrower is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and is duly qualified as a foreign corporation and in good standing under the laws of each jurisdiction in which the conduct of its business or the ownership of its assets requires such qualification.

3.2 Power and Authority. Subject to the Bankruptcy Court approval of this Agreement, the Borrower has the corporate power to execute, deliver and perform under, the Loan Documents, to borrow under this Agreement and to create the collateral security interests for which the Security Documents provide, and has taken all necessary corporate action to authorize the borrowings hereunder on the terms and conditions of this Agreement and the execution and delivery of, and performance under, the Loan Documents. Other than Bankruptcy Court approval of this Agreement, no consent of any other party (including members of the Borrower) and no consent, license, approval or authorization of, or registration or declaration with, any governmental authority, bureau or agency is required in connection with the execution, delivery, performance, validity or enforceability of the Loan Documents.

3.3 Enforceability. Subject to the Bankruptcy Court approval of this Agreement, the Loan Documents, when executed and delivered to Lender pursuant to the provisions of this Agreement, will constitute valid obligations of the Borrower legally binding upon it and enforceable in accordance with their respective terms, except as enforceability of the foregoing may be limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights.

3.4 Conflict with Other Instruments. Subject to the Bankruptcy Court approval of this Agreement, the execution and delivery of, and performance under, the Loan Documents will not violate or contravene any provision of any existing law or regulation or decree of any court, governmental authority, bureau or agency having jurisdiction in the premises or of the Articles or Certificate of Incorporation, Charter or By-Laws of the Borrower.

3.5 Title to Collateral. The Borrower has good and marketable title in fee to the Collateral, free of any mortgages, pledges, charges, liens, security interests or other encumbrances except Permitted Encumbrances.

3.6 Use of Proceeds. From and after the Closing Date, the Borrower agree that amounts drawn on the Line of Credit may be used only to pay expenses provided for in the Budget (with a twenty percent (20%) cumulative variance on a line item basis (a "**Permitted Variance**"). In no circumstance shall amounts drawn on the Line of Credit or any cash Collateral for the Obligations be used for expenses incurred to investigate or to contest in any adversary proceeding or any other action (a) the validity, extent, attachment, perfection or priority of the Liens created by this Agreement or the Loan Documents, (b) the validity, binding effect or enforceability of this Agreement or the Loan Documents or the Line of Credit Note, or (c) any other rights or interests of the Lender under the Loan Documents (those expenses set forth in clauses (i) through (iv) above and not excluded pursuant to the foregoing proviso are hereinafter collectively referred to as the "**Permitted Expenses**"). Nothing herein shall in any way prejudice or prevent the Lender from objecting, for any reason, to any applications made for interim or final allowances of compensation for services rendered or reimbursement of expenses incurred under section 330 or 331 of the Bankruptcy Code.

3.7 No Notices; No Violations. Neither the Borrower nor any Subsidiary has received any notice from any Governmental Body or any insurance or inspection body to the effect that any of its properties, facilities, equipment or business procedures or practices fail to comply with any applicable Law, including any ordinance, regulation, building or zoning Law, judicial or administrative determination, or any other requirements of any such Governmental Body, and the Borrower and all Subsidiaries, and all such properties, facilities, equipment, procedures and practices, comply in all material respects with all such Laws, including ERISA and any Environmental Laws.

3.8 Margin Regulation; Investment Company Act.

(a) The Borrower is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying "margin stock" within the meaning of Regulation U. No part of the proceeds of the Loan will be used, directly, or indirectly, for the purpose of purchasing or carrying any "margin stock" within the meaning of Regulation U. None of the transactions contemplated by this Agreement (including the direct or indirect use of the proceeds of the Loan) will violate or result in a violation of Regulation T, U or X.

(b) The Borrower is not an "investment company" registered or required to be registered under the Investment Company Act of 1940, as amended or (ii) controlled by such a company.

3.9 Location of Collateral. The Collateral and all of the Borrower's business records are situated at the locations set forth in Schedule 3.8 attached hereto and made a part hereof, and the Borrower's places of business are all listed thereon.

3.10 Broker's Commissions. No brokerage commission or similar compensation is due or will become due to any Person by reason of the making of the Loan.

3.11 APA Representations. All of the representations made by the Borrower to the Lender in the APA are true and correct.

SECTION 4. CONDITIONS OF BORROWING.

4.1 Initial Advance. As a condition precedent to the Lender's obligation to make the initial advance under the Line of Credit, the following conditions shall all be satisfied:

(a) Loan Documents. The Borrower shall have delivered or caused to be delivered to the Lender duly executed copies of each of the Loan Documents.

(b) Financing Statements. A financing statement describing the Collateral shall have been filed in each such jurisdiction and in each such office as shall have been required by the Lender.

(c) Borrower's Authorizations.

(i) The Borrower shall have delivered to Lender:

(A) a copy, certified by the Secretary of the Borrower, of the resolutions of the Board of Directors of the Borrower authorizing and approving the execution and delivery of and performance under this Agreement and the other Loan Documents, the borrowings provided for hereunder and the creation of the collateral security interests for which the Security Documents provide;

(B) a copy of the Borrower's articles or certificate of incorporation, certified by the Secretary of State of the state of the Borrower's incorporation as of a recent date;

(C) a good standing or subsistence certificate with respect to the Borrower certified by the Secretary of State of the state of the Borrower's incorporation as of a recent date;

(D) a copy of the Borrower's By-Laws, as currently in effect, certified by such Borrower's Secretary or Assistant Secretary;

(ii) The Secretary of the Borrower shall have duly executed and delivered to the Lender a certificate of incumbency, in form and substance satisfactory to the Lender.

(d) Representations. The representations and warranties contained in Section 3 hereof shall be true and correct on and as of the date of the making of the Loans and the date of any advance under the Line of Credit with the same effect as if made on and as of such date, and no Event of Default or Default shall be in existence on the date of the making of Loans or such advance or shall occur as a result thereof.

(e) No Litigation. No suit, action, investigation, inquiry or other proceeding by or before any arbitrator or any governmental authority shall be pending and no preliminary or permanent injunction or order by a state or federal court shall have been entered (i) in connection with this Agreement, the other Loan Documents, the APA or any of the transactions contemplated hereby or thereby, or (ii) which, in the reasonable judgment of the Lender, could reasonably be expected to have a material adverse effect upon the Borrower.

(f) Lien Searches. The Lender shall have received such secured transaction, judgment and docket searches as it deems appropriate.

(g) Insurance. The Lender shall have received certificates or policies evidencing the insurance required under Section 5.7.

(h) No Violation. Subject to Bankruptcy Court approval of this Agreement, the completion of the transactions contemplated hereby and by the Loan Documents shall not contravene, violate or conflict with, nor involve the Lender in violation of, any law, rule, or regulation applicable to any of them.

(i) Legal Matters. All legal matters incident to the transactions contemplated by this Agreement shall be satisfactory to counsel for the Lender.

(j) Interim DIP Order. The Bankruptcy Court shall have entered the Interim DIP Order in form and substance satisfactory to the Lender and its counsel and such shall be in full force and effect and shall not have been vacated, reversed, modified, amended or stayed.

(k) Execution of APA. The Borrower and the Lender shall have executed the APA and the APA shall not have been terminated.

(l) Cash Management System. The Borrower shall have implemented a cash management system satisfactory, in form and substance, to the Lender.

(m) Closing Date Budget. The Borrower shall have delivered to the Lender a Budget setting forth: (a) projected weekly operating cash receipts for each week, (b) projected weekly disbursements (including, specifically, from advances under the Line of Credit) for each week, and (c) a liquidity forecast of the Borrower, for each week commencing with the week ending as of December 15, 2017 (collectively, the “**Projected Information**”).

(n) Borrowing Notice. The Borrower shall have executed and delivered to the Lender a Borrowing Notice.

(o) No Default. No Default or Event of Default shall exist as on the date of such initial advance or shall occur as a result of making such initial advance.

4.2 Subsequent Advances. As a condition precedent to the Lenders’ obligation to make any advance after the initial advance, the following conditions shall all be satisfied on the date of such Advance:

(a) No Default. No Default or Event of Default shall exist on the date of such advance or shall occur as the result of making such advance.

(b) Representations. Without limiting the generality of Section 4.2(a), the representations and warranties contained in Section 3 shall be true and correct on and as of the date of the making of such advance with the same effect as if made on and as of such date.

(c) No Litigation. No litigation, investigation, or proceeding before or by any arbitrator or governmental authority shall be pending and no preliminary or permanent injunction or order by a state or federal court shall have been entered (i) in connection with this Agreement, the other Loan Documents, the APA or any of the transactions contemplated hereby or thereby, or (ii) which, in the reasonable judgment of the Lender, could reasonably be expected to have a material adverse effect on the Borrower.

(d) Borrowing Notice. The Borrower shall have executed and delivered to the Lender a Borrowing Notice.

(e) Non-Termination of APA. The APA shall not have been terminated.

(f) Additional Matters. All corporate and other proceedings, and all documents, instruments and other legal matters in connection with the transactions contemplated by this Agreement and the other Loan Documents shall be reasonably satisfactory, in form and substance, to the Lender.

4.3 Waiver of Conditions. The Lender may waive any condition in whole or in part.

SECTION 5. AFFIRMATIVE COVENANTS. The Borrower covenants and agrees that from and after the Closing Date and so long as any of the Obligations remain outstanding and unpaid, in whole or in part, the Borrower will observe the following covenants, unless the Lender shall otherwise consent in writing:

5.1 Financial Statements; Reports. The Borrower will furnish to Lender:

(a) on or prior to Tuesday of each week following the Closing Date, an updated Budget, in form and substance satisfactory to Lender, prepared on a cumulative, weekly roll forward basis, together with a report that sets forth for the immediately preceding four (4) week period a comparison of the actual cash receipts and cash disbursements to the Projected Information for such four (4) week period set forth in the Budget on a cumulative, weekly roll-forward basis, together with a certification from an authorized officer of Borrower that no material budget deviation has occurred or if a material budget deviation has occurred, a detailed explanation of such occurrence; and

(b) from time to time, such financial and other information as Lender may reasonably request.

5.2 Liabilities. The Borrower and any Subsidiaries will pay and discharge, at or before their maturity, all their respective Post-Petition Obligations (including, without limitation, tax liabilities and all employee wages as provided in the Fair Labor Standards Act, 29 U.S.C. §§206-207 and any successor statute), except those which may be contested in good faith. .

5.3 ERISA.

(a) The Borrower will furnish to Lender (i) within five (5) days after it has reason to know that any Reportable Event has occurred with respect to any Employee Pension Plan or that the PBGC has instituted or will institute proceedings under Title IV of ERISA to terminate any Employee Pension Plan or to appoint a trustee to administer any Employee Pension Plan, a statement setting forth the details as to such Reportable Event, termination or appointment proceedings and the action which it (or Employee Pension Plan sponsor other than the Borrower) proposes to take with respect thereto, together with a copy of the notice of such Reportable Event given to PBGC if a copy of such notice is available to the Borrower or any of its Controlled Group Members; and (ii) promptly after receipt thereof, a copy of any notice the Borrower or any of its Controlled Group Members or the sponsor of any Employee Pension Plan received from PBGC or the Internal Revenue Service which sets forth or proposes any action or determination with respect to such Employee Pension Plan.

(b) The Borrower will notify Lender of (i) any excise taxes which have been assessed or which the Borrower or any of its Controlled Group Members have reason to believe may be assessed against the Borrower or any of its Controlled Group Members by the Internal Revenue Service with respect to any Employee Pension Plan or (ii) any revocation of qualification under Code §401 or §403(b) which has occurred or which the Borrower or any of its Controlled Group Members have reason to believe may occur with respect to any Employee Pension Plan.

5.4 Notices. The Borrower will promptly give notice in writing to Lender of the occurrence of any of the following:

(a) any Event of Default or Default under this Agreement, or any event of default or similar occurrence under any instrument or other agreement of the Borrower entitling any Person to accelerate the maturity of any obligation of the Borrower or to exercise any other remedy against the Borrower;

(b) any strike, lock-out, boycott or any other labor trouble;

(c) the commencement of any material litigation, proceeding or dispute affecting the Borrower or any material dispute between the Borrower and any Person;

(d) any material and adverse change in the financial position, operations or business of the Borrower; or

any changes in the personnel holding the following positions with the Borrower at the time of closing: President, Chief Financial Officer and Chairman of the Board of Directors.

5.5 Environmental Matters; Compliance with Laws.

(a) Borrower, and its Subsidiaries, shall comply, and cause all properties, assets, and operations owned or used by such Borrower and its Subsidiaries to comply, with (i) all Laws, including, without limitation, all Environmental Laws and all other applicable zoning, occupational safety, health, employment, discrimination, labor and other Laws and regulations, (ii) the provisions and requirements of all franchises, licenses, permits and certificates of compliance and approvals issued by Governmental Bodies and with other like grants of authority held by the Borrower or its Subsidiaries in connection with its business, and (iii) all applicable material decrees, orders and judgments.

(b) Borrower shall promptly notify the Lenders in reasonable detail once it is aware of any failure by the Borrower or its Subsidiaries to comply with or perform or any breach or violation by the Borrower or its Subsidiaries in respect of any of the matters compliance with which is required under Section 5.5(a).

(c) The Borrower shall:

(i) immediately notify the Lender (and any other person that the Borrower is required to notify pursuant to any applicable laws) once it is aware of a Release or threatened Release of Hazardous Substances on, from, or near any of the properties owned or used by the Borrower which might cause Contamination;

(ii) immediately notify the Lender once an environmental investigation or clean-up proceeding is instituted by any Person in connection with such properties;

(iii) immediately notify the Lender of any citation, notification, complaint, or violation which the Borrower receives from any Person which relates to or pertains to the making, storing, handling, treating, disposing, generating, transporting or Release of any Hazardous Substances;

(iv) promptly upon the written request of the Lender, permit the Lender, its agents, contractors and other representatives, to enter into any property owned or used by the Borrower in order to make such report or assessment, and at such other times and as often as the Lender may reasonably request, the Borrower will make available at their offices to the Lender or its representatives such historical and operational information (including the results of all samples sent for analysis), correspondence with official bodies, and environmental reviews conducted prior to and after the Closing Date regarding its properties as are within the possession, custody or control of the Borrower or which are reasonably available to it, and

(v) make appropriate personnel employed by the Borrower having knowledge of such matters available for meetings with the Lender or its representatives; and

(vi) comply, and cause all properties, assets, and operations owned or used by the Borrower to comply, with all applicable federal, state, local and other environmental, zoning, occupational safety, health, employment, discrimination, labor and other laws and regulations.

(d) If the Borrower shall fail to fully execute and complete any requisite Remedial Action, the Lender may, but is not obligated to, make advances or payments toward performance or satisfaction of such Remedial Actions.

(e) If the Lender acquires equitable or legal title to any of the Borrower's property as a result of enforcement of remedies hereunder or under any other Loan Document, the Lender does not accept and shall not bear (nor shall any assignee or transferee of the Lender accept or bear) any responsibility for any Hazardous Substances in or about such property or for the actual or threatened Release thereof from such property. No provisions of the Loan Documents shall be interpreted to absolve or release the Borrower from any liability or responsibility which they may have to any Person, under any local, state or federal statute or regulation, for Remedial Actions with respect to any such Hazardous Substances or for the actual or threatened Release of any such Hazardous Substances.

(f) The Borrower shall defend, indemnify the Lender and hold the Lender harmless from and against all loss, liability, damage, cost, and expense, including without limitation, reasonable attorneys fees, fines, or other civil and criminal penalties or payments, for failure of the Collateral or any other operations, assets or property owned or used by the Borrower to comply in all respects with all environmental and other laws, caused, in whole or in part, regardless of fault, by the Borrower or by any past or present owner, occupier, tenant, subtenant, licensee, guest or other person provided, the Borrower shall not be liable for any loss, liability, damage, cost or expense under this Section 5.5(f) caused by the gross negligence or willful misconduct of the Lender. The provisions of this Section 5.5(f) shall survive payoff, release, foreclosure, or other disposition of this Agreement, the Collateral, or such other properties hereunder or otherwise. The Borrower shall remain liable hereunder regardless of any other provisions hereof which may limit the Borrower's liability.

(g) All sums advanced or paid by the Lender under this Section 5.5, including sums so advanced or paid in connection with any judicial or administrative investigation or proceeding relating thereto, and including, without limitation, reasonable attorneys' fees, fines, or other penalties or payments, and all of the Borrower's obligations to defend, indemnify and hold harmless the Lender, shall be deemed to be advances under the Line of Credit and shall be at once repayable. The Borrower's obligations with respect thereto shall be evidenced by, and shall bear interest at the highest rate provided in the Line of Credit Note and shall be secured and guaranteed, as the case may be, by the Security Documents.

5.6 Corporate Existence; Properties. The Borrower will not change its name and the Borrower will maintain:

- (a) its corporate existence and its qualification to do business and good standing in each jurisdiction in which qualification is necessary for the proper conduct of its businesses;
- (b) all licenses, permits and other authorizations necessary for the ownership and operation of its properties and businesses; and
- (c) its assets and properties (including all of the Collateral) in substantially the state of repair, order and condition as on the date hereof, reasonable wear and tear or loss by casualty excepted.

5.7 Insurance.

(a) The Borrower shall carry at all times insurance covering risks, in amounts at least equal to and subject to terms no less favorable than the insurance maintained by the Borrower as of the Petition Date, and pay all premiums on the policies for such insurance when and as they become due and do all other things necessary to maintain such policies in full force and effect. The Borrower shall from time to time, upon request by the Lender, promptly furnish or cause to be furnished to the Lender evidence, in form and substance satisfactory to the Lender, of the maintenance of all insurance required to be maintained by this Section 5.7 including, but not limited to, such originals or copies, as the Lender may request, of policies, certificates of insurance, riders and endorsements relating to such insurance and proof of premium payments.

(b) The Borrower shall cause all hazard insurance policies to provide, and the insurers issuing such policies to certify to the Lender, that:

(i) the interest of the Lender shall be insured regardless of any breach or violation by Borrower or the holder or owner of the policies of any warranties, declarations or conditions contained in such policies and the Lender shall have the right, in its own name or the name of the Borrower, to file claims, receive and give acquittance for any payments and execute any and all endorsements or other documents necessary to effect the collection, compromise or settlement of any claims;

(ii) if such insurance be proposed to be canceled or materially changed for any reason whatsoever, such insurer will promptly notify the Lender and such cancellation or change shall not be effective, as to the Lender, for thirty (30) days after receipt by Lender of such notice, unless the effect of such change is to extend or increase coverage under the policy;

(iii) the Lender will have the right, at its election, to remedy any default in the payment of premiums within thirty (30) days of notice from the insurer of such default; and

(iv) loss payments in each instance will be payable to the Lender as lender loss payee, or otherwise.

(c) If the Borrower shall fail at any time or times hereafter to obtain and maintain any of the policies of insurance required hereby, or fail to pay any premium in whole or in part relating to any such policies, then Lender may, but it shall have no obligation to do so, obtain and cause to be maintained any or all of such policies, and pay any part or all of the premiums due thereunder, without thereby waiving any default by Borrower, and any sums so disbursed by Lender shall become a part of the Obligations secured by the Collateral, payable on demand and, until paid, shall bear interest at the Default Rate.

5.8 Books and Records. The Borrower will maintain accurate and complete records and books of account with respect to all its operations in accordance with GAAP, and will permit officers or representatives of the Lender to examine and make excerpts from such books and records and to visit and inspect its properties, both real and personal, at all reasonable times provided such examination will not interfere with Borrower's operations.

5.9 Location of Business. The Borrower will not change the location of any place of business of Borrower, whether the establishment of a new place of business or the discontinuance of a present place of business.

5.10 Group Health Plans. The Borrower will comply in all material respects with the group health plan COBRA Continuation Coverage requirements of Code §4980B(f), with all provisions of §1862(b)(1) of the Social Security Act and the provisions of the Health Insurance Portability and Accountability Act of 1996. The Borrower will furnish to Lender, as soon as possible and in any event within thirty (30) days after the Borrower knows or has reason to know, notice that the Borrower is not in compliance with any provision of Code §4980B(f) or §1862(b)(1) of the Social Security Act.

5.11 Location of Collateral. All Collateral and all of the Borrower's business records will at all times be situated at the locations set forth in Schedule 3.8, and the Borrower will provide the Lender with at least sixty (60) days' advance written notice of any change in such locations.

5.12 APA Covenants. The Borrower will comply with all covenants in the APA applicable to the Borrower.

SECTION 6. NEGATIVE COVENANTS.

The Borrower covenants and agrees that, from and after the Closing Date and so long as any of the Obligations remain outstanding and unpaid, in whole or in part, the Borrower will observe the following covenants unless the Lender shall otherwise consent in writing:

6.1 Debt. The Borrower will not create, incur, assume or suffer or permit to exist any Debt, including indebtedness for borrowed money or any indebtedness constituting the deferred portion of the purchase price of any property, except (collectively, the "**Permitted Debt**"):

- (a) any Obligations, whether evidenced by the Line of Credit Note or any other instruments;
- (b) Debt related to Permitted Expenses;

- (c) Pre-Petition Obligations; and
- (d) any other Debt permitted under the Loan Documents.

6.2 Liens.

(a) The Borrower will not create, assume, or suffer to exist, any Lien of any kind upon the Collateral or any of its other assets, whether now owned or hereafter except the following (collectively, the "**Permitted Encumbrances**");

(i) Liens identified on Schedule 6.2 hereof;

(ii) any adequate protection or replacement liens that may be granted to Century Medical, Inc. with respect to diminution in value, if any, of its interests in the Borrower's property resulting from the use, sale or lease of the Borrower's property (including the use of the cash and securities in the cash collateral accounts) or the automatic stay

(iii) Liens for taxes not yet payable;

(iv) mechanics', materialmen's, warehousemen's, carriers' or other like Liens arising in the ordinary course of business arising with respect to obligations which are not overdue for a period longer than thirty (30) days;

(v) other encumbrances consisting of zoning restrictions, easements, restrictions on the use of real property or minor irregularities in the title thereto, which do not arise in connection with the borrowing of, or any obligation for the payment of, money and which, in the aggregate, do not materially detract from the value of the business, properties or assets of the Borrower; and

(vi) the Liens granted to the Lender.

6.3 Investments, Loans and Advances. The Borrower will not make or suffer to exist any Investment (by way of transfer of property, contribution to capital, purchase of stock, securities, partnership or other ownership interests or evidence of indebtedness, acquisition of the business or assets or otherwise) in, or make or suffer to exist any advances or loans to, any Person, except that:

(a) the Borrower may extend trade credit under usual and customary arm's length terms in the ordinary course of business; and

(b) the Borrower may invest money consistent with the provisions of Section 345 of the Bankruptcy Court or as may be permitted by order of the Bankruptcy Court.

6.4 Dividends; Distributions; Acquisition of Capital Stock. The Borrower will not declare or pay any dividends or make any other distribution (whether in cash or in property) on any shares of its capital stock or any other securities (or rights, options or warrants to purchase such shares), and the Borrower will not purchase, redeem, retire or otherwise acquire for value any shares of the capital stock or any other securities (or rights, options or warrants to purchase such shares) of the Borrower.

6.5 Disposition of Assets. The Borrower will not convey, sell, lease, or otherwise transfer or dispose of all or any part of its properties, assets or business except that (a) the Borrower may sell used equipment no longer used or useful in connection with their respective businesses, (b) the Borrower may sell inventory in the ordinary course of its business, and (c) the Borrower may sell the Purchased Assets pursuant to the APA or pursuant to an order of the Bankruptcy Court permitting sale of the Purchased Assets to a buyer other than the Lender provided, in all cases, all Obligations hereunder are paid in full at closing on such sale.

6.6 Continuance of Business. The Borrower will not engage in any line of business other than those in which the Borrower is actively engaged on the effective date of this Agreement.

6.7 Removal and Protection of Property. The Borrower will not remove (other than in the ordinary course of business) any equipment, inventory, or general intangibles from the place of business where presently located, nor permit the value of any property to be impaired or any equipment to become a fixture or an accession to other goods.

6.8 Cash Collateral. The Borrower shall not request the entry of an order of the Bankruptcy Court authorizing the use of cash collateral pursuant to Section 363 of the Bankruptcy Code while any Obligations are outstanding unless the terms of such order are reasonably acceptable to the Lender.

6.9 Handling of Hazardous Substances. The Borrower will not permit use in their businesses or operations, or produce as a result or as a by-product of their businesses or operations, or store or hold at any site or location at which it conducts their businesses or operations, or at any other property, Hazardous Substance unless the Borrower strictly and fully comply with all requirements of any applicable law, regulation, decision or edict relating to the special handling, collection, storage, treatment, disposal, or transportation of such Hazardous Substance. The Borrower will not permit the Release or threatened Release of any Hazardous Substance on, from, or near their respective properties which might cause Contamination.

6.10 Use of Proceeds. The Borrower agrees that it will not, nor will it permit any Subsidiary to, directly or indirectly, apply any part of the proceeds of the Advances to the purchasing or carrying of any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System, or any regulations, interpretations or rulings thereunder

6.11 APA Negative Covenants. The Borrower will comply with all covenants in the APA applicable to the Borrower.

SECTION 7. EVENTS OF DEFAULT, REMEDIES.

7.1 Events of Default. The following shall constitute Events of Default:

(a) Non-Payment. (i) Failure by the Borrower to pay the principal of or accrued interest on the Line of Credit Note or any other instrument evidencing any Obligation when due, or (ii) five (5) days following written notice of the failure of the Borrower to pay any other amount payable to Lender, whether under this Agreement or otherwise, when due;

(b) Falsity of Representations and Warranties. Any representation or warranty made by the Borrower in this Agreement or in any other Loan Document or in any certificate, financial or other statement furnished at any time under or in connection with this Agreement or any other Loan Document shall be false or misleading in any material respect as of the date made or deemed to have been made;

(c) Failure to Perform Certain Covenants. Five (5) days following written notice of failure by the Borrower to observe or perform any other covenants, conditions or provisions contained in this Agreement or in any other Loan Document unless, within such five (5) day period, such failure is cured; *provided, however*, that, the five (5) day notice provision shall not apply to any Event of Default described in Sections 7.1(a)(i) or 7.1(b) hereof or any other covenant, condition or provision which is not curable;

(d) Material Adverse Effect. The occurrence of a Material Adverse Effect, as defined in the APA;

(e) Default Under Other Loan Documents or the APA. An Event of Default by the Borrower or similar event shall have occurred and be continuing under any Loan Document or under the APA;

(f) Unenforceability. (i) Any material provision of any of the Loan Documents shall at any time for any reason cease to be a valid and binding obligation of the Borrower, or shall be declared to be null and void or (ii) the validity or enforceability thereof shall be contested by the Borrower or any other Person, or the Borrower shall deny that it has any further liability or obligation under any Loan Document;

(g) Lender's Liens. The Liens granted by the Borrower to the Lender shall at any time fail to be first priority perfected Liens, subject only to Permitted Encumbrances, or the Borrower shall so allege in any writing;

(h) Judgments. One or more judgments are entered against the Borrower which have a material adverse affect upon the Collateral;

(i) Appointment of Trustee. The Bankruptcy Court shall enter an order appointing a trustee under Section 1104(a) of the Bankruptcy Code in the Reorganization Case of the Borrower;

(j) Final DIP Order. The Bankruptcy Court shall not have entered the Final DIP Order on or before the thirtieth (30th) day following the Petition Date or the Final DIP Order shall not have become a Final Order on or before the sixtieth (60th) day following the Petition Date;

(k) Appointment of Examiner. The Bankruptcy Court shall enter an order appointing an examiner for the Borrower with powers beyond those stated in Sections 1106(a)(3 and (4) of the Bankruptcy Code;

(l) Modification of Orders. The Interim DIP Order or the Final DIP Order, as applicable, shall be amended, supplemented, vacated, stayed or otherwise modified without the written consent of the Lender;

(m) Dismissal, Conversion, Priority Administrative Expenses. The Reorganization Case of the Borrower shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code; or an application shall be filed by the Borrower for the approval of, or there shall arise, any claim which is, an administrative expense claim having priority over the administrative expense claim granted to the Lender, other than with respect to any administrative expense claim granted to Century Medical, Inc. pursuant to a cash collateral order entered by the Bankruptcy Court that is limited in amount to the lesser of (i) diminution in value of Century Medical Inc.'s collateral as of the Petition Date, and (ii) the amounts owed to Century Medical Inc. pursuant to that certain Secured Note Purchase Agreement dated September 2, 2011 in the maximum aggregate amount of Four Million Dollars (\$4,000,000);

(n) Relief from Automatic Stay. The Bankruptcy Court shall enter an order granting relief from the automatic stay applicable under Section 362 of the Bankruptcy Code to the holder of any security interest in any material Purchased Asset;

(o) Noncompliance with Interim DIP Order or Final DIP Order. The Borrower shall fail to comply with the terms of the Interim DIP Order or, upon its entry, the Final DIP Order;

(p) Noncompliance with Cash Collateral Order. The Borrower shall fail to comply with the terms of any order of the Bankruptcy Court allowing for the use of cash collateral.

(q) Payment of Pre-Petition Obligations. The Borrower shall make any payment on account of a Pre-Petition Obligation, other than as approved by the Bankruptcy Court provided the Lender shall not be deemed to have waived its rights to object to any motion to approve such payments; or

(r) Claims Against Lender. Commencement by the Borrower, or its estate or any other Person of any litigation, arbitration or other proceeding relating to any claim or action against the Lender arising or alleged to arise out of any conduct in connection with Loan Documents or the APA;

7.2 Remedies.

(a) Upon the occurrence of an Event of Default, the Lender may, by written notice to Borrower, terminate immediately and irrevocably the Line of Credit, the Line of Credit Commitment, and any other obligation of the Lender to make any advances to or for the account of the Borrower, and declare the Line of Credit Termination Date to have occurred and the Line of Credit Note, and all other instruments evidencing the Obligations to be due and payable, whereupon the principal amount of the Line of Credit Note and all outstanding Obligations, together with accrued interest thereon and all other amounts payable thereunder, shall become immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the documents evidencing the same to the contrary notwithstanding;

(b) Upon the occurrence of an Event of Default and following five (5) days written notice to the Borrower and counsel to the Creditors Committee in the Reorganization Case, if one has been appointed, (the “*Committee*”) the automatic stay of Section 362 of the Bankruptcy Code shall be deemed automatically vacated and the Lender shall be immediately permitted to, among other things, pursue any and all of its remedies against the Borrower and the Collateral unless, prior to the expiration of such five (5) day period, the Bankruptcy Court, upon motion of the Debtor or the Committee and hearing with an opportunity for the Lender to be heard, orders otherwise, provided, however, the automatic stay shall be deemed vacated immediately upon entry of the Interim DIP Order to the extent necessary to allow the Lender to enforce its entitlement to payment in full of all Obligations from the proceeds of sale of any Purchased Assets;

(c) Upon the occurrence of an Event of Default the Lender shall have all rights and, subject to obtaining any necessary relief from the automatic stay, all remedies contained in this Agreement or in any other Loan Document, and all the rights and remedies of a secured party under the UCC. In addition to all such rights and remedies, subject to obtaining any necessary relief from the automatic stay, the Lender may sell, lease or otherwise dispose of the Collateral, or any part thereof, at public or private sale, for cash, credit or any combination thereof. The Lender shall have the right to bid and purchase at such sale or sales. The Proceeds of any sale or other disposition of all or any part of the Collateral upon which Lender has a security interest, after payment of all costs and expenses of sale, including retaking, holding, preparing for sale, selling and the like and also including reasonable attorneys’ fees and legal expenses incurred by the Lender, shall be applied by the Lender to the then outstanding balance of the Obligations and any surplus shall be paid by the Lender to the Borrower. The Borrower shall be liable to the Lender for any deficiency;

(d) Upon the occurrence of an Event of Default and subject to obtaining any necessary relief from the automatic stay, the Lender shall have the right to enter and remain upon the various premises of the Borrower without cost or charge to Lender, and to use the same, together with materials, supplies, books and records of the Borrower, for the purpose of preparing for and conducting the sale of Collateral, whether by foreclosure, auction or otherwise. In addition, the Lender may remove from such premises the Collateral and copies of any records with respect thereto, to the premises of the Lender or any designated agent of the Lender for such time as the Lender may desire, in order to effectively collect or liquidate the Collateral;

(e) Upon the occurrence of an Event of Default, the Borrower irrevocably waives the right to direct the application of any and all payments (including Proceeds of Collateral) at any time or times thereafter which may be received by the Lender by or for the benefit of the Borrower.

7.3 Right of Setoff. Upon the occurrence of a Default or an Event of Default, the Lender shall have the right, in addition to all other rights and remedies available to it, to set off against the unpaid balance of the Obligations, any debt owing to the Borrower by the Lender.

7.4 No Marshalling, Etc., Required. If an Event of Default shall have occurred and be continuing, the Lender shall not be required to marshal any present or future security for, or guarantees of, the Obligations or to resort to any such security or guarantee in any particular order and the Borrower waives, to the fullest extent that it lawfully can, (a) any right it might have to require the Lender to pursue any particular remedy before proceeding against it, and (b) any right to the benefit of, or to direct the application of the proceeds of any Collateral until the Obligations have been paid in full.

7.5 Site Assessments. In connection with the Lender's consideration of enforcement or preservation of rights under any Loan Document, if an Event of Default shall occur, the Borrower shall permit such persons ("Site Reviewers") as the Lender may select to visit all properties owned or used by the Borrower and perform such environmental and other site investigations and assessments thereof ("Site Assessments") for the purpose of determining whether such properties are subject to any Contamination or other condition which could result in any liability, cost or expense to the owner or occupier thereof relating to Hazardous Substances or otherwise. Such Site Assessments may include above- and below-the-ground sampling and/or testing for Contamination and such other tests as may be necessary in the opinion of the Site Reviewers. The Borrower shall supply to the Site Reviewers such historical and operational information, including the results of all samples sent for analysis, correspondence with official bodies and previous environmental audits or environmental reviews regarding its properties as are within its possession, custody or control or which are reasonably available to it, and will make available for meetings with the Site Reviewers appropriate personnel employed by the Borrower having knowledge of such matters. The cost of performing all Site Assessments shall be paid by the Borrower within five days after demand by the Lender, together with interest thereon at the Default Rate from and after such fifth day until paid. The provisions of this Section 7.5 are in addition to all rights of the Lender under this Agreement and the other Loan Documents.

7.6 Remedies Cumulative. Lender may exercise any of its rights and remedies set forth in this Loan Agreement and the other Loan Documents. The remedies of Lender shall be cumulative and concurrent, and may be pursued singly, successively, or together, at its sole discretion, and may be exercised as often as the occasion therefore shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

SECTION 8. MISCELLANEOUS.

8.1 No Waiver; Cumulative Remedies. No failure or delay on the part of the Lender in exercising any right, power or privilege hereunder or under the other Loan Documents shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude or require any other or further exercise thereof or the exercise of any other right, power or privilege. The Lender shall not be deemed, by any act of omission or commission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the Lender, and then only to the extent specifically set forth in writing. A waiver with respect to one event shall not be construed as continuing or as a bar to or a waiver of any right or remedy with respect to a subsequent event. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

8.4 Payment of Expenses and Taxes. In addition to payment of the expenses provided for in Section 8.3, the Borrower agrees to pay, and to save the Lender harmless from any delay in paying, stamp and other similar taxes, if any, including, without limitation, all levies, impositions, duties, charges or withholdings, together with any penalties, fines or interest thereon or other additions thereto, which may be payable or determined to be payable in connection with the execution and delivery of this Agreement and the Loan Documents or any modification of any thereof or any waiver or consent under or in respect of any thereof.

8.5 Survival of Representations and Warranties. All representations, warranties, covenants and agreements made in this Agreement and all other Loan Documents shall survive the execution and delivery of the Loan Documents and the making of the Loans hereunder. All such representations and warranties shall be deemed to be made again at the date of each request for a borrowing under the Line of Credit. The provisions of Sections 5.5, 7.5, 8.3, 8.4, 8.9, 8.10 and 8.11 hereof shall survive payment of the Obligations.

8.6 Successors. This Agreement shall be binding upon and inure to the benefit of the Borrower and the Lender and their respective successors and assigns, except that the Borrower may not assign or transfer its rights hereunder without the prior written consent of the Lender.

8.7 Construction. This Agreement, all Loan Documents, and the rights and obligations of the parties hereunder and thereunder, shall be governed by and construed and interpreted in accordance with, the domestic internal laws of State of Delaware without regard to its rules pertaining to conflict of laws. The Section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. At all times prior to termination of the APA, to the extent of any direct conflict between the representations and covenants of the Borrower hereunder and the representations and covenants of the Seller under the APA, the representations and covenants of the Seller under the APA shall control. At all times after termination of the APA, the representations and covenants of the Borrower hereunder shall be fully enforceable notwithstanding any direct conflict with the representations and covenants of the Seller under the APA.

8.8 Severability. Any provision contained in this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

8.9 Indemnity. The Borrower hereby agrees to pay, assume liability for, and indemnify, protect, defend, save and keep harmless the Lender from and against, any and all liabilities, obligations, losses, damages, settlements, claims, actions, suits, penalties, costs and expenses (including, but not limited to, legal and investigative fees and expenses) of whatsoever kind and nature, including, but not limited to claims based upon negligence, strict or absolute liability, liability in tort, latent and other defects (whether or not discoverable), and any claim for patent, trademark or copyright infringement which may from time to time be imposed on, incurred by or asserted against the Lender (whether or not any such claim is also indemnified or insured against by any other person) relating to or resulting from this Agreement, any Loan Document, or any of the transactions contemplated herein or therein (but excluding the APA, the Ancillary Documents, as defined in the APA, or any of the transactions contemplated therein) except to the extent arising out of Lender's gross negligence or willful misconduct. The provisions of this Section 8.9 shall survive the payoff, release, foreclosure or other disposition, as applicable, of this Agreement, the Obligations or the Collateral.

8.10 Waiver of Trial by Jury: Jurisdiction.

(a) To the extent permitted by law, each party to this Agreement agrees that any suit, action, or proceeding, whether claim or counterclaim, brought or instituted by either party hereto or any successor or assign of any party on or with respect to this Agreement or any other Loan Document or which in any way relates, directly or indirectly, to the Loans or any event, transaction, or occurrence arising out of or in any way connection with the Loans, or the dealings of the parties with respect thereto, shall be tried only by a court and not by a jury. EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION, OR PROCEEDING. THE BORROWER ACKNOWLEDGES AND AGREES THAT THIS SECTION 8.10 IS A SPECIFIC AND MATERIAL ASPECT OF THIS AGREEMENT BETWEEN THE PARTIES AND THAT THE LENDER WOULD NOT EXTEND THE LOANS TO THE BORROWER IF THIS WAIVER OF JURY TRIAL SECTION WERE NOT A PART OF THIS AGREEMENT.

(b) To the extent permitted by law, for the purpose of any suit, action or proceeding arising out of or relating to this Agreement, the Line of Credit Note or the Loan, the Borrower hereby irrevocably consents and submits to the jurisdiction and venue of the Courts of the State of Delaware, the Federal District Court for the District of Delaware and the United States Bankruptcy Court for the District of Delaware, and agrees to accept and acknowledge all service of process in connection with any such matter by certified or registered mail or by any other legally permissible means. The Borrower irrevocably waives any objection which it may now or hereinafter have to the laying of the venue of any suit, action or proceeding brought in such court and any claim that such suit, action or proceeding brought in such a court has been brought in an inconvenient forum and agrees that service of process in accordance with the foregoing sentence shall be deemed in every respect effective and valid personal service of process upon the Borrower. The provisions of this Section 8.10(b) shall not limit or otherwise affect the right of the Lender to institute and conduct action in any other appropriate manner, jurisdiction or court.

8.11 Actions Against Lender: Release.

(a) Any action brought by the Borrower against the Lender which is based, directly or indirectly, on this Agreement or any other Loan Document or any matter in or related to this Agreement or any other Loan Document, including but not limited to the making of the Loans or the administration or collection thereof, shall be brought only in the Courts of the State of Delaware or the Federal District Court or Bankruptcy Court for the District of Delaware.

(b) Upon full payment and satisfaction of the Loans and the interest thereon, as provided in Section 2 hereof, the parties shall thereupon automatically each be fully, finally, and forever released and discharged from any further claim, liability or obligation in connection with the Loans except as expressly set forth herein, except to the extent an payment received by the Lender is determined to be a preference or similar voidable transfer, in which case the claims of the Lender shall not be released.

8.12 Performance by Lender. If the Borrower shall fail to observe or perform any of the terms, agreements or covenants contained in this Agreement, or in any other Loan Document, the Lender may, in its discretion, but without any obligation or duty to do so, and without waiving any Default, or Event of Default, perform any of such terms, agreements or covenants, in part or in whole, and any money advanced or expended by the Lender in or toward the fulfillment of such terms, agreements or covenants, shall be due on demand and become a part of and be added to the indebtedness due under the Line of Credit Note and secured as herein provided with interest thereon at the rate specified in such Note from the date of the respective advance or expenditure. Lender's rights contained in this Section 8.12 shall be in addition to all of Lender's rights under Section 5.5(b) and otherwise, and Lender may, at its sole election, exercise any one or more, or all, of such rights alternatively or concurrently.

8.13 Counterparts. This Agreement may be executed by facsimile or electronic PDF signature and in any number of counterparts with then same effect as if the signatures thereto and hereto were upon the same instrument, but all of such counterparts taken together shall be deemed to constitute one and the same instrument.

8.14 Further Actions. The Borrower shall execute and deliver such documents and instruments, and take such other actions, as the Lender deems necessary to consummate the transactions described in this Agreement.

8.15 Section 506(c) Waiver. In consideration of the agreements of the Lender stated in the Loan Documents, each Borrower hereby agrees not to assert and affirmatively waives any claim it otherwise might have under Section 506(c) of the Bankruptcy Code and agrees that the Collateral securing the Obligations may not be charged with costs or expenses or administration including Permitted Expenses and other expenses which are permitted uses of the proceeds of the Line of Credit.

8.16 Section 510, 544, 547, 548 and 549 Waiver, Etc. In consideration of the agreements of the Lender stated in the Loan Documents, the Borrower hereby agrees not to assert and hereby affirmatively waives any claim it may have under Sections 510, 544, 547, 548, or 549 of the Bankruptcy Code against the Lender, in any form or manner whatsoever, any right it may have to challenge the extent and validity of the Liens granted to the Lender as security under the Loan Documents.

8.17 Entire Agreement. This Agreement and the Loan Documents represent the entire agreement between the Lender and the Borrower with respect to the financing transactions to which they relate, and cannot be changed or amended except by an agreement in writing signed by the party against whom enforcement of the change or amendment is sought.

8.18 Bankruptcy Court Approval. Neither this Agreement, nor the Loan Documents, shall be binding upon any party prior to entry of the Interim Final DIP Order.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

BORROWER:

DEXTERA SURGICAL INC.
As Debtor-In-Possession

By: /s/ Julian Nikolchev
Name: Julian Nikolchev
Title: President and CEO

LENDER:

AESCULAP, INC., or its designee

By: /s/ Keith Moser
Name: Keith Moser
Title: VP of Corporate Finance and IT Services

and

By: /s/ Charles A. DiNardo
Name: Charles A. DiNardo
Title: President

The following exhibits and schedules to this Agreement have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The Company will furnish supplementally copies of these omitted exhibits and schedules to the Securities and Exchange Commission upon request.

Schedule A Copyrights, Licenses, Patents and Trademarks

Schedule 3.8 Location of Collateral

Schedule 6.2 Certain Permitted Encumbrances

Exhibit A Final DIP Order

Exhibit B Interim DIP Order

LINE OF CREDIT NOTE

\$1,500,000.00

Date: December 15, 2017

FOR VALUE RECEIVED, DEXTERA SURGICAL, INC., a Delaware corporation formerly known as “Cardica, Inc.” (the “Maker”), promises to pay to the order of AESCULAP, INC., a California corporation, or its designee (the “Payee”), at its address at 3773 Corporate Parkway, Center Valley, PA 18034 or at such other place as Payee may from time to time designate in writing, the principal sum of One Million Five Hundred Thousand Dollars (\$1,500,000.00) or so much thereof as may be advanced by Payee pursuant to the Loan Agreement, together with interest on the unpaid principal balance of this Note, on the terms and conditions described below.

1. Loan Agreement. This Note is the Note referred to in Section 2.2 of the Post-Petition Loan and Security Agreement dated the date hereof between the Maker and the Payee (including all amendments, restatements, extensions and substitutions therefor or thereof, the “Loan Agreement”), and is entitled to all the benefits and security referred to in the Loan Agreement. The terms of the Loan Agreement are incorporated by reference herein. All capitalized terms used in this Note without definition which are defined in the Loan Agreement shall have the meanings ascribed to such terms therein

2. Interest.

(a) Subject to Section 4 hereof, from the date on which the first disbursement is made under the Loan Agreement, interest shall accrue on the unpaid principal amount of this Note at a fixed annual rate equal to nine and one quarter percent (9.25%) (the “Contract Rate”).

(b) Accrued interest shall be payable monthly in arrears commencing on the first (1st) Business Day of January, 2018 and continuing on the first (1st) Business Day of every month thereafter (each an “Interest Payment Date”) until the principal amount of, and all accrued interest on, this Note, including, without limitation, the PIK Interest, have been paid in full; provided, however, that on the date of each scheduled Interest Payment Date the payment of the interest accrued on the outstanding principal balance of this Note shall be deferred (the aggregate amount of such deferred payments of interest, the “PIK Interest”) until the Line of Credit Termination Date. All unpaid PIK Interest shall: (i) be added to the unpaid principal balance of this Note on each Interest Payment Date; (ii) be due and payable, together with all interest accrued thereon, in cash, on the Line of Credit Termination Date or acceleration of this Note pursuant to the terms hereof; and (iii) bear interest at a fixed rate per annum equal to the Contract Rate or the Default Rate, as applicable.

(c) Any interest that is not paid when due shall itself earn interest at the rate provided herein until the same has been paid in full. Interest shall be calculated on the basis of a year of three hundred sixty (360) days containing twelve (12) months with thirty (30) days each.

3. Payment of Principal and Accrued Interest; Line of Credit Termination Date. Unless accelerated by Payee upon an Event of Default, Maker shall pay the entire outstanding principal balance of this Note, and all accrued and unpaid interest thereon (including PIK Interest), on the Line of Credit Termination Date.

4. Default Rate. Notwithstanding the above, on the occurrence of any Default or Event of Default, this Note shall immediately and automatically begin to bear interest at the Default Rate. The Maker recognizes and acknowledges that: (i) this Section 4 is a material inducement for the Payee to extend credit to the Maker; (ii) the Payee would not have extended credit to the Maker in the absence of the provisions of this Section 4; (iii) amounts required to be paid by the Maker under this Section 4 represents compensation for increased risk to the Payee that the Debt evidenced hereby will not be repaid; and (iv) amounts required to be paid by the Maker under this Section 4 is not a penalty and represents a reasonable estimate of (x) the cost to the Payee in allocating its resources (both personnel and financial) to the on-going review, monitoring, administration, and collection of the Debt evidenced hereby, and (y) compensation to the Payee for losses that are difficult to ascertain.

5. Post-Judgment Interest. The interest rate or rates provided in this Note shall apply to the indebtedness evidenced hereby before, on and after the date or dates on which Payee enters judgment on this Note.

6. Security. This Note is secured by, and entitled to all of the benefits of, the Loan Agreement, the Security Documents and all other Loan Documents.

7. Default: Rights, Remedies. On the occurrence of any Event of Default, Payee may exercise any and all rights and remedies set forth in the Loan Documents or otherwise available under applicable law.

8. Waivers. Maker and all endorsers, sureties and guarantors, jointly and severally: (i) waive presentment for payment, demand, notice of demand, notice of nonpayment or dishonor, protest and notice of protest of this Note, and all other notices (not expressly provided for in this Note) in connection with the delivery, acceptance, performance, default, or enforcement of the payment of this Note; (ii) agree that the liability of any of them shall be unconditional without regard to the liability of any other party and shall not be affected in any manner by any indulgence, extension of time, renewal, waiver or modification granted or consented to by Payee at any time; and (iii) consent to any and all indulgences, extensions of time, renewals, waivers or modifications granted or consented to by Payee at any time.

9. Waiver of Trial by Jury; Jurisdiction.

(a) Maker agrees that any suit, action, or proceeding, whether claim or counterclaim, brought or instituted by either party hereto or any successor or assign of any party on or with respect to this Note or under any other Loan Document or which in any way relates, directly or indirectly, to this Note or any other Loan Document or any event, transaction, or occurrence arising out of or in any way connected with the transaction contemplated by either this Note or any other Loan Document, or the dealings of the parties with respect thereto, shall be tried only by a court and not by a jury. **MAKER HEREBY EXPRESSLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION, OR PROCEEDING. MAKER ACKNOWLEDGES AND AGREES THAT THIS SECTION 9 IS A SPECIFIC AND MATERIAL ASPECT OF THIS NOTE.**

(b) For the purpose of any suit, action or proceeding arising out of or relating to this Note or any other Loan Document, the Maker hereby irrevocably consents and submits to the jurisdiction and venue of any of the courts of the Courts of the State of Delaware, the Federal District Court for the District of Delaware and the United States Bankruptcy Court for the District of Delaware. Maker irrevocably waives any objection which it may now or hereinafter have to the laying of the venue of any suit, action or proceeding brought in such court and any claim that such suit, action or proceeding brought in such a court has been brought in an inconvenient forum and agrees that service of process in accordance with the foregoing sentence shall be deemed in every respect effective and valid personal service of process upon such Maker. The provisions of this Section 9(b) shall not limit or otherwise affect the right of Payee to institute and conduct action in any other appropriate manner, jurisdiction or court.

10. Enforcement Costs. In any action under this Note or any other Loan Document, Payee may recover all reasonable costs of suit and other reasonable expenses in connection with the action, including reasonable attorneys' fees paid or incurred by Payee.

11. Payee's Waivers. Payee shall not be deemed, by any act of omission or commission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by Payee. Such a written waiver signed by Payee shall waive Payee's rights and remedies only to the extent specifically stated in such written waiver. A waiver as to one or more particular events or defaults shall not be construed as continuing or as a bar to or waiver of any right or remedy as to another or subsequent event or default.

12. Governing Law. This Note shall be governed by and construed according to the laws of the State of Delaware.

13. Binding Effect. The provisions of this Note shall bind and inure to the benefit of Maker and Payee and their respective successors, heirs, personal representatives and permitted assigns.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, Maker, intending to be legally bound hereby, and intending this to be a sealed instrument has caused this Note to be duly executed by its authorized officers the day and year first above written.

DEXTERA SURGICAL INC.

As Debtor-in-Possession

By: /s/ Julian Nikolchev

Name: Julian Nikolchev

Title: President and CEO