As filed with the Securities and Exchange Commission on January 19, 2021.

Registration No. 333-

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

FORM S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

Bioventus Inc.
(Exact name of registrant as specified in its charter)

Delaware	3841	81-0980861
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification No.)

4721 Emperor Boulevard, Suite 400
Durham, North Carolina 27703
(919) 474-6700
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Kenneth M. Reali
Chief Executive Officer
Bioventus Inc.
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(919) 474-6700
(Name, address, including zip code, and telephone number, including area code, of agent for service)

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Approximate date of commencement of proposed sale to the public: As soon as practicable after this Registration Statement is declared effective.

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box. ☐

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	☐	Accelerated filer	☐
Non-accelerated filer	☒ (Do not check if a smaller reporting company)	Smaller reporting company	☐
		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 7(a)(2)(B) of the Securities Act. ☒

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Proposed maximum aggregate offering price(1)(2)	Amount of registration fee
Class A common stock, $0.001 par value per share	$100,000,000	$10,910

(1) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o) under the Securities Act of 1933, as amended.
(2) Includes the offering price of shares of Class A common stock that may be sold if the over-allotment option to purchase additional shares of Class A common stock granted by the Registrant to the underwriters is exercised. See "Underwriting."

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

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The information in this preliminary prospectus is not complete and may be changed. These securities may not be sold until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state or other jurisdiction where the offer or sale is not permitted.

Subject to completion, dated January 19, 2021
Preliminary prospectus

Shares

bioventus

Class A common stock

This is the initial public offering of shares of Class A common stock of Bioventus Inc. We are offering shares of our Class A common stock.

Prior to this offering, there has been no public market for our Class A common stock. The estimated initial public offering price is between $ and $ per share. We expect to list our Class A common stock on The Nasdaq Global Market, or Nasdaq, under the symbol "BVS."

We will use the net proceeds that we receive from this offering to purchase from Bioventus LLC newly-issued common membership interests of Bioventus LLC, which we refer to as the LLC Interests. There is no public market for the LLC Interests. The purchase price for the newly-issued LLC Interests will be equal to the initial public offering price of our Class A common stock, less the underwriting discounts and commissions referred to below. We intend to cause Bioventus LLC to use the net proceeds it receives from us in connection with this offering as described in "Use of proceeds." Simultaneous with this offering, certain of the indirect owners of membership interests in Bioventus LLC, whom we refer to as Former LLC Owners, will exchange their indirect ownership interests for shares of Class A common stock and one other holder of membership interests in Bioventus LLC, whom we refer to as the Continuing LLC Owner, will retain its membership interests in Bioventus LLC.

We will have two classes of common stock outstanding after this offering: Class A common stock and Class B common stock. Each share of Class A common stock and Class B common stock entitles its holder to one vote on all matters presented to our stockholders generally. Immediately following this offering, all of our Class B common stock will be held by the Continuing LLC Owner, on a one-to-one basis with the number of LLC Interests it owns. Immediately following this offering, the holders of our Class A common stock issued in this offering collectively will hold % of the economic interests in us and % of the voting power in us, the Former LLC Owners, through their ownership of Class A common stock, collectively will hold % of the economic interests in us and % of the voting power in us, and the Continuing LLC Owner, through its ownership of all of the outstanding Class B common stock, collectively will hold no economic interest in us and the remaining % of the voting power in us. We will be a holding company, and upon consummation of this offering and the application of proceeds therefrom, our principal asset will be the LLC Interests we purchase from Bioventus LLC and acquire from the Former LLC Owners, representing an aggregate % economic interest in Bioventus LLC. The remaining % economic interest in Bioventus LLC will be owned by the Continuing LLC Owner through its ownership of LLC Interests.

We will be the sole managing member of Bioventus LLC. We will operate and control all of the business and affairs of Bioventus LLC and, through Bioventus LLC and its subsidiaries, conduct our business.

Following this offering, we will be a "controlled company" within the meaning of the corporate governance rules for Nasdaq-listed companies. See "Transactions" and "Management—Corporate governance."

We are an "emerging growth company" as defined under the federal securities laws and, as such, may elect to comply with certain reduced public company reporting requirements for future filings. See "Prospectus summary—Implications of being an emerging growth company."

	Per share	***Total***
Initial public offering price	*$*	*$*
Underwriting discounts and commissions(1)	*$*	*$*
Proceeds to us, before expenses	*$*	*$*

(1) See "Underwriting" for additional information regarding underwriting compensation.

We have granted the underwriters an over-allotment option for a period of 30 days to purchase up to additional shares of Class A common stock.

Investing in shares of our Class A common stock involves risks. See "Risk factors" beginning on page 27.

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

The underwriters expect to deliver the shares against payment in New York, New York on , 2021.

Morgan Stanley *J.P. Morgan* *Goldman Sachs & Co. LLC*
Canaccord Genuity

The date of this prospectus is , 2021.

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We and the underwriters have not authorized anyone to provide any information or to make any representations other than those contained in this prospectus or in any related free writing prospectuses. We and the underwriters take no responsibility for, and can provide no assurance as to the reliability of, any other information that others may give you. This prospectus is an offer to sell only the shares of Class A common stock offered by this prospectus, and only under circumstances and in jurisdictions where it is lawful to do so. The information contained in this prospectus or in any applicable free writing prospectus is current only as of its date. Our business, results of operations, financial condition, and prospects may have changed since that date.

For investors outside the United States: We have not, and the underwriters have not, done anything that would permit this offering or the possession or distribution of this prospectus or any free writing prospectus in connection with this offering in any jurisdiction where action for that purpose is required, other than in the United States. Persons outside the United States who come into possession of this prospectus must inform themselves about, and observe any restrictions relating to, the offering of the shares of Class A common stock and the distribution of this prospectus outside the United States. See "Underwriting."

BASIS OF PRESENTATION

In connection with the closing of this offering, we will effect certain organizational transactions. Unless otherwise stated or the context otherwise requires, all information in this prospectus reflects the consummation of the organizational transactions and this offering, which we refer to collectively as the "Transactions." See "Transactions" for additional information regarding the Transactions.

As used in this prospectus, unless the context otherwise requires, references to:

- *"we," "us," "our," the "Company," "Bioventus," "Bioventus Inc."* and similar references refer: (i) following the consummation of the Transactions, including this offering, to Bioventus Inc., and, unless otherwise stated, all of its subsidiaries, including Bioventus LLC, which we refer to as "Bioventus LLC," and, unless otherwise stated, all of its subsidiaries, and (ii) on or prior to the completion of the Transactions, including this offering, to Bioventus LLC and, unless otherwise stated, all of its subsidiaries.

- *"Continuing LLC Owner"* refers to Smith & Nephew, Inc., a wholly-owned indirect U.S. subsidiary of Smith & Nephew plc, a United Kingdom public company listed on the London Stock Exchange with American Depositary Receipts traded on the New York Stock Exchange, which will continue to own LLC Interests (as defined below) after the Transactions and which may, following the consummation of this offering, exchange its LLC Interests for shares of our Class A common stock or a cash payment (if mutually agreed) as described in "Certain relationships and related party transactions—Bioventus LLC Agreement," in each case, together with a cancellation of the same number of its shares of Class B common stock.
- *"EW Healthcare Partners"* refers to EW Healthcare Partners Acquisition Fund, L.P., a Delaware limited partnership.
- *"Former LLC Owners"* refers to all of the Original LLC Owners (including EW Healthcare Partners and Smith & Nephew (Europe) B.V., but excluding the Continuing LLC Owner) who will exchange their indirect ownership interests in Bioventus LLC for shares of our Class A common stock in connection with the consummation of this offering.
- *"LLC Interests"* refer to the single class of newly-issued common membership interests of Bioventus LLC.
- *"Original LLC Owners"* refer to the direct and certain indirect owners of Bioventus LLC, collectively, prior to the Transactions, including the members of the Voting Group (as defined below).
- *"Stock Plan Participants"* refer to certain individuals who hold existing awards under the Bioventus Stock Plan, which we refer to as the "Phantom Plan," and will, in connection with this offering, receive rights to receive shares of Class A common stock upon settlement of their awards as described in "Executive compensation—Narrative to summary compensation table—Equity-based compensation.
- *"S+N Former LLC Owner"* refers to Smith & Nephew OUS, Inc., a wholly-owned direct U.S. subsidiary of Smith & Nephew (Europe) B.V., which is a wholly-owned indirect Dutch subsidiary of Smith & Nephew plc. In connection with the consummation of this offering, Smith & Nephew (Europe) B.V. will exchange its indirect ownership interests in Bioventus LLC for shares of Class A common stock on a one-to-one basis and the S+N Former LLC Owner will merge with and into Bioventus Inc.
- *"Voting Group"* refers collectively to (i) EW Healthcare Partners, (ii) Continuing LLC Owner and (iii) certain other Original LLC Owners, all of whom will be parties to the Stockholders Agreement as described in "Certain relationships and related party transactions—Stockholders Agreement." The Voting Group will hold Class A common stock and Class B common stock representing in the aggregate a majority of the combined voting power of our common stock.

Following completion of the Transactions, we will be a holding company and the sole managing member of Bioventus LLC and our principal asset will be LLC Interests of Bioventus LLC. Bioventus LLC is the predecessor of the issuer, Bioventus Inc., for financial reporting purposes. Accordingly, this prospectus contains the historical financial statements of Bioventus LLC. As we will have no other interest in any operations other than those of Bioventus LLC and its subsidiaries, the historical consolidated financial information included in this prospectus is that of Bioventus LLC and its subsidiaries. As Bioventus Inc. has no business transactions or activities to date and had no assets or liabilities during the periods presented, the historical financial statements of this entity are not included in this prospectus. Following completion of this offering, the reporting entity for purposes of periodic reporting will be Bioventus Inc.

The unaudited pro forma financial information of Bioventus Inc. presented in this prospectus has been derived by the application of pro forma adjustments to the historical consolidated financial statements of Bioventus LLC and its subsidiaries included elsewhere in this prospectus. These pro forma adjustments give effect to the Transactions as described in "Transactions," including the completion of this offering. The unaudited pro forma consolidated balance sheet as of September 26, 2020 gives effect to the Transactions as if they had occurred on that date. The unaudited pro forma consolidated statements of operations for the year ended December 31, 2019 and for the nine months ended September 26, 2020 and September 28, 2019 have been prepared to illustrate the effects of the Transactions as if they occurred on January 1, 2019. See "Unaudited pro forma consolidated financial information" for a complete description of the adjustments and assumptions underlying the pro forma financial information included in this prospectus.

Numerical figures included in this prospectus have been subject to rounding adjustments. Accordingly, numerical figures shown as totals in various tables may not be arithmetic aggregations of the figures that precede them.

TRADEMARKS, TRADE NAMES AND SERVICE MARKS

This prospectus includes our trademarks and trade names that we own or license, such as Bioventus, Cellxtract, Durolane, Exogen, Exponent, GELSYN-3, MOTYS, OsteoAMP, Prohesion, PureBone, SAFHS, Signafuse, SUPARTZ FX and our logo. This prospectus also includes trademarks, trade names and service marks that are the property of other organizations. Solely for convenience, trademarks and trade names referred to in this prospectus appear without any "™" or "®" symbol, but those references are not intended to indicate, in any way, that we will not assert, to the fullest extent under applicable law, our rights to these trademarks, trade names and service marks. We do not intend our use or display of other parties' trademarks, trade names or service marks to imply, and such use or display should not be construed to imply, a relationship with, or endorsement or sponsorship of us by, these other parties.

MARKET AND INDUSTRY DATA

Unless otherwise indicated, information contained in this prospectus concerning our industry and the markets in which we operate is based on information from iData Research, Inc., or iData, and BioMedGPS, provider of SmartTRAK Business Intelligence Solutions. Other information concerning our industry and the markets in which we operate is based on independent industry and research organizations, other third-party sources (including industry publications, surveys and forecasts), and management estimates. Management estimates are derived from publicly available information released by independent industry analysts and third-party sources, as well as data from our internal research, and are based on assumptions made by us upon reviewing such data and our knowledge of such industry and markets which we believe to be reasonable. In addition, projections, assumptions and estimates of the future performance of the industry in which we operate and our future performance are necessarily subject to uncertainty and risk due to a variety of factors, including those described in "Risk factors" and "Special note regarding forward-looking statements." These and other factors could cause results to differ materially from those expressed in the estimates made by the independent parties and by us.

PROSPECTUS SUMMARY

The following summary highlights information contained elsewhere in this prospectus. This summary is not complete and may not contain all the information you should consider before investing in our Class A common stock. You should read this entire prospectus carefully, including the risks of investing in our Class A common stock discussed under the heading "Risk factors," and the financial statements and related notes included elsewhere in this prospectus before making an investment decision.

Bioventus

We are a global medical device company focused on developing and commercializing clinically differentiated, cost efficient and minimally invasive treatments that engage and enhance the body's natural healing process. We believe our non-invasive medical device and biologic products play a critical role in supporting the body's own healing mechanisms to heal or eliminate the pain caused by orthopedic conditions and problems, which we define as our active healing products. These products address an estimated $6.0 billion market opportunity across osteoarthritic, or OA, joint pain treatment and joint preservation, spinal fusion surgery and bone fractures, each of which is experiencing growth through multiple industry tailwinds, including an aging population, increased participation in sports and active lifestyles and a rise in obesity rates. Our devices are most often used to delay or replace the need for an elective surgical procedure and are focused on reaching patients early on in their treatment paradigm. In 2019, approximately 85% of our $340.1 million in revenues were derived from products associated with non-surgical procedures. Our products are widely reimbursed by both public and private health insurers and are sold in the physician's office or clinic, in ambulatory surgical centers, or ASCs, and in the hospital setting in the United States and across 37 countries. We have broad commercial reach across our established orthopedic customer base, which is a key strength of the company. We are focused on leveraging this significant customer base and the reach of our commercial organization to continue to grow the company by expanding our market share and product portfolio. This strategy has led to a 7.4% CAGR in revenue since 2016 and during this time period, our revenue has grown from $274.5 million to $340.1 million in 2019.

Our existing portfolio of products is grouped into three verticals based on our targeted customer focus:

- ***OA Joint Pain Treatment and Joint Preservation***. We are the largest pure play orthopedics-focused company in the OA joint pain treatment and joint preservation market. We have been the fastest growing hyaluronic acid, or HA, participant over the last three years, driving our share to number three by revenue in the U.S. market. We offer the only complete portfolio of HA viscosupplementation therapies, including single, three and five injection regimens, for patients experiencing pain related to OA in the knee. Our HA products are all approved by the U.S. Food and Drug Administration, or the FDA, through premarket approvals, or PMAs, and include:
  - (a) Durolane, a single injection therapy, was launched in the United States in 2018 and is also marketed outside the United States in more than 30 countries including Europe through a Conformité Européenne, or CE, mark;
  - (b) GELSYN-3, a three injection therapy, was launched in the United States in 2016; and
  - (c) SUPARTZ FX, a five injection therapy, was launched in the United States in 2001.
- ***Bone Graft Substitutes***. We are the fastest growing participant in the bone graft substitutes, or BGSs, market and offer a broad portfolio of products including human tissue allografts and synthetics. Our BGS products can be used in conjunction with any orthopedic fixation and spinal fusion implant. They are designed to improve bone fusion rates following spinal fusion and other orthopedic surgeries and reduce the need for using the patient's own bone, which is associated with additional cost and morbidity. Our products include an allograft-derived bone graft with growth factors (OsteoAMP), a demineralized bone matrix (Exponent), or DBM, a cancellous bone in different preparations

(PureBone), bioactive synthetics (Signafuse and Interface), a collagen ceramic matrix (OsteoMatrix) and two bone marrow isolation systems (CellXtract and Extractor). Our products have received either Section 510(k) of the United States Federal Food, Drug, and Cosmetic Act, or 510(k), clearance from the FDA or are marketed pursuant to Section 361 of the Public Health Service Act, or PHSA, as Section 361 HCT/Ps. HCT/Ps regulated solely under Section 361 are human cells, tissues and cellular and tissue-based products that do not require marketing authorization to be marketed in the United States.

- ***Minimally Invasive Fracture Treatment.*** Our Exogen system is the number one prescribed device in the long bone stimulation market and has had marketing authorization via a PMA through the FDA for over 25 years. We are the only company to utilize advanced, pulsed ultrasound technology for bone growth in delayed and nonunion fractures in all fracture locations except spine, as well as in fresh fractures of the tibia and radius. Our Exogen system offers significant advantages over electrical based long bone stimulation systems, including a documented mechanism of action, shorter treatment times and superior nonunion heal rates. The system is also sold internationally under a CE mark for nonunions and fresh fractures and is the market-leading bone healing treatment for long bones in Japan.

Our expansive direct sales and distribution channel across our three verticals provides us with broad and differentiated customer reach, and allows us to serve physicians spanning the orthopedic continuum, including sports medicine, total joint reconstruction, hand and upper extremities, foot and ankle, podiatric surgery, trauma, spine and neurosurgery. Our OA joint pain treatment and joint preservation products and minimally invasive fracture treatment are sold by a direct sales team of approximately 240 in the United States and approximately 45 internationally. This direct sales team is complemented by approximately 20 account representatives who facilitate account access through integrated delivery networks, or IDNs, group purchasing organizations, or GPOs, and payer contracting. Our BGS products are sold by approximately 170 independent distributors in the United States, each with their own independent sales force, supported by our 15 member regionalized sales support team. We market our BGSs primarily to orthopedic spine surgeons and neurosurgeons for use in the operating room in both the hospital and ASC setting. We believe that our broad customer reach has and will continue to enable strong and durable growth in each of our verticals and provides a significant foundation for future product launches.

In addition to our current portfolio, we have a deep pipeline of new products under development, and we are pursuing the development of line extensions and expanded indications for already marketed products that address a significant market opportunity within our current customer base. On October 29, 2020, we received FDA confirmation indicating its authorization of our investigational new drug application, or IND, to begin a clinical trial for MOTYS, a placental tissue biologic for knee OA for which we ultimately plan to pursue a Biologics License Application, or BLA. We have recently entered into an option and equity purchase agreement with CartiHeal (2009) Ltd., or CartiHeal, which provides us with the option to acquire CartiHeal and its Agili-C technology, which we believe is the only off-the-shelf scaffold implant designed to address osteochondral defects in the knee. CartiHeal expects to submit a PMA seeking FDA approval of Agili-C in the fourth quarter of 2021, which was granted breakthrough device designation by the FDA in the fourth quarter of 2020 for the treatment of certain knee-joint surface lesions. We have also entered into an exclusive license and development collaboration agreement, or Collaboration Agreement with Harbor Medtech Inc., or Harbor, for purposes of commercializing PROcuff, a rotator cuff tissue repair product, and we anticipate filing a request for 510(k) clearance in either the second or third quarter of 2022. We intend to launch a new flowable version of our OsteoAmp product, or OsteoAmp Flowable, in 2021 that can be used in minimally invasive spine procedures. Additionally, we are currently conducting clinical studies of our Exogen system pursuant to an Investigational Device Exemption, or IDE, from the FDA, and we plan to use data from these studies to seek approval for expanded indications with respect to fresh fractures. We intend to leverage the clinical data from this program to support payer coverage in this area. We submitted the PMA supplement for the first proposed label expansion in December 2020.

We have grown our total net sales from $319.2 million for the year ended December 31, 2018 to $340.1 million for the year ended December 31, 2019. Our total net sales declined from $242.6 million for the nine months ended September 28, 2019, to $222.6 million for the nine months ended September 26, 2020, related to the Coronavirus Disease 2019, or COVID-19, pandemic. For the years ended December 31, 2019 and 2018 and the nine months ended September 26, 2020 and September 28, 2019, we had net income from continuing operations of $8.1 million $4.4 million, $12.5 million and $2.8 million, respectively. We have also grown our Adjusted EBITDA from $72.2 million for the year ended December 31, 2018 to $79.2 million for the year ended December 31, 2019. Our Adjusted EBITDA declined from $48.5 million for the nine months ended September 28, 2019 to $44.3 million for the nine months ended September 26, 2020, related to the COVID-19 pandemic. The COVID-19 pandemic and the measures imposed to contain the wide spread of the virus disrupted our business beginning in early March 2020 as healthcare systems across the U.S. were forced to limit patient visits and elective surgical procedures. The effects of the pandemic began to decrease in late April 2020 and we saw a very strong recovery for our products at the end of the second quarter as restrictions on orthopedic procedures were lifted across the United States and patients also returned to orthopedic offices. See the sections titled “Risk factors” and “Management’s discussion and analysis of financial condition and results of operations” for more information. For a reconciliation of net income from continuing operations to Adjusted EBITDA, see Note 2 to the information contained in “Prospectus summary—Summary historical and pro forma financial data.”

Our solutions

We offer a portfolio of active healing products to meet the needs of our orthopedist, musculoskeletal and sports medicine physician, podiatrist, neurosurgeon and orthopedic spine surgeon customers and their patients.

Our portfolio of products is grouped into three verticals based on clinical use: (i) OA joint pain treatment and joint preservation, (ii) BGSs and (iii) minimally invasive fracture treatment.

OA joint pain treatment and joint preservation

Our key OA joint pain treatment and joint preservation products are presented in the summary table below:

Product	Description	Regulatory pathway	Region where marketed(1)
DUROLANE® hyaluronic acid, stabilized single injection	Single injection HA viscosupplementation therapy	• PMA • Device approval by Health Canada • CE mark and other registrations(2)	• United States • Canada • Europe
GELSYN-3™ 3 injection hyaluronic acid treatment	Three injection HA viscosupplementation therapy	• PMA	• United States
SUPARTZ FX™ sodium hyaluronate	Five injection HA viscosupplementation therapy	• PMA	• United States

(1) We maintain exclusive distribution agreements with respect to Durolane, GELSYN-3 and SUPARTZ FX in the United States. We maintain exclusive distribution agreements and own certain assets with respect to Durolane outside the United States.

(2) Durolane is also approved for marketing in Argentina, Australia, Brazil, Columbia, India, Indonesia, Jordan, Malaysia, Mexico, New Zealand, Russia, Switzerland, Taiwan, Turkey and the United Arab Emirates, or the UAE.

Bone graft substitutes

Our key bone graft substitution products are presented in the summary table below:

Product	Indications	Regulatory pathway / year launched
Allograft		
osteoamp® Allogeneic Morphogenetic Proteins	Orthopedic, neurosurgical and reconstructive bone grafting procedures	• Section 361 HCT/P / 2009
exponent® Demineralized Bone Matrix	Posterolateral spine procedures	• 510(k) / 2012
purebone® Demineralized and Mineralized Allograft	Orthopedic, neurosurgical and reconstructive bone grafting procedures	• Section 361 HCT/P / 2012
Synthetic		
signafuse® Bioactive Bone Graft	Standalone posterolateral spine, extremities and pelvis, as well as a bone graft extender in the posterolateral spine	• 510(k) / 2014
interface Bioactive Bone Graft	Posterolateral spine when mixed with autograft, extremities and pelvis	• 510(k) / 2011
osteomatrix™ Biphasic Bone Graft	Posterolateral spine, extremities and pelvis	• 510(k) / 2010
signafuse® Bioactive Bone Graft	Posterolateral spine, extremities and pelvis	• 510(k) / 2020

Minimally invasive fracture treatment

We offer our Exogen system for the non-invasive treatment of established nonunion fractures and certain fresh fractures:

Product	Description	Regulatory pathway	Region where marketed(1)
exogen® ultrasound bone healing system	Ultrasound bone healing system for nonunion fractures and fresh fractures to the tibia and radius(1)	• PMA • Device approval by Health Canada • CE mark and other registrations(2)	• United States • Canada • Europe • Japan

(1) Our Exogen system is indicated in the United States for the non-invasive treatment of established nonunions, excluding skull and vertebra, and for accelerating the time to a healed fracture for fresh, closed, posteriorly displaced distal radius fractures and fresh, closed or Grade I open long bone fractures in skeletally mature individuals when these fractures are orthopedically managed by closed reduction and cast immobilization. We own our Exogen system and market it both in and outside the United States.

(2) Exogen is also approved for marketing in Australia, Japan, New Zealand, Saudi Arabia, Turkey and the UAE.

Our strengths

We believe that we have several key strengths that provide us with a competitive advantage:

- ***Broad customer reach and market access***. We believe we have one of the largest sales organizations in the verticals in which we operate, including a direct sales team and distributors, with a dedicated focus on OA joint pain treatment and joint preservation products, BGSs and minimally invasive fracture treatments. We believe that our broad customer reach and market access are key factors contributing to our ability to increase our market share and grow faster than our competitors. Our sales organization has a performance culture built on serving our core orthopedic patient customers and delivering our products to a variety of physicians and care settings. We serve physicians spanning the orthopedic continuum, including sports medicine, total joint reconstruction, hand and upper extremities, foot and ankle, podiatric, trauma and spine. We believe we will continue to be well-positioned in the market given our strong foundation for reimbursement and customer access, coupled with a broad portfolio of clinically differentiated products.
- ***Differentiated, market leading products across three verticals.*** We believe our portfolio of complementary, market leading products provides patients and physicians with greater flexibility in tailoring a treatment regime that best fits the patient's needs and lifestyle. Our products are most often used to delay or replace the need for an elective surgical procedure and are focused on reaching patients early on in their treatment paradigm. In 2019, approximately 85% of our $340.1 million in revenues were associated with non-surgical procedures. We have the only complete one, three and five injection portfolio in the HA viscosupplementation market in the United States, which we believe gives patients the freedom of choice and appeals to the growing preference among providers to interact with a single vendor when accessing a complete portfolio of care. We also offer a comprehensive, clinically effective and cost efficient portfolio of BGSs to meet a broad range of patient needs and procedures. Our products are designed to improve bone fusion rates and avoid the cost and risks associated with autograft following spinal fusion and other orthopedic surgeries, and can be used in conjunction with any orthopedic fixation and spinal fusion implant. Additionally, our Exogen ultrasound bone healing system is the leader in the long bone stimulation market, offering shorter treatment times, superior non-union heal rates and a documented mechanism of action. Our Exogen system also has a broad label for patient use, including established nonunions and fresh fractures to the tibia and radius.
- ***Substantial body of peer reviewed clinical evidence.*** We believe that clinical evidence is critical to demonstrating efficacy, achieving reimbursement coverage and demonstrating the value of medical products. We have invested in building evidence and support for our key offerings and product portfolio. Clinical evidence is vital to physicians as they look to make decisions about which product would best serve their patients. The safety and efficacy of our key offerings within each of our three verticals has been demonstrated by numerous clinical studies, published peer review research and clinical publications. We believe that our significant body of clinical evidence creates a competitive barrier to entry given the time and investment required to amass the amount of published data we have and is an asset that would take years for a competitor to try to replicate.
- ***Robust free cash flow conversion.*** We believe that our robust free cash flow conversion and scale enables us to invest in our business in a meaningful way. Over the last four years, we have self-funded all internal research and development and business development efforts. We define free cash flow as net cash provided by operating activities from continuing operations as presented on our consolidated statement of cash flow plus interest expense as presented on our consolidated statement of operations less purchases of property and equipment and other on our consolidated statement of cash flow. Our

free cash flow conversion, defined as free cash flow divided by Adjusted EBITDA, was 78% for the year ended December 31, 2019 and 93% from 2018 through September 26, 2020. With $340.1 million in revenues for the year ended December 31, 2019, we also have scale to pursue opportunities to grow our business, including internationally to regions such as China. Our attractive cash generation has and will continue to allow us to expand our deep pipeline of products through further internal research and development investment and additional tuck-in acquisitions that leverage our established infrastructure.

- ***Experienced management team with a track record of value creation***. Our senior leadership team has been involved in growing large and mid-cap businesses, including through major acquisitions and integrations, public and private equity company sale transactions and strategic equity investments, as well as the development, approval and launch of new and transformative active healing products. Our team also has extensive operating experience with respect to active healing products, which includes designing clinical trials, working closely with regulatory agencies on identifying the appropriate path to market, successfully commercializing products, including securing managed care, payer or purchasing committee contracts and effectively managing our direct or distributor sales organizations.

Our growth strategy

We intend to pursue the following strategies to continue to grow our net sales and Adjusted EBITDA:

- continue to expand market share in HA viscosupplementation;
- introduce new OA joint pain treatment and joint preservation products;
- further develop and commercialize our BGS portfolio;
- expand indications for use for our Exogen system;
- invest in research and development;
- pursue business development opportunities; and
- opportunistically grow our international markets.

Recent Developments

Estimated selected preliminary financial results for the three months and year ended December 31, 2020

Included below are certain estimated preliminary unaudited financial results for the three months and year ended December 31, 2020 and the corresponding periods of the prior fiscal year. We have provided ranges, rather than specific amounts, for the three months and year ended December 31, 2020 because these results are preliminary and subject to change, and there is a possibility that our actual results may differ materially from these preliminary estimates. These ranges are based on the information available to us as of the date of this prospectus. These estimated preliminary results for the three months and year ended December 31, 2020 are derived from the preliminary internal financial records of Bioventus LLC and are subject to revisions based on our procedures and controls associated with the completion of our interim financial reporting, including all the customary reviews and approvals, and completion by our independent registered public accounting firm of its review of such financial statements for the year ended December 31, 2020. These estimated preliminary results should not be viewed as a substitute for interim financial statements prepared in accordance with U.S. GAAP. Our independent registered public accounting firm has not conducted a review of, and does not express an opinion or any other form of assurance with respect to, these estimated preliminary results. It is possible that we or our independent registered public accounting firm may identify items that would require us to make adjustments to the preliminary estimates set forth below as we complete our financial statements and that our actual results may differ materially from these preliminary estimates. Accordingly, undue reliance should not be placed on these preliminary estimates. These preliminary estimates are not necessarily indicative of any future

period and should be read together with "Risk Factors," "Special Note Regarding Forward-Looking Statements," "Selected Financial Data," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our financial statements and related notes included elsewhere in this prospectus.

(unaudited; in millions)	Three Months Ended December 31, 2020 (Low)	Three Months Ended December 31, 2020 (High)	Three Months Ended December 31, 2019	Year Ended December 31, 2020 (Low)	Year Ended December 31, 2020 (High)	Year Ended December 31, 2019
Statement of operations data:						
Net sales	$	$	$97.6	$	$	$340.1
Net sales, U.S.	$	$	$86.8	$	$	$305.1
Net sales, International	$	$	$10.7	$	$	$ 35.1
Net income from continuing operations	$	$	$ 5.3	$	$	$ 8.1
Other financial data:						
Adjusted EBITDA(1)	$	$	$30.7	$	$	$ 79.2

(1) Adjusted EBITDA, as used herein, is a non-GAAP financial measure that is presented as supplemental disclosure and is fully described in footnote two to "—Summary Historical and Pro Forma Financial Data." Additionally, see below for a reconciliation of Adjusted EBITDA to net income, the most directly comparable GAAP measure.

The following table reconciles net loss to Adjusted EBITDA for the three months and year ended December 31, 2019 and December 31, 2020:

(unaudited; $ in millions)	Three Months Ended December 31, 2020 (Low)	Three Months Ended December 31, 2020 (High)	Three Months Ended December 31, 2019	Year Ended December 31, 2020 (Low)	Year Ended December 31, 2020 (High)	Year Ended December 31, 2019
Net income from continuing operations	$	$	$ 5.3	$	$	$ 8.1
Depreciation and amortization(a)			7.3			30.3
Income tax expense			0.9			1.6
Interest expense			7.6			21.6
Equity compensation(b)			7.6			10.8
COVID-19 benefits, net(c)			—			—
Succession and transition charges(d)			—			—
Restructuring costs(e)			0.0			0.6
Foreign currency impact(f)			(0.1)			—
Losses associated with debt refinancing(g)			0.4			0.4
Other non-recurring costs(h)			1.7			5.8
Adjusted EBITDA	$	$	$30.7	$	$	$79.2

(a) Includes for the years ended December 31, 2019 and 2020 and the three months ended December 31, 2019 and 2020, respectively, depreciation and amortization of $22.4 million, $ million, $5.3 million and $ million in cost of sales and $7.9 million, $ million, $2.1 million and $ million represented in the consolidated statements of operations and comprehensive income (loss) with the balance in research and development.

(b) Represents compensation as well as the change in fair market value resulting from two equity-based compensation plans, the MIP and the Phantom Plan.
(c) Represents income resulting from the Coronavirus Aid, Relief and Economic Security Act, or CARES Act, offset by additional cleaning and disinfecting expenses and contract termination fees for events we were unable to hold.
(d) Primarily represents costs related to the chief executive officer transition.
(e) Represents costs related to a shift from direct to an indirect distribution model in our International business to improve performance. In addition, various international subsidiaries were dissolved and or merged into other Bioventus LLC entities.
(f) Represents realized and unrealized gains and losses from fluctuations in foreign currency and is included in other (income) expense on the consolidated statements of operations and comprehensive income (loss).
(g) Represents charges with our 2019 debt refinancing that were included in selling, general and administrative expense on the consolidated statements of operations and comprehensive income (loss).
(h) Represents charges associated with Bioventus LLC potential strategic transactions such as potential acquisitions or preparing to become a public company, primarily accounting and legal fees.

Summary of the transactions

Prior to the consummation of this offering and the organizational transactions described below, the Original LLC Owners were the only owners of Bioventus LLC. Bioventus Inc. was incorporated as a Delaware corporation on December 22, 2015 to serve as the issuer of the Class A common stock offered hereby.

In connection with the closing of this offering, we will consummate the following organizational transactions:

- we will amend and restate the amended and restated limited liability company agreement of Bioventus LLC, as amended, effective as of the completion of this offering, or the Bioventus LLC Agreement, to, among other things, (i) provide for LLC Interests that will be the single class of common membership interests in Bioventus LLC, (ii) exchange all of the existing membership interests (including profit interests awarded under the Bioventus LLC Management Incentive Plan, or MIP) in Bioventus LLC for LLC Interests and (iii) appoint Bioventus Inc. as the sole managing member of Bioventus LLC;
- we will amend and restate Bioventus Inc.'s certificate of incorporation to, among other things, (i) provide for Class A common stock and Class B common stock, each share of which entitles its holders to one vote per share on all matters presented to Bioventus Inc.'s stockholders and (ii) issue shares of Class B common stock to the Continuing LLC Owner, on a one-to-one basis with the number of LLC Interests it owns;
- the Former LLC Owners will exchange their indirect ownership interests in Bioventus LLC for shares of Class A common stock on a one-to-one basis, representing (i) approximately % of the combined voting power of all of Bioventus Inc.'s common stock (or approximately %, if the underwriters exercise in full their option to purchase additional shares of Class A common stock) and (ii) approximately % of the economic interest in the business of Bioventus LLC and its subsidiaries (or approximately %, if the underwriters exercise in full their option to purchase additional shares of Class A common stock), indirectly through Bioventus Inc.'s ownership of LLC Interests;
- Bioventus Inc. will issue shares of Class A common stock to the purchasers in this offering (or shares of our Class A common stock if the underwriters exercise in full their option to purchase additional shares of Class A common stock);
- Bioventus Inc. will use all of the net proceeds from this offering (including any net proceeds received upon exercise of the underwriters' option to purchase additional shares of Class A common stock) to

acquire newly-issued LLC Interests from Bioventus LLC at a purchase price per interest equal to the initial public offering price per share of Class A common stock, less underwriting discounts and commissions, collectively representing % of Bioventus LLC's outstanding LLC Interests (or %, if the underwriters exercise in full their option to purchase additional shares of Class A common stock);

- Bioventus LLC will use the proceeds from the sale of LLC Interests to Bioventus Inc. as described in "Use of proceeds;"
- the Phantom Plan will be terminated and the Phantom Plan Participants will receive rights to receive up to shares of our Class A common stock upon settlement of their awards under the Phantom Plan, with such settlement expected to take place between twelve and 24 months following the date of termination of the Phantom Plan as described in "Executive compensation—Narrative to summary compensation table—Equity-based compensation" (which settlement may result in a change in the timing over which compensation expense is recognized as described in "Management's discussion and analysis of financial condition and results of operations—Components of our results of operations—Selling, general and administrative expense"), and Bioventus Inc. will receive a corresponding number of LLC Interests from Bioventus LLC upon settlement;
- the Continuing LLC Owner will continue to own the LLC Interests it received in exchange for its existing membership interests in Bioventus LLC, which LLC Interests, following this offering, will be redeemable, at its election, for newly-issued shares of Class A common stock on a one-for-one basis or, if Bioventus Inc. and the Continuing LLC Owner agree, a cash payment equal to a volume weighted average market price of one share of Class A common stock for each LLC Interest redeemed (subject to customary adjustments, including for stock splits, stock dividends and reclassifications) in accordance with the terms of the Bioventus LLC Agreement; provided that, at Bioventus Inc.'s election, Bioventus Inc. may effect a direct exchange of such Class A common stock or such cash (if mutually agreed) for such LLC Interests. Shares of Class B common stock will be cancelled on a one-for-one basis if we, at the election of the Continuing LLC Owner, redeem or exchange its LLC Interests pursuant to the terms of the Bioventus LLC Agreement; and
- Bioventus Inc. will enter into (i) a tax receivable agreement, or the Tax Receivable Agreement, with the Continuing LLC Owner, (ii) a stockholders agreement, or the Stockholders Agreement, with the Voting Group and (iii) a registration rights agreement, or the Registration Rights Agreement, with the Original LLC Owners.

Upon the consummation of this offering, the Continuing LLC Owner will own (x) shares of Bioventus' Class B common stock (which will not have any liquidation or distribution rights), representing approximately % of the combined voting power of all of Bioventus' common stock (or approximately %, if the underwriters exercise in full their option to purchase additional shares of Class A common stock) and (y) LLC Interests, representing approximately % of the economic interest in the business of Bioventus LLC and its subsidiaries (or approximately %, if the underwriters exercise in full their option to purchase additional shares of Class A common stock).

Upon consummation of the offering, the purchasers in this offering (i) will own shares of Class A common stock, representing approximately % of the combined voting power of all of Bioventus Inc.'s common stock (or shares of Class A common stock representing approximately %, if the underwriters exercise in full their option to purchase additional shares of Class A common stock), (ii) will own % of the economic interest in Bioventus Inc. (or %, if the underwriters exercise in full their option to purchase additional shares of Class A common stock) and (iii) through Bioventus Inc.'s ownership of LLC Interests, indirectly will hold (applying the percentages in the preceding clause (ii) to Bioventus Inc.'s percentage economic interest in Bioventus LLC) approximately % of the economic interest in Bioventus LLC (or

% if the underwriters exercise in full their option to purchase additional shares of Class A common stock). The Former LLC Owners (i) will own shares of Class A common stock, representing approximately % of the combined voting power of all of Bioventus Inc.'s common stock (or approximately %, if the underwriters exercise in full their option to purchase additional shares of Class A common stock), (ii) will own % of the economic interest in Bioventus Inc. (or %, if the underwriters exercise in full their option to purchase additional shares of Class A common stock) and (iii) through Bioventus Inc.'s ownership of LLC Interests, indirectly will hold (applying the percentages in the preceding clause (ii) to Bioventus Inc.'s percentage economic interest in Bioventus LLC) approximately % of the economic interest in Bioventus LLC (or %, if the underwriters exercise in full their option to purchase additional shares of Class A common stock).

Immediately following the consummation of this offering, the Continuing LLC Owner will hold all of the issued and outstanding shares of our Class B common stock. The shares of Class B common stock will have no economic rights, and each share will entitle the holder to one vote per share on all matters on which stockholders of Bioventus Inc. are entitled to vote generally. The Continuing LLC Owner will retain its equity interest in Bioventus LLC. Immediately following the consummation of this offering, the investors in this offering and the Former LLC Owners will hold all of the issued and outstanding shares of our Class A common stock. The shares of Class A common stock will entitle the holder to one vote per share on all matters on which stockholders of Bioventus Inc. are entitled to vote generally. The investors in this offering and the Former LLC Owners will indirectly hold economic interest in Bioventus LLC through Bioventus Inc.'s ownership of LLC Interests. Holders of outstanding shares of our Class A common stock and Class B common stock will vote as a single class on all matters on which stockholders are entitled to vote generally, except as otherwise required by law.

Our corporate structure following this offering, as described above, is commonly referred to as an umbrella partnership-C-corporation, or Up-C, structure, which is often used by partnerships and limited liability companies when they undertake an initial public offering of their business. The Up-C structure will allow the Continuing LLC Owner to retain its equity ownership in Bioventus LLC and to continue to realize tax benefits associated with owning interests in an entity that is treated as a partnership, or "passthrough" entity, for U.S. federal income tax purposes following the offering. Investors in this offering will, by contrast, hold their equity ownership in Bioventus Inc., a Delaware corporation that is a domestic corporation for U.S. federal income tax purposes, in the form of shares of Class A common stock. Similarly, the Former LLC Owners will also hold their equity ownership in Bioventus Inc. in the form of shares of Class A common stock. One of the tax benefits to the Continuing LLC Owner associated with this structure is that future taxable income of Bioventus LLC that is allocated to the Continuing LLC Owner will be taxed on a flow-through basis and therefore will not be subject to corporate taxes at the entity level. Additionally, because the Continuing LLC Owner may redeem or exchange its LLC Interests for newly issued shares of our Class A common stock on a one-for-one basis or, at our option, for cash, the Up-C structure also provides the Continuing LLC Owner with potential liquidity that holders of non-publicly traded limited liability companies are not typically afforded. Bioventus Inc. also expects to benefit from the Up-C structure because, in general, we expect to benefit in the form of cash tax savings in amounts equal to 15% of certain tax benefits, as described above, arising from redemptions or exchanges of the Continuing Owner's LLC Interests for Class A Common Stock or cash and certain other tax benefits covered by the Tax Receivable Agreement discussed in "Certain relationships and related party transactions—Tax Receivable Agreement." See "Risk Factors—Risks related to our organizational structure and the Tax Receivable Agreement."

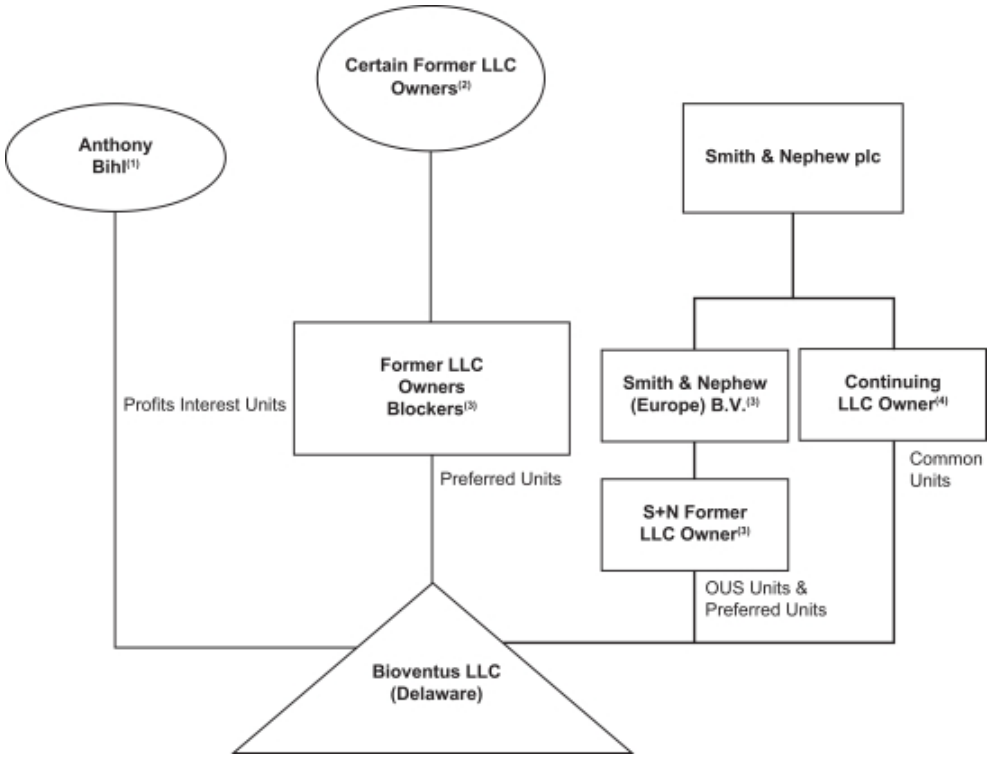
We refer to the foregoing transactions collectively as the "Transactions." For more information regarding our structure after the completion of the Transactions, including this offering, see "Transactions."

Immediately following this offering, Bioventus Inc. will be a holding company and its principal asset will be the LLC Interests it purchases from Bioventus LLC and acquires from the Former LLC Owners. As the sole managing member of Bioventus LLC, Bioventus Inc. will operate and control all of the business and affairs of

Bioventus LLC and, through Bioventus LLC and its subsidiaries, conduct our business. Accordingly, Bioventus Inc. will have the sole voting interest in, and control the management of, Bioventus LLC. As a result, we will consolidate Bioventus LLC in our consolidated financial statements and will report a non-controlling interest related to the LLC Interests held by the Continuing LLC Owner on our consolidated financial statements.

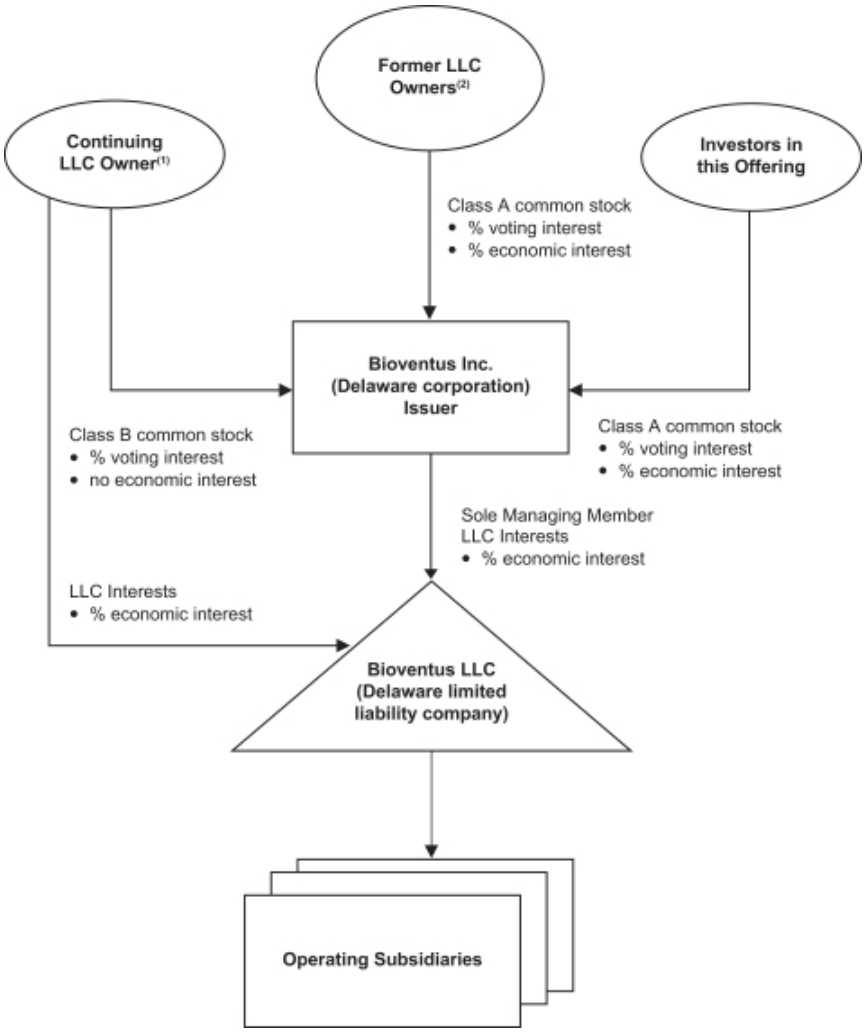
See “Description of capital stock” for more information about our certificate of incorporation and the terms of the Class A common stock and Class B common stock. See “Certain relationships and related party transactions” for more information about (i) the Bioventus LLC Agreement, including the terms of the LLC Interests and the redemption right of the Continuing LLC Owner; (ii) the Tax Receivable Agreement; (iii) the Registration Rights Agreement; and (iv) the Stockholders Agreement. Under the Stockholders Agreement, any increase or decrease in the size of our board of directors or any committee, and any amendment to our organizational documents, will in each case require the approval of EW Healthcare Partners, certain other members of the Voting Group and their respective affiliates, for so long as they collectively own at least 10% of the total shares of our Class A common stock owned by them as of the date this offering is consummated, and will also require the approval of Continuing LLC Owner and its affiliates, for so long as Smith & Nephew, Inc. and Smith & Nephew (Europe) B.V. and their affiliates own at least 10% of the total shares of our Class A common stock and Class B common stock owned by them as of the date this offering is consummated.

The diagram below depicts our organizational structure immediately prior to giving effect to the Transactions.



(1) We plan to redeem all of Mr. Bihl's Profits Interest Units as described in "Executive Compensation—Narrative to Summary Compensation Table—Severance."
(2) Refers to all the Original LLC Owners (including EW Healthcare Partners) but excluding the Continuing LLC Owner, the S+N Former LLC Owner and Smith & Nephew (Europe) B.V.
(3) Immediately prior to the consummation of this offering, each of the Former LLC Owners, including Smith & Nephew (Europe) B.V., a wholly-owned indirect Dutch subsidiary of Smith & Nephew plc and the owner of S+N Former LLC Owner, will exchange their indirect ownership interests in Bioventus LLC for shares of Class A common stock on a one-to-one basis and the Former LLC Owners Blockers and S+N Former LLC Owner will merge with and into Bioventus Inc.
(4) Following the consummation of this offering, the Continuing LLC Owner will continue to own the LLC Interests it receives in exchange for its existing membership interests in Bioventus LLC.

The diagram below depicts our organizational structure after giving effect to the Transactions, including this offering, assuming no exercise by the underwriters of their option to purchase additional shares of Class A common stock.



(1) Refers to Smith & Nephew, Inc., a wholly-owned indirect U.S. subsidiary of Smith & Nephew plc, which will continue to own LLC Interests after the Transactions and which may, following the consummation of this offering, exchange its LLC Interests for shares of our Class A common stock or a cash payment (if mutually agreed) as described in "Certain relationships and related party transactions—Bioventus LLC Agreement," in each case, together with a cancellation of the same number of its shares of Class B common stock.

(2) *Refers to all of the Original LLC Owners (including EW Healthcare Partners and Smith & Nephew (Europe) B.V., but excluding the Continuing LLC Owner) who will exchange their indirect ownership interests in Bioventus LLC for shares of our Class A common stock in connection with the consummation of this offering.*

Summary of risks associated with our business

We are subject to several risks, including risks that may prevent us from achieving our business objectives or that may adversely affect our business, results of operations, financial condition, and cash flows. You should

carefully consider the risks discussed in the section entitled “Risk factors,” including the following risks, before investing in our Class A common stock:

- our business may continue to experience adverse impacts as a result of the COVID-19 pandemic;
- we are highly dependent on a limited number of products;
- our long-term growth depends on our ability to develop, acquire and commercialize new products, line extensions or expanded indications;
- we may be unable to successfully commercialize newly developed or acquired products or therapies in the United States;
- demand for our existing portfolio of products and any new products, line extensions or expanded indications depends on the continued and future acceptance of our products by physicians, patients, third-party payers and others in the medical community;
- our commercial success depends on our ability to differentiate the HA viscosupplementation therapies that we own or distribute from alternative therapies for the treatment of OA;
- the proposed down classification of non-invasive bone growth stimulators, including our Exogen system, by the FDA could increase future competition for bone growth stimulators and otherwise adversely affect the Company’s sales of Exogen;
- if we are unable to achieve and maintain adequate levels of coverage and/or reimbursement for our products, the procedures using our products, or any future products we may seek to commercialize, the commercial success of these products may be severely hindered;
- if we choose to acquire or invest in new businesses, products or technologies, we may be unable to complete these acquisitions or to successfully integrate them in a cost-effective and non-disruptive manner
- we compete and may compete in the future against other companies, some of which have longer operating histories, more established products or greater resources than we do, which may prevent us from achieving increased market penetration or improved operating results;
- the reclassification of our HA products from medical devices to drugs in the United States by the FDA could negatively impact our ability to market these products and may require that we conduct costly additional clinical studies to support current or future indications for use of those products;
- our ability to maintain our competitive position depends on our ability to attract, retain and motivate our senior management team and highly qualified personnel, and our failure to do so could adversely affect our business, results of operations and financial condition;
- if our facilities are damaged or become inoperable, we will be unable to continue to research, develop and manufacture our products and, as a result, our business, results of operations and financial condition may be adversely affected until we are able to secure a new facility;
- our products and operations are subject to extensive governmental regulation, and our failure to comply with applicable requirements could cause our business to suffer;
- we may be subject to enforcement action if we engage in improper claims submission practices and resulting audits or denials of our claims by government agencies could reduce our net sales or profits;
- the FDA regulatory process is expensive, time-consuming and uncertain, and the failure to obtain and maintain required regulatory clearances and approvals could prevent us from commercializing our products; our HCT/P products are subject to extensive government regulation and our failure to comply with these requirements could cause our business to suffer;

- if clinical studies of our future products do not produce results necessary to support regulatory clearance or approval in the United States or elsewhere, we will be unable to expand the indications for or commercialize these products; and
- we may be subject to enforcement action if we engage in improper marketing or promotion of our products, that could lead to costly investigations, fines or sanctions by regulatory bodies, any of which could be costly to our business.

Corporate information

Bioventus Inc., the issuer of the Class A common stock in this offering, was incorporated in Delaware on December 22, 2015. Bioventus LLC was organized in Delaware as a limited liability company in November 23, 2011. Our principal executive offices are located at 4721 Emperor Boulevard, Suite 400, Durham, NC 27703. Our telephone number is (919) 474-6700. Our corporate website is www.bioventus.com. The information contained on or that can be accessed through our website is not incorporated by reference into this prospectus, and you should not consider information on our website to be part of this prospectus or in deciding to purchase our Class A common stock.

Implications of being an emerging growth company

We are an "emerging growth company," as defined in the Jumpstart Our Business Startups Act of 2012, or the JOBS Act, and are eligible to take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies. These include, but are not limited to:

- reduced obligations with respect to financial data, including presenting only two years of audited financial statements and only two years of selected financial data in the registration statement on Form S-1 of which this prospectus is a part;
- reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements;
- not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act of 2002, or the Sarbanes-Oxley Act; and
- exemptions from the requirements of holding a non-binding advisory vote on executive compensation and the requirement to obtain stockholder approval of any golden parachute payments not previously approved.

We may take advantage of these exemptions until the last day of our fiscal year following the fifth anniversary of the completion of this offering or such earlier time that we are no longer an emerging growth company. We would cease to be an emerging growth company upon the earliest to occur of (1) the last day of the fiscal year in which we have more than $1.07 billion in annual gross revenue; (2) the date we qualify as a "large accelerated filer" as defined in Rule 12b-2 under the Securities Exchange Act of 1934, or the Exchange Act; (3) the issuance, in any three-year period, by us of more than $1.0 billion in non-convertible debt securities held by non-affiliates; and (4) the last day of the fiscal year ending after the fifth anniversary of our initial public offering. We may choose to take advantage of some, but not all, of the available exemptions. We have taken advantage of certain reduced reporting burdens in this prospectus. Accordingly, the information contained herein may be different than the information you receive from other public companies in which you hold stock.

In addition, Section 107 of the JOBS Act provides that an emerging growth company can take advantage of the extended transition period provided in Section 7(a)(2)(B) of the Securities Act of 1933, or the Securities Act, for complying with new or revised accounting standards. In other words, an emerging growth company can delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. However, we are choosing to "opt out" of such extended transition period and, as a result, we will comply with new or revised accounting standards on the relevant dates on which adoption of such standards is required for non-emerging growth companies. Our decision to opt out of the extended transition period for complying with new or revised accounting standards is irrevocable.

THE OFFERING

Issuer	Bioventus Inc.
Class A common stock offered hereby	shares (or shares if the underwriters exercise in full their option to purchase additional shares).
Underwriters' option to purchase additional shares of Class A common stock	shares.
Class A common stock to be issued to Former LLC Owners	shares.
Class A common stock to be outstanding immediately after this offering	shares (or shares if the underwriters exercise in full their option to purchase additional shares).
Class B common stock to be outstanding immediately after this offering	shares, all of which will be owned by the Continuing LLC Owner.
Voting Rights	Holders of our Class A common stock and Class B common stock will vote together as a single class on all matters presented to stockholders for their vote or approval, except as otherwise required by law. Each share of Class A common stock and Class B common stock will entitle its holder to one vote per share on all such matters. See "Description of capital stock."
Voting power held by purchasers in this offering	% (or %, if the underwriters exercise in full their option to purchase additional shares of Class A common stock).
Voting power held by the Former LLC Owners	% (or %, if the underwriters exercise in full their option to purchase additional shares of Class A common stock).
Voting power held by all holders of Class A common stock after giving effect to this offering	% (or %, if the underwriters exercise in full their option to purchase additional shares of Class A common stock).
Voting power held by all holders of Class B common stock after giving effect to this offering	% (or %, if the underwriters exercise in full their option to purchase additional shares of Class A common stock).
Voting power held by the Original LLC Owners after giving effect to this offering	% (or %, if the underwriters exercise in full their option to purchase additional shares of Class A common stock).
Ratio of shares of Class A common stock to LLC Interests	Our amended and restated certificate of incorporation and the Bioventus LLC Agreement will require that we at all times maintain a ratio of one LLC Interest owned by us for each outstanding share of Class A

	common stock (subject to certain exceptions for treasury shares and shares underlying certain convertible or exchangeable securities) and Bioventus LLC at all times maintain a one-to-one ratio between the number of shares of Class A common stock issued by us and the number of LLC Interests owned by us, as well as a one-to-one ratio between the number of shares of Class B common stock owned by the Continuing LLC Owner and the number of LLC Interests owned by the Continuing LLC Owner. This construct is intended to result in the Continuing LLC Owner having a voting interest in Bioventus Inc. that is substantially the same as the Continuing LLC Owner's percentage economic interest in Bioventus LLC. The Continuing LLC Owner will own all of our outstanding Class B common stock.
Use of proceeds	We estimate that the net proceeds to us from this offering, after deducting underwriting discounts and commissions and estimated offering expenses, will be approximately $ million (or approximately $ million if the underwriters exercise in full their option to purchase additional shares of Class A common stock), assuming an initial public offering price of $ per share (the midpoint of the price range listed on the cover page of this prospectus). We intend to use the net proceeds that we receive from this offering (including any net proceeds from the underwriters' exercise of their option to purchase additional shares of Class A common stock) to purchase newly-issued LLC Interests (or LLC Interests if the underwriters exercise in full their option to purchase additional shares of Class A common stock) directly from Bioventus LLC at a purchase price per interest equal to the initial public offering price per share of Class A common stock less underwriting discounts and commissions. The net proceeds received by Bioventus LLC in connection with this offering will be used as described in "Use of Proceeds." We cannot specify with certainty all of the uses of the net proceeds that we will receive from this offering. Accordingly, we will have broad discretion in the application of these proceeds.
Redemption rights of holders of LLC Interests	The Continuing LLC Owner, from time to time following the offering, may require Bioventus LLC to redeem all or a portion of its LLC Interests for newly-issued shares of Class A common stock on a one-for-one basis or, if Bioventus Inc. and the

	Continuing LLC Owner agree, a cash payment equal to the volume weighted average market price of one share of our Class A common stock for each LLC Interest redeemed (subject to customary adjustments, including for stock splits, stock dividends and reclassifications) in accordance with the terms of the Bioventus LLC Agreement; provided that, at Bioventus Inc.'s election, it may effect a direct exchange of such Class A common stock or such cash (if mutually agreed) for such LLC Interests. See "Certain relationships and related party transactions—Bioventus LLC Agreement." Shares of our Class B common stock will be cancelled on a one-for-one basis if we, at the election of the Continuing LLC Owner, redeem or exchange its LLC Interests pursuant to the terms of the Bioventus LLC Agreement.
Registration Rights Agreement	Pursuant to the Registration Rights Agreement, we will, subject to the terms and conditions thereof, agree to register the resale of the shares of our Class A common stock that are issuable to the Continuing LLC Owner upon redemption or exchange of their LLC Interests and the shares of our Class A common stock that are issued to the Former LLC Owners in connection with the Transactions. See "Certain relationships and related party transactions—Registration Rights Agreement."
Controlled company	Following this offering we will be a "controlled company" within the meaning of the corporate governance rules of Nasdaq. See "Management—Corporate governance." By becoming a stockholder, you will be deemed to have notice of and consented to provisions of our amended and restated certificate of incorporation that allocate certain corporate opportunities between us and our Original LLC Owners. See "Description of capital stock—Corporate opportunities."
Dividend policy	We do not anticipate declaring or paying any cash dividends on our Class A common stock for the foreseeable future. See "Dividend policy."
Tax Receivable Agreement	We will enter into the Tax Receivable Agreement with Bioventus LLC and the Continuing LLC Owner that will provide for the payment by us to the Continuing LLC Owner of 85% of the amount of tax benefits, if any, that we actually realize (or in some circumstances are deemed to realize) as a result of (i) increases in the tax basis of assets of Bioventus LLC resulting from (a) any future redemptions or exchanges of LLC Interests described above under

"—The offering—Redemption rights of holders of LLC interests" and (b) certain distributions (or deemed distributions) by Bioventus LLC and (ii) certain other tax benefits arising from payments under the Tax Receivable Agreement. Assuming no material changes in the relevant tax laws and that we earn sufficient taxable income to realize all potential tax benefits that are subject to the Tax Receivable Agreement, we expect that the tax savings associated with the purchase of LLC Interests in connection with this offering, together with future redemptions or exchanges of all remaining LLC Interests owned by the Continuing LLC Owner pursuant to the Bioventus LLC Agreement as described above, would aggregate to approximately $ million over 20 years from the date of this offering based on the assumed initial public offering price of $ per share of our Class A common stock, which is the midpoint of the range set forth on the cover page of this prospectus, and assuming all future redemptions or exchanges would occur one year after this offering. Under such scenario, assuming future payments are made on the date each relevant tax return is due, without extensions, we would be required to pay approximately 85% of such amount, or approximately $ million, over the 20-year period from the date of this offering. Under the Tax Receivable Agreement, we may elect to terminate the Tax Receivable Agreement early by making an immediate cash payment equal to the present value of all of the tax benefit payments that would be required to be paid by us to the Continuing LLC Owner under the Tax Receivable Agreement. If we were to elect to terminate the Tax Receivable Agreement immediately after this offering (including the use of proceeds to us therefrom), based on the assumed initial public offering price of $ per share of our Class A common stock, which is the midpoint of the range set forth on the cover page of this prospectus, and assuming no material changes in the relevant tax laws or tax rates and that we earn sufficient taxable income to realize all tax benefits that are subject to the Tax Receivable Agreement, we estimate that we would be required to pay approximately $ million in the aggregate under the Tax Receivable Agreement. The actual amounts we will be required to pay under the Tax Receivable Agreement will depend on, among other things, the timing of subsequent redemptions or exchanges of LLC Interests by the Continuing LLC Owner, the price of our shares of

	Class A common stock at the time of each such redemption or exchange, and the amounts and timing of our future taxable income, and may be significantly different from the amounts described in the preceding sentences. See "Certain relationships and related party transactions—Tax Receivable Agreement."
Stockholders Agreement	Pursuant to the Stockholders Agreement, the Voting Group will hold Class A common stock and Class B common stock representing approximately % of the combined voting power of all of our common stock. Until such time as EW Healthcare Partners, certain other members of the Voting Group and their respective affiliates own less than % of the total shares of our Class A common stock owned by them as of the date this offering is consummated, and Continuing LLC Owner and its affiliates own less than % of the total shares of our Class A common stock and Class B common stock owned by them as of the date this offering is consummated, or the Stockholders Agreement is otherwise terminated in accordance with its terms, the parties to the Stockholders Agreement will agree to vote their shares of Class A common stock and Class B common stock in favor of the election of the nominees of certain members of the Voting Group to our board of directors upon their nomination by the nominating and corporate governance committee of our board of directors. See "Certain relationships and related party transactions—Stockholders Agreement."
Reserved Shares Program	At our request, the underwriters have reserved for sale, at the initial public offering price, up to 5% of the shares offered by this prospectus for sale to some of our officers, employees and consultants. If these persons purchase reserved shares, this will reduce the number of shares available for sale to the general public. Any reserved shares that are not so purchased will be offered by the underwriters to the general public on the same terms as the other shares offered by this prospectus.
Risk Factors	Investing in shares of our Class A common stock involves a high degree of risk. See "Risk factors" for a discussion of factors you should carefully consider before investing in shares of our Class A common stock.
NASDAQ Global Market symbol	"BVS"

The number of shares of Class A common stock to be outstanding after this offering is based on the membership interests of Bioventus LLC outstanding as of , 2021, and excludes:

- shares of Class A common stock reserved for issuance under our 2021 Incentive Award Plan, or the Plan, as described in "Executive compensation—New incentive arrangements", consisting of (i) shares of Class A common stock issuable upon the exercise of options to purchase shares of Class A common stock granted on the date of this prospectus to our directors and certain employees, including the named executive officers, in connection with this offering as described in "Executive compensation—Director compensation" and "Executive compensation—New equity awards," and (ii) additional shares of Class A common stock reserved for future issuance (exclusive of the additional shares available for issuance under the Plan pursuant to the annual increase each calendar year beginning in and ending in , as described in "Executive compensation—New incentive arrangements");
- shares of Class A common stock reserved as of the closing date of this offering for future issuance to the Stock Plan Participants upon settlement of their awards as described in "Executive compensation—Narrative to summary compensation table—Equity-based compensation";
- shares of Class A common stock reserved for issuance under our Employee Stock Purchase Plan as described in "Executive compensation—New incentive arrangements"; and
- shares of Class A common stock reserved as of the closing date of this offering for future issuance upon redemption or exchange of LLC Interests by the Continuing LLC Owner.

Unless otherwise indicated, this prospectus assumes:

- the completion of the organizational transactions as described in "Transactions;"
- no exercise by the underwriters of their option to purchase additional shares of Class A common stock;
- the shares of Class A common stock are offered at $ per share (the midpoint of the price range listed on the cover page of this prospectus); and
- no exercise of outstanding options after , 2021.

SUMMARY HISTORICAL AND PRO FORMA FINANCIAL DATA

The following tables present the summary historical and pro forma financial data for Bioventus LLC and its subsidiaries for the periods and at the dates indicated. Bioventus LLC is the predecessor of the issuer, Bioventus Inc., for financial reporting purposes. The summary statements of operations and statement of cash flows data for the years ended December 31, 2019 and 2018 are derived from the Bioventus LLC audited financial statements included elsewhere in this prospectus. The summary statements of operations and statement of cash flows data for the nine months ended September 26, 2020 and September 28, 2019, and the summary balance sheet data as of September 26, 2020 are derived from the Bioventus LLC unaudited interim condensed consolidated financial statements included elsewhere in this prospectus. The unaudited interim condensed consolidated financial statements have been prepared on the same basis as the audited consolidated financial statements and, in the opinion of management, include all adjustments, consisting only of normal recurring adjustments, necessary for a fair statement of the information set forth herein. You should read this data together with our audited and unaudited financial statements and related notes appearing elsewhere in this prospectus and the information under the captions “Capitalization,” “Selected financial data” and “Management’s discussion and analysis of financial condition and results of operations.” Our historical results are not necessarily indicative of our future results and results of interim periods are not necessarily indicative of results for the entire year.

The summary unaudited pro forma consolidated financial data of Bioventus Inc. presented below have been derived from our unaudited pro forma consolidated financial statements included elsewhere in this prospectus. The summary unaudited pro forma balance sheet data as of September 26, 2020 give effect to the Transactions as described in “Transactions”, including the completion of this offering, as if all such transactions had occurred on that date and the summary unaudited pro forma statement of operations data for the year ended December 31, 2019 and the nine months ended September 26, 2020 gives effect to the Transactions, as if all such transactions had occurred on January 1, 2019. The unaudited pro forma financial information includes various estimates which are subject to material change and may not be indicative of what our operations or financial position would have been had this offering and related transactions taken place on the dates indicated, or that may be expected to occur in the future. See “Unaudited pro forma consolidated financial information” for a complete description of the adjustments and assumptions underlying the summary unaudited pro forma consolidated financial data.

The summary historical data of Bioventus Inc. have not been presented as Bioventus Inc. has had no business transactions or activities to date and had no assets or liabilities during the periods presented in this section.

	Historical Bioventus LLC				Pro forma Bioventus Inc.(1)	
	Year ended		Nine months ended		Year ended	Nine months ended
(in thousands, except per share and share amounts)	December 31, 2019	December 31, 2018	September 26, 2020	September 28, 2019	December 31, 2019	September 26, 2020
Consolidated statements of operations data:						
Net sales	$ 340,141	$ 319,177	$ 222,570	$ 242,587	$	$
Cost of sales (including depreciation and amortization of $22,399, $20,614, $16,076 and $17,149, respectively)	90,935	84,168	62,521	66,810		
Gross profit	249,206	235,009	160,049	175,777		
Selling, general and administrative expense	198,475	191,672	131,104	144,021		
Research and development expense	11,055	8,095	8,311	7,911		
Change in fair value of contingent consideration	—	(739)	—	—		
Restructuring costs	575	1,373	—	540		
Depreciation and amortization	7,908	8,615	5,305	5,815		
Loss on impairment of intangible assets	—	489	—	—		
Operating income	31,193	25,504	15,329	17,490		
Interest expense	21,579	19,171	7,095	13,935		
Other (income) expense	(75)	226	(4,539)	71		
Other expense	21,504	19,397	2,556	14,006		
Income from continuing operations before income taxes	9,689	6,107	12.773	3,484		
Income tax expense	1,576	1,664	302	684		
Net income from continuing operations	8,113	4,443	12,471	2,800		
Loss from discontinued operations, net of tax	1,815	16,650	—	1,616		
Net income (loss)	6,298	(12,207)	12,471	1,184		
Loss attributable to noncontrolling interest	553	—	1,164	30		
Net income attributable to Bioventus	6,851	(12,207)	13,635	1,214	$	$
Accumulated and unpaid preferred distributions	(5,955)	(5,781)	(4,525)	(4,421)		
Net income allocated to participating shareholders	(1,555)	—	(5,225)	—		
Net (loss) income attributable to common unit holders	$ (659)	$ (17,988)	$ 3,885	$ (3,207)		
Net (loss) income per common unit, basic and diluted	$ (0.13)	$ (3.67)	$ 0.79	$ (0.65)		
Weighted average common units outstanding, basic and diluted	4,900	4,900	4,900	4,900		
Pro forma weighted average shares of Class A common stock outstanding:						
Basic						
Diluted						
Pro forma net (loss) income per share of Class A common stock outstanding:						
Basic					$	$
Diluted					$	$
Other Financial Data:						
Adjusted EBITDA(2)	$ 79,188	$ 72,171	$ 44,289	$ 48,483	$	$

(in thousands)	Years Ended December 31, 2019	Years Ended December 31, 2018	Nine Months Ended September 26, 2020	Nine Months Ended September 28, 2019
Consolidated statements of cash flows data:				
Net cash provided by (used in):				
Operating activities from continuing operations	$ 42,545	$ 52,310	$ 46,752	$ 21,329
Investing activities from continuing operations	(7,912)	(6,061)	(18,961)	(7,348)
Financing activities	(10,951)	(13,256)	(19,691)	(11,640)
Discontinued operations	(1,832)	(7,163)	(228)	(1,663)
Effect of exchange rate changes on cash	(104)	(160)	86	171
Net change in cash and cash equivalents	$ 21,746	$ 25,670	$ 7,958	$ 849

(in thousands)	September 26, 2020	Pro forma Bioventus Inc.(1) As of September 26, 2020
Balance sheet data:		
Cash and cash equivalents	$ 72,478	$
Total assets	$ 479,277	$
Total liabilities	$ 333,938	$
Accumulated deficit	$ (142,176)	$
Total members'/stockholders' equity	$ 145,339	$

(1) Gives pro forma effect to the Transactions, including the offering and sale of shares of Class A common stock in this offering at an initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus. See "Unaudited pro forma consolidated financial information."

(2) We define Adjusted EBITDA as net income from continuing operations before interest expense, provision for income taxes and depreciation and amortization, adjusted for the impact of certain cash, non-cash and other items that we do not consider in our evaluation of ongoing operating performance. These items include loss on impairment of intangible assets, equity compensation, losses associated with debt refinancing, adjustments to the fair value of contingent consideration liabilities, restructuring costs, foreign currency impact and other non-recurring costs. We use Adjusted EBITDA, a non-GAAP financial measure, because we believe it is a useful indicator of our operating performance. Our management uses Adjusted EBITDA principally as a measure of our operating performance and believes that Adjusted EBITDA is useful to our investors because it is frequently used by securities analysts, investors and other interested parties in their evaluation of the operating performance of companies in industries similar to ours. Our management also uses Adjusted EBITDA for planning purposes, including the preparation of our annual operating budget and financial projections.

Adjusted EBITDA is not a measurement of financial performance under U.S. generally accepted accounting principles, or U.S. GAAP or GAAP. Adjusted EBITDA should not be considered in isolation or as a substitute for a measure of our liquidity or operating performance prepared in accordance with U.S. GAAP and is not indicative of net income (loss) from continuing operations as determined under U.S. GAAP. In addition, Adjusted EBITDA should not be construed as an inference that our future results will be unaffected by unusual or non-recurring items. Adjusted EBITDA and other non-GAAP financial measures have limitations that should be considered before using these measures to evaluate our liquidity or financial performance. Some of these limitations are as follows:

Adjusted EBITDA excludes certain tax payments that may require a reduction in cash available to us; does not reflect our cash expenditures, or future requirements, for capital expenditures (including capitalized software developmental costs) or contractual commitments; does not reflect changes in, or cash requirements for, our working capital needs; does not reflect the cash requirements necessary to service interest or principal payments on our debt; and excludes certain purchase accounting adjustments related to acquisitions.

In addition, our definition and calculation of Adjusted EBITDA may differ from that of other companies. We compensate for these limitations by relying primarily on our U.S. GAAP results and by using non-GAAP financial measures as a supplement.

The following table presents a reconciliation of net income from continuing operations to Adjusted EBITDA for the periods presented:

	Year ended		Nine Months Ended		Pro Forma Bioventus Inc.	
(in thousands)	December 31, 2019	December 31, 2018	September 26, 2020	September 28, 2019	Year ended December 31, 2019	Nine Months Ended September 26, 2020
Net income from continuing operations	$ 8,113	$ 4,443	$ 12,471	$ 2,800	$	$
Depreciation and amortization[a]	30,316	29,238	21,789	22,972		
Income tax expense	1,576	1,664	302	684		
Interest expense	21,579	19,171	7,095	13,935		
Equity compensation[b]	10,844	14,325	619	3,252		
COVID-19 benefits, net[c]	—	—	(4,158)	—		
Succession and transition charges[d]	—	—	5,345	—		
Restructuring costs[e]	575	1,373	—	540		
Foreign currency impact[f]	8	234	(58)	146		
Loss on impairment of intangible assets[g]	—	489	—	—		
Losses associated with debt refinancing[h]	367	—	—	—		
Change in fair value of contingent consideration[i]	—	(739)	—	—		
Other non-recurring costs[j]	5,810	1,973	884	4,154		
Adjusted EBITDA	$ 79,188	$ 72,171	$ 44,289	$ 48,483	$	$

(a) Includes for the years ended December 31, 2019 and 2018 and the nine months ended September 26, 2020 and September 28, 2019, respectively, depreciation and amortization of $22.4 million, $20.6 million, $16.1 million and $17.1 million in cost of sales and $7.9 million, $8.6 million, $5.3 million and $5.8 million represented in the consolidated statements of operations and comprehensive income (loss) with the balance in research and development.
(b) Represents compensation as well as the change in fair market value resulting from two equity-based compensation plans, the MIP and the Phantom Plan.
(c) Represents income resulting from the Coronavirus Aid, Relief and Economic Security Act, or CARES Act, offset by additional cleaning and disinfecting expenses and contract termination fees for events we were unable to hold.
(d) Primarily represents costs related to the chief executive officer transition.
(e) Represents costs related to a shift from direct to an indirect distribution model in our International business to improve performance. In addition, various international subsidiaries were dissolved and or merged into other Bioventus LLC entities.
(f) Represents realized and unrealized gains and losses from fluctuations in foreign currency and is included in other (income) expense on the consolidated statements of operations and comprehensive income (loss).
(g) Represents the write-off of an intangible asset related to a BGS product we no longer sell.
(h) Represents charges with our 2019 debt refinancing that were included in selling, general and administrative expense on the consolidated statements of operations and comprehensive income (loss).
(i) Represents adjustments to the fair value of contingent consideration liabilities related to a supply agreement resulting from the OsteoAMP acquisition.
(j) Represents charges associated with Bioventus LLC potential strategic transactions such as potential acquisitions or preparing to become a public company, primarily accounting and legal fees.

RISK FACTORS

Investing in our Class A common stock involves a high degree of risk. These risks include, but are not limited to, those described below, each of which may be relevant to an investment decision. You should carefully consider the risks described below, together with all of the other information in this prospectus, including our financial statements and related notes, before investing in our Class A common stock. The realization of any of these risks could adversely affect our business, results of operations and financial condition. In that event, the trading price and value of our Class A common stock could decline, and you may lose part or all of your investment.

Risks related to our business

Our business may continue to experience adverse impacts as a result of the COVID-19 pandemic.

In March 2020, the World Health Organization declared the outbreak of COVID-19 to be a pandemic. The COVID-19 pandemic is having widespread, rapidly evolving and unpredictable impacts on global society, economies, financial markets and business practices. Federal and state governments have implemented measures in an effort to contain the virus, including social distancing, travel restrictions, border closures, limitations on public gatherings, work from home and supply chain logistical changes. We remain focused on protecting the health and well-being of our employees, partners and patients while assuring the continuity of our business operations. Furthermore, the long-term impact of COVID-19 on our business will depend on many factors, including, but not limited to, the duration and severity of the pandemic and the impact it has on our partners, patients and communities in which we operate, all of which continue to be uncertain. For example, there has been a decrease in patient visits to hospitals due to risk and fear of exposure to COVID-19, as well as decreases in, or temporary moratoriums on, elective procedures, which may be re-imposed in the future. Our business, results of operations and financial condition have been, and may continue to be, materially impacted due to the decrease in patient visits and elective procedures and any future temporary cessations of elective procedures and could be further impacted by delays in payments from customers, supply chain interruptions, extended “shelter in place” orders or advisories, facility closures or other reasons related to the pandemic.

To the extent the COVID-19 disruptions adversely impact our business, results of operations and financial condition, it may also have the effect of heightening many of the other risks described in “Risk Factors,” including risks relating to our ability to successfully commercialize new developed or acquired products or therapies, consolidation in the healthcare industry, disruptions in the supply or manufacturing of our products or their components, intensified pricing pressure as a result of changes in the purchasing behavior of hospitals and maintenance of our numerous contractual relationships.

We are highly dependent on a limited number of products.

Our OA joint pain treatment and joint preservation products accounted for 54%, 49%, 53% and 53% of our total revenue for the years ended December 31, 2019 and 2018 and the nine months ended September 26, 2020 and September 28, 2019, respectively. We expect that sales of such products will continue to account for a substantial portion of our revenue, and therefore, our ability to execute our growth strategy and maintain profitability will depend upon the continued demand for these products. In addition, our supply and distribution agreements for Durolane, GELSYN-3 and SUPARTZ FX are subject to renewal and their terms end in December 2115, February 2026 and December 2028, respectively. If the supply and distribution agreements for any of our HA viscosupplementation therapies were terminated, our revenue would be impaired. If our OA joint pain treatment and joint preservation products fail to maintain their market acceptance for any reason, our business, results of operations and financial condition may be adversely affected.

Our long-term growth depends on our ability to develop, acquire and commercialize new products, line extensions or expanded indications.

Our industry is highly competitive and subject to rapid change and technological advancements. Therefore, it is important to our business that we continue to introduce new products and/or enhance our existing product offerings through line extensions or expanded indications. Developing, acquiring and commercializing products is expensive, time-consuming and could divert management's attention away from our existing business. Even if we are successful in developing additional products, the success of any new product offering or enhancements to existing products will depend on several factors, including our ability to:

- properly identify and anticipate the needs of healthcare professionals and patients;
- develop and introduce new products, line extensions and expanded indications in a timely manner;
- distinguish our products from those of our competitors;
- avoid infringing upon the intellectual property rights of third-parties and maintain necessary intellectual property licenses from third-parties;
- demonstrate, if required, the safety and efficacy of new products with data from preclinical studies and clinical trials;
- obtain clearance or approval, if required, from the FDA and other regulatory agencies, for such new products, line extensions and expanded indications, and maintain full compliance with FDA and other regulatory requirements applicable to new devices or products or modifications of existing devices or products;
- provide adequate training to potential users of our products;
- receive adequate coverage and reimbursement for our products; and
- maintain an effective and dedicated sales and marketing team.

If we are unsuccessful in developing, acquiring and commercializing new products or enhancing our existing product offerings through line extensions and expanded indications, our ability to increase our net sales may be impaired.

Additionally, our research and development efforts may require a substantial investment of time and resources before we are adequately able to determine the commercial viability of a new product, technology, material or other innovation. Such efforts may not result in the development of a viable product. In addition, even if we are able to successfully develop new active healing products, line extensions and expanded indications, these products may not produce sales in excess of the costs of development and they may be rendered obsolete by changing customer preferences or the introduction by our competitors of products embodying new technologies or features.

We may be unable to successfully commercialize newly developed or acquired products or therapies in the United States.

The commercial success of newly acquired or developed products, such as MOTYS, in the United States will depend upon the awareness and acceptance of such products among the medical community, including physicians and patients. Market acceptance will depend on a number of factors, including, among others:

- the perceived advantages and disadvantages of such products over existing therapies and other competitive treatments;
- availability of alternative treatments;
- inability to secure and maintain adequate coverage, including obtaining a unique reimbursement code;

- the extent to which physicians prescribe the Company's products;
- the willingness of the target patient population to try new therapies;
- the strength of marketing and distribution support of the Company's new products and competitive products;
- publicity concerning the Company's new products, our existing products or competing products and treatments;
- pricing and cost effectiveness of such new therapies;
- the effectiveness of our sales and marketing strategies; and
- the willingness of patients to pay out-of-pocket in the absence of third-party reimbursement.

Our efforts to educate the medical community about the benefits of newly acquired or developed products may require significant resources and we may never be successful. If such newly acquired or developed products do not achieve an adequate level of acceptance by patients and physicians in the United States, our business, results of operations and financial condition may be adversely affected.

Demand for our existing portfolio of products and any new products, line extensions or expanded indications depends on the continued and future acceptance of our products by physicians, patients, third-party payers and others in the medical community.

We cannot be certain that our existing portfolio of products and any new products, line extensions or expanded indications that we develop will achieve or maintain market acceptance. With respect to our OA joint pain treatment and joint preservation products, third-party payers may be reluctant to continue to cover our HA viscosupplementation therapies at their current prices. Further, new injectable therapies or oral medications may become available that help manage OA joint pain in a more convenient and/or cost effective manner than our HA viscosupplementation therapies. With respect to our BGS products, new allograft, DBMs, synthetics, growth factors, or other enhancements to our existing implants may never achieve broad market acceptance, which can be affected by a lack of clinical acceptance of BGSs and technologies, introduction of competitive treatment options which render BGSs and technologies too expensive or obsolete and difficulty training surgeons in the use of BGSs and technologies. Media reports or other negative publicity concerning both methods of tissue recovery from donors and actual or potential disease transmission from donated tissue may limit widespread acceptance by the medical community of our allografts, growth factor and DBMs, whether directed at these products generally or our products specifically. Unfavorable reports of improper or illegal tissue recovery practices by any participant in the industry, both in the United States and internationally, as well as incidents of improperly processed tissue leading to transmission of disease, may broadly affect the rate of future tissue donation and market acceptance of allograft based technologies by the medical community.

In addition, we believe that even if the medical community generally accepts our existing portfolio of products and any new products, line extensions or expanded indications, acceptance and recommendations by influential members of the medical community will be important to their broad commercial success. If the medical community does not broadly accept our products, we may not remain competitive in the market, which could adversely affect our business, results of operations and financial condition.

Our commercial success depends on our ability to differentiate the HA viscosupplementation therapies that we own or distribute from alternative therapies for the treatment of OA.

Our ability to achieve commercial success will, at least in part, depend on our ability to differentiate the HA viscosupplementation therapies that we own or distribute in such a way that physicians and patients will select them. The HA viscosupplementation therapies that we own or distribute could face competition from steroid injections, other HA viscosupplementation therapies, combination HA viscosupplementation/steroid therapies and alternate therapies for the treatment of OA, including those currently in development.

We expect that the HA viscosupplementation therapies that we own or distribute will continue to be used primarily after oral analgesics and steroid injections no longer provide adequate pain relief. In addition, the five and three injection HA viscosupplementation therapies that we distribute face competition from single injection therapies. We expect the three injection market to decline by a projected 3.1% CAGR and the five injection market to decline by a projected 13.6% CAGR from 2019 to 2024. Due to the convenience associated with the single injection treatments, it is expected that these products will continue to capture increasing market share of the HA viscosupplementation therapies market, which may adversely affect our business, results of operations and financial condition to the extent physicians and patients do not select Durolane, our single injection HA viscosupplementation therapy. There are also a number of combination HA viscosupplementation/steroid therapies currently in development. The American Association of Orthopedic Surgeons, or AAOS, since the release of their May 2013 clinical practice guidelines, does not recommend the use of HA for patients with symptomatic knee OA. The evidence for the AAOS recommendation is based on two or more high quality studies with consistent findings for recommending for or against the intervention. The AAOS recommendation states that practitioners should follow a strong recommendation, such as this one, unless a clear and compelling rationale for an alternative approach is present. In May 2018, the Journal of the AAOS ranked the nonsteroidal anti-inflammatory drug naproxen the most effective in individual knee OA treatment for improving both pain and function. To the extent that any additional therapies receive approval or alternative therapies receive positive support from the AAOS or other physician associations, they could reduce the market share represented by HA viscosupplementation therapies for OA treatment and adversely affect our commercial success.

If we are unable to differentiate the HA viscosupplementation therapies we own or distribute from other therapies, physicians and patients may not be willing to use them or be willing to switch from existing therapies with which they are familiar. Once physicians incorporate a particular treatment into their practice, they may not alter their practice absent compelling clinical evidence of safety and/or effectiveness and/or significant pricing reimbursement advantages.

The proposed down-classification of non-invasive bone growth stimulators, including our Exogen system, by the FDA could increase future competition for bone growth stimulators and otherwise adversely affect the Company's sales of Exogen.

On August 17, 2020, FDA published a Federal Register notice announcing its proposal to reclassify non-invasive bone growth stimulators, such as Exogen, from Class III medical devices to Class II with special controls. Class III devices are subject to the most stringent regulatory pathway for approval for medical devices requiring, among other things, rigorous clinical studies and pre-approval manufacturing review. Class II devices may be cleared for marketing by the FDA under the 510(k) pathway if they are determined to be substantially equivalent to a legally marketed predicate device. The 510(k) clearance process does not always require clinical testing, and is generally less onerous than the premarket approval process applicable to Class III devices. On September 8-9, 2020, the Orthopaedic and Rehabilitation Devices Panel of the FDA Medical Devices Advisory Committee met and discussed FDA's proposal. The Panel, whose authority is non-binding but nonetheless considered by FDA, ultimately voted in favor of FDA's proposal to down-classify non-invasive bone growth stimulators.

The FDA has proposed that any final order would become effective 30 days after publication. While FDA has not yet finalized its proposal to down-classify non-invasive bone growth stimulators, should such down-classification occur now or in the future, we may face additional competition from new market entrants who would be able to pursue marketing authorization through the 510(k) clearance pathway instead of the more onerous and burdensome PMA approval process. Class II devices that qualify as durable medical equipment under the Medicare program may also be eligible for inclusion in Medicare's competitive bidding program for durable medical equipment, prosthetics, orthotics and supplies. As a result of down-classification, Exogen could face additional competition or we could receive lower reimbursement amounts for Exogen, all of which could adversely affect our business, results of operations and financial condition.

If we are unable to achieve and maintain adequate levels of coverage and/or reimbursement for our products, the procedures using our products, or any future products we may seek to commercialize, the commercial success of these products may be severely hindered.

Our products are purchased by healthcare providers and customers who typically bill third-party payers, such as government programs, including Medicare and Medicaid, or private insurance plans and healthcare networks, to cover all or a portion of the costs and fees associated with our products. Patients may also be billed for deductibles or co-payments in accordance with third-party payer policies. These third-party payers and insurers may deny reimbursement if they determine that a device or product provided to a patient or used in a procedure does not meet applicable payment criteria or if the policyholder's healthcare insurance benefits are limited.

As required by law, the Centers for Medicare and Medicaid Services, or CMS, which administers the Medicare program, has continued efforts to implement a competitive bidding program for selected durable medical equipment, prosthetic and orthotic supplies items paid for by the Medicare program. In this program, Medicare rates are based on bid amounts for certain products in designated geographic areas, rather than the Medicare fee schedule amount. Bone growth stimulation products like our Exogen system are currently exempt from this competitive bidding process, but may be eligible for inclusion if the FDA's proposed down-classification order becomes effective. We cannot predict which products from any of our businesses may ultimately be affected or whether or when the competitive bidding process may be extended to our businesses.

Limits put on reimbursement by third-party payers, whether foreign or domestic, governmental or commercial, could make it more difficult to buy our products and substantially reduce, or possibly eliminate, patient access to our products. The healthcare industry in the United States has experienced a trend toward cost containment as government and private insurers seek to control rising healthcare costs by imposing lower payment rates and negotiating reduced contract rates with providers and suppliers.

There is no uniform policy of coverage and reimbursement for our products or procedures using our products among third-party payers in the United States, and coverage and reimbursement for our products and procedures using our products can differ significantly from payer to payer. Further, these payers regularly review new and existing technologies for possible coverage and can, without notice, deny or reverse coverage for new or existing products and treatments. Third-party payers may not consider our products to be medically necessary or cost-effective for certain indications or off-label uses or for all uses, and as a result, may not provide coverage for the products. For example, Blue Cross Blue Shield Association's Evidence Street platform issued a report in April 2018 questioning the efficacy of our Exogen system, which resulted in several non-coverage policies being issued by member organizations. Additionally, to the extent that third party payers decide that they are no longer willing to provide reimbursement for physician prescribed off-label uses of Exogen, sales may be negatively impacted. See "Risk factors—Risks related to government regulation—We may be subject to enforcement action if we engage in improper marketing or promotion of our products, and the misuse or off-label use of our products may harm our image in the marketplace, result in injuries that lead to product liability suits or result in costly investigations, fines or sanctions by regulatory bodies if we are deemed to have engaged in the promotion of these uses, any of which could be costly to our business."

We may also be required to conduct expensive clinical studies to justify coverage and reimbursement and/or the level of reimbursement relative to other therapies. In addition, should governmental authorities continue to enact legislation or adopt regulations that affect third-party coverage and reimbursement, access to our products and coverage by private or public insurers may be reduced. If third-party payers or insurers that currently cover or reimburse our products or the procedures in which they are used limit their coverage or reimbursement in the future, or if other third-party payers or insurers issue similar policies, this could impact our ability to sell our products, force us to lower the price we charge for our products, and adversely affect our business, results of operations and financial condition.

Our ability to market and sell our products could be harmed by future actions by CMS, other government agencies or private payers to diminish payments to healthcare providers and suppliers. For example, the CMS, in its ongoing implementation of the Medicare program, periodically reviews medical study literature to determine how the literature addresses certain procedures and therapies in the Medicare population. The impact that these assessments could have on Medicare or third-party payer coverage determinations for our products is currently unknown, but we cannot provide assurances that the resulting actions will not restrict Medicare or other insurance coverage for our products. In addition, there can be no assurance that we or our distributors will not experience significant coverage or reimbursement impediments in the future related to these or other programs and policies of CMS. Specifically, drug pricing reform legislation and executive orders, which could negatively affect the reimbursement rates paid for HA viscosupplements, have been issued by the White House and proposed by Congress, and may be enacted in the future.

Private payers may adopt coverage decisions and payment amounts determined by CMS as guidelines in setting their coverage and reimbursement policies. In addition, for some governmental programs, such as Medicaid, coverage and reimbursement differs from state to state. Medicaid payments to physicians, facilities and other providers are often lower than payments by other third-party payers and some state Medicaid programs may not pay an adequate amount for the procedures performed with our products, if any payment is made at all. If CMS, other government agencies or private payers lower their reimbursement rates, or if any of the proposed drug pricing executive orders or legislative reforms are enacted, the commercial success of our products may be adversely affected.

Our business may be adversely affected if consolidation in the healthcare industry leads to demand for price concessions or if a GPO, third-party payers or other similar entities exclude us from being a supplier.

Healthcare costs have risen significantly over the past decade, which has resulted in or led to numerous cost reform initiatives by legislators, regulators and third-party payers. Cost reform has triggered a consolidation trend in the healthcare industry to aggregate purchasing power, which may increase requests for pricing concessions or risk vendor exclusion. For example, non-clinical staff at hospitals are increasingly involved in the evaluation of products and product purchasing decisions. In order for us to sell our products, we must convince such staff as well as physicians and hospitals that our products are attractive alternatives to competing products for use in surgical procedures. Additionally, GPOs, independent delivery networks and large single accounts may continue to use their market power to consolidate purchasing decisions for physicians. Third-party payers may also continue to use their market power to reduce the reimbursement for our products by increasing the rebates we are required to pay them when our products are covered, which may negatively impact our results. We expect that market demand, government regulation, third-party coverage and reimbursement policies and societal pressures will continue to change the healthcare industry worldwide, resulting in further business consolidations and alliances among our customers, which may exert further downward pressure on the prices of our products.

If we choose to acquire or invest in new businesses, products or technologies, we may be unable to complete these acquisitions or to successfully integrate them in a cost-effective and non-disruptive manner.

Our success depends on our ability to enhance and broaden our product offerings in response to changing customer demands, competitive pressures and advances in technologies. We continue to search for viable acquisition candidates or strategic alliances that would expand our market sector and/or global presence, as well as additional products appropriate for current distribution channels. Accordingly, we may in the future pursue the acquisition of, or joint ventures relating to, new businesses, products or technologies instead of developing them internally. For example, we entered into an Option and Equity Purchase Agreement with CartiHeal providing for, among other things, an exclusive option to acquire the company under certain terms and conditions as described above. See “Business—Development and Clinical Pipeline—Treatment of Cartilage for Osteochondral defects—CartiHeal (developer of Agili-C) investment and option and equity purchase agreement.” Potential future and

completed acquisitions and strategic investments, such as the CartiHeal transaction, involve numerous risks, including:

- risks associated with conducting due diligence;
- problems integrating the purchased technologies, products or business operations;
- inability to achieve the anticipated synergies and overpaying for acquisitions or unanticipated costs associated with acquisitions;
- invalid net sales assumptions for potential acquisitions;
- issues maintaining uniform standards, procedures, controls and policies;
- diversion of management's attention from our core business;
- adverse effects on existing business relationships with suppliers, distributors and customers;
- risks associated with entering new markets in which we have limited or no experience;
- potential loss of key employees of acquired businesses; and
- increased legal, accounting and compliance costs.

We compete with other companies for these opportunities, and we may be unable to consummate such acquisitions or joint ventures on commercially reasonable terms, or at all. In addition, acquired businesses may have ongoing or potential liabilities, legal claims (including tort and/or personal injury claims) or adverse operating issues that we fail to discover through due diligence prior to the acquisition. Even if we are aware of such liabilities, claims or issues, we may not be able to accurately estimate the magnitude of the related liabilities and damages. In particular, to the extent that prior owners of any acquired businesses or properties failed to comply with or otherwise violated applicable laws or regulations, failed to fulfill their contractual obligations to their customers, or failed to satisfy legal obligations to employees or third parties, we, as the successor, may be financially responsible for these violations and failures and may suffer reputational harm or otherwise be adversely affected. Acquisitions also frequently result in the recording of goodwill and other intangible assets which are subject to potential impairment in the future that could harm our financial results. If we were to issue additional equity in connection with such acquisitions, this may dilute our stockholders.

Pricing pressure from our competitors or hospitals may affect our ability to sell our products at prices necessary to support our current business strategies.

Medical device companies, healthcare systems and GPOs have intensified competitive pricing pressure as a result of industry trends and new technologies. Purchasing decisions are gradually shifting to hospitals, IDNs and other hospital groups, with surgeons and other physicians increasingly acting only as "employees." Changes in the purchasing behavior of hospitals or the amount third-party payers are willing to reimburse our customers for procedures using our products, including those as a result of healthcare reform initiatives, could create additional pricing pressure on us. In addition to these competitive forces, we continue to see pricing pressure as hospitals introduce new pricing structures into their contracts and agreements, including fixed price formulas, capitated pricing and episodic or bundled payments intended to contain healthcare costs. If such trends continue to drive down the prices we are able to charge for our products, our profit margins will shrink, adversely affecting our business, results of operations and financial condition.

If we fail to successfully enter into purchasing contracts for our BGS products or engage in contract bidding processes internationally, we may not be able to receive access to certain hospital facilities and our sales may decrease.

In the United States, the hospital facilities where physicians treat patients with our BGS products typically require us to enter into purchasing contracts. The process of securing a satisfactory contract can be lengthy and

time-consuming and require extensive negotiations and management time. In certain international jurisdictions, from time to time, certain institutions require us to engage in a contract bidding process in the event that such institutions are considering making purchase commitments that exceed specified cost thresholds, which vary by jurisdiction. These processes are only open at certain periods of time, and we may not be successful in the bidding process. If we do not receive access to hospital facilities through these contracting processes or otherwise, or if we are unable to secure contracts or tender successful bids, our sales may stagnate or decrease and our operating results may be harmed. Furthermore, we may expend significant effort in these time-consuming processes and still may not obtain a purchase contract from such hospitals.

Governments outside the United States may not provide coverage or reimbursement of our products, which may adversely affect our business, results of operations and financial condition.

Acceptance of our products in international markets may depend, in part, upon the availability of coverage and reimbursement within prevailing healthcare payment systems. Reimbursement and healthcare payment systems in international markets vary significantly by country, and include both government-sponsored healthcare and private insurance. Our products may not obtain international coverage and reimbursement approvals in a timely manner, if at all, which may require consumers desiring our products to purchase them directly. Third-party coverage and reimbursement for our products or any of our products in development for which we may receive regulatory approval may not be available or adequate in international markets, which could adversely affect our business, results of operations and financial condition.

Our future growth depends on physician awareness of the distinctive characteristics, benefits, safety, clinical efficacy and cost-effectiveness of our products.

We focus our sales, marketing and training efforts on physicians, surgeons and other health care professionals. The acceptance of our products depends in part on our ability to educate physicians as to the distinctive characteristics, benefits, safety, clinical efficacy and cost-effectiveness of our products compared to alternative products, procedures and therapies. If physicians, surgeons or other healthcare professionals are not properly trained, they may misuse or ineffectively use our products, which may result in unsatisfactory patient outcomes, patient injury, negative publicity or lawsuits against us. In addition, a failure to educate physicians, surgeons or other healthcare professionals regarding our products may impair our ability to achieve market acceptance of our products.

We compete and may compete in the future against other companies, some of which have longer operating histories, more established products or greater resources than we do, which may prevent us from achieving increased market penetration or improved operating results.

The medical device industry is characterized by intense competition, subject to rapid change and significantly affected by market activities of industry participants, new product introductions and other technological advancements. We believe that our competitors have historically dedicated and will continue to dedicate significant resources to promote their products or to develop new products. We have competitors in the United States and internationally, including major medical device and pharmaceutical companies, biotechnology companies and universities and other research institutions.

These companies and other industry participants may develop alternative treatments, products or procedures that compete directly or indirectly with our products. If alternative treatments are, or are perceived to be, superior to our products, sales of our products could be adversely affected and our results of operations could suffer. Our competitors may also develop and patent processes or products earlier than we can or obtain regulatory clearance or approvals for competing products more rapidly than we can, which could impair our ability to develop and commercialize similar processes or products.

Many of our current and potential competitors are major medical device and pharmaceutical companies that have substantially greater financial, technical and marketing resources than we do, and they may succeed in

developing products that would render our products obsolete or noncompetitive. It is also possible that our competition will be able to leverage their large market share to set prices at a level below that which is profitable for us.

Some of our competitors enjoy several competitive advantages over us, including:

- greater financial, human and other resources for product research and development, sales and marketing and litigation;
- significantly greater name recognition;
- control of intellectual property and more expansive portfolios of intellectual property rights, which could impact future products under development;
- greater experience in obtaining and maintaining regulatory clearances or approvals for products and product enhancements;
- established relationships with hospitals and other healthcare providers, physicians, suppliers, customers and third-party payers;
- additional lines of products, and the ability to bundle products to offer greater incentives to gain a competitive advantage; and
- more established sales, marketing and worldwide distribution networks.

The potential introduction by competitors of products that compete with our existing or planned products may also make it difficult to market or sell our products. In addition, the entry of multiple new products and competitors may lead some of our competitors to employ pricing strategies that could adversely affect the pricing of our products and pricing in the market generally.

As a result, our ability to compete successfully will depend on our ability to develop proprietary products that reach the market in a timely manner, receive adequate coverage and reimbursement from third-party payers, and are safer, less invasive and more effective than alternatives available for similar purposes. If we are unable to do so, our sales or margins could decrease, which would adversely affect our business, results of operations and financial condition.

The reclassification of our HA products from medical devices to drugs in the United States by the FDA could negatively impact our ability to market these products and may require that we conduct costly additional clinical studies to support current or future indications for use of those products.

On December 18, 2018, the FDA published notice in the Federal Register announcing its intention to reconsider the appropriate classification of HA intra-articular products intended for the treatment of pain in OA of the knee. Although HA products intended for this use have previously been regulated as medical devices, in its notice the FDA stated that current published scientific literature supports that HA products achieve their primary intended purpose of treatment of pain in OA of the knee through biological action in the body which would require such products being classified as drugs. The FDA has encouraged organizations intending to submit applications for changes in indications for use, formulation, or route of administration of their HA products to obtain from the FDA an informal or formal classification and jurisdiction determination as a drug or device through a pre-request for designation or request for designation, respectively, prior to submission of such application. However, the FDA to date has taken no action to reclassify HA products from medical devices to drugs, or indicated what the potential ramifications would be for currently marketed HA products if a reclassification were to occur.

We currently market three HA products: Durolane, GELSYN-3 and SUPARTZ FX. If the reclassification of HA products were to occur, the FDA may not allow us to continue to market these products without submitting additional clinical trial data, obtaining approval of a New Drug Application, or NDA, for these products, or

without otherwise complying with new conditions or limitations on how those products are marketed. Clinical testing can take years to complete, can be expensive and carries uncertain outcomes, and there is no guarantee that would be able to successfully obtain and maintain any required regulatory approvals. These new regulatory obligations could result in increased regulation of Durolane, GELSYN-3 and SUPARTZ FX and would subject these products to a new set of regulatory requirements to which they have not been previously subject. These changes could ultimately increase our costs and adversely impact our business, results of operations and financial condition if they were to be implemented. See "Risk factors—Risks related to our business—If we are unable to achieve and maintain adequate levels of coverage and/or reimbursement for our products, the procedures using our products, or any future products we may seek to commercialize, the commercial success of these products may be severely hindered."

Our ability to maintain our competitive position depends on our ability to attract, retain and motivate our senior management team and highly qualified personnel, and our failure to do so could adversely affect our business, results of operations and financial condition.

We believe that our continued success depends to a significant extent upon the skill, experience and performance of members of our senior management team, who have been critical to the management of our operations and implementation of our strategy, as well as our ability to continue to attract, retain and motivate additional executive officers, and other key employees and consultants, such as those individuals who are engaged in our research and development efforts. The replacement of any of our key personnel likely would involve significant time and costs and may significantly delay or prevent the achievement of our business objectives and could therefore adversely affect our business, results of operations and financial condition. In addition, we do not carry any "key person" insurance policies that could offset potential loss of service under applicable circumstances.

Competition for experienced employees in the medical device industry can be intense. To attract, retain and motivate qualified employees, we may utilize equity-based incentive awards such as employee stock options. If the value of such equity incentive awards does not appreciate as measured by the performance of the price of our Class A common stock and ceases to be viewed as a valuable benefit, our ability to attract, retain and motivate our employees could be adversely impacted, which could adversely affect our business, results of operations and financial condition and/or require us to increase the amount we expend on cash and other forms of compensation.

Since inception, our history of operations has included periods of net losses, and we may not be able to sustain profitability.

For the years ended December 31, 2019 and 2018 and the nine months ended September 26, 2020 and September 28, 2019, we had net income from continuing operations of $8.1 million, $4.4 million, $12.5 million and $2.8 million, respectively. We had an accumulated deficit of $142.2 million and $141.7 million as of September 26, 2020 and December 31, 2019, respectively. Our ability to generate sufficient net sales from our existing products or from any of our products in development or products that we acquire, in order to sustain profitability, is uncertain, and, since inception, our history of operations has previously included periods of net loss. We expect that our operating expenses will continue to increase as we continue to develop, enhance and commercialize new products and incur additional operational costs associated with being a public company. Furthermore, we may not be able to sustain or increase profitability on an ongoing basis. If we do not achieve sustained profitability, it will be more difficult for us to finance our business and accomplish our strategic objectives.

If we fail to properly manage our anticipated growth, our business could suffer.

We have been growing steadily in recent periods. We intend to continue to grow and may experience periods of rapid growth and expansion, which could place a significant additional strain on our limited personnel, information technology systems and other resources. In particular, our sales force and distributor network requires significant management, training, financial and other supporting resources. Any failure by us to manage our growth effectively could have an adverse effect on our ability to achieve our development and commercialization goals.

To achieve our revenue goals, we must also successfully increase supply of our products to meet expected customer demand. In the future, we may experience difficulties with yields, quality control, component supply and shortages of qualified personnel, among other problems. These problems could result in delays in product availability and increases in expenses. Any such delay or increased expense could adversely affect our ability to generate revenue.

Future growth will also impose significant added responsibilities on management, including the need to identify, recruit, train and integrate additional employees. In addition, rapid and significant growth will place a strain on our administrative and operational infrastructure.

In order to manage our operations and growth we will need to continue to improve our operational and management controls, reporting and information technology systems and financial internal control procedures. If we are unable to manage our growth effectively, it may be difficult for us to execute our business strategy and our operating results and business could suffer.

We may not be able to strengthen our brand and the brands associated with our products.

We believe that strengthening the Bioventus brand and the brands associated with our products is critical to achieving widespread acceptance of our products, particularly because of the rapidly developing nature of the market for active healing products. Promoting and positioning our brand will depend largely on the success of our marketing efforts and the reliability of our products. Historically, our efforts to build our brand have involved marketing expenses, and it is likely that our future marketing efforts will require us to incur additional expenses. These brand promotion activities may not yield increased sales and, even if they do, any sales increases may not offset the expenses we incur to promote our brand and our products. If we fail to successfully promote and maintain our brand, or if we incur substantial expenses in an unsuccessful attempt to promote and maintain our brand and the brands of our products, our products may not be accepted by healthcare providers, which would cause our sales to decrease and would adversely affect our business, results of operations and financial condition.

We face the risk of product liability claims that could be expensive, divert management's attention and harm our reputation and business. We may not be able to maintain adequate product liability insurance.

Our business exposes us to the risk of product liability claims that are inherent in the testing, manufacturing and marketing of our products. This risk exists even if a product is cleared or approved for commercial sale by the FDA and manufactured in facilities regulated by the FDA or an applicable foreign regulatory authority. Our products are designed to affect, and any future products will be designed to affect, important bodily functions and processes. Any side effects, manufacturing defects, misuse or abuse associated with our products or our products in development could result in patient injury or death. The medical device industry has historically been subject to extensive litigation over product liability claims, and we cannot assure you that we will not face product liability claims. We may be subject to product liability claims if our products or products in development cause, or merely appear to have caused, patient injury or death, even if such injury or death was as a result of supplies or components that are produced by third-party suppliers. Product liability claims may be brought against us by consumers, healthcare providers or others selling or otherwise coming into contact with our products, among others. If we cannot successfully defend ourselves against product liability claims, we will incur substantial liabilities and reputational harm. In addition, regardless of merit or eventual outcome, product liability claims may result in:

- costs of litigation;
- distraction of management's attention from our primary business;
- the inability to commercialize existing or new products;
- decreased demand for our products or, if cleared or approved, products in development;
- damage to our business reputation;

- product recalls or withdrawals from the market;
- withdrawal of clinical trial participants;
- substantial monetary awards to patients or other claimants; and
- loss of net sales.

While we may attempt to manage our product liability exposure by proactively recalling or withdrawing from the market any defective products, any recall or market withdrawal of our products may delay the supply of those products to our customers and may impact our reputation. For example, we have in the past instituted a voluntary recall for certain of our products. We cannot assure you that we will be successful in initiating appropriate market recall or market withdrawal efforts that may be required in the future or that these efforts will have the intended effect of preventing product malfunctions and the accompanying product liability that may result. Such recalls and withdrawals may also be used by our competitors to harm our reputation for product safety or be perceived by patients as a safety risk when considering the use of our products, either of which could adversely affect our business, results of operations and financial condition.

In addition, although we have product liability and clinical study liability insurance that we believe is appropriate, this insurance is subject to deductibles and coverage limitations. Our current product liability insurance may not continue to be available to us on acceptable terms, if at all, and, if available, coverage may not be adequate to protect us against any future product liability claims. If we are unable to obtain insurance at an acceptable cost or on acceptable terms or otherwise protect against potential product liability claims, we could be exposed to significant liabilities. A product liability claim, recall or other claim with respect to uninsured liabilities or for amounts in excess of insured liabilities could adversely affect our business, results of operations and financial condition.

Fluctuations in the demand for our products or our inability to forecast demand accurately may influence the ability of our suppliers to meet our delivery needs or result in excess product inventory.

We are required by some of our contracts with suppliers of our products to forecast future product demand or meet minimum purchase requirements. Our supply agreement for Durolane is subject to a minimum order volume for each order and purchase amounts are based in part on forecasts. We are also subject to certain annual minimum purchase requirements for GELSYN-3 and SUPARTZ FX and purchase amounts are based on rolling annual forecasts. Our forecasts are based on multiple assumptions of product and market demand, which may cause our estimates to be inaccurate. If we underestimate demand, we may not have adequate supplies and could have reduced control over pricing, availability and delivery schedules with our suppliers, which could prevent us from meeting increased customer or consumer demand and harm our business. However, if we overestimate our demand, we may have underutilized assets and may experience reduced margins. If we do not accurately align our supplies with demand and/or fail to meet contractual minimum purchase requirements, our business, results of operations and financial condition may be adversely affected. For example, if we fail to order the minimum order quantity of SUPARTZ FX from Seikagaku Corporation, or SKK, we are obligated to pay SKK a specified fee equal to the number of units needed to meet the minimum order quantity multiplied by a specified percentage of the purchase price.

We may face issues with respect to the supply of our products or their components, including increased costs, disruptions of supply, shortages, contaminations or mislabeling.

We are dependent on a limited number of suppliers for our products and components used in the manufacturing process of our products. Our top three suppliers provide us with products and components that constituted 54%, 49%, 53% and 53% of total net sales for the years ended December 31, 2019 and 2018 and the nine months ended September 26, 2020 and September 28, 2019, respectively. Durolane, GELSYN-3 and SUPARTZ FX are supplied by single-source third-party manufacturers. Our Exogen system undergoes final assembly with components procured from various suppliers, including a transducer, which is a key component that is supplied by a single source supplier. We may not be able to renew or enter into new contracts with our existing suppliers following the expiration of such contracts on commercially reasonable terms, or at all.

In particular, the success of our bone graft substitutions product portfolio, depends on our suppliers continuing to have access to donated human cadaveric tissue, as well as the maintenance of high standards in their processing methodology. The supply of such donors can fluctuate over time. We cannot be certain that our current suppliers who rely on allograft bone tissue, plus any additional sources that our suppliers identify in the future, will be sufficient to meet our product needs. Our dependence on a limited number of third-party suppliers and the challenges that they may face in obtaining adequate supplies of allograft bone tissue involve several risks, including limited control over pricing, availability, quality and delivery schedules. We may be unable to find an alternative supplier in a reasonable time period or on commercially reasonable terms, if at all, which would adversely affect our business, results of operations and financial condition.

If any of our products or the components used in our products are alleged or proven to include quality or product defects, including as a result of improper methods of tissue recovery from donors and disease transmission from donated tissue or illegal harvesting, we may need to find alternate supplies, delay production of our products, discard or otherwise dispose of our products, or engage in a product recall, all of which may adversely affect our business, results of operations and financial condition. If our products or the components in our products are affected by adverse prices or quality or other concerns, we may not be able to identify alternate sources of components or other supplies that meet our quality controls and standards to sustain our sales volumes or on commercially reasonable terms, or at all.

We rely on a limited number of third-party manufacturers to manufacture certain of our products.

Third-party manufacturers generally manufacture Durolane, GELSYN-3, SUPARTZ FX, Exogen components and our bone graft substitutions product portfolio. We have developed in-house assembly capabilities for our Exogen system. We and our third-party manufacturers are required to comply with the Quality System Regulation, or QSR, which is a set of FDA regulations that establishes current Good Manufacturing Practices, or cGMP, requirements for medical devices and covers the methods and documentation of the design, testing, production, control, quality assurance, labeling, packaging, sterilization, storage and shipping of such devices. Moreover, certain of our products may be re-classified as drugs, and we are planning to seek approval of a product pursuant to the BLA pathway. In each case, such products would be required to comply with the cGMP requirements that apply to drugs and biologics, respectively.

There are a limited number of suppliers and third-party manufacturers that operate under FDA's QSR requirements and that have the necessary expertise and capacity to manufacture our products or components for our products. As a result, it may be difficult for us to locate manufacturers for our anticipated future needs, and our anticipated growth could strain the ability of our current suppliers and third-party manufacturers to deliver products, materials and components to us. Upon expiration of our existing agreements with these third-party manufacturers, we may not be able to renegotiate the terms of our agreements with these third-party manufacturers on a commercially reasonable basis, or at all.

If we or our third-party manufacturers fail to maintain facilities in accordance with the FDA's QSR, the noncomplying party could lose the ability to manufacture our products on a commercial scale. Loss of this manufacturing capability would limit our ability to sell our products, including Durolane, GELSYN-3, SUPARTZ FX and our bone graft substitutions product portfolio, which are manufactured by single-source third-party manufacturers. See "Business—Manufacturing and supply."

The manufacturing of our products may not be easily transferable to other sites in the event that any of our third-party manufacturers experience breakdown, failure or substandard performance of equipment, disruption of supply or shortages of, or quality issues with, components of our products and other supplies, labor problems, power outages, adverse weather conditions and natural disasters or the need to comply with environmental and other directives of governmental agencies. From time to time, a third-party manufacturer may experience financial difficulties, bankruptcy or other business disruptions, which could disrupt our supply of finished goods or require that we incur additional expense by providing financial accommodations to the third-party

manufacturer or taking other steps to seek to minimize or avoid supply disruption, such as establishing a new third-party manufacturing arrangement with another provider. The loss of any of these third-party manufacturers or the failure for any reason of any of these third-party manufacturers to fulfill their obligations under their agreements with us, including a failure to meet our quality controls and standards, may result in disruptions to our supply of finished goods. We may be unable to locate an additional or alternate third-party manufacturing arrangement that meets our quality controls and standards in a timely manner or on commercially reasonable terms, if at all. If this occurs, our business, results of operations and financial condition will be adversely affected.

If our facilities are damaged or become inoperable, we will be unable to continue to research, develop and manufacture our products and, as a result, our business, results of operations and financial condition may be adversely affected until we are able to secure a new facility.

We do not have redundant facilities for the final assembly of our Exogen system. Our other facilities and equipment would be costly to replace and could require substantial lead-time to repair or replace. Our facilities may be harmed or rendered inoperable by natural or man-made disasters, including, but not limited to, tornadoes, flooding, fire and power outages. Such disasters may render it difficult or impossible to manufacture and commercialize our products and conduct our research and development activities for new products, line extensions and expanded indications. The inability to perform those activities, combined with our limited inventory of supplies, components and finished product, may result in the inability to continue manufacturing or supplying our products during such periods and the loss of customers or harm to our reputation. Although we possess insurance for damage to our facilities and the disruption of our business, this insurance may not be sufficient to cover all of our potential losses and this insurance may not continue to be available to us on acceptable terms, or at all.

If we fail to maintain our numerous contractual relationships, our business, results of operations and financial condition could be adversely affected.

We are party to numerous contracts in the normal course of our business, including our supply and distribution agreements for Durolane, which has a current term expiring in December 2115, GELSYN-3, which has a current term expiring in February 2026, and SUPARTZ FX, which has a current term expiring in December 2028. We have contractual relationships with suppliers, distributors and agents, as well as service providers. In the aggregate, these contractual relationships are necessary for us to operate our business. From time to time, we amend, terminate or negotiate our contracts. We may also periodically be subject to, or make claims of breach of contract, or threaten legal action relating to our contracts. These actions may result in litigation. At any one time, we have a number of negotiations under way for new or amended commercial agreements. We devote substantial time, effort and expense to the administration and negotiation of contracts involved in our business. However, these contracts may not continue in effect past their current term or we may not be able to negotiate satisfactory contracts in the future with current or new business partners, which may adversely affect our business, results of operations and financial condition.

If we are unable to manage, train, maintain and grow our direct sales team and network of independent distributors, we may not be able to generate anticipated sales or we may be subject to regulatory or enforcement action.

Our operating results are directly dependent upon the sales and marketing efforts of not only our direct sales team, but also our independent distributors. If our direct sales team or independent distributors fail to adequately promote, market and sell our products, our sales could significantly decrease.

We face significant challenges and risks in managing our geographically dispersed distribution network and retaining the individuals who make up that network. If any members of our direct sales team were to leave us, or if any of our independent distributors were to cease to do business with us, our sales could be adversely affected.

In such a situation, we may need to seek alternative independent distributors or increase our reliance on our direct sales team, which may not prevent our sales from being adversely affected. If a member of our direct sales team or independent distributor were to depart and be retained by one of our competitors, we may be unable to prevent them from helping competitors solicit business from our existing customers, which could further adversely affect our sales. Because of the competition for their services, we may be unable to recruit or retain additional qualified independent distributors or to hire additional direct sales team members to work with us on favorable or commercially reasonable terms, if at all. Failure to hire or retain qualified members of our direct sales team or independent distributors would prevent us from maintaining or expanding our business and generating sales.

If we launch new products or increase our marketing efforts with respect to existing products, we will need to expand the reach of our marketing and sales networks. Our future success will depend largely on our ability to continue to hire, train, retain and motivate skilled members of our direct sales team and independent distributors with significant technical knowledge in active healing products. New hires require training and take time to achieve full productivity. If we fail to train new hires adequately, or if we experience high turnover in our sales force in the future, we cannot be certain that new hires will become as productive as may be necessary to maintain or increase our sales. Further, if we are unable to adequately train new hires and/or members of our direct sales team, if new hires and/or members of our direct sales team engage in practices such as the promotion of unapproved or off-label uses of our devices or if new hires and/or members of our direct sales team assist with the reimbursement process in a manner that results in false or fraudulent claims for reimbursement being submitted to government or private payers, we may be subject to investigations or regulatory or enforcement actions by governmental authorities or third party payers for reasons such as the promotion of unapproved or off-label uses of our devices, inappropriate actions and involvement in the reimbursement process, or inappropriate completion of reimbursement forms. See "—Risks related to government regulation—We may be subject to enforcement action if we engage in improper claims submission practices and resulting audits or denials of our claims by government agencies could reduce our net sales or profits."

If we are unable to expand our sales and marketing capabilities domestically and internationally, we may not be able to effectively commercialize our products, which would adversely affect our business, results of operations and financial condition.

Actual or attempted breaches of security, unauthorized disclosure of information, denial of service attacks or the perception that personal and/or other sensitive or confidential information in our possession or control is not secure, could result in a material loss of business, substantial legal liability or significant harm to our reputation.

We receive, collect, process, use and store a large amount of information, including personally identifiable, protected health and other sensitive and confidential information. This data is often accessed by us through transmissions over public and private networks, including the Internet. The secure transmission of such information over the Internet and other mechanisms is essential to maintain confidence in our IT systems. Despite the privacy and security measures we have in place to ensure compliance with applicable laws, regulations and contractual requirements, our facilities and systems, and those of our third-party vendors and service providers, are vulnerable to privacy and security incidents including, but not limited to, computer hacking, breaches, acts of vandalism or theft, computer viruses and other malware, including ransomware or other forms of cyber-attack, misplaced or lost data, programming and/or human errors or other similar events. A party, whether internal or external, that is able to circumvent our security systems could, among other things, misappropriate or misuse sensitive or confidential information, user information or other proprietary information, or cause significant interruptions in our operations. Internal or external parties have and will continue to attempt to circumvent our security systems, and we expect that we may in the future experience external attacks on our network, such as, reconnaissance probes, denial of service attempts, malicious software attacks and phishing attacks.

Because the techniques used to circumvent security systems can be highly sophisticated and change frequently, often are not recognized until launched against a target and may originate from less regulated and remote areas around the world, we may be unable to proactively address all possible techniques or implement adequate preventive measures for all situations. Recent, well-publicized attacks on prominent companies have resulted in the theft of significant amounts of sensitive and personal information and demonstrate the sophistication of the perpetrators and magnitude of the threat posed to companies across the nation, including the health care industry.

If someone is able to circumvent or breach our security systems, they could steal any information located therein or cause interruptions to our operations. Security breaches or attempts thereof could also damage our reputation and expose us to a risk of monetary loss and/or litigation, fines and sanctions. We also face risks associated with security breaches affecting third parties that conduct business with us or our customers and others who interact with our data. While we maintain insurance that covers certain security and privacy breaches, we may not carry appropriate insurance or maintain sufficient coverage to compensate for all potential liability. Additionally, the costs incurred to remediate any data security or privacy incident could be substantial.

We cannot assure you that our third-party service providers with access to our or our customers', suppliers', trial patients', and employees' personally identifiable and other sensitive or confidential information in relation to which we are responsible will not breach contractual obligations imposed by us, or that they will not experience data security breaches or attempts thereof, which could have a corresponding effect on our business including putting us in breach of our obligations under privacy laws and regulations and/or which could in turn adversely affect our business, results of operations and financial condition. While we attempt to address the associated risks by performing security assessments and detailed due diligence, we cannot assure you that these contractual measures and our own privacy and security-related safeguards will protect us from the risks associated with the third-party processing, storage and transmission of such information.

Failure of a key information technology and communication system, process or site could adversely affect our business, results of operations and financial condition.

We rely extensively on information technology and communication systems and software and hardware products, including those of external providers, to conduct business. These systems and software and hardware impact, among other things, ordering and managing components of our products from suppliers, shipping products to customers on a timely basis, processing transactions, coordinating our sales activities across all of our products, summarizing and reporting results of operations, complying with regulatory, legal or tax requirements, data security and other processes necessary to manage our business.

Despite any precautions we may take, our systems and software and hardware could be exposed to damage or interruption from circumstances beyond our control, such as fire, natural disasters, systems failures, power outages, cyber-attacks, terrorism, energy loss, telecommunications failure, security breaches and attempts thereof, computer viruses and similar disruptions affecting the global Internet. Although we have taken steps to prevent system failures and have back-up systems and procedures to prevent or reduce disruptions, such steps may not prevent an interruption of services and our disaster recovery planning may not be adequate or account for all contingencies. Additionally, our insurance may not adequately compensate us for all losses or failures that may occur. If our systems or software and hardware are damaged or cease to function properly and our business continuity plans do not effectively compensate on a timely basis, we may suffer interruptions in our operations, which could adversely affect our business, results of operations and financial condition.

We will need to improve and upgrade our systems and infrastructure as our operations grow in scale in order to maintain the reliability and integrity of our systems and infrastructure. The expansion of our systems and infrastructure will require us to commit substantial financial, operational and technical resources before the volume of our business increases, with no assurance that the volume of business will increase. Any service outages or delays due to the installation of any new or upgraded technology (and customer issues therewith), or

the impact on the reliability of our data from any new or upgraded technology could adversely affect our business, results of operations and financial condition.

Our business subjects us to economic, political, regulatory and other risks associated with international sales and operations that could adversely affect our business, results of operations and financial condition.

Since we sell our products in many different jurisdictions outside the United States, our business is subject to risks associated with conducting business internationally. We anticipate that net sales from international operations will continue to represent a portion of our total net sales. In addition, a number of our third-party manufacturing facilities and suppliers of our products are located outside the United States. Accordingly, our future results could be harmed by a variety of factors, including:

- economic weakness, including inflation, or political instability in particular foreign economies and markets;
- foreign currency fluctuations, which could result in increased operating expenses and reduced revenue, and other obligations incident to doing business in another country;
- customers in some foreign countries potentially having longer payment cycles;
- disadvantages of competing against companies from countries that are not subject to U.S. laws and regulations, including the U.S. Foreign Corrupt Practices Act, or FCPA, regulations of the U.S. Office of Foreign Assets Controls, and U.S. anti-money laundering regulations, as well as exposure of our foreign operations to liability under these regulatory regimes;
- training of third-parties on our products and the procedures in which they are used;
- reduced protection for and greater difficulty enforcing our intellectual property rights;
- unexpected changes in tariffs, trade barriers and regulatory requirements, export licensing requirements or other restrictive actions by foreign governments;
- difficulty in staffing and managing widespread operations, including compliance with tax, employment, immigration and labor laws for employees living or traveling abroad;
- foreign taxes, including withholding of payroll taxes;
- workforce uncertainty in countries where labor unrest is more common than in the United States;
- international regulators and third-party payers requiring additional clinical studies prior to approving or allowing reimbursement for our products;
- complexities associated with managing multiple payer reimbursement regimes, government payers or patient self-pay systems;
- production shortages resulting from any events affecting material supply or manufacturing capabilities abroad; and
- business interruptions resulting from geopolitical actions, including war and terrorism, global pandemics or natural disasters including earthquakes, typhoons, floods and fires.

In addition, further expansion into new international markets may require significant resources and the efforts and attention of our management and other personnel, which may divert resources from our existing business operations. As we expand our business internationally, our success will depend, in large part, on our ability to anticipate and effectively manage these and other risks associated with our operations outside of the United States.

We are exposed to foreign currency risks, which may adversely affect our business, results of operations and financial condition.

External events such as the withdrawal by the United Kingdom from the EU, global pandemics, the ongoing uncertainty regarding actual and potential shifts in U.S. and foreign trade, economic and other policies and the passage of U.S. taxation reform legislation each have caused, and may continue to cause, significant volatility in currency exchange rates. Because some of our revenue, expenses, assets and liabilities are denominated in foreign currencies, we are subject to exchange rate and currency risks. In preparing our financial statements, which are presented in U.S. dollars, we must convert all non-U.S. dollar financial results to U.S. dollars at varying exchange rates. This may ultimately result in currency gain or loss, the outcome of which we cannot predict. Furthermore, to the extent that we incur expenses or earn revenue in currencies other than in U.S. dollars, any change in the values of those foreign currencies relative to the U.S. dollar could cause our profits to decrease or our products to be less competitive against those of our competitors. To the extent that our current assets denominated in foreign currency are greater or less than our current liabilities denominated in foreign currencies, we face potential foreign exchange exposure.

To minimize such exposures, we have entered, and may in the future enter, into derivative instruments related to forecasted foreign currency transactions or currency hedges from time to time. Losses from changes in the value of the Euro or other foreign currencies relative to the U.S. dollar could adversely affect our business, results of operations and financial condition.

We are subject to differing tax rates in several jurisdictions in which we operate, which may adversely affect our business, results of operations and financial condition.

We will be subject to taxes in the United States and certain foreign jurisdictions. Due to economic and political conditions, tax rates in various jurisdictions, including the United States, may be subject to change. Our future effective tax rates could be affected by changes in the mix of earnings in countries with differing statutory tax rates, changes in the valuation of deferred tax assets and liabilities and changes in tax laws or their interpretation. In addition, we may be subject to income tax audits by various tax jurisdictions. Although we believe our income tax liabilities are reasonably estimated and accounted for in accordance with applicable laws and principles, an adverse resolution by one or more taxing authorities could have a material impact on the results of our operations

International tariffs applied to goods traded between the United States and China may adversely affect our business, results of operations and financial condition.

International tariffs, including tariffs applied to goods traded between the United States and China, may adversely affect our business, results of operations and financial condition. Since the beginning of 2018, there has been increasing rhetoric, in some cases coupled with legislative or executive action, from several U.S. and foreign leaders regarding the possibility of instituting tariffs against foreign imports of certain materials. More specifically, in March and April of 2018, the U.S. and China have applied tariffs to certain of each other’s exports. The institution of trade tariffs both globally and between the U.S. and China specifically carries the risk of adversely affecting overall economic condition, which could have a negative impact on us as imposition of tariffs could cause an increase in the cost of our products and the components for our products, specifically with respect to our Exogen system, which may adversely affect our business, results of operations and financial condition.

The 2019 Credit Agreement contains financial and operating restrictions that may limit our access to credit. If we fail to comply with financial or other covenants in the 2019 Credit Agreement, we may be required to repay indebtedness to our existing lenders, which may harm our liquidity.

On December 6, 2019, we entered into a $250.0 million credit and guaranty agreement, or the 2019 Credit Agreement, with Wells Fargo Bank National Association, as administrative agent and collateral agent, and a

syndicate of other entities as lenders. As of September 26, 2020, we had outstanding indebtedness of $193.3 million under our term loan (leaving $49.9 million available under our revolving credit facility after giving effect to $0.1 million in an outstanding letter of credit). We are subject to certain covenants under the 2019 Credit Agreement, including, but not limited to:

- a minimum interest coverage ratio and a maximum debt leverage ratio requirement as defined in our credit agreement;
- restrictions on the declaration or payment of certain distributions on or in respect of our equity interests;
- restrictions on acquisitions, investments and certain other payments;
- limitations on the incurrence of new indebtedness;
- limitations on the incurrence of new liens on property or assets;
- limitations on transfers, sales and other dispositions;
- limitations on entering into transactions with affiliates; and
- limitations on making any material change in any of our business objectives that could reasonably be expected to have a material adverse effect on the repayment of our credit agreement.

Such indebtedness could have significant consequences, including:

- requiring a substantial portion of our cash flows to be dedicated to debt service payments instead of funding growth, working capital, capital expenditures, investments or other cash requirements;
- reducing our flexibility to adjust to changing business conditions or obtain additional financing;
- exposing us to the risk of increased interest rates as certain of our borrowings, including borrowings under our term loan, are at variable rates, making it more difficult for us to make payments on our indebtedness;
- restricting us from making strategic acquisitions or causing us to make non-strategic divestitures;
- subjecting us to restrictive covenants that may limit our flexibility in operating our business; and
- limiting our ability to obtain additional financing for working capital, capital expenditures, debt service requirements and general corporate or other purposes.

In addition, we may not be able to comply with these financial covenants described above in the future. In the absence of a waiver from our lenders, any failure by us to comply with these covenants in the future may result in the declaration of an event of default, which could adversely affect our business, results of operations and financial position. See “Management’s discussion and analysis of financial condition and results of operations—Indebtedness.”

Uncertainty relating to the LIBOR calculation process and potential phasing out of LIBOR in the future may adversely affect our financing costs.

Currently, the 2019 Credit Agreement utilizes the London Interbank Offered Rate, or LIBOR, or various alternative methods set forth in the 2019 Credit Agreement to calculate interest on any borrowings. National and international regulators and law enforcement agencies have conducted investigations into a number of rates or indices known as “reference rates.” Actions by such regulators and law enforcement agencies may result in changes to the manner in which certain reference rates are determined, their discontinuance or the establishment of alternative reference rates. In particular, on July 27, 2017, the Chief Executive of the United Kingdom Financial Conduct Authority, or the FCA, which regulates LIBOR, announced that the FCA will no longer persuade or compel banks to submit rates for the calculation of LIBOR after 2021. Such announcement indicates

that the continuation of LIBOR on the current basis cannot and will not be guaranteed after 2021. As a result, it appears highly likely that LIBOR will be discontinued or modified by 2021.

At this time, it is not possible to predict the effect that these developments, any discontinuance, modification or other reforms to LIBOR or any other reference rate, or the establishment of alternative reference rates may have on LIBOR, other benchmarks or LIBOR-based debt instruments. Uncertainty as to the nature of such potential discontinuance, modification, alternative reference rates or other reforms could cause the interest rates calculated for the 2019 Credit Agreement to be materially different than expected, which could have a material adverse effect on our financing costs.

Due to the high degree of uncertainty regarding the implementation and impact of the CARES Act and other legislation related to COVID-19, there can be no assurance as to the total amount of financial assistance we will receive or that we will be able to comply with the applicable terms and conditions for retaining such assistance.

On March 27, 2020, the CARES Act was signed into law, which is aimed at providing emergency assistance and health care for individuals, families, and businesses affected by the COVID-19 pandemic and generally supporting the U.S. economy. The CARES Act, among other things, includes provisions relating to refundable payroll tax credits, deferment of employer social security payments, net operating loss carryback periods, alternative minimum tax credit refunds, and modifications to the net interest deduction limitations. The CARES Act and similar legislation intended to provide assistance related to the COVID-19 pandemic also authorized $175.0 billion in funding to be distributed by the U.S. Department of Health and Human Services, or the HHS, to eligible health care providers. This funding, known as the Provider Relief Fund, is designated to fund eligible healthcare providers' healthcare-related expenses or lost revenues attributable to COVID-19. On December 27, 2020, the Consolidated Appropriations Act, 2021 was signed into law, which adds $3.0 billion to the Provider Relief Fund. Payments from the Provider Relief Fund are subject to certain eligibility criteria, as well as reporting and auditing requirements, but do not need to be repaid to the U.S. government if recipients comply with the applicable terms and conditions.

In reliance on the CARES Act, we deferred our employer social security payroll tax payments from May 2020 until the remainder of the 2020 calendar year of which, 50% is deferred until December 31, 2021, with the remaining 50% deferred until December 31, 2022. The Company has deferred $1.2 million of payroll tax payments as of September 26, 2020, all of which has been recorded in other long-term liabilities on the condensed consolidated balance sheet. We are in the process of analyzing other provision of the CARES Act to determine the financial impact on our condensed consolidated financial statements.

In April 2020, we received, without request, a $1.2 million payment from the Provider Relief Fund from HHS. We determined that we complied with the conditions to be able to keep and use the funds as reimbursement for health care related expenses and lost revenue attributable to the public health emergency resulting from COVID-19 and submitted to HHS the required attestation to agree to the applicable terms and conditions of the Provider Relief Fund Phase I General Distribution. In July 2020, we applied for and received a second Provider Relief Fund payment totaling $2.9 million, which is subject to the same conditions as the initial payment. The payments were recorded as other income on the condensed consolidated statement of operations and comprehensive income for the nine months ended September 26, 2020.

Due to the high degree of uncertainty regarding the implementation of the CARES Act, the Consolidated Appropriations Act, 2021 and other stimulus legislation, there can be no assurance that the terms and conditions of the Provider Relief Fund or other relief programs will not change or be interpreted in ways that affect our ability to comply with such terms and conditions in the future, which could affect our ability to retain such assistance. We will continue to monitor our compliance with the terms and conditions of the Provider Relief Fund, including demonstrating that the distributions received have been used for healthcare-related expenses or lost revenue attributable to COVID-19. If we are unable to comply with current or future terms and conditions, our ability to retain some or all of the distributions received may be impacted, and we may be subject to actions including payment recoupment, audits and inquiries by governmental authorities, and criminal, civil or administrative penalties.

Our future capital needs are uncertain and we may need to raise additional funds in the future, and such funds may not be available on acceptable terms or at all.

We believe that our current cash and cash equivalents, in combination with the borrowing availability under our credit facility and our expected cash from operations, will be sufficient to meet our projected operating requirements for the foreseeable future. However, we may seek additional funds from public and private stock offerings, borrowings under our existing or new credit facilities or other sources in order to fund future initiatives related to the expansion of our business, which financing may not be available on acceptable or commercially reasonable terms, if at all. For example, pursuant to the Option and Equity Purchase Agreement with CartiHeal and its shareholders, CartiHeal has a put option that would require us to purchase 100% of CartiHeal's shares for $350 million under certain conditions, or the Put Option. The Put Option is only exercisable by CartiHeal upon pivotal clinical trial success of the Agili-C device and we may terminate the Put Option at any time ending 30 days after receipt by CartiHeal of the statistical report regarding the final results of the pivotal clinical upon payment of $30.0 million to CartiHeal. See "Management's discussion and analysis of financial condition and results of operations—Strategic transactions—CartiHeal (developer of Agili-C) investment and option and equity purchase agreement."

Furthermore, if we issue equity or debt securities to raise additional capital, our existing stockholders may experience dilution, and the new equity or debt securities may have rights, preferences and privileges senior to those of our existing stockholders. In addition, if we raise additional capital through collaboration, licensing or other similar arrangements, it may be necessary to relinquish valuable rights to our products, potential products or proprietary technologies, or grant licenses on terms that are not favorable to us. If we cannot raise capital on acceptable terms, we may not be able to develop or enhance our products, execute our business plan, take advantage of future opportunities, or respond to competitive pressures, changes in our supplier relationships, or unanticipated customer requirements. Any of these events could adversely affect our business, results of operations and financial condition.

Risks related to government regulation

The risk factors listed below describe the risks we face related to government regulation. The companies who manufacture or produce certain of the products we distribute face similar risks with respect to government regulation relating to such products. If such suppliers are unable to comply with government regulations, they may not be able to continue to supply us with products, which could adversely affect our business, results of operations and financial condition.

Our products and operations are subject to extensive governmental regulation, and our failure to comply with applicable requirements could cause our business to suffer.

The healthcare industry, and in particular the medical device industry, are regulated extensively by governmental authorities, principally the FDA and corresponding state and foreign regulatory agencies and authorities. The FDA and other U.S. and foreign governmental agencies and authorities regulate and oversee, among other things:

- design, development and manufacturing;
- testing, labeling, content and language of instructions for use and storage;
- clinical trials;
- product safety;
- marketing, sales and distribution;
- premarket clearance and approval;
- conformity assessment procedures;
- record-keeping procedures;

- advertising and promotion;
- recalls and other field safety corrective actions;
- postmarket surveillance, including reporting of deaths or serious injuries and malfunctions that, if they were to recur, could lead to death or serious injury;
- postmarket studies; and
- product import and export.

The regulations to which we are subject are complex and have tended to become more stringent over time. Regulatory changes could result in restrictions on our ability to carry on or expand our operations, higher than anticipated costs or lower than anticipated sales.

The failure to comply with applicable regulations could jeopardize our ability to sell our products and result in enforcement actions such as:

- administrative or judicially imposed sanctions;
- unanticipated expenditures to address or defend such actions;
- injunctions, consent decrees or the imposition of civil penalties or fines;
- recall or seizure of our products;
- total or partial suspension of production or distribution;
- refusal to grant pending or future clearances or approvals for our products;
- withdrawal or suspension of regulatory clearances or approvals;
- clinical holds;
- untitled letters or warning letters;
- refusal to permit the import or export of our products; and
- criminal prosecution of us or our employees.

Any of these sanctions could result in higher than anticipated costs or lower than anticipated sales and harm our reputation, business, results of operations and financial condition.

Moreover, governmental authorities outside the United States have become increasingly stringent in their regulation of medical devices, and our products may become subject to more rigorous regulation by non U.S. governmental authorities in the future. U.S. or non-U.S. government regulations may be imposed in the future that adversely affect our business, results of operations and financial condition. The European Commission has harmonized national regulations for the control of medical devices through European Medical Device Directives with which manufacturers must comply. Under these new regulations, manufacturing plants must have received a full Quality Assurance Certification from a “Notified Body” in order to be able to sell products within the member states of the EU. This certification allows manufacturers to stamp the products of certified plants with a “CE” mark. Products covered by European Commission regulations that do not bear the CE mark cannot be sold or distributed within the EU. We have received certification for all of our manufacturing facilities.

We may be subject to enforcement action if we engage in improper claims submission practices and resulting audits or denials of our claims by government agencies could reduce our net sales or profits.

In connection with our Exogen system, we submit claims directly to, and receive payments directly from, the Medicare and Medicaid programs and private payers. Therefore, we are subject to extensive government regulation, including detailed requirements for submitting claims under appropriate codes and maintaining

certain documentation, including evidence that all medical necessity requirements are met to support our claims. Billing for our Exogen system is complex, time-consuming and expensive, particularly for items and services provided to government healthcare program beneficiaries, such as Medicare and Medicaid. Reimbursement claims may be adversely affected by improper completion of the Certificate for Medical Necessity form, or CMN, required in connection with Medicare claims for the Exogen system and we may be subject to investigations by governmental authorities or third party payers and required to prove the validity of the claims or the authenticity of the signatures on the CMNs under investigation. Reimbursement claims may also be adversely affected by the promotion of our devices for unapproved or off-label uses or assistance with the reimbursement process that could result in false or fraudulent claims for reimbursement being submitted to government or private payers. Depending on the billing arrangement and applicable law, we bill various payers, all of which may have different prior authorization, patient qualification and medical necessity requirements, as well as patients for any applicable co-payments or co-insurance amounts. In addition, we may also face increased risk in our collection efforts, including potential write-offs of doubtful accounts and long collection cycles, any of which could adversely affect our business, results of operations and financial condition.

We are also required to implement compliance procedures and oversight, train and monitor our employees, appeal coverage and payment denials, and perform internal audits periodically to assess compliance with applicable laws and regulations as well as internal compliance policies and procedures. We are required to report and return any overpayments received from government payers within 60 days of identification and exercise of reasonable diligence to investigate credible information regarding potential overpayments. Failure to identify and return such overpayments exposes the provider or supplier to liability under federal false claims laws. See “Risk Factors—Risks related to government regulation—We are subject to federal, state and foreign laws and regulations relating to our healthcare business, and could face substantial penalties if we are determined not to have fully complied with such laws, which would adversely affect our business, results of operations and financial condition.” Moreover, Medicare contractors and Medicaid agencies periodically conduct pre- and post-payment reviews and other audits of claims and are under increasing pressure to more closely scrutinize healthcare claims and supporting documentation. We may be subject to pre-payment and post-payment reviews, as well as audits of claims in the future. Private payers may from time to time conduct similar reviews and audits. Any third-party payer reviews and audits of our claims could result in material delays in payment, material recoupments, overpayments, claim denials, fines, revocations of billing privileges, bars on re-enrollment in federal or state healthcare programs, cancellation of our agreements or damage to our reputation, any of which would reduce our net sales and profitability.

For example, in July of 2018 we became aware of allegations that certain of our sales personnel may have been completing Section B of the CMN required in connection with Medicare claims for the Exogen system, which, under federal law, must be completed by the physician and/or physician staff. Together with our outside counsel, we initiated an investigation into these allegations, and we determined that the CMN forms for a portion of Medicare claims for the Exogen system were in fact improperly completed by our sales representatives, some of which also failed to meet CMS coverage requirements. As a result of our findings, we made a self-disclosure on November 30, 2018 to the Office of Inspector General of the U.S. Department of Health and Human Services, or the OIG, under the Provider Self-Disclosure Protocol. Our self-disclosure disclosed the extent of our findings relating to the inappropriate completion of CMN forms by our sales personnel and offered to make repayment for such claims which failed to meet CMS coverage requirements and which we submitted to the Medicare program between October 1, 2012 and September 30, 2018, the statutory period applicable to such conduct. The total value of impacted claims was $30.1 million in the aggregate. In October 2019, our outside counsel received a letter from the Office of the United States Attorney in the Middle District of North Carolina, or the USAO, stating that the USAO would be working with the OIG to resolve our self-disclosure. We are presently in ongoing discussions with the USAO and OIG regarding a possible settlement of certain claims covered by the self-disclosure. We believe the settlement will require that we pay a certain amount to resolve potential liabilities associated with the submission of Medicare claims that did not meet CMS coverage requirements and for which our sales representatives completed Section B of the CMN forms. Any such settlement will be subject to negotiation of final terms, approval by the parties and execution of a formal settlement agreement reflecting any

such payment, which is expected to be finalized and executed shortly and which will include releases from associated False Claims Act liability and further Civil Monetary Penalties that are customary in self-disclosures of this type. Any such settlement amount noted above will be recorded in the consolidated financial statements for the quarter ended December 31, 2020.

In 2019, separate from the self-disclosure described above, as a result of our internal auditing of Exogen Medicare claims, we made repayments to our Medicare Administrative Contractors, or MACs, for overpayments identified during such auditing totaling $7.5 million for the period October 1, 2012 through December 31, 2018. This amount reflected certain Medicare claims for Exogen for which we lacked adequate documentation of medical necessity consistent with Medicare coverage requirements. Similarly, in July of 2020, we made repayments to the MACs of $1.5 million after completing our internal auditing of Exogen Medicare claims for the period beginning January 1, 2019 through December 31, 2019. We maintain a reserve for reimbursement claims related to our Exogen system that may have been processed for payment without adequate medical records support. Our reserve is estimated using an extrapolation of an error rate from a statistical sample, which represents our best estimate as of the date of the financial statements, but because of the uncertainty inherent in such estimates, the ultimate repayment amounts may be materially different.

Until this self-disclosure matter is finally resolved, we cannot assure you that we will not be subject to monetary fines, non-monetary penalties, such as monitoring agreements, as well as requirements to conduct audits and submit reports to HHS. The ultimate outcome of these matters is uncertain and we cannot assure you that the actual fines will not be significantly higher than the prior payments and our currently proposed settlement amount. If all claims were pursued and resolved adversely against us, such fines could aggregate as much as $50 million. In the event of an unfavorable outcome, these contingencies may have a material adverse effect on our business, results of operations and financial condition.

The FDA regulatory process is expensive, time-consuming and uncertain, and the failure to obtain and maintain required regulatory clearances and approvals could prevent us from commercializing our products.

Before we can market or sell a new medical device or other product or a new use of or a claim for or significant modification to an existing medical device in the United States, we must obtain either clearance from the FDA under 510(k) pathway or approval of a PMA, unless an exemption applies. In the United States, we have obtained 510(k) premarket clearance from the FDA to market products such as Signafuse Bioactive Bone Graft Putty, Interface Bioactive Bone Graft and Signafuse Mineralized Collagen Scaffold. Our OA joint pain treatment and joint preservation products, including Durolane, GELSYN-3 and SUPARTZ FX, and our Exogen system, have obtained PMA approval. In the 510(k) clearance process, before a device may be marketed, the FDA must determine that a proposed device is “substantially equivalent” to a legally-marketed “predicate” device, which includes a device that has been previously cleared through the 510(k) process, a device that was legally marketed prior to May 28, 1976 (preamendments device), a device that was originally on the U.S. market pursuant to an approved PMA application and later downclassified, or a 510(k)-exempt device. To be “substantially equivalent,” the proposed device must have the same intended use as the predicate device, and either have the same technological characteristics as the predicate device or have different technological characteristics and not raise different questions of safety or effectiveness than the predicate device. Clinical data are sometimes required to support substantial equivalence. In the PMA process, the FDA must determine that a proposed product is safe and effective for our intended use based, in part, on extensive data, including, but not limited to, technical, preclinical, clinical trial, manufacturing and labeling data. The PMA process is typically required for products that are deemed to pose the greatest risk, such as life-sustaining, life-supporting or implantable devices.

Modifications to products that are approved through a PMA application generally require FDA approval. Similarly, certain modifications made to products cleared through a 510(k) may require a new 510(k) clearance. Both the PMA approval and the 510(k) clearance process can be expensive, lengthy and uncertain. The FDA’s 510(k) clearance process usually takes from three to twelve months, but can last longer. The process of obtaining a PMA is much more costly and uncertain than the 510(k) clearance process and generally takes from six to 18 months, or even longer, from the time the application is filed with the FDA. In addition, a PMA generally

requires the performance of one or more clinical trials. Despite the time, effort and cost, we cannot assure you that any particular device will be approved or cleared by the FDA. Any delay or failure to obtain necessary regulatory approvals could harm our business.

Any modification to one of our 510(k) cleared products that would constitute a major change in its intended use, or any change that could significantly affect the safety or effectiveness of the device would require us to obtain a new 510(k) marketing clearance and may even, in some circumstances, require the submission of a PMA application, if the change raises complex or novel scientific issues or the product has a new intended use. The FDA requires every manufacturer to make the determination regarding the need for a new 510(k) submission in the first instance, but the FDA may review any manufacturer's decision. We may make changes to our 510(k)-cleared products in the future that we may determine do not require a new 510(k) clearance or PMA approval. If the FDA disagrees with our decision not to seek a new 510(k) or PMA approval for changes or modifications to existing devices and requires new clearances or approvals, we may be required to recall and stop marketing our products as modified, which could require us to redesign our products, conduct clinical trials to support any modifications, and pay significant regulatory fines or penalties. If there is any delay or failure in obtaining required clearances or approvals or if the FDA requires us to go through a lengthier, more rigorous examination for future products or modifications to existing products than we had expected, our ability to introduce new or enhanced products in a timely manner would be adversely affected, which in turn would result in delayed or no realization of revenue from such product enhancements or new products and could also result in substantial additional costs which could decrease our profitability.

The FDA can delay, limit or deny clearance or approval of a device for many reasons, including:

- we may not be able to demonstrate to the FDA's satisfaction that the product or modification is substantially equivalent to the proposed predicate device or safe and effective for its intended use;
- the data from our preclinical studies and clinical trials may be insufficient to support clearance or approval, where required; and
- the manufacturing process or facilities we use may not meet applicable requirements.

In addition, the FDA may change its clearance and approval policies, adopt additional regulations or revise existing regulations, or take other actions, which may prevent or delay approval or clearance of our future products under development or impact our ability to modify our currently cleared or approved products on a timely basis. Even after clearance or approval for our products is obtained, we and the products are subject to extensive postmarket regulation by the FDA, including with respect to advertising, marketing, labeling, manufacturing, distribution, import, export, and clinical evaluation. For example, as a condition of approving a PMA application, the FDA may require some form of post-approval study or post-market surveillance, whereby the applicant conducts a follow-up study or follows certain patient groups for a number of years and makes periodic reports to the FDA on the clinical status of those patients when necessary to protect the public health or to provide additional safety and effectiveness data for the device. The product labeling must be updated and submitted in a PMA supplement once results, including any adverse event data from the post-approval study, become available. Failure to conduct post-approval studies in compliance with applicable regulations or to timely complete required post-approval studies or comply with other post-approval requirements could result in withdrawal of approval of the PMA, which would harm our business.

We are also required to timely file various reports with regulatory agencies. If these reports are not timely filed, regulators may impose sanctions and sales of our products may suffer, and we may be subject to product liability or regulatory enforcement actions, all of which could harm our business. In addition, if we initiate a correction or removal for one of our devices, issue a safety alert, or undertake a field action or recall to reduce a risk to health posed by the device, we may be required to submit a report to the FDA, and in many cases, to other regulatory agencies. Such reports could lead to increased scrutiny by the FDA, other international regulatory agencies and our customers regarding the quality and safety of our devices and to negative publicity, including FDA alerts, press releases, or administrative or judicial actions. Furthermore, the submission of these reports has been and could be used by competitors against us in competitive situations and cause customers to delay purchase decisions or cancel orders, which would harm our reputation and business.

The FDA and state authorities have broad enforcement powers. Our failure to comply with applicable regulatory requirements could result in enforcement action by the FDA or state agencies, which may include any of the following sanctions:

- adverse publicity, warning letters, untitled letters, fines, injunctions, consent decrees and civil penalties;
- repair, replacement, refunds, recalls, termination of distribution, administrative detention or seizures of our products;
- operating restrictions, partial suspension or total shutdown of production;
- customer notifications or repair, replacement or refunds;
- refusing our requests for 510(k) clearance or PMA approvals or foreign regulatory approvals of new products, new intended uses or modifications to existing products;
- withdrawals of current 510(k) clearances or PMAs or foreign regulatory approvals, resulting in prohibitions on sales of our products;
- FDA refusal to issue certificates to foreign governments needed to export products for sale in other countries; and
- criminal prosecution.

Any of these sanctions could also result in higher than anticipated costs or lower than anticipated sales and adversely affect our business, results of operations and financial condition.

In addition, the FDA's and other regulatory authorities' policies may change and additional government regulations may be enacted that could prevent, limit or delay regulatory approval of our product candidates. If we are slow or unable to adapt to changes in existing requirements or the adoption of new requirements or policies, or if we are not able to maintain regulatory compliance as a result of a changing regulatory landscape, we may lose any marketing approvals or clearances that we have already obtained or fail to obtain new marketing approvals or clearances, and we may not be able to achieve or sustain profitability, which would adversely affect our business, prospects, financial condition and results of operations.

We also cannot predict the likelihood, nature or extent of government regulation that may arise from future legislation or administrative or executive action, either in the United States or abroad. The results of the 2020 Presidential election may impact our business and industry. Moreover, the Trump administration took several executive actions, including the issuance of a number of Executive Orders, that could impose significant burdens on, or otherwise materially delay, FDA's ability to engage in routine regulatory and oversight activities such as implementing statutes through rulemaking, issuance of guidance, and review and approval of marketing applications. It is difficult to predict whether or how these executive actions, including the Executive Orders, will be implemented, or whether they will be rescinded or replaced under the Biden administration. The policies and priorities of an incoming administration are unknown and could materially impact the regulatory framework governing our products.

Once obtained, we cannot guarantee that FDA or international product approvals will not be withdrawn or rescinded or that relevant regulatory authorities will not require other corrective action, and any withdrawal, rescission or corrective action could materially affect our business and financial results.

Once obtained, marketing approval can be withdrawn by the FDA or comparable foreign regulatory authorities for a number of reasons, including the failure to comply with ongoing regulatory requirements or the occurrence of unforeseen problems following initial approval. Regulatory authorities could also limit or prevent the manufacture or distribution of our products. Any regulatory limitations on the use of our products or any withdrawal, suspension or rescission of approval by the FDA or a comparable foreign regulatory authority could have a material adverse effect on our business, financial condition, and results of operations.

Legislative or regulatory reforms, including those currently under consideration by FDA, could make it more difficult or costly for us to obtain regulatory clearance or approval of any future products and to manufacture, market and distribute our products after clearance or approval is obtained, which could adversely affect our competitive position and materially affect our business and financial results.

From time to time, legislation is drafted and introduced in Congress that could significantly change the statutory provisions governing the regulatory clearance or approval, manufacture and marketing of regulated products or the reimbursement thereof. In addition, FDA may change its clearance and approval policies, adopt additional regulations or revise existing regulations, propose new reclassification orders, or take other actions, which may prevent or delay approval or clearance of our future products under development or impact our ability to market or modify our currently cleared products on a timely basis. FDA and foreign regulations depend heavily on administrative interpretation, and we cannot assure you that future interpretations made by the FDA or other regulatory bodies, with possible retroactive effect, will not adversely affect us. Additionally, any changes, whether in interpretation or substance, in existing regulations or policies, or any future adoption of new regulations or policies by relevant regulatory bodies, could prevent or delay approval of our products. In the event our future, or current, products, including HA generally, are classified, or re-classified, as human drugs, combination products, or biologics by the FDA or an applicable international regulatory body, the applicable review process related to such products is typically substantially longer and substantially more expensive than the review process to which they are currently subject as medical devices. In 2018, FDA publicly indicated its intent to consider HA products for certain indications as drugs and has indicated that sponsors of HA products who submit PMAs or PMA supplements for changes in indications for use, formulation or route of administration should obtain an informal or formal classification and jurisdictional determination through a pre-request for determination or request for determination prior to submission. There exists uncertainty with respect to the final interpretation, implementation, and consequences of this development, and this or any other potential regulatory changes in approach or interpretation similar in substance to those mentioned in this paragraph and affecting our products could materially impact our competitive position, business, and financial results.

Moreover, over the last several years, the FDA has proposed reforms to its 510(k) clearance process, and such proposals could include increased requirements for clinical data and a longer review period, or could make it more difficult for manufacturers to utilize the 510(k) clearance process for their products. For example, in November 2018, FDA officials announced forthcoming steps that the FDA intends to take to modernize the premarket notification pathway under Section 510(k) of the FDCA. Among other things, the FDA announced that it planned to develop proposals to drive manufacturers utilizing the 510(k) pathway toward the use of newer predicates. These proposals included plans to potentially sunset certain older devices that were used as predicates under the 510(k) clearance pathway, and to potentially publish a list of devices that have been cleared on the basis of demonstrated substantial equivalence to predicate devices that are more than 10 years old. The FDA also announced that it intended to finalize guidance to establish a premarket review pathway for “manufacturers of certain well-understood device types” as an alternative to the 510(k) clearance pathway and that such premarket review pathway would allow manufacturers to rely on objective safety and performance criteria recognized by the FDA to demonstrate substantial equivalence, obviating the need for manufacturers to compare the safety and performance of their medical devices to specific predicate devices in the clearance process.

In May 2019, the FDA solicited public feedback on its plans to develop proposals to drive manufacturers utilizing the 510(k) pathway toward the use of newer predicates, including whether the FDA should publish a list of devices that have been cleared on the basis of demonstrated substantial equivalence to predicate devices that are more than 10 years old. The FDA requested public feedback on whether it should consider certain actions that might require new authority, such as whether to sunset certain older devices that were used as predicates under the 510(k) clearance pathway. These proposals have not yet been finalized or adopted, and the FDA may work with Congress to implement such proposals through legislation. Accordingly, it is unclear the extent to which any proposals, if adopted, could impose additional regulatory requirements on us that could delay our ability to obtain new 510(k) clearances, increase the costs of compliance, or restrict our ability to maintain our current clearances, or otherwise create competition that may negatively affect our business.

More recently, in September 2019, the FDA finalized the aforementioned guidance to describe an optional "safety and performance based" premarket review pathway for manufacturers of "certain, well-understood device types" to demonstrate substantial equivalence under the 510(k) clearance pathway, by demonstrating that such device meets objective safety and performance criteria established by the FDA, obviating the need for manufacturers to compare the safety and performance of their medical devices to specific predicate devices in the clearance process. The FDA intends to maintain a list device types appropriate for the "safety and performance based pathway" and develop product-specific guidance documents that identify the performance criteria for each such device type, as well as the testing methods recommended in the guidances, where feasible. The FDA may establish performance criteria for classes of devices for which we or our competitors seek or currently have received clearance, and it is unclear the extent to which such performance standards, if established, could impact our ability to obtain new 510(k) clearances or otherwise create competition that may negatively affect our business.

In addition, FDA regulations and guidance are often revised or reinterpreted by the FDA in ways that may significantly affect our business and our products. Any new statutes, regulations or revisions or reinterpretations of existing regulations may impose additional costs or lengthen review times of any future products or make it more difficult to obtain clearance or approval for, manufacture, market or distribute our products. We cannot determine what effect changes in regulations, statutes, legal interpretation or policies, when and if promulgated, enacted or adopted may have on our business in the future. Such changes could, among other things, require: additional testing prior to obtaining clearance or approval; changes to manufacturing methods; recall, replacement or discontinuance of our products; or additional record keeping. Additionally, the implementation of the new European Medical Device Regulation, or EU MDR, set to take full effect on May 26, 2021 after a one-year postponement due to the COVID-19 pandemic, is expected to change several aspects of the existing regulatory framework in Europe. Specifically, the EU MDR will require changes in the clinical evidence required for medical devices, post-market clinical follow-up evidence, annual reporting of safety information for Class III products, and bi-annual reporting for Class II products, Unique Device Identification, or UDI, for all products, submission of core data elements to a European UDI database prior to placement of a device on the market, reclassification of medical devices, and multiple other labeling changes. While we will be able to continue marketing our currently CE-marked products in the EEA after the EU MDR enters into full effect and until the associated CE mark certificates expire, acquiring approvals for new products or renewing our existing CE mark certificates once these expire could be more challenging and costly.

Our HCT/P products are subject to extensive government regulation and our failure to comply with these requirements could cause our business to suffer.

In the United States, we sell human tissue-derived BGSs, such as PureBone and OsteoAMP, which are referred to by the FDA as human cells, tissues and cellular or tissue-based products, or HCT/Ps. In the U.S., we are marketing our HCT/Ps pursuant to Section 361 of the PHSA and 21 CFR Part 1271 of FDA's regulations. We do not manufacture these HCT/P products, but serve as a distributor for them. So-called Section 361 HCT/Ps are not currently subject to the FDA requirements to obtain marketing authorizations as long as they meet certain criteria provided in FDA's regulations. HCT/Ps regulated as "361 HCT/Ps" are currently subject to requirements relating to registering facilities and listing products with the FDA, screening and testing for tissue donor eligibility, current Good Tissue Practices, or cGTP, when processing, storing, labeling and distributing HCT/Ps, including required labeling information, stringent record keeping and adverse event reporting. If we or our suppliers fail to comply with these requirements, we could be subject to FDA enforcement action, including, for example, warning letters, fines, injunctions, product recalls or seizures, and, in the most serious cases, criminal penalties. To be regulated as Section 361 HCT/Ps, these products must meet FDA's criteria to be considered "minimally manipulated" and intended for "homologous use," among other requirements. HCT/Ps that do not meet the criteria to be considered Section 361 HCT/Ps are subject to the FDA's regulatory requirements applicable to medical devices, biologics or drugs. Device, biologic or drug HCT/Ps must comply both with the requirements exclusively applicable to Section 361 HCT/Ps and, in addition, with other requirements, including requirements for marketing authorization. For example, Section 361 HCT/Ps do not require 510(k) clearance, PMA approval, approval of a BLA, or other premarket authorization from FDA before marketing. Except as described below with regard to MOTYS, we believe our HCT/Ps are regulated solely under Section 361 of the PHSA, and therefore, we have not sought or obtained 510(k) clearance, PMA approval, or licensure through a BLA for such HCT/Ps.

The FDA could disagree with our determination that these human tissue products are Section 361 HCT/Ps and could determine that these products are biologics requiring a BLA or medical devices requiring 510(k) clearance or PMA approval, and could require that we cease marketing such products and/or recall them pending appropriate clearance, approval or licensure from the FDA. For example, the FDA's Center for Devices and Radiological Health, or CDRH, issued us a letter in March 2016 in which it asserted that OsteoAMP meets the definition of a medical device, and requested that we provide CDRH with information in support of our position that OsteoAMP does not require 510(k) clearance or PMA approval. We provided CDRH with the requested information in support of this position in May 2016 and we have received no further inquiries to date. We believe that CDRH's assertion is unfounded and inconsistent with a 2011 letter from the FDA concluding that OsteoAMP meets the criteria for regulation solely as a Section 361 HCT/P. However, if the FDA were to disagree, and if we are otherwise unsuccessful in asserting our position, the FDA may then require that we obtain 510(k) clearance or PMA approval and that we cease marketing OsteoAMP and/or recall OsteoAMP unless and until we receive clearance or approval. If we have to cease marketing and/or have to recall any of our BGSs products, including OsteoAmp, our net sales would decrease, which would adversely affect our business, results of operations and financial condition.

HCT/Ps that do not meet the criteria of Section 361 are regulated under Section 351 of the PHSA. Unlike Section 361 HCT/Ps, HCT/Ps regulated as "351" HCT/Ps are subject to premarket review and approval by the FDA. In November 2017, the FDA released a guidance document entitled "Regulatory Considerations for Human Cells, Tissues, and Cellular and Tissue—Based Products: Minimal Manipulation and Homologous Use—Guidance for Industry and Food and Drug Administration Staff." The guidance outlined the FDA's position that all lyophilized amniotic products are more than minimally manipulated and would therefore require a BLA to be lawfully marketed in the United States. The guidance also indicated that the FDA would exercise enforcement discretion, using a risk-based approach, with respect to the IND application and pre-market approval requirements for certain HCT/Ps for a period of 36 months from the issuance date of the guidance to allow manufacturers to pursue its IND application. Under this approach, FDA indicated that high-risk products and uses could be subject to immediate enforcement action; FDA has not clearly stated what must happen by the end of its enforcement discretion period in order to avoid enforcement (i.e., whether a BLA must be approved by that time, or merely submitted). In July 2020, the FDA extended its period of enforcement discretion to May 31, 2021.

We plan to market MOTYS under the FDA's policy of enforcement discretion as we pursue marketing authorization under a BLA for the product. We may be required to cease selling MOTYS if the FDA changes the scope of its enforcement discretion or changes the criteria used to assess which products qualify. In addition, following the period of enforcement discretion articulated in FDA's guidance, we may be required to cease selling MOTYS until such time as we obtain BLA approval or be subject to another enforcement action or penalties. We may also be subject to enforcement on the grounds that we are marketing a product at the same time we are investigating that product pursuant to an IND, in violation of FDA's prohibition on the preapproval promotion of an investigational product. The loss of our ability to market and sell this product could have an adverse impact on our business, results of operations and financial condition. In addition, we expect the cost to manufacture our products will be higher than our other HCT/Ps because of the costs to comply with the more stringent requirements that apply to products regulated as biologics for which a BLA is required (and not just as Section 361 HCT/Ps). These requirements include satisfying cGMP manufacturing standards and performing ongoing product testing. If we do receive BLA approval for this product, changes such as adding new indications, manufacturing changes and additional labeling claims, will be subject to further testing requirements and FDA review and approval.

In addition, the FDA may in the future modify the scope of its enforcement discretion with respect to Section 361 HCT/Ps or change its position on which current or future products qualify as Section 361 HCT/Ps, or determine that some or all of our HCT/P products may not be lawfully marketed under the FDA's policy of enforcement discretion. Any regulatory changes could have adverse consequences for us and make it more difficult or expensive for us to conduct our business by requiring pre-market clearance or approval and compliance with additional post-market regulatory requirements with respect to those products.

If clinical studies of our future products do not produce results necessary to support regulatory clearance or approval in the United States or elsewhere, we will be unable to expand the indications for or commercialize these products.

We will likely need to conduct additional clinical studies in the future to support new indications for our products or for clearances or approvals of new product lines, or for the approval of the use of our products in some foreign countries. Clinical testing can take many years, can be expensive and carries uncertain outcomes. The initiation and completion of any of these studies may be prevented, delayed, or halted for numerous reasons. Conducting successful clinical studies requires the enrollment of large numbers of patients, and suitable patients may be difficult to identify and recruit. Patient enrollment in clinical trials and completion of patient participation and follow-up depends on many factors, including the size of the patient population, the nature of the trial protocol, the attractiveness of, or the discomforts and risks associated with, the treatments received by enrolled subjects, the availability of appropriate clinical trial investigators and support staff, proximity of patients to clinical sites, patient ability to meet the eligibility and exclusion criteria for participation in the clinical trial and patient compliance. For example, patients may be discouraged from enrolling in our clinical trials if the trial protocol requires them to undergo extensive post-treatment procedures or follow-up to assess the safety and effectiveness of our products or if they determine that the treatments received under the trial protocols are not attractive or involve unacceptable risks or discomforts. Patients may also not participate in our clinical trials if they choose to participate in contemporaneous clinical trials of competitive products. In addition, patients participating in clinical trials may die before completion of the trial or suffer adverse medical events unrelated to investigational products.

For example, in late 2017 we began enrollment for the B.O.N.E.S. clinical study, a uniquely designed trial to further broaden the label of our Exogen system to include a fuller range of bones that may be treated as fresh fractures in predisposed patients at risk of nonunion. The B.O.N.E.S clinical study design includes prospective inclusion of 3,000 Exogen-treated patients presenting certain risk factors observed over the course of 12 months. See “Business—Development and Clinical Pipeline—Exogen clinical data—Ongoing Bioventus-sponsored clinical studies (B.O.N.E.S.).” If we are unable to successfully complete enrollment and conclude the B.O.N.E.S. study, or the data generated from the study does not support these new indications, future demand for our Exogen system may be affected. On October 29, 2020, we received FDA confirmation indicating its authorization of our IND, which will allow us to conduct a clinical trial to support a BLA submission for MOTYS, as well as an additional clinical trial based on a registry of patients who receive MOTYS after our initial commercial launch in the cash pay market. If we are unable to complete enrollment of these trials or if these trials do not support our desired clinical indications for use or show clinical efficacy of the MOTYS product, we may not obtain approval of the BLA and may not be able to continue to sell MOTYS or obtain coverage or reimbursement for the product.

Clinical failure can occur at any stage of testing. Our clinical studies may produce negative or inconclusive results, and we may decide, or regulators may require us, to conduct additional clinical and non-clinical studies in addition to those we have planned. In addition, failure to adequately demonstrate the safety and efficacy of any of our devices would prevent receipt of regulatory clearance or approval and, ultimately, the commercialization of that device or indication for use. Even if our future products are cleared in the United States, commercialization of our products in foreign countries would require approval by regulatory authorities in those countries. Approval procedures vary among jurisdictions and can involve requirements and administrative review periods different from, and greater than, those in the United States, including additional preclinical studies or clinical trials. Any of these occurrences could adversely affect our business, results of operations and financial condition.

Interim, “top-line” and preliminary data from our clinical trials that we announce or publish from time to time may change as more patient data become available and are subject to audit and verification procedures that could result in material changes in the final data.

From time to time, we may publish interim, “top-line” or preliminary data from our clinical trials. Interim, top-line, or preliminary data from clinical trials that we may complete are subject to the risk that one or more of the clinical outcomes may materially change as patient enrollment continues and more patient data become

available. Preliminary, "top-line," or interim data also remain subject to audit and verification procedures that may result in the final data being materially different from the preliminary data we previously published. As a result, interim, "top-line," and preliminary data should be viewed with caution until the final data are available. Differences between preliminary, interim, or "top-line" data and final data could significantly harm our business prospects and may cause the trading price of our common stock to fluctuate significantly.

Further, others, including regulatory agencies, may not accept or agree with our assumptions, estimates, calculations, conclusions or analyses or may interpret or weigh the importance of data differently, which could impact the value of the particular program, the approvability or commercialization of the particular product candidate or product and our business in general. In addition, the information we choose to publicly disclose regarding a particular study or clinical trial is based on what is typically extensive information, and you or others may not agree with what we determine is the material or otherwise appropriate information to include in our disclosure, and any information we determine not to disclose may ultimately be deemed significant with respect to future decisions, conclusions, views, activities or otherwise regarding a particular product candidate or our business. If the interim, "top-line," or preliminary data that we report differ from actual results, or if others, including regulatory authorities, disagree with the conclusions reached, our ability to obtain approval for and commercialize our product candidates, our business, operating results, prospects or financial condition may be harmed.

We may be subject to enforcement action if we engage in improper marketing or promotion of our products, and the misuse or off-label use of our products may harm our image in the marketplace, result in injuries that lead to product liability suits or result in costly investigations, fines or sanctions by regulatory bodies if we are deemed to have engaged in the promotion of these uses, any of which could be costly to our business.

The medical devices that we currently market have been cleared or approved by the FDA and other foreign regulatory bodies for specific treatments. However, we cannot prevent a physician from using our products outside of such cleared or approved indications for use, known as off-label uses, when in the physician's independent professional medical judgment, he or she deems it appropriate, and we do not analyze the ordering practices of physicians with respect to off-label uses. In cases where prescriptions of our Exogen system are written for off-label uses, we could be subject to regulatory or enforcement actions if we were determined to have engaged in promotion of our products for off-label uses, or otherwise determined to have made false or misleading statements about our products. There may be increased risk of injury to patients if physicians attempt to use our products off-label. Furthermore, the use of our products for indications other than those cleared or approved by the FDA or any foreign regulatory body may not effectively treat such conditions, which could harm our reputation in the marketplace among physicians and patients.

In addition, physicians may misuse our products or use improper techniques if they are not adequately trained, potentially leading to injury and an increased risk of product liability. If our products are misused or used with improper technique, we may become subject to costly litigation by our customers or their patients. Product liability claims could divert management's attention from our core business, be expensive to defend and result in sizeable damage awards against us that may not be covered by insurance.

Further, our promotional materials and training methods must comply with FDA and other applicable laws and regulations, including the prohibition of the promotion of off-label use. If the FDA or any foreign regulatory body determines that our promotional materials or training constitute promotion of an off-label use, the FDA could request that we modify our training, promotional materials or subject us to regulatory or enforcement actions, including the issuance of an untitled letter, a warning letter, injunction, seizure, civil fine or criminal penalties. It is also possible that other federal, state or foreign enforcement authorities might take action if they consider our business activities to constitute promotion of an off-label use, which could result in significant penalties under other statutory authorities, such as laws prohibiting false claims for reimbursement. Such enforcement actions may include, but are not limited to, criminal, civil and administrative penalties, treble

damages, fines, disgorgement, exclusion from participation in government healthcare programs, additional reporting requirements and oversight if we become subject to a corporate integrity agreement or similar agreement to resolve allegations of non-compliance with these laws and the curtailment or restructuring of our operations.

Our products may cause or contribute to adverse medical events that we are required to report to the FDA, and if we fail to do so, we would be subject to sanctions that could materially harm our business.

Some of our marketed products are subject to Medical Device Reporting, or MDR, obligations, which require that we report to the FDA any incident in which our products may have caused or contributed to a death or serious injury, or in which our products malfunctioned and, if the malfunction were to recur, it could likely cause or contribute to a death or serious injury. The timing of our obligation to report under the MDR regulations is triggered by the date we become aware of the adverse event as well as the nature of the event. We may fail to report adverse events of which we become aware within the prescribed timeframe. We may also fail to recognize that we have become aware of a reportable adverse event, especially if it is not reported to us as an adverse event or if it is an adverse event that is unexpected or removed in time from the use of our products. If we fail to comply with our reporting obligations, the FDA could take action including warning letters, untitled letters, administrative actions, criminal prosecution, imposition of civil monetary penalties, revocation of our device clearances, seizure of our products, or delay in clearance of future products.

We and our third-party manufacturers and suppliers are subject to various governmental regulations related to the manufacturing of our products.

Our products and the manufacturing processes, reporting requirements, post-approval clinical data and promotional activities for such products, will be subject to continued regulatory review, oversight and periodic inspection by the FDA and other domestic and foreign regulatory bodies. In particular, the methods used in, and the facilities used for, the manufacture of the products that we own and distribute that are regulated as medical devices must comply with the FDA's QSR, which covers the procedures and documentation of the design, testing, production, control, quality assurance, labeling, packaging, sterilization, storage and shipping of medical devices. The FDA enforces the QSR through periodic announced or unannounced inspections of manufacturing facilities, and both we and our third-party manufacturers and suppliers are subject to such inspections. Similarly, the devices we distribute on behalf of third-party manufacturers that are regulated as Section 361 HCT/Ps must be manufactured in compliance with cGTP requirements and other related requirements. Moreover, should any of our HA products be re-classified as drugs, such products would be required to comply with a different set of manufacturing requirements under FDA's current Good Manufacturing Practice, or cGMP, requirements for drugs. Similarly, if we are successful in obtaining BLA approval for MOTYS, that product will need to comply with the cGMP requirements for biologics, instead of the cGTP requirements that will apply to the product upon our planned launch of the product as a Section 361 HCT/P. The need to comply with different manufacturing requirements may require us to seek new suppliers.

Failure to comply with applicable FDA requirements, or later discovery of previously unknown problems with our products or the manufacturing processes of our third-party manufacturers and suppliers, including any failure to take satisfactory corrective action in response to an adverse regulatory inspection, can result in, among other things:

- administrative or judicially imposed sanctions;
- injunctions or the imposition of civil penalties or fines;
- recall or seizure of our products;
- total or partial suspension of production or distribution;
- refusal to grant pending or future clearances or approvals for our products;
- withdrawal or suspension of regulatory clearances or approvals;

- clinical holds;
- untitled letters or warning letters;
- refusal to permit the import or export of our products; and
- criminal prosecution of us or our employees.

Any of these actions could prevent or delay us from marketing, distributing or selling our products and would likely harm our business. Furthermore, our suppliers may not currently be or may not continue to be in compliance with all applicable regulatory requirements, which could result in our failure to produce our products on a timely basis and in the required quantities, if at all.

Our products may be subject to product recalls. A recall of our products, either voluntarily or at the direction of the FDA or another governmental authority, or the discovery of serious safety issues with our products, could adversely affect us.

The FDA and similar foreign governmental authorities have the authority to require the recall of commercialized products in the event of material deficiencies or defects in their design or manufacture. The FDA's authority to require a recall for medical devices must be based on a finding that there is reasonable probability that the device would cause serious injury or death. We may also decide to voluntarily recall our products if certain deficiencies are found. We have in the past instituted a voluntary recall for certain of our products, and we are currently undertaking a voluntary Class II recall of certain vials of ultrasound gel that we provide with our Exogen system due to particulates, which were microbial in nature, found in the gel. The gel is manufactured by a third-party supplier, and we have discontinued the use of that suppliers' gel and have replaced that gel with that of another manufacturer. We have identified the affected lots and have notified patients to discard gel bottles from those lots. A government-mandated or voluntary recall could occur as a result of an unacceptable risk to health, component failures, malfunctions, manufacturing errors, design or labeling defects or other deficiencies and issues. Recalls of any of our products would divert managerial and financial resources and could adversely affect our reputation and business, which could impair our ability to produce our products in a cost-effective and timely manner in order to meet our customers' demands. We may also be subject to liability claims, be required to bear other costs, or take other actions that could adversely affect our business, results of operations and financial condition.

Companies are required to maintain certain records of recalls and corrections, even if they are not reportable to the FDA. We may initiate voluntary recalls or corrections for our products in the future that we determine do not require notification of the FDA. If the FDA disagrees with our determinations, they could require us to report those actions as recalls and we may be subject to enforcement action.

As we conduct clinical studies designed to generate long-term data on some of our existing products, the data we generate may not be consistent with our existing data and may demonstrate less favorable safety or efficacy. Data we generate may ultimately not be favorable, or could even hurt the commercial prospects for our products.

We are currently collecting and plan to continue collecting long-term clinical data regarding the quality, safety and effectiveness of some of our existing products. The clinical data collected and generated as part of these studies will further strengthen our clinical evaluation concerning safety and performance of these products. We believe that this additional data will help with the marketing of our products by providing surgeons and physicians with additional confidence in their long-term safety and efficacy. If the results of these clinical studies are negative, these results could reduce demand for our products and significantly reduce our ability to achieve expected net sales. We do not expect to undertake such studies for all of our products and will only do so in the future where we anticipate the benefits will outweigh the costs and risks. For these reasons, surgeons and physicians could be less likely to purchase our products than competing products for which longer-term clinical data are available. Also, we may not choose or be able to generate the comparative data that some of our competitors have or are generating and we may be subject to greater regulatory and product liability risks. If we are unable to or unwilling to collect sufficient long-term clinical data supporting the quality, safety and effectiveness of our existing products, our business, results of operations and financial condition could be adversely affected.

We may rely on third parties to conduct our clinical studies and to assist us with preclinical development and if they fail to perform as contractually required or expected, we may not be able to obtain regulatory clearance or approval to commercialize our products.

We have relied upon and may continue to rely upon third parties, such as contract research organizations, medical institutions, clinical investigators and contract laboratories to assist in conducting our clinical studies, which must be conducted in accordance with applicable regulations, including those known as good clinical practice, or GCP, and our preclinical development activities. We rely on these parties for execution of our studies, and control only certain aspects of their activities. Nevertheless, we are responsible for ensuring that each of our clinical studies is conducted in accordance with the applicable protocol, legal, regulatory, and scientific standards, and our reliance on these third parties does not relieve us of our regulatory responsibilities. GCPs are regulations and guidelines enforced by the FDA and other regulatory authorities for products in clinical development. Regulatory authorities enforce these GCPs through periodic inspections of trial sponsors, principal investigators, trial sites, and CROs. We cannot assure you that upon inspection by a given regulatory authority, such regulatory authority will determine that any of our clinical trials comply with GCP regulations. In addition, our clinical trials must be conducted with product produced under applicable manufacturing requirements.

If these third parties fail to successfully carry out their contractual duties, comply with applicable regulatory obligations, including GCP requirements, or meet expected deadlines, or if these third parties must be replaced, or if the quality or accuracy of the data they obtain is compromised due to the failure to adhere to clinical protocols or applicable regulatory requirements or for other reasons, our pre-clinical development activities or clinical studies may be extended, delayed, suspended or terminated. Under these circumstances we may not be able to obtain regulatory clearance or approval for, or successfully commercialize, our products on a timely basis, if at all, and our business, results of operations and financial condition may be adversely affected.

If any of our relationships with these third parties terminate, we may not be able to enter into arrangements with alternative third parties or to do so on commercially reasonable terms. In addition, our third parties are not our employees, and except for remedies available to us under our agreements with them, we cannot control whether or not they devote sufficient time and resources to our on-going clinical, nonclinical and preclinical programs. Switching or adding additional third parties involves additional cost and requires management time and focus. In addition, there is a natural transition period when a new CRO or other third party vendor commences work. As a result, delays occur, which can materially impact our ability to meet our desired development timelines. Though we carefully manage our relationships with our third party vendors including CROs, there can be no assurance that we will not encounter similar challenges or delays in the future or that these delays or challenges will not have a material adverse impact on our business, financial condition and prospects.

Healthcare regulatory reform may affect our ability to sell our products profitably and could adversely affect our business, results of operations and financial condition.

In the United States and in certain foreign jurisdictions, there have been a number of legislative and regulatory proposals to change the regulatory and healthcare systems in ways that could prevent or delay marketing approval of our products in development, restrict or regulate post-approval activities of our products and impact our ability to sell our products profitably. In the United States in recent years, new legislation has been proposed and adopted at the federal and state level that is effecting major changes in the healthcare system. In addition, new regulations and interpretations of existing healthcare statutes and regulations are frequently adopted.

In March 2010, the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act, or collectively, the Affordable Care Act, was signed into law. While the goal of healthcare reform is to expand coverage to more individuals, it also involves increased government price controls, additional regulatory mandates and other measures designed to constrain medical costs. The Affordable Care Act substantially changes the way healthcare is financed by both governmental and private insurers,

encourages improvements in the quality of healthcare items and services and significantly impacts the medical device industry. Among other things, the Affordable Care Act:

- increased the statutory minimum rebates a manufacturer must pay under the Medicaid Drug Rebate Program;
- created a new methodology by which rebates owed by manufacturers under the Medicaid Drug Rebate Program are calculated for drugs that are inhaled, infused, instilled, implanted or injected;
- extended manufacturers' Medicaid rebate liability to individuals enrolled in Medicaid managed care organizations;
- expanded eligibility criteria for Medicaid programs;
- established a new Patient-Centered Outcomes Research Institute to oversee and identify priorities in comparative clinical effectiveness research in an effort to coordinate and develop such research; and
- implemented payment system reforms including a national pilot program on payment bundling to encourage hospitals, physicians and other providers to improve the coordination, quality and efficiency of certain healthcare services through bundled payment models.

Since its enactment, there have been judicial and Congressional challenges to certain aspects of the Affordable Care Act, as well as efforts by the former Trump administration to repeal or replace certain aspects of the ACA, and we expect such challenges and amendments to continue. For example, the Tax Cuts and Jobs Act of 2017 includes a provision repealing, effective January 1, 2019, the tax-based shared responsibility payment imposed by the ACA on certain individuals who fail to maintain qualifying health coverage for all or part of a year that is commonly referred to as the "individual mandate." On December 14, 2018, a U.S. District Court Judge in the Northern District of Texas, ruled that the individual mandate is a critical and inseverable feature of the Affordable Care Act, and therefore, because it was repealed as part of the U.S. Tax Act, the remaining provisions of the Affordable Care Act are invalid as well. On December 18, 2019, the U.S. Court of Appeals for the 5th Circuit upheld the District Court ruling that the individual mandate was unconstitutional and remanded the case back to the District Court to determine whether the remaining provisions of the Affordable Care Act are invalid as well. On March 2, 2020, the United States Supreme Court granted the petitions for writs of certiorari to review this case, and the Court held oral argument on November 10, 2020. The case is expected to be decided in mid-2021. It is unclear how this decision and other efforts to challenge, repeal or replace the Affordable Care Act will impact the Affordable Care Act or our business. We expect there will be additional challenges and amendments to the Affordable Care Act in the future.

The results of the 2020 U.S. presidential and congressional elections have created regulatory uncertainty, including with respect to the U.S. government's role, in the U.S. healthcare industry. As a result of such elections, there are renewed and reinvigorated calls for health insurance reform, which could cause significant uncertainty in the U.S. healthcare market, could increase our costs, decrease our revenues or inhibit our ability to sell our products. We cannot predict with certainty what impact any U.S. federal and state health reforms will have on us, but such changes could impose new and/or more stringent regulatory requirements on our activities or result in reduced reimbursement for our products, any of which could adversely affect our business, results of operations and financial condition.

In addition, third-party payers regularly update payments to physicians and hospitals where our products are used. For example, the Medicare Access and CHIP Reauthorization Act of 2015, or MACRA, ended the use of the Sustainable Growth Rate Formula, and provided for a 0.5% annual increase in payment rates under the Medicare Physician Fee Schedule through 2019, but no annual update from 2020 through 2025. MACRA also introduced a merit based incentive bonus program for Medicare physicians beginning in 2019. At this time, it is unclear how the introduction of the merit based incentive program will impact overall physician reimbursement under the Medicare program. In addition, the Budget Control Act of 2011 imposed reductions to Medicare payments to providers of 2% per fiscal year, which went into effect on April 1, 2013, and, due to subsequent

legislative amendments, will stay in effect through 2030 unless additional Congressional action is taken. In January 2013, President Obama signed into law the American Taxpayer Relief Act of 2012, which, among other things, further reduced Medicare payments to several types of providers, and increased the statute of limitations period for the government to recover overpayments to providers from three to five years. These and other payment updates could directly impact the demand for our products or any products we may develop in the future, if cleared or approved.

We expect that the Affordable Care Act, as well as other healthcare reform measures that may be adopted in the future, may result in additional reductions in Medicare and other healthcare funding, more rigorous coverage criteria, new payment methodologies and in additional downward pressure on the price that we receive for any cleared or approved products. Furthermore, we believe that many individuals who have obtained insurance coverage through the health insurance exchanges which arose as a result of the Affordable Care Act have done so with policies that have significantly higher deductibles than policies they may have obtained prior to its enactment. Because the out-of-pocket costs of undergoing certain procedures for patients who have not met their deductible for a given year would be significantly higher than they historically would have been, these patients may be discouraged from undergoing certain procedures due to the cost. Any reluctance on the part of patients to undergo procedures utilizing our products due to cost could impact our ability to expand sales of our products and could adversely impact our business, results of operations and financial condition.

We are subject to federal, state and foreign laws and regulations relating to our healthcare business, and could face substantial penalties if we are determined not to have fully complied with such laws, which would adversely affect our business, results of operations and financial condition.

Both in our capacity as a pharmaceutical and medical device manufacturer and/or as a supplier of covered items and services to federal health care program beneficiaries, with respect to which items and services we submit claims for reimbursement from such programs, we are subject to healthcare fraud and abuse regulation and enforcement by federal, state and foreign governments, which could adversely impact our business, results of operations and financial condition. Healthcare fraud and abuse and health information privacy and security laws potentially applicable to our operations include:

- the federal Anti-Kickback Statute, which applies to our marketing practices, educational programs, pricing and discounting policies and relationships with healthcare providers, by prohibiting, among other things, persons and entities from knowingly and willfully soliciting, receiving, offering or providing remuneration intended to induce or reward, or in return for, either the referral of an individual for, or the purchase, order or recommendation of an item or service reimbursable under a federal healthcare program, such as the Medicare or Medicaid programs. A person or entity does not need to have actual knowledge of this statute or specific intent to violate it to have committed a violation. Violations are also subject to civil monetary penalties up to $100,000 for each violation, plus up to three times the remuneration involved. Civil penalties for such conduct can further be assessed under the federal False Claims Act. Violations of the federal Anti-Kickback Statute may also result civil and criminal penalties, including criminal fines of up to $100,000 and imprisonment of up to ten years, or exclusion from Medicare, Medicaid or other governmental programs;
- the “Stark Law,” which prohibits a physician from referring Medicare or Medicaid patients to an entity providing “designated health services,” which includes durable medical equipment, if the physician or immediate family member of the physician, has an ownership or investment interest in or compensation arrangement with such entity that does not comply with the requirements of a Stark exception;
- the federal civil and criminal false claims laws, including the False Claims Act, which impose civil and criminal penalties through governmental, civil whistleblower or qui tam actions, against individuals or entities for, among other things, knowingly presenting, or causing to be presented, claims for payment or approval to the federal government that are false or fraudulent, knowingly making a false statement material to an obligation to pay or transmit money or property to the federal government or knowingly

concealing or knowingly and improperly avoiding or decreasing an obligation to pay or transmit money or property to the federal government. Suits filed under the False Claims Act, can be brought by any individual on behalf of the government, known as ‘‘qui tam’’ actions, and such individuals, commonly known as ‘‘whistleblowers,’’ may share in any amounts paid by the entity to the government in fines or settlement. The frequency of filing qui tam actions has increased significantly in recent years, causing greater numbers of pharmaceutical, medical device and other healthcare companies to have to defend a False Claims Act action. When an entity is determined to have violated the False Claims Act, the government may impose civil fines and penalties ranging from $11,665 to $23,331 for each false claim, plus treble damages, and exclude the entity from participation in Medicare, Medicaid and other federal healthcare programs. The government may assert that a claim including items or services resulting from a violation of the federal Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the false claims statutes;

- the federal civil monetary penalties laws, which impose civil fines for, among other things, the offering or transfer of remuneration to a Medicare or state healthcare program beneficiary if the person knows or should know it is likely to influence the beneficiary’s selection of a particular provider, practitioner, or supplier of services reimbursable by Medicare or a state healthcare program, unless an exception applies;
- HIPAA and its implementing regulations, which created federal criminal laws that prohibit, among other things, executing or attempting to execute a scheme to defraud any healthcare benefit program or making false statements relating to healthcare matters. Similar to the federal Anti-Kickback Statute, a person or entity does not need to have actual knowledge of the statute or specific intent to violate it to have committed a violation;
- HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act, or HITECH, and its implementing regulations, which also imposes certain regulatory and contractual requirements regarding the privacy, security and transmission of protected health information, or PHI;
- the federal Physician Payments Sunshine Act, which requires manufacturers of drugs, devices, biologics and medical supplies for which payment is available under Medicare, Medicaid or the Children’s Health Insurance Program (with certain exceptions) to report annually to the government information related to certain payments or other “transfers of value” made to physicians (defined to include doctors, dentists, optometrists, podiatrists and chiropractors) and teaching hospitals, and, beginning in 2022, physician assistants, nurse practitioners, and other practitioners, and requires applicable manufacturers to report annually to the government ownership and investment interests held by the providers described above and their immediate family members and payments or other “transfers of value” to such provider owners. Failure to submit required information may result in civil monetary penalties of $11,766 per failure up to an aggregate of $176,495 per year (or up to an aggregate of $1.177 million per year for “knowing failures”), for all payments, transfers of value or ownership or investment interests that are not timely, accurately, and completely reported in an annual submission, and may result in liability under other federal laws or regulations;
- federal consumer protection and unfair competition laws, which broadly regulate marketplace activities and activities that potentially harm consumers;
- federal government price reporting laws, which require us to calculate and report complex pricing metrics in an accurate and timely manner to government programs, and where the failure to report such prices may expose us to potential liability; and
- state and foreign law equivalents of each of the above federal laws and regulations, such as anti-kickback, self-referral, fee-splitting and false claims laws that may apply to items or services reimbursed by any third-party payer, including commercial insurers; state laws that require pharmaceutical and device companies to comply with the industry’s voluntary compliance guidelines and the relevant compliance guidance promulgated by the federal government or otherwise that restrict payments that may be made to healthcare providers; state laws that require drug and device

manufacturers to report information related to payments and other transfers of value to physicians and other healthcare providers or marketing expenditures and pricing information; and state and foreign laws governing the privacy and security of certain health information, such as GDPR, which imposes obligations and restrictions on the collection and use of personal data relating to individuals located in the EU (including health data), many of which differ from each other in significant ways and some of which may be more stringent than HIPAA or HITECH.

The risk of us being found in violation of these laws and regulations is increased by the fact that many of them have not been fully interpreted by the regulatory authorities or the courts, and their provisions are open to a variety of interpretations. We are unable to predict what additional federal, state or foreign legislation or regulatory initiatives may be enacted in the future regarding our business or the healthcare industry in general, or what effect such legislation or regulations may have on us. Federal, state or foreign governments may impose additional restrictions or adopt interpretations of existing laws that could adversely affect us.

Because of the breadth of these laws and the narrowness of the statutory exceptions and safe harbors available under such laws, it is possible that some of our business activities, including certain sales and marketing practices and financial arrangements with physicians and other healthcare providers, some of whom recommend, use, prescribe or purchase our products, and other customers, could be subject to challenge under one or more of such laws. Any action against us for violation of these laws, even if we successfully defend against it, could cause us to incur significant legal expenses and divert our management's attention from the operation of our business. If our operations are found to be in violation of any of the laws described above or any other governmental regulations that apply to us, we may be subject to penalties, including civil and criminal penalties, damages, fines, exclusion from governmental healthcare programs, disgorgement, contractual damages, reputational harm, diminished profits and future earnings, and the curtailment or restructuring of our operations, any of which could adversely impact our business, results of operations and financial condition.

We are subject to governmental regulation and other legal obligations, particularly related to privacy, data protection and information security, and we are subject to consumer protection laws that regulate our marketing practices and prohibit unfair or deceptive acts or practices. Our actual or perceived failure to comply with such obligations could harm our business.

We are subject to diverse laws and regulations relating to data privacy and security, including, in the United States, the federal Health Insurance Portability and Accountability Act of 1996, as amended by HITECH, and the regulations that implement both laws, collectively known as HIPAA, and, in the European Union, or EU, and the European Economic Area, or EEA, Regulation 2016/679, known as the General Data Protection Regulation, or GDPR. New privacy rules are being enacted in the United States and globally, and existing ones are being updated and strengthened. Complying with these numerous, complex and often changing regulations is expensive and difficult, and failure to comply with any privacy laws or data security laws or any security incident or breach involving the misappropriation, loss or other unauthorized use or disclosure of sensitive or confidential patient or consumer information, whether by us, one of our business associates or another third-party, could adversely affect our business, results of operations and financial condition, including but not limited to: investigation costs, material fines and penalties; compensatory, special, punitive, and statutory damages; litigation; reputational damage; consent orders regarding our privacy and security practices; requirements that we provide notices, credit monitoring services and/or credit restoration services or other relevant services to impacted individuals; adverse actions against our licenses to do business; and injunctive relief. Furthermore, these rules are constantly changing. For example, the California Consumer Privacy Act, or CCPA, took effect on January 1, 2020. The CCPA establishes a new privacy framework for covered businesses and provides new and enhanced data privacy rights to California residents, such as affording consumers the right to access and delete their information and to opt out of certain sharing and sales of personal information. The CCPA imposes severe statutory damages as well as a private right of action for certain data breaches that result in the loss of personal information. This private right of action is expected to increase the likelihood of, and risks associated with, data breach litigation. It remains unclear how various provisions of the CCPA will be interpreted and enforced. The CCPA contains an

exemption for medical information governed by the California Confidentiality of Medical Information Act, or CMIA, and for PHI collected by a covered entity or business associate governed by the privacy, security and breach notification rules established pursuant to HIPAA, but the precise application and scope of this exemption is not yet clear, and the law may still apply to certain aspects of our business. The CCPA may lead other states to pass comparable legislation, with potentially greater penalties, and more rigorous compliance requirements relevant to our business, and that may not include exemptions for businesses subject to HIPAA. The effects of the CCPA, and other similar state or federal laws, are potentially significant and may require us to modify our data processing practices and policies and to incur substantial costs and potential liability in an effort to comply with such legislation.

The privacy laws in the EU have been significantly reformed. On May 25, 2018, the GDPR entered into force and became directly applicable in all EU member states. The GDPR implements more stringent operational requirements than its predecessor legislation. For example, the GDPR requires us to make more detailed disclosures to data subjects, requires disclosure of the legal basis on which we can process personal data, makes it harder for us to obtain valid consent for processing, requires the appointment of data protection officers when sensitive personal data, such as health data, is processed on a large scale, provides more robust rights for data subjects, introduces mandatory data breach notification through the EU, imposes additional obligations on us when contracting with service providers and requires us to adopt appropriate privacy governance including policies, procedures, training and data audit. If we do not comply with our obligations under the GDPR, we could be exposed to fines of up to the greater of €20 million or up to 4% of our total global annual revenue in the event of a significant breach. In addition, we may be the subject of litigation and/or adverse publicity, which could adversely affect our business, results of operations and financial condition.

Prior to the effectiveness of the GDPR, the US-EU Safe Harbor framework provided a method which permitted the transfer of personal data to the United States under European privacy law; in 2015 it was declared invalid and replaced with the US-EU Privacy Shield framework, or Privacy Shield. On July 16, 2020, the Court of Justice of the European Union, or CJEU, invalidated Privacy Shield. While the CJEU upheld the adequacy of the standard contractual clauses (a standard form of contract approved by the European Commission as an adequate personal data transfer mechanism, and potential alternative to the Privacy Shield), it made clear that reliance on them alone may not necessarily be sufficient in all circumstances; this has created increasing uncertainty. This recent development will require us to review and amend the legal mechanisms by which we make and/or receive personal data transfers to/in the U.S. As supervisory authorities issue further guidance on personal data export mechanisms, including circumstances where the standard contractual clauses cannot be used, and/or start taking enforcement action, we could suffer additional costs, complaints and/or regulatory investigations or fines, and/or if we are otherwise unable to transfer personal data between and among countries and regions in which we operate, it could affect the manner in which we provide our services, the geographical location or segregation of our relevant systems and operations, and could adversely affect our financial results.

Additionally starting on January 1, 2021 (following the United Kingdom’s departure from the EU), we will have to comply with the GDPR and the UK GDPR (i.e. the GDPR as implemented into UK law) if we offer services to UK users, monitor their behavior or are established in the United Kingdom. Failure to comply with the UK GDPR can result in fines up to the greater of £17 million (approximately $20 million), or 4% of global revenue. However, the relationship between the United Kingdom and the European Union in relation to certain aspects of data protection law remains unclear. For example, it is unclear what the role of the Information Commissioner’s Office will be following the end of the transitional period. In addition, it is likely that documentation will need to be put in place between UK entities and entities in European member states to ensure adequate safeguards are in place for data transfers, which may result in increased costs with respect to transfers of personal data between the European Union and the UK, which would increase our expenses. We may find it necessary or advantageous to join industry bodies or self-regulatory organizations that impose stricter compliance requirements than those set out in applicable laws, including the GDPR. We may also be bound by contractual restrictions that prevent us from participating in data processing activities that would otherwise be

permissible under applicable laws, including the GDPR. Such strategic choices may impact our ability to use and exploit data, and may have an adverse impact on our business.

Failure to comply with the FCPA and laws associated with our activities outside the United States could adversely affect our business, results of operations and financial condition.

We are subject to the FCPA and other anti-bribery legislation around the world. The FCPA generally prohibits covered entities and their intermediaries from engaging in bribery or making other prohibited payments, offers or promises to foreign officials for the purpose of obtaining or retaining business or other advantages. In addition, the FCPA imposes recordkeeping and internal controls requirements on publicly traded corporations and their foreign affiliates, which are intended to, among other things, prevent the diversion of corporate funds to the payment of bribes and other improper payments, and to prevent the establishment of "off books" slush funds from which such improper payments can be made. As we conduct our business in jurisdictions outside of the United States, we face significant risks if we fail to comply with the FCPA and other laws that prohibit improper payments, offers or promises of payment to foreign governments and their officials and political parties by us and other business entities for the purpose of obtaining or retaining business or other advantages. In many foreign countries, particularly in countries with developing economies, it may be a local custom that businesses operating in such countries engage in business practices that are prohibited by the FCPA or other laws and regulations. Although we have implemented a company policy requiring our employees and consultants to comply with the FCPA and similar laws, such policy may not be effective at preventing all potential FCPA or other violations. Although our agreements with our international distributors clearly state our expectations for our distributors' compliance with U.S. laws, including the FCPA, and provide us with various remedies upon any non-compliance, including the ability to terminate the agreement, we also cannot guarantee our distributors' compliance with U.S. laws, including the FCPA. Therefore, there can be no assurance that our employees and agents, or those companies to which we outsource certain of our business operations, have not and will not take actions that violate our policies or applicable laws, for which we may be ultimately held responsible. Any violation of the FCPA and related policies could result in severe criminal or civil sanctions, which could adversely affect our business, results of operations and financial condition.

Furthermore, we are subject to the export controls and economic embargo rules and regulations of the United States, including, but not limited to, the Export Administration Regulations and trade sanctions against embargoed countries, which are administered by the Office of Foreign Assets Control within the Department of the Treasury, as well as the laws and regulations administered by the Department of Commerce. These regulations limit our ability to market, sell, distribute or otherwise transfer our products or technology to prohibited countries or persons. A determination that we have failed to comply, whether knowingly or inadvertently, may result in substantial penalties, including fines, enforcement actions, civil and/or criminal sanctions, the disgorgement of profits, the imposition of a court-appointed monitor, as well as the denial of export privileges, and may adversely affect our business, results of operations and financial condition.

If we fail to meet Medicare accreditation and surety bond requirements or DMEPOS supplier standards, it could adversely affect our business, results of operations and financial condition.

Our Exogen system is classified by CMS and third-party payers as durable medical equipment. Suppliers of Medicare durable medical equipment, prosthetics, orthotics and supplies, or DMEPOS, must be accredited by an approved accreditation organization as meeting DMEPOS quality standards adopted by CMS and are required to meet surety bond requirements. In addition, Medicare DMEPOS suppliers must comply with Medicare supplier standards in order to obtain and retain billing privileges, including meeting all applicable federal and state licensure and regulatory requirements. CMS periodically expands or otherwise clarifies the Medicare DMEPOS supplier standards, and states periodically change licensure requirements, including licensure rules imposing more stringent requirements on out-of-state DMEPOS suppliers. We believe we are currently in compliance with these requirements. If we fail to maintain our Medicare accreditation status and/or do not comply with Medicare surety bond or supplier standard requirements or state licensure requirements in the future, or if these requirements are changed or expanded, it could adversely affect our business, results of operations and financial condition.

Our operations involve the use of hazardous and toxic materials, and we must comply with environmental, health and safety laws and regulations, which can be expensive, and could adversely affect our business, results of operations and financial condition.

We are subject to a variety of federal, state, local and foreign laws and regulations relating to the protection of the environment or of human health and safety, including laws pertaining to the use, handling, storage, disposal and human exposure to hazardous and toxic materials. Liability under environmental laws can be imposed on a joint and several basis (which could result in an entity paying more than its fair share) and without regard to comparative fault, and environmental laws are likely to become more stringent over time, imposing greater compliance costs and increasing risks and penalties associated with violations, which could adversely affect our business, results of operations and financial condition.

Our employees, independent distributors, independent contractors, suppliers and other third parties may engage in misconduct or other improper activities, including noncompliance with regulatory standards and requirements, which could expose us to liability and hurt our reputation.

We are exposed to the risk that our employees, independent distributors, independent contractors, suppliers and others may engage in fraudulent conduct or other illegal activity. Misconduct by these parties could include intentional, reckless and/or negligent conduct or disclosure of unauthorized activities to us that violates: (1) FDA laws and regulations, including those laws that require the reporting of true, complete and accurate information to the FDA, (2) manufacturing standards, (3) healthcare fraud and abuse laws, or (4) laws that require the true, complete and accurate reporting of financial information or data. Activities subject to these laws also involve the improper use or misrepresentation of information obtained in the course of clinical trials, creating fraudulent data in our preclinical studies or clinical trials or illegal misappropriation of product, which could result in regulatory sanctions and cause serious harm to our reputation. It is not always possible to identify and deter misconduct by employees and other third parties, and the precautions we take to detect and prevent this activity may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to be in compliance with such laws or regulations. Additionally, we are subject to the risk that a person or government could allege such fraud or other misconduct, even if none occurred.

If any such actions are instituted against us, and we are not successful in defending ourselves or asserting our rights, those actions could have a significant impact on our business and financial results, including, without limitation, the imposition of significant civil, criminal and administrative penalties, damages, monetary fines, possible exclusion from participation in Medicare, Medicaid and other federal healthcare programs, reputational harm, diminished profits and future earnings, and curtailment of our operations, any of which could adversely affect our business, results of operations and financial condition.

Risks related to intellectual property matters

The risk factors listed below describe the risks we face related to intellectual property matters. The companies who own certain of the products we distribute face similar risks with respect to intellectual property relating to such products. If such suppliers are unable to protect their intellectual property rights, they may not be able to continue to supply us with products, which could adversely affect our business, results of operations and financial condition.

Protection of our intellectual property rights may be difficult and costly, and our inability to protect our intellectual property could adversely affect our competitive position.

Our success depends on our ability to protect our proprietary rights to the technologies and inventions used in, or embodied by, our products. To protect our proprietary technology, we rely on patent protection, as well as a combination of copyright, trade secret and trademark laws, as well as nondisclosure, confidentiality and other contractual restrictions in our consulting and employment agreements. These legal means afford only limited

protection, however, and may not adequately protect our rights or permit us to gain or keep any competitive advantage. Our existing confidentiality and/or invention assignment agreements with employees, contractors, and others who participate in IP development activities could be breached, or we may not enter into sufficient and adequate agreements with those individuals in the first instance, and we may not have adequate remedies for such breaches. Furthermore, we may be subject to, and forced to defend against, third-party claims of ownership to our intellectual property. If we fail in defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights, such as exclusive ownership of, or rights to use, valuable intellectual property. Such an outcome could adversely affect our business, results of operations and financial condition. Even if we are successful in defending against such claims, litigation could result in substantial costs and be a distraction to management and other employees.

Patents

The process of applying for patent protection is time-consuming and expensive and we cannot assure you that all of our patent applications will issue as patents or that, if issued, they will issue in a form that will be advantageous to us. The rights granted to us under our patents, including prospective rights sought in our pending patent applications, may not be meaningful or provide us with any commercial advantage, and they could be opposed, contested, narrowed, or circumvented by our competitors or declared invalid or unenforceable in judicial or administrative proceedings. We may not be able to file and prosecute all necessary or desirable patent applications at a reasonable cost or in a timely manner. It is also possible that we will fail to identify patentable aspects of our research and development output before it is too late to obtain patent protection. As a result, some of our products are not, and in the future may not be, protected by patents. We generally apply for patents in those countries where we intend to make, have made, use, offer for sale, or sell products and where we assess the risk of infringement to justify the cost of seeking patent protection. However, we do not seek protection in all countries where we sell products and we may not accurately predict all the countries where patent protection would ultimately be desirable. If we fail to timely file a patent application in any such country or major market, we may be precluded from doing so at a later date. Competitors may use our technologies in jurisdictions where we have not obtained patent protection to develop their own products and, further, may export otherwise infringing products to territories in which we have patent protection but where such protection may not be sufficient to terminate infringing activities. Furthermore, we may not have the right to control the preparation, filing and prosecution of patent applications, or to maintain the rights to patents licensed to us by third-parties. Therefore, these patents and applications may not be prosecuted or enforced in a manner consistent with the best interests of our business. If such licensors fail to maintain such patents, or lose rights to those patents, the rights we have licensed may be reduced or eliminated, which could also adversely affect our business, results of operations and financial condition.

We own numerous issued patents and pending patent applications relating to our technology and products. The rights granted to us under these patents, including prospective rights sought in our pending patent applications, could be opposed, contested or circumvented by our competitors or declared invalid or unenforceable in judicial or administrative proceedings. If any of our patents are challenged, invalidated or legally circumvented by third-parties, and if we do not own other enforceable patents protecting our products, competitors could market products and use processes that are substantially similar to, or superior to, those of ours, and our business will suffer. In addition, the patents we own may not be of sufficient scope or strength to provide us with any meaningful protection or commercial advantage, and competitors may be able to design around our patents or develop products that provide outcomes comparable to those of ours without infringing on our intellectual property rights.

Even if our patents are determined by the U.S. Patent and Trademark Office, or USPTO, foreign patent office, or a court to be valid and enforceable, they may not be drafted or interpreted sufficiently broadly to prevent others from marketing products and services similar to ours or designing around our patents. For example, third parties may be able to develop products that are similar to ours but that are not covered by the claims of our patents. Third parties may assert that we or our licensors were not the first to make the inventions

covered by our issued patents or pending patent applications. The claims of our issued patents or patent applications when issued may not cover our commercial technology or the future products and services that we develop. We may not have freedom to operate unimpeded by the patent rights of others. Third parties may have dominating, blocking or other patents relevant to our technology of which we are not aware. In addition, because patent applications in the United States and many foreign jurisdictions are typically not published until 18 months after the filing of certain priority documents (or, in some cases, are not published until they issue as patents) and because publications in the scientific literature often lag behind actual discoveries, we cannot be certain that others have not filed patent applications for our technology or our contemplated technology. Any such patent applications may have priority over our patent applications or issued patents, which could require us to obtain rights from third parties to issued patents or pending patent applications covering such technologies to allow us to commercialize our technology. If another party has filed a U.S. patent application on inventions similar to ours, depending on when the timing of the filing date falls under certain patent laws, we may have to participate in a priority contest (such as an interference proceeding) declared by the USPTO to determine priority of invention in the United States. There may be prior public disclosures of which we are not aware that could invalidate our patents or a portion of the claims of our patents. Further, we may not develop additional proprietary technologies and, even if we do, they may not be patentable.

In addition, patent reform legislation may pass in the future that could lead to additional uncertainties and increased costs surrounding the prosecution, enforcement, and defense of our patents and applications. We may be subject to a third-party preissuance submission of prior art to the USPTO, or become involved in opposition, derivation, reexamination, inter partes review, post-grant review or other patent office proceedings or litigation, in the United States or elsewhere, challenging our patent rights. An adverse determination in any such submission, proceeding or litigation could reduce the scope of, or invalidate, our patent rights, allow third-parties to commercialize our technology or products and compete directly with us, without payment to us, or result in our inability to manufacture or commercialize products without infringing third-party patent rights.

Moreover, the USPTO and various foreign governmental patent agencies require compliance with a number of procedural, documentary, fee payment and other similar provisions during the patent application process. In addition, periodic maintenance fees on issued patents often must be paid to the USPTO and foreign patent agencies over the lifetime of the patent. While an unintentional lapse can in many cases be cured by payment of a late fee or by other means in accordance with the applicable rules, there are situations in which noncompliance can result in abandonment or lapse of the patent or patent application, resulting in partial or complete loss of patent rights in the relevant jurisdiction. Non-compliance events that could result in abandonment or lapse of a patent or patent application include, but are not limited to, failure to respond to official actions within prescribed time limits, non-payment of fees and failure to properly legalize and submit formal documents. If we fail to maintain the patents and patent applications covering our products or procedures, we may not be able to stop a competitor from marketing products that are the same as or similar to our products, which would adversely affect our business, results of operations and financial condition.

Filing, prosecuting and defending patents on our products in all countries throughout the world would be prohibitively expensive. The requirements for patentability may differ in certain countries, particularly developing countries, and the breadth of patent claims allowed can be inconsistent. In addition, the laws of some foreign countries may not protect our intellectual property rights to the same extent as laws in the United States. Consequently, we may not be able to prevent third parties from practicing our inventions in all countries outside the United States. Competitors may use our technologies in jurisdictions where we have not obtained patent protection to develop their own products and, further, may export otherwise infringing products to territories in which we have patent protection that may not be sufficient to terminate infringing activities.

Due to differences between foreign and U.S. patent laws, our patented intellectual property rights may not receive the same degree of protection in every jurisdiction in which we obtain patents. Furthermore, we do not have patent rights in certain foreign countries in which a market may exist in the future. We may need to expend additional resources to protect or defend our intellectual property rights in these countries, and the inability to

protect or defend the same could impair our brand or adversely affect the growth of our business internationally. For example, we may not be able to stop a competitor from marketing and selling in foreign countries products that are the same as or similar to our products.

Patents have a limited lifespan, and the protection patents affords is limited. In the United States, if all maintenance fees are timely paid, the natural expiration of a patent is generally 20 years from its earliest U.S. non-provisional filing date. Even if patents covering our products are obtained, once the patent life has expired for patents covering a product, we may be open to competition from competitive products and services. As a result, our patent portfolio may not provide us with sufficient rights to exclude others from commercializing product candidates similar or identical to ours.

Trademarks

We rely on our trademarks as one means to distinguish our products from the products of our competitors, and have registered or applied to register many of these trademarks. However, we may not be able to successfully secure trademark registrations for all such applications. Third-parties may oppose our trademark applications, or otherwise challenge our use of both registered and unregistered trademarks. In the event that our trademarks are successfully challenged, we could be forced to rebrand our products, which could result in loss of brand recognition and could require us to devote resources to advertising and marketing new brands. Our competitors may infringe our trademarks and we may not have adequate resources to enforce our trademarks. Over the long term, if we are unable to establish name recognition based on our trademarks, then we may not be able to compete effectively and our business, results of operations and financial condition may be adversely affected.

Trade secrets and know-how

We may not be able to prevent the unauthorized disclosure or use of our technical knowledge or other trade secrets by consultants, vendors, former employees or current employees, despite the existence generally of confidentiality agreements and other contractual restrictions. Monitoring unauthorized uses and disclosures of our intellectual property is difficult, and we do not know whether the steps we have taken to protect our intellectual property will be effective.

Moreover, our competitors may independently develop equivalent knowledge, methods and know-how. For example, the FDA, as part of its Transparency Initiative, is currently considering whether to make additional information publicly available on a routine basis, including information that we may consider to be trade secrets or other proprietary information, and it is not clear at the present time how the FDA's disclosure policies may change in the future, if at all. Our competitors could use any of the information we may be required to disclose by the FDA to develop independently technology similar to those of ours. Competitors could purchase our products and attempt to replicate some or all of the competitive advantages we derive from our development efforts, willfully infringe our intellectual property rights, design around our protected technology or develop their own competitive technologies that fall outside of our intellectual property rights. If our intellectual property is not adequately protected so as to protect our market against competitors' products and methods, our competitive position could be adversely affected, as could our business, results of operations and financial condition.

If we were to enforce a claim that a third-party had illegally obtained, misappropriated or was using our trade secrets, it would be expensive and time consuming, and the outcome would be unpredictable. In addition, courts outside the United States may be less willing to protect trade secrets. If any of the technology or information that we protect as trade secrets were to be independently developed by a competitor, we would have no right to prevent them from using that technology or information to compete with us. Misappropriation or unauthorized disclosure of our trade secrets could impair our competitive position and may adversely affect our business, results of operations and financial condition. Additionally, if the steps taken to maintain our trade secrets are deemed inadequate, we may have insufficient recourse against third parties for misappropriating the trade secret.

We depend on certain technologies that are licensed to us. We do not control the intellectual property rights covering these technologies and any loss of our rights to these technologies or the rights licensed to us could prevent us from selling our products, which could adversely impact our business, results of operations and financial condition.

We are a party to license agreements under which we are granted rights to intellectual property that is important to our business, and we may need to enter into additional license agreements in the future. We rely on these licenses in order to be able to use and sell various proprietary technologies that are material to our business, as well as technologies which we intend to use in our future commercial activities. Our rights to use these technologies and the inventions claimed in the licensed patents are subject to the continuation of and our compliance with the terms of those licenses. Our existing license agreements impose, and we expect that future license agreements will impose on us, various diligence obligations, payment of milestones or royalties and other obligations. If we fail to comply with our obligations under these agreements, or we are subject to a bankruptcy, the licensor may have the right to terminate the license, in which case we would not be able to market products covered by the license, which would adversely affect our business, results of operations and financial condition.

As we have done previously, we may need to obtain licenses from third parties to advance our research or allow commercialization of our products and technologies. We may fail to obtain any of these licenses on commercially reasonable terms, if at all. Even if we are able to obtain a license, it may be non-exclusive, thereby giving our competitors access to the same technologies licensed to us. In the event that we are not able to acquire a license, we may be required to expend significant time and resources to develop or license replacement technology. If we are unable to do so, we may be unable to develop or commercialize the affected products and technologies, which could materially harm our business. In addition, the third parties owning such intellectual property rights could seek either an injunction prohibiting our sales, or, with respect to our sales, an obligation on our part to pay royalties or other forms of compensation and damages.

In some cases, we may not have the right to control the prosecution, maintenance, or filing of the patents that are licensed to us, or the enforcement of these patents against infringement by third parties. Some of our patents and patent applications were not filed by us, but were either acquired by us or are licensed from third parties. Thus, these patents and patent applications were not drafted by us or our attorneys, and we did not control or have any input into the prosecution of these patents and patent applications prior to our acquisition of, or our entry into a license with respect to, such patents and patent applications. We cannot be certain that the drafting or prosecution of the patents and patent applications licensed to us will result or has resulted in valid and enforceable patents. Further, we do not always retain complete control over our ability to enforce our licensed patent rights against third-party infringement. In those cases, we cannot be certain that our licensor will elect to enforce these patents to the extent that we would choose to do so, or in a way that will ensure that we retain the rights we currently have under our license. If our licensor fails to properly enforce the patents subject to our license in the event of third-party infringement, our ability to retain our competitive advantage with respect to our products may be materially and adversely affected.

Licensing of intellectual property is an important part of our business and involves complex legal, business and scientific issues. Disputes may arise between us and our licensors regarding intellectual property that is subject to a license agreement, including:

- the scope of rights granted under the license agreement and other interpretation-related issues;
- whether and the extent to which our technology and processes infringe on intellectual property of the licensor that is not subject to the license agreement;
- our right to sublicense patent and other rights to third parties under collaborative development relationships;
- our diligence obligations with respect to the use of the licensed technology in relation to our development and commercialization of our products and technologies, and what activities satisfy those diligence obligations; and

- the ownership of inventions and know-how resulting from the joint creation or use of intellectual property by our licensors and us and our partners.

In addition, we may become the owner of intellectual property that was obtained through assignments which may be subject to re-assignment back to the original assignor upon our failure to prosecute or maintain such intellectual property, upon our breach of the agreement pursuant to which such intellectual property was assigned, or upon our bankruptcy.

If disputes over intellectual property that we have licensed prevent or impair our ability to maintain our current licensing arrangements on acceptable terms, or if intellectual property is re-assigned back to the original assignor, we may be unable to successfully develop and commercialize the affected products and technologies.

Our intellectual property agreements with third parties may be subject to disagreements over contract interpretation, which could narrow the scope of our rights to the relevant intellectual property or technology.

Certain provisions in our intellectual property agreements may be susceptible to multiple interpretations. The resolution of any contract interpretation disagreement that may arise could affect the scope of our rights to the relevant intellectual property or technology, or affect financial or other obligations under the relevant agreement, either of which could adversely affect our business, results of operations and financial condition.

In addition, while it is our policy to require our employees and contractors who may be involved in the conception or development of intellectual property to execute agreements assigning such intellectual property to us, we may be unsuccessful in executing such an agreement with each party who in fact conceives or develops intellectual property that we regard as our own. Our assignment agreements may not be self-executing or may be breached, and we may be forced to bring claims against third parties, or defend claims they may bring against us, to determine the ownership of what we regard as our intellectual property.

We may in the future be a party to patent and other intellectual property litigation and administrative proceedings that could be costly and could interfere with our ability to successfully market our products.

The medical device industry has been characterized by frequent and extensive intellectual property litigation and is highly competitive. Our competitors or other patent holders may assert that our products and/or the methods employed in our products are covered by their patents or that we are infringing, misappropriating, or misusing their trademark, copyright, trade secret, and/or other proprietary rights.

If our products or methods are found to infringe, we could be prevented from manufacturing or marketing our products. In the event that we become involved in such a dispute, we may incur significant costs and expenses and may need to devote resources to resolving any claims, which would reduce the cash we have available for operations and may be distracting to management and other employees, including those involved in the development of intellectual property. We do not know whether our competitors or potential competitors have applied for, will apply for, or will obtain patents that will prevent, limit or interfere with our ability to make, use, sell, import or export our products. Because patent applications can take many years to issue, third parties may have currently pending patent applications which may later result in issued patents that our products and technologies may infringe, or which such third parties claim are infringed by the use of our products or technologies. There is no guarantee that patents will not issue in the future from currently pending applications that may be infringed by our technology or products. In addition, identification of third-party patent rights that may be relevant to our technology is difficult because patent searching is imperfect due to differences in terminology among patents, incomplete databases, and difficulty in assessing the meaning of patent claims. Moreover, as the medical device industry expands and more patents are issued in this area, the risk increases that we may be subject to claims of infringement of the patent rights of third parties. We cannot assure you that we will prevail in such actions, or that other actions alleging misappropriation or misuse by us of third-party trade

secrets or infringement by us of third-party patents, copyrights, trademarks or other rights or challenging the validity of our patents, copyrights, trademarks or other rights will not be asserted against us. Competing products may also be sold in other countries in which our patent coverage might not exist or be as strong. If we lose a foreign patent lawsuit alleging our infringement of a competitor's patents, we could be prevented from marketing our products in one or more foreign countries.

We may also initiate litigation against third-parties to enforce our patent and proprietary rights or to determine the scope, enforceability or validity of the proprietary rights of others. Our intellectual property has not been tested in litigation. If we initiate litigation to protect our rights, we run the risk of having our patents and other proprietary rights invalidated, canceled or narrowed, which could undermine our competitive position. Further, if the scope of protection provided by our patents or patent applications or other proprietary rights is threatened or reduced as a result of litigation, it could discourage third parties from entering into collaborations with us that are important to the commercialization of our products.

We may be subject to ownership disputes relating to intellectual property, including disputes arising from conflicting obligations of consultants or others who are involved in developing our product. Furthermore, if a license to necessary technology is terminated, the licensor may initiate litigation claiming that our processes or products infringe or misappropriate its patent or other intellectual property rights and/or that we breached our obligations under the license agreement, and we and our collaborators would need to defend against such proceedings.

These lawsuits and proceedings, regardless of merit, are time-consuming and expensive to initiate, maintain, defend or settle, and could divert the time and attention of managerial and technical personnel, which could materially adversely affect our business, results of operations and financial condition. Any such claim could also force use to do one or more of the following:

- incur substantial monetary liability for infringement or other violations of intellectual property rights, which we may have to pay if a court decides that the product, service, or technology at issue infringes or violates the third-party's rights, and if the court finds that the infringement was willful, we could be ordered to pay treble damages and the third-party's attorneys' fees;
- pay substantial damages to our customers or end users to discontinue use or replace infringing technology with non-infringing technology;
- stop manufacturing, offering for sale, selling, using, importing, exporting or licensing the product or technology incorporating the allegedly infringing technology or stop incorporating the allegedly infringing technology into such product, service, or technology;
- obtain from the owner of the infringed intellectual property right a license, which may require us to pay substantial upfront fees or royalties to sell or use the relevant technology and which may not be available on commercially reasonable terms, or at all;
- redesign our products, services, and technology so they do not infringe or violate the third-party's intellectual property rights, which may not be possible or may require substantial monetary expenditures and time;
- enter into cross-licenses with our competitors, which could weaken our overall intellectual property position;
- lose the opportunity to license our technology to others or to collect royalty payments based upon successful protection and assertion of our intellectual property against others;
- find alternative suppliers for non-infringing products and technologies, which could be costly and create significant delay; or
- relinquish rights associated with one or more of our patent claims, if our claims are held invalid or otherwise unenforceable.

Some of our competitors may be able to sustain the costs of complex intellectual property litigation more effectively than we can because they have substantially greater resources. In addition, intellectual property litigation, regardless of its outcome, may cause negative publicity, adversely impact prospective customers, cause product shipment delays, divert the time, attention and resources of management, or prohibit us from manufacturing, marketing or otherwise commercializing our products, services and technology. Any uncertainties resulting from the initiation and continuation of any litigation could adversely affect our ability to raise additional funds or otherwise adversely affect our business, results of operations and financial condition.

Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential information could be compromised by disclosure during this type of litigation. In addition, during the course of this kind of litigation, there could be public announcements of the results of hearings, motions or other interim proceedings or developments. If these results are perceived to be negative, the price of our Class A common stock could be adversely affected.

In addition, certain of our agreements with suppliers, distributors, customers and other entities with whom we do business may require us to defend or indemnify these parties to the extent they become involved in infringement claims relating to our technologies or products, or rights licensed to them by us. We could also voluntarily agree to defend or indemnify third parties in instances where we are not obligated to do so if we determine it would be important to our business relationships. If we are required or agree to defend or indemnify any of these third parties in connection with any infringement claims, we could incur significant costs and expenses that could adversely affect our business, results of operation and financial condition.

We may be subject to damages resulting from claims that we or our employees have wrongfully used or disclosed alleged trade secrets of our competitors or former employers or are in breach of non-competition or non-solicitation agreements with our competitors or former employers.

We could in the future be subject to claims that we or our employees have inadvertently or otherwise used or disclosed alleged trade secrets or other proprietary information of former employers or competitors. In addition, we may in the future be subject to claims that we caused an employee to breach the terms of his or her non-competition or non-solicitation agreement. Litigation may be necessary to defend against these claims. Even if we are successful in defending against these claims, litigation could result in substantial costs and could be a distraction to management. If our defense to those claims fails, in addition to paying monetary damages, a court could prohibit us from using technologies or features that are essential to our products, if such technologies or features are found to incorporate or be derived from the trade secrets or other proprietary information of the competitors or former employers. An inability to incorporate technologies or features that are important or essential to our products could adversely affect our business, results of operations and financial condition, and may prevent us from selling our products. In addition, we may lose valuable intellectual property rights or personnel. Any litigation or the threat thereof may adversely affect our ability to hire employees or contract with independent sales representatives. A loss of key personnel or their work product could hamper or prevent our ability to commercialize our products, which could adversely affect our business, results of operations and financial condition.

Any product candidates that we develop as biologics subject to the BLA pathway may be subject to competition sooner than anticipated.

We expect to submit a BLA to allow for the marketing of MOTYS following the expiration of FDA's enforcement discretion period for certain HCT/Ps. See "—Risks related to government regulation—Our HCT/P products are subject to extensive government regulation and our failure to comply with these requirements could cause our business to suffer. These products could be subject to significant additional regulatory requirements." The Biologics Price Competition and Innovation Act of 2009, or BPCIA, was enacted as part of the Affordable Care Act to establish an abbreviated pathway for the approval of biosimilar and interchangeable biological products. The regulatory pathway establishes legal authority for the FDA to review and approve biosimilar

biologics, including the possible designation of a biosimilar as "interchangeable" based on its similarity to an approved biologic. Under the BPCIA, an application for a biosimilar product cannot be approved by the FDA until 12 years after the reference product was approved under a BLA. The law is complex and is still being interpreted and implemented by the FDA. As a result, its ultimate impact, implementation, and meaning are subject to uncertainty. While it is uncertain when processes intended to implement BPCIA may be fully adopted by the FDA, any of these processes could have a material adverse effect on the future commercial prospects for our biological products.

We believe that any of the product candidates we develop that is approved in the United States as a biological product under a BLA should qualify for the 12-year period of exclusivity. However, there is a risk that this exclusivity could be shortened due to congressional action or otherwise, or that the FDA will not consider the subject product candidates to be reference products for competing products, potentially creating the opportunity for generic competition sooner than anticipated. Moreover, the extent to which a biosimilar, once approved, will be substituted for any one of the reference products in a way that is similar to traditional generic substitution for non-biological products is not yet clear, and will depend on a number of marketplace and regulatory factors that are still developing.

In addition, the approval of a biologic product biosimilar to one of our products could have a material adverse impact on our business as it may be significantly less costly to bring to market and may be priced significantly lower than our products.

Intellectual property rights do not necessarily address all potential threats to our business.

Once granted, patents may remain open to invalidity challenges including opposition, interference, re-examination, post-grant review, inter partes review, nullification or derivation action in court or before patent offices or similar proceedings for a given period after allowance or grant, during which time third parties can raise objections against such grant. In the course of such proceedings, which may continue for a protracted period of time, the patent owner may be compelled to limit the scope of the allowed or granted claims thus attacked, or may lose the allowed or granted claims altogether.

In addition, the degree of future protection afforded by our intellectual property rights is uncertain because even granted intellectual property rights have limitations, and may not adequately protect our business, provide a barrier to entry against our competitors or potential competitors or permit us to maintain our competitive advantage. Moreover, if a third-party has intellectual property rights that cover the practice of our technology, we may not be able to fully exercise or extract value from our intellectual property rights. The following examples are illustrative:

- others may be able to develop and/or practice technology that is similar to our technology or aspects of our technology, but that are not covered by the claims of the patents that we own or control, assuming such patents have issued or do issue;
- we or our licensors or any future strategic partners might not have been the first to conceive or reduce to practice the inventions covered by the issued patent or pending patent application that we own or have exclusively licensed;
- we or our licensors or any future strategic partners might not have been the first to file patent applications covering certain of our inventions;
- others may independently develop similar or alternative technologies or duplicate any of our technologies without infringing our intellectual property rights;
- our pending patent applications may not lead to issued patents;
- issued patents that we own or exclusively license may not provide us with any competitive advantage, or may be held invalid or unenforceable, as a result of legal challenges by our competitors;

- our competitors might conduct research and development activities in countries where we do not have patent rights and then use the information learned from such activities to develop competitive products for sale in our major commercial markets;
- third parties performing manufacturing or testing for us using our products or technologies could use the intellectual property of others without obtaining a proper license;
- parties may assert an ownership interest in our intellectual property and, if successful, such disputes may preclude us from exercising exclusive rights over that intellectual property;
- we may not develop or in-license additional proprietary technologies that are patentable;
- we may not be able to obtain and maintain necessary licenses on commercially reasonable terms, or at all; and
- the patents of others may adversely affect our business.

Should any of these events occur, they could adversely affect our business, results of operations and financial condition.

Risks related to our organizational structure and the Tax Receivable Agreement

Our principal asset after the completion of this offering will be our interest in Bioventus LLC, and, accordingly, we will depend on distributions from Bioventus LLC to pay our taxes and expenses, including payments under the Tax Receivable Agreement. Bioventus LLC's ability to make such distributions may be subject to various limitations and restrictions.

Upon the consummation of this offering, we will be a holding company and will have no material assets other than our ownership of LLC Interests of Bioventus LLC. As such, we will have no independent means of generating net sales or cash flow, and our ability to pay our taxes and operating expenses or declare and pay dividends in the future, if any, will be dependent upon the financial results and cash flows of Bioventus LLC and its subsidiaries and distributions we receive from Bioventus LLC. There can be no assurance that Bioventus LLC and its subsidiaries will generate sufficient cash flow to distribute funds to us or that applicable state law and contractual restrictions, including negative covenants in our debt instruments, will permit such distributions.

Bioventus LLC will continue to be treated as a partnership for U.S. federal income tax purposes and, as such, generally will not be subject to any entity-level U.S. federal income tax. Instead, taxable income will be allocated to holders of LLC Interests, including us. Accordingly, we will incur income taxes on our allocable share of any net taxable income of Bioventus LLC. Under the terms of the Bioventus LLC Agreement, Bioventus LLC will be obligated to make tax distributions to holders of LLC Interests, including us, subject to any limitations or restrictions in our debt arrangements. In addition to tax expenses, we will also incur expenses related to our operations, including payments under the Tax Receivable Agreement, which we expect could be significant. See "Certain relationships and related party transactions—Tax Receivable Agreement." We intend, as its managing member, to cause Bioventus LLC to make cash distributions to the owners of LLC Interests, including us, in an amount sufficient to (i) fund their or our tax obligations in respect of allocations of taxable income from Bioventus LLC and (ii) cover our operating expenses, including payments under the Tax Receivable Agreement. However, Bioventus LLC's ability to make such distributions may be subject to various limitations and restrictions, such as restrictions on distributions that would either violate any contract or agreement to which Bioventus LLC is then a party, including debt agreements, or any applicable law, or that would have the effect of rendering Bioventus LLC insolvent. If we do not have sufficient funds to pay taxes or other liabilities or to fund our operations, we may have to borrow funds, which could materially adversely affect our liquidity and financial condition and subject us to various restrictions imposed by any such lenders. To the extent that we are unable to make payments under the Tax Receivable Agreement for any reason, such payments generally will be deferred and will accrue interest until paid; provided, however, that nonpayment for a specified period may constitute a material breach of a material obligation under the Tax Receivable Agreement and

therefore accelerate payments due under the Tax Receivable Agreement. See "Certain relationships and related party transactions—Tax Receivable Agreement." In addition, if Bioventus LLC does not have sufficient funds to make distributions, our ability to declare and pay cash dividends will also be restricted or impaired. See "Risk Factors—Risks related to this offering and ownership of our Class A common stock" and "Dividend policy."

The Tax Receivable Agreement with the Continuing LLC Owner requires us to make cash payments to it in respect of certain tax benefits to which we may become entitled, and we expect that the payments we will be required to make could be significant.

Upon the closing of this offering, we will be a party to the Tax Receivable Agreement with the Continuing LLC Owner. Under the Tax Receivable Agreement, we will be required to make cash payments to the Continuing LLC Owner equal to 85% of the tax benefits, if any, that we actually realize, or in certain circumstances are deemed to realize, as a result of (1) increases in the tax basis of assets of Bioventus LLC resulting from (a) any future redemptions or exchanges of LLC Interests described under "Certain relationships and related party transactions—Bioventus LLC Agreement—LLC Interest Redemption Right," and (b) certain distributions (or deemed distributions) by Bioventus LLC and (2) certain other tax benefits arising from payments under the Tax Receivable Agreement. We expect the amount of the cash payments that we will be required to make under the Tax Receivable Agreement will be significant. The actual amount and timing of any payments under the Tax Receivable Agreement will vary depending upon a number of factors, including the timing of redemptions or exchanges by the Continuing LLC Owner, the amount of gain recognized by the Continuing LLC Owner, the amount and timing of the taxable income we generate in the future, and the federal tax rates then applicable. Any payments made by us to the Continuing LLC Owner under the Tax Receivable Agreement will generally reduce the amount of overall cash flow that might have otherwise been available to us. To the extent that we are unable to make timely payments under the Tax Receivable Agreement for any reason, the unpaid amounts will be deferred and will accrue interest until paid by us. Furthermore, our future obligation to make payments under the Tax Receivable Agreement could make us a less attractive target for an acquisition, particularly in the case of an acquirer that cannot use some or all of the tax benefits that are the subject of the Tax Receivable Agreement. Payments under the Tax Receivable Agreement are not conditioned on the Continuing LLC Owner's continued ownership of LLC Interests or our Class A common stock after this offering. For more information, see "Certain relationships and related party transactions—Tax Receivable Agreement." Assuming no material changes in the relevant tax laws and that we earn sufficient taxable income to realize all tax benefits that are subject to the Tax Receivable Agreement, we expect that the tax savings associated with the purchase of LLC Interests in connection with this offering, together with future redemptions or exchanges of all remaining LLC Interests owned by the Continuing LLC Owner pursuant to the Bioventus LLC Agreement as described above, would aggregate to approximately $ million over 20 years from the date of this offering based on the assumed initial public offering price of $ per share of our Class A common stock, which is the midpoint of the range set forth on the cover page of this prospectus, and assuming all future redemptions or exchanges would occur one year after this offering. Under such scenario, assuming future payments are made on the date each relevant tax return is due, without extensions, we would be required to pay approximately 85% of such amount, or approximately $ million, over the 20-year period from the date of this offering. The actual amounts we will be required to pay under the Tax Receivable Agreement will depend on, among other things, the timing of subsequent redemptions or exchanges of LLC Interests by the Continuing LLC Owner, the price of our shares of Class A common stock at the time of each such redemption or exchange, and the amounts and timing of our future taxable income, and may be significantly different from the amounts described in the preceding sentence. Additionally, in certain cases such payments may be accelerated or significantly exceed the actual benefits we realize. See "—In certain cases, payments under the Tax Receivable Agreement to the Continuing LLC Owners may be accelerated or significantly exceed the actual benefits we realize in respect of tax attributes subject to the Tax Receivable Agreement."

Our organizational structure, including the Tax Receivable Agreement, confers certain tax benefits upon the Continuing LLC Owner that may not benefit Class A common stockholders to the same extent as they will benefit the Continuing LLC Owner.

Our organizational structure, including the Tax Receivable Agreement, confers certain tax benefits upon the Continuing LLC Owner that may not benefit the holders of our Class A common stock to the same extent as they will benefit the Continuing LLC Owner. We will enter into the Tax Receivable Agreement with Bioventus LLC and the Continuing LLC Owner that will provide for our payment to the Continuing LLC Owner of 85% of the amount of tax benefits, if any, that we actually realize (or in some circumstances are deemed to realize) as a result of (i) increases in the tax basis of assets of Bioventus LLC resulting from (a) any future redemptions or exchanges of LLC Interests described under "Certain relationships and related party transactions—Bioventus LLC Agreement—LLC Interest Redemption Right," and (b) certain distributions (or deemed distributions) by Bioventus LLC and (ii) certain other tax benefits arising from payments under the Tax Receivable Agreement. Although Bioventus will retain 15% of such tax benefits, this and other aspects of our organizational structure may adversely impact the future trading market for the Class A common stock.

In certain cases, payments under the Tax Receivable Agreement to the Continuing LLC Owner may be accelerated or significantly exceed the actual benefits we realize in respect of the tax attributes subject to the Tax Receivable Agreement.

The Tax Receivable Agreement will provide that if (i) we materially breach any of our material obligations under the Tax Receivable Agreement, (ii) certain mergers, asset sales, other forms of business combinations or other changes of control were to occur on or before December 31, 2021 or (iii) we elect an early termination of the Tax Receivable Agreement, then our obligations or our successor's obligations under the Tax Receivable Agreement to make payments thereunder would be based on certain assumptions, including an assumption that we would have sufficient taxable income to fully utilize all potential future tax benefits that are subject to the Tax Receivable Agreement (or, in the case of certain mergers, asset sales, other forms of business combinations or other changes of control occurring after December 31, 2021, that we would have taxable income at least equal to four times the highest taxable income in any of the four fiscal quarters ending prior to the closing date of such transaction (increased by 10% for each taxable year beginning with the second taxable year following such closing date)).

As a result of the foregoing, (i) we could be required to make payments under the Tax Receivable Agreement that are greater than the specified percentage of the actual benefits we ultimately realize in respect of the tax benefits that are subject to the Tax Receivable Agreement and (ii) if we materially breach any of our material obligations under the Tax Receivable Agreement or if we elect to terminate the Tax Receivable Agreement early, we would be required to make an immediate cash payment equal to the present value of the anticipated future tax benefits that are the subject of the Tax Receivable Agreement, which payment may be made significantly in advance of the actual realization, if any, of such future tax benefits. In these situations, our obligations under the Tax Receivable Agreement could have a substantial negative impact on our liquidity and could have the effect of delaying, deferring or preventing certain mergers, asset sales, other forms of business combinations or other changes of control. For example, should we elect to terminate the Tax Receivable Agreement immediately following this offering, assuming no material changes in the relevant tax laws or tax rates and that we earn sufficient taxable income to realize all tax potential benefits that are subject to the Tax Receivable Agreement, we estimate that the aggregate of termination payments would be approximately $ million based on the assumed initial public offering price of $ per share of our Class A common stock, which is the midpoint of the range set forth on the cover page of this prospectus and assuming LIBOR were to be %. There can be no assurance that we will be able to fund or finance our obligations under the Tax Receivable Agreement. We may elect to completely terminate the Tax Receivable Agreement early only with the written approval of a majority of our directors other than any directors that have been appointed or designated by the Continuing LLC Owner or any of such person's affiliates. See "Certain relationships and related party transactions—Tax Receivable Agreement."

We may make payments to the Continuing LLC Owner under the Tax Receivable Agreement that exceed the tax benefits actually realized by us in the event that any tax benefits are disallowed by a taxing authority.

Payments under the Tax Receivable Agreement will be based on the tax reporting positions that we determine, and the Internal Revenue Service, or the IRS, or another tax authority may challenge all or part of the tax basis increases, as well as other related tax positions we take, and a court could sustain such challenge. Pursuant to the Tax Receivable Agreement, the Continuing LLC Owner is required to reimburse us for any cash payments previously made to it under the Tax Receivable Agreement in the event that any tax benefits actually realized by us and for which payment has been made under the Tax Receivable Agreement are subsequently challenged by a taxing authority and are ultimately disallowed. In addition, but without duplication of any amounts previously reimbursed by the Continuing LLC Owner, any excess cash payments made by us to the Continuing LLC Owner will be netted against any future cash payments that we might otherwise be required to make to the Continuing LLC Owner under the terms of the Tax Receivable Agreement. However, we might not determine that we have effectively made an excess cash payment to the Continuing LLC Owner for a number of years following the initial time of such payment. Moreover, there can be no assurance that any excess cash payments for which the Continuing LLC Owner has a reimbursement obligation under the Tax Receivable Agreement will be repaid to us. As a result, payments could be made under the Tax Receivable Agreement in excess of the tax savings that we realize in respect of the tax attributes with respect to the Continuing LLC Owner that are the subject of the Tax Receivable Agreement. See “Certain relationships and related party transactions—Tax Receivable Agreement.”

Unanticipated changes in effective tax rates or adverse outcomes resulting from examination of our income or other tax returns could adversely affect our results of operations and financial condition.

We are subject to taxes by the U.S. federal, state, local and foreign tax authorities, and our tax liabilities will be affected by the allocation of expenses to differing jurisdictions. Our future effective tax rates could be subject to volatility or adversely affected by a number of factors, including:

- changes in the valuation of our deferred tax assets and liabilities;
- expected timing and amount of the release of any tax valuation allowances;
- tax effects of equity-based compensation;
- changes in tax laws, regulations or interpretations thereof; or
- future earnings being lower than anticipated in countries where we have lower statutory tax rates and higher than anticipated earnings in countries where we have higher statutory tax rates.

In addition, we may be subject to audits of our income, sales and other transaction taxes by U.S. federal, state, local and foreign taxing authorities. Outcomes from these audits could adversely affect our business, results of operations and financial condition.

If we were deemed to be an investment company under the Investment Company Act of 1940, as amended, or the 1940 Act, as a result of our ownership of Bioventus LLC, applicable restrictions could make it impractical for us to continue our business as contemplated and could adversely affect our business, results of operations and financial condition.

Under Sections 3(a)(1)(A) and (C) of the 1940 Act, a company generally will be deemed to be an “investment company” for purposes of the 1940 Act if (i) it is, or holds itself out as being, engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting or trading in securities or (ii) it engages, or proposes to engage, in the business of investing, reinvesting, owning, holding or trading in securities and it owns or proposes to acquire investment securities having a value exceeding 40% of the value of its total assets

(exclusive of U.S. government securities and cash items) on an unconsolidated basis. We do not believe that we are an "investment company," as such term is defined in either of those sections of the 1940 Act.

As the sole managing member of Bioventus LLC, we will control and operate Bioventus LLC. On that basis, we believe that our interest in Bioventus LLC is not an "investment security" as that term is used in the 1940 Act. However, if we were to cease participation in the management of Bioventus LLC, our interest in Bioventus LLC could be deemed an "investment security" for purposes of the 1940 Act.

We and Bioventus LLC intend to conduct our operations so that we will not be deemed an investment company. However, if we were to be deemed an investment company, restrictions imposed by the 1940 Act, including limitations on our capital structure and our ability to transact with affiliates, could make it impractical for us to continue our business as contemplated and could adversely affect our business, results of operations and financial condition.

Bioventus is controlled by the Original LLC Owners, whose interests may differ from those of our public stockholders.

Immediately following this offering and the application of net proceeds from this offering, the Original LLC Owners will control approximately % of the combined voting power of our common stock through their ownership of both Class A common stock and Class B common stock. The Original LLC Owners will, for the foreseeable future, have the ability to substantially influence us through their ownership position over corporate management and affairs, and will be able to control virtually all matters requiring stockholder approval. The Original LLC Owners are able to, subject to applicable law, and the voting arrangements described in "Certain relationships and related party transactions," elect a majority of the members of our board of directors and control actions to be taken by us and our board of directors, including amendments to our certificate of incorporation and bylaws and approval of significant corporate transactions, including mergers and sales of substantially all of our assets. The directors so elected will have the authority, subject to the terms of our indebtedness and applicable rules and regulations, to issue additional stock, implement stock repurchase programs, declare dividends and make other decisions. It is possible that the interests of the Original LLC Owners may in some circumstances conflict with our interests and the interests of our other stockholders, including you. For example, the Continuing LLC Owner may have different tax positions from us, especially in light of the Tax Receivable Agreement that could influence our decisions regarding whether and when to dispose of assets, whether and when to incur new or refinance existing indebtedness, and whether and when Bioventus should terminate the Tax Receivable Agreement and accelerate its obligations thereunder. In addition, the determination of future tax reporting positions and the structuring of future transactions may take into consideration the Continuing LLC Owner's tax or other considerations, which may differ from the considerations of us or our other stockholders. See "Certain relationships and related party transactions—Tax Receivable Agreement."

Risks related to this offering and ownership of our Class A common stock

We have identified an ongoing material weakness in our internal control over financial reporting. If we are unable to remediate this material weakness, or if we experience additional material weaknesses in the future or otherwise fail to maintain an effective system of internal controls, we may not be able to accurately or timely requirements applicable to public companies, which may adversely affect investor confidence in us, and, as a result, the market price of our Class A common stock.

Ensuring that we have adequate internal financial and accounting controls and procedures in place so that we can produce accurate financial statements on a timely basis is a costly and time-consuming effort that needs to be re-evaluated frequently. Our internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with GAAP.

Prior to the completion of this offering, we have been a private company with limited accounting personnel and other resources to address our internal control over financial reporting. In connection with the audit of our consolidated financial statements as of and for the year ended December 31, 2018, we identified two material weaknesses in our internal control over financial reporting, one of which had not been remediated by December 31, 2019. A material weakness is a deficiency, or combination of deficiencies in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of our financial statements will not be prevented or detected on a timely basis.

In connection with the audit of our consolidated financial statements as of and for the year ended December 31, 2019, we determined that we continued to have a material weakness associated with the proper processing of Exogen reimbursement claims in accordance with regulations and contractual terms related to items we self-reported to the OIG.

We have implemented measures designed to improve our internal control over financial reporting to address the underlying causes of this material weakness. These efforts include:

- the augmentation, reorganization and training of our prescription to cash staff, which includes our direct sales team, order management personnel, patient financial services personnel and reimbursement services and accounts receivable personnel, regarding key aspects of regulations and requirements and how to deal with inconsistencies within patient medical records,
- realigning executive responsibility for this function to enhance the segregation of duties;
- implementation of monthly sales order testing on sampling basis by the Compliance department including a review of medical necessity;
- implementation of a third party medical billing review including a review of key regulatory elements;
- implementation of an electronic Certificate of Medical Necessity Form to ensure authorized individuals complete the appropriate sections in accordance with Medicare guidelines
- established a cross functional governance committee, reporting to an executive steering committee to review and approve the Company's Exogen Medicare policy and oversee future Exogen policy and process interpretations and changes; and
- implementing a checklist to be completed for each Medicare order to ensure compliance with the Company's policy for Medicare claims and then further automating this checklist.

In addition, we also determined that we had a material weakness associated with the establishment and review of a reimbursement claim reserve for errors related to the determination of medical necessity for Exogen reimbursement claims, which we believe has been remediated.

We cannot assure you that the measures we have taken to date, and actions we may take in the future, will be sufficient to remediate the control deficiencies that led to our material weaknesses in our internal control over financial reporting or that they will prevent or avoid potential future material weaknesses. If we are unable to successfully remediate our existing or any future material weaknesses in our internal control over financial reporting, or identify any additional material weaknesses, the accuracy and timing of our financial reporting may be adversely affected, we may be unable to maintain compliance with securities law requirements regarding timely filing of periodic reports in addition to applicable stock exchange listing requirements, investors may lose confidence in our financial reporting, and the market price of our Class A common stock may decline as a result. We could also become subject to investigations by the SEC or other regulatory authorities, which could require additional financial and management resources.

Failure to establish and maintain effective internal controls in accordance with Section 404 of the Sarbanes-Oxley Act could adversely affect our business and stock price.

We are not currently required to comply with the rules of the SEC implementing Section 404 of the Sarbanes-Oxley Act and are therefore not required to make a formal assessment of the effectiveness of our internal control over financial reporting for that purpose. Upon becoming a public company, we will be required to comply with the SEC's rules implementing Sections 302 and 404 of the Sarbanes-Oxley Act, which will require management to certify financial and other information in our quarterly and annual reports and provide an annual management report on the effectiveness of internal controls over financial reporting. Though we will be required to disclose changes made in our internal controls and procedures on a quarterly basis, we will not be required to make our first annual assessment of our internal control over financial reporting pursuant to Section 404 until the year following our first annual report required to be filed with the SEC. However, as an emerging growth company, our independent registered public accounting firm will not be required to formally attest to the effectiveness of our internal control over financial reporting pursuant to Section 404 until the later of the year following our first annual report required to be filed with the SEC or the date we are no longer an emerging growth company. At such time, our independent registered public accounting firm may issue a report that is adverse in the event it is not satisfied with the level at which our controls are documented, designed or operating.

To comply with the requirements of being a public company, we have undertaken various actions, and may need to take additional actions, such as implementing new internal controls and procedures and hiring additional accounting or internal audit staff. Testing and maintaining internal controls can divert our management's attention from other matters that are important to the operation of our business. Additionally, when evaluating our internal controls over financial reporting, we may identify material weaknesses that we may not be able to remediate in time to meet the applicable deadline imposed upon us for compliance with the requirements of Section 404. If we identify any material weaknesses in our internal controls over financial reporting or are unable to comply with the requirements of Section 404 in a timely manner or assert that our internal controls over financial reporting is effective, or if our independent registered public accounting firm is unable to express an opinion as to the effectiveness of our internal controls over financial reporting once we are no longer an emerging growth company, investors may lose confidence in the accuracy and completeness of our financial reports and the market price of our Class A common stock could be adversely affected, and we could become subject to investigations by the stock exchange on which our securities are listed, the SEC or other regulatory authorities, which could require additional financial and management resources.

We will incur increased costs as a result of becoming a public company and in the administration of our organizational structure.

As a public company, we will incur significant legal, accounting, insurance and other expenses that we have not incurred as a private company, including costs associated with public company reporting requirements. We also have incurred and will incur costs associated with the Sarbanes-Oxley Act and related rules implemented by the SEC. Following the completion of this offering, we will incur ongoing periodic expenses in connection with the administration of our organizational structure. The expenses incurred by public companies generally for reporting and corporate governance purposes have been increasing. We expect these rules and regulations to increase our legal and financial compliance costs and to make some activities more time-consuming and costly, although we are currently unable to estimate these costs with any degree of certainty. In estimating these costs, we took into account expenses related to insurance, legal, accounting, and compliance activities, as well as other expenses not currently incurred. These laws and regulations could also make it more difficult or costly for us to obtain certain types of insurance, including director and officer liability insurance, and we may be forced to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. These laws and regulations could also make it more difficult for us to attract and retain qualified persons to serve on our board of directors, our board committees or as our executive officers. Furthermore, if we are unable to satisfy our obligations as a public company, we could be subject to delisting of our common stock, fines, sanctions and other regulatory action and potentially civil litigation.

The dual class structure of our common stock may adversely affect the trading price or liquidity of our Class A common stock.

The existence of dual classes of our common stock could result in less liquidity for any such class than if there were only one class of our capital stock. In addition, S&P Dow Jones and FTSE Russell have announced changes to their eligibility criteria for inclusion of shares of public companies on certain indices that will exclude companies with multiple classes of shares of common stock from being added to such indices. Several shareholder advisory firms also have announced their opposition to the use of multiple class structures. As a result, the dual class structure of our common stock may prevent the inclusion of our Class A common stock in such indices and may cause shareholder advisory firms to publish negative commentary about our corporate governance practices or otherwise seek to cause us to change our capital structure. Any such exclusion from indices could result in a less active trading market for our Class A common stock. Any actions or publications by shareholder advisory firms critical of our corporate governance practices or capital structure could also adversely affect the value of our Class A common stock.

Immediately following the consummation of this offering, the Continuing LLC Owner will have the right to have its LLC Interests redeemed pursuant to the terms of the Bioventus LLC Agreement, which may dilute the owners of the Class A common stock.

After this offering, we will have an aggregate of shares of Class A common stock authorized but unissued, including approximately shares of Class A common stock issuable upon redemption of LLC Interests that will be held by the Continuing LLC Owner. Bioventus LLC will enter into the Bioventus LLC Agreement and, subject to certain restrictions set forth therein and as described elsewhere in this prospectus, the Continuing LLC Owner will be entitled to have its LLC Interests redeemed for shares of our Class A common stock. We also intend to enter into the Registration Rights Agreement pursuant to which the shares of Class A common stock issued to the Continuing LLC Owner upon redemption of its LLC Interests and the shares of Class A common stock issued to the Former LLC Owners in connection with the Transactions will be eligible for resale, subject to certain limitations set forth therein. See “Certain relationships and related party transactions—Registration Rights Agreement.”

We cannot predict the size of future issuances of our Class A common stock or the effect, if any, that future issuances and sales of shares of our Class A common stock may have on the market price of our Class A common stock. Sales or distributions of substantial amounts of our Class A common stock, including shares issued in connection with an acquisition, or the perception that such sales or distributions could occur, may cause the market price of our Class A common stock to decline.

We are a “controlled company” within the meaning of Nasdaq listing standards and, as a result, will qualify for, and intend to rely on, exemptions from certain corporate governance requirements. You will not have the same protections afforded to stockholders of companies that are subject to such requirements.

Substantially concurrent with the closing of this offering, the Voting Group, which will hold Class A common stock and Class B common stock representing approximately % of the combined voting power of our common stock, intends to enter into the Stockholders Agreement. Pursuant to the terms of the Stockholders Agreement, until such time as EW Healthcare Partners, certain other members of the Voting Group and their respective affiliates own less than 10% of the total shares of our Class A common stock owned by them as of the date this offering is consummated, and Continuing LLC Owner and its affiliates own less than 10% of the total shares of our Class A common stock and Class B common stock owned by them as of the date this offering is consummated, or the Stockholders Agreement is otherwise terminated in accordance with its terms, the parties to the Stockholders Agreement will agree to vote their shares of Class A common stock and Class B common stock in favor of the election of the nominees of certain members of the Voting Group to our board of directors upon their nomination by the nominating and corporate governance committee of our board of directors. See “Certain relationships and related party transactions—Stockholders Agreement.”

Because of the Stockholders Agreement and the aggregate voting power over our Class A common stock and Class B common stock held by the parties to the Stockholders Agreement, we are considered a "controlled company" for the purposes of Nasdaq. As such, we are exempt from certain corporate governance requirements of Nasdaq, including (1) the requirement that a majority of the board of directors consist of independent directors, (2) the requirement that we have a nominating and corporate governance committee that is composed entirely of independent directors and (3) the requirement that we have a compensation committee that is composed entirely of independent directors. Following this offering, we intend to rely on some or all of these exemptions. As a result, we will not have a majority of independent directors and our compensation and nominating and corporate governance committees will not consist entirely of independent directors. Accordingly, you will not have the same protections afforded to stockholders of companies that are subject to all of the corporate governance requirements of Nasdaq.

If you purchase shares of Class A common stock in this offering, you will incur immediate and substantial dilution.

Dilution is the difference between the offering price per share and the pro forma net tangible book value per share of our Class A common stock immediately after the offering. The price you pay for shares of our Class A common stock sold in this offering is substantially higher than our pro forma net tangible book value per share immediately after this offering. If you purchase shares of Class A common stock in this offering, you will incur immediate and substantial dilution in the amount of $ per share based upon an assumed initial public offering price of $ per share (the midpoint of the price range listed on the cover page of this prospectus). In addition, you may also experience additional dilution, or potential dilution, upon future equity issuances to investors or to our employees and directors under our stock option plan and any other equity incentive plans we may adopt. As a result of this dilution, investors purchasing shares of Class A common stock in this offering may receive significantly less than the full purchase price that they paid for the stock purchased in this offering in the event of liquidation. See "Dilution."

We do not know whether a market will develop for our Class A common stock or what the market price of our Class A common stock will be and as a result it may be difficult for you to sell your shares of our Class A common stock.

Before this offering, there was no public trading market for our Class A common stock. If a market for our Class A common stock does not develop or is not sustained, it may be difficult for you to sell your shares of Class A common stock at an attractive price or at all. We cannot predict the prices at which our Class A common stock will trade. It is possible that in one or more future periods our results of operations may be below the expectations of public market analysts and investors and, as a result of these and other factors, the price of our Class A common stock may fall.

If securities analysts do not publish research or reports about our business or if they publish negative evaluations of our Class A common stock, the price of our Class A common stock could decline.

The trading market for our Class A common stock will rely in part on the research and reports that industry or securities analysts publish about us or our business. We do not currently have and may never obtain research coverage by industry or securities analysts. If no or few analysts commence coverage of us, the trading price of our stock would likely decrease. Even if we do obtain analyst coverage, if one or more of the analysts covering our business downgrade their evaluations of our stock, the price of our Class A common stock could decline. If one or more of these analysts cease to cover our Class A common stock, we could lose visibility in the market for our stock, which in turn could cause our Class A common stock price to decline.

We expect that the price of our Class A common stock will fluctuate substantially and you may not be able to sell the shares you purchase in this offering at or above the offering price.

The initial public offering price for the shares of our Class A common stock sold in this offering is determined by negotiation between the representatives of the underwriters and us. This price may not reflect the market price of our Class A common stock following this offering. In addition, the market price of our Class A common stock is likely to be highly volatile and may fluctuate substantially due to many factors, including:

- the volume and timing of sales of our products;
- the introduction of new products or product enhancements by us or our competitors;
- disputes or other developments with respect to our or others' intellectual property rights;
- our ability to develop, obtain regulatory clearance or approval for, and market new and enhanced products on a timely basis;
- product liability claims or other litigation;
- quarterly variations in our results of operations or those of our competitors;
- media exposure of our products or our competitors;
- announcement or expectation of additional equity or debt financing efforts;
- additions or departures of key personnel;
- issuance of new or updated research or reports by securities analysts;
- failure to meet or exceed financial estimates and projections of the investment community or that we provide to the public;
- changes in governmental regulations or in reimbursement;
- changes in earnings estimates or recommendations by securities analysts; and
- general market conditions and other factors, including factors unrelated to our operating performance or the operating performance of our competitors.

In recent years, the stock markets generally have experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies. Broad market and industry factors may significantly affect the market price of our Class A common stock, regardless of our actual operating performance. These fluctuations may be even more pronounced in the trading market for our Class A common stock shortly following this offering. If the market price of shares of our Class A common stock after this offering does not ever exceed the initial public offering price, you may not realize any return on your investment in us and may lose some or all of your investment.

In addition, in the past, class action litigation has often been instituted against companies whose securities have experienced periods of volatility in market price. Securities litigation brought against us following volatility in our stock price, regardless of the merit or ultimate results of such litigation, could result in substantial costs, which would hurt our financial condition and operating results and divert management's attention and resources from our business.

Substantial future sales of our Class A common stock, or the perception in the public markets that these sales may occur, may depress our stock price.

Sales of substantial amounts of our Class A common stock in the public market after this offering, or the perception that these sales could occur, could adversely affect the price of our Class A common stock and could impair our ability to raise capital through the sale of additional shares. Upon the closing of this offering, we will

have shares of Class A common stock outstanding (or if the underwriters exercise in full their option to purchase additional shares of Class A common stock) and shares of Class A common stock that would be issuable upon redemption or exchange of LLC Interests authorized but unissued. The shares of Class A common stock offered in this offering will be freely tradable without restriction under the Securities Act, except for any shares of our common stock that may be held or acquired by our directors, executive officers and other affiliates, as that term is defined in the Securities Act, which will be restricted securities under the Securities Act. Restricted securities may not be sold in the public market unless the sale is registered under the Securities Act or an exemption from registration is available.

The remaining outstanding shares of Class A common stock held by the Former LLC Owners will be subject to certain restrictions on sale. We and each of our executive officers and directors and the Original LLC Owners, which collectively will hold % of our outstanding capital stock (including shares of Class A common stock issuable upon redemption or exchange of LLC Interests) upon the closing of this offering, have agreed with the underwriters, subject to certain exceptions, not to dispose of or hedge any shares of common stock or securities convertible into or exchangeable for (including the LLC Interests), or that represent the right to receive, shares of common stock during the period from the date of this prospectus continuing through the date 180 days after the date of this prospectus, except with the prior written consent of the representatives on behalf of the underwriters. See “Underwriting.” All of our shares of common stock outstanding as of the date of this prospectus (and shares of Class A common stock issuable upon redemption or exchange of LLC Interests) may be sold in the public market by existing stockholders following the expiration of the applicable lock-up period, subject to applicable limitations imposed under federal securities laws.

We also intend to enter into the Registration Rights Agreement pursuant to which the shares of Class A common stock issued upon redemption or exchange of LLC Interests held by the Continuing LLC Owner and the shares of Class A common stock issued to the Former LLC Owners in connection with the Transactions will be eligible for resale, subject to certain limitations set forth therein. See “Certain relationships and related party transactions—Registration Rights Agreement.”

We intend to file one or more registration statements on Form S-8 under the Securities Act to register all shares of Class A common stock subject to outstanding options and Class A common stock (a) issued or issuable under our stock plans and (b) issuable to the Phantom Plan Participants under the Phantom Plan. Any such Form S-8 registration statements will automatically become effective upon filing. Accordingly, shares registered under such registration statements will be available for sale in the open market following the expiration of the applicable lock-up period.

See “Shares eligible for future sale” for a more detailed description of the restrictions on selling shares of our common stock after this offering.

In the future, we may also issue additional securities if we need to raise capital, which could constitute a material portion of our then-outstanding shares of common stock.

We have broad discretion over the use of the net proceeds from this offering and it is possible that we will not use them effectively.

We intend to use the net proceeds to us from this offering to purchase newly-issued LLC Interests (or LLC Interests if the underwriters exercise in full their option to purchase additional shares of Class A common stock) directly from Bioventus LLC at a purchase price per LLC Interest equal to the initial public offering price per share of Class A common stock less the underwriting discounts and commissions.

As the sole managing member of Bioventus LLC, we intend to cause Bioventus LLC to use such proceeds, after deducting estimated offering expenses, (i) to redeem all of Mr. Bihl’s Profits Interest Units as described in “Executive Compensation—Narrative to Summary Compensation Table—Severance,” (ii) to satisfy the

$ million cash entitlement of the Continuing LLC Owner in respect of the EPR Unit held by the Continuing LLC Owner, (iii) to pursue future potential acquisition opportunities, such as the acquisition of all of the shares of CartiHeal in connection with the Call Option (as defined herein) or Put Option (as defined herein), and (iv) for general corporate purposes; however, we cannot specify with any certainty the particular uses of the net proceeds that we will receive from this offering. Our management will have broad discretion in the application of the net proceeds from this offering, including for any of the purposes described in the section titled ‘‘Use of Proceeds,’’ and you will not have the opportunity as part of your investment decision to assess whether the net proceeds are being used appropriately. Because of the number and variability of factors that will determine our use of the net proceeds from this offering, their ultimate use may vary substantially from their currently intended use. The failure by our management to apply these proceeds effectively could adversely affect our business, results of operations and financial condition. Pending their use, we may invest our proceeds in a manner that does not produce income or that loses value. Our investments may not yield a favorable return to our investors and may negatively impact the price of our Class A common stock.

Taking advantage of the reduced disclosure requirements applicable to “emerging growth companies” may make our Class A common stock less attractive to investors.

The JOBS Act provides that, so long as a company qualifies as an “emerging growth company,” it will, among other things:

- be exempt from the provisions of Section 404(b) of the Sarbanes-Oxley Act requiring that its independent registered public accounting firm provide an attestation report on the effectiveness of its internal control over financial reporting;
- be exempt from the “say on pay” and “say on golden parachute” advisory vote requirements of the Dodd-Frank Wall Street Reform and Customer Protection Act, or the Dodd-Frank Act;
- be exempt from certain disclosure requirements of the Dodd-Frank Act relating to compensation of its executive officers and be permitted to omit the detailed compensation discussion and analysis from proxy statements and reports filed under the Exchange Act; and
- be permitted to provide a reduced level of disclosure concerning executive compensation and be exempt from any rules that have been adopted by the Public Company Accounting Oversight Board requiring a supplement to the auditor’s report on the financial statements or that may be adopted requiring mandatory audit firm rotations.

We are an “emerging growth company,” as defined in the JOBS Act, and we could be an emerging growth company for up to five years following the completion of this offering. For as long as we continue to be an emerging growth company, we may choose to take advantage of certain exemptions from various reporting requirements that are applicable to other public companies. We currently intend to take advantage of the reduced disclosure requirements regarding executive compensation. We have irrevocably elected not to take advantage of the extension of time to comply with new or revised financial accounting standards available under Section 107(b) of the JOBS Act. We could be an emerging growth company for up to five years after this offering and will continue to be an emerging growth company unless our total annual gross revenues are $1.07 billion or more, we have issued more than $1 billion in non-convertible debt in the past three years or we become a “large accelerated filer” as defined in the Exchange Act. If we remain an “emerging growth company” after this offering, we may take advantage of other exemptions, including the exemptions from the advisory vote requirements and executive compensation disclosures under the Dodd-Frank Act and the exemption from the provisions of Section 404(b) of the Sarbanes-Oxley Act. We cannot predict if investors will find our Class A common stock less attractive if we elect to rely on these exemptions, or if taking advantage of these exemptions would result in less active trading or more volatility in the price of our Class A common stock. Also, as a result of our intention to take advantage of some or all of the reduced regulatory and reporting requirements that will be available to us as long as we qualify as an “emerging growth company,” our financial statements may not be comparable to those of companies that fully comply with regulatory and reporting requirements upon the public company effective dates.

We do not currently expect to pay any cash dividends.

We do not anticipate declaring or paying any cash dividends to holders of our Class A common stock in the foreseeable future. We currently intend to retain future earnings, if any, to finance our growth. Any determination to pay cash dividends in the future will be at the sole discretion of our board of directors, subject to limitations under applicable law and may be discontinued at any time. In addition, our ability to pay cash dividends is currently restricted by the terms of our 2019 Credit Agreement. Therefore, you are not likely to receive any dividends on your Class A common stock for the foreseeable future, and the success of an investment in our Class A common stock will depend upon any future appreciation in its value. Consequently, investors may need to sell all or part of their holdings of our Class A common stock after price appreciation, which may never occur, as the only way to realize any future gains on their investment. There is no guarantee that our Class A common stock will appreciate in value or even maintain the price at which our stockholders have purchased our Class A common stock. Investors seeking cash dividends should not purchase our Class A common stock.

In addition, our operations are currently conducted entirely through Bioventus LLC and its subsidiaries and our ability to generate cash to meet our debt service obligations or to make future dividend payments, if any, is highly dependent on the earnings and the receipt of funds from Bioventus LLC and its subsidiaries via dividends or intercompany loans.

Our amended and restated certificate of incorporation will, to the extent permitted by applicable law, contain provisions renouncing our interest and expectation to participate in certain corporate opportunities identified or presented to certain of our Original LLC Owners.

Certain of the Original LLC Owners are in the business of making or advising on investments in companies and these Original LLC owners may hold, and may, from time to time in the future, acquire interests in or provide advice to businesses that directly or indirectly compete with certain portions of our business or the business of our suppliers. Our amended and restated certificate of incorporation will provide that, to the fullest extent permitted by law, none of the Original LLC Owners or any director who is not employed by us or his or her affiliates will have any duty to refrain from engaging in a corporate opportunity in the same or similar lines of business as us. The Original LLC Owners may also pursue acquisitions that may be complementary to our business, and, as a result, those acquisition opportunities may not be available to us. As a result, these arrangements could adversely affect our business, results of operations, financial condition or prospects if attractive business opportunities are allocated to any of the Original LLC Owners instead of to us. See “Description of capital stock—Corporate opportunities.”

We may issue shares of preferred stock in the future, which could make it difficult for another company to acquire us or could otherwise adversely affect holders of our Class A common stock, which could depress the price of our Class A common stock.

Our amended and restated certificate of incorporation will authorize us to issue one or more series of preferred stock. Our board of directors will have the authority to determine the preferences, limitations and relative rights of the shares of preferred stock and to fix the number of shares constituting any series and the designation of such series, without any further vote or action by our stockholders. Our preferred stock could be issued with voting, liquidation, dividend and other rights superior to the rights of our Class A common stock. The potential issuance of preferred stock may delay or prevent a change in control of us, discourage bids for our Class A common stock at a premium to the market price, and materially and adversely affect the market price and the voting and other rights of the holders of our Class A common stock.

Anti-takeover provisions in our governing documents and under Delaware law could make an acquisition of our company more difficult, limit attempts by our stockholders to replace or remove our current management, and depress the market price of our common stock.

Our amended and restated certificate of incorporation, amended and restated bylaws and Delaware law contain or will contain provisions that could have the effect of rendering more difficult, delaying or preventing an

acquisition deemed undesirable by our board of directors. Among others, our amended and restated certificate of incorporation and amended and restated bylaws will include the following provisions:

- authorizing the issuance of "blank check" preferred stock that could be issued by our board of directors to increase the number of outstanding shares and thwart a takeover attempt;
- establishing a classified board of directors so that not all members of our board of directors are elected at one time;
- the removal of directors only for cause;
- prohibiting the use of cumulative voting for the election of directors;
- limiting the ability of stockholders to call special meetings or amend our bylaws;
- requiring all stockholder actions to be taken at a meeting of our stockholders; and
- establishing advance notice and duration of ownership requirements for nominations for election to the board of directors or for proposing matters that can be acted upon by stockholders at stockholder meetings.

These provisions, alone or together, could delay or prevent hostile takeovers and changes in control or changes in our management. As a Delaware corporation, we are also subject to provisions of Delaware law, including Section 203 of the Delaware General Corporation Law, or the DGCL, which prevents interested stockholders, such as certain stockholders holding more than 15% of our outstanding common stock from engaging in certain business combinations unless (i) prior to the time such stockholder became an interested stockholder, the board approved the transaction that resulted in such stockholder becoming an interested stockholder, (ii) upon consummation of the transaction that resulted in such stockholder becoming an interested stockholder, the interested stockholder owned 85% of the common stock or (iii) following board approval, the business combination receives the approval of the holders of at least two-thirds of our outstanding common stock not held by such interested stockholder. Because we have "opted out" of Section 203 of the DGCL in our amended and restated certificate of incorporation, the statute will not apply to business combinations involving us.

Any provision of our amended and restated certificate of incorporation, amended and restated bylaws or Delaware law that has the effect of delaying, preventing or deterring a change in control could limit the opportunity for our stockholders to receive a premium for their shares of our common stock and could also affect the price that some investors are willing to pay for our common stock.

Our amended and restated certificate of incorporation will provide that the Court of Chancery of the State of Delaware will be the sole and exclusive forum for substantially all disputes between us and our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers or employees.

Our amended and restated certificate of incorporation will provide that, unless we consent to the selection of an alternative forum, the Court of Chancery of the State of Delaware is the sole and exclusive forum for: (a) any derivative action, suit or proceeding brought on our behalf; (b) any action, suit or proceeding asserting a claim of breach of fiduciary duty owed by any of our directors, officers or stockholders to us or to our stockholders; (c) any action, suit or proceeding arising pursuant to any provision of the DGCL, our amended and restated certificate of incorporation or amended bylaws (as either may be amended from time to time); or, (d) any action, suit or proceeding asserting a claim governed by the internal affairs doctrine; provided that the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act. The choice of forum provision may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers or other employees, which may discourage such lawsuits against us and our directors, officers and other employees.

Alternatively, if a court were to find the choice of forum provision contained in our amended and restated certificate of incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could harm our business, results of operations and financial condition.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements concerning our business, operations and financial performance and condition, as well as our plans, objectives and expectations for our business operations and financial performance and condition. Any statements contained herein that are not statements of historical facts may be deemed to be forward-looking statements. In some cases, you can identify forward-looking statements by terminology such as “aim,” “anticipate,” “assume,” “believe,” “contemplate,” “continue,” “could,” “due,” “estimate,” “expect,” “goal,” “intend,” “may,” “objective,” “plan,” “predict,” “potential,” “positioned,” “seek,” “should,” “target,” “will,” “would” and other similar expressions that are predictions of or indicate future events and future trends, or the negative of these terms or other comparable terminology, although not all forward-looking statements contain these words. These forward-looking statements include, but are not limited to, statements about:

- the adverse impacts on our business as a result of the COVID-19 pandemic;
- our dependence on a limited number of products;
- our ability to develop, acquire and commercialize new products, line extensions or expanded indications;
- the continued and future acceptance of our existing portfolio of products and any new products, line extensions or expanded indications by physicians, patients, third-party payers and others in the medical community;
- our ability to differentiate the HA viscosupplementation therapies we own or distribute from alternative therapies for the treatment of OA;
- the proposed down-classification of non-invasive bone growth stimulators, including our Exogen system, by the FDA;
- our ability to achieve and maintain adequate levels of coverage and/or reimbursement for our products, the procedures using our products, or any future products we may seek to commercialize;
- our ability to complete acquisitions or successfully integrate new businesses, products or technologies in a cost-effective and non-disruptive manner;
- competition against other companies;
- the negative impact on our ability to market our HA products due to the reclassification of HA products from medical devices to drugs in the United States by the FDA;
- our ability to attract, retain and motivate our senior management and qualified personnel;
- our ability to continue to research, develop and manufacture our products if our facilities are damaged or become inoperable;
- failure to comply with the extensive government regulations related to our products and operations;
- enforcement actions if we engage in improper claims submission practices or in improper marketing or promotion of our products;
- the FDA regulatory process and our ability to obtain and maintain required regulatory clearances and approvals;
- failure to comply with the government regulations that apply to our HCT/P products;
- the clinical studies of any of our future products that do not product results necessary to support regulatory clearance or approval in the United States or elsewhere; and
- the other risks identified in this prospectus including, without limitation, those under the sections titled “Risk factors,” “Management’s discussion and analysis of financial condition and results of operations” and “Business.”

Forward-looking statements are based on management's current expectations, estimates, forecasts and projections about our business and the industry in which we operate, and management's beliefs and assumptions are not guarantees of future performance or development and involve known and unknown risks, uncertainties and other factors that are in some cases beyond our control. As a result, any or all of our forward-looking statements in this prospectus may turn out to be inaccurate. Furthermore, if the forward-looking statements prove to be inaccurate, the inaccuracy may be material. In light of the significant uncertainties in these forward-looking statements, you should not regard these statements as a representation or warranty by us or any other person that we will achieve our objectives and plans in any specified time frame, or at all. Factors that may cause actual results to differ materially from current expectations include, among other things, those described in the section entitled "Risk factors" and elsewhere in this prospectus. Potential investors are urged to consider these factors carefully in evaluating these forward-looking statements. These forward-looking statements speak only as of the date of this prospectus. Except as required by law, we assume no obligation to update or revise these forward-looking statements for any reason, even if new information becomes available in the future. You should, however, review the factors and risks and other information we describe in the reports we will file from time to time with the SEC after the date of this prospectus.

USE OF PROCEEDS

We estimate the net proceeds from this initial public offering of shares of Class A common stock will be approximately $ million, or $ million if the underwriters exercise their option to purchase additional shares in full, assuming an initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, and after deducting the underwriting discounts and commissions and estimated offering expenses payable by us.

Each $1.00 increase (decrease) in the assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, would increase (decrease) the net proceeds to us by approximately $ million, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same, and after deducting underwriting discounts and commissions and estimated offering expenses payable by us. We may also increase or decrease the number of shares we are offering. Each increase (decrease) of 1,000,000 shares in the number of shares offered by us would increase (decrease) the net proceeds to us by approximately $ million, assuming that the assumed initial public offering price remains the same, and after deducting the underwriting discounts and commissions and estimated offering expenses payable by us.

We intend to use the net proceeds to us from this offering to purchase newly-issued LLC Interests (or LLC Interests if the underwriters exercise in full their option to purchase additional shares of Class A common stock) directly from Bioventus LLC at a purchase price per LLC Interest equal to the initial public offering price per share of Class A common stock less the underwriting discounts and commissions.

We intend to cause Bioventus LLC to use such proceeds (together with any additional proceeds it may receive if the underwriters exercise their option to purchase additional shares of Class A common stock), after deducting estimated offering expenses, (i) to redeem all of Mr. Bihl's Profits Interest Units for which he is entitled to receive a payment on or before June 16, 2021 in an amount equal to the greater of (a) $7.71 million and (b) the fair market value of such remaining MIP award as of the date of payment, as well as an additional cash payment of $1.54 million, as described in "Executive Compensation—Narrative to Summary Compensation Table—Severance," (ii) to satisfy the $ million cash entitlement of the Continuing LLC Owner in respect of the EPR Unit held by the Continuing LLC Owner, (iii) to pursue future potential acquisition opportunities, such as the acquisition of all of the shares of CartiHeal in connection with the Call Option or Put Option, and (iv) for general corporate purposes.

As of the date of this prospectus, since we cannot specify with certainty all of the particular uses for the net proceeds to be received upon the completion of this offering, our management will have broad discretion over the use of any net proceeds from this offering that are to be applied for general corporate purposes. Pending the use of the proceeds from this offering, we intend to invest the net proceeds in short-term, interest-bearing, investment grade securities, certificates of deposit or governmental securities.

DIVIDEND POLICY

We do not anticipate declaring or paying any cash dividends to holders of our Class A common stock in the foreseeable future. We currently intend to retain future earnings, if any, to finance the growth of our business. If we decide to pay cash dividends in the future, the declaration and payment of such dividends will be at the sole discretion of our board of directors and may be discontinued at any time. Holders of our Class B common stock are not entitled to participate in any dividends declared by our board of directors. In determining the amount of any future dividends, our board of directors will take into account any legal or contractual limitations, our actual and anticipated future earnings, cash flow, debt service and capital requirements and other factors that our board of directors may deem relevant.

Upon consummation of this offering, Bioventus Inc. will be a holding company and will have no material assets other than its ownership of LLC Interests. The limited liability company agreement of Bioventus LLC that will be in effect at the time of this offering provides that certain distributions to cover the taxes of the Continuing LLC Owner will be made based upon assumed tax rates and other assumptions provided in the limited liability company agreement. See "Certain Relationships and Related Person Transactions—Bioventus Limited Liability Company Agreement." Additionally, in the event Bioventus Inc. declares any cash dividend, we intend to cause Bioventus LLC to make distributions to Bioventus Inc., in an amount sufficient to cover such cash dividends declared by us. If Bioventus LLC makes such distributions to Bioventus Inc., the Continuing LLC Owner will also be entitled to receive the respective equivalent pro rata distributions in accordance with the percentages of their respective LLC Interests. See "Risk Factors—Risks Related to Our Organizational Structure—Our principal asset after the completion of this offering will be our interest in Bioventus LLC, and, accordingly, we will depend on distributions from Bioventus LLC to pay our taxes and expenses, including payments under the Tax Receivable Agreement. Bioventus LLC's ability to make such distributions may be subject to various limitations and restrictions."

In addition, the terms of our financing arrangements, including the 2019 Credit Agreement, contain covenants that may restrict Bioventus LLC and its subsidiaries from paying such distributions, subject to certain exceptions. Any financing arrangements that we enter into in the future may include restrictive covenants that limit our ability to pay dividends. In addition, Bioventus LLC is generally prohibited under Delaware law from making a distribution to a member to the extent that, at the time of the distribution, after giving effect to the distribution, liabilities of Bioventus LLC (with certain exceptions) exceed the fair value of its assets. Subsidiaries of Bioventus LLC are generally subject to similar legal limitations on their ability to make distributions to Bioventus LLC.

TRANSACTIONS

Existing organization

Prior to the consummation of this offering and the organizational transactions described below, the Original LLC Owners are the only owners of Bioventus LLC. Bioventus LLC is treated as a partnership for U.S. federal income tax purposes and, as such, generally is not subject to any U.S. federal entity-level income taxes (with the exception of certain subsidiaries that are subject to entity-level income taxes). Rather, taxable income or loss is included in the U.S. federal income tax returns of Bioventus LLC's members.

Bioventus Inc. was incorporated as a Delaware corporation on December 22, 2015 to serve as the issuer of the Class A common stock offered hereby.

Transactions

In connection with the closing of this offering, we will consummate the following organizational transactions, which we refer to as the "Transactions":

- we will amend and restate the Bioventus LLC Agreement, to, among other things, (i) provide for LLC Interests that will be the single class of common membership interests in Bioventus LLC, (ii) exchange all of the existing membership interests (including profit interests awarded under our MIP) in Bioventus LLC for LLC Interests and (iii) appoint Bioventus Inc. as the sole managing member of Bioventus LLC;
- we will amend and restate Bioventus Inc.'s certificate of incorporation to, among other things, (i) provide for Class A common stock and Class B common stock, each share of which entitles its holders to one vote per share on all matters presented to Bioventus Inc.'s stockholders and (ii) issue shares of Class B common stock to the Continuing LLC Owner, on a one-to-one basis with the number of LLC Interests it owns;
- the Former LLC Owners will exchange their indirect ownership interests in Bioventus LLC for shares of Class A common stock on a one-to-one basis;
- Bioventus Inc. will issue shares of our Class A common stock to the purchasers in this offering (or shares of Class A common stock if the underwriters exercise in full their option to purchase additional shares of Class A common stock) in exchange for net proceeds of approximately $ million (or approximately $ million if the underwriters exercise in full their option to purchase additional shares of Class A common stock), assuming the shares are offered at $ per share (the midpoint of the price range listed on the cover page of this prospectus), after deducting underwriting discounts and commissions but before offering expenses;
- Bioventus Inc. will use all of the net proceeds from this offering (including any net proceeds received upon exercise of the underwriters' option to purchase additional shares of Class A common stock) to acquire newly-issued LLC Interests from Bioventus LLC at a purchase price per interest equal to the initial public offering price per share of Class A common stock, less underwriting discounts and commissions, collectively representing % of Bioventus LLC's outstanding LLC Interests (or %, if the underwriters exercise in full their option to purchase additional shares of Class A common stock);
- Bioventus LLC will use the proceeds from the sale of LLC Interests to Bioventus Inc. as described in "Use of proceeds;"
- the Phantom Plan will be terminated and the Phantom Plan Participants will receive rights to receive up to shares of Class A common stock upon settlement of their awards under the Phantom Plan, with such settlement expected to take place between twelve and 24 months following the date of termination of the Phantom Plan as described in "Executive compensation—Narrative to summary

compensation table—Equity-based compensation" (which settlement may result in a change in the timing over which compensation expense is recognized as described in "Management's discussion and analysis of financial condition and results of operations—Components of our results of operations—Selling, general and administrative expense"), and Bioventus Inc. will receive a corresponding number of LLC Interests from Bioventus LLC upon settlement;

- the Continuing LLC Owner will continue to own the LLC Interests it received in exchange for its existing membership interests in Bioventus LLC; and
- Bioventus Inc. will enter into (i) the Tax Receivable Agreement with the Continuing LLC Owner, (ii) the Stockholders Agreement with the Voting Group and (iii) the Registration Rights Agreement with the Original LLC Owners who, upon the consummation of this offering, will own shares of Bioventus' Class A and Class B common stock (which will not have any liquidation or distribution rights).

Organizational structure following this offering

Immediately following the completion of the Transactions, including this offering:

- Bioventus Inc. will be a holding company and the principal asset of Bioventus Inc. will be LLC Interests of Bioventus LLC;
- Bioventus Inc. will be the sole managing member of Bioventus LLC and will control the business and affairs of Bioventus LLC and its subsidiaries;
- Bioventus Inc.'s amended and restated certificate of incorporation and the Bioventus LLC Agreement will require that we and Bioventus LLC at all times maintain a one-to-one ratio between the number of shares of Class A common stock issued by us and the number of LLC Interests owned by us, as well as a one-to-one ratio between the number of shares of Class B common stock owned by the Continuing LLC Owner and the number of LLC Interests owned by the Continuing LLC Owner;
- Bioventus Inc. will own LLC Interests representing % of the economic interest in Bioventus LLC (or %, if the underwriters exercise in full their option to purchase additional shares of Class A common stock);
- the purchasers in this offering (i) will own shares of Class A common stock, representing approximately % of the combined voting power of all of Bioventus Inc.'s common stock (or shares of Class A common stock, representing approximately %, if the underwriters exercise in full their option to purchase additional shares of Class A common stock), (ii) will own % of the economic interest in Bioventus Inc. (or %, if the underwriters exercise in full their option to purchase additional shares of Class A common stock) and (iii) through Bioventus Inc.'s ownership of LLC Interests, indirectly will hold (applying the percentages in the preceding clause (ii) to Bioventus Inc.'s percentage economic interest in Bioventus LLC) approximately % of the economic interest in Bioventus LLC (or % if the underwriters exercise in full their option to purchase additional shares of Class A common stock);
- the Former LLC Owners (i) will own shares of Class A common stock, representing approximately % of the combined voting power of all of Bioventus Inc.'s common stock (or approximately %, if the underwriters exercise in full their option to purchase additional shares of Class A common stock), (ii) will own % of the economic interest in Bioventus Inc. (or %, if the underwriters exercise in full their option to purchase additional shares of Class A common stock) and (iii) through Bioventus Inc.'s ownership of LLC Interests, indirectly will hold (applying the percentages in the preceding clause (ii) to Bioventus Inc.'s percentage economic interest in Bioventus LLC) approximately % of the economic interest in Bioventus LLC (or %, if the underwriters exercise in full their option to purchase additional shares of Class A common stock);
- the Continuing LLC Owner will own (i) through its ownership of Class B common stock, approximately % of the voting power in Bioventus Inc. (or approximately %, if the

underwriters exercise in full their option to purchase additional shares of Class A common stock) and (ii) LLC Interests, representing % of the economic interest in Bioventus LLC (or %, if the underwriters exercise in full their option to purchase additional shares of Class A common stock). Following the offering, each LLC Interest held by the Continuing LLC Owner will be redeemable, at its election, for newly-issued shares of Class A common stock on a one-for-one basis or, if Bioventus Inc. and the Continuing LLC Owner agree, a cash payment equal to a volume weighted average market price of one share of Class A common stock for each LLC Interest redeemed (subject to customary adjustments, including for stock splits, stock dividends and reclassifications) in accordance with the terms of the Bioventus LLC Agreement; provided that, at Bioventus Inc.'s election, Bioventus Inc. may effect a direct exchange of such Class A common stock or such cash (if mutually agreed) for such LLC Interests. Shares of Class B common stock will be cancelled on a one-for-one basis if we, at the election of the Continuing LLC Owner, redeem or exchange its LLC Interests pursuant to the terms of the Bioventus LLC Agreement. See "Certain relationships and related party transactions—Bioventus LLC Agreement;" and

- Bioventus Inc. will enter into (i) the Tax Receivable Agreement with the Continuing LLC Owner, (ii) the Stockholders Agreement with the Voting Group and (iii) the Registration Rights Agreement with the Original LLC Owners. Upon the consummation of this offering, the Continuing LLC Owner will own (x) shares of Bioventus' Class B common stock (which will not have any liquidation or distribution rights), representing approximately % of the combined voting power of all of Bioventus Inc.'s common stock (or approximately %, if the underwriters exercise in full their option to purchase additional shares of Class A common stock) and (y) LLC Interests, representing approximately % of the economic interest in the business of Bioventus LLC and its subsidiaries (or approximately %, if the underwriters exercise in full their option to purchase additional shares of Class A common stock), representing both a direct interest through the Continuing LLC Owner's ownership of LLC Interests and an indirect interest through the Former LLC Owners' ownership of Class A common stock.

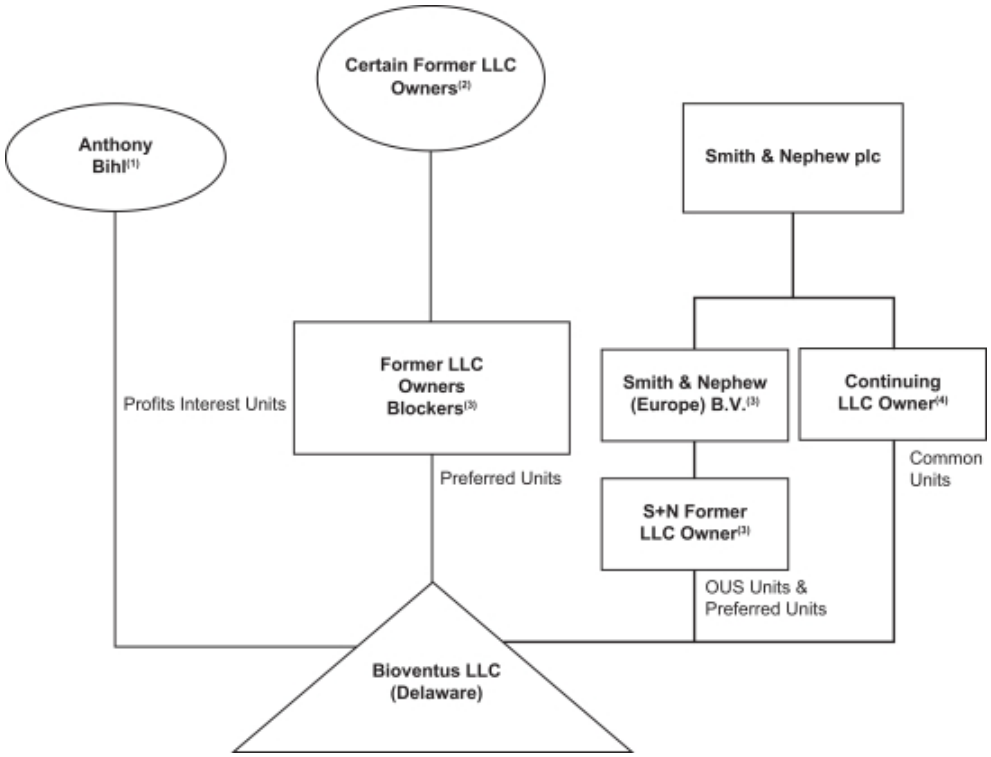
Our corporate structure following this offering, as described above, is commonly referred to as an Up-C structure, which is often used by partnerships and limited liability companies when they undertake an initial public offering of their business. The Up-C structure will allow the Continuing LLC Owner to retain its equity ownership in Bioventus LLC and to continue to realize tax benefits associated with owning interests in an entity that is treated as a partnership, or "passthrough" entity, for U.S. federal income tax purposes following the offering. Investors in this offering will, by contrast, hold their equity ownership in Bioventus Inc., a Delaware corporation that is a domestic corporation for U.S. federal income tax purposes, in the form of shares of Class A common stock. Similarly, the Former LLC Owners will also hold their equity ownership in Bioventus Inc. in the form of shares of Class A common stock. One of the tax benefits to the Continuing LLC Owner associated with this structure is that future taxable income of Bioventus LLC that is allocated to the Continuing LLC Owner will be taxed on a flow-through basis and therefore will not be subject to corporate taxes at the entity level. Additionally, because the Continuing LLC Owner may redeem or exchange its LLC Interests for newly issued shares of our Class A common stock on a one-for-one basis or, at our option, for cash, the Up-C structure also provides the Continuing LLC Owner with potential liquidity that holders of non-publicly traded limited liability companies are not typically afforded. Bioventus Inc. also expects to benefit from the "Up-C" structure because, in general, we expect to benefit in the form of cash tax savings in amounts equal to 15% of certain tax benefits arising from redemptions or exchanges of the Continuing Owner's LLC Interests for Class A Common Stock or cash and certain other tax benefits covered by the Tax Receivable Agreement discussed in "Certain relationships and related party transactions—Tax Receivable Agreement." See "Risk Factors—Risks related to our organizational structure and the Tax Receivable Agreement."

Immediately following this offering, Bioventus Inc. will be a holding company and our principal asset will be the LLC Interests we purchase from Bioventus LLC and acquire from the Former LLC Owners. As the sole managing member of Bioventus LLC, Bioventus Inc. will operate and control all of the business and affairs of

Bioventus LLC and, through Bioventus LLC and its subsidiaries, conduct our business. Accordingly, we will have the sole voting interest in, and control the management of, Bioventus LLC. As a result, Bioventus Inc. will consolidate Bioventus LLC in our consolidated financial statements and will report a non-controlling interest related to the LLC Interests held by the Continuing LLC Owner on our consolidated financial statements. Bioventus Inc. will have a board of directors and executive officers, but will have no employees. The functions of all of our employees are expected to reside at or under Bioventus LLC.

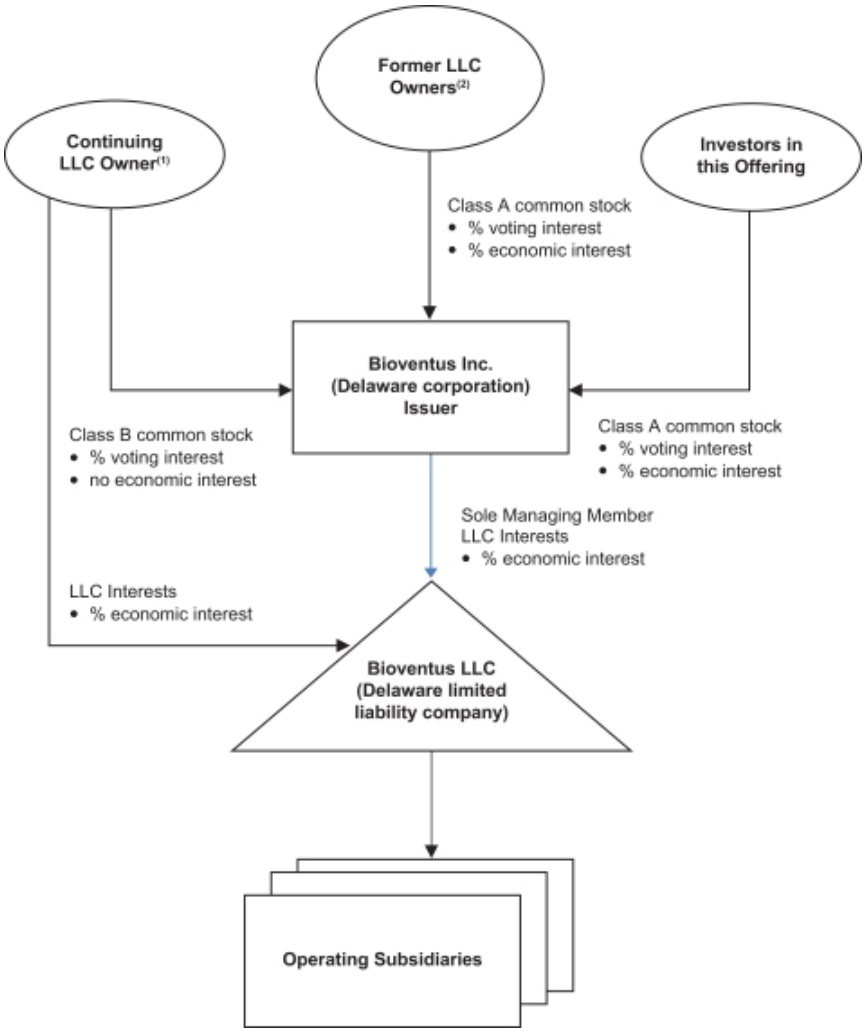
See “Description of capital stock” for more information about our certificate of incorporation and the terms of the Class A common stock and Class B common stock. See “Certain relationships and related party transactions” for more information about (i) the Bioventus LLC Agreement, including the terms of the LLC Interests and the redemption right of the Continuing LLC Owner; (ii) the Tax Receivable Agreement; (iii) the Registration Rights Agreement; and (iv) the Stockholders Agreement. Under the Stockholders Agreement, any increase or decrease in the size of our board of directors or any committee, and any amendment to our organizational documents, will in each case require the approval of EW Healthcare Partners, certain other members of the Voting Group and their respective affiliates, for so long as they collectively own at least 10% of the total shares of our Class A common stock owned by them as of the date this offering is consummated, and will also require the approval of Smith & Nephew, Inc. and Smith & Nephew (Europe) B.V. and their affiliates, for so long as Continuing LLC Owner and its affiliates own at least 10% of the total shares of our Class A common stock and Class B common stock owned by them as of the date this offering is consummated.

The diagram below depicts our organizational structure immediately prior to giving effect to the Transactions.



(1) We plan to redeem all of Mr. Bihl's Profits Interest Units as described in "Executive Compensation—Narrative to Summary Compensation Table—Severance."
(2) Refers to all the Original LLC Owners (including EW Healthcare Partners) but excluding the Continuing LLC Owner, the S+N Former LLC Owner and Smith & Nephew (Europe) B.V.
(3) Immediately prior to the consummation of this offering, each of the Former LLC Owners, including Smith & Nephew (Europe) B.V., a wholly-owned indirect Dutch subsidiary of Smith & Nephew plc and the owner of S+N Former LLC Owner, will exchange their indirect ownership interests in Bioventus LLC for shares of Class A common stock on a one-to-one basis and the Former LLC Owners Blockers and S+N Former LLC Owner will merge with and into Bioventus Inc.
(4) Following the consummation of this offering, the Continuing LLC Owner will continue to own the LLC Interests it receives in exchange for its existing membership interests in Bioventus LLC.

The diagram below depicts our organizational structure after giving effect to the Transactions, including this offering, assuming no exercise by the underwriters of their option to purchase additional shares of Class A common stock:



(1) Refers to Smith & Nephew, Inc., a wholly-owned indirect U.S. subsidiary of Smith & Nephew plc, which will continue to own LLC Interests after the Transactions and which may, following the consummation of this offering, exchange its LLC Interests for shares of our Class A common stock or a cash payment (if mutually agreed) as described in "Certain relationships and related party transactions—Bioventus LLC Agreement," in each case, together with a cancellation of the same number of its shares of Class B common stock.

(2) Refers to all of the Original LLC Owners (including EW Healthcare Partners and Smith & Nephew (Europe) B.V., but excluding the Continuing LLC Owner) who will exchange their indirect ownership interests in Bioventus LLC for shares of our Class A common stock in connection with the consummation of this offering.

CAPITALIZATION

The following table sets forth the cash and cash equivalents and capitalization as of September 26, 2020:

- of Bioventus LLC and its subsidiaries on an actual basis; and
- of Bioventus Inc. and its subsidiaries on a pro forma basis to give effect to the Transactions, including our issuance and sale of shares of Class A common stock in this offering at an assumed initial public offering price of $ per share, the midpoint of the price range listed on the cover page of this prospectus, after (i) deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us and (ii) the application of the proceeds from the offering, each as described under "Use of proceeds."

You should read this information together with the financial statements and related notes appearing elsewhere in this prospectus and the information set forth under the headings "Prospectus summary—Summary historical and pro forma financial data," "Transactions," "Use of proceeds," "Selected financial data," and "Management's discussion and analysis of financial condition and results of operations".

	As of September 26, 2020	
(in thousands, except share and per share data)	**Bioventus LLC actual**	**Bioventus Inc. pro forma(1)**
Cash and cash equivalents	$ 72,478	
Long-term indebtedness:		
Term loan(2)	193,275	
Stockholders' equity (deficit):		
Class A common stock, par value $ per share; no shares authorized, issued and outstanding, actual; shares authorized, shares issued and outstanding, Bioventus Inc. pro forma	—	
Class B common stock, par value $ per share; no shares authorized, issued and outstanding, actual; shares authorized, shares issued and outstanding, Bioventus Inc. pro forma	—	
Members' equity	285,173	—
Accumulated other comprehensive income	222	
Additional paid-in capital	—	
Accumulated deficit	(142,176)	
Non-controlling interest in subsidiary	2,120	
Total members' equity, actual; stockholders' equity pro forma	145,339	
Total capitalization	$ 338,614	

(1) A $1.00 increase (decrease) in the assumed initial public offering price of $ per share, which is the midpoint of the price range listed on the cover page of this prospectus, would increase (decrease) the pro forma amount of each of cash and cash equivalents, additional paid-in capital, total stockholders' equity and total capitalization by approximately $ million, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

(2) For more information regarding our term loan and revolving credit facility, see "Management's discussion and analysis of financial condition and results of operations—Indebtedness."

DILUTION

The Continuing LLC Owner will maintain its LLC Interests in Bioventus LLC after the Transactions. Because the Continuing LLC Owner does not own any Class A common stock or have any right to receive distributions from Bioventus, we have presented dilution in pro forma net tangible book value per share after this offering assuming the Continuing LLC Owner had its LLC Interests redeemed or exchanged for newly-issued shares of Class A common stock on a one-for-one basis (rather than for cash), and the cancellation for no consideration of all of its shares of Class B common stock (which are not entitled to distributions from Bioventus Inc.), in order to more meaningfully present the dilutive impact on the investors in this offering. We refer to the assumed redemption or exchange of all LLC Interests owned by the Continuing LLC Owner for shares of Class A common stock as described in the previous sentence as the "Assumed Redemption." We also note that the effect of the Assumed Redemption is to increase the assumed number of shares of Class A common stock outstanding before the offering, thereby decreasing the pro forma net tangible book value per share before the offering and correspondingly increasing the dilution per share to new Class A common stock investors.

Dilution is the amount by which the offering price paid by the purchasers of the Class A common stock in this offering exceeds the pro forma net tangible book value per share of Class A common stock after the offering. Bioventus LLC's net tangible book value as of September 26, 2020 was $ million. Net tangible book value per share is determined at any date by subtracting our total liabilities from the total book value of our tangible assets and dividing the difference by the number of shares of Class A common stock deemed to be outstanding at that date.

If you invest in our Class A common stock in this offering, your ownership interest will be immediately diluted to the extent of the difference between the initial public offering price per share and the pro forma net tangible book value per share of our Class A common stock after this offering.

Pro forma net tangible book value per share is determined at any date by subtracting our total liabilities from the total book value of our tangible assets and dividing the difference by the number of shares of Class A common stock, after giving effect to the Transactions, including this offering, and the Assumed Redemption. Our pro forma net tangible book value as of September 26, 2020 would have been approximately $ million, or $ per share of Class A common stock. This amount represents an immediate increase in pro forma net tangible book value of $ per share to our existing stockholders and an immediate dilution in pro forma net tangible book value of approximately $ per share to new investors purchasing shares of Class A common stock in this offering. We determine dilution by subtracting the pro forma net tangible book value per share after this offering from the amount of cash that a new investor paid for a share of Class A common stock. The following table illustrates this dilution:

Assumed initial public offering price per Class A share		$
Pro forma net tangible book value per share as of September 26, 2020 before this offering[1][2]		
Increase in pro forma net tangible book value per share attributable to investors in this offering		
Pro forma net tangible book value per share after this offering		$
Dilution per share to new Class A common stock investors		$

(1) The computation of pro forma net tangible book value per share as of September 26, 2020 before this offering and after the Assumed Redemption is set forth below:

Numerator:	
Book value of tangible assets	$
Less: total liabilities	
Pro forma net tangible book value[(a)]	$
Denominator:	
Shares of Class A common stock outstanding immediately prior to this offering and after Assumed Redemption	
Pro forma net tangible book value per share	$

(a) Gives pro forma effect to the Transactions (other than this offering) and the Assumed Redemption.

(2) The computation of pro forma net tangible book value per share as of September 26, 2020 before this offering and before the Assumed Redemption is set forth below:

Numerator:	
Book value of tangible assets	$
Less: total liabilities	
Pro forma net tangible book value[(a)]	$
Denominator:	
Shares of Class A common stock outstanding immediately prior to this offering and prior to any Assumed Redemption	
Pro forma net tangible book value per share	$

(a) Gives pro forma effect to the Transactions (other than this offering) and excludes the Assumed Redemption.

If the underwriters exercise their option to purchase additional shares of our Class A common stock in full in this offering, the pro forma net tangible book value after the offering would be $ per share, the increase in pro forma net tangible book value per share to existing stockholders would be $ and the dilution per share to new investors would be $ per share, in each case assuming an initial public offering price of $ per share, which is the midpoint of the price range listed on the cover page of this prospectus.

The following table summarizes, as of September 26, 2020 after giving effect to this offering, the Transactions and the differences between the Original LLC Owners and new investors in this offering with regard to:

- the number of shares of Class A common stock purchased from us by investors in this offering and the number of shares issued to the Original LLC Owners after giving effect to the Assumed Redemption,
- the total consideration paid to us in cash by investors purchasing shares of Class A common stock in this offering and by the Original LLC Owners, and
- the average price per share of Class A common stock that such Original LLC Owners and new investors paid.

- The calculation below is based on an assumed initial public offering price of $ per share, which is the midpoint of the price range listed on the cover page of this prospectus, before deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us.

	Shares purchased		Total consideration		Average price per share
	Number	Percent	Amount	Percent	
Original LLC Owners		%	$	%	$
New investors					
Total		100%	$	100%	$

Except as otherwise indicated, the discussion and the tables above assume no exercise of the underwriters' option to purchase additional shares of Class A common stock. The number of shares of our Class A common stock outstanding after this offering as shown in the tables above is based on the membership interests of Bioventus LLC outstanding as of , 2021, and excludes:

- shares of Class A common stock reserved for future issuance under the Plan, as described in "Executive compensation—New incentive arrangements," consisting of (i) shares of Class A common stock issuable upon the exercise of options to purchase shares of Class A common stock granted on the date of this prospectus to our directors and certain employees, including the named executive officers, in connection with this offering, as described in "Executive compensation—Director compensation" and Executive compensation—New equity awards," and (ii) additional shares of Class A common stock reserved for future issuance (exclusive of the additional shares available for issuance under the Plan pursuant to the annual increase each calendar year beginning in and ending in , as described in "Executive compensation—New incentive arrangements");
- shares of Class A common stock reserved as of the closing date of this offering for future issuance to the Stock Plan Participants upon settlement of their awards, as described in "Executive compensation—Narrative to summary compensation table—Equity-based compensation;"
- shares of Class A common stock reserved for issuance under our Employee Stock Purchase Plan, as described in "Executive compensation—New incentive arrangements;" and
- shares Class A common stock reserved as of the closing date of this offering for future issuance upon redemption or exchange of LLC Interests by the Continuing LLC Owner.

Unless otherwise indicated, this prospectus assumes:

- the completion of the organizational transactions as described under "Transactions;"
- no exercise by the underwriters of their option to purchase additional shares of Class A common stock;
- the shares of Class A common stock are offered at $ per share (the midpoint of the price range listed on the cover page of this prospectus); and
- no exercise of outstanding options after , 2021.

UNAUDITED PRO FORMA CONSOLIDATED FINANCIAL INFORMATION

The following statements set forth unaudited pro forma consolidated financial data for Bioventus Inc. as of September 26, 2020, for the nine months ended September 26, 2020 and September 28, 2019 and for the year ended December 31, 2019. The unaudited pro forma consolidated balance sheet as of September 26, 2020 gives effect to the Transactions as if they had occurred on that date. The unaudited pro forma consolidated statements of operations for the year ended December 31, 2019 and for the nine months ended September 26, 2020 and September 28, 2019 have been prepared to illustrate the effects of the Transactions as if they occurred on January 1, 2019. The unaudited pro forma consolidated financial statements have been developed by applying pro forma adjustments to the historical audited consolidated financial statements of Bioventus LLC included elsewhere in this prospectus. Assumptions underlying the pro forma adjustments are described in the accompanying notes, which should be read in conjunction with these unaudited pro forma consolidated financial statements.

Bioventus Inc. was incorporated on December 22, 2015 and has no business transactions, activities, assets or liabilities to date, and therefore its historical financial information is not shown in a separate column in the unaudited pro forma consolidated balance sheet and unaudited pro forma consolidated statement of operations.

The pro forma adjustments related to the Transactions other than this offering, which we refer to as Reorganization Adjustments, are described in the notes to the unaudited pro forma consolidated financial information, and principally include those transactions as listed within the “Transactions” section of this prospectus.

The pro forma adjustments related to this offering, which we refer to as the Offering Adjustments, are described in the notes to the unaudited pro forma consolidated financial information, and principally include those items listed within “The offering” and “Use of proceeds” sections of this prospectus.

Except as otherwise indicated, the unaudited pro forma consolidated financial information presented assumes no exercise by the underwriters of their option to purchase additional shares of Class A common stock from us.

Bioventus LLC has been, and following the Transactions will continue to be, treated as a partnership for U.S. federal income tax purposes and, as such, is generally not, apart from certain subsidiaries, subject to any U.S. federal entity-level income taxes. Rather, taxable income or loss is included in the U.S. federal income tax returns of Bioventus LLC’s members, including following this offering, Bioventus Inc. Bioventus Inc. will be subject to U.S. federal, state and local income tax with respect to its allocable share of any taxable income of Bioventus LLC. For the purposes of the unaudited pro forma financial statements, Bioventus Inc. has not recorded pro forma adjustments to income tax expense or deferred income tax as it is not more likely than not that Bioventus Inc. will be able to realize the benefit from the reorganization.

As described in greater detail under “Certain relationships and related party transactions—Tax Receivable Agreement,” in connection with the closing of this offering, we will enter into the Tax Receivable Agreement with the Continuing LLC Owner that will provide for the payment to it by Bioventus Inc. of 85% of the amount of tax benefits, if any, that Bioventus Inc. actually realizes (or in some circumstances is deemed to realize) as a result of (i) increases in the tax basis of assets of Bioventus LLC resulting from (a) any future redemptions or exchanges of LLC Interests described under “Certain relationships and related party transactions—Bioventus LLC Agreement—LLC Interest Redemption Right,” and (b) certain distributions (or deemed distributions) by Bioventus LLC and (ii) certain other tax benefits arising from payments under the Tax Receivable Agreement. Due to the uncertainty in the amount and timing of future redemptions or exchanges of LLC Interests by the Continuing LLC Owner, the unaudited pro forma consolidated financial information assumes that no redemptions or exchanges of LLC Interests have occurred and therefore no increases in tax basis in Bioventus LLC’s assets or other tax benefits that may be realized thereunder have been assumed in the unaudited pro forma consolidated financial information. However, if the Continuing LLC Owner were to exchange or redeem all of its

LLC Interests, we would recognize a deferred tax asset of approximately $ million over 20 years from the date of this offering and a related liability for payments under the Tax Receivable Agreement of approximately $ million, assuming, among other factors, (i) all exchanges occurred on the same day; (ii) a price of $ per share of Class A common stock (which is the midpoint of the price range set forth on the cover of this prospectus), (iii) a constant corporate tax rate of %; (iv) we will have sufficient taxable income to fully utilize the tax benefits; (v) Bioventus LLC is able to fully depreciate or amortize its assets; and (vi) no material changes in tax law. For each 5% increase (decrease) in the price per share of Class A common stock (and therefore the value of the LLC Interests exchanged by the Continuing LLC Owner), our deferred tax asset would increase (decrease) by approximately $ million and the related liability for payments under the Tax Receivable Agreement would increase (decrease) by approximately $ million, assuming that the corporate tax rate remains the same. Under such scenario, assuming future payments are made on the date each relevant tax return is due, without extensions, we would be required to pay approximately 85% of such amount, or approximately $ million, over the 20-year period from the date of this offering. These amounts are estimates and have been prepared for informational purposes only. The actual amount of deferred tax assets and related liabilities that we will recognize will differ based on, among other things, the timing of the redemptions or exchanges, the price of our shares of Class A common stock at the time of the redemptions or exchanges and the tax rates then in effect.

Under the Tax Receivable Agreement, we may elect to terminate the Tax Receivable Agreement early by making an immediate cash payment equal to the present value of all of the tax benefit payments that would be required to be paid by us to the Continuing LLC Owner under the Tax Receivable Agreement. The calculation of such cash payment would be based on certain assumptions, including, among others (i) that the Continuing LLC Owner's LLC Interests that have not been exchanged are deemed exchanged, in general, for the market value of our Class A common stock that would be received by the Continuing LLC Owner if such LLC Interests had been exchanged at the time of termination, (ii) we will have sufficient taxable income in each future taxable year to fully realize all potential tax savings, (iii) the tax rates for future years will be those specified in the law as in effect at the time of termination and (iv) certain non-amortizable assets are deemed disposed of within specified time periods. In addition, the present value of such tax benefit payments is discounted at a rate equal to the lessor of (i) 6.50% per annum, compounded annually and (ii) LIBOR plus 100 basis points. Assuming that the market value of our Class A common stock were to be equal to $, the midpoint of the price range set forth on the cover of this prospectus and that LIBOR were to be %, we estimate that the aggregate amount of these termination payments would be approximately $ million if we were to exercise our termination right immediately following this offering.

The pro forma adjustments are based upon available information and methodologies that are factually supportable and directly related to the Transactions and are presented for illustrative purposes only. The unaudited pro forma consolidated financial information includes various estimates which are subject to material change and may not be indicative of what our operations or financial position would have been had the Transactions, including this offering, taken place on the dates indicated, or that may be expected to occur in the future.

The pro forma financial information should be read in conjunction with, "Risk factors," "Summary historical and unaudited pro forma consolidated financial and other data," "Management's discussion and analysis of financial condition and results of operations" and the historical consolidated financial statements and related notes included elsewhere in this prospectus.

Bioventus Inc.
Unaudited pro forma consolidated balance sheet
As of September 26, 2020
(Dollar amounts in thousands)

	Bioventus LLC historical	Reorganization adjustments (note 1)	Offering adjustments (note 2)	Bioventus Inc. pro forma
Assets				
Current assets:				
Cash and cash equivalents	$ 72,478	$ —	$ 2	$
Accounts receivable, net	80,813	—	—	
Inventory	34,705	—	—	
Prepaid and other current assets	5,145	—	2	
Total current assets	193,141	—		
Property and equipment, net	5,886	—	—	
Goodwill	49,800	—	—	
Intangibles assets, net	196,688	—	—	
Operating lease assets	13,906	—	2	
Investment and other assets	19,856	—	—	
Total assets	$ 479,277	$ —	$	$
Liabilities and members'/stockholders' equity				
Current liabilities:				
Accounts payable	$ 8,790	$ —	$ —	$
Accrued liabilities	73,019	—	—	
Accrued equity-based compensation	9,580	—	—	
Long-term debt	16,250	—	2	
Other current liabilities	4,095	—	—	
Total current liabilities	111,734	—		
Long-term debt, less current portion	177,025	—	2	
Accrued equity-based compensation, less current portion	22,086	—	—	
Deferred income taxes	3,436	—	—	
Other long-term liabilities	19,657	1	—	
Total liabilities	333,938			
Class A common stock, $0.001 par value per share, shares authorized on a pro forma basis, shares issued and outstanding on a pro forma basis	—	1	2	
Class B common stock, $0.001 par value per share, shares authorized on a pro forma basis, shares issued and outstanding on a pro forma basis	—	1	—	
Members equity	285,173	1	2	
Additional paid in capital	—	1	—	
Accumulated other comprehensive income	222	1	—	
Accumulated deficit	(142,176)	1	—	
Non-controlling interest in subsidiary	2,120	1	—	
Total members'/stockholders' equity	145,339			
Total liabilities and members'/stockholders' equity	$ 479,277	$	$	$

See Notes to the Unaudited Pro Forma Consolidated Financial Information.

Bioventus Inc.
Unaudited pro forma consolidated statement of operations
For the year ended December 31, 2019
(Dollar amounts in thousands, except per share amounts)

	Bioventus LLC historical	Reorganization adjustments (note 1)	Offering adjustments (note 2)	Bioventus Inc. pro forma
Net sales	$ 340,141	$ —	$ —	$
Cost of sales (including depreciation and amortization)	90,935	—	—	
Gross profit	249,206	—	—	
Selling, general and administrative expense	198,475	—	2	
Research and development expense	11,055	—	2	
Restructuring costs	575	—	—	
Depreciation and amortization	7,908	—	—	
Operating income	31,193	—		
Interest expense	21,579	—	2	
Other income	(75)	—	—	
Other expense	21,504	—		
Income from continuing operations before income taxes	9,689	—		
Income tax expense	1,576	1	—	
Net income from continuing operations	8,113			
Less: Net (loss) income from continuing operations attributable to non-controlling interests	(553)	1	2	
Net income from continuing operations attributable to Bioventus	$ 8,666	$	$	$
Net income from continuing operations attributable to unit holders	$ 8,666			
Accumulated and unpaid preferred distribution	(5,955)			
Net income allocated to participating shareholders	(1,555)			
Net income from continuing operations attributable to common unit holders	$ 1,156			
Pro forma net income from continuing operations per share attributable to Bioventus:				
Basic				$ 2
Diluted				$ 2
Pro forma weighted average common shares outstanding:				
Basic				2
Diluted				2

See Notes to the Unaudited Pro Forma Consolidated Financial Information.

Bioventus Inc.
Unaudited pro forma consolidated statement of operations
For the nine months ended September 26, 2020
(Dollar amounts in thousands, except per share amounts)

	Bioventus LLC historical	Reorganization adjustments (note 1)	Offering adjustments (note 2)	Bioventus Inc. pro forma
Net sales	$ 222,570	$ —	$ —	$
Cost of sales (including depreciation and amortization)	62,521	—	—	
Gross profit	160,049	—	—	
Selling, general and administrative expense	131,104	—	2	
Research and development expense	8,311	—	2	
Depreciation and amortization	5,305	—	—	
Operating income	15,329	—		
Interest expense	7,095	—	2	
Other income	(4,539)	—	—	
Other expense	2,556	—		
Income from continuing operations before income taxes	12,773	—		
Income tax expense	302	1	—	
Net income from continuing operations	12,471			
Less: Net (loss) income from continuing operations attributable to non-controlling interests	(1,164)	1	2	
Net income from continuing operations attributable to Bioventus	$ 13,635	$	$	$
Net income from continuing operations attributable to unit holders	$ 13,635			
Accumulated and unpaid preferred distribution	(4,525)			
Net income allocated to participating shareholders	(5,225)			
Net income from continuing operations attributable to common unit holders	$ 3,885			
Pro forma net income from continuing operations per share attributable to Bioventus:				
Basic				$ 2
Diluted				$ 2
Pro forma weighted average common shares outstanding:				
Basic				2
Diluted				2

See Notes to the Unaudited Pro Forma Consolidated Financial Information.

Bioventus Inc.
Unaudited pro forma consolidated statement of operations
For the nine months ended September 28, 2019
(Dollar amounts in thousands, except per share amounts)

	Bioventus LLC historical	Reorganization adjustments (note 1)	Offering adjustments (note 2)	Bioventus Inc. pro forma
Net sales	$ 242,587	$ —	$ —	$
Cost of sales (including depreciation and amortization)	66,810	—	—	
Gross profit	175,777	—	—	
Selling, general and administrative expense	144,021	—	2	
Research and development expense	7,911	—	2	
Restructuring costs	540	—	—	
Depreciation and amortization	5,815	—	—	
Operating income	17,490	—		
Interest expense	13,935	—	2	
Other expense	71	—	—	
Other expense	14,006	—	—	
Income from continuing operations before income taxes	3,484	—		
Income tax expense	684	1		
Net income from continuing operations	2,800			
Less: Net (loss) income from continuing operations attributable to non-controlling interests	(30)	1	2	
Net income from continuing operations attributable to Bioventus	$ 2,830	$	$	$
Net income from continuing operations attributable to unit holders	$ 2,830			
Accumulated and unpaid preferred distribution	(4,421)			
Net loss from continuing operations attributable to common unit holders	$ (1,591)			
Pro forma net loss from continuing operations per share attributable to Bioventus:				
Basic				$ 2
Diluted				$ 2
Pro forma weighted average common shares outstanding:				
Basic				2
Diluted				2

See Notes to the Unaudited Pro Forma Consolidated Financial Information.

Notes to unaudited pro forma consolidated financial information
(Dollar amounts in thousands, except for per share amounts)

1. Reorganization adjustments

The following adjustments are related to the reorganization of the Company as described in the section entitled "Transactions".

(a) As a C-corporation, we will no longer record a members' equity in the consolidated balance sheet. The preferred units of Bioventus LLC, along with their related preferred return (collectively the liquidation preference) and the profit interest award under the MIP will convert to common units in Bioventus LLC immediately prior to the Transactions. To reflect the C-corporation structure of our equity, we will separately present the value of our Class A common stock, Class B common stock, non-controlling interest in subsidiary, additional paid-in capital and accumulated deficit. This adjustment represents the issuance of shares of Class A common stock with a par value of $ per share and the issuance of shares of Class B common stock with a par value of $ per share. Additionally, this adjustment includes the elimination of previously recorded accumulated other comprehensive income and accumulated deficit of Bioventus LLC.

(b) As described in "Transactions", Bioventus Inc. will become the sole managing member of, own the sole voting interest in, and control the management of Bioventus LLC. As a result, we will consolidate the financial results of Bioventus LLC and will report a non-controlling interest related to the LLC Interests held by the Continuing LLC Owner on our consolidated balance sheet.

The computation of the non-controlling interest following the consummation of this offering is as follows:

	Units	Percentage
LLC Interests in Bioventus LLC held by Bioventus Inc.		%
Non-controlling interest in Bioventus LLC held by the Continuing LLC Owner		%
		100.0%

If the underwriters were to exercise their option to purchase additional shares of our Class A common stock, Bioventus Inc. would own % of the economic interest of Bioventus LLC and the Continuing LLC Owner would own the remaining % of the economic interest of Bioventus LLC.

The balance of the non-controlling interest and total member's equity as of September 26, 2020 on a pro forma basis were calculated as follows:

Historical Bioventus LLC equity	$ 145,339
Net adjustments from the reorganization and this offering	—
Total members' equity of Bioventus LLC after the Transactions	145,339
Total Continuing LLC Owner's ownership percentage in Bioventus LLC after the Transactions	—
Non-controlling interest as of September 26, 2020 on a pro forma basis	—
Stockholders' equity attributable to common stock on a pro forma basis	145,339
Total stockholders' equity at September 26, 2020 on a pro forma basis	$ 145,339

The Continuing LLC Owner, from time to time following the offering, may require Bioventus LLC to redeem or exchange all or a portion of its LLC Interests for newly-issued shares of Class A common stock on a one-for-one basis or, if Bioventus Inc. and the Continuing LLC Owner agree, a cash payment equal to the volume weighted average market price of one share of our Class A common stock for each LLC Interest redeemed in accordance with the terms of the Bioventus LLC Agreement; provided that, at Bioventus' election, Bioventus may effect a direct exchange of such Class A common stock or such cash (if mutually agreed) for such LLC Interests. See "Certain relationships and related party transactions—Bioventus LLC Agreement."

2. Offering adjustments

(a) We have been deferring certain costs in our historical financial statements directly associated with this offering, including certain legal, accounting and other related expenses, which have been recorded in other assets on our consolidated balance sheet. Upon completion of this offering, approximately $ million of deferred costs will be reversed out of other assets and charged against the proceeds from this offering as a reduction to additional paid-in capital. The total amount of estimated offering expenses is $ million.

(b) We estimate that the net proceeds from this offering, after deducting underwriting discounts and commissions but before estimated offering expenses, will be approximately $ million, based on an assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus. If the underwriters exercise their option to purchase additional shares in full, we estimate that the net proceeds will be approximately $ million after deducting underwriting discounts and commissions but before estimated offering expenses.

Assumed initial public offering price per share	$
Shares of Class A common stock issued in this offering	
Gross proceeds	$
Less: underwriting discounts and commissions	
Less: offering expenses (including amounts previously deferred)	
Net cash proceeds	$

(c) We intend to use the proceeds from this offering to purchase newly-issued LLC Interests from Bioventus LLC at a purchase price per interest equal to the initial public offering price per share of Class A common stock less underwriting discounts and commissions.

(d) Pro forma basic net income (loss) from continuing operations per share is calculated by dividing net income (loss) attributable to common stockholders by the number of weighted average Class A common stock outstanding.

	Year Ended	Nine months ended	
	December 31, 2019	September 26, 2020	September 28, 2019
Net income (loss) from continuing operations per share, basic and diluted:			
Numerator			
Net income (loss) from continuing operations			
Less: Net income (loss) from continuing operations attributable to non-controlling interests			
Net income (loss) from continuing operations attributable to Class A common stockholders			
Denominator			
Shares of Class A common stock issued in this offering			
Shares of Class A common stock held by the Former LLC Owners			
Weighted-average shares of Class A common stock			
Net income (loss) from continuing operations per share, basic and diluted			

In computing the dilutive effect, if any, that the aforementioned exchange would have on earnings per share, we considered that the net income available to holders of Class A common stock would increase due to elimination of the non-controlling interest in consolidated entities associated with the Class B common stock held (including any tax impact).

(e) In connection with the Transactions, we intend to grant new equity-based compensation awards to certain of our employees and directors. Accordingly this adjustment reflects estimated compensation expense of $, $, and $, for the year ended December 31, 2019 and the nine months ended September 26, 2020 and September 28, 2019, respectively, which has been recorded in selling, general and administrative expense and research and development expense. The settlement of the awards under the Phantom Plan is expected to take place between the twelve and 24-month anniversary following the date of termination of the Phantom Plan. Our unaudited pro forma consolidated statements of operations do not include compensation expense related to the settlement of the Phantom Plan awards.

The pro forma net income (loss) from continuing operations attributable to non-controlling interest is computed as follows by adjustment:

	Year ended December 31, 2019		Nine months ended September 26, 2020		Nine months ended September 28, 2019	
	Reorganization	Offering	Reorganization	Offering	Reorganization	Offering
Net income (loss) from continuing operations	$ —	$ —	$ —	$ —	$ —	$
Non-controlling interests ownership percentage	—	—	—	—	—	
Net income (loss) from continuing operations attributable to non-controlling interests	$ —	$ —	$ —	$ —	$ —	$

SELECTED FINANCIAL DATA

The following table presents the selected financial data for Bioventus LLC and its subsidiaries for the periods and at the dates indicated. Bioventus LLC is the predecessor of the issuer, Bioventus Inc., for financial reporting purposes. The selected statements of operations and statement of cash flows data for the years ended December 31, 2019 and 2018 and the selected balance sheet data as of December 31, 2019 and 2018 are derived from the Bioventus LLC audited financial statements appearing elsewhere in this prospectus. The selected statements of operations and statement of cash flows data for the years ended December 31, 2017 and 2016 are derived from Bioventus LLC financial statements not appearing in this prospectus. The selected statements of operations and statement of cash flows data for the nine months ended September 26, 2020 and September 28, 2019 and the selected balance sheet data as of September 26, 2020 are derived from the Bioventus LLC unaudited interim condensed consolidated financial statements included elsewhere in this prospectus. The unaudited interim condensed consolidated financial statements have been prepared on the same basis as the audited consolidated financial statements and, in the opinion of management, include all adjustments, consisting only of normal recurring adjustments, necessary for a fair statement of the information set forth herein. You should read this data together with our audited and unaudited financial statements and related notes appearing elsewhere in this prospectus and the information under the captions “Capitalization” and “Management’s discussion and analysis of financial condition and results of operations.” Our historical results are not necessarily indicative of our future results or any other period and results of interim periods are not necessarily indicative of results for the entire year. The selected financial data included in this section are not intended to replace the financial statements and the related notes included elsewhere in this prospectus.

	Years Ended December 31,				Nine Months Ended	
(in thousands, except per share and share amounts)	2019	2018	2017	2016	September 26, 2020	September 28, 2019
Net sales	$340,141	$319,177	$292,059	$274,500	$222,570	$242,587
Cost of sales (including depreciation and amortization of $22,399, $20,614, $22,296, $22,760, $16,076 and $17,149, respectively)	90,935	84,168	82,101	80,388	62,521	66,810
Gross profit	249,206	235,009	209,958	194,112	160,049	175,777
Selling, general and administrative expense	198,475	191,672	164,842	160,321	131,104	144,021
Research and development expense	11,055	8,095	8,096	7,900	8,311	7,911
Change in fair value of contingent consideration	—	(739)	(10,492)	(4,796)	—	—
Restructuring costs	575	1,373	2,313	—	—	540
Depreciation and amortization	7,908	8,615	9,996	11,001	5,305	5,815
Loss on impairment of intangible assets	—	489	7,200	8,750	—	—
Operating income	31,193	25,504	28,003	10,936	15,329	17,490
Interest expense	21,579	19,171	18,897	15,938	7,095	13,935
Other (income) expense	(75)	226	448	652	(4,539)	71
Other expense	21,504	19,397	19,345	16,590	2,556	14,006
Income (loss) from continuing operations before income taxes	9,689	6,107	8,658	(5,654)	12,773	3,484
Income tax expense (benefit)	1,576	1,664	(785)	1,091	302	684
Net income (loss) from continuing operations	8,113	4,443	9,443	(6,745)	12,471	2,800
Loss attributable to noncontrolling interest	553	—	—	—	1,164	30
Loss from discontinued operations, net of tax	(1,815)	(16,650)	(8,885)	(11,208)	—	(1,616)
Net income (loss) attributable to unit holders	$ 6,851	$ (12,207)	$ 558	$ (17,953)	$ 13,635	$ 1,214

(in thousands, except per share and share amounts)	Years Ended December 31, 2019	2018	2017	2016	Nine Months Ended September 26, 2020	September 28, 2019
Net income (loss) from continuing operations attributable to unit holders	$ 8,666	$ 4,443	$ 9,443	$ (6,745)	$ 13,635	$ 2,830
Accumulated and unpaid preferred distributions	(5,955)	(5,781)	(5,613)	(5,449)	(4,525)	(4,421)
Net income allocated to participating shareholders	(1,555)	—	(2,197)	—	(5,225)	—
Net income (loss) from continuing operations attributable to common unit holders	1,156	(1,338)	1,633	(12,194)	3,885	(1,591)
Loss from discontinued operations, net of tax	1,815	16,650	8,885	11,208	—	1,616
Net (loss) income attributable to common unit holders	$ (659)	$(17,988)	$(7,252)	$(23,402)	$ 3,885	$ (3,207)
Net (loss) income per unit attributable to common unit holders—basic and diluted:						
Net income (loss) from continuing operations	$ 0.24	$ (0.27)	$ 0.33	$ (2.49)	$ 0.79	$ (0.32)
Loss from discontinued operations, net of tax	0.37	3.40	1.81	2.29	—	0.33
Net (loss) income attributable to common unit holders	$ (0.13)	$ (3.67)	$ (1.48)	$ (4.78)	$ 0.79	$ (0.65)
Weighted average common units outstanding, basic and diluted	4,900	4,900	4,900	4,900	4,900	4,900

(in thousands)	Years Ended December 31, 2019	2018	2017	2016	Nine Months Ended September 26, 2020	September 28, 2019
Consolidated statement of cash flow data:						
Net cash provided by (used in):						
Operating activities from continuing operations	$ 42,545	$ 52,310	$ 28,976	$ 37,145	$ 46,752	$ 21,329
Investing activities from continuing operations	(7,912)	(6,061)	(6,675)	(7,949)	(18,961)	(7,348)
Financing activities	(10,951)	(13,256)	(10,241)	(8,961)	(19,691)	(11,640)
Discontinued operations	(1,832)	(7,163)	(9,451)	(11,716)	(228)	(1,663)
Effect of exchange rate changes	(104)	(160)	1,176	(493)	86	171
Net change in cash and cash equivalents	$ 21,746	$ 25,670	$ 3,785	$ 8,026	$ 7,958	$ 849

(in thousands)	As of December 31, 2019	2018	As of September 26, 2020
Balance sheet data:			
Cash and cash equivalents	$ 64,520	$ 42,774	$ 72,478
Total assets	$ 472,407	$ 442,723	$ 479,277
Total liabilities	$ 326,790	$ 297,456	$ 333,938
Accumulated deficit	$(141,700)	$(139,821)	$ (142,176)
Total members' equity	$ 145,617	$ 145,267	$ 145,339

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with "Risk factors," "Selected financial data" and our consolidated financial statements and the related notes to those statements included elsewhere in this prospectus. In addition to historical consolidated financial information, the following discussion and analysis contains forward-looking statements that involve risks, uncertainties and assumptions. Some of the numbers included herein have been rounded for the convenience of presentation. Our actual results may differ materially from those anticipated in these forward-looking statements as a result of many factors, including those discussed under "Risk factors" and elsewhere in this prospectus. The following discussion does not give effect to the Transactions. See "Transactions" and "Unaudited pro forma consolidated financial information" included elsewhere in this prospectus for a description of the Transactions and their effect on our historical results of operations.

Executive Summary

We are a global medical device company focused on developing and commercializing clinically differentiated, cost efficient and minimally invasive treatments that engage and enhance the body's natural healing process. We operate our business through two reportable segments, U.S. and International, and our portfolio of products is grouped into following three verticals:

- OA joint pain treatment and joint preservation products, which are HA viscosupplementation therapies approved by the FDA through a PMA;
- BGSs, which are human tissue allograft and synthetic products used primarily in spine surgery which have either (i) received 510(k) clearance, which is a premarket submission made to the FDA to demonstrate that the device to be marketed is at least as safe and effective, that is, substantially equivalent, to a legally marketed device, or (ii) are regulated solely as Section 361 HCT/Ps, which means they are human cells, tissues and cellular and tissue-based products that do not require a PMA in the United States; and
- minimally invasive fracture treatment, which is a FDA-approved Exogen system prescribed for long bone stimulation for fracture healing.

Our U.S. segment offers our full existing portfolio of products. This includes our OA joint pain treatment and joint preservation products, which address the entire market for HA viscosupplementation with offerings for single, three and five injection therapies: (i) Durolane, a single injection therapy, which we launched in the United States in the first half of 2018 and also market outside the United States in more than 30 countries; (ii) GELSYN-3, a three injection therapy, which we have marketed in the United States since the second half of 2016; and (iii) SUPARTZ FX, a five injection therapy, which we have marketed in the United States since May 2012. Our U.S. segment also offers our BGS products, which are targeted at improving bone fusion rates following spinal fusion and other orthopedic surgeries. These products include allograft-derived bone graft with growth factors (OsteoAMP), a DBM (Exponent), cancellous bone in different preparations (PureBone), bioactive synthetics (Signafuse and Interface), a collagen ceramic matrix (OsteoMatrix) and two bone marrow isolation systems (CellXtract and Extractor). Further, our U.S. segment offers our Exogen system, which we believe offers significant advantages over electrical based long bone stimulation systems, including documented mechanism of action, shorter treatment times and superior nonunion heal rates.

Our International segment offers Durolane, or single injection therapy, OsteoAMP our allograft-derived bone graft with growth factors, and our Exogen system.

The following table sets forth total net sales, net income from continuing operations and Adjusted EBITDA:

(in thousands)	Years Ended December 31, 2019	Years Ended December 31, 2018	Nine Months Ended September 26, 2020	Nine Months Ended September 28, 2019
Net sales	$ 340,141	$ 319,177	$ 222,570	$ 242,587
Net income from continuing operations	$ 8,113	$ 4,443	$ 12,471	$ 2,800
Adjusted EBITDA(1)	$ 79,188	$ 72,171	$ 44,289	$ 48,483

(1) For a reconciliation of net income from continuing operations to Adjusted EBITDA, see Note 2 to the information contained in "Prospectus summary —Summary historical and pro forma financial information."

Strategic transactions

We have pursued and continue to pursue business development opportunities that leverage our significant customer presence across orthopedics, broaden our portfolio and increase our global footprint. Below is a summary of some of our recent transactions:

Collaboration and development agreement for MOTYS

On May 29, 2019, we entered into a collaboration and development agreement, or Development Agreement, with Musculoskeletal Transplant Foundation, Inc., or MTF, to develop an injectable placental tissue product, MOTYS, for use in the OA joint pain treatment. The development and commercialization of the product is anticipated to take place in two stages. In consideration for achieving its development milestones, we paid MTF $1.5 million and are obligated to pay additional payments totaling $0.8 million if certain further milestones are achieved. We began selling MOTYS in the fourth quarter of 2020, subject to the terms of an exclusive commercial supply agreement entered into with MTF on June 18, 2020.

Development collaboration agreement for PROcuff

On August 23, 2019, we entered into an exclusive Collaboration Agreement with Harbor, to develop and license the rights to commercialize a woven-suture-collagen composite implant product. Concurrently with the execution of the agreement, we purchased $1.0 million of shares of Harbor. As a result of Harbor's achievement of certain milestones, on October 5, 2020, we purchased $1.0 million of additional shares of Harbor. Furthermore, we are obligated to make two additional one-time payments totaling $6.0 million in aggregate upon Harbor's achievement of (i) receiving regulatory approval and (ii) achieving a certain net sales target. The sole use of proceeds from these investments is for the development of the implant product that is the subject of our agreement. We intend to negotiate and enter into a definitive supply agreement with Harbor if and when the product is cleared for marketing by the FDA at a price per unit not to exceed an agreed upon maximum.

CartiHeal (developer of Agili-C) investment and option and equity purchase agreement

On July 15, 2020, we made a $15.0 million equity investment in CartiHeal, a privately-held company headquartered in Israel and developer of the proprietary Agili-C implant for the treatment of joint surface lesions in traumatic and osteoarthritic joints. This investment follows the recently completed enrollment and outcome of interim analysis in CartilHeal's IDE multinational pivotal study for Agili-C. This new round of funding is expected to enable CartiHeal to complete all patient follow-up in the Agili-C study and submit an application for PMA to the FDA. Under the agreement, CartiHeal can secure an additional $5.0 million equity investment from us, if needed, for IDE study completion. We previously made an initial $2.5 million investment in CartiHeal in January 2018 and a subsequent investment of $0.2 million in January 2020.

At the time of closing of the initial equity investment, we also entered into an Option and Equity Purchase Agreement with CartiHeal and its shareholders, which provides us with an exclusive option to acquire 100% of

CartiHeal's shares under certain conditions, or the Call Option, and provides CartiHeal with a put option that would require us to purchase 100% of CartiHeal's shares under certain conditions, or the Put Option. The Call Option is exercisable by us upon closing of the investment. The Put Option is only exercisable by CartiHeal upon pivotal clinical trial success, including achievement of certain secondary endpoints and FDA approval of the Agili-C device with a label consistent in all respects with pivotal clinical trial success. The pivotal clinical trial's objective is to demonstrate the superiority of the Agili-C implant over the surgical standard of care, including microfracture and debridement, for the treatment of cartilage or osteochondral defects, in both osteoarthritic knees and knees without degenerative changes. If not previously exercised, the Call Option and the Put Option terminate 45 days following the FDA approval of Agili-C or in the event of failure of the pivotal clinical trial. We also have the right to terminate the Call Option and Put Option at any time ending 30 days after receipt from CartiHeal of the statistical report regarding the final results of the pivotal clinical trial upon payment of a break fee of $30.0 million. Consideration for the acquisition of all of the shares of CartiHeal pursuant to the Call Option or Put Option would be $350.0 million, all of which would be payable at closing, with an additional $150.0 million payable upon achievement of certain sales milestones related to Agili-C. Such closing would be subject to customary closing conditions.

Certain of the foregoing transactions have had a significant impact on our financial results of operations for the periods in which they occurred, and they have affected the comparability of these statements for the corresponding comparative periods.

Outlook

We plan to continue to expand our business and to increase our net sales and profitability by executing on the following strategies:

- continue to expand market share in HA viscosupplementation;
- introduce new OA joint pain treatment and joint preservation products;
- further develop and commercialize our BGS portfolio;
- expand indications for use for our Exogen system;
- invest in research and development;
- pursue business development opportunities; and
- opportunistically grow our international markets.

We expect to face challenges as we execute on our business strategy. Our industry is highly competitive, subject to rapid change and significantly affected by market activities of industry participants, new product introductions and other technological advancements. We believe our experienced management team positions us for success in facing these and other challenges. However, there are several factors affecting our business that are beyond our control, such as our ability to successfully introduce new products and line extensions, expand labels, continue to obtain reimbursement for our products at acceptable rates and receive necessary governmental approvals. In addition, we expect that market demand, government regulation, third-party coverage and reimbursement policies and societal pressures will continue to change the healthcare industry worldwide, resulting in further business consolidations and alliances among our customers, which may exert further downward pressure on the prices of our products. For information about additional factors that may affect our outlook, see the "Risk factors" and "Special note regarding forward-looking statements" sections of this prospectus.

COVID-19 Update and Outlook

In March 2020, the World Health Organization declared a global pandemic related to the rapidly growing outbreak of a novel strain of coronavirus known as COVID-19. In the following weeks, many states and counties

across the United States responded by implementing a number of measures designed to prevent its spread, including stay-at-home or shelter-in-place orders, quarantines and closure of all non-essential businesses.

The COVID-19 pandemic has rapidly escalated in the United States, creating significant uncertainty and economic disruption, and leading to record levels of unemployment nationally. Due to the evolving nature of the COVID-19 crisis, we continue to monitor the situation closely and assess the impact on our business. In response to various governmental orders and public health advisories, we have implemented a number of measures to protect the health and safety of our workforce, conserve liquidity and position us to emerge from the current crisis in a healthy financial position. These measures include closing our offices and instituting work-from-home policies with the exception of essential personnel in March 2020. In addition, we temporarily imposed employee salary reductions for our U.S. employees for the month of June 2020 and suspended, until December 31, 2020, a portion of the employer contribution we make under our 401(k) plan. All temporary salary reductions have now been reversed and all salaries have been reinstated to pre-COVID-19 levels. To the extent permitted and in accordance with guidance from public health officials and government agencies, we have begun to reopen our locations and resume normal operations where appropriate. We expect our operations will continue to be impacted throughout 2020, however, the magnitude and duration of the impact is impossible to predict due to:

- uncertainties regarding the duration of the COVID-19 pandemic and the length of time over which the disruptions caused by COVID-19 will continue;
- the impact of governmental orders and regulations that have been, and may in the future be, imposed in response to the pandemic;
- the impact of COVID-19 on our suppliers, manufacturers and other third parties on which we rely;
- the deterioration of economic conditions in the United States, as well as record high unemployment levels, which could have an adverse impact on discretionary consumer spending; and
- uncertainly regarding the potential for a “second wave” of the COVID-19 crisis to occur later in the year.

The COVID-19 pandemic began to have a material impact on our business during the second quarter of 2020. Since March 2020, various governmental orders and public health advisories, including “shelter-in-place” orders and quarantines, have reduced or prevented patient access to hospitals and physicians. As a result, the number of both elective and non-elective procedures have been reduced and our sales have decreased. As a precautionary measure in March 2020, in response to changing market dynamics and in order to increase our cash position and preserve financial flexibility in view of the uncertainty resulting from the COVID-19 pandemic, we drew down $49.0 million on our revolving credit facility. On September 24, 2020, we repaid all borrowings outstanding under our revolving credit facility.

In addition, we could be further impacted if we begin to see delays in payments from customers, return to more stringent “shelter in place” orders or advisories, facility closures or other reasons related to the pandemic. Despite the COVID-19 pandemic, we had positive cash flows for the nine months ended September 26, 2020, due to a lack of significant delays in payments from customers, decreases in expenses correlating to a decrease in sales, reduction in travel expenses and the institution of various cost cutting measures provided us with positive cash flow during the nine months ended September 26, 2020. However, the extent to which COVID-19 could materially impact our future liquidity is uncertain.

In April 2020, we received $1.2 million in funds from the HHS as part of the CARES Act Provider Relief Fund. We determined we have complied with the CARES Act Provider Relief Fund conditions so that we may use the funds to reimburse for health care related expenses and lost revenues attributable to the public health emergency resulting from COVID-19. An additional $2.9 million was received from the CARES Act Provider Relief Fund in July 2020. We have recognized these payments as other income within our condensed consolidated statement of operations and comprehensive income for the nine months ended September 26, 2020.

Under the CARES Act, we have also taken advantage of the deferral of employer social security payroll tax payments. In April 2020, we began deferring all employer social security payroll tax payments for the remainder of the 2020 calendar year, with 50% of the taxes is deferred until December 31, 2021 and the remaining 50% deferred until December 31, 2022.

We are continuing to evaluate other aspects of the CARES Act, including the use of the employee retention tax credit. The employee retention tax credit provides an additional tax credit to employers that (i) have either fully or partially suspended operations because of government orders associated with COVID-19 or (ii) experience a substantial decline in income but continue to pay employees their wages.

Components of our results of operations

Net sales

We generate net sales from a portfolio of active healing products that serve physicians spanning the orthopedic continuum, including sports medicine, total joint reconstruction, hand and upper extremities, foot and ankle, podiatric surgery, trauma, spine and neurosurgery. We report sales net of contractual allowances, rebates and returns.

We sell our OA joint pain treatment and joint preservation products and minimally invasive fracture treatment through our direct sales team, who manage and maintain the sales relationship with healthcare providers, distribution centers or specialty pharmacies. In certain international markets, we also sell to independent distributors on pre-arranged business terms, who manage or maintain the sales relationship with their physician customers. See Note 2 to our consolidated financial statements for the years ended December 31, 2019 and 2018. We recognize revenue at the point in time when control is transferred to the customer, typically, in the case of our OA joint pain treatment and joint preservation products, when these products are shipped to the customer and, in the case of our Exogen system, when the patient has accepted the product.

Our BGSs are primarily sold in the U.S. market through independent distributors. We generally consign our BGS products to hospitals so our neurosurgeon and orthopedic spine surgeon customers can use them in procedures. We recognize revenue based upon consumption in a surgical procedure.

Cost of sales

Our cost of sales primarily consist of costs of products purchased from our third-party suppliers, direct labor and allocated overhead associated with the assembly of our Exogen system, excess and obsolete inventory charges, shipping, inspection and related costs incurred in making our products available for sale or use. In addition, cost of sales includes depreciation related to production as well as amortization of product-related intellectual property and distribution rights associated with commercialized products. Our OA joint pain treatment and joint preservation products and BGS products are manufactured by or obtained from third-party suppliers primarily located in Japan, Switzerland, Sweden and the United States. We receive the components for our Exogen system from suppliers and assemble each system in-house at our Cordova, Tennessee facility. In the future, we expect our cost of sales to increase due to increased sales volume.

Gross profit and gross margin

Gross profit consists of net sales less cost of sales. We calculate gross margin as gross profit divided by net sales. Our gross margin has been and will continue to be affected by a variety of factors, including costs of products purchased from our third-party suppliers, manufacturing costs, product mix and implementation over time of cost-reduction strategies. We expect net sales and product mix to vary quarter by quarter and therefore our gross profit will likely fluctuate from quarter to quarter.

Selling, general and administrative expense

Selling, general and administrative expense primarily consists of salaries, benefits and other related costs, including equity-based compensation, for personnel employed in sales, marketing, finance, legal, compliance, administrative, information technology, medical education and training, quality and human resource departments. Selling, general and administrative expense also includes third-party marketing, supply chain and distribution, information technology, legal, human resources, insurance and facilities expenses, selling, general and administrative expenses also include commissions, generally based on a percentage of sales, to our direct sales team and independent distributors. We expect our selling, general and administrative expenses will increase with the continued expansion of our sales organization and commercialization of our current and pipeline products. We plan to hire more personnel to support the growth of our business. In addition, as a public company, we will be implementing additional procedures and processes to address the standards and requirements applicable to public companies. We expect to incur additional annual selling, general and administrative expenses related to these additional procedures and processes including, among other things, equity-based compensation, increased liability insurance for our directors and officers, director fees, reporting requirements of the SEC, transfer agent fees, hiring additional accounting, legal and administrative personnel, increased auditing and legal fees and similar expenses. We also expect a change in the timing over which compensation expense is recognized as a result of the termination of the Phantom Plan and the receipt by participants of shares of Class A common stock upon settlement of their awards, which settlement is expected to take place between the twelve and 24 month anniversary of the date of such termination. However, over time, as we grow our net sales, we expect selling, general and administrative expenses to decline as a percentage of net sales.

Research and development expense

Research and development expense primarily consists of employee compensation, equity compensation and related expenses, as well as contract research organization service expenses related to clinical trials. We expense internal research and development costs as incurred and research and development costs incurred by third parties as they perform contracted work. Our research and development expenses may vary substantially from period to period based on the timing of research and development activities. We are focused on internal research and development to broaden our product portfolio across all verticals, expand our Exogen system product label and undertake clinical research to support commercialization of all of our products. As a result, we expect our research and development expenses to increase to the mid-single digits as a percentage of net sales as we introduce new products, extend existing product lines and expand indications. We see significant opportunity to develop innovative and clinically differentiated products in-house with our experienced research and development team. We are currently funding our B.O.N.E.S. clinical study, which began enrollment in 2018 and is aimed at broadening the label of our Exogen system to include a broader range of bones that may be treated as fresh fractures in predisposed patients at risk of nonunion. In addition, we are planning preclinical and animal model studies for MOTYS and PROcuff. Clinical and preclinical development timelines, the probability of success and development costs can differ materially from expectations.

Change in fair value of contingent consideration

Our change in fair value of contingent consideration primarily consists of changes in estimated contingent consideration payable to counterparties in connection with certain acquisition and investment transactions. During the periods presented, change in fair value of contingent consideration primarily consisted of income related to adjustments to the fair value of contingent consideration liabilities in connection with a supply agreement resulting from the OsteoAMP acquisition. We initially value contingent consideration using a weighted probability calculation of potential payment scenarios discounted at rates reflective of the risks associated with the expected future cash flows. Key assumptions used to estimate the fair value of contingent consideration include revenue, new business and operating forecasts and the probability of achieving the specific targets. After the initial valuation, we assign 100% probability to our best estimate in each reporting period and recognize a gain or loss in the income statement for fair value adjustments.

Restructuring costs

Restructuring costs primarily consist of employee severance, legal, consulting and temporary labor expenses. During the periods presented, restructuring costs were associated with headcount reductions in our international business to improve operating efficiency. Key assumptions in determining the restructuring costs include headcount reductions, as well as terms and negotiated payments to terminate certain contractual obligations.

Depreciation and amortization

Depreciation expense primarily consists of depreciation of computer equipment and software as well as leasehold improvements, furniture, fixtures, machinery and equipment. Amortization expense primarily consists of amortization expense related to customer relationships and other intangible assets.

Loss on impairment of intangible assets

During the periods presented, loss on impairment of intangible assets primarily consists of the write-off of an intangible asset related to a BGS product we no longer sell. We review intangible assets for recoverability if the facts and circumstances suggest that a potential impairment may have occurred. If this review indicates that carrying values may not be recoverable, we will perform an assessment to determine if an impairment charge is required to reduce carrying values to estimated fair value. We estimate fair value using a discounted value of estimated future cash flows.

Interest expense

Interest expense primarily consists of interest on our indebtedness, which currently consists of our term loan and revolving credit facility, which was incurred pursuant to the 2019 Credit Agreement. We have entered into interest rate swaps to limit our exposure to changes in the variable interest rate on our term loan. Interest expense includes any fair value gain or losses on these swaps. Interest expense also includes the revaluation for the liability related to our Equity Participation Right, or EPR, Unit. The EPR Unit's entitlement is 0.55% of available distributions arising from a distribution event as defined in the Bioventus LLC Agreement. We expect to use net proceeds from this offering to settle the EPR liability.

Other (income) expense

Other (income) expense primarily consists of foreign currency transaction and remeasurement gains and losses on transactions denominated in currencies other than our functional currency. Our foreign currency transaction and remeasurement gains and losses are primarily related to foreign currency denominated cash, liabilities and intercompany receivables and payables. Other (income) expense may also include certain nonrecurring items.

Income tax expense

Bioventus LLC is a partnership for U.S. federal tax purposes. Accordingly, the members include the profits and losses of Bioventus LLC in their income tax returns. Certain wholly-owned subsidiaries of Bioventus LLC are taxable entities for U.S. or foreign tax purposes and file tax returns in their local jurisdictions. Income tax expense includes U.S. federal and state and international income taxes, including certain taxes applicable to Bioventus LLC and U.S. federal income taxes for one of our subsidiaries that is treated as a corporation for U.S. federal tax purposes. Certain income and expense items in income tax returns are not reported in the same year as financial statements. We report the income tax effects of these differences as deferred income taxes. Valuation allowances recognized reduce the related deferred tax assets to an amount which will, more likely than not, be realized. We recognize interest and penalties related to unrecognized tax benefits as a component of income tax expense.

After the consummation of this offering, Bioventus Inc. will become subject to U.S. federal, state and local income taxes at the prevailing corporate tax rates with respect to our taxable income. In addition to tax expenses, we will be obligated to make payments under the Tax Receivable Agreement, which could be significant. The Tax Receivable Agreement, will obligate us to pay to the Continuing LLC Owner 85% of the amount of any realized tax benefits, (or in some circumstances are deemed to realize) resulting from (i) increases in the tax basis of assets of Bioventus LLC as a result of (a) any future redemptions or exchanges of LLC Interests described under "Certain relationships and related party transactions—Bioventus LLC Agreement—LLC Interest Redemption Right," and (b) certain distributions (or deemed distributions) by Bioventus LLC and (ii) certain other tax benefits arising from our making payments under the Tax Receivable Agreement. For more information, see "Certain relationships and related party transactions—Tax Receivable Agreement."

Adjusted EBITDA

We present Adjusted EBITDA, a non-GAAP financial measure because we believe it is a useful indicator of our operating performance. Our management uses Adjusted EBITDA principally as a measure of our operating performance and believes that Adjusted EBITDA is useful to our investors because it is frequently used by securities analysts, investors and other interested parties frequently use it in their evaluation of the operating performance of companies in industries similar to ours. Our management also uses Adjusted EBITDA for planning purposes, including the preparation of our annual operating budget and financial projections. We define Adjusted EBITDA as net income (loss) from continuing operations before depreciation and amortization, provision of income taxes and interest expense, adjusted for the impact of certain cash, non-cash and other items that we do not consider in our evaluation of ongoing operating performance. These items include equity compensation, change in fair value of contingent consideration, COVID-19 benefits, succession and transition charges, loss on impairment of intangible assets, losses associated with debt refinancing, restructuring costs, foreign currency impact and other non-recurring costs. Adjusted EBITDA by segment is comprised of net sales and costs directly attributable to a segment, as well as an allocation of corporate overhead costs. The allocation of corporate overhead costs is determined based on various methods but is primarily based on a ratio of net sales by segment to total consolidated net sales. For more information regarding our calculation of Adjusted EBITDA, including information about its limitations as a tool for analysis, please see Note 2 to the table under "Prospectus summary—Summary historical and pro forma financial data."

Results from continuing operations

Nine months ended September 26, 2020 compared to the nine months ended September 28, 2019

The following table sets forth components of our condensed consolidated statements of operations from continuing operations as a percentage of net sales for the periods presented:

	Nine Months Ended	
	September 26, 2020	September 28, 2019
Net sales	100.0%	100.0%
Cost of sales (including depreciation and amortization)	28.1%	27.5%
Gross profit	71.9%	72.5%
Selling, general and administrative expense	58.9%	59.4%
Research and development expense	3.7%	3.3%
Restructuring costs	—	0.2%
Depreciation and amortization	2.4%	2.4%
Operating income	6.9%	7.2%

The following table presents a reconciliation of net income from continuing operations to Adjusted EBITDA for the periods presented:

(in thousands)	Nine Months Ended September 26, 2020	Nine Months Ended September 28, 2019
Net income from continuing operations	$ 12,471	$ 2,800
Depreciation and amortization[a]	21,789	22,972
Income tax expense	302	684
Interest expense	7,095	13,935
Equity compensation[b]	619	3,252
COVID-19 benefits, net[c]	(4,158)	—
Succession and transition charges[d]	5,345	—
Restructuring costs[e]	—	540
Foreign currency impact[f]	(58)	146
Other non-recurring costs[g]	884	4,154
Adjusted EBITDA	$ 44,289	$ 48,483

(a) Includes for the nine months ended September 26, 2020 and September 28, 2019 depreciation and amortization of $16.1 and $17.1 million in cost of sales and also includes $5.3 and $5.8 million, respectively, presented in the consolidated statements of operations and comprehensive income, with the balance in research and development.

(b) Represents compensation as well as the change in fair market value resulting from two equity-based compensation plans, the MIP and the Phantom Plan.

(c) Represents income resulting from the CARES Act offset by additional cleaning and disinfecting expenses and contract termination fees for events we were unable to hold.

(d) Primarily represents costs related to the CEO transition.

(e) Represents costs related to a shift from direct to an indirect distribution model in our International business to improve performance. In addition, various international subsidiaries were dissolved and or merged into other Bioventus LLC entities.

(f) Foreign currency impact represents realized and unrealized gains and losses from fluctuations in foreign currency and is included in other (income) expense on the consolidated statements of operations and comprehensive income.

(g) Represents charges associated with potential strategic transactions, such as potential acquisitions, and preparing to become a public company, primarily accounting and legal fees.

Net sales

(in thousands, except for percentage)	Nine Months Ended September 26, 2020	Nine Months Ended September 28, 2019	Change $	Change %
U.S.	$204,022	$218,228	$(14,206)	(6.5)%
International	18,548	24,359	(5,811)	(23.9)%
Net Sales	$222,570	$242,587	$(20,017)	(8.3)%

U.S.

Net sales decreased $14.2 million, or 6.5%, for the nine months ended September 26, 2020, compared to the nine months ended September 28, 2019. The changes in net sales by vertical are as follows:

- Minimally invasive fracture treatment ($12.5) million
  - OA joint pain treatment and joint preservation ($5.4) million
  - BGSs $3.7 million

Minimally invasive fracture treatment decreased primarily due to sales volume declines resulting from the disruption caused by the COVID-19 pandemic. OA joint pain and joint preservation decreased primarily due to more treatments being sold under contracts with major insurers at lower prices partially offset by sales volume growth. These decreases were also offset by sales volume growth within our BGS vertical.

International

Net sales decreased $5.8 million, or 23.9%, for the nine months ended September 26, 2020, compared to the nine months ended September 28, 2019, primarily due to a decline in order volumes due to the disruption caused by the COVID-19 pandemic.

Gross profit and gross margin

	Nine Months Ended		Change	
(in thousands, except for percentage)	September 26, 2020	September 28, 2019	$	%
Gross profit				
U.S.	$ 147,654	$159,154	$ (11,500)	(7.2)%
International	12,395	16,623	(4,228)	(25.4)%
Total	$ 160,049	$175,777	$ (15,728)	

	Nine Months Ended		
	September 26, 2020	September 28, 2019	Change
Gross margin			
U.S.	72.4%	72.9%	(0.5)%
International	66.8%	68.2%	(1.4)%
Total	71.9%	72.5%	(0.6)%

U.S.

Gross profit decreased $11.5 million, or 7.2%, for the nine months ended September 26, 2020, compared to the nine months ended September 28, 2019, primarily due to the decline in net sales described above.

International

Gross profit decreased $4.2 million, or 25.4%, for the nine months ended September 26, 2020, compared to the nine months ended September 28, 2019, primarily due to the decrease in sales from the disruption caused by COVID-19 pandemic. The decline in International gross margin of 1.4 percentage points is primarily due to the increased proportional mix of sales made through distributors compared to our direct sales team.

Selling, general and administrative expense

	Nine Months Ended		Change	
(in thousands, except for percentage)	September 26, 2020	September 28, 2019	$	%
Selling, general and administrative expense	$ 131,104	$ 144,021	$(12,917)	(9.0)%

Selling, general and administrative expense declined $12.9 million, or 9.0%, for the nine months ended September 26, 2020, compared to the nine months ended September 28, 2019, primarily due to:

- COVID-19 related decreases, including declines in travel and meetings from doing business virtually, lower compensation related expenses as well as various cost-reduction initiatives — $13.4 million
- Lower legal and accounting expenses — $4.8 million

These decreases were partially offset by $5.3 million in succession and transition charges primarily associated with the transition to our new Chief Executive Officer in April 2020.

Research and development expense

(in thousands, except for percentage)	Nine Months Ended September 26, 2020	Nine Months Ended September 28, 2019	Change $	Change %
Research and development expense	$ 8,311	$ 7,911	$ 400	5.1%

Research and development expense increased $0.4 million, or 5.1%, for the nine months ended September 26, 2020, compared to the nine months ended September 28, 2019, primarily due to costs relating to the development agreement for MOTYS being almost entirely offset by cost reduction initiatives undertaken as a result of the COVID-19 pandemic.

Restructuring costs

There were no restructuring charges during the nine months ended September 26, 2020. Restructuring charges of $0.5 million for the nine months ended September 28, 2019 resulted from a reduction in headcount and the closing of offices in certain countries as we shifted to an indirect distribution model in these countries to improve the performance of our International operations.

Depreciation and amortization

(in thousands, except for percentage)	Nine Months Ended September 26, 2020	Nine Months Ended September 28, 2019	Change $	Change %
Depreciation and amortization	$ 5,305	$ 5,815	$ (510)	(8.8)%

Depreciation and amortization during the nine months ended September 26, 2020 remained consistent with the nine months ended September 28, 2019, as it slightly decreased $0.5 million, or 8.8%.

Other expense (income)

(in thousands, except for percentage)	Nine Months Ended September 26, 2020	Nine Months Ended September 28, 2019	Change $	Change %
Interest expense	$ 7,095	$ 13,935	$(6,840)	(49.1)%
Other (income) expense	$ (4,539)	$ 71	$(4,610)	NM

Interest expense decreased $6.8 million, or 49.1%, for the nine months ended September 26, 2020, compared to the nine months ended September 28, 2019, primarily due to decreased debt interest resulting from refinancing our debt in December 2019 as well as the decline in interest rates due to COVID-19. This decrease was partially offset with an increase of $1.9 million primarily resulting from the decline in value of our interest rate swap.

Other income during the nine months ended September 26, 2020 was primarily the result of receiving Provider Relief Fund payments of approximately $4.1 million in the aggregate pursuant to the CARES Act.

Income tax expense

(in thousands, except for percentage)	Nine Months Ended September 26, 2020	Nine Months Ended September 28, 2019	Change $	Change %
Income tax expense	$ 302	$ 684	$ (382)	(55.8)%
Effective tax rate	2.4%	19.6%		(17.2)%

Income tax expense decreased $0.4 million, or 55.8%, for the nine months ended September 26, 2020, compared to the nine months ended September 28, 2019, primarily due to the change in income from continuing operations before income taxes. Our change in effective tax rate is the result of Bioventus LLC's pass-through structure for U.S. income tax purposes, while being treated as taxable in certain states and various foreign jurisdictions as well as for certain subsidiaries.

Segment Adjusted EBITDA

Adjusted EBITDA for each of our reportable segments is as follows:

(in thousands, except for percentage)	Nine Months Ended September 26, 2020	Nine Months Ended September 28, 2019	Change $	Change %
U.S.	$ 42,800	$ 44,406	$(1,606)	(3.6)%
International	$ 1,489	$ 4,077	$(2,588)	(63.5)%

U.S.

Adjusted EBITDA decreased $1.6 million, or 3.6%, during the comparable time periods. The decline was the result of decreased gross profit, excluding depreciation and amortization in cost of sales, due to the decrease in sales primarily resulting from the economic impact of COVID-19, which also led to lower expenses resulting from doing business virtually, lower compensation related expenses, as well as various other cost-reduction initiatives.

International

Adjusted EBITDA decreased $2.6 million, or 63.5%, during the comparable time periods. The decline was the result of decreased gross profit, excluding depreciation and amortization in cost of sales, resulting from the decrease in sales primarily due to the economic impact of COVID-19, which was partially offset by lower expenses resulting from doing business virtually, reduced compensation related expenses and various other cost-reduction initiatives.

Year ended December 31, 2019 compared to the Year ended December 31, 2018

The following table sets forth components of our consolidated statements of operations from continuing operations as a percentage of net sales for the periods presented:

	Years Ended December 31, 2019	Years Ended December 31, 2018
Net sales	100.0%	100.0%
Cost of sales (including depreciation and amortization)	26.7%	26.4%
Gross profit	73.3%	73.6%
Selling, general and administrative expense	58.3%	60.0%
Research and development expense	3.3%	2.5%
Change in fair value of contingent consideration	—	(0.2)%
Restructuring costs	0.2%	0.4%
Depreciation and amortization	2.3%	2.7%
Loss on impairment of intangible assets	—	0.2%
Operating income	9.2%	8.0%

The following table presents a reconciliation of net income from continuing operations to Adjusted EBITDA for the periods presented:

(in thousands)	Years Ended December 31, 2019	2018
Net income from continuing operations	$ 8,113	$ 4,443
Depreciation and amortization[a]	30,316	29,238
Income tax expense (benefit)	1,576	1,664
Interest expense	21,579	19,171
Equity compensation[b]	10,844	14,325
Contingent consideration[c]	—	(739)
Loss on impairment of intangible assets[d]	—	489
Losses associated with debt refinancing[e]	367	—
Restructuring costs[f]	575	1,373
Foreign currency impact[g]	8	234
Other non-recurring costs[h]	5,810	1,973
Adjusted EBITDA	$ 79,188	$ 72,171

(a) Includes for the years ended December 31, 2019 and 2018, respectively, depreciation and amortization of $22.4 million and $20.6 million in cost of sales and $7.9 million, $8.6 million shown on the consolidated statements of operations and comprehensive income (loss) with the balance in research and development expense.

(b) Represents compensation as well as the change in fair market value resulting from two equity-based compensation plans, the MIP and the Phantom Plan.

(c) Represents adjustments to the fair value of contingent consideration liabilities related to a supply agreement resulting from the OsteoAMP acquisition.

(d) Represents the write-off of an intangible asset related to a BGS product we no longer sell.

(e) Represents charges with our 2019 debt refinancing that were included in selling, general and administrative expense on the consolidated statements of operations and comprehensive income (loss).

(f) Represents costs related to a shift from direct to an indirect distribution model in our International business to improve performance. In addition, various international subsidiaries were dissolved and or merged into other Bioventus LLC entities.

(g) Foreign currency impact represents realized and unrealized gains and losses from fluctuations in foreign currency and is included in other (income) expense on the consolidated statements of operations and comprehensive income (loss).

(h) Represents charges associated with Bioventus LLC potential strategic transactions such as potential acquisitions or preparing to become a public company, primarily accounting and legal fees.

Net sales

(in thousands, except for percentage)	Years Ended December 31, 2019	2018	Change $	%
U.S.	$305,072	$282,895	$ 22,177	7.8%
International	35,069	36,282	(1,213)	(3.3)%
Net Sales	$340,141	$319,177	$ 20,964	6.6%

U.S.

Net sales increased $22.2 million, or 7.8%, for the year ended December 31, 2019, compared to the year ended December 31, 2018, primarily due to an increase of $26.7 million in sales of our treatments for OA joint pain and joint preservation due to multiple large contract wins executed in 2019, partially offset by net price decreases resulting from more products being sold under new contracts with major insurers at lower prices. Net sales also increased by $11.6 million due to higher sales volume of BGS as we added new distributors. These increases were partially offset by a decrease of $16.1 million in lower sales of our minimally invasive fracture treatment.

International

Net sales decreased $1.2, or 3.3%, for the year ended December 31, 2019, compared to the year ended December 31, 2018, primarily due to conversion from direct to indirect sales channels in several markets.

Gross profit and gross margin

(in thousands, except for percentage)	Years Ended December 31, 2019	2018	Change $	%
Gross profit				
U.S.	$224,957	$209,415	$ 15,542	7.4%
International	24,249	25,594	(1,345)	(5.3)%
Total	$249,206	$235,009	$ 14,197	

	Years Ended December 31, 2019	2018	Change
Gross margin			
U.S.	73.7%	74.0%	(0.3)%
International	69.1%	70.5%	(1.4)%
Total	73.3%	73.6%	(0.3)%

U.S.

Gross profit increased $15.5 million, or 7.4%, for the year ended December 31, 2019, compared to the year ended December 31, 2018, primarily due to the increase in sales volume. The decline in U.S. gross margin of 0.3 percentage points primarily resulted from the change in mix in products sold as well as higher amortization expense attributed to our products.

International

Gross profit decreased $1.3 million, or 5.3%, for the year ended December 31, 2019, compared to the year ended December 31, 2018, primarily due to the decrease in sales. The decline in International gross margin of 1.4 percentage points is primarily due to the increased proportional mix of sales made through distributors compared to our direct sales team.

Selling, general and administrative expense

(in thousands, except for percentage)	Years Ended December 31, 2019	2018	Change $	%
Selling, general and administrative expense	$198,475	$191,672	$ 6,803	3.5%

Selling, general and administrative expense increased $6.8 million, or 3.5%, for the year ended December 31, 2019, compared to the year ended December 31, 2018, due to:

- Increase in strategic transactions and consulting expenses $4.9 million
- Increase in compensation related expenses $1.2 million

Research and development expense

(in thousands, except for percentage)	Years Ended December 31, 2019	2018	Change $	%
Research and development expense	$11,055	$ 8,095	$ 2,960	36.6%

Research and development expense increased $3.0 million or 36.6% primarily due to the Development Agreement for MOTYS and our B.O.N.E.S. clinical study.

Change in fair value of contingent consideration

(in thousands, except for percentage)	Years Ended December 31, 2019	2018	Change $	%
Change in fair value of contingent consideration	$ —	$ (739)	$ 739	100.0%

There was no change in the fair value of contingent consideration in 2019. The change in fair value of contingent consideration for the year ended December 31, 2018 was primarily driven by lower forecasted sales in subsequent years for certain BGS products as well as the actual 2018 sales being lower than those estimated at December 31, 2017. These were partially offset by interest on discounted cash flows.

Restructuring costs

(in thousands, except for percentage)	Years Ended December 31, 2019	2018	Change $	%
Restructuring costs	$ 575	$ 1,373	$ (798)	(58.1)%

Restructuring costs decreased $0.8 million, or 58.1%, for the year ended December 31, 2019, compared to the year ended December 31, 2018. The charges in 2019 and 2018 resulted from a reduction in headcount and the closing of offices in certain countries as we shifted to an indirect distribution model with more of the expense incurred in 2018.

Depreciation and amortization

(in thousands, except for percentage)	Years Ended December 31, 2019	2018	Change $	%
Depreciation and amortization	$ 7,908	$ 8,615	$ (707)	(8.2)%

Depreciation and amortization during 2019 remained consistent with 2018 as it slightly decreased $0.7 million, or 8.2%, during the comparable time periods.

Loss on impairment of intangible assets

During 2018, we decided to stop selling a specific BGS product and fully wrote off the related intangible asset, resulting in an impairment charge of $0.5 million.

Other expense

(in thousands, except for percentage)	Years Ended December 31, 2019	2018	Change $	%
Interest expense	$21,579	$19,171	$ 2,408	12.6%
Other (income) expense	$ (75)	$ 226	$ (301)	NM

Interest expense increased $2.4 million, or 12.6%, for the year ended December 31, 2019, compared to the year ended December 31, 2018, primarily due to the December 2019 refinancing resulting in a write-off of various deferred loan costs and discount related to the 2016 Credit Agreement.

Income tax expense

(in thousands, except for percentage)	Years Ended December 31, 2019	2018	Change $	%
Income tax expense	$ 1,576	$ 1,664	$ (88)	(5.3)%
Effective tax rate	16.3%	27.2%		(10.9)%

Income tax expense remained consistent year over year. Our change in effective tax rate is the result of Bioventus LLC's pass-through structure for U.S. income tax purposes, while being treated as taxable in certain states and various foreign jurisdictions as well as for certain subsidiaries.

Segment Adjusted EBITDA

Adjusted EBITDA for each of our reportable segments is as follows:

(in thousands, except for percentage)	Years Ended December 31, 2019	2018	Change $	%
U.S.	$71,673	$67,480	$ 4,193	6.2%
International	$ 7,515	$ 4,691	$ 2,824	60.2%

U.S.

Adjusted EBITDA increased $4.2, or 6.2%, during the comparable time periods. The increase was primarily the result of the increase in gross profit, excluding depreciation and amortization in cost of sales, resulting from the increase in sales. This increase was partially offset by the related increase in commissions, higher compensation expenses, increased consulting and legal expenses related to improving certain business processes.

International

Adjusted EBITDA increased $2.8, or 60.2%, during the comparable time periods. The increase was primarily the result of the restructuring that began in late 2018 resulting in lower personnel expenses and a decline in various other costs due to the closure of offices. These increases in Adjusted EBITDA were partially offset by the decrease in gross profit, excluding depreciation and amortization in cost of sales, resulting from the decrease in and mix of sales due to conversion from direct to indirect sales channels in several markets.

Liquidity and Capital Resources

Overview

Our principal liquidity needs have historically been for acquisitions, working capital, research and development, clinical trials, and capital expenditures. We expect these needs to continue as we develop and commercialize new products and further our expansion into international markets. We believe that our existing cash and cash equivalents, borrowing capacity under our revolving credit facility, cash flow from operations and net proceeds from this offering will be enough to meet our anticipated cash requirements for at least the next twelve months. We may require additional liquidity as we continue to execute our business strategy. Negative impacts to our liquidity would include a decline in sales of our products, including declines due to changes in our

customers' ability to obtain third-party coverage and reimbursement for procedures that utilize our products, increased pricing pressures resulting from intensifying competition and cost increases, as well as general economic and industry factors. We anticipate that to the extent that we require additional liquidity, we will obtain funding through the incurrence of other indebtedness, additional equity financings or a combination of these potential sources of liquidity. In addition, we may raise additional funds to finance future cash needs through receivables or royalty financings or corporate collaboration and licensing arrangements. If we raise additional funds by issuing equity securities or convertible debt, our stockholders will experience dilution. Debt financing, if available, would result in increased fixed payment obligations and may involve agreements that include covenants limiting or restricting our ability to take specific actions, such as incurring additional debt, making capital expenditures or declaring dividends. If we raise additional funds through collaboration and licensing arrangements with third parties, it may be necessary to relinquish valuable rights to our products, future revenue streams or product candidates, or to grant licenses on terms that may not be favorable to us. The covenants under our credit agreement limit our ability to obtain additional debt financing. We cannot be certain that additional funding will be available on acceptable terms, or at all. Any failure to raise capital in the future could have a negative impact on our financial condition and our ability to pursue our business strategies.

After the completion of this offering, Bioventus Inc. will be a holding company and will have no material assets other than its ownership of LLC Interests. Bioventus Inc. has no independent means of generating revenue. The limited liability company agreement of Bioventus LLC that will be in effect at the time of this offering provides for the payment of certain distributions to the Continuing LLC Owner and Bioventus Inc. in amounts sufficient to cover the income taxes imposed on such members with respect to the allocation of taxable income from Bioventus LLC as well as to cover Bioventus Inc.'s obligations under the Tax Receivable Agreement. Additionally, in the event Bioventus Inc. declares any cash dividend, we intend to cause Bioventus LLC to make distributions to Bioventus Inc., in an amount sufficient to cover such cash dividends declared by us. Deterioration in the financial condition, earnings, or cash flow of Bioventus LLC and its subsidiaries for any reason could limit or impair their ability to pay such distributions. In addition, the terms of our financing arrangements, including the 2019 Credit Agreement, contain covenants that may restrict Bioventus LLC and its subsidiaries from paying such distributions, subject to certain exceptions. Further, Bioventus LLC is generally prohibited under Delaware law from making a distribution to a member to the extent that, at the time of the distribution, after giving effect to the distribution, liabilities of Bioventus LLC (with certain exceptions), as applicable, exceed the fair value of its assets. Subsidiaries of Bioventus LLC are generally subject to similar legal limitations on their ability to make distributions to Bioventus LLC. See "Dividend Policy" and "Risk Factors—Risks Related to Our Organizational Structure—Our principal asset after the completion of this offering will be our interest in Bioventus LLC, and, accordingly, we will depend on distributions from Bioventus LLC to pay our taxes and expenses, including payments under the Tax Receivable Agreement. Bioventus LLC's ability to make such distributions may be subject to various limitations and restrictions." If we do not have sufficient funds to pay taxes or other liabilities or to fund our operations, we may have to borrow funds, which could materially adversely affect our liquidity and financial condition and subject us to various restrictions imposed by any such lenders. To the extent that we are unable to make payments under the Tax Receivable Agreement for any reason, such payments generally will be deferred and will accrue interest until paid; provided, however, that nonpayment for a specified period may constitute a material breach of a material obligation under the Tax Receivable Agreement and therefore accelerate payments due under the Tax Receivable Agreement. See "Certain relationships and related party transactions—Tax Receivable Agreement." In addition, if Bioventus LLC does not have sufficient funds to make distributions, our ability to declare and pay cash dividends will also be restricted or impaired. See "Risk Factors—Risks related to this offering and ownership of our Class A common stock" and "Dividend policy."

In addition, under the Tax Receivable Agreement, we will be required to make cash payments to the Continuing LLC Owner equal to 85% of the tax benefits, if any, that we actually realize (or in certain circumstances are deemed to realize), as a result of (1) increases in the tax basis of assets of Bioventus LLC resulting from (a) any future redemptions or exchanges of LLC Interests described under "Certain relationships and related party transactions—Bioventus LLC Agreement—LLC Interest Redemption Right," and (b) certain distributions (or deemed distributions) by Bioventus LLC and (2) certain other tax benefits arising from payments under the Tax Receivable Agreement. We expect the amount of the cash payments that we will be required to make under the Tax Receivable Agreement will be significant. The actual amount and timing of any payments under the Tax Receivable Agreement will vary depending upon a number of factors, including the

timing of redemptions or exchanges by the Continuing LLC Owner, the amount of gain recognized by the Continuing LLC Owner, the amount and timing of the taxable income we generate in the future, and the federal tax rates then applicable. Any payments made by us to the Continuing LLC Owner under the Tax Receivable Agreement will generally reduce the amount of overall cash flow that might have otherwise been available to us. See "Risk Factors—Risks related to our organizational structure and the Tax Receivable Agreement—The Tax Receivable Agreement with the Continuing LLC Owner requires us to make cash payments to it in respect of certain tax benefits to which we may become entitled, and we expect that the payments we will be required to make could be significant."

Nine Months Ended September 26, 2020 compared to the Nine Months ended September 28, 2019

Cash and cash equivalents, as of September 26, 2020, totaled $72.5 million compared to $64.5 million at December 31, 2019. The increase in cash was primarily due to the following:

	Nine Months Ended		Change	
(in thousands)	September 26, 2020	September 28, 2019	$	%
Consolidated statement of cash flow data:				
Net cash provided by (used in):				
Operating activities from continuing operations	$ 46,752	$ 21,329	$ 25,423	119.2%
Investing activities from continuing operations	(18,961)	(7,348)	(11,613)	158.0%
Financing activities	(19,691)	(11,640)	(8,051)	69.2%
Discontinued operations	(228)	(1,663)	1,435	(86.3)%
Effect of exchange rate changes on cash and cash equivalents	86	171	(85)	(49.7)%
Net change in cash and cash equivalents	$ 7,958	$ 849	$ 7,109	NM

Operating Activities

Cash flows from operating activities from continuing operations increased $25.4 million during the nine months ended September 26, 2020 compared to the nine months ended September 28, 2019 due to collections on accounts receivables staying strong while selling, general and administrative expenses declined. We experienced lower travel expense payments resulting from the near halting of all travel, a reduction in compensation related expenses due to the decline in sales and increased cash savings from cost cutting measures. We also received stimulus payments from government entities while we purchased less inventory due to the decline in sales. In addition, our interest expense was significantly lower during the nine months ended September 26, 2020 due to the December 2019 refinancing.

Investing Activities

Cash flows used in investing activities increased $11.6 million during the nine months ended September 26, 2020 compared to the nine months ended September 28, 2019 primarily due to the $16.6 million payment in connection with the 2020 CartiHeal investment partially offset by the $6.0 million purchase of distribution rights during the nine months ended September 28, 2019.

Financing Activities

Cash flows used in financing activities increased $8.1 million during the nine months ended September 26, 2020 compared to the nine months ended September 28, 2019 primarily due to the $5.7 million increase in
distribution to members as well as the $2.4 million increase in debt payments.

Credit Facilities

As of September 26, 2020, there had been no material changes to our credit facilities as disclosed in our audited consolidated financial statements for the year ended December 31, 2019. In March 2020, as a precautionary measure and in order to increase our cash position and preserve financial flexibility in view of the uncertainty resulting from the COVID-19 pandemic, we drew down $49.0 million on our revolving credit facility. On September 24, 2020, we repaid all borrowings outstanding under our revolving credit facility.

Other

For information regarding Commitments and Contingencies, see Note 8 to the September 26, 2020 Notes to the Unaudited Condensed Consolidated Financial Statements contained herein.

Year ended December 31, 2019 compared to the Year ended December 31, 2018

	Years Ended December 31,		Change	
	2019	2018	$	%
Consolidated statement of cash flow data:				
Net cash provided by (used in):				
Net cash provided by operating activities from continuing operations	$ 42,545	$ 52,310	$ (9,765)	(18.7)%
Net cash used in investing activities from continuing operations	(7,912)	(6,061)	(1,851)	(30.5)%
Net cash used in financing activities	(10,951)	(13,256)	2,305	17.4%
Net cash used in discontinued operations	(1,832)	(7,163)	5,331	74.4%
Effect of exchange rate changes on cash and cash equivalents	(104)	(160)	56	35.0%
Net change in cash and cash equivalents	$ 21,746	$ 25,670	$ (3,924)	(15.3)%

Operating activities

Net cash provided by operating activities from continuing operations decreased $9.8 million during the year ended December 31, 2019 compared to the year ended December 31, 2018. The decrease was due to the timing of cash receipts and payments, including $7.5 million paid to CMS Medicare as reimbursement for overpayments received on claims between October 1, 2012 and December 31, 2018.

Investing activities

Net cash used in investing activities increased $1.9 million during the year ended December 31, 2019 compared to the year ended December 31, 2018 primarily due to a $2.5 million increase in the acquisition of distribution rights.

Financing activities

Net cash used in financing activities decreased $2.3 million during the year ended December 31, 2019 compared to the year ended December 31, 2018 primarily due to the receipt of $3.9 million in net cash proceeds from the December 2019 refinancing, which was partially offset by $1.3 million in additional distributions to members.

Indebtedness

On December 6, 2019, we entered into the 2019 Credit Agreement. The 2019 Credit Agreement is comprised of our $200.0 million term loan and our $50.0 million revolving credit facility. All obligations under the 2019 Credit Agreement are guaranteed by certain of our wholly owned domestic subsidiaries and secured by substantially all our and the guarantors' assets. The term loan and revolving credit facility mature on December 6, 2024. The 2019 Credit Agreement contains various restrictive covenants, including a quarterly covenant not to exceed a consolidated leverage ratio of 3.50 to 1.00 and an interest coverage ratio of 3.00:1.00 for the prior four consecutive quarters. The leverage and interest coverage ratios are based on Consolidated EBITDA as defined in the 2019 Credit Agreement, which includes several differences from Adjusted EBITDA as calculated in this prospectus. Consolidated EBITDA as defined in the 2019 Credit Agreement permits, among other things, the exclusion of (1) certain extraordinary, unusual and/or non-recurring expenses, some of which are subject to an aggregate cap, including but not limited to severance, acquisitions, dispositions, debt refinancing/amendment and initial public offering-related, (2) foreign currency gains/losses recognized in the

statement of operations and (3) franchise, excise and property taxes recognized in the statement of operations. The restrictive covenants include limitations on (1) the declaration or payment of certain distributions on or in respect of our equity interests, (2) restrictions on acquisitions, investments and certain other payments, (3) limitations on the incurrence of new indebtedness, (4) limitations on transfers, sales and other dispositions and (5) limitations on making changes to our business and organizational documents. As of September 26, 2020, we complied with all covenants under the 2019 Credit Agreement and there was $193.3 million of outstanding borrowings under the term loan. We have one nominal outstanding letter of credit. We intend to use the net proceeds for general corporate purposes. See "Use of proceeds."

Off-balance sheet arrangements

We do not have any off-balance sheet arrangements.

Contractual obligations

Our contractual obligations as of December 31, 2019 are as follows:

	Payments Due by Period				
(in thousands)	Less than 1 year	1-3 Years	3-5 Years	More than 5 years	Total
Long-term debt obligations	$ 10,000	$ 30,000	$ 160,000	$ —	$ 200,000
Interest on long-term debt obligations	8,477	14,270	11,212	—	33,959
Operating lease obligations	1,814	3,602	3,575	7,336	16,327
Purchase obligations	16,889	—	—	—	16,889
	$ 37,180	$ 47,872	$ 174,787	$ 7,336	$ 267,175

The table above does not include certain obligations as follows:

- commitments under our multi-year exclusive supply agreements for our OA products except for those amounts that are contractually committed as of December 31, 2019. Our purchase obligations under these supply agreements are generally based upon our forecasted requirements, subject in some cases to a contractual minimum per annum;
- commitments under the Development Agreement with MTF, the Option and Equity Purchase Agreement with CartiHeal and its shareholders and the Collaboration Agreement with Harbor, for which the relevant contingent events requiring a payment under the respective agreements have not yet occurred; and
- future milestone payments pursuant to the Development Agreement with MTF, the Option and Equity Purchase Agreement with CartiHeal and its shareholders, the Collaboration Agreement with Harbor and the amended and restated license agreement, or the Q-Med License Agreement, with Q-Med and NSH, as the payment obligations under these agreements are contingent upon future events and we are unable to estimate the timing or likelihood of achieving these milestones or generating future product sales.

Quantitative and qualitative disclosures about market risk

We are exposed to various market risks, which may result in potential losses arising from adverse changes in market rates, such as interest rates and foreign exchange rates. We do not enter into derivatives or other financial instruments for trading or speculative purposes. We use derivative instruments to manage exposures to interest rates and foreign currencies. Derivatives are recorded on the balance sheet at fair value at each balance sheet date. We have elected the fair value method of accounting and do not designate whether the derivative

instrument is an effective hedge of an asset, liability or firm commitment. Changes in the fair values of derivative instruments are recognized in the consolidated statements of operations and comprehensive income (loss) in the period incurred.

Interest rate risk

Our cash and cash equivalents balance as of September 26, 2020 consisted of demand deposits and institutional money market funds held in U.S. and foreign banks. Cash equivalents consist of highly liquid investment securities with original maturities on the date of purchase of three months or less and can be exchanged for a known amount of cash. We are exposed to the market risk related to fluctuations in interest rates and market prices for our cash equivalents. We are also exposed to interest rate risk in connection with borrowings under our credit agreement, which bear interest at a floating rate based on one-month LIBOR plus an applicable borrowing margin. As of September 26, 2020, a 1.0% increase in interest rate would result in $9.0 million increase in total interest payable over the remaining life of the credit agreement in the event we were to draw down the entire capacity of our revolving credit facility. For variable rate debt, interest rate changes generally do not affect the fair value of the debt instrument, but impact future earnings and cash flows, assuming other factors are constant. In the ordinary course of business, we may enter into contractual arrangements to reduce our exposure to interest rate risks.

In March 2020, we entered into an interest rate swap agreement, effective March 26, 2020 and expiring December 6, 2024 to limit our exposure to changes in the variable interest rate on our term loan. The derivative instrument was not designated as a hedge.

Foreign exchange risk management

We operate in countries other than the U.S. and are exposed to foreign currency risks. We bill most direct sales outside of the U.S. in local currencies. We expect that the percentage of our sales denominated in foreign currencies will increase in the foreseeable future as we continue to expand into international markets. When sales or expenses are not denominated in U.S. dollars, a fluctuation in exchange rates could affect our net income. We believe that the risk of a significant impact on our operating income from foreign currency fluctuations is minimal. Although we do not currently have any foreign currency hedges, we have used foreign exchange forward contracts in the past to protect against the impact of foreign currency fluctuations and may use forward contracts, derivatives or other hedges for foreign exchange risk management purposes in the future.

Effects of inflation

We do not believe that inflation has had a material effect on our results of operations during the periods presented herein.

Related parties

For a description of our related party transactions, see “Certain relationships and related party transactions.”

Recently issued accounting standards

The Company has elected to comply with non-accelerated public company filer effective dates of adoption. Therefore, the required effective dates for adopting new or revised accounting standards as described below are specific to non-accelerated public company filers, which are generally earlier than when emerging growth companies are required to adopt.

Accounting Pronouncements Recently Adopted

The Financial Accounting Standards Board, or FASB, issued Accounting Standards Update 2016-13, *Financial Instruments-Credit Losses*, or ASU 2016-13, in June 2016 that significantly changes accounting for

credit losses for most financial assets and certain other instruments that are not measured at fair value through net income. ASU 2016-13 requires that an entity measure and recognize expected credit losses for financial assets held at amortized cost and replaces the incurred loss impairment methodology in prior GAAP with a methodology that considers a broad range of information for the estimation of credit losses. The Company adopted ASU 2016-13 on January 1, 2020 prospectively and the adoption did not have a material impact on the Company's consolidated financial statements.

In August 2018, the FASB issued Accounting Standards Update 2018-15, *Intangibles-Goodwill and Other-Internal-Use Software*, or ASU 2018-15, addressing a customer's accounting for implementation costs incurred in a cloud computing arrangement, or CCA, that is considered a service contract. Under ASU 2018-15, implementation costs for a CCA should be evaluated for capitalization using the same approach as implementation costs associated with internal-use software. The capitalized implementation costs should be expensed over the term of the hosting arrangement, which includes any reasonably certain renewal periods. Capitalized implementation costs should be assessed for impairment like long-lived assets. The Company adopted ASU 2018-15 on January 1, 2020 prospectively and it had no material impact on the consolidated financial statements.

In August 2018, the FASB issued Accounting Standards Update 2018-13, *Fair Value Measurement*, or ASU 2018-13, modifying the disclosure requirements on fair value measurements and eliminates the requirement to disclose the amount of and reasons for transfers between Level 1 and Level 2 of the fair value hierarchy, the policy for timing of transfers between levels and the valuation processes for Level 3 fair value measurements. ASU 208-13 modifies certain disclosures related to investments measured at net asset value and clarifies that companies are to disclose uncertainties in measurements as of the reporting date. ASU 2018-13 requires additional disclosure related to changes in unrealized gains and losses included in other comprehensive income for recurring Level 3 fair value measurements as well as the range and weighted average, or other quantitative information that would be a more reasonable and rational method, of significant unobservable inputs used to develop Level 3 fair value measurements. The additional disclosures and description of any measurement uncertainty amendments should be applied prospectively for the most recent interim or annual period in the initial year of adoption. All other amendments should be applied retrospectively to all periods presented upon their effective date. The Company adopted ASU 2018-13 on January 1, 2020 and it did not have a material impact on its consolidated financial statements.

New Accounting Pronouncements Not Yet Adopted

In December 2019, the FASB issued Accounting Standards Update 2019-12, *Income Taxes*, or ASU 2019-12, which amended the accounting for income taxes. ASU 2019-12 eliminates certain exceptions to the guidance for income taxes related to the approach for intraperiod tax allocation, the methodology for calculating income taxes in an interim period and the recognition of deferred tax liabilities for outside basis differences as well as simplifying aspects of the accounting for franchise taxes and enacted changes in tax laws or rates and clarifies the accounting for transactions that result in a step-up in the tax basis of goodwill. ASU 2019-12 is effective for annual and interim periods beginning after December 15, 2020. Early adoption is permitted in interim or annual periods for which financial statements have not been made available for issuance. Entities that elect to early adopt the amendments in an interim period should reflect any adjustments as of the beginning of the annual period that includes that interim period. Certain amendments are to be applied prospectively while others are retrospective. The Company is currently evaluating the impact of this guidance on its consolidated financial statements.

Internal control over financial reporting

Internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with GAAP. Prior to this offering, we were a private company and we are currently in the process of reviewing, documenting and testing our internal control over financial reporting.

Presently, we are not an accelerated filer, as such term is defined by Rule 12b-2 of the Exchange Act, and therefore, our management is not presently required to perform an annual assessment of the effectiveness of our internal control over financial reporting. This requirement will first apply to our second Annual Report on Form 10-K. Our independent public registered accounting firm will first be required to attest to the effectiveness of our internal control over financial reporting for our Annual Report on Form 10-K for the first year we are no longer an "emerging growth company".

Critical accounting policies and estimates

The preparation of the consolidated financial statements requires us to make assumptions, estimates and judgments that affect the reported amounts of assets and liabilities, the disclosures of contingent assets and liabilities as of the date of the consolidated financial statements, and the reported amounts of sales and expenses during the reporting periods. Certain of our more critical accounting policies require the application of significant judgment by management in selecting the appropriate assumptions for calculating financial estimates. By their nature, these judgments are subject to an inherent degree of uncertainty. On an ongoing basis, we evaluate our judgments, including those related to inventories, recoverability of long-lived assets and the fair value of our common stock. We use historical experience and other assumptions as the basis for our judgments in making these estimates. Because future events and their effects cannot be determined with precision, actual results could differ significantly from these estimates. Any changes in these estimates will be reflected in our consolidated financial statements as they occur. While our significant accounting policies are more fully described in Note 1 to our consolidated financial statements included elsewhere in this prospectus, we believe that the following accounting policies and estimates are most critical to a full understanding and evaluation of our reported financial results. The critical accounting policies addressed below reflect our most significant judgments and estimates used in the preparation of our consolidated financial statements.

Revenue recognition

Sale of products

We derive revenue primarily from the sale of our OA joint pain treatment and joint preservation products, BGSs and minimally invasive fracture treatment. We sell these products directly to healthcare institutions, patients, distributors and dealers. We also enter into arrangements with pharmacy and health benefit managers that provide for privately negotiated rebates, chargebacks and discounts with respect to the purchase of our products. We recognize revenue at a point in time upon transfer of control of the promised product to customers in an amount that reflects the consideration we expect to receive in exchange for those products. We exclude from revenues taxes collected from customers and remitted to governmental authorities.

Revenues are recorded at the transaction price, which is determined as the contracted price net of estimates of variable consideration resulting from discounts, rebates, returns, chargebacks, contractual allowances, estimated third-party payer settlements and certain distribution and administration fees offered in our customer contracts and other indirect customer contracts relating to the sale of our products. We establish reserves for the estimated variable consideration based on the amounts earned or eligible for claim on the related sales. Where appropriate, these estimates take into consideration a range of possible outcomes, which are probability-weighted for relevant factors such as our historical experience, current contractual requirements, specific known market events and trends, industry data and forecasted customer buying and payment patterns. The amount of variable consideration is included in the transaction price only to the extent that it is probable that a significant reversal in the amount of the cumulative revenue recognized will not occur in a future period. We regularly review all reserves and update them at the end of each reporting period as needed. Adjustments arising from the change in estimates of variable consideration were not significant for the years ended December 31, 2019 and 2018.

OA joint pain treatment and joint preservation

Revenue from customers such as healthcare providers, distribution centers or specialty pharmacies is recognized at the point in time when control is transferred to the customer, typically upon shipment.

Distributor chargebacks

We have preexisting contracts with established rates with many of the distributors' customers that require the distributors to sell our product at their established rate. We offer chargebacks to distributors who supply these customers with our products. We reduce revenue at the time of sale for the estimated future chargebacks. We record chargeback reserves as a reduction of accounts receivable and base the reserves on the expected value by using probability-weighted estimates of volume of purchases, inventory holdings and historical chargebacks requested for each distributor.

Discounts and rebates

We offer retrospective discounts and rebates linked to the volume of purchases which may increase at negotiated thresholds within a contract-buying period. We reduce revenue and record the reserve as a reduction to accounts receivable for the estimated discount and rebate at the most likely amount the customer will earn, based on historical buying trends and forecasted purchases.

Bone graft substitutes

The majority of our BGS product sales are through consignment inventory with hospitals, where ownership remains with us until the hospital performs a surgery and consumes the consigned inventory. We recognize the revenue when the surgery has been performed. The customer does not have control of the product until the customer consumes it, as we are able to require the return or transfer of the product to a third-party. An unconditional obligation to pay for the product does not exist until the customer consumes it.

Minimally invasive fracture treatment

We recognize revenue from third-party payers, such as governmental agencies, insurance companies or managed care providers, when we transfer control of the Exogen system to the patient, typically when the patient has accepted the product or upon delivery. We record this revenue at the contracted rate, net of contractual allowances at the time of sale, or an estimated price based on historical data and other available information for non-contracted payers. We record contractual allowances based on probability weighting historical data and collections. We recognize revenue from patients (self-pay and insured patients with coinsurance and deductible responsibilities) based on billed amounts giving effect to any discounts and implicit price concessions. Implicit price concessions represent differences between amounts billed and the amounts we expect to collect from patients, which considers historical collection experience and current market conditions.

Settlements with third-party payers for retroactive revenue adjustments due to audits, reviews or investigations are considered variable consideration and are included in the determination of the estimated transaction price using the most likely outcome method. These settlements are estimated based on the terms of the payment agreement with the payer, correspondence from the payer and historical settlement activity, including an assessment to ensure that it is probable that a significant reversal in the amount of cumulative revenue recognized will not occur when the uncertainty associated with the retroactive adjustment is subsequently resolved. Estimated settlements are adjusted in future periods as adjustments become known (that is, new information becomes available), or as years are settled or are no longer subject to such audits, reviews and investigations. We are not aware of any claims, disputes or unsettled matters with any payer that would materially affect revenues for which we have not adequately provided for.

Product returns

We estimate the amount of returns and reduce revenue in the period the related product revenue is recognized. We record a liability for expected returns based on probability weighted historical data.

Accounts receivable, net

Accounts receivable, net are amounts billed and currently due from customers. We record the amounts due net of allowance for doubtful accounts. We maintain allowances for credit losses to provide for receivables we do not expect to collect. We base the allowance on an assessment of customer creditworthiness, historical payment experience, the age of outstanding receivables and other information as applicable. Collection of the consideration that we expect to receive typically occurs within 30 to 90 days of billing. We apply the practical expedient for contracts with payment terms of one year or less which does not consider the effects of the time value of money. Occasionally, we enter into payment agreements with patients that allow payment terms beyond one year. In those cases, the financing component is not deemed significant to the contract.

Contract assets

Contract assets consist of unbilled amounts resulting from estimated future royalties from an international distributor that exceeds the amount billed. Contract assets are included in prepaid and other current assets on the consolidated balance sheets.

Contract liabilities

Contract liabilities consist of customer advance payments or deposits and deferred revenue. Occasionally for certain international customers, we require payments in advance of shipping product and recognizing revenue resulting in contract liabilities. Contract liabilities are included in accrued liabilities on the consolidated balance sheets.

Shipping and handling

We classify amounts billed for shipping and handling as a component of net sales. The related shipping and handling fees and costs as well as other distribution costs are included in cost of sales. We have elected to recognize shipping and handling activities that occur after control of the related product transfers to the customer as fulfillment costs and are included in cost of sales.

Contract costs

We apply the practical expedient of recognizing the incremental costs of obtaining contracts as an expense when incurred as the amortization period of the assets that we otherwise would have recognized is one year or less. These incremental costs include our sales incentive programs for the internal sales force and third-party sales agents as the compensation is commensurate with annual sales activities. These costs are included in selling, general and administrative expense on the consolidated statements of operations and comprehensive income (loss).

Use of estimates

The preparation of financial statements in accordance with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, and the disclosure of contingent assets and liabilities, at the date of the financial statements, as well as the reported amounts of revenues and expenses during the period. On an ongoing basis, management evaluates these estimates, including those related to contractual allowances and sales incentives, allowances for doubtful accounts, inventory reserves, goodwill and intangible assets impairment, useful lives of long lived assets, noncontrolling interest, fair value measurements, litigation and contingent liabilities, income taxes, and equity-based compensation. Management bases its estimates on historical experience, future expectations and other relevant assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from those estimates.

Fair value

We record certain assets and liabilities at fair value. Fair value is defined as the price that would be received from selling an asset or paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants at the measurement date. A three-level fair value hierarchy that prioritizes the inputs used to measure fair value is described below. This hierarchy requires entities to maximize the use of observable inputs and minimize the use of unobservable inputs. Assets and liabilities are categorized based on the lowest level that is significant to the valuation.

The three levels of inputs used to measure fair value are as follows:

Level 1—Quoted prices in active markets for identical assets or liabilities;

Level 2—Observable inputs other than quoted prices included within Level 1, such as quoted prices for similar assets and liabilities in active markets; quoted prices for identical or similar assets and liabilities in markets that are not active; or other inputs that are observable or can be corroborated by observable market data; and

Level 3—Unobservable inputs that are supported by little or no market data. This includes certain pricing models, discounted cash flow methodologies and similar techniques that use significant unobservable inputs.

Business combinations

We record identifiable assets acquired, liabilities assumed and any noncontrolling interest in an acquiree resulting from a business combination at their estimated fair values on the date of the acquisition. We generally have third-party valuations completed for intangible assets in a business combination using a discounted cash flow analysis, incorporating various assumptions. Goodwill represents the excess of the purchase price over the estimated fair value of the net assets acquired, including the amount assigned to identifiable intangible assets. The most significant estimates and assumptions inherent in a discounted cash flow analysis include the amount and timing of projected future cash flows, discount rate used to measure the risks inherent in the future cash flows, assessment of the asset's life cycle, and competitive and other trends impacting the asset, including consideration of technical, legal, regulatory, economic and other factors. Each of these factors and assumptions can significantly affect the value of the intangible asset.

Acquired in-process research and development, or IPR&D, is the fair value of projects for which the related products have not received regulatory approval and have no alternative future use and is capitalized as an indefinite-lived intangible asset. Due to inherent uncertainty related to research and development, actual results could differ materially from the assumptions used in the discounted cash flow model. Additionally, there are risks including, but not limited to, delay or failure to receive regulatory requirements to conduct clinical trials, required market clearances, or patent issuance, and that the research and development project does not result in a successful commercial product. Development costs incurred after the acquisition are expensed as incurred. Upon receipt of regulatory approval of the related technology or product, the indefinite-lived intangible asset is accounted for as a finite-lived intangible asset and amortized on a straight-line basis over its estimated useful life. If the research and development project is abandoned, the indefinite-lived asset is charged to expense.

We recognize contingent consideration liabilities resulting from business combinations at estimated fair value on the acquisition date. Contingent consideration liabilities are revalued subsequent to the acquisition date with changes in fair value recognized in earnings. Contingent payments related to acquisitions consist of development, regulatory and commercial milestone payments, and are valued using discounted cash flow techniques. Significant estimates and assumptions required for these valuations include the probability of achieving regulatory approval under specified time frames, product sales projections under various scenarios and discount rates used to calculate the present value of the estimated payments. Changes in the fair value of contingent consideration liabilities result from changes in these estimates and assumptions. Significant judgment

is employed in determining the appropriateness of the estimates and assumptions as of the acquisition date and in post-acquisition periods.

Impairment

We evaluate goodwill and other indefinite-lived intangible assets for impairment annually during the fourth quarter, or more frequently if events or changes in circumstances indicate that the asset might be impaired. Our reporting units are U.S. and International and we analyze each reporting unit separately in our goodwill impairment evaluation. We used independent third-party valuation specialists in 2019 and 2018 to assist management in performing the annual review of goodwill for impairment as well as in April 2020 due to the COVID-19 triggering event. The specialists assist management in the determination of fair value of reporting units based upon inputs and assumptions provided by management, which management uses for its impairment assessment. We analyze all other indefinite-lived intangible assets qualitatively to determine if it is more likely than not for an impairment to exist. If we meet the criteria, we perform a quantitative analysis to determine if an impairment exists.

Goodwill

Our goodwill impairment process includes applying a quantitative impairment analysis where the fair value of the reporting unit and compare it to its carrying value (including goodwill). We determine the fair value of U.S. and International reporting units based primarily on an income approach, which incorporates the use of a discounted free cash flow analysis. The discounted free cash flow analyses is based on significant judgments, including the current operating budgets, estimated long-term growth projections and future forecasts for each reporting unit. We discount future cash flows based on a market comparable weighted average cost of capital rate for each reporting unit. The discount rates used in the discounted free cash flow analyses reflect the risks inherent in the expected future cash flows generated by the respective intangible assets. Market risk, industry risk and a small company premium has an impact on the discount rate. The value of each reporting unit is determined on a stand-alone basis from the perspective of a market participant and represents the price we estimate we would receive in a sale of the reporting unit in an orderly transaction between market participants at the measurement date. Significant judgments inherent in this analysis include estimating the amount and timing of future cash flows and the selection of appropriate discount rates, royalty rate and long-term growth rate assumptions. Changes in these estimates and assumptions could materially affect the determination of fair value for each reporting unit and for some of the reporting units and could result in an impairment charge, which could be material to our financial position and results of operations. There has been no impairment of our goodwill related to our U.S. and International reporting units since our formation.

Equity compensation

We operate two equity-based compensation plans, the MIP and Phantom Plan. We issue MIP and Phantom Plan, which allows our employees to share our future profit without granting any additional voting rights. Awards granted under the MIP and certain Phantom Plan awards granted in 2015 and thereafter, or the 2015 Phantom Plan Units, are liability-classified. Those Phantom Plan awards granted from inception in 2012 and until the grant of the 2015 Phantom Plan Units, or the 2012 Phantom Plan Units, are equity-classified, as they do not contain a put option or other features requiring them to be liability-classified. Equity compensation includes compensation expense for all equity awards made to employees that are part of continuing operations and are based on estimated fair values as of the grant date for the 2012 Phantom Plan Units and period end fair value for the MIP units and 2015 Phantom Plan Units. We recognize expense for performance-based awards when we expect them to be earned. We recognize timed-based awards over the requisite service period, which is generally the vesting period of the award. We recognize forfeitures as they occur.

We used independent third-party valuation specialists in 2019 and 2018 to assist management in performing the annual valuation of MIP and 2015 Phantom Plan Units, as well as in April 2020 due to the COVID-19

triggering event. The specialists assist management in the determination of fair value of awards granted using the Monte Carlo option pricing model. The subjective assumptions and the application of judgment in determining the fair value of the awards represent management's best estimates. If factors change and different assumptions are used, our equity compensation expense could be materially different in the future. The most significant assumptions and judgments are as follows:

- Expected volatility—We determine the expected price volatility based on the historical volatilities of our peer group, as we do not have a sufficient trading history for our units. Industry peers consist of several public companies in the medical device industry similar to us in size, stage of life cycle and financial leverage. We intend to continue to consistently apply this process using the same or similar public companies until a sufficient amount of historical information regarding the volatility of our own stock price becomes available, or unless circumstances change such that the identified companies are no longer similar to us, in which case, more suitable companies whose share prices are publicly available would be utilized in the calculation.
- Time to liquidity event—The amount of time that the awards are expected to be outstanding.
- Risk-free interest rate—We based the risk-free rate on U.S. Government Constant Maturity Treasury rates for a term corresponding to the Time to Liquidity Event.
- Expected dividend yield—We used a dividend rate of zero as we have not previously issued dividends and do not anticipate paying dividends in the foreseeable future.

The assumptions utilized to determine the fair value of the awards are indicated in the following table:

	Year ended December 31,		
	2019	2018	April 30, 2020
Expected dividend yield	0.0%	0.0%	0.0%
Expected volatility	35.0%	30.0%	55.0%
Risk-free interest rate	1.5%	2.7%	0.2%
Time to exit event (in years)	1.5	1.0	1.0

The calculation of the fair value of awards also requires an estimate of our equity value, based on inputs from management and reporting unit valuation reports prepared by the specialists during the annual goodwill impairment process.

We determined the value of our equity utilizing methodologies, approaches and assumptions consistent with the American Institute of Certified Public Accountants Practice Aid, "Valuation of Privately-Held-Company Equity Securities Issued as Compensation". Prior to the consummation of this offering, in the absence of a public trading market, our Board of Managers determines a reasonable estimate of the grant date fair value of our equity awards based on input from management and the annual valuation reports prepared by the specialists. In addition, we exercised judgment in evaluating and assessing the foregoing based on several factors including:

- the nature and history of our business;
- our historical operating and financial results;
- the market value of companies that are engaged in a similar business to ours;
- the lack of marketability of our common stock;
- the overall inherent risks associated with our business at the time awards were approved; and
- the overall equity market conditions and general economic trends.

After the closing of this offering, our board of directors will determine the grant date fair value of our equity awards based on the closing price of our common shares as reported by Nasdaq on the date of the grant.

As of September 26, 2020, we had $8.0 million of unrecognized compensation expense to be recognized over a weighted-average period of 1.3 years based on time to vest.

Income taxes

Bioventus LLC is currently a partnership for U.S. federal income tax purposes. As a partnership, taxable income or loss is generally included in the income tax returns of its members. We also have a subsidiary that operates as a C-corporation that is subject to income tax requirements and international operations that are subject to foreign income tax requirements. Additionally, Bioventus LLC is liable for various other state and local taxes. As a corporation, Bioventus Inc. will be subject to U.S. federal, state and local income taxes. We recognize the effect of income tax positions only if these positions are more likely than not to be sustained. We reflect changes in recognition or measurement in the period in which the change in judgment occurs. Upon the redemption or exchange of Bioventus LLC Units for shares of Class A common stock or cash, we will determine if we are likely to realize the resulting tax benefits. If we are, we will record (i) a deferred tax asset based on the step-up in basis resulting from the exchange and the then effective income tax rate, (ii) a payable to related party in respect of the corresponding 85% payment under the Tax Receivable Agreement and (iii) a tax benefit based on the net difference between (i) and (ii). As we realize cash tax savings, we will reduce the deferred tax asset and the payments made under the Tax Receivable Agreement will reduce the payable to related party. Further, we will evaluate the likelihood that we will realize the benefit represented by the deferred tax asset and, to the extent that we estimate it is more likely than not that we will not realize the benefit, we will reduce the carrying amount of the deferred tax asset with a valuation allowance.

Long-lived assets

Property and equipment are stated at cost and are depreciated using the straight-line method over the shorter of the asset's estimated useful life, or the lease term if related to leased property, as follows in years:

Computer software and hardware	3-5
Leasehold improvements	7
Machinery and equipment	7
Furniture and fixtures	7

We amortize finite-lived identifiable intangible assets using the straight-line method over their estimated remaining weighted average useful lives as follows in years:

	Weighted Average Useful Life
Intellectual property	17.1
Distribution rights	12.1
Customer relationships	10.0
Developed technology	5.0

We capitalize costs incurred from third-party vendors for software design, configuration, coding and testing and amortizes these costs on a straight-line basis over the estimated useful life of the product, not to exceed three years. We do not capitalize costs that are precluded from capitalization in authoritative guidance, such as preliminary project phase costs, planning, oversight, process re-engineering costs, training costs or data conversion costs.

The carrying values of property, equipment and finite lived intangible assets are reviewed for recoverability if the facts and circumstances suggest that a potential impairment may have occurred. If this review indicates that carrying values may not be recoverable, we will perform an assessment to determine if an impairment charge is required to reduce carrying values to estimated fair value. There were no events, facts or circumstances for the years ended December 31, 2019 and 2018 that resulted in any impairment charges to our property, equipment or finite lived intangible assets.

JOBS Act

We qualify as an "emerging growth company" pursuant to the provisions of the JOBS Act. For as long as we are an "emerging growth company," we may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not "emerging growth companies," including, but not limited to, not being required to comply with the auditor attestation requirements of Section 404(b) of the Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements, reduced disclosure obligations relating to the presentation of financial statements in the "Management's discussion and analysis of financial condition and results of operations" section and exemptions from the requirements of holding advisory "say-on-pay" votes on executive compensation and shareholder advisory votes on golden parachute compensation. We have availed ourselves of the reduced reporting obligations and executive compensation disclosure in this prospectus and expect to continue to avail ourselves of the reduced reporting obligations available to emerging growth companies in future filings.

In addition, an emerging growth company can delay its adoption of certain accounting standards until those standards would otherwise apply to private companies. However, we are choosing to "opt out" of such extended transition period, and as a result, we plan to comply with any new or revised accounting standards on the relevant dates on which non- emerging growth companies must adopt such standards. Section 107 of the JOBS Act provides that our decision to opt out of the extended transition period for complying with new or revised accounting standards is irrevocable.

We will continue to qualify as an emerging growth company until the earliest of:

- The last day of our fiscal year following the fifth anniversary of the date of our initial public offering;
- The last day of our fiscal year in which have annual gross revenues of $1.07 billion or more;
- The date on which we have, during the previous three-year period, issued more than $1.0 billion in non-convertible debt;
- The date on which we are deemed to be a "large accelerated filer", which will occur at such time as we (1) have an aggregate worldwide market value of common equity securities held by non-affiliates of $700 million or more as of the last business day of our most recently completed second quarter, (2) have been required to file annual and quarterly reports under the Exchange Act for a period of at least 12 months and (3) have filed at least one annual report pursuant to the Exchange Act.

BUSINESS

Overview

We are a global medical device company focused on developing and commercializing clinically differentiated, cost efficient and minimally invasive treatments that engage and enhance the body's natural healing process. We believe our non-invasive medical device and biologic products play a critical role in supporting the body's own healing mechanisms to heal or eliminate the pain caused by orthopedic conditions and problems, which we define as our active healing products. These products address an estimated $6.0 billion market opportunity across OA joint pain treatment and joint preservation, spinal fusion surgery and bone fractures, each of which is experiencing growth through multiple industry tailwinds, including an aging population, increased participation in sports and active lifestyles and a rise in obesity rates. Our devices are most often used to delay or replace the need for an elective surgical procedure and are focused on reaching patients early on in their treatment paradigm. In 2019, approximately 85% of our $340.1 million in revenues were derived from products associated with non-surgical procedures. Our products are widely reimbursed by both public and private health insurers and are sold in the physician's office or clinic, in ASCs, and in the hospital setting in the United States and across 37 countries. We have broad commercial reach across our established orthopedic customer base, which is a key strength of the company. We are focused on leveraging this significant customer base and the reach of our commercial organization to continue to grow the company by expanding our market share and product portfolio. This strategy has led to a 7.4% CAGR in revenue since 2016 and during this time period, our revenue has grown from $274.5 million to $340.1 million in 2019.

Our existing portfolio of products is grouped into three verticals based on our targeted customer focus:

- ***OA Joint Pain Treatment and Joint Preservation***. We are the largest pure play orthopedics-focused company in the OA joint pain treatment and joint preservation market. We have been the fastest growing HA participant over the last three years, driving our share to number three by revenue in the U.S. market. We offer the only complete portfolio of HA viscosupplementation therapies, including single, three and five injection regimens, for patients experiencing pain related to OA in the knee. Our HA products are all approved by the FDA through PMAs, and include:
  - (a) Durolane, a single injection therapy, was launched in the United States in 2018 and is also marketed outside the United States in more than 30 countries including Europe through a CE mark;
  - (b) GELSYN-3, a three injection therapy, was launched in the United States in 2016; and
  - (c) SUPARTZ FX, a five injection therapy, was launched in the United States in 2001.
- ***Bone Graft Substitutes.*** We are the fastest growing participant in the BGSs market and offer a broad portfolio of products including human tissue allografts and synthetics. Our BGS products can be used in conjunction with any orthopedic fixation and spinal fusion implant. They are designed to improve bone fusion rates following spinal fusion and other orthopedic surgeries and reduce the need for using the patient's own bone, which is associated with additional cost and morbidity. Our products include an allograft-derived bone graft with growth factors (OsteoAMP), a DBM, a cancellous bone in different preparations (PureBone), bioactive synthetics (Signafuse and Interface), a collagen ceramic matrix (OsteoMatrix) and two bone marrow isolation systems (CellXtract and Extractor). Our products have received either 510(k) clearance from the FDA or are marketed as Section 361 HCT/Ps. HCT/Ps regulated solely under Section 361 are human cells, tissues and cellular and tissue-based products that do not require marketing authorization to be marketed in the United States.
- ***Minimally Invasive Fracture Treatment.*** Our Exogen system is the number one prescribed device in the long bone stimulation market. It has had marketing authorization via a PMA through the FDA for over 25 years. We are the only company to utilize advanced, pulsed ultrasound technology for bone growth in delayed and nonunion fractures in all fracture locations except spine, as well as in fresh

fractures of the tibia and radius. Our Exogen system offers significant advantages over electrical based long bone stimulation systems, including a documented mechanism of action, shorter treatment times and superior nonunion heal rates. The system is also sold internationally under a CE mark for nonunions and fresh fractures and is the market-leading bone healing treatment for long bones in Japan.

Our expansive direct sales and distribution channel across our three verticals provides us with broad and differentiated customer reach, and allows us to serve physicians spanning the orthopedic continuum, including sports medicine, total joint reconstruction, hand and upper extremities, foot and ankle, podiatric surgery, trauma, spine and neurosurgery. Our OA joint pain treatment and joint preservation products and minimally invasive fracture treatment are sold by a direct sales team of approximately 240 in the United States and approximately 45 internationally. This direct sales team is complemented by approximately 20 account representatives who facilitate account access through IDNs, GPOs and payer contracting. Our BGS products are sold by 170 independent distributors in the United States, each with their own independent sales force, supported by our 15 member regionalized sales support team. We market our BGSs primarily to orthopedic spine surgeons and neurosurgeons for use in the operating room in both the hospital and ASC setting. We believe that our broad customer reach has and will continue to enable strong and durable growth in each of our verticals and provides a significant foundation for future product launches.

In addition to our current portfolio, we have a deep pipeline of new products under development, and we are pursuing the development of line extensions and expanded indications for already marketed products that address a significant market opportunity within our current customer base. On October 29, 2020, we received FDA confirmation indicating its authorization of our IND, allow us to begin a clinical trial for MOTYS, a placental tissue biologic for knee OA for which we ultimately plan to pursue a BLA. We have recently entered into an option and equity purchase agreement with CartiHeal, which provides us with the option to acquire CartiHeal and its Agili-C technology, which we believe is the only off-the-shelf scaffold implant designed to address osteochondral defects in the knee. CartiHeal expects to submit a PMA seeking FDA approval of Agili-C in the fourth quarter of 2021, which was granted breakthrough device designation by the FDA in the fourth quarter of 2020 for the treatment of certain knee-joint surface lesions. We have also entered into an exclusive Collaboration Agreement with Harbor for purposes of commercializing PROcuff, a rotator cuff tissue repair product, and we anticipate filing a request for 510(k) clearance in either the second or third quarter of 2022. We intend to launch OsteoAmp Flowable in 2021 for use in minimally invasive spine procedures. Additionally, we are currently conducting clinical studies of our Exogen system pursuant to an IDE from the FDA, and we plan to use data from these studies to seek approval for expanded indications with respect to fresh fractures. We intend to leverage the clinical data to support payer coverage in this area. We submitted the PMA supplement for the first proposed label expansion in December 2020.

We have grown our total net sales from $319.2 million for the year ended December 31, 2018 to $340.1 million for the year ended December 31, 2019. Our total net sales declined from $242.6 million for the nine months ended September 28, 2019, to $222.6 million for the nine months ended September 26, 2020, related to the COVID-19 pandemic. For the years ended December 31, 2019 and 2018 and the nine months ended September 26, 2020 and September 28, 2019, we had net income from continuing operations of $8.1 million $4.4 million, $12.5 million and $2.8 million, respectively. We have also grown our Adjusted EBITDA from $72.2 million for the year ended December 31, 2018 to $79.2 million for the year ended December 31, 2019. Our Adjusted EBITDA declined from $48.5 million for the nine months ended September 28, 2019 to $44.3 million for the nine months ended September 26, 2020, related to the COVID-19 pandemic. The COVID-19 pandemic and the measures imposed to contain the wide spread of the virus disrupted our business beginning in early March 2020 as healthcare systems across the U.S. were forced to limit patient visits and elective surgical procedures. The effects of the pandemic began to decrease in late April 2020 and we saw a very strong recovery for our products at the end of the second quarter as restrictions on orthopedic procedures were lifted across the United States and patients also returned to orthopedic offices. See the sections titled “Risk factors” and “Management’s discussion and analysis of financial condition and results of operations” for more information. For a reconciliation of net income (loss) from continuing operations to Adjusted EBITDA, see Note 2 to the information contained in “Prospectus summary—Summary historical and pro forma financial data.”

Our strengths

We believe that we have several key strengths that provide us with a competitive advantage:

- ***Broad customer reach and market access***. We believe we have one of the largest sales organizations in the verticals in which we operate, including a direct sales team and distributors, with a dedicated focus on OA joint pain treatment and joint preservation products, BGSs and minimally invasive fracture treatments. We believe that our broad customer reach and market access are key factors contributing to our ability to increase our market share and grow faster than our competitors. Our sales organization has a performance culture built on serving our core orthopedic patient customers and delivering our products to a variety of physicians and care settings. We serve physicians spanning the orthopedic continuum, including sports medicine, total joint reconstruction, hand and upper extremities, foot and ankle, podiatric, trauma and spine. We believe we will continue to be well-positioned in the market given our strong foundation for reimbursement and customer access, coupled with a broad portfolio of clinically differentiated products.
- ***Differentiated, market leading products across three verticals.*** We believe our portfolio of complementary, market leading products provides patients and physicians with greater flexibility in tailoring a treatment regime that best fits the patient's needs and lifestyle. Our products are most often used to delay or replace the need for an elective surgical procedure and are focused on reaching patients early on in their treatment paradigm. In 2019, approximately 85% of our $340.1 million in revenues were associated with non-surgical procedures. We have the only complete one, three and five injection portfolio in the HA viscosupplementation market in the United States, which we believe gives patients the freedom of choice and appeals to the growing preference among providers to interact with a single vendor when accessing a complete portfolio of care. We also offer a comprehensive, clinically effective and cost efficient portfolio of BGSs to meet a broad range of patient needs and procedures. Our products are designed to improve bone fusion rates and avoid the cost and risks associated with autograft following spinal fusion and other orthopedic surgeries, and can be used in conjunction with any orthopedic fixation and spinal fusion implant. Additionally, our Exogen ultrasound bone healing system is the leader in the long bone stimulation market, offering shorter treatment times, superior non-union heal rates and a documented mechanism of action. Our Exogen system also has a broad label for patient use, including established nonunions and fresh fractures to the tibia and radius.
- ***Substantial body of peer reviewed clinical evidence.*** We believe that clinical evidence is critical to demonstrating efficacy, achieving reimbursement coverage and demonstrating the value of medical products. We have invested in building evidence and support for our key offerings and product portfolio. Clinical evidence is vital to physicians as they look to make decisions about which product would best serve their patients. The safety and efficacy of our key offerings within each of our three verticals has been demonstrated by numerous clinical studies, published peer review research and clinical publications. We believe that our significant body of clinical evidence creates a competitive barrier to entry given the time and investment required to amass the amount of published data we have and is an asset that would take years for a competitor to try to replicate.
- ***Robust free cash flow conversion.*** We believe that our robust free cash flow conversion and scale enables us to invest in our business in a meaningful way. Over the last four years, we have self-funded all internal research and development and business development efforts. We define free cash flow as net cash provided by operating activities from continuing operations as presented on our consolidated statement of cash flow plus interest expense as presented on our consolidated statement of operations less purchases of property and equipment and other on our consolidated statement of cash flow. Our free cash flow conversion, defined as free cash flow divided by Adjusted EBITDA, was 78% for the year ended December 31, 2019 and 93% from 2018 through September 26, 2020. With $340.1 million in revenues for the year ended December 31, 2019, we also have scale to pursue opportunities to grow our business, including internationally to regions such as China. Our attractive cash generation has and

will continue to allow us to expand our deep pipeline of products through further internal research and development investment and additional tuck-in acquisitions that leverage our established infrastructure.

- ***Experienced management team with a track record of value creation.*** Our senior leadership team has been involved in growing large and mid-cap businesses, including through major acquisitions and integrations, public and private equity company sale transactions and strategic equity investments, as well as the development, approval and launch of new and transformative active healing products. Our team also has extensive operating experience with respect to active healing products, which includes designing clinical trials, working closely with regulatory agencies on identifying the appropriate path to market, successfully commercializing products, including securing managed care, payer or purchasing committee contracts and effectively managing our direct or distributor sales organizations.

Our growth strategy

We intend to pursue the following strategies to build a market-leading and customer-focused company centered on the OA joint pain treatment and joint preservation, BGSs and minimally invasive fracture treatments, and to continue to grow our net sales and Adjusted EBITDA:

- ***Continue to expand market share in HA viscosupplementation***. We intend to increase sales of our HA viscosupplementation therapies and extend our market leadership in this category by building on our unique positioning as the only company to offer a one, three and five injection treatment regimen and by expanding payer coverage, which we have done successfully, increasing the number of lives under contract from 6 million to 48 million between April 2017 and April 2020. This increase in lives, along with our differentiated portfolio and dedicated direct sales team, has allowed us to achieve significant market share gains over the last several years and positioned us as the largest pure play orthopedic-focused company in the U.S. HA viscosupplementation market with a market share of approximately 17%.
- ***Introduce new OA joint pain treatment and joint preservation products.*** To expand our offering beyond HA viscosupplementation therapies and build a comprehensive portfolio for the OA joint pain treatment and joint preservation, we are planning to commercially launch a range of new therapies over the next several years, including:

  (a) ***MOTYS.*** A placental tissue injectable biologic for knee OA, which we began selling in the cash pay market in the fourth quarter of 2020 as a Section 361 HCT/P pursuant to a temporary FDA policy of enforcement discretion. In parallel, we plan to pursue a required BLA premarket approval for this product, which we expect would expand insurance payment alternatives over time.

  (b) ***PROcuff.*** A bio-inductive collagen implant for regeneration of tendon tissue in the rotator cuff. We expect to file a request for 510(k) clearance in either the second or third quarter of 2022.

  (c) ***Agili-C.*** An off-the-shelf aragonite implant designed for implantation into osteochondral defects in the knee. We have an option to acquire this technology from CartiHeal upon FDA approval. CartiHeal expects to submit a PMA seeking FDA approval in the fourth quarter of 2021.
- ***Further develop and commercialize our BGS portfolio.*** We intend to grow our presence in the BGS market and expand our reach into the operating room in both ASCs and hospitals. In the near-term, we plan to maintain and selectively expand our profitable product lines by adding to our U.S. distributor base in an effort to reach significantly underpenetrated markets. Over time, we intend to launch product line enhancements and invest in the development of next-generation BGS therapies to continue to grow our market share. Consistent with this strategy, we recently launched the Signafuse Bioactive Strip and anticipate launching the OsteoAmp Flowable in 2021.
- ***Expand indications for use for our Exogen system***. We are focused on generating incremental clinical data and peer-reviewed publications to expand our indications and continue to grow our market leading

share. We are currently underway with the B.O.N.E.S. clinical studies, which are aimed at generating data to support label expansion in additional bone types and expanded reimbursement for the treatment of fresh fractures in patients at risk of nonunion due to certain comorbidities, such as diabetes or obesity. We commenced patient enrollment to study three specific bones in 2017 and expect a rolling release of data starting in late 2020. Depending on the results from our studies, we plan to submit a total of three PMA supplements to the FDA, the first of which was submitted in December 2020 seeking approval for the adjunctive treatment of acute and delayed metatarsal fractures to reduce the risk of non-union. We plan to submit the second PMA supplement in the second quarter of 2022 and the third PMA supplement in either the third or fourth quarter of 2023.

- ***Invest in research and development.*** We are focused on internal research and development to broaden our portfolio of therapies to manage OA joint pain and joint preservation, expand our Exogen system product label and undertake clinical research to support commercialization of our next-generation of BGS products. We see significant opportunity to develop innovative and clinically differentiated products internally with our qualified research and development team. We rely on a team of 40 highly trained individuals to develop new products, conduct clinical investigations and help educate health care providers using our products. Our research and development team is comprised of 15 members holding PhDs and 22 members with more than 15 years of experience in the medical device industry. We collaborate with academic centers of excellence, leading contract research organizations and other industrial groups to complement and expedite execution of our research and development programs and minimize fixed costs.
- ***Pursue business development opportunities.*** Consistent with our track record of partnerships and acquisitions of MOTYS, PROcuff and CartiHeal, we intend to continue to pursue business development opportunities that leverage our significant customer presence across orthopedics, broaden our portfolio and increase our global footprint. We will continue to search for clinically differentiated and cost-effective products and technologies that also balance our portfolio in terms of risk and time to market.
- ***Opportunistically grow our international markets.*** We intend to focus our international business on markets where our existing portfolio can maintain profitable growth over time, either through direct or distributor based channels. For example, we launched OsteoAMP in Canada in 2020, where Durolane and Exogen already had a market leading presence. We plan to selectively expand to new markets with Durolane, Exogen and our BGSs and intend to pursue further opportunities in the Asia Pacific markets. In particular, China represents an attractive and exciting market given its large and aging population as well as its rising middle class. We are adding a management team in China and will be creating a legal entity as we seek approval from the China Food and Drug Administration for Durolane, which we believe will be facilitated by the successful completion of our Chinese randomized controlled trial, or RCT.

Our products

We offer a diverse portfolio of active healing products to serve physicians spanning the orthopedic continuum, including sports medicine, total joint reconstruction, hand and upper extremities, foot and ankle, podiatric surgery, trauma, spine and neurosurgery, in the physician’s office or clinic, ASCs or in the hospital setting.

Our portfolio of products is grouped into three verticals based on clinical use: (i) OA joint pain treatment and joint preservation, (ii) BGSs and (iii) minimally invasive fracture treatment.

OA joint pain treatment and joint preservation

Knee OA is a degenerative condition that is chronic in nature and is characterized by gradual breakdown and destruction of the cartilage in the knee. This condition develops over years and is often found in patients who

exhibit joint malalignment, have had a joint injury, or are overweight. The disease can involve joint inflammation and results in symptoms that include redness, warmth, swelling, stiffness, tenderness, limited range of motion and pain. As the condition advances, the knee joint gradually loses cartilage tissue and the cartilage layer attached to the bone deteriorates to the point where eventually the bone becomes exposed.

Knee OA is one of the five leading causes of disability among U.S. adults with an estimated 14 million individuals in the United States suffering from symptomatic knee OA. The prevalence of knee OA has increased over the past several decades in the United States, in line with the aging population and the growing obesity epidemic. Currently, the U.S. Census Bureau projects that nearly one in five U.S. residents will be aged 65 and older by 2030. As the chances of developing knee OA increase with each decade of life, we expect the number of individuals with knee OA to increase as the U.S. population as a whole becomes older. In addition, the Centers for Disease Control and Prevention, or CDC, estimates that one-third of the U.S. population is considered obese, and studies have shown that nearly two out of every three people who are obese will likely develop symptomatic knee OA in their lifetime. Furthermore, a study in the *American Journal of Epidemiology* has also shown that obese patients have approximately a four- to five-times greater chance of developing knee OA than non-obese patients. Accordingly, we believe that the number of individuals suffering from symptomatic knee OA in the United States will continue to grow.

Furthermore, costs due to hospitalizations for total knee replacements in patients with severe knee OA in the United States are estimated to be approximately $40 billion annually, underscoring the need for non-surgical treatments for this prevalent chronic condition.

Although there is no cure for knee OA, several non-surgical options for treatment exist, such as weight reduction, physiotherapy, physical exercise and braces for functional assistance. Pharmacological therapy is often prescribed for symptoms of pain. Among these therapies are off-the-shelf oral analgesics, such as acetaminophen and nonsteroidal anti-inflammatory drugs, topical nonsteroidal anti-inflammatory drugs and intra-articular corticosteroid injections. Oral nonsteroidal anti-inflammatory drugs have well-known toxicities, with the potential for adverse gastrointestinal effects. Intra-articular corticosteroid injections have been shown to cause toxic effects in the joint, and a clinical study conducted by McAlindon et al. in 2017 observed that repeated injection of corticosteroids into patients' knees caused a measurable and significant loss in cartilage tissue. Furthermore, the pain relief provided by intra-articular corticosteroid injections is often short-lived (approximately three months), as observed by Bannuru et al. in a 2009 meta-analysis.

HA is a major component of the extracellular matrix in almost all living tissue that is produced naturally by the human body and is concentrated in the joints, cartilage and skin. HA is a natural lubricant and a major component of synovial fluid and articular cartilage and has an important anti-inflammatory role, causing inhibition of tissue destruction and facilitating tissue healing. Viscosupplementation is a procedure in which HA is injected into the joint. Within the United States, the FDA has approved the use of HA injections for treatment of pain caused by knee OA. Outside of the United States, HA viscosupplementation is used for treatment of OA in other joints in addition to the knee, such as the hip, ankle, shoulder elbow and small joints.

The treatment regimen for HA viscosupplementation therapies involves injections in the knee, with the number of injections depending on the type of formulation, the technology used to chemically modify HA to increase its longevity, as well as the preference of the patient and physician. Pain relief is usually experienced within four to twelve weeks and the effect has been shown to last up to six months. The safety of viscosupplementation has been established- infrequent potential side effects of knee OA injections include joint swelling and pain. Injection schedules vary from one to five injections and patients are generally advised to repeat the injection schedule if they are satisfied with the previous injection course. In a 2016 study, Bannuru et al. observed multiple cycles of HA viscosupplementation treatment to be safe and effective. A 2015 study conducted on claims data and published in *PLoS ONE* showed that HA injections are associated with significant delay in total knee replacement. In the cohort evaluated in this study, patients who received no HA viscosupplementation therapy had a median time-to-total knee replacement of approximately four months. With

one course of HA viscosupplementation therapy, the median time to total knee replacement increased to more than 12 months and with more than five courses this number increased to 38 months, suggestive of a significant clinical benefit from HA injections.

In 2019, there were an estimated 2.4 million HA viscosupplementation procedures performed in the United States, representing approximately a $1 billion market size across single, three and five injection treatments. The $476.0 million single injection market has a projected 6.5% CAGR from 2019 to 2024 driven by economic advantages and greater patient convenience and compliance. The market opportunity for the $405.0 million three injection market has a projected CAGR decline of (3.1)% and the $113.0 million five injection market has a projected CAGR decline of (13.6)% from 2019 to 2024. However, we believe the multi-injection treatment market continues to be viable as there is a pool of patients that will continue to prefer these treatment protocols.

We have the only complete one, three and five injection portfolio in the HA viscosupplementation market in the United States with Durolane, GELSYN-3 and SUPARTZ FX.

Product	Description	Regulatory pathway	Region where marketed(1)
DUROLANE hyaluronic acid, stabilized single injection	Single injection HA viscosupplementation therapy	• PMA • Device approval by Health Canada • CE mark and other registrations(2)	• United States • Canada • Europe
GELSYN-3 3-injection hyaluronic acid treatment	Three injection HA viscosupplementation therapy	• PMA	• United States
SUPARTZ FX sodium hyaluronate	Five injection HA viscosupplementation therapy	• PMA	• United States

(1) We maintain exclusive distribution agreements with respect to Durolane, GELSYN-3 and SUPARTZ FX in the United States. We maintain exclusive distribution agreements and own certain assets with respect to Durolane outside the United States.

(2) Durolane is also approved for marketing in Argentina, Australia, Brazil, Columbia, India, Indonesia, Jordan, Malaysia, Mexico, New Zealand, Russia, Switzerland, Taiwan, Turkey and the UAE.

Single Injection Therapy

Durolane is a sterile, transparent and viscoelastic gel that is a single injection therapy that is indicated for the symptomatic treatment of OA in the knee in the United States. Durolane is also indicated for the hip, ankle and shoulder, as well as for treatment of other small orthopedic joints outside the United States. Durolane contains high levels of HA and is injected directly into the joints affected by OA to relieve pain and restore lubrication and cushioning. This may improve joint function and help to potentially avoid or delay knee replacement surgery.

Physicians administer Durolane to the affected knee joint in a single injection and it has been observed to provide a benefit for pain reduction in patients with OA in the knee for up to 26 weeks. Durolane's injection schedule results in economic advantages and greater patient convenience and compliance compared to other HA viscosupplementation therapies which require weekly injections over a period of three to five weeks. For example, we believe that changes in physician visiting patterns, as a result of the COVID-19 pandemic, have led to increased preference for single injection therapies.

Durolane is highly purified and based upon a natural and patented non-animal stabilized HA, or NASHA, expanding use to patients who are allergic to animal derived solutions.

Comparison of major FDA-approved single injection HA viscosupplementation therapies

Product *Manufacturer or distributor*	**Indication**	**Source and process**	**Active ingredient / treatment dosage**	**Duration**
DUROLANE® hyaluronic acid, stabilized single injection *Bioventus*	OA of the knee	Non-animalstabilized HA	NASHA / (60 mg)	Six months
Synvisc-One *Sanofi S.A.*	OA of the knee	Animal sourced Hylan A and Hylan B polymers	Hylan G-F 20 / (48 mg)	Six months
Monovisc *DePuy Orthopaedics, Inc.*	OA of the knee	Non-animal cross-linked sourced HA	2.2% sodium hyaluronate / (88 mg)	Six months
Gel-One *Zimmer Biomet Holdings, Inc.*	OA of the knee	Animal sourced HA	1.0% sodium hyaluronate /(30 mg)	Three months

Durolane clinical data

Durolane's proprietary stabilizing technology substantially extends the amount of time it remains in the joint. Multiple studies have been conducted to determine Durolane's half-life, which is the amount of time needed for 50% of the injected material to be broken down and excreted from the body.

In one study, Durolane's half-life in the joint was studied in a rabbit model. Results showed the Durolane remained in the joint with an observable half-life of 32 days, substantially longer than the half-lives of Synvisc and unmodified HA, as determined in comparable studies, which were 40 hours and less than 24 hours, respectively.

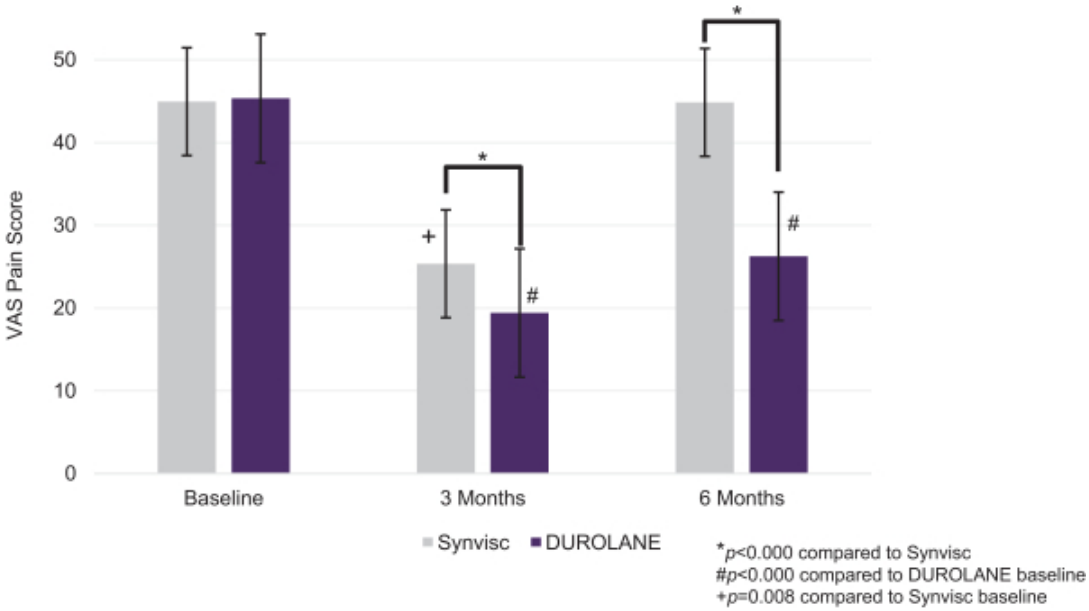
The long half-life of Durolane was also observed in the 2002 Lindqvist et al. human study where six healthy volunteers were given a single injection of Durolane that contained a radioactive isotope that could be traced, allowing scientists to measure Durolane's elimination from the body over time. The results showed a 30-day half-life, indicative of the expected long residence time in the joint due to Durolane's proprietary stabilizing technology and pre-clinical studies.

In terms of efficacy, Durolane has been directly compared against the main intra-articular therapeutic options available for managing osteoarthritic pain: SUPARTZ FX, a five injection product, Synvisc One, a single injection product and methylprednisolone acetate, an intra-articular corticosteroid.

In a multi-center randomized, blinded, controlled trial of 349 patients with mild-to-moderate knee OA, Durolane was compared with SUPARTZ FX. This 2015 Zhang et al. study concluded that one injection of Durolane was non-inferior to five weekly injections of SUPARTZ FX in terms of pain, stiffness, physical function and global self-assessment.

In an independent, investigator-initiated randomized, controlled study involving 213 patients with mild-to-moderate knee OA, Durolane was further compared to Synvisc-One. After following up with the patients over a span of 12 months following the treatment, the results from this 2013 McGrath et al. study showed that Durolane produced significantly more durable pain relief effects than Synvisc-One, while also providing longer-lasting improvements in range of motion and a reduction in the use of pain medication for study participants.

Greater Reduction in Knee Pain versus Synvisc-One



(n=168)
Mean values +/- standard deviation

In a separate prospective, multi-center, randomized, active-controlled, double-blind, non-inferiority clinical trial with 442 enrolled patients with knee OA, it was observed that single injection Durolane was well tolerated and non-inferior compared to the corticosteroid methylprednisolone acetate at twelve weeks. Methylprednisolone acetate is a steroid injectable formulation used to treat pain and swelling that occurs with OA and other joint disorders. The effect size for pain, physical function and stiffness scores favored Durolane over methylprednisolone acetate from twelve to 26 weeks. The benefit of Durolane was maintained through 26 weeks, while that of methylprednisolone acetate declined during the same period. An additional injection of Durolane at 26 weeks conferred improvements through 52 weeks without increased sensitivity or risk of complications compared to the initial injection. One subset of 31 patients treated with Durlane remained pain free after six months from the first injection and did not elect to receive a second injection.

As of September 26, 2020, over 2 million injections of the Durolane formulation have been safely administered globally since its international launch in 2006. We launched Durolane in the United States in March 2018 and have owned certain Durolane assets outside of the United States relating to trademark, product registrations and clinical data since November 2015.

Three Injection Therapy

GELSYN-3 is an FDA-approved sterile, buffered solution of highly purified sodium hyaluronate that is administered as a three injection HA viscosupplementation therapy. It is indicated for the treatment of pain due to knee OA in patients who have failed to respond adequately to conservative non-pharmacologic therapy and simple analgesics. The solution treats knee OA by providing temporary replacement for the diseased synovial fluid and restoring lubricity of bearing joint surfaces. Physicians administer GELSYN-3 to the affected knee joint once a week for three consecutive weeks. GELSYN-3 provides relief of knee pain and may help delay the need for total knee replacement surgery. GELSYN-3 is derived from bacterial fermentation, is highly purified and does not involve the use of animal products, thereby reducing the potential risk of an immune response following

injection. We currently market GELSYN-3 in the United States. As of September 26, 2020, approximately 750,000 injections of the GELSYN-3 HA formulation have been safely administered in the United States since its launch in 2016.

GELSYN-3 clinical data

The safety and efficacy of GELSYN-3 was assessed in a prospective, multicenter, randomized, controlled, double-blind, non-inferiority pivotal study that enrolled 381 adult patients with knee OA. Patients were randomized to receive three weekly injections of GELSYN-3 or three weekly injections of Synvisc 3, a three injection regimen commercialized in the United States by Sanofi S.A., with follow-up visits scheduled up to 26 weeks. GELSYN-3 was observed to be non-inferior to Synvisc 3 at the 26-week time point.

Five Injection Therapy

SUPARTZ FX is an FDA-approved sterile and viscoelastic solution of HA that is administered as a five injection HA viscosupplementation therapy. It is indicated for the treatment of pain in patients with knee OA who failed to adequately respond to conservative nonpharmacological therapy and simple analgesics. The solution treats knee OA by providing temporary replacement for the diseased synovial fluid and restoring the lubricity of the bearing joint surfaces. Physicians administer SUPARTZ FX to the affected knee joint once a week for five consecutive weeks. SUPARTZ FX may also delay the need for total knee replacement. SUPARTZ FX is derived from HA extracted from certified and veterinary inspected chicken combs. Risks can include general knee pain, warmth and redness or pain at the injection site. We currently market SUPARTZ FX in the United States. As of March 31, 2020, over over 410 million injections of the SUPARTZ FX HA formulation have been safely administered globally since its launch in 1987.

SUPARTZ FX clinical data

In a double blind, randomized, multicenter, parallel group study conducted by Day et al. in 2004 of the effectiveness and tolerance of intra-articular SUPARTZ FX compared to control (saline) treatment for knee OA, it was observed that SUPARTZ FX reduced knee pain in patients during the post-injection period by about 50% from the baseline. Of 240 patients randomized for inclusion in the study, 223 patients were evaluable for the modified intention to treat analysis and the statistically significant difference from the control was apparent after the series of injections was complete. Intra-articular SUPARTZ FX therapy was shown to be more effective than saline in mild to moderate knee OA for the 13-week post injection period of the study.

The safety and efficacy of SUPARTZ FX was observed by Strand et al. in an integrated analysis. This integrated analysis included five separate double-blind, randomized, saline-controlled trials, and included a total of 1,155 patients comparing five weekly injections of SUPARTZ FX versus a saline placebo. The pooled results from this study showed that SUPARTZ FX produced statistically significantly greater reduction from baseline in total Lequesne scores, a measure of overall function including pain. The incidence of adverse events were observed to be minimal and similar in both treatment arms. Furthermore, none of the reported adverse events were observed to be deemed treatment-related suggesting that SUPARTZ FX was safe and well-tolerated.

Comparison of FDA-approved multi-injection HA viscosupplementation therapies

Product *Manufacturer or distributor*	**Indication**	**Source and process**	**Active ingredient / total treatment dosage**	**Number of injections per course**	**Duration**
GELSYN-3 ***Bioventus***	OA of the knee	Fermented, bacterial derived HA	0.84% sodium hyaluronate (50.4 mg)	Three	Six months
SUPARTZ FX ***Bioventus***	OA of the knee	Naturally derived, purified HA	1.0% sodium hyaluronate (75/125 mg)	Three to Five	Six months
Synvisc *Sanofi S.A.*	OA of the knee	Hylan polymers, purified HA	0.8% Hylan G-F 20 (48 mg)	Three	Six months
Euflexxa *Ferring Pharmaceuticals Inc.*	OA of the knee	Fermented, bacterial derived HA	1.0% sodium hyaluronate (60 mg)	Three	Six months
Hyalgan *Fidia Farmaceutici S.p.A.*	OA of the knee	Naturally derived, purified HA	1.0% sodium hyaluronate (60 mg/100 mg)	Three to Five	Six months
Genvisc-850 *OrthogenRx, Inc.*	OA of the knee	Fermented, bacterial derived HA	1.0% sodium hyaluronate (75/125 mg)	Three to Five	Six months

Development and Clinical Pipeline

Amniotic tissue products for the treatment of OA

Collaboration and development agreement for MOTYS

On May 29, 2019, we entered into a Development Agreement with MTF to develop an injectable placental tissue product, MOTYS, for use in the OA joint pain treatment and joint preservation.

The development and commercialization of the product will take place in two stages, and we began limited commercialization of MOTYS to a cash pay only market in the fourth quarter of 2020 as a Section 361 HCT/P pursuant to the FDA's policy of enforcement discretion allowing for marketing without the required BLA approval until May 2021, while in parallel we pursue a BLA pre-market approval for the product. Once approved as a biologic, MOTYS will be eligible for health insurance reimbursement and hence gain access a broader patient population.

Given these products are currently sold in the cash pay market, there is limited industry data available on the current market for amniotic injectables. The approximately $110.7 million U.S. amniotic tissue market for orthopedic, sports and spine applications is estimated to reach approximately $271.3 million in 2023, a projected 25.1% CAGR from 2019 to 2023. We expect that demographic trends coupled with industry focus, expected positive clinical trial outcomes and potential for future coverage and reimbursement will drive further interest in amniotic tissue products.

We are planning to conduct randomized clinical trials to ultimately support the submission to the FDA of a BLA for the use of MOTYS in the OA joint pain treatment.

Based on our preclinical evidence, we believe the MOTYS formulation holds potential for mitigating OA joint pain while protecting damaged cartilage and promoting anti-catabolic and pro-anabolic events that could ultimately result in delayed disease progression in OA. We have completed extensive in vitro and in vivo studies comparing the effect of MOTYS to the clinical standard of care (steroid injections). MOTYS provided non-inferior pain relief effects to a steroid, but was superior in its effect on cartilage protection and in promotion of new tissue formation.

On October 29, 2020, we received FDA confirmation indicating its authorization of our IND and plan to initiate clinical studies by year end. Amniotic products have been extensively and safely used in clinical practice, and FDA has granted Regenerative Medicine Advanced Therapy, or RMAT, designation to other amniotic tissue products being investigated for use in OA, which enables an expedited development pathway as well as eligibility for increased and earlier interactions with FDA. We intend to submit a request for RMAT designation for MOTYS in .

Implantable for the treatment of rotator cuff injuries

Development collaboration agreement for PROcuff

On August 23, 2019, we entered into an exclusive Collaboration Agreement with Harbor to develop and license the rights to commercialize a woven-suture-collagen composite implant product, PROcuff, for the regeneration of tendon tissue.

Concurrently with the execution of the agreement, we purchased $1.0 million of shares of Harbor. As a result of Harbor's achievement of certain milestones, on October 5, 2020, we purchased $1.0 million of additional shares of Harbor.

The sole use of proceeds from these investments is for the development of the woven-suture-collagen composite implant product and we have the right to purchase the product from Harbor once it is cleared for marketing by the FDA.

According to SmartTRAK Business Intelligence, there will be an estimated 534,000 rotator cuff injuries surgically repaired in the United States in 2020, and at least one quarter of those injuries are in scope for PROcuff technology. The composite implant could also be used in additional tendon/ligament disorders in other extremities. The number of rotator cuff injuries surgically repaired in the United States is expected to grow to 802,000 procedures by 2024.

We have currently completed a pilot sheep implantation study through a collaboration with a prominent academic investigator. Results indicate that the material is well tolerated, rapidly integrated and promotes the formation of new tendon tissue at the bone tendon interface.

We expect to file a request for 510(k) clearance in either the second or third quarter of 2022. We plan to conduct post-clearance human clinical studies with the composite implant to further demonstrate the safety and efficacy of the product, and facilitate reimbursement.

Treatment of Cartilage for Osteochondral defects

CartiHeal (developer of Agili-C) investment and option and equity purchase agreement

On July 15, 2020, we made a $15.0 million equity investment in CartiHeal, a privately-held company headquartered in Israel and developer of the proprietary Agili-C implant for the treatment of joint surface lesions in traumatic and osteoarthritic joints.

We believe Agili-C is the only product in clinical development in the United States as an off-the-shelf scaffold implant that is designed to regenerate hyaline cartilage and subchondral bone simultaneously. The

associated surgical procedure is similar to osteochondral allograft implantation, but is a single-step process and is easier, faster and more cost-effective. We believe this is the first cartilage repair technology to be tested in trials designed for regulatory approval in the United States in non-OA and OA patients, potentially unlocking applications for millions of patients with knee OA and cartilage defects. We also believe Agili-C will enable the treatment of cartilage lesions in a significant population of OA patients, including those younger, active patients for whom available treatment options are limited. The FDA's grant of breakthrough device designation in the fourth quarter of 2020 for the treatment of an ICRS grade III or above knee-joint surface lesions(s), with a total treatable area of 1-7cm2, without severe osteoarthritis (Kellgren-Lawrence grade 0-3) is a promising development, as such designation may help patients receive more timely access to Agili-C by expediting its development, assessment and review by the FDA. On January 12, 2021, CMS issued a final rule under which a breakthrough device designation by the FDA also provides a streamlined pathway to national Medicare coverage for a period of four years, beginning as early as the FDA approval for the product. The approximately $110.0 million U.S. knee cartilage repair market for 2020 is estimated to reach approximately $197.0 million in 2026, a projected 10% CAGR from 2019 to 2026. We believe Agili-C also has the potential for broader indications for use in other joints, providing entrance into an approximately $1.3 billion global market for cartilage repair products designed to delay or eliminate the need for knee replacements.

In preclinical studies, based on implantation in over 200 animals, Agili-C was associated with osteochondral regeneration, good lateral integration and hyaline cartilage formation in critical size defects at 20 months when implanted in a goat, with the implant being fully resorbed between six to 20 months.

The Agili-C implant has been implanted in more than 190 patients outside the United States with follow up of more than four years and is CE marked. The implant is currently being evaluated in a pivotal study pursuant to an IDE filed with the FDA. The trial's objective is to demonstrate the superiority of the Agili-C implant over the surgical standard of care (microfracture and debridement) for the treatment of cartilage or osteochondral defects, in both osteoarthritic knees and knees without degenerative changes. The study's protocol design, which is based on feedback from multiple pre-IDE interactions with the FDA, involves broad inclusionary criteria, such as defect size, age, and etiology, multiple controls, including microfracture and debridement, and multiple pre-planned secondary endpoints. The study has an adaptive design, which allows for a maximum of 500 planned patients, includes multiple interim analyses to estimate sample size needs and includes EU, Israeli and U.S. sites.

Our CartiHeal investment follows the recently completed enrollment and reporting of interim results in CartilHeal's IDE multinational pivotal study for Agili-C.

This investment is expected to enable CartiHeal to complete the study, including all patient follow-up, and submit a PMA to the FDA. Under the equity purchase agreement, CartiHeal can secure an additional $5.0 million from us, if needed, for IDE study completion. We previously made an initial $2.5 million investment in CartiHeal in January 2018 and a subsequent investment of $0.2 million in January 2020 as part of prior CartiHeal financing rounds. Any additional investment we make will be subject to customary closing conditions.

We concurrently entered into an Option and Equity Purchase Agreement with CartiHeal and its shareholders, which provides us with an exclusive option to acquire 100% of CartiHeal's shares, or the Call Option, and provides CartiHeal with a put option that would require us to purchase 100% of CartiHeal's shares under certain conditions, or the Put Option. The Call Option is exercisable by us upon closing of the investment. The Put Option is only exercisable by CartiHeal upon pivotal clinical trial success, including achievement of certain secondary endpoints and FDA approval of the Agili-C device with a label consistent in all respects with pivotal clinical trial success.

If not previously exercised, the Call Option and the Put Option terminate 45 days following the FDA approval of Agili-C or in the event of failure of the pivotal clinical trial. We also have the right to terminate the Call Option and Put Option at any time ending 30 days after receipt from CartiHeal of the statistical report regarding the final results of the pivotal clinical trial upon payment of a breakup fee of $30.0 million.

Consideration for the acquisition of all of the shares of CartiHeal pursuant to the Call Option or Put Option would be $350.0 million, all of which would be payable at closing, with an additional $150.0 million payable upon achievement of certain sales milestones related to Agili-C.

Bone Graft Substitutes

BGSs in spinal fusion and other procedures

Bone grafting is a surgical procedure used to fuse spinal vertebrae, replace missing bones, fix bones that are damaged from trauma or problem joints, or to facilitate growing bones around an implanted device, such as a total knee replacement. The bones used in a bone graft can come from a particular patient's own body, referred to as an autograft, or from a donor, referred to as an allograft, or can be entirely man-made, referred to as a synthetic. Most bone grafts are expected to be reabsorbed and replaced as the natural bone heals over a few months.

In some spinal fusion procedures, parts of the vertebrae are removed to facilitate the procedure. The removed bone can be saved and used as the graft, known as a local autograft. Given that it is the patient's own bone, the advantage is that it will not be rejected and eliminates the need to harvest bone from elsewhere in the body. The disadvantage is that there is a limited amount of bone that can be harvested from the small spinal bones, especially as the patient gets older and their bones tend to thin and weaken.

An autograft can also be harvested from other parts of the patient's body such as the hip, rib or other areas of the spine. Iliac crest bone taken from a patient's hip has been considered the preferred bone graft material to promote successful fusion because it is easy to access, provides good quantities of cortical and cancellous bone, has natural curvatures that aid in the creation of grafts and does not carry the risk of rejection or disease transmission. The major drawback to the use of an autograft is graft-site morbidity and associated major complications such as deep infection, iliac fracture, chronic pain and arterial injury, among others. There is also extra cost associated with autograft bone grafting procedures, which face difficulties and complications such as increased operative time, blood loss, limited supply of bone graft, increased risk of subsequent pelvic fracture, peripheral nerve dysfunction causing numbness or weakness, postoperative pain and infection. Despite these potential adverse events, autograft bone grafting procedures are still performed regularly with approximately 175,000 performed in the United States in 2019.

To avoid the morbidity and cost of harvesting autograft, a number of BGSs have been developed and commercialized for orthopedic applications. There are several types of BGSs that have been developed and commercialized, including growth factors, stem cells, synthetics, DBMs and allografts.

Different BGSs are often combined in a procedure to achieve the key elements of successful bone regeneration, which include osteoinduction, osteoconduction and osteogenesis. Osteoinduction refers to the ability of an implant to stimulate bone formation based primarily on soluble growth factor signals. Osteoconduction refers to the ability of an implant to facilitate bone formation based primarily on a physical matrix or scaffold, when placed adjacent to viable bone tissue. Osteogenesis refers to the ability to facilitate new bone formation based primarily on the viable stem cells contained within the bone graft. BGSs, depending on their design, can be used entirely in place of an autograft or by extending the volume of an autograft by combining it with the BGS.

Surgeons utilize BGSs in spinal fusion, orthopedic trauma, foot and ankle, hand and wrist, hip and knee and craniomaxillofacial surgeries. Below is a brief description of these applications:

- ***Spinal fusion***. Spinal fusion surgery is indicated for several conditions, including spine trauma, tumors and degenerative disease in the cervical, thoracic and lumbar sections of the spine. The objective of spinal fusion is to create an environment that will allow bone to form a solid bony bridge across the involved spinal segments. In 2019, spinal fusion represented the largest potential indication for bone

replacement materials, accounting for 31.2%, or over 705,000 of all potential orthopedic spine bone grafting procedures. This number is expected to grow at a 3.6% CAGR from 2019 to 2024.

- ***Orthopedic trauma***. Most uses of BGSs in trauma are for fresh fracture cases, rather than nonunion, due to the nature of these injuries. The number of trauma BGS procedures performed in 2019 was estimated to be approximately 553,000 and represents 24.4% of the total orthopedic spine bone grafting procedures for that year. Trauma BGS procedures are expected to grow at a 4.0% CAGR from 2019 to 2024.
- ***Other***. BGSs are used in foot and ankle surgeries, as well as hand and wrist procedures to fill defects, span bone voids and correct alignment; in hip and knee procedures when there is bone lost to disease, infection or injury, or if the bone needs assistance integrating with surgically implanted devices; and in craniomaxillofacial surgeries to reduce fusion times and in conjunction with the use of metal plates. Excluding craniomaxillofacial surgeries, there were approximately 1,000,000 procedures performed in 2019 and this number of procedures is expected to grow at a 5.6% CAGR from 2019 to 2024.

Bone graft substitutes	U.S. 2019 market size (*in millions*)	Market CAGR (2019-2023)	Primary applications	Bioventus product offerings(1)
Allografts, DBMs and Growth factors	1,077	3.2%	Spinal fusion, trauma and other bone repair applications	Purebone, Exponent and OsteoAMP
Synthetics	534	1.5%	Spinal fusion, trauma and other bone repair applications	Signafuse, Interface and OsteoMatrix
Stem cells	395	16.1%	Spinal fusion, trauma and other bone repair applications	Distributor for other brands

Source: iData US Market report on Orthopedic Biomaterials

Procedure	Description	Procedures in 2019 (‘000)
Allograft Bone Graft Substitutes	- Harvested from cadaveric femoral or iliac crests - Depending on preparation process may exhibit osteoconductive and/or osteoinductive properties - Comes in a variety of forms including freeze-dried, fresh-frozen, morselized and cancellous chips	249
DBMs	- Allograft material obtained from cadaveric bone that is frozen, freeze-dried and devoid of mineral content - Structural matrix consisting of type-1 collagen provides osteoconductive activity and differences in demineralization process provides varying degrees of osteoinductive properties - Effective BGS for spinal fusion and other orthopedic procedures - Comes in a variety of forms including putty, gel, powder, fiber, flexible sheets or mixed with cortical chips	401
Growth Factors	- When produced through recombinant manufacturing process, allows for easy reproducibility and consistent purity of large amounts of BMP-2 and PDGF, bone-growth regulatory factors - May include allogeneic morphogenic proteins that undergo a novel tissue processing technique that utilizes angiogenic, mitogenic and osteoinductive growth factors	118

Procedure	Description	Procedures in 2019 ('000)
	- Provides access to growth factors that are naturally found within bone marrow cells	
Synthetics	- Produced from ceramics such as hydroxyapatite, beta-tricalcium phosphate and bioactive glass - Osteoconductive, biodegradable, non-immunogenic and no risk of disease transmission - Readily available in large quantities and inexpensive to manufacture - Neither osteogenic nor osteoinductive - Designed to have porosity and pore size optimized for bony ingrowth - Can be fashioned in many different sizes and shapes - Possess limited compressive strength	432
Stem Cells	- Obtained from cadaveric cancellous bone - Contains viable multipotent stem cells (mesenchymal stem cells) - Exhibits osteoinductive activity through mesenchymal stem cells -	109

Source: iData US Market report on Orthopedic Biomaterials

Our BGS product portfolio is comprised of clinically efficacious and cost effective bone graft solutions to meet a broad range of patient needs and procedures. Our products are designed to improve bone fusion rates following spinal and other orthopedic surgeries, including trauma and reconstructive foot and ankle procedures. These products include an allograft-derived bone graft with growth factors (OsteoAMP), a DBM (Exponent), cancellous bone in different preparations (PureBone), bioactive synthetics (Signafuse and Interface), a collagen ceramic matrix (OsteoMatrix) and two bone marrow isolation systems (CellXtract and Extractor).

As we build the body of clinical evidence supporting our products, we continue to look for and execute on opportunities to innovate in our BGS portfolio. To meet growing market demand and evolving surgical techniques, we continue to develop product extensions and adjust formulations. For example, we launched OsteoAMP Select in 2019 and we expect to launch OsteoAMP Flowable in 2021. We designed OsteoAMP Flowable to be moldable and easy to use, with a convenient, ready to use syringe.

Product	Indications	Description	Regulatory pathway / year launched
Allograft			
osteoamp® Allogeneic Morphogenetic Proteins	Orthopedic, neurosurgical and reconstructive bone grafting procedures	An allogeneic bone graft that is available in multiple formats (fibers, putty, sponge and granules) that is processed with bone marrow cells to maintain the wide array of growth factors present in native bone	• Section 361 HCT/P / 2009
exponent® Demineralized Bone Matrix	Posterolateral spine procedures	Derived from human allograft bone tissue and is combined with a migration-resistant resorbable carrier and formulated into a putty	• 510(k) / 2012
purebone® Demineralized and Mineralized Allograft	Orthopedic, neurosurgical and reconstructive bone grafting procedures	100% cancellous bone with compressible, elastic and sponge-like attributes, offered in filler, block and strip options, as well as mineralized chips	• Section 361 HCT/P / 2012
Synthetic			
signafuse® Bioactive Bone Graft	Standalone posterolateral spine, extremities and pelvis, as well as a bone graft extender in the posterolateral spine	Bioactive synthetic bone graft substitute comprised of a mixture of calcium phosphate granules and bioglass granules suspended in a resorbable polymer carrier that facilitates handling and delivery of the granule components to fill spaces of missing bone	• 510(k) / 2014
interface Bioactive Bone Graft	Posterolateral spine when mixed with autograft, extremities and pelvis	Bioactive synthetic bone graft in the form of irregular granules of bioglass to repair bone defects	• 510(k) / 2011
osteomatrix™ Biphasic Bone Graft	Posterolateral spine, extremities and pelvis	Next-generation mineralized two-phase calcium phosphate bone void filler comprised of a collagen scaffold designed for optimized intra-operative handling and biologic responsiveness at the defect site	• 510(k) / 2010
signafuse® Bioactive Bone Graft	Posterolateral spine, extremities and pelvis	Next-generation mineralized bone void filler comprised of bioglass and biphasic mineral granules embedded in a collagen scaffold designed for optimized intra-operative handling and biologic responsiveness at the defect site.	• 510(k) / 2020

Minimally Invasive Fracture Treatment

Bone fractures

Fractures, also known as broken bones, occur when there is a high force or impact put on a bone, most commonly from trauma resulting from sports injuries, car accidents, falls or from osteoporosis, which is bone weakening due to aging. Immediately following a fracture, patients are treated to realign the fractured bone ends. If possible or required, the affected limb is immobilized using plaster or a splint. In some cases, fractures require surgical fixation with devices such as screws, plates, rods and frames. X-rays, CT and MRI imaging are utilized to verify alignment of the bone and to assess progress towards healing.

A fracture is considered a fresh fracture during the first 14 days after the fracture occurs. After a fracture is treated, new bone tissue begins to form and bridge the gap. With modern treatment methods, most fractures heal spontaneously over the course of several months following injury. However, some fractures fail to heal even when they receive the best surgical or non-surgical treatments. This condition may be diagnosed as a nonunion fracture. Nonunions may occur due to mechanical instability of the fracture site, due to inadequate immobilization, poor blood supply, gaps in bone to bone contact, or a number of comorbidities experienced by the patient. In clinical literature, it is estimated that five to ten percent of all fractures fail to heal, often in high impact fractures or in patients that have compromised health from old age, obesity, cardiovascular disorders, arthritis, diabetes or smoking. A nonunion is considered to be established when the fracture site shows no visibly progressive signs of healing. Nonunions have a negative impact on quality of life with symptoms, such as reduced mobility, swelling, pain, tenderness, deformity and difficulty bearing weight.

Long bone stimulation systems

Patients with nonunions may undergo surgery when certain conditions occur, such as an unstable or misaligned fracture, or a larger inter-fragment gap. Some nonunions can be treated non-surgically using bone stimulation devices. We estimate the total long bone stimulation market was approximately $250.0 million in 2019 and that it will continue to grow at a 1.9% CAGR from 2019 to 2024 with the number of fractures treated with long bone stimulation devices to steadily grow from approximately 100,000 fractures treated in 2019 to 113,000 in 2024.

We offer our Exogen ultrasound bone healing system for the non-invasive treatment of established nonunion fractures and certain fresh fractures. Our Exogen system is the number one prescribed device in the long bone stimulation market. It has been sold commercially for over 25 years and is the only FDA-approved device on the market for the accelerated healing of fresh, closed posteriorly displaced distal fractures of the radius and fresh, closed or grade I open long bone fractures.

Product	Description	Regulatory pathway	Region where marketed(1)
exogen ultrasound bone healing system	Ultrasound bone healing system for nonunion fractures and fresh fractures to the tibia and radius(2)	• PMA • Device approval by Health Canada • CE mark and other registrations(2)	• United States • Canada • Europe • Japan

(1) Our Exogen system is indicated in the United States for the non-invasive treatment of established nonunions, excluding skull and vertebra, and for accelerating the time to a healed fracture for fresh, closed, posteriorly displaced distal radius fractures and fresh, closed or Grade I open long bone fractures in skeletally mature individuals when these fractures are orthopedically managed by closed reduction and cast immobilization. We own our Exogen system and market it both in and outside the United States.

(2) Exogen is also approved for marketing in Australia, Japan, New Zealand, Saudi Arabia, Turkey and the UAE.

Our Exogen system is used to administer treatment in a location of convenience, including at home or work, once daily, for 20 minutes, or as prescribed by the patient's physician, for accelerating bone healing. This therapy provides a cost-effective treatment alternative to surgical intervention for nonunions.

Our Exogen system consists of the portable device, a charger, a gel bottle and strap. The device features a transducer at the end of a coiled cord, a color screen, a power button and a mini-USB charging port to allow for recharging the battery. The transducer sends specifically-programmed low-intensity pulsed ultrasound to the fracture site through the skin and soft tissue, with little or no sensation felt by the patient during the treatment. The gel facilitates ultrasound signal transmission through the patient's skin. Our Exogen system provides an easy to use interface that tracks treatment use and promotes compliance. In a clinical study of our Exogen system, we

observed a 91% patient compliance with the treatment regimen, based on median total time of device usage. An additional support tool for the patient is Exogen Connects, a free smartphone app that provides daily automated treatment reminders and helpful healing information.

Our Exogen system utilizes low-intensity pulsed ultrasound technology to stimulate the body's natural bone healing process. The ultrasound output intensity of the device is comparable to diagnostic ultrasound intensity levels used in obstetrical sonogram procedures for fetal monitoring and is typically only one to five percent of the output intensity of conventional therapeutic ultrasound devices used for physical therapy. Some patients report experiencing a tingling sensation at the treatment site. The depth and breadth of the Exogen ultrasound signal enables it to treat superficial and deep indicated fractures. Exogen ultrasound is osteoinductive, which means it stimulates cells to differentiate into osteoblasts, or cells that make new bone. The growth of this new bone helps bridge the gap at the fracture site.

Comparison of U.S. long bone stimulation devices

Product *Manufacturer*	**Daily treatment times**	**Technology**	**Indications**
exogen® ultrasound bone healing system ***Bioventus***	20 minutes	Low-intensity pulsed ultrasound	Nonunions and select fresh fractures(2)
CMF OL1000 *DJO Global, Inc.*	30 minutes	Combined magnetic field	Nonunions
Physio-Stim *Orthofix International B.V.*	3 hours	Pulsed electromagnetic field	Nonunions
EBI Bone Healing System *Zimmer Biomet Holdings, Inc.*	10 hours	Pulsed electromagnetic field	Nonunions
OsteoGen *Zimmer Biomet Holdings, Inc.*	24 hours	Direct electrical current (implanted)	Nonunions
Orthopak 2 Bone Growth Stimulator *Zimmer Biomet Holdings, Inc.*	24 hours	Capacitive coupling	Nonunions

(1) Heal rates for fresh fracture as compared to placebo.
(2) Our Exogen system is indicated in the United States for the non-invasive treatment of established nonunions excluding skull and vertebra and for accelerating the time to a healed fracture for fresh, closed, posteriorly displaced distal radius fractures and fresh, closed or Grade I open long bone fractures in skeletally mature individuals when these fractures are orthopedically managed by closed reduction and cast immobilization.

Exogen clinical data

In a meta-analysis published by Leighton et al. in 2017 studied heal rates of many different fracture nonunions treated with our Exogen system. A total of 13 eligible studies were identified which reported success of treatment with our Exogen system in 1,441 nonunions. Overall, that analysis estimated that 82% of nonunions of at least three months in age treated with our Exogen system successfully healed. Because healing of established nonunion is not expected without treatment, these findings are compelling. Our Exogen system may be most useful in patients for whom surgery is high risk. With an observed overall average nonunion heal rate of at least 80% after treatment with our Exogen system, the study authors concluded that treatment with our Exogen system was comparable to surgical treatment for nonunion.

Additional published evidence supports the efficacy of our Exogen system in treating fracture nonunions. Established fracture nonunions rarely heal without corrective surgery, though nonunion revision surgery is expensive, invasive and the expected heal rate averages approximately 86%. In a study that looked at patient data collected over a four-year period, Zura et al. found that was that the Exogen system enhanced the heal rate among chronic nonunions and even healed fractures that had been nonunion for more than 10 years, without further surgical intervention. Heal rate was 86.2% among patients with fractures that had not healed for at least one year, 82.7% among 98 patients with chronic nonunion of greater than five years duration, and furthermore 12 patients healed after chronic nonunion of greater than 10 years. Therefore, our Exogen system offers a heal rate comparable to surgery, with fewer associated risks and morbidities.

Developmental and clinical pipeline

Ongoing Bioventus-sponsored clinical studies (B.O.N.E.S.)

While currently indicated for the treatment of both established nonunions, excluding skull and vertebrae, and certain types of conservatively managed acute fractures of the tibia and radius, our Exogen system's use in fracture care management has grown over its 20 year clinical history in both the United States and internationally. The use of our Exogen system for the management of fresh fractures has been the subject of numerous published peer reviewed research articles encompassing over 4,500 subjects. The current prescription data indicate that the product's use in routine practice of fresh fracture management is based on clinician's determination of medical necessity, in an effort to mitigate risk of progression to fracture nonunion in at-risk patients.

In order to quantify the effectiveness of our Exogen system in mitigating the risk of progression to fracture nonunion, and in an effort to obtain regulatory approval for expanded indications, we are seeking to supplement the body of clinical knowledge in an innovative population-based clinical development program, B.O.N.E.S., which stands for Bioventus Observational Non-interventional Exogen Studies. With enrollment started in late 2017, the B.O.N.E.S. clinical study design includes the parallel conduct of three independent study protocols which, taken together, are designed to prospectively include more than 3,000 Exogen-treated patients presenting with certain risk factors to be observed over the course of 9 to 12 months. Our Exogen system treated patients will be propensity matched to one or more untreated controls extracted from a real-world health claims database provided by Truven Healthcare Analytics, generating a total sample size of at least 6,000 patients. The program involves the concurrent execution of three studies on pre-specified anatomical locations, such as the tibia, scaphoid and fifth metatarsal, with the objective of determining if the use of our Exogen system mitigates risk of fracture nonunion in predisposed patients. Depending on the results from our studies, we plan to submit a total of three PMA supplements to the FDA, the first of which was submitted in December 2020 seeking approval for the adjunctive treatment of acute and delayed metatarsal fractures to reduce the risk of non-union. We plan to submit the second PMA supplement in the second quarter of 2022 and the third PMA supplement in either the third or fourth quarter of 2023.

Sales and marketing

Our expansive direct sales and distribution channel across our product portfolio provides us with broad and differentiated customer reach, and allows us to serve physicians spanning the orthopedic continuum, including sports medicine, total joint reconstruction, hand and upper extremities, foot and ankle, podiatric surgery, trauma, spine and neurosurgery. Our products are widely reimbursed by both public and private health insurers and are sold in the physician's office or clinic, ASCs, and in the hospital setting in the United States and across 37 countries. Our sales team and distributors work directly with our physician customers on a frequent basis, providing us with a significant opportunity to introduce new products and upsell from our current portfolio. We believe our sales organization will provide us with an opportunity to efficiently roll out our deep pipeline and participate in business development opportunities going forward.

Our OA joint pain treatment and joint preservation products and our minimally invasive fracture treatment products are sold by a direct sales team of approximately 240 in the United States and approximately 45

internationally. This direct team is complimented by approximately 20 account representatives who work with our sales team to provide account access through IDNs, GPOs and payer contracting. Our direct sales organization, totaling approximately 305 globally, is comprised of approximately 35 sales managers and approximately 270 members of the sales team in the field. Our sales leaders have considerable experience, with an average of five years of experience. Our BGS products are sold by 170 independent distributors in the United States, each with their own independent sales force, supported by our 15 member regionalized sales support team. We market our BGSs primarily to orthopedic spine surgeons and neurosurgeons for use in the operating room in both the hospital and ASC setting. We believe that our broad customer reach has and will continue to enable strong and durable growth in each of our verticals and provides a significant foundation for future product launches. We support our sales organization with extensive training to help them excel, and we have a performance culture built on serving our core orthopedic patient customers and delivering our products to a variety of physicians and care settings.

Research and clinical operations

We see significant opportunity to develop innovative and clinically differentiated products internally with our experienced research and development team. We are focused on internal research and development to broaden our portfolio of therapies to manage OA joint pain and joint preservation, expand our Exogen system product label and undertake clinical research to support commercialization of our next-generation of BGS products.

As a result, we expect our research and development expense to increase to the mid-single digits as a percentage of net sales as we introduce new products, extend existing product lines and expand indications. As of September 26, 2020, our research and development and clinical operations staff included approximately 40 engineers, scientists and project managers. Our research and development activities are focused on product development in BGSs, treatments for OA and soft tissue surgery. Our clinical research is focused on running the B.O.N.E.S. and MOTYS clinical programs, as well as continuing to build our body of clinical evidence to demonstrate the efficacy and value of our products through collaborations with prominent academic investigators. Our research and development team is comprised of 15 individuals holding PhDs and 22 individuals with more than 15 years of experience in the medical device industry. We collaborate with academic centers of excellence, leading contract research organizations and other industrial groups to complement and expedite execution of our research and development programs and minimize fixed costs. Research and development expense, including spending on our clinical evidence development efforts, totaled $11.1 million, $8.1 million and $8.1 million for the years ended years ended December 31, 2019, 2018 and 2017, respectively, and $8.3 million and $7.9 million for the nine months ended September 26, 2020 and September 28, 2019, respectively.

Competition

The medical device industry is highly competitive, subject to change and significantly affected by activities of industry participants.

The multi-injection HA viscosupplementation therapies that we own or distribute compete against Ferring Pharmaceutical Inc.’s Euflexxa, Fidia Farmaceutici S.p.A.’s Hyalgan, DePuy Orthopaedics, Inc. (Johnson & Johnson’s) Orthovisc, Sanofi S.A.’s Synvisc and OrthogenRx Inc.’s GenVisc 850. These products have faced significant competition from single injection therapies, such as Sanofi S.A.’s Synvisc-One, Zimmer Biomet Holdings, Inc.’s Gel-One and DePuy Orthopaedics, Inc. (Johnson & Johnson’s) Monovisc.

Our BGS product portfolio competes with products from Medtronic, DePuy Orthopaedics, Inc. (Johnson & Johnson), Stryker Corporation, NuVasive, Inc., SeaSpine, Inc., Orthofix Medical Inc., Zimmer Biomet Holdings, Inc. and Globus Medical Inc.

Our Exogen system competes with products marketed by Orthofix Medical Inc., Zimmer Biomet Holdings, Inc. and DJO Global Inc.

At any time, these or other market participants may develop alternative treatments, products or procedures that compete directly or indirectly with our products. They may also develop and patent processes or products earlier than we can or obtain regulatory clearance or approvals for competing products more rapidly than we can.

See “Risk factors—Risks related to our business—Our commercial success depends on our ability to differentiate the HA viscosupplementation therapies that we own or distribute from alternative therapies for the treatment of OA” and “Risk factors—Risks related to our business—We compete and may compete in the future against other companies, some of which have longer operating histories, more established products or greater resources than we do, which may prevent us from achieving increased market penetration or improved operating results.”

Intellectual property

We strive to protect and enhance the proprietary technologies, inventions and improvements that we believe are important to our business, including seeking, maintaining and defending patent rights, whether developed internally or licensed from third parties. Our policy is to seek to protect our proprietary position by, among other methods, pursuing and obtaining patent protection in the United States and in jurisdictions outside of the United States related to our proprietary technology, inventions and improvements that are important to the development and implementation of our business. We also rely on trademarks, trade secrets and careful monitoring of and contractual obligations with respect to our proprietary information to protect aspects of our business that are not amenable to, or that we do not consider appropriate for, patent protection.

Our success will depend on our ability to obtain and maintain patent and other proprietary protection for commercially important technology, inventions and know-how related to our business, defend and enforce our patents, maintain our licenses to use intellectual property owned by third parties and operate without infringing the valid and enforceable patents and other proprietary rights of third parties. For important factors related to our proprietary technology, inventions and improvements, please see the section entitled “Risk factors—Risks related to intellectual property.”

Patents

We own numerous patents and/or patent applications which relate to our material products, including patents and/or patent applications with respect to our Exogen system, OsteoAMP and MOTYS. Although in the aggregate our intellectual property is of material importance to our business, we do not believe that any single patent is of material importance to our product portfolio. As of November 13, 2020, we owned four issued U.S. patents and two pending U.S. patent applications relating to our material products. We also owned nine issued foreign patents and 11 pending foreign patent applications directed to our material products. Our patents and patent applications as of November 30, 2020 directed to our material products are summarized below.

We owned three issued U.S. patents and one issued foreign patent in Australia directed to our Exogen system. The U.S. patents are expected to expire between 2025 and 2029, and the foreign patent is expected to expire in 2025.

We owned one issued U.S. patent, one pending U.S. patent application, eight issued foreign patents, and ten pending foreign patent applications directed to our OsteoAMP product, including foreign patents and patent applications in Europe, Asia, Canada and Australia. The issued U.S. patent is expected to expire in 2029. The issued foreign patents are expected to expire in 2029. The pending patent applications, if issued, are expected to expire in 2029, without accounting for potential patent term extensions and adjustments.

We also own one pending U.S. patent application and one pending Patent Cooperation Treaty application directed to MOTYS. Patents issuing from these applications, if any, are expected to expire in 2040, without accounting for potential patent term extensions and adjustments. Our patents and pending patent applications directed to our material products are detailed in the table below.

Country	Application Number	Filing Date	Patent Number	Application Status	Expected Expiration Date	Description	Product
AU	2009324417	Dec. 13, 2009	2009324417	Issued	Dec. 2029	Directed to methods of making osteoinductive implants	OsteoAMP
AU	2014259553	Nov. 14, 2014	2014259553	Issued	Dec. 2029	Directed to methods of making osteoinductive implants	OsteoAMP
AU	2016213839	Aug. 11, 2016	2016213839	Issued	Dec. 2029	Directed to methods of making osteoinductive implants	OsteoAMP
CA	2746668	Dec. 13, 2009	2746668	Issued	Dec. 2029	Directed to methods of making osteoinductive implants	OsteoAMP
CN	200980155596.X	Dec. 13, 2009	200980155596.X	Issued	Dec. 2029	Directed to methods of making osteoinductive implants	OsteoAMP
CN	201410413348.3	Aug. 20, 2014	201410413348.3	Issued	Dec. 2029	Directed to methods of making osteoinductive implants	OsteoAMP
EP	09832666.3	Dec. 13, 2009		Pending	Dec. 2029	Directed to methods of making osteoinductive implants	OsteoAMP
HK	15105678.1	June 16, 2015	HK1205007	Issued	Dec. 2029	Directed to methods of making osteoinductive implants	OsteoAMP
IN	2567/KOLNP/2011	Dec. 13, 2009		Pending	Dec. 2029	Directed to methods of making osteoinductive implants	OsteoAMP
KR	10-2011-7016270	Dec. 13, 2009	10-1713346	Issued	Dec. 2029	Directed to methods of making osteoinductive implants	OsteoAMP
US	15/016072	Feb. 4, 2016	10383974	Issued	Dec. 2029	Directed to methods of making osteoinductive implants	OsteoAMP
US	16/459778	July 2, 2019		Pending	Dec. 2029	Directed to methods of making osteoinductive implants	OsteoAMP
GB	09832666.3	Dec. 13, 2009		Pending	Dec. 2029	Directed to methods of making osteoinductive implants	OsteoAMP
FR	09832666.3	Dec. 13, 2009		Pending	Dec. 2029	Directed to methods of making osteoinductive implants	OsteoAMP
DE	09832666.3	Dec. 13, 2009		Pending	Dec. 2029	Directed to methods of making osteoinductive implants	OsteoAMP
IT	09832666.3	Dec. 13, 2009		Pending	Dec. 2029	Directed to methods of making osteoinductive implants	OsteoAMP

Country	Application Number	Filing Date	Patent Number	Application Status	Expected Expiration Date	Description	Product
CH	09832666.3	Dec. 13, 2009		Pending	Dec. 2029	Directed to methods of making osteoinductive implants	OsteoAMP
BE	09832666.3	Dec. 13, 2009		Pending	Dec. 2029	Directed to methods of making osteoinductive implants	OsteoAMP
ES	09832666.3	Dec. 13, 2009		Pending	Dec. 2029	Directed to methods of making osteoinductive implants	OsteoAMP
PT	09832666.3	Dec. 13, 2009		Pending	Dec. 2029	Directed to methods of making osteoinductive implants	OsteoAMP
US	09/925,193	Aug. 9, 2001	7,429,248	Granted	July 2025	Directed to applying ultrasound to tissue using a modal converter having a plurality of angled sides	Exogen
AU	2006203281	Aug. 1, 2006	2006203281	Granted	Aug. 2025	Directed to treating a neuropathy disease with ultrasound using a specific frequency and pulse rate for the signal	Exogen
US	11/462,271	Aug. 3, 2006	8,048,006	Granted	Feb. 2029	Directed to treating a neuropathy disease with ultrasound using a specific frequency and pulse rate for the signal	Exogen
US	12/296,333	April 7, 2007	8,226,582	Granted	June 2028	Directed to applying ultrasound to tissue using a modal converter having an oblique angle and speed of sound similar to human tissue	Exogen
US	17/097,350	Nov. 13, 2020		Pending	Nov. 2040	Directed to placental tissue particulates compositions, methods of treating musculoskeletal or orthopedic conditions, methods of treating pain associated with osteoarthritis, kits and methods of making the compositions	MOTYS
PCT	PCT/US20/60393	Nov. 13, 2020		Pending	Nov. 2040	Directed to placental tissue particulates compositions, for use in treating musculoskeletal or orthopedic conditions, methods of treating pain associated with osteoarthritis, kits and methods of making the compositions	MOTYS

Trademarks

We own registered trademarks for Bioventus, Cellxtract, Durolane, Exogen, Exponent, Gelsyn-3, OsteoAMP, Osteofuse, Prohesion, PureBone, SAFHS, and Signafuse in the United States.

Trade secrets

We may rely on trade secret law to protect some of our technology, including the processing of tissue for OsteoAMP. Trade secrets, however, can be difficult to protect.

We seek to protect our proprietary technology and manufacturing process, in part, by confidentiality and invention assignment agreements with employees, under which they are bound to assign to us inventions that are made during the term of their employment and relate to our business, unless there is an exception. These agreements further prohibit our employees from using, disclosing, or bringing onto the premises any proprietary information belonging to any third-party. In addition, our consultants, scientific advisors and contractors are required to sign agreements under which they must assign to us any inventions that relate to our business. These agreements also prohibit these third-parties from incorporating into any inventions the proprietary rights of third-parties without informing us. It is our policy to require all employees to document potential inventions and other intellectual property in laboratory notebooks and to disclose inventions to patent counsel.

We also seek to preserve the integrity and confidentiality of our data and trade secrets by taking commercially reasonable efforts to maintain the physical security of our premises and physical and electronic security of our information technology systems.

While we have confidence in these individuals, organizations and systems, our security measures may be breached, or may otherwise prove inadequate to protect the integrity and confidentiality of our data and trade secrets. Further, our agreements may be breached (or not obtained in the first place) and we may not have adequate remedies for any breach. In addition, our trade secrets may otherwise become known or be independently discovered by competitors. To the extent that our consultants, contractors or collaborators use intellectual property owned by others in their work for us, disputes may arise as to the rights in related or resulting know-how and inventions.

Amended and Restated License Agreement for Durolane

In December 2016, we entered into the Q-Med License Agreement with Q-Med and NSH. Pursuant to the Q-Med License Agreement, Q-Med granted us an exclusive license under certain intellectual property rights controlled by Q-Med to commercialize, but not to develop or manufacture, Durolane products for use in the prevention or treatment of pain due to OA in the United States. For the first ten years of the Q-Med License Agreement, we may not commercialize any single-injection-regimen or dual-injection-regimen products other than Durolane in the United States for use in the prevention or treatment of pain due to osteoarthritis. In connection with the Q-Med License Agreement, we paid Q-Med an upfront fee of $2 million, and agreed to pay up to an aggregate of an additional $8 million upon the achievement of certain regulatory and commercial milestones. We also agreed to pay Q-Med tiered royalties based on our annual net sales of Durolane, at rates calculated such that the sum of the royalty payable and the supply price we pay for Durolane purchased from Q-Med in the applicable year equals low-to mid- twenty percentages of net sales of Durolane, subject to a specified floor on such payment. In the event that we do not meet a specified minimum sales requirement we must pay Q-Med a fee equal to the shortfall.

The Q-Med License Agreement will remain in effect until the ninety-ninth anniversary of the effective date of the agreement unless earlier terminated. If the Q-Med Supply Agreement is terminated, the terminating party may simultaneously terminate the Q-Med License Agreement. The Q-Med License Agreement may be terminated earlier by either party in the event of material breach by the other party that remains uncured for 60 days, or by Q-Med if we were to challenge the validity or enforceability of the licensed patents, directly or indirectly through a third party.

Exclusive distribution agreement for GELSYN-3

In February 2016, we entered into an agreement with IBSA under which we obtained the exclusive distribution rights for GELSYN-3 in the United States, as well as an assignment of the related GELSYN-3 trademark. Under the agreement, IBSA will supply GELSYN-3 on a purchase order basis, based on the amounts of GELSYN-3 that we require as set forth in rolling forecasts. We are also subject to certain annual minimum purchase requirements. We are obligated to diligently market GELSYN-3 in the United States.

The term of the IBSA agreement continues in effect for ten years, or until March 2026. Thereafter, the agreement will be automatically renewed for consecutive five year terms, unless either we or IBSA gives notice of termination at least six months prior to the expiration of the initial term or any renewal term. If we fail to meet the minimum purchase requirement in a given year and do not purchase enough products to satisfy the shortfall for such year within a specified time after receiving notice from IBSA, IBSA may terminate the agreement.

Either party may terminate the agreement on written notice for the other party's material breach that remains uncured for 30 days after receipt of prior written notice. Either party may terminate the agreement upon written notice for the other party's bankruptcy or insolvency-related events.

Exclusive distribution agreement for SUPARTZ FX

Effective December 22, 2020, we entered into an Amended and Restated Exclusive Distribution Agreement No.2 with SKK, whereby we maintained our exclusive promotion and distribution rights, with the right to engage sub-distributors if approved by SKK, for SUPARTZ FX in the United States. We also received an exclusive license to the trademarks SUPARTZ and SUPARTZ FX in the United States. SKK supplies to us SUPARTZ FX on a purchase order basis and in exchange, we pay to SKK an amount in the low thirty percentages of the average selling price per unit of SUPARTZ FX, subject to certain adjustments. We are subject to certain annual minimum purchase requirements based on a mutually agreed upon methodology and are obligated to use our best efforts to commercialize SUPARTZ FX in the United States. If we fail to order the minimum order quantity of SUPARTZ FX from SKK in any year during the term of the agreement, we must pay SKK a specified fee equal to the number of units needed to meet the minimum order quantity multiplied by a specified percentage of the purchase price.

The term of the SKK agreement continues in effect until December 31, 2028. Either party may terminate the agreement on written notice for the other party's material breach that cannot be cured, or that otherwise remains uncured for 60 days after receipt of prior written notice thereof, or for the other party's bankruptcy or insolvency-related events. SKK may terminate the agreement immediately if we fail to pay undisputed amounts due under the agreement within a certain time of receiving written notice of our nonpayment. We may terminate the agreement upon 15 days written notice if we are enjoined from selling SUPARTZ FX in any part of the United States a specified time period due to patent infringement.

Manufacturing and supply

Our HA viscosupplementation therapies and certain of our surgical products are manufactured exclusively by single-source third-party manufacturers, pursuant to multi-year supply agreements. We work closely with each of our manufacturing partners and provide them with a forecast, which enables them to better capacity plan and sequence their production efficiently. For Durolane, we are subject to minimum order volumes for each order and purchase amounts are also based in part on forecasts. For GELSYN-3, we will be subject to certain annual minimum purchase requirements and purchase amounts based on rolling forecasts. For SUPARTZ FX, we are subject to certain annual minimum purchase requirements based on a percentage of our SUPARTZ FX annual forecast.

For Durolane, in December 2016, we entered into an amended and restated supply agreement, or the Q-Med Supply Agreement, with Q-Med AB, or Q-Med. Under the Q-Med Supply Agreement, Q-Med supplies Durolane products exclusively to us for sale in the United States for use in the in the prevention or treatment of pain due to OA on a purchase order basis, based on the amounts of Durolane we require as set forth in rolling forecasts and we are subject to certain semi-annual minimum purchase requirements based on a percentage of our Durolane forecast.

The term of the Q-Med Supply Agreement continues in effect until the termination of the Q-Med License Agreement. We may terminate the Q-Med Supply Agreement immediately if Q-Med fails to supply a specified

percentage of the aggregate quantities of licensed product required for a specified number of months and does not cure such shortfall within a defined time period and, upon such termination, Q-Med is obligated to grant us, or to a third party reasonably acceptable to us, the right to manufacture Durolane products.

Either party may terminate the Q-Med Supply Agreement upon written notice for the other party's material breach that remains uncured for 60 days (or 30 days for any payment default) after receipt of prior written notice.

We assemble, inspect, test and package our Exogen system at our facility in Cordova, Tennessee with components supplied by third-party suppliers. Our Exogen system includes a transducer which is a key component that is supplied by a single-source supplier. We perform inspections of these components before use in our manufacturing operations.

We intend to maintain sufficient supplies of the products and components from these single-source suppliers in the event that one or more of these suppliers were to encounter certain interruptions in supply. See "Risk factors—Risks related to our business—We rely on a limited number of third-party manufacturers to manufacture certain of our products."

We believe our manufacturing operations are in compliance with regulations mandated by the FDA. We are an FDA-registered medical device manufacturer. Our manufacturing facilities and processes are subject to periodic inspections and audits by various federal, state and foreign regulatory agencies.

With respect to MOTYS, on June 18, 2020, we entered into a commercial supply agreement with MTF. Under the agreement, MTF will exclusively manufacture and supply MOTYS under cGTPs to us to allow for our limited commercialization that began in the fourth quarter of 2020 under the tissue regulations while we pursue a BLA for the product. MTF is responsible for obtaining and storing all materials, including all tissue materials, required for the manufacture, testing, handling, packaging, labeling, release and delivery of the product to us.

We anticipate entering into an additional supply agreement with MTF if we are able to obtain FDA approval for our BLA and at the appropriate stage of development of the program, when adherence to cGMP manufacturing standards is required for continued regulatory compliance.

Government regulation

Government regulation of medical devices

Our medical devices are subject to regulation by numerous government agencies, including the FDA and comparable foreign agencies. The FDA and other U.S. and foreign governmental agencies regulate, among other things, with respect to medical devices:

- design, development and manufacturing;
- testing, labeling, content and language of instructions for use and storage;
- clinical trials;
- product safety;
- marketing, sales and distribution;
- premarket clearance and approval;
- record keeping procedures;
- advertising and promotion;
- recalls and field safety corrective actions;
- postmarket surveillance, including reporting of deaths or serious injuries and malfunctions that, if they were to recur, could lead to death or serious injury;

- postmarket approval studies; and
- product import and export.

The regulations to which we are subject are complex and have tended to become more stringent over time. Regulatory changes could result in restrictions on our ability to carry on or expand our operations, higher than anticipated costs or lower than anticipated sales.

FDA premarket clearance and approval requirements

Each medical device we seek to commercially distribute in the United States must first receive 510(k) clearance or approval of a PMA application from the FDA, unless specifically exempt. The FDA classifies all medical devices into one of three classes. Devices deemed to pose lower risk are categorized as either Class I or Class II. Class II devices require the manufacturer to submit to the FDA a 510(k) pre-market notification requesting clearance of the device for commercial distribution in the United States. Class I devices are exempted from this requirement. Devices deemed by the FDA to pose the greatest risk, such as life sustaining, life-supporting, selected implantable devices, or devices deemed not substantially equivalent to a previously 510(k) cleared device, are categorized as Class III, generally requiring submission and approval of a PMA.

510(k) clearance process

To obtain 510(k) clearance, we must submit a premarket notification to the FDA demonstrating the proposed device to be substantially equivalent to a predicate device. A predicate is a previously cleared 510(k) device, a device that was in commercial distribution before May 28, 1976 for which the FDA has not yet called for the submission of PMA applications, or is a device that has been reclassified from Class III to either Class II or I. The standard review process for 510(k)s is between 30 days to 3 months, dependent upon the type of 510(k) filing submitted. Although many 510(k) premarket notifications are cleared without clinical data, in some cases, the FDA may require clinical data to support substantial equivalence. In reviewing a premarket notification, the FDA may request additional information, including clinical data, which may significantly prolong the review process and clearance is never assured.

After a device receives 510(k) clearance, any subsequent modification of the device that could significantly affect its safety or effectiveness, or that would constitute a major change in its intended use, requires a new 510(k) clearance or could require submission and approval of a PMA application in cases where new indications are sought for which there is no predicate. Non-significant changes are handled via internal documentation by the Company. Each manufacturer must judge the significance of modifications based on algorithms within FDA 510(k) guidance documents. FDA may review any such decision and may disagree with a manufacturer’s determination. If the FDA disagrees with a manufacturer’s determination, the FDA may require the manufacturer to cease marketing and/or recall the modified device until 510(k) clearance or PMA approval is obtained. We have modified aspects of some of our devices since receiving initial regulatory clearance. We concluded that some of those modifications did not significantly affect the safety or efficacy of the device and therefore, that new 510(k) clearances were not required. We have also obtained new 510(k) clearances from the FDA for other modifications to our devices. In the future, we may make additional modifications to our products after they have received FDA clearance or approval and in appropriate circumstances, determine that new clearance or approval is unnecessary. However, the FDA may disagree with our determination and if the FDA requires us to seek 510(k) clearance or submit new PMA applications for any modifications to a previously cleared product, we may be required to cease marketing or recall the modified device until we obtain the required clearance or approval. Under these circumstances, we may also be subject to significant regulatory fines or other penalties.

We have obtained 510(k) premarket clearance from the FDA for Signafuse Bioactive Bone Graft Putty, Interface Bioactive Bone Graft, Osteomatrix +, and Signafuse Mineralized Collagen Scaffold.

Premarket approval process

A PMA application must be submitted if the medical device is in Class III (although the FDA has the discretion to continue to allow certain pre-amendment Class III devices to use the 510(k) process) or cannot be

cleared through the 510(k) process. A PMA application must be supported by, among other things, extensive technical, preclinical, clinical trials, manufacturing and labeling data to demonstrate to the FDA's satisfaction the safety and effectiveness of the device.

After a PMA application is submitted and filed, the FDA begins an in-depth review of the submitted information. The standard review of such application is six months. During this review period, the FDA may request additional information or clarification of information already provided. This can extend the overall review process and typically PMAs take between one to three years in total for approval. Also during the review period, an advisory panel of experts from outside the FDA will usually be convened for a new type of device to review and evaluate the application and provide recommendations to the FDA as to the approvability of the device. In addition, the FDA will conduct a pre-approval inspection of the manufacturing facility to ensure compliance with QSR, which impose elaborate design development, testing, control, documentation and other quality assurance procedures in the design and manufacturing process. The FDA may approve a PMA application with post-approval conditions intended to ensure the safety and effectiveness of the device including, among other things, restrictions on labeling, promotion, sale and distribution and collection of long-term follow-up data from patients in the clinical study that supported approval. Failure to comply with the conditions of approval can result in materially adverse enforcement action, including the loss or withdrawal of the approval. PMA supplements are required for significant modifications to the manufacturing process, labeling of the product and design of a device that is approved through the PMA process. PMA supplements requires submission of information needed to support any changes from the device covered by the original PMA and typically do not require clinical data or the convening of an advisory panel. Non-significant changes must be reported to the FDA through an annual report filing with the FDA. In review of this report, FDA may disagree with a manufacturer's determination of the level of significance of the change. If the FDA disagrees with a manufacturer's determination, the FDA may require the manufacturer to cease marketing and/or recall the modified device until PMA supplement approval is obtained.

Durolane, GELSYN-3, SUPARTZ FX and our Exogen bone healing system have each been approved through the PMA process.

Clinical trials

A clinical trial is typically required to support a PMA and is sometimes required for a 510(k) premarket notification. In the United States, authorization to conduct a clinical trial generally requires submission of an application for an IDE to the FDA. The IDE application must be supported by appropriate data, such as animal and laboratory testing results, showing that it is safe to test the device in humans and that the investigational protocol is scientifically sound. The IDE application must be approved in advance by the FDA for a specified number of patients, unless the product is deemed a non-significant risk device and eligible for abbreviated IDE requirements. Clinical trials for a significant risk device may begin once the IDE application is approved by the FDA as well as the appropriate institutional review boards, or IRBs, at the clinical trial sites and the informed consent of the patients participating in the clinical trial is obtained. After a trial begins, the FDA may place it on hold or terminate it if, among other reasons, it concludes that the clinical subjects are exposed to an unacceptable health risk. Any trials we conduct must be conducted in accordance with FDA regulations as well as other federal regulations and state laws concerning human subject protection and privacy. Moreover, the results of a clinical trial may not be sufficient to obtain clearance or approval of the product.

Pervasive and continuing FDA regulation

After a medical device is placed on the market, numerous FDA regulatory requirements apply, including, but not limited to the following:

- QSRs, which requires manufacturers to follow design, testing, control, documentation and other quality assurance procedures during the manufacturing process;
- Establishment Registration, which requires establishments involved in the production and distribution of medical devices, intended for commercial distribution in the United States, to register with the FDA;

- Medical Device Listing, which requires manufacturers to list the devices they have in commercial distribution with the FDA;
- Labeling regulations, which prohibit "misbranded" devices from entering the market, as well as prohibit the promotion of products for unapproved or off-label uses and impose other restrictions on labeling;
- Postmarket surveillance, including MDR requirements which requires manufacturers to report to the FDA if their device may have caused or contributed to a death or serious injury, or malfunctioned in a way that would likely cause or contribute to a death or serious injury if it were to recur; and
- Corrections and Removal Reporting regulations, which require that manufacturers report to the FDA field corrections and product recalls or removals if undertaken to reduce a risk to health posed by the device or to remedy a violation of the United States Federal Food, Drug, and Cosmetic Act that may present a risk to health.

The FDA enforces these requirements by inspection and market surveillance. Failure to comply with applicable regulatory requirements may result in enforcement action by the FDA, which may include one or more of the following sanctions:

- untitled letters or warning letters;
- fines, injunctions and civil penalties;
- mandatory recall or seizure of our products;
- administrative detention or banning of our products;
- operating restrictions, partial suspension or total shutdown of production;
- refusing our request for 510(k) clearances or PMA approvals for new product versions;
- revocation of 510(k) clearances or PMA approvals previously granted; and
- criminal prosecution and penalties.

U.S. regulation of HCT/Ps

Our products, including OsteoAMP and PureBone, are regulated as human cells, tissues and cellular and tissue-based products, or HCT/Ps. Section 361 of the PHSA authorizes the FDA to issue regulations to prevent the introduction, transmission or spread of communicable disease. HCT/Ps regulated as "Section 361" HCT/Ps are subject to requirements relating to registering facilities and listing products with the FDA, screening and testing for tissue donor eligibility, cGTP, when processing, storing, labeling and distributing HCT/Ps, including required labeling information, stringent record keeping and adverse event reporting, among other applicable requirements and laws. Specifically, cGTPs are requirements that govern the methods used in, and the facilities and controls used for, the manufacture of HCT/Ps in a way that prevents the introduction, transmission, or spread of communicable diseases. Section 361 HCT/Ps do not require 510(k) clearance, PMA approval, BLAs, or other premarket authorization from the FDA before marketing. However, to be regulated as a Section 361 HCT/P, the product must, among other things, be "minimally manipulated," which for structural tissue products means that the manufacturing processes do not alter the original relevant characteristics of the tissue relating to the tissue's utility for reconstruction, repair, or replacement and for cells or nonstructural tissue products, means that the manufacturing processes do not alter the relevant biological characteristics of cells or tissues. A Section 361 HCT/P must also be intended for "homologous use," which refers to use in the repair, reconstruction, replacement, or supplementation of a recipient's cells or tissues with an HCT/P that performs the same basic function or functions in the recipient as in the donor.

We believe our OsteoAMP product is properly regulated as a Section 361 HCT/P and therefore have not sought or obtained 510(k) clearance, PMA approval, or licensure through a BLA. However, the FDA's CDRH issued us a letter in March 2016 in which it asserted that OsteoAMP meets the definition of a medical device and

requested that we provide CDRH with information in support of our position that OsteoAMP does not require 510(k) clearance or PMA approval. We provided CDRH with the requested information in support of this position in May 2016 and we have received no further inquiries to date. We believe that CDRH's assertion is unfounded and inconsistent with a 2011 letter from the FDA concluding that OsteoAMP meets the criteria for regulation solely as a Section 361 HCT/P. However, if the FDA were to disagree and if we are otherwise unsuccessful in asserting our position, the FDA may then require that we obtain 510(k) clearance or PMA approval and that we cease marketing OsteoAMP and/or recall OsteoAMP unless and until we receive clearance or approval. We estimate that if we were to cease marketing OsteoAmp and/or recall OsteoAmp that our net sales would decrease, which would adversely affect our results of operations. See "Risk factors—Risks related to government regulation—Our HCT/P products are subject to extensive government regulation and our failure to comply with these requirements could cause our business to suffer."

HCT/Ps that do not meet the criteria of Section 361 are regulated under Section 351 of the PHSA. Unlike 361 HCT/Ps, HCT/Ps regulated as "351" HCT/Ps are subject to premarket review and/or approval by the FDA, as required.

In November 2017, the FDA released a guidance document entitled "Regulatory Considerations for Human Cells, Tissues, and Cellular and Tissue—Based Products: Minimal Manipulation and Homologous Use—Guidance for Industry and Food and Drug Administration Staff." The guidance outlined the FDA's position that all lyophilized amniotic products are more than minimally manipulated and would therefore require a BLA to be lawfully marketed in the United States. The guidance also indicated that the FDA would exercise enforcement discretion, using a risk-based approach, with respect to the IND application and pre-market approval requirements for certain HCT/Ps for a period of 36 months from the issuance date of the guidance to allow manufacturers to pursue its IND application. Under this approach, FDA indicated that high-risk products and uses could be subject to immediate enforcement action. In July 2020, the FDA extended its period of enforcement discretion to May 31, 2021.

We plan to market MOTYS under the FDA's policy of enforcement discretion as we pursue approval under a BLA for the product. We may be required to cease selling MOTYS if the FDA changes the scope of its enforcement discretion policy or changes the criteria used to assess which products qualify. In addition, following the period of enforcement discretion under the guidance, we may be required to cease selling MOTYS until such time as we obtain BLA approval.

Failure to comply with statutory and regulatory requirements subjects a manufacturer to possible legal or regulatory action, including the seizure or recall of products, injunctions, consent decrees placing significant restrictions on or suspending manufacturing operations and civil and criminal penalties.

U.S. regulation of drugs and biologics

We expect that MOTYS will be regulated by the FDA as a biological product, or biologic, and we plan to submit a BLA to the FDA to allow for the marketing of MOTYS following the expiration of the FDA's enforcement discretion period for certain HCT/Ps. Biologics are regulated under both the FDCA and the PHSA and other federal, state, local and foreign statutes and regulations. We, along with third-party contractors, will be required to navigate the various preclinical, clinical and commercial approval requirements of the governing regulatory agencies of the countries in which we wish to conduct studies or seek approval or licensure of our product candidates.

The process required by the FDA before product candidates may be marketed in the United States generally involves the following:

- completion of extensive preclinical laboratory tests and animal studies performed in accordance with applicable regulations, including the FDA's Good Laboratory Practice, or GLP, regulations;
- submission to the FDA of an IND which must become effective before clinical trials may begin;

- approval by an independent institutional review board, or IRB, or ethics committee at each clinical site before the trial is commenced;
- performance of adequate and well-controlled human clinical trials to establish the safety and effectiveness of the proposed drug candidate and the safety, purity and potency of the proposed biologic product candidate for its intended purpose;
- preparation of and submission to the FDA of an NDA or BLA after completion of all pivotal clinical trials;
- satisfactory completion of an FDA Advisory Committee review, if applicable;
- a determination by the FDA within 60 days of its receipt of a NDA or BLA to file the application for review;
- satisfactory completion of an FDA pre-approval inspection of the manufacturing facility or facilities at which the proposed product is produced to assess compliance with cGMP requirements, and to assure that the facilities, methods and controls are adequate to preserve the product's safety and effectiveness, and of selected clinical investigation sites to assess compliance with GCPs; and
- FDA review and approval of a NDA or BLA to permit commercial marketing of the product for particular indications for use in the United States.

Preclinical and Clinical Development

Prior to beginning the first clinical trial with a product candidate, we must submit an IND to the FDA. An IND is a request for authorization from the FDA to administer an investigational new drug product to humans. The central focus of an IND submission is on the general investigational plan and the protocol or protocols clinical trials. The IND also includes results of animal and *in vitro* studies assessing the toxicology, pharmacokinetics, pharmacology and pharmacodynamic characteristics of the product, chemistry, manufacturing and controls, or CMC, information, and any available human data or literature to support the use of the investigational product. An IND must become effective before human clinical trials may begin. The IND automatically becomes effective 30 days after receipt by the FDA, unless the FDA, within the 30-day period, raises safety concerns or questions about the proposed clinical trial. In such a case, the IND may be placed on clinical hold and the IND sponsor and the FDA must resolve any outstanding concerns or questions before the clinical trial can begin. Submission of an IND therefore may or may not result in FDA authorization to begin a clinical trial.

Clinical trials involve the administration of the investigational product to human subjects under the supervision of qualified investigators in accordance with GCPs, which include the requirement that all research subjects provide their informed consent for their participation in any clinical study. Clinical trials are conducted under protocols detailing, among other things, the objectives of the study, the parameters to be used in monitoring safety and the effectiveness criteria to be evaluated. A separate submission to the existing IND must be made for each successive clinical trial conducted during product development and for any subsequent protocol amendments. Furthermore, an independent IRB for each site proposing to conduct the clinical trial must review and approve the plan for any clinical trial and its informed consent form before the clinical trial begins at that site, and must monitor the study until completed. Regulatory authorities, the IRB or the sponsor may suspend a clinical trial at any time on various grounds, including a finding that the subjects are being exposed to an unacceptable health risk or that the trial is unlikely to meet its stated objectives. Some studies also include oversight by an independent group of qualified experts organized by the clinical study sponsor, known as a data safety monitoring board, which provides authorization for whether or not a study may move forward at designated check points based on access to certain data from the study and may halt the clinical trial if it determines that there is an unacceptable safety risk for subjects or other grounds, such as no demonstration of efficacy. There are also requirements governing the reporting of ongoing preclinical studies and clinical trials and clinical study results to public registries.

For purposes of regulatory approval, human clinical trials are typically conducted in three sequential phases that may overlap or be combined:

- *Phase 1*. The investigational product is initially introduced into patients with the target disease or condition. These studies are designed to test the safety, dosage tolerance, absorption, metabolism and distribution of the investigational product in humans, the side effects associated with increasing doses, and, if possible, to gain early evidence on effectiveness.
- *Phase 2*. The investigational product is administered to a limited patient population to evaluate the preliminary efficacy, optimal dosages and dosing schedule and to identify possible adverse side effects and safety risks.
- *Phase 3*. The investigational product is administered to an expanded patient population to further evaluate dosage, to provide statistically significant evidence of clinical efficacy and to further test for safety, generally at multiple geographically dispersed clinical trial sites. These clinical trials are intended to establish the overall risk/benefit ratio of the investigational product and to provide an adequate basis for product approval.

In some cases, the FDA may require, or companies may voluntarily pursue, additional clinical trials after a product is approved to gain more information about the product. These so-called Phase 4 studies may be made a condition to approval of the NDA or BLA. Concurrent with clinical trials, companies may complete additional animal studies and develop additional information about the biological characteristics of the product candidate, and must finalize a process for manufacturing the product in commercial quantities in accordance with cGMP requirements. The manufacturing process must be capable of consistently producing quality batches of the product candidate and, among other things, must develop methods for testing the identity, strength, quality and purity of the final product, or for biologics, the safety, purity and potency. Additionally, appropriate packaging must be selected and tested and stability studies must be conducted to demonstrate that the product candidate does not undergo unacceptable deterioration over its shelf life.

During all phases of clinical development, regulatory agencies require extensive monitoring and auditing of all clinical activities, clinical data, and clinical study investigators. The FDA or the sponsor or its data safety monitoring board may suspend a clinical study at any time on various grounds, including a finding that the research participant or participants are being exposed to an unacceptable health risk. Similarly, an IRB can suspend or terminate approval of a clinical study at its institution if the clinical study is not being conducted in accordance with the IRB's requirements or if the product candidate has been associated with unexpected serious harm to patients. There are also requirements governing the reporting of ongoing clinical trials and completed clinical trial results to public registries. Sponsors of clinical trials of FDA-regulated products may be required to register and disclose certain clinical trial information, which is publicly available at www.clinicaltrials.gov.

NDA or BLA Submission and Review

Assuming successful completion of all required testing in accordance with all applicable regulatory requirements, the results of product development, nonclinical studies and clinical trials are submitted to the FDA as part of a NDA or BLA requesting approval to market the product for one or more indications. The NDA or BLA must include all relevant data available from pertinent preclinical studies and clinical trials, including negative or ambiguous results as well as positive findings, together with detailed information relating to the product's CMCs and proposed labeling, among other things. The submission of a NDA or BLA requires payment of a substantial application user fee to the FDA, unless a waiver or exemption applies. The FDA has 60 days from the applicant's submission of a NDA or BLA to either issue a refusal to file letter or accept the NDA or BLA for filing, indicating that it is sufficiently complete to permit substantive review.

Once a NDA or BLA has been accepted for filing, the FDA's goal is to review standard applications within ten months after it accepts the application for filing, or, if the application qualifies for priority review, six months after the FDA accepts the application for filing. In both standard and priority reviews, the review process is often significantly extended by FDA requests for additional information or clarification. The FDA reviews a NDA or

BLA to determine, among other things, whether a product is safe and effective, or safe, pure, and potent, for its intended use, and whether the facility in which it is manufactured, processed, packed or held meets standards designed to assure and preserve the product's identity, safety, strength, quality, potency and purity. The FDA may convene an advisory committee to provide clinical insight on application review questions. Before approving a NDA or BLA, the FDA will typically inspect the facility or facilities where the product is manufactured. The FDA will not approve an application unless it determines that the manufacturing processes and facilities are in compliance with cGMP requirements and adequate to assure consistent production of the product within required specifications. Additionally, before approving a NDA or BLA, the FDA will typically inspect one or more clinical sites to assure compliance with GCPs. If the FDA determines that the application, manufacturing process or manufacturing facilities are not acceptable, it will outline the deficiencies in the submission and often will request additional testing or information. Notwithstanding the submission of any requested additional information, the FDA ultimately may decide that the application does not satisfy the regulatory criteria for approval.

After the FDA evaluates a NDA or BLA and conducts inspections of manufacturing facilities where the investigational product and/or its drug substance will be manufactured, the FDA may issue an approval letter or a Complete Response letter. An approval letter authorizes commercial marketing of the product with specific prescribing information for specific indications. A Complete Response letter will describe all of the deficiencies that the FDA has identified in the NDA or BLA, except that where the FDA determines that the data supporting the application are inadequate to support approval, the FDA may issue the Complete Response letter without first conducting required inspections, testing submitted product lots and/or reviewing proposed labeling. In issuing the Complete Response letter, the FDA may recommend actions that the applicant might take to place the NDA or BLA in condition for approval, including requests for additional information or clarification, including the potential requirement for additional clinical studies. The FDA may delay or refuse approval of a BLA if applicable regulatory criteria are not satisfied, require additional testing or information and/or require post-marketing testing and surveillance to monitor safety or efficacy of a product.

If regulatory approval of a product is granted, such approval will be granted for particular indications and may entail limitations on the indicated uses for which such product may be marketed. For example, the FDA may approve the NDA or BLA with a Risk Evaluation and Mitigation Strategy, or REMS, to ensure the benefits of the product outweigh its risks. A REMS is a safety strategy to manage a known or potential serious risk associated with a product and to enable patients to have continued access to such medicines by managing their safe use, and could include medication guides, physician communication plans, or elements to assure safe use, such as restricted distribution methods, patient registries and other risk minimization tools. The FDA also may condition approval on, among other things, changes to proposed labeling or the development of adequate controls and specifications. Once approved, the FDA may withdraw the product approval if compliance with pre- and post-marketing requirements is not maintained or if problems occur after the product reaches the marketplace. The FDA may require one or more Phase 4 post-market studies and surveillance to further assess and monitor the product's safety and effectiveness after commercialization, and may limit further marketing of the product based on the results of these post-marketing studies

Post-Approval Requirements

Any products manufactured or distributed by us pursuant to FDA approvals are subject to pervasive and continuing regulation by the FDA, including, among other things, requirements relating to record-keeping, reporting of adverse experiences, periodic reporting, product sampling and distribution, and advertising and promotion of the product. After approval, most changes to the approved product, such as adding new indications or other labeling claims, are subject to prior FDA review and approval. There also are continuing user fee requirements, under which the FDA assesses an annual program fee for each product identified in an approved NDA or BLA. Manufacturers and their subcontractors are required to register their establishments with the FDA and certain state agencies, and are subject to periodic unannounced inspections by the FDA and certain state agencies for compliance with cGMPs, which impose certain procedural and documentation requirements upon us and our third-party manufacturers. Changes to the manufacturing process are strictly regulated, and, depending on the significance of the change, may require prior FDA approval before being implemented. FDA regulations

also require investigation and correction of any deviations from cGMPs and impose reporting requirements upon us and any third-party manufacturers that we may decide to use. Accordingly, manufacturers must continue to expend time, money and effort in the area of production and quality control to maintain compliance with cGMPs and other aspects of regulatory compliance.

The FDA may withdraw approval if compliance with regulatory requirements and standards is not maintained or if problems occur after the product reaches the market. Later discovery of previously unknown problems with a product, including adverse events of unanticipated severity or frequency, or with manufacturing processes, or failure to comply with regulatory requirements, may result in revisions to the approved labeling to add new safety information; imposition of post-market studies or clinical studies to assess new safety risks; or imposition of distribution restrictions or other restrictions under a REMS program. Other potential consequences include, among other things:

- restrictions on the marketing or manufacturing of a product, complete withdrawal of the product from the market or product recalls;
- fines, warning or untitled letters or holds on post-approval clinical studies;
- refusal of the FDA to approve pending applications or supplements to approved applications, or suspension or revocation of existing product approvals;
- product seizure or detention, or refusal of the FDA to permit the import or export of products;
- consent decrees, corporate integrity agreements, debarment or exclusion from federal healthcare programs;
- mandated modification of promotional materials and labeling and the issuance of corrective information;
- the issuance of safety alerts, Dear Healthcare Provider letters, press releases and other communications containing warnings or other safety information about the product; or
- injunctions or the imposition of civil or criminal penalties.

The FDA closely regulates the marketing, labeling, advertising and promotion of drugs and biologics. A company can make only those claims relating to safety and efficacy, purity and potency that are approved by the FDA and in accordance with the provisions of the approved label. However, companies may share truthful and not misleading information that is otherwise consistent with a product's FDA approved labeling. The FDA and other agencies actively enforce the laws and regulations prohibiting the promotion of off-label uses. Failure to comply with these requirements can result in, among other things, adverse publicity, warning letters, corrective advertising and potential civil and criminal penalties. Physicians may prescribe legally available products for uses that are not described in the product's labeling and that differ from those tested by us and approved by the FDA, but physicians may not submit claims for reimbursement that are false or fraudulent. Such off-label uses are common across medical specialties. Physicians may believe that such off-label uses are the best treatment for many patients in varied circumstances. The FDA does not regulate the behavior of physicians in their choice of treatments. The FDA does, however, restrict manufacturer's communications on the subject of off-label use of their products.

International regulation of medical devices

Sales of medical devices outside the United States are subject to foreign government regulations, which vary substantially from country to country. In order to market our products in other countries, we must obtain regulatory approvals and comply with extensive safety and quality regulations in other countries. The time required to obtain approval by a foreign country may be longer or shorter than that required for FDA approval and the requirements may differ significantly.

EU regulation of medical devices

The EU has adopted legislation, in the form of directives to be implemented in each Member State, concerning the regulation of medical devices within the EU. The directives include, among others, the Medical

Device Directive (Council Directive 93/42/EEC) that establishes certain requirements, such as the essential requirements, with which medical devices must comply before they can be commercialized in the EEA (which is comprised of the Member States of the EU plus Norway, Liechtenstein and Iceland). Under the EU Medical Device Directive, medical devices are classified into four Classes, I, IIa, IIb and III, with Class I being the lowest risk and Class III being the highest risk. Under the Medical Device Directive, a competent authority is nominated by the government of each Member State to monitor and ensure compliance with the Directive. To demonstrate compliance of their medical devices with the essential requirements, manufacturers must undergo a conformity assessment evaluation, which varies according to the type of medical device and its classification. Except for certain types of low risk medical devices (Class I non-sterile, non-measuring devices), where the manufacturer can issue an EC Declaration of Conformity based on a self-assessment of the conformity of its products with the essential requirements of the Medical Devices Directive, a conformity assessment evaluation requires the intervention of an organization accredited by a Member State of the EEA to conduct conformity assessments, a so-called Notified Body. The Notified Body would typically audit and examine the quality system for the manufacture, design and final inspection of the medical devices, along with conducting a technical review of data supporting the device's safety and efficacy, before issuing a certification demonstrating compliance with the essential requirements. Both the quality system and the product are reviewed and certified. The Company is subject to annual surveillance audits by the Notified Body and must undergo re-certification every 5 years. During these audits, (minor or major) non-conformities to the essential requirement may be issued to the Company. The Company could potentially lose marketing authorization if these non-conformaties are not remediated with the Notified Body. Significant modifications to the quality system or product changes for Class III devices must be submitted to the Notified Body for review prior to implementation. Non-significant changes are subject to review during the annual surveillance audits. Medical devices that comply with the essential requirements are entitled to bear the CE mark, which is an abbreviation for Conformité Européenne or European Conformity. Medical devices properly bearing the CE mark may be commercially distributed throughout the EEA. We have received CE certification from the British Standards Institute, a United Kingdom Notified Body, for conformity with the EU Medical Device Directive allowing us to place the CE mark on Durolane (Class III) and our Exogen bone healing system (Class IIa). Additional PMAs in individual EEA countries are sometimes required prior to marketing of a product. Failure to maintain the CE mark would preclude us from selling our products in the EEA, as could failure to comply with the specific requirements of the Member States.

On April 5, 2017, the European Parliament passed the Medical Devices Regulation, which repeals and replaces the EU Medical Devices Directive. Unlike directives, which must be implemented into the national laws of the EEA Member States, the regulations would be directly applicable without the need for adoption of EEA Member State laws implementing them in all EEA Member States and are intended to eliminate current differences in the regulation of medical devices among EEA Member States. The Medical Devices Regulation, among other things, is intended to establish a uniform, transparent, predictable and sustainable regulatory framework across the EEA for medical devices and *in vitro* diagnostic devices and ensure a high level of safety and health while supporting innovation.

The Medical Devices Regulation was meant to become applicable three years after publication (in May 2020). However, on April 23, 2020, to take the pressure off EEA national authorities, notified bodies, manufacturers and other actors so they can focus fully on urgent priorities related to the COVID-19 pandemic, the European Council and Parliament adopted Regulation 2020/561, postponing the date of application of the Medical Devices Regulation by one year (to May 2021). Once applicable, the new regulations will among other things:

- strengthen the rules on placing devices on the market and reinforce surveillance once they are available;
- establish explicit provisions on manufacturers' responsibilities for the follow-up on the quality, performance and safety of devices placed on the market;
- improve the traceability of medical devices throughout the supply chain to the end-user or patient through a unique identification number;

- set up a central database to provide patients, healthcare professionals and the public with comprehensive information on products available in the EU; and
- strengthen rules for the assessment of certain high-risk devices, such as implants, which may have to undergo an additional check by experts before they are placed on the market.

These new rules and procedures may result in increased regulatory oversight of our devices and this may, in turn, increase the costs, time and requirements that we need to meet in order to maintain or place such devices on the EEA market.

Further, the advertising and promotion of our products in the EEA is subject to the laws of individual EEA Member States implementing the EU Medical Devices Directive, Directive 2006/114/EC concerning misleading and comparative advertising and Directive 2005/29/EC on unfair commercial practices, as well as other EEA Member State laws governing the advertising and promotion of medical devices. These laws may limit or restrict the advertising and promotion of our products to the general public and may impose limitations on our promotional activities with healthcare professionals.

Other countries' regulation of medical devices

Many other countries have specific requirements for classification, registration and postmarketing surveillance that are independent of the countries already listed. We obtain what we believe are the appropriate clearances for Durolane and our Exogen bone healing system and conduct our business in accordance with the applicable laws of each country. This landscape is constantly changing and we could be found in violation if we interpret the laws incorrectly or fail to keep pace with changes. In the event of either of these occurrences, we could be instructed to recall products, cease distribution and/or be subject to civil or criminal penalties.

Anti-kickback, false claims and other healthcare laws

In addition to FDA restrictions on the marketing of pharmaceutical, biological and medical device products, we are also subject to healthcare regulation and enforcement by the federal government and the states and foreign governments and authorities in the locations in which we conduct our business. These other agencies include, without limitation, CMS, other divisions of the HHS, the U.S. Department of Justice and individual U.S. Attorney offices within the Department of Justice, as well as state and local governments. Such agencies enforce a variety of laws which include, without limitation, state and federal anti-kickback, fraud and abuse, false claims, data privacy and security and physician payment transparency laws and regulations.

The federal Anti-Kickback Statute prohibits, among other things, any person or entity from knowingly and willfully offering, paying, soliciting or receiving any remuneration (including any kickback, bribe or rebate), directly or indirectly, overtly or covertly, to induce or in return for purchasing, leasing, ordering or arranging for or recommending the purchase, lease or order of any good, facility, item or service reimbursable, in whole or in part, by Medicare, Medicaid or other federal healthcare programs. The term "remuneration" has been broadly interpreted to include anything of value, including cash, improper discounts and free or reduced price items and services. Among other things, the Anti-Kickback Statute has been interpreted to apply to arrangements between pharmaceutical, biotechnology and medical device manufacturers on the one hand and prescribers, purchasers and formulary managers on the other. Although there are a number of statutory exceptions and regulatory safe harbors protecting some common activities from prosecution, the exceptions and safe harbors are drawn narrowly. Practices that involve remuneration that may be alleged to be intended to induce prescribing, purchases or recommendations may be subject to scrutiny if they do not meet the requirements of a statutory or regulatory exception or safe harbor. Failure to meet all of the requirements of a particular applicable statutory exception or regulatory safe harbor does not make the conduct per se illegal under the Anti-Kickback Statute. Instead, the legality of the arrangement will be evaluated on a case-by-case basis based on a cumulative review of all of its facts and circumstances. Several courts have interpreted the statute's intent requirement to mean that if any one purpose of an arrangement involving remuneration is to induce referrals of federal healthcare covered business, the Anti-Kickback Statute has been violated. In addition, a person or entity does not need to have actual

knowledge of the statute or specific intent to violate it in order to have committed a violation. Violations are subject to civil monetary penalties up to $100,000 for each violation, plus up to three times the remuneration involved, and may result in criminal fines of up to $100,000 and imprisonment of up to ten years, or exclusion from Medicare, Medicaid or other governmental programs. Further, a claim including items or services resulting from a violation of the federal Anti-Kickback Statute also constitutes a false or fraudulent claim for purposes of the federal civil False Claims Act.

Federal law also includes a provision commonly known as the “Stark Law,” which prohibits a physician from referring Medicare or Medicaid patients to an entity providing “designated health services,” which includes durable medical equipment, if the physician or immediate family member of the physician, has an ownership or investment interest or compensation arrangement with such entity that does not comply with the requirements of a Stark exception. Violation of the Stark Law could result in denial of payment, disgorgement of reimbursements received under a non-compliant arrangement, civil penalties, and exclusion from Medicare, Medicaid or other governmental programs.

The federal false claims and civil monetary penalties laws, including the civil False Claims Act, prohibit, among other things, any person or entity from knowingly presenting, or causing to be presented, a false or fraudulent claim for payment to or approval by the federal government or knowingly making, using or causing to be made or used a false record or statement material to a false or fraudulent claim to the federal government. A claim includes “any request or demand” for money or property presented to the U.S. government. Actions under the False Claims Act may be brought by the Attorney General or as a qui tam action by a private individual in the name of the U.S. government. Violations of the False Claims Act can result in very significant monetary penalties and treble damages. The federal government is using the False Claims Act and the accompanying threat of significant liability, in its investigation and prosecution of pharmaceutical, biotechnology and medical device companies throughout the country. Manufacturers can be held liable under these laws if they are deemed to “cause” the submission of false or fraudulent claims by for example, in connection with the promotion of products for unapproved or off-label uses and other sales and marketing practices. The government has obtained multi-million and multi-billion dollar settlements under the False Claims Act in addition to individual criminal convictions under applicable criminal statutes. When an entity is determined to have violated the federal civil False Claims Act, the government may impose civil fines and penalties ranging from $11,181 to $22,363 for each false claim, plus treble damages, and exclude the entity from participation in Medicare, Medicaid and other federal healthcare programs. In addition, companies found liable under the False Claims Act have been forced to implement extensive corrective action plans, and have often become subject to consent decrees or corporate integrity agreements, severely restricting the manner in which they conduct their business and imposing ongoing reporting and disclosure obligations.

The federal civil monetary penalties statute imposes penalties against any person or entity that, among other things, is determined to have presented or caused to be presented a claim to a federal health program that the person knows or should know is for an item or service that was not provided as claimed or is false or fraudulent. Given the significant size of actual and potential settlements, it is expected that governmental authorities will continue to devote substantial resources to investigating healthcare providers’ and manufacturers’ compliance with applicable fraud and abuse laws. For drugs that are covered under Medicare Part B, the manufacturer must report average sales price, or ASP, to CMS on a quarterly basis. Failure to report this information in a timely and accurate manner can lead to substantial civil and criminal penalties and to liability under the False Claims Act.

In July of 2018 we became aware of allegations that certain of our sales personnel may have been completing Section B of the CMN required in connection with Medicare claims for the Exogen system, which, under federal law, must be completed by the physician and/or physician staff.

Together with our outside counsel, we initiated an investigation into these allegations, and we determined that the CMN forms for a portion of Medicare claims for the Exogen system were in fact improperly completed by our sales representatives, some of which also failed to meet CMS coverage requirements. As a result of our findings we made a self-disclosure on November 30, 2018 to the OIG, under the Provider Self-Disclosure

Protocol. Our self-disclosure disclosed the extent of our findings relative to the inappropriate completion of CMN forms by our sales personnel and offered to make repayment for such claims which failed to meet CMS coverage requirements and which we submitted to the Medicare program between October 1, 2012 and September 30, 2018, the statutory period applicable to such conduct. The total value of impacted claims was $30.1 million in the aggregate.

In October 2019, our outside counsel received a letter from the USAO stating that the USAO would be working with the OIG to resolve our self-disclosure. We are presently in ongoing discussions with the USAO and OIG regarding a possible settlement of certain claims covered by the self-disclosure. We believe the settlement will require that we pay a certain amount to resolve potential liabilities associated with the submission of Medicare claims that did not meet CMS coverage requirements and for which our sales representatives completed Section B of the CMN forms. Any such settlement will be subject to negotiation of final terms, approval by the parties and execution of a formal settlement agreement reflecting any such payment, which is expected to be finalized and executed shortly and which will include releases from associated False Claims Act liability and further Civil Monetary Penalties that are customary in self-disclosures of this type. Any such settlement amount noted above will be recorded in the consolidated financial statements for the quarter ended December 31, 2020.

See “Risk factors—Risks related to government regulation—We may be subject to enforcement action if we engage in improper claims submission practices and resulting audits or denials of our claims by government agencies could reduce our net sales or profits.”

HIPAA created additional federal criminal statutes that prohibit, among other things, knowingly and willfully executing, or attempting to execute, a scheme to defraud any healthcare benefit program, including private third-party payers, knowingly and willfully embezzling or stealing from a healthcare benefit program, willfully obstructing a criminal investigation of a healthcare offense and knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false, fictitious or fraudulent statement in connection with the delivery of or payment for healthcare benefits, items or services. Similar to the federal Anti-Kickback Statute, a person or entity does not need to have actual knowledge of these statutes or specific intent to violate them in order to have committed a violation.

Also, many states have similar fraud and abuse statutes or regulations that may be broader in scope and may apply regardless of payer, in addition to items and services reimbursed under Medicaid and other state programs.

In addition, a person who offers or transfers to a Medicare or Medicaid beneficiary any remuneration, including waivers of co-payments and deductible amounts (or any part thereof), that the person knows or should know is likely to influence the beneficiary’s selection of a particular provider, practitioner or supplier of Medicare or Medicaid payable items or services may be liable for civil monetary penalties of up to $20,866 for each wrongful act. Moreover, in certain cases, providers who routinely waive co-payments and deductibles for Medicare and Medicaid beneficiaries can also be held liable under the Anti-Kickback Statute and civil False Claims Act, which can impose additional penalties associated with the wrongful act. One of the statutory exceptions to the prohibition is non-routine, unadvertised waivers of co-payments or deductible amounts based on individualized determinations of financial need or exhaustion of reasonable collection efforts. The OIG emphasizes, however, that this exception should only be used occasionally to address special financial needs of a particular patient. Although this prohibition applies only to federal healthcare program beneficiaries, the routine waivers of co-payments and deductibles offered to patients covered by commercial payers may implicate applicable state laws related to, among other things, unlawful schemes to defraud, excessive fees for services, tortious interference with patient contracts and statutory or common law fraud. To the extent our patient assistance programs are found to be inconsistent with applicable laws, we may be required to restructure or discontinue such programs, or be subject to other significant penalties.

Additionally, there has been a recent trend of increased federal and state regulation of payments made to physicians and certain other healthcare providers. The Patient Protection and Affordable Care Act, as amended by the Health Care and Education and Reconciliation Act, or collectively, the Affordable Care Act, imposed, among other things, new annual reporting requirements through the Physician Payments Sunshine Act for covered manufacturers for certain payments and "transfers of value" provided to physicians and teaching hospitals, and, beginning in 2022, physician assistants, nurse practitioners and other practitioners, as well as ownership and investment interests held by such providers and their immediate family members. Failure to submit timely, accurately and completely the required information for all payments, transfers of value and ownership or investment interests may result in civil monetary penalties of up to an aggregate of $176,495 per year and up to an aggregate of $1.177 million per year for "knowing failures." Covered manufacturers must submit reports by the 90th day of each calendar year. In addition, certain states require implementation of compliance programs and compliance with the industry's voluntary compliance guidelines and the relevant compliance guidance promulgated by the federal government, impose restrictions on marketing practices, make periodic public disclosures on sales, marketing, pricing, clinical trials and other activities and/or require tracking and reporting of gifts, compensation and other remuneration or items of value provided to physicians and other healthcare professionals and entities.

These laws impact the kinds of financial arrangements we may have with hospitals, physicians or other potential purchasers of our products. They particularly impact how we structure our sales offerings, including discount practices, customer support, education and training programs, physician consulting, research grants and other arrangements. If our operations are found to be in violation of any of the health regulatory laws described above or any other laws or regulations that apply to us, we may be subject to penalties, including, without limitation, potentially significant criminal, civil and/or administrative penalties, damages, fines, disgorgement, exclusion from participation in government healthcare programs, imprisonment, contractual damages, reputational harm, administrative burdens, diminished profits and future earnings and the curtailment or restructuring of our operations.

As a result of our sale or distribution of products in a foreign country, we may be subject to similar foreign laws and regulations, which may include, for instance, applicable post marketing requirements, including safety surveillance, anti-fraud and abuse laws and implementation of corporate compliance programs and reporting of payments or other transfers of value to healthcare professionals.

We participate in state government-managed Medicaid programs as well as certain other qualifying federal and state government programs where discounts and mandatory rebates are provided to participating state and local government entities. In connection with several of these government programs, we are required to report prices to various government agencies. Pricing calculations vary among programs. The calculations are complex and are often subject to interpretation by the reporting entities, government agencies and the courts. Our methodologies for calculating these prices could be challenged under false claims laws or other laws. We could make a mistake in calculating reported prices and required discounts, which could result in retroactive liability to government agencies. Government agencies may also make changes in program interpretations, requirements or conditions of participation, some of which may have implications for amounts previously estimated or paid. If we make these mistakes or if governmental agencies make these changes, we could face, in addition to prosecution under federal and state false claims laws, substantial liability and civil monetary penalties, exclusion of our products from reimbursement under government programs, criminal fines or imprisonment, or prosecutors may impose a Corporate Integrity Agreement, Deferred Prosecution Agreement, or similar arrangement.

The Medicare Prescription Drug, Improvement and Modernization Act of 2003, or the MMA, requires that manufacturers report data to CMS on pricing of covered drugs reimbursed under Medicare Part B. These are generally drugs and biologicals, such as injectable products, that are administered "incident to" a physician service and in general are not self-administered. Effective January 1, 2005, ASP became the basis for reimbursement to physicians and suppliers for drugs and biologicals covered under Medicare Part B, replacing the average wholesale price, or AWP, provided and published by pricing services. In general, we must comply with all reporting requirements for any drug that is separately reimbursable under Medicare. The SUPARTZ FX product is reimbursed under Medicare Part B and, as a result, we provide ASP data on this product to CMS on a quarterly basis.

Privacy and data protection laws in the United States

HIPAA and its implementing regulations, as amended by the regulations promulgated pursuant to the HITECH Act, which we collectively refer to as HIPAA, contain substantial restrictions and requirements with respect to the use and disclosure of certain PHI). These restrictions and requirements are set forth in the HIPAA Privacy, Security and Breach Notification Rules.

In some of our operations, such those involving the acceptance of payments, we are a "covered entity" under HIPAA and therefore required to comply with the Privacy, Security and Breach Notification Rules and is subject to significant civil and criminal penalties for failure to do so. We also provide services to customers that are covered entities themselves and we are required to provide satisfactory written assurances to these customers through written "business associate" agreements that we will provide our services in accordance with HIPAA.

The Final Rule published by the U.S. Department of Health and Human Services Office for Civil Rights, or OCR, of the Department of Health and Human Services in January 2013 and effective March 23, 2013, modified the HIPAA Privacy, Security, Breach Notification and Enforcement Rules, including revisions/additions made by the HITECH Act. The rule expanded the privacy and security requirements for business associates that create, receive, maintain or transmit PHI for or on behalf of covered entities, increased penalties for noncompliance and strengthened requirements for reporting of breaches of unsecured PHI, among other changes. The rule also made business associates and their subcontractors directly liable for civil monetary penalties for impermissible uses and disclosures of PHI.

If we were to be found to have breached our obligations under HIPAA, we could be subject to enforcement actions by the OCR and state health regulators and lawsuits, including class action law suits, by private plaintiffs. In addition, OCR performs compliance audits in order to proactively enforce the HIPAA privacy and security standards. OCR has become an increasingly active regulator and has signaled its intention to continue this trend. OCR has the discretion to impose penalties without being required to attempt to resolve violations through informal means; further OCR may require companies to enter into resolution agreements and corrective action plans which impose ongoing compliance requirements. OCR enforcement activity can result in financial liability and reputational harm, and responses to such enforcement activity can consume significant internal resources. In addition to enforcement by OCR, state attorneys general are authorized to bring civil actions under either HIPAA or relevant state laws seeking either injunctions or damages in response to violations that threaten the privacy of state residents. Although we have implemented and maintained policies, processes and a compliance program infrastructure to assist us in complying with these laws and regulations and our contractual obligations, we cannot provide assurance regarding how these laws and regulations will be interpreted, enforced or applied to our operations.

In addition to HIPAA, we must adhere to state patient confidentiality laws that are not pre-empted by HIPAA, including those that are more stringent than HIPAA requirements. Numerous other state, federal and foreign laws, including consumer protection laws and regulations, govern the collection, dissemination, use, access to, confidentiality and security of patient health information. In addition, Congress and some states are considering new laws and regulations that further protect the privacy and security of medical records or medical information. With the recent increase in publicity regarding data breaches resulting in improper dissemination of consumer information, all states have passed laws regulating the actions that a business must take if it experiences a data breach, such as prompt disclosure to affected customers. Generally, these laws are limited to electronic data and make some exemptions for smaller breaches. Congress has also been considering similar federal legislation relating to data breaches. The FTC and states' Attorneys General have also brought enforcement actions and prosecuted some data breach cases as unfair and/or deceptive acts or practices under the FTC Act. In addition to data breach notification laws, some states have enacted statutes and rules requiring businesses to reasonably protect certain types of personal information they hold or to otherwise comply with certain specified data security requirements for personal information. For example, the CCPA took effect on January 1, 2020. The CCPA establishes a new privacy framework for covered businesses and provides new and enhanced data privacy rights to California residents, such as affording consumers the right to access and delete their information and to opt out of certain sharing and sales of personal information. The CCPA imposes severe statutory damages as well as a private right of action for certain data breaches that result in the loss of personal information. This private right of action is expected to increase the likelihood of, and risks associated with, data breach litigation. It remains unclear how various provisions of the CCPA will be interpreted and enforced. The CCPA

contains an exemption for medical information governed by the CMIA and for PHI collected by a covered entity or business associate governed by the privacy, security and breach notification rules established pursuant to HIPAA and HITECH, but the precise application and scope of this exemption is not yet clear, and the law may still apply to certain aspects of our business. Additionally, a new privacy law, the California Privacy Rights Act, or the CPRA, was approved by California voters in the November 3, 2020 election. The CPRA generally takes effect on January 1, 2023 and significantly modifies the CCPA, including by expanding consumers' rights with respect to certain personal information, restricting use of sensitive personal information, which includes health information, and creating a new state agency to oversee implementation and enforcement efforts, potentially resulting in further uncertainty and requiring us to incur additional costs and expenses in an effort to comply. The CCPA and CPRA may lead other states to pass comparable legislation, with potentially greater penalties, and more rigorous compliance requirements relevant to our business, and that may not include exemptions for businesses subject to HIPAA. The effects of the CCPA, and other similar state or federal laws, are potentially significant and may require us to modify our data processing practices and policies and to incur substantial costs and potential liability in an effort to comply with such legislation. As with HIPAA, any laws regulating the collection, dissemination, use, access to, confidentiality and security of personal information may apply directly to our business or indirectly by contract when we provide services to other companies. We intend to continue to comprehensively protect all consumer data and to comply with all applicable laws regarding the protection of this data.

Privacy and data protection laws in Europe

We are subject to European laws relating to our and our suppliers', partners' and subcontractors' collection, control, processing and other use of personal data, such as data relating to an identifiable living individual, whether that individual can be identified directly or indirectly. We and our suppliers, partners and subcontractors process personal data including in relation to our employees, employees of customers, trial patients, health care professions and employees of suppliers including health and medical information. The data privacy regime in the EU includes the GDPR, the E-Privacy Directive (2002/58/EC) and national laws implementing or supplementing each of them.

The GDPR requires that personal data is only collected for specified, explicit and legal purposes as set out in the GDPR or local laws and the data may then only be processed in a manner consistent with those purposes. The personal data collected and processed must be adequate, relevant and not excessive in relation to the purposes for which it is collected and processed, it must be held securely, not transferred outside of the EEA unless certain steps are taken to ensure an adequate level of protection and must not be retained for longer than necessary for the purposes for which it was collected. In addition, the GDPR requires companies processing personal data to take certain organizational steps to ensure that they have adequate records, policies, security, training and governance frameworks in place to ensure the protection of data subject rights, including as required to respond to complaints and requests from data subjects. In addition, to the extent a company processes, controls or otherwise uses 'special category' personal data (including patients' health or medical information, genetic information and biometric information), more stringent rules apply, further limiting the circumstances and the manner in which a company is legally permitted to process that data. Finally, GDPR provides a broad right for EU Member States to create supplemental national laws and they are increasingly adopting different approaches to the role of the parties in clinical trials. Such laws, for example may relate to the processing of health, genetic and biometric data, which could further limit our ability to use and share such data or could cause our costs to increase and harm our business and financial condition.

From January 1, 2021, we are also subject to the UK GDPR, which, together with the amended UK Data Protection Act 2018, retains the GDPR in UK national law. The UK GDPR mirrors the fines under the GDPR, e.g. fines up to the greater of €20 million (£17.5 million) or 4% of global turnover. The relationship between the United Kingdom and the European Union in relation to certain aspects of data protection law remains unclear, and it is unclear how UK data protection laws and regulations will develop in the medium to longer term, and how data transfers to and from the United Kingdom will be regulated in the long term. Currently there is a four to six-month grace period agreed in the EU and UK Trade and Cooperation Agreement, ending 30 June 2021 at the latest, whilst the parties discuss an adequacy decision. However, it is not clear whether (and when) an adequacy decision may be granted by the European Commission enabling data transfers from EU member states to the United Kingdom long term without additional measures. These changes will lead to additional costs and increase our overall risk exposure.

In addition, the United Kingdom's withdrawal from the European Union means that the United Kingdom will become a "third country" for the purposes of data transfers from the European Union to the United Kingdom following the expiration of the four to six-month personal data transfer grace period (from January 1, 2021) set out in the EU and UK Trade and Cooperation Agreement, unless a relevant adequacy decision is adopted in favor of the United Kingdom (which would allow data transfers without additional measures). These changes may require us to find alternative solutions for the compliant transfer of personal data into the United Kingdom.

We are also subject to evolving European laws on data export and electronic marketing. The rules on data export will apply when we transfer personal data to group companies or third parties outside of the EEA. For example, in 2015, the CJEU ruled that the U.S.-EU Safe Harbor framework, one compliance method by which companies could transfer personal data regarding citizens of the EU to the United States, was invalid and could no longer be relied upon. European and U.S. negotiators agreed in February 2016 to a new framework, the EU-US Privacy Shield framework, which replaced the Safe Harbor framework, however, on July 16, 2020 the CJEU also invalidated the Privacy Shield framework as a method to transfer personal data from the EEA to US. While the CJEU upheld the adequacy of the standard contractual clauses (a standard form of contract approved by the European Commission as an adequate personal data transfer mechanism, and potential alternative to the Privacy Shield), it made clear that reliance on them alone may not necessarily be sufficient in all circumstances; this has created uncertainty. These changes will require us to review and amend the legal mechanisms by which we make and/ or receive personal data transfers to/ in the U.S. As supervisory authorities issue further guidance on personal data export mechanisms, including circumstances where the standard contractual clauses cannot be used, and/or start taking enforcement action, we could suffer additional costs, complaints and/or regulatory investigations or fines, and/or if we are otherwise unable to transfer personal data between and among countries and regions in which we operate, it could affect the manner in which we provide our services, the geographical location or segregation of our relevant systems and operations, and could adversely affect our financial results.

We are also subject to evolving EU and UK privacy laws on cookies and e-marketing. In the European Union and the United Kingdom, regulators are increasingly focusing on compliance with requirements in the online behavioral advertising ecosystem, and current national laws that implement the ePrivacy Directive are highly likely to be replaced by an EU regulation known as the ePrivacy Regulation which will significantly increase fines for non-compliance. In the European Union and the United Kingdom, informed consent is required for the placement of a cookie or similar technologies on a user's device and for direct electronic marketing. The GDPR also imposes conditions on obtaining valid consent, such as a prohibition on pre-checked consents and a requirement to ensure separate consents are sought for each type of cookie or similar technology. While the text of the ePrivacy Regulation is still under development, a recent European court decision and regulators' recent guidance are driving increased attention to cookies and tracking technologies. If regulators start to enforce the strict approach in recent guidance, this could lead to substantial costs, require significant systems changes, limit the effectiveness of our marketing activities, divert the attention of our technology personnel, adversely affect our margins, increase costs and subject us to additional liabilities.

We are subject to the supervision of local data protection authorities in those jurisdictions where we are established or collecting data from EU residents. We depend on a number of third parties in relation to our provision of our services, a number of which process personal data on our behalf. With each such provider we enter into contractual arrangements to ensure that they only process personal data according to our instructions, and that they have sufficient technical and organizational security measures in place. Where we transfer personal data outside the EEA, we do so in compliance with the relevant data export requirements. As previously described, following the CJEU's decision to invalidate Privacy Shield, we are now required to review and amend the legal mechanisms by which we make and/or receive personal data transfers to/in the U.S. As supervisory authorities issue further guidance on personal data export mechanisms, including circumstances where the standard contractual clauses cannot be used, and/or start taking enforcement action, we could suffer additional costs, complaints and/or regulatory investigations or fines, and/or if we are otherwise unable to transfer personal data between and among countries and regions in which we operate, it could affect the manner in which we provide our services, the geographical location or segregation of our relevant systems and operations, and could adversely affect our financial results.

We take our data protection obligations seriously, as any improper, unlawful or accidental disclosure, loss, alteration or access to, personal data, particularly sensitive personal data, such as special category, could adversely affect our business and/or our reputation.

We may find it necessary or desirable to join self-regulatory bodies or other privacy-related organizations, particularly relating to biopharmacy and/or scientific research that require compliance with certain rules pertaining to privacy and data security.

There are costs and administrative burdens associated with compliance with GDPR and the resultant changes in the EU and EEA Member States' national laws and the introduction of the e-Privacy Regulation once it takes effect. Any failure or perceived failure to comply with global privacy laws carries with it the risk of significant penalties and sanctions. These laws or new interpretations, enactments or supplementary forms of these laws, could create liability for us, could impose additional operational requirements on our business, and could affect the manner in which we use and transmit patient information and could increase our cost of doing business. Claims of violations of privacy rights or contractual breaches, even if we are not found liable, could be expensive and time-consuming to defend and could result in adverse publicity that could harm our business.

Coverage and reimbursement

Significant uncertainty exists as to the coverage and reimbursement status of any pharmaceutical, biological or medical device product. In the United States and markets in other countries, patients who are prescribed treatments or undergo procedures for their conditions and the providers performing the services generally rely on third-party payers to reimburse all or part of the associated healthcare costs. Patients are unlikely to use our products unless coverage is provided and reimbursement is adequate to cover a significant portion of the cost of our products or related procedures. Sales of any products will therefore depend, in part, on the availability of coverage and adequate reimbursement from third-party payers. Third-party payers include government authorities, managed care organizations, private health insurers and other organizations.

The process for determining whether a third-party payer will provide coverage for a product typically is separate from the process for setting the price of such product or for establishing the reimbursement rate that the payer will pay for the product once coverage is approved. Third-party payers may limit coverage to specific products on an approved list, also known as a formulary, which might not include all of the FDA-approved products for a particular indication, or place products at certain formulary levels that result in lower reimbursement levels and higher cost-sharing obligation imposed on patients. A decision by a third-party payer not to cover any of our products or product candidates could reduce physician utilization of such products and adversely affect our business, results of operations and financial condition. Moreover, a third-party payer's decision to provide coverage for a product does not imply that an adequate reimbursement rate will be approved. Adequate third-party reimbursement may not be available to enable us to maintain price levels sufficient to realize an appropriate return on our investment in product development. Additionally, coverage and reimbursement for products can differ significantly from payer to payer. One third-party payer's decision to cover a particular medical product or service does not ensure that other payers will also provide coverage for the medical product or service, or will provide coverage at an adequate reimbursement rate. As a result, the coverage determination process will often require us to provide scientific and clinical support for the use of our products to each payer separately and can be a time-consuming process.

Third-party payers are increasingly challenging the price and examining the medical necessity and cost-effectiveness of medical products and services, in addition to their safety and efficacy. Third-party payers may not consider our products to be medically necessary or cost-effective for certain indications or for all uses, and as a result, may not provide coverage for our products. In order to obtain and maintain coverage and reimbursement for our products and product candidates, we may need to conduct expensive clinical trials in order to demonstrate the medical necessity and cost-effectiveness of such products, in addition to the costs required to obtain regulatory approvals. If third-party payers do not consider a product to be cost-effective compared to other available therapies, they may not cover the product as a benefit under their plans or, if they do, the level of payment may not be sufficient to allow a company to sell our products at a profit. Any changes in coverage and reimbursement that further restrict coverage of our products or lower reimbursement for procedures using our devices could materially affect our business. See “Risk factors—Risks related to our business—If we are unable to achieve and maintain adequate levels of coverage and/or reimbursement for our products, the procedures using our products, or any future products we may seek to commercialize, the commercial success of these products may be severely hindered.”

Outside of the United States, the pricing of medical devices and prescription pharmaceuticals is subject to governmental control in many countries. For example, in the EU, pricing and reimbursement schemes vary widely from country to country. Some countries provide that products may be marketed only after a reimbursement price has been agreed. Some countries may require the completion of additional studies that compare the cost-effectiveness of a particular therapy to currently available therapies or so called health technology assessments, in order to obtain reimbursement or pricing approval. Other countries may allow companies to fix their own prices for products, but monitor and control prescription volumes and issue guidance to physicians to limit prescriptions. Efforts to control prices and utilization of medical devices and pharmaceutical products could continue as countries attempt to manage healthcare expenditures, especially in light of the severe fiscal and debt crises experienced by many countries in the EU. There can be no assurance that any country that has price controls or reimbursement limitations for medical devices or pharmaceutical products will allow favorable reimbursement and pricing arrangements for any of our products, if approved in those countries. See “Risk factors—Risks related to our business—Governments outside the United States may not provide coverage or reimbursement of our products, which may adversely affect our business, results of operations and financial condition.”

Exogen reimbursement and order fulfillment

Our Exogen system is classified as durable medical equipment, meaning the product is used by the patient in the home and that the patient and/or insurance company, rather than the physician, is billed for the product. We bill third-party payers, such as private insurance or Medicare, on behalf of our patients and bill the patient for their co-payment obligations and deductibles. An internal team and external consultants assist with billing and processing orders for our Exogen system and has been trained in verifying case-by-case benefits, obtaining prior authorization and billing and collecting payments from payers. We also have a separate dedicated team of employees that provides customer support services for our Exogen system.

We have strong and established payer relationships, including the largest private payers in the United States. Based on our estimates, we are contracted as a provider with payers covering over 200 million lives. These contracts allow patients to access our Exogen system at a competitive rate and copay comparable to other suppliers and easing our administrative burden in processing at both authorization and when billing. Our Exogen system is reimbursed under HCPCS code E0760.

Healthcare reform

Current and future legislative proposals to further reform healthcare or reduce healthcare costs may limit coverage for the procedures associated with the use of our products, or result in lower reimbursement for those procedures. The cost containment measures that payers and providers are instituting and the effect of any healthcare reform initiative implemented in the future could significantly reduce our revenues from the sale of

our products. By way of example, the Affordable Care Act substantially changed healthcare financing and delivery by both governmental and private insurers and significantly impacted the pharmaceutical and medical device industries. The Affordable Care Act imposed, among other things, a new federal excise tax on the sale of certain medical devices, provided incentives to programs that increase the federal government's comparative effectiveness research and implemented payment system reforms including a national pilot program on payment bundling to encourage hospitals, physicians and other providers to improve the coordination, quality and efficiency of certain healthcare services through bundled payment models. Since its enactment, there have been judicial and Congressional challenges to certain aspects of the Affordable Care Act, including the permanent repeal of the federal excise tax on the sale of certain medical devices effective January 1, 2020. We expect there will be additional challenges and amendments to the Affordable Care Act in the future.

In addition, other legislative changes have been proposed and adopted in the United States since the Affordable Care Act was enacted. On August 2, 2011, the Budget Control Act of 2011 was signed into law, which, among other things, included reductions to Medicare payments to providers of 2% per fiscal year, which went into effect on April 1, 2013, and, due to subsequent legislative amendments, will stay in effect through 2030 unless additional congressional action is taken. On January 2, 2013, the American Taxpayer Relief Act of 2012, was signed into law, which, among other things, further reduced Medicare payments to several types of providers, including hospitals.

Moreover, payment methodologies may be subject to changes due to healthcare legislation and regulatory initiatives. For example, CMS may develop new payment and delivery models, such as bundled payment models. In addition, recently there has been heightened governmental scrutiny over the manner in which manufacturers set prices for their marketed products, which has resulted in several U.S. Congressional inquiries and proposed and enacted federal legislation designed to, among other things, bring more transparency to drug pricing, reduce the cost of prescription drugs under Medicare and review the relationship between pricing and manufacturer patient programs.

Individual states in the United States have also increasingly passed legislation and implemented regulations designed to control pharmaceutical and biological product pricing, including price or patient reimbursement constraints, discounts, restrictions on certain product access and marketing cost disclosure and transparency measures and, in some cases, designed to encourage importation from other countries and bulk purchasing. In addition, regional healthcare authorities and individual hospitals are increasingly using bidding procedures to determine what pharmaceutical products and which suppliers will be included in their prescription drug and other healthcare programs.

In the EU, similar political, economic and regulatory developments have occurred or are being contemplated. In addition to continuing pressure on prices and cost containment measures, legislative developments at the EU or Member State level may result in significant additional requirements or obstacles that may increase operating costs. The delivery of healthcare in the EU, including the establishment and operation of health services and the pricing and reimbursement of medicines, is almost exclusively a matter for national, rather than EU, law and policy. National governments and health service providers have different priorities and approaches to the delivery of health care and the pricing and reimbursement of products in that context. In general, however, the healthcare budgetary constraints in most EU Member States have resulted in restrictions on the pricing and reimbursement of medicines by relevant health service providers.

We expect that additional foreign, state and federal healthcare reform measures will be adopted in the future, any of which could limit the amounts that federal and state governments will pay for healthcare products and services, which could result in reduced demand for our products or additional pricing pressure.

Employee and Human Capital Resources

As of September 26, 2020, we had approximately 680 employees, none of whom were covered by collective bargaining agreements. Most of these employees are located in the United States with approximately 95 located outside the United States. We believe that our relations with our employees are generally good.

We value our employees and regularly benchmark total rewards we provide, such as short and long term compensation, 401(k) contributions, health, welfare and quality of life benefits, paid time off and personal leave, against our industry peers to ensure we remain competitive and attractive to potential new hires. We seek to create a workplace environment that fosters personal and business successes by offering training and development programs, which further assist our current employees in meeting and exceeding our established standards of performance. Additionally, through our Diversity, Equity and Inclusion Counsel, our employees work directly with our executive management team to address any internal concerns and continuously improve the ways in which we serve our employees and customers.

Facilities

Our principal executive offices are located on leased property in Durham, North Carolina. We also occupy leased office and manufacturing space in Cordova, Tennessee. In addition, our international operations occupy leased office spaces in Hoofddorp, Netherlands and Mississauga, Canada. We believe that our facilities are sufficient to meet our current needs and that suitable additional space will be available as and when needed on acceptable terms.

Legal proceedings

We are not currently a party to any material legal proceedings. We may at times be involved in litigation and other legal claims in the ordinary course of business. When appropriate in our estimation, we may record reserves in our financial statements for pending litigation and other claims.

MANAGEMENT

Executive officers, key employees and directors

The following table sets forth information regarding the individuals who have agreed to become our executive officers, key employees and directors upon the completion of this offering, as of December 31, 2020:

Name	Age	Position(s)
Executive Officers		
Kenneth M. Reali	55	Chief Executive Officer and Director
Gregory O. Anglum	50	Senior Vice President and Chief Financial Officer
John E. Nosenzo	63	Chief Commercial Officer
Anthony D'Adamio	60	Senior Vice President and General Counsel
Katrina Church	59	Senior Vice President and Chief Compliance Officer
Alessandra Pavesio	54	Senior Vice President and Chief Science Officer
Non-Employee Directors		
William A. Hawkins	66	Director, Chairperson
Philip G. Cowdy	53	Director
Guido J. Neels	72	Director
Guy P. Nohra	60	Director
David J. Parker	60	Director
Martin P. Sutter	65	Director
Susan M. Stalnecker	67	Director

The following are biographical summaries and a description of the business experience of those individuals who serve as officers of Bioventus LLC. Upon the consummation of this offering, such individuals will serve in the same capacities at Bioventus Inc. The following also contains biographical summaries and a description of the business experience of those individuals who will serve as directors of Bioventus Inc.

Executive officers and directors

Kenneth M. Reali has served as our Chief Executive Officer since April 2020 and as a member of our board of directors since September 2020. Mr. Reali previously served as President and Chief Executive Officer of Clinical Innovations, LLC, a medical device company focused on advancing woman's healthcare, from June 2015 until its successful sale on February 12, 2020. In this role, Mr. Reali led the company through two successful acquisitions by a private equity firm in October 2017 and later to a leading diagnostic and therapeutic medical technology company in February 2020. Prior to joining Clinical Innovations, LLC, Mr. Reali also served as the President and CEO of Baxano Surgical, Inc., a medical device company, from January 2010 until February 2015, leading its turn-around out of bankruptcy. Mr. Reali also held positions of increasing responsibility at several medical device companies, including Biomet, Inc. (now known as Zimmer Biomet) and Stryker Corporation. Mr. Reali also served as Senior Vice President and General Manager within the Biologics and Clinical Therapies business of Smith & Nephew plc from May 2005 to January 2010, a division which was later spun out to become Bioventus LLC. Mr. Reali has served as a member of the board of managers of Bioventus LLC since April 2020. Mr. Reali also currently serves as a member of the board of directors of Ossio, Ltd., an orthopedic medical device company, and the Advanced Medical Technology Association, or AdvaMed, an American medical device trade association. Mr. Reali also serves on the compensation committee of Ossio, Ltd. and the ethics and health care compliance committee of AdvaMed. Mr. Reali holds a Bachelor of Science in Business Administration from Valparaiso University.

We believe Mr. Reali is qualified to serve on our board of directors because of his vast skills and experience in the medical device industry, his role as our Chief Executive Officer and his extensive knowledge of the Company.

Gregory O. Anglum has served as our Senior Vice President and Chief Financial Officer since May 2017. Previously, Mr. Anglum served as our Chief Accounting Officer from April 2016 to May 2017. Prior to joining us, Mr. Anglum served as Chief Financial Officer of Overture Networks, Inc. (now known as ADVA Optical Networking SE), a leading global provider of networking and telecommunications equipment from September 2015 to April 2016. From December 2014 to September 2015, Mr. Anglum was Chief Financial Officer at StrikeIron, Inc., a Data-as-a-Service software company. From August 2004 to July 2014, Mr. Anglum was an audit partner at Grant Thornton LLP, or GT, where he also served as leader of the Raleigh office from August 2009 through July 2014 and was a member of the firm-wide leadership team for the technology industry group. Mr. Anglum holds a Master of Business Administration with a concentration in Accounting from Vanderbilt University's Owen Graduate School of Management and a Bachelors of Arts in Economics from Vanderbilt University and is a Certified Public Accountant.

John E. Nosenzo has served as our Chief Commercial Officer since February 2017. Prior to joining us, Mr. Nosenzo served as Senior Vice President, Global Customer Operations at Beckman Coulter Diagnostics, a global leader in clinical diagnostics, from September 2011 to February 2017. From May 2010 to September 2011, Mr. Nosenzo was Senior Vice President, Customer Relations Management for Siemens Healthcare (now known as Siemens Healthineers AG), a clinical diagnostic services and therapeutic systems company, where he developed and implemented sales plans for their multi-billion dollar healthcare imaging and healthcare IT commercial organizations. Mr. Nosenzo's earlier career also includes senior positions at Quest Diagnostics and Bayer Healthcare LLC's Diagnostics Division (now known as Siemens Healthcare Diagnostics). Mr. Nosenzo currently serves as a member of the board of directors of Spectral Medical Inc. Mr. Nosenzo holds a Master of Business Administration in marketing and management from Adelphi University and received his Bachelor of Science in pharmacy from St. John's University.

Anthony D'Adamio has served as our Senior Vice President and General Counsel since August 2017. Previously, Mr. D'Adamio was General Counsel and Secretary at Siemens Healthcare (now known as Siemens Healthineers AG) from January 2010 to August 2017 and served as Deputy General Counsel and Secretary of Siemens Healthcare Diagnostics from January 2007 to January 2010. Prior to that, Mr. D'Adamio was Senior Counsel within the Diagnostics Division of Bayer Healthcare LLC (now known as Siemens Healthcare Diagnostics) from January 2001 to December 2006. Mr. D'Adamio began his legal career at the law firm of Bond, Schoeneck & King before taking corporate legal positions with companies within the health insurance, pharmaceutical and biotechnology industries, including Group Health Incorporated, Quest Diagnostics and Covance Inc. Mr. D'Adamio holds a Juris Doctor, cum laude, from Howard University School of Law and a Bachelor of Arts from the State University of New York at Binghamton.

Katrina Church has served as our Chief Compliance Officer since August 2020. Prior to joining us, Ms. Church served in corporate counsel and compliance roles within the Merz Group of companies, most recently as Global Compliance Officer for Merz Pharma GmbH & Co KGaA, a privately-held pharmaceutical company, from March 2015 to August 2020. From June 1998 to December 2008, Ms. Church was Executive Vice President and General Counsel of Connetics Corporation, a specialty pharmaceutical company that was acquired by Stiefel Laboratories, Inc. in 2008. Ms. Church began her career as an attorney at Hopkins & Carley, a San Jose-based law firm. In 2020, Ms. Church was nominated for several industry awards for compliance training and received the 2020 Women in Compliance Award for "Most Impactful Compliance Training Programme of the Year" and the Brandon Hall 2020 Gold Medal for Excellence in Training. Ms. Church holds a Juris Doctor from New York University School of Law and a Bachelor of Arts in Comparative Literature, magna cum laude, from Duke University.

Alessandra Pavesio has served as our Senior Vice President and Chief Science Officer since August 2013. Previously, Ms. Pavesio managed the Boston University Coulter Translational Partnership, a foundation-

sponsored research program designed to enhance clinical impact and wealth creation through the development and transfer of innovative intellectual properties from university laboratories to commercial practice, from January 2012 to July 2013. From January 2010 to December 2011, Ms. Pavesio was Vice President of Research & Development at Anika Therapeutics, Inc., an integrated orthopedic medicines company. Prior to that, Ms. Pavesio served as Director of Research and Development at Fidia Advanced Biopolymers, s.r.l. (now known as Anika Therapeutics, Inc.), from May 1991 to December 2009. Ms. Pavesio is the co-author of numerous peer reviewed publications and more than 15 patented inventions on hyaluronan based and biologics technologies. In the European Union, she has also served as chairperson of international regenerative medicine technology platforms and government advisory councils on innovation. Ms. Pavesio holds a Master's degree in Medicinal Chemistry, magna cum laude, from the University of Turin in Italy.

Non-employee directors

William A. Hawkins has served as a member of our board of directors since September 2020 and was appointed Chairperson of our board of directors in September 2020. Mr. Hawkins is a Senior Advisor to EW Healthcare Partners, a leading private equity firm investing in life sciences. From October 2011 to July 2015, Mr. Hawkins served as President and Chief Executive Officer of Immucor, Inc., a leading provider of transfusion and transplantation diagnostic products worldwide. Prior to that, Mr. Hawkins served in positions of increasing responsibility at Medtronic, Inc., a prominent medical technology company, from January 2002 to June 2011, most recently serving as its Chief Executive Officer from November 2007 to June 2011. Mr. Hawkins served as President and Chief Executive Officer of Novoste Corporation, a global leader in the field of vascular brachytherapy, from 1988 to 2002 and has also held several senior leadership positions at American Home Products (now known as Wyeth, LLC), Johnson & Johnson, Guidant Corp. and Eli Lilly and Co. Mr. Hawkins has served as a member of the board of managers of Bioventus LLC since January 2016. Mr. Hawkins also currently serves on the board of directors of Avanos Medical, Inc., a public medical technology company; Biogen Inc. and MiMedx Group Inc., each a public biopharmaceutical company; and Asklepios BioPharmaceutical, Inc., Baebies, Inc., Cirtec Medical Corp., Immucor, Inc. and Virtue Labs, LLC, each a privately-held life science company. Mr. Hawkins was elected to the Duke University Board of Trustees in 2011 and currently serves as its Vice Chairman. Mr. Hawkins is also Chair of the Duke University Health System board of director and a member of the board of directors of the North Carolina Biotechnology Center and the Focused Ultrasound Foundation Society. Mr. Hawkins holds a Master of Business Administration from the University of Virginia Darden School of Business and received a Bachelor of Science in electrical and biomedical engineering from Duke University.

We believe Mr. Hawkins is qualified to serve on our board of directors because of his experience in and knowledge of the life science industry.

Philip G. Cowdy has served as a member of our board of directors since September 2020. Mr. Cowdy is the Chief Business Development and Corporate Affairs Officer for Smith & Nephew plc. Since joining Smith & Nephew plc in June 2008, he has also served as Executive Vice President of Business Development and Corporate Affairs, Head of Corporate Affairs and Strategic Planning, Group Director of Corporate Affairs and Director of Investor Relations. Prior to joining Smith & Nephew plc, Mr. Cowdy served as a Senior Director at Deutsche Bank for 13 years, providing corporate finance and equity capital markets advice to a variety of UK-based companies. Mr. Cowdy is currently a member of the board of managers of Bioventus LLC, which he has served on from January 2012 to October 2017 and again from July 2018, and he has served as a member of the Audit, Compliance and Quality Committee. Mr. Cowdy received his Bachelor of Science in Natural Sciences from Durham University (UK) and is a qualified chartered accountant.

We believe Mr. Cowdy is qualified to serve on our board of directors because of his experience in the industry, his finance experience, and his knowledge of the Company.

Guido J. Neels has served as a member of our board of directors since September 2020. Mr. Neels has been with Essex Woodlands since August 2006, where he is now an Operating Partner. Prior to joining Essex

Woodlands, Mr. Neels served in a variety of management positions at Guidant Corporation, a developer of cardiovascular medical products. From July 2004 until retiring in November 2005, Mr. Neels served as Guidant's Chief Operating Officer, where he was responsible for the global operations of Guidant's four operating units: Cardiac Rhythm Management, Vascular Intervention, Cardiac Surgery and Endovascular Solutions. From December 2002 to July 2004, Mr. Neels served as Guidant's Group Chairman, Office of the President, responsible for worldwide sales operations, corporate communications, corporate marketing, investor relations and government relations. In January 2000, Mr. Neels was named Guidant's President, Europe, Middle East, Africa and Canada. In addition, Mr. Neels served as Guidant's Vice President, Global Marketing, Vascular Intervention, from 1996 to 2000 and as Guidant's General Manager, Germany and Central Europe, from 1994 to 1996. Mr. Neels has served as a member of the board of managers of Bioventus LLC since May 2012. Mr. Neels also currently serves on the board of directors of Axogen, Inc. and also is a member of its compensation committee. Mr. Neels previously served on the board of directors of Endologix, Inc. from December 2010 to June 2019 and on the board of directors of Entellus Medical from November 2009 to February 2018, each of which is a public company. Mr. Neels holds a Master in Business Administration from the Stanford University Graduate School of Business and received his Business Engineering degree from the University of Leuven in Belgium.

We believe that Mr. Neels is qualified to serve on our board of directors because of his experience in the industry, familiarity with serving on the boards of public companies and his knowledge of our business.

Guy P. Nohra has served as a member of our board of directors since September 2020. In March 1996, Mr. Nohra co-founded Alta Partners, a life sciences venture capital firm, and he has since been involved in the funding and development of numerous medical technology and life sciences companies. Mr. Nohra is currently a member of the board of managers of Bioventus LLC, which he has served on since May 2012, and serves as the Chair of the Compensation Committee. Mr. Nohra currently serves as a member of the boards of directors of several private life sciences companies, including Bionure, Inc., Sanifit Therapeutics S.A. and Spiral Therapeutics, Inc. He also previously served on the board of directors of various public companies, including ATS Medical, Inc., Cutera, Inc., AcelRx Pharmaceuticals, Inc., and ZS Pharma, as well as several private companies, including Carbylan Biosurgery, Inc., Cerenis Therapeutics, Coapt Systems, Paracor Medical, Inc. and PneumRx. Mr. Nohra holds a Master in Business Administration from the University of Chicago and received his Bachelor of Arts in History from Stanford University.

We believe Mr. Nohra is qualified to serve on our board because of his extensive experience in the life sciences industry, his investment and development experience, and his service as a director of other life sciences companies.

David J. Parker has served as a member of our board of directors since September 2020. Mr. Parker has been a General Partner at Ampersand Capital Partners since November 2010, a private equity firm with $800.0 million of capital under management, which he joined in September 1994. Prior to joining Ampersand Capital Partners, Mr. Parker served as a management consultant at Bain & Company and Mercer Management Consulting, where he provided strategy and operations consulting services to clients in the healthcare, transportation, consumer products and telecommunications sectors. Mr. Parker is currently a member of the board of managers of Bioventus LLC, which he has served on since May 2012, and serves on the Audit, Compliance and Quality Committee. Mr. Parker also currently serves as a director of Genome Diagnostics B.V., or GenDx, MedPharm Ltd. And Tjoapack Holdings B.V. Mr. Parker also serves on the remuneration committees of both GenDx and MedPharm and the audit committee of GenDx. Mr. Parker holds a Master of Business Administration in Finance from The Wharton School of the University of Pennsylvania and received his Bachelor of Arts in Government and Economics from Dartmouth College.

We believe Mr. Parker is qualified to serve on our board because of his extensive experience in the life sciences industry, his finance and investment experience, and his service as a director of other life sciences companies.

Martin P. Sutter has served as a member of our board of directors since September 2020. Mr. Sutter is one of the two founding Managing Directors of EW Healthcare Partners (previously known as Essex Woodlands), one of the oldest and largest life sciences and healthcare focused venture capital firms, which he formed in 1994. Mr. Sutter has more than 30 years of management experience in operations, marketing, finance and venture capital. Mr. Sutter has served as a member of the board of managers of Bioventus LLC since May 2012. Mr. Sutter also currently serves on the board of directors of Abiomed, Inc., a publicly traded biopharmaceutical company, MiMedx Group, Inc., a publicly traded medical devices company, and Prolacta Biosciences, Inc., a privately held life sciences company. Mr. Sutter has also previously served on the board of directors of Tissue Tech, Inc., Suneva Medical, Inc. and QSpex Technologies, Inc. Mr. Sutter currently serves on the compensation and nominating and governance committees of both Abiomed, Inc. and MiMedx Group, Inc. Mr. Sutter holds a Master of Business Administration from the University of Houston and received his Bachelor of Science from Louisiana State University.

We believe Mr. Sutter is qualified to serve on our board because of his extensive experience in the life sciences industry, his investment experience, and his service as a director of other life sciences companies.

Susan M. Stalnecker has served as a member of our board of directors since September 2020. Ms. Stalnecker has been a Senior Advisor at Boston Consulting Group, a global management consulting firm, since March 2016. Ms. Stalnecker served as Vice President of E.I. duPont de Nemours and Co. (now known as DuPont de Nemours, Inc., or DuPont), a public company engaged primarily in biotechnology and the manufacture of chemicals and pharmaceuticals, from December 1976 until she retired in 2016. During her nearly 40-year career at DuPont, Ms. Stalnecker served in several senior leadership roles including Vice President, Treasurer & M&A; Vice President, Risk Management; Vice President, Government and Consumer Markets; and Vice President, Productivity & Shared Services. Ms. Stalnecker has served as a member of the board of managers of Bioventus LLC since November 2018. Ms. Stalnecker also currently serves on the board of directors of Leidos Holding, Inc. and Optimum Funds McQuairie, and serves on the Board of Trustees of the Duke Health System. She also serves on the audit & finance committee of Leidos Inc., the audit committee of Optimum Funds McQuairie and the compliance, audit & finance committee of the Duke Health System. Ms. Stalnecker holds a Master of Business Administration from The Wharton School of the University of Pennsylvania and received her Bachelor of Arts from Duke University.

We believe Ms. Stalnecker is qualified to serve on our board because of her extensive experience as a financial expert, her investment experience, and her service as a director of other public companies.

Corporate governance

Composition of our board of directors

Our business and affairs are managed under the direction of our board of directors. We currently have eight directors and one vacant seat. Pursuant to the Stockholders Agreement, the Essex Members (as defined herein), collectively will have the right to designate up to three individuals to be included in the slate of nominees recommended by our board of directors. Smith & Nephew, Inc. and Smith & Nephew (Europe) B.V., as the other members of the Voting Group, will have the right to designate up to two individuals to be included in the slate of nominees recommended by our board of directors pursuant to the Stockholders Agreement, one of whom shall be the individual to be included in the slate of nominees recommended by our board of directors to fill the currently vacant seat. See “Certain Relationships and Related Party Transactions—Stockholders Agreement.” Our amended and restated certificate of incorporation and bylaws will provide for the division of our board of directors into three classes, as nearly equal in number as possible, with the directors in each class serving for a three-year term, and one class being elected each year by our stockholders. Prior to the offering, each of Mr. Reali, Mr. Hawkins, Mr. Cowdy, Mr. Neels, Mr. Nohra, Mr. Parker, Mr. Sutter and Ms. Stalnecker joined our board of directors.

When considering whether directors and nominees have the experience, qualifications, attributes or skills, taken as a whole, to enable our board of directors to satisfy its oversight responsibilities effectively in light of our business and structure, the board of directors focuses primarily on each person's background and experience as reflected in the information discussed in each of the directors' individual biographies set forth above. We believe that our directors provide an appropriate mix of experience and skills relevant to the size and nature of our business.

In accordance with our amended and restated certificate of incorporation and the Stockholders Agreement, each of which will be in effect upon the closing of this offering, our board of directors will be divided into three classes with staggered three year terms. At each annual meeting of stockholders after the initial classification, the successors to the directors whose terms will then expire will be elected to serve from the time of election and qualification until the third annual meeting following their election. Our directors will be divided among the three classes as follows:

- the Class I directors will be Messrs. , and , and their terms will expire at the annual meeting of stockholders to be held in ;
- the Class II directors will be Messrs. , and , and their terms will expire at the annual meeting of stockholders to be held in ; and
- the Class III directors will be Messrs. , and , and their terms will expire at the annual meeting of stockholders to be held in .

Any increase or decrease in the number of directors will be distributed among the three classes so that, as nearly as possible, each class will consist of one-third of the directors. This classification of our board of directors may have the effect of delaying or preventing changes in control of our Company.

Director independence

Prior to the consummation of this offering, our board of directors undertook a review of the independence of our directors and considered whether any director has a material relationship with us that could compromise that director's ability to exercise independent judgment in carrying out that director's responsibilities. Our board of directors has determined that, except as described below with respect to , all of the members of each of the board's four standing committees are independent as defined under the rules of Nasdaq and Rule 10A-3 under the Exchange Act.

Board committees

Our board has established four standing committees—audit, compliance and ethics, compensation, and nominating and corporate governance—each of which operates under a charter that has been approved by our board of directors. Current copies of each committee's charter are posted on our website, *www.bioventus.com*. The information on any of our websites is deemed not to be incorporated in this prospectus or to be part of this prospectus.

Following this offering, the Voting Group, which will hold Class A common stock and Class B common stock collectively representing a majority of the combined voting power of our total common stock outstanding, intends to enter into the Stockholders Agreement to elect the nominees of certain members of the Voting Group to our board of directors. See "Description of capital stock—Stockholders Agreement." As a result, we will be a "controlled company" under Nasdaq governance standards. As a controlled company, exemptions under the standards will mean that we are not required to comply with certain corporate governance requirements, including the following requirements:

- that a majority of our board of directors consists of "independent directors," as defined under the Nasdaq rules;

- that we have a nominating and corporate governance committee that is composed entirely of independent directors with a written charter addressing the committee's purpose and responsibilities;
- that we have a compensation committee that is composed entirely of independent directors with a written charter addressing the committee's purpose and responsibilities; and
- for an annual performance evaluation of the nominating and governance committee and compensation committee.

These exemptions do not modify the independence requirements for our audit committee, and we intend to comply with the applicable requirements of the Sarbanes-Oxley Act and rules with respect to our audit committee within the applicable time frame.

Audit committee

The audit committee will be responsible for, among other matters:

- appointing, compensating, retaining, evaluating, terminating and overseeing our independent registered public accounting firm;
- discussing with our independent registered public accounting firm their independence from management;
- reviewing with our independent registered public accounting firm the scope and results of their audit;
- approving all audit and permissible non-audit services to be performed by our independent registered public accounting firm;
- overseeing the financial reporting process and discussing with management and our independent registered public accounting firm the interim and annual financial statements that we file with the SEC;
- reviewing and monitoring our accounting principles, accounting policies, financial and accounting controls and compliance with legal and regulatory requirements;
- overseeing the Company's cybersecurity policies, processes and controls; and
- establishing procedures for the confidential anonymous submission of concerns regarding questionable accounting, internal controls or auditing matters.

Upon the closing of this offering, our audit committee will consist of , and , with serving as chair. We intend to rely on the phase-in rules of Rule 10A-3 under the Exchange Act and the Nasdaq rules requiring that the audit committee be composed entirely of members who qualify as independent under the Nasdaq rules and the additional independence standards applicable to audit committee members established pursuant to Rule 10A-3 under the Exchange Act. will serve on our audit committee following the listing date of our common stock, and, in accordance with the phase-in provisions described above, one year from such date we intend all members of our audit committee to meet the definition of "independent director" for purposes of serving on the audit committee under Rule 10A-3 under the Exchange Act and the Nasdaq rules. We have determined that the fact that our audit committee will not be entirely comprised of independent directors in the first year following this offering will not materially adversely affect the ability of our audit committee to act independently and to satisfy the other requirements of the SEC and Nasdaq. Our board of directors has affirmatively determined that and meet the definition of "independent director" for purposes of serving on an audit committee under Rule 10A-3 and the Nasdaq rules, and we intend to comply with the other independence requirements within the time periods specified. In addition, our board of directors has determined that will qualify as an "audit committee financial expert," as such term is defined in Item 407(d)(5) of Regulation S-K.

Compensation committee

The compensation committee's responsibilities include:

- reviewing and approving the compensation of our directors, Chief Executive Officer and other executive officers; and
- appointing and overseeing any compensation consultants.
- Upon the closing of this offering, our compensation committee will consist of , and , with serving as chair. As a controlled company, we will rely upon the exemption from the requirement that we have a compensation committee composed entirely of independent directors.

Compliance, ethics and culture committee

The compliance committee's responsibilities include:

- overseeing and monitoring the implementation of a Global Compliance Program, including our Code of Compliance and Ethics, and related compliance policies and procedures; and
- overseeing the activities of the Company's Chief Compliance Officer.
- Upon the closing of this offering, our compliance committee will consist of , and , with serving as chair.

Nominating and corporate governance committee

The nominating and corporate governance committee's responsibilities include:

- identifying individuals qualified to become members of our board of directors, consistent with criteria approved by our board of directors; and
- developing and recommending to our board of directors a set of corporate governance guidelines and principles.

The members of our nominating and corporate governance committee are , and , with serving as chair. As a controlled company, we will rely upon the exemption from the requirement that we have a nominating and corporate governance committee composed entirely of independent directors.

Risk oversight

Our board of directors is responsible for overseeing our risk management process. Our board of directors focuses on our general risk management strategy, the most significant risks facing us, and oversees the implementation of risk mitigation strategies by management. Our board of directors is also apprised of particular risk management matters in connection with its general oversight and approval of corporate matters and significant transactions.

Risk considerations in our compensation program

We conducted an assessment of our compensation policies and practices for our employees and concluded that these policies and practices are not reasonably likely to have a material adverse effect on us.

Compensation committee interlocks and insider participation

During fiscal 2019, the members of Bioventus LLC's compensation committee were Bradley J. Cannon, Guido J. Neels and Guy P. Nohra. No member of our compensation committee is or has been a current or former

officer or employee of Bioventus or had any related person transaction involving Bioventus. None of our executive officers served as a director or a member of a compensation committee (or other committee serving an equivalent function) of any other entity, one of whose executive officers served as a director or member of Bioventus LLC's compensation committee during fiscal 2019.

Code of compliance and ethics

Prior to the completion of this offering, in addition to the existing Bioventus LLC policies in place, Bioventus Inc. will adopt a written code of compliance and ethics that applies to our directors, officers and employees, including our principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. We will post a current copy of the code on our website, *www.bioventus.com*. In addition, we intend to post on our website all disclosures that are required by law or Nasdaq listing standards concerning any amendments to, or waivers from, any provision of the code. The information on any of our websites is deemed not to be incorporated in this prospectus or to be part of this prospectus.

EXECUTIVE COMPENSATION

This section discusses the material components of the executive compensation program for our executive officers who are named in the "2020 Summary compensation table" below. In 2020, our "named executive officers" and their positions were as follows:

- Kenneth Reali, Chief Executive Officer
- Gregory O. Anglum, Senior Vice President & Chief Financial Officer;
- John E. Nosenzo, Senior Vice President & Chief Commercial Officer;
- Anthony D'Adamio, Senior Vice President & General Counsel;
- Alessandra Pavesio, Senior Vice President & Chief Science Officer; and
- Anthony P. Bihl III, former Chief Executive Officer.

Mr. Kenneth Reali became Chief Executive Officer and a member of the Bioventus LLC board of managers, effective as of April 13, 2020, in connection with Mr. Bihl's retirement on April 19, 2020.

2020 Summary Compensation Table

The following table sets forth information concerning the compensation of our named executive officers for the years ended December 31, 2019 and December 31, 2020.

Name and Principal Position	Year	Salary ($)(1)	Bonus ($)	Stock Awards ($)	Option Awards ($)	Non-Equity Incentive Plan Compensation ($)	All Other Compensation ($)	Total ($)
Kenneth Reali	2020	428,135		4,111,191(7)	38,631(8)	(3)	277,719(5)	4,855,676
Chief Executive Officer	2019	—	—	—	—	—	—	—
Gregory O. Anglum	2020	381,044				(3)	22,392(5)	403,436
Senior Vice President & Chief Financial Officer	2019	374,019				143,479(4)	22,386(6)	539,884
John E. Nosenzo	2020	504,893				(3)	22,959(5)	527,852
Senior Vice President & Chief Commercial Officer	2019	490,219				295,322(4)	22,584(6)	808,125
Anthony D'Adamio	2020	396,597				(3)	22,959(5)	419,556
Senior Vice President & General Counsel	2019	391,106				150,016(4)	22,584(6)	563,706
Alessandra Pavesio	2020	408,657	100(2)			(3)	21,375(5)	430,132
Senior Vice President & Chief Science Officer	2019	398,165				160,693(4)	21,000(6)	579,858
Anthony P. Bihl III	2020	236,750				(3)	3,639,984(5)	3,876,734
Former Chief Executive Officer	2019	684,979				552,910(4)	23,561(6)	1,261,450

(1) Amounts reflect annual base salary earned with respect to 2019 and 2020.

(2) Amount reflects bonus paid to Ms. Pavesio in connection with a CEO determination to pay $100 discretionary bonuses to all employees with five through nine years of service.
(3) Bonus amounts under the Non Commercial AIP and the Commercial AIP (as described below under "—2020 Incentive Bonuses") have not yet been determined. We expect the board of managers to determine the bonus amounts for fiscal year 2020 in February 2021.
(4) Amounts reflect the annual performance-based cash incentives earned by our named executive officers in 2020 based on achievement of corporate and personal performance objectives as set forth in the 2019 Executive Annual Incentive Plan – Non Commercial or the 2019 Executive Annual Incentive Plan – Chief Commercial Officer, as applicable.
(5) Amounts reflect (i) $8,550, $8,550, $8,550, $8,550, $8,550, and $8,550 in matching 401(k) contributions made by us to the 401(k) accounts of Messrs. Reali, Anglum, Nosenzo, D'Adamio, Ms. Pavesio and Mr. Bihl, respectively, (ii) additional fixed non-elective contributions of $1,064, $12,402, $12,825, $12,825, $12,825 and $12,825 made by us to the 401(k) accounts of Messrs. Reali, Anglum, Nosenzo, D'Adamio, Ms. Pavesio and Mr. Bihl, respectively, (iii) reimbursement of cellular telephone expenses to Messrs. Reali, Anglum, Nosenzo, and D'Adamio equal to $1,056, $1440, $1,584 and $1,584, respectively, (iv) relocation allowance of $250,000 and tax gross up of $17,048 to Mr. Reali, (v) payments to Mr. Bihl of a $4,966 benefit stipend and $63,700 tax stipend in connection with his status as a partner and associated receipt of a guaranteed payment instead of a salary, and (vi) payments made and to be made to Mr. Bihl in connection with his retirement in an aggregate amount of $3,549,943 to reflect the COVID-19-related decrease in the repurchase value of his equity interests.
(6) Amounts reflect (i) $2,561 benefit stipend to Mr. Bihl (ii) $8,400, $8,400, $8,400, $8,400 and $8,400 in matching 401(k) contributions made by us to the 401(k) accounts of Messrs. Anglum, Nosenzo, D'Adamio, Ms. Pavesio and Mr. Bihl, respectively, (iii) additional fixed non-elective contributions of $12,600, $12,600, $12,600, $12,600 and $12,600 made by us to the 401(k) accounts of Messrs. Anglum, Nosenzo, D'Adamio, Ms. Pavesio and Mr. Bihl, respectively, and (iv) reimbursement of cellular telephone expenses to Messrs. Anglum, Nosenzo, and D'Adamio equal to $1,386, $1,584 and $1,584, respectively.
(7) Amount reflects the aggregate grant date fair value of phantom profits interests granted to Mr. Reali during the year ended December 31, 2020 computed in accordance with FASB ASC Topic 718, Compensation—Stock Compensation. See Note 6 of the audited consolidated financial statements included elsewhere in this prospectus for a discussion of the relevant assumptions used in calculating this amount.
(8) Amount reflects the aggregate grant date fair value of options granted to Mr. Reali during the year ended December 31, 2020 computed using a Black-Scholes calculation in accordance with FASB ASC Topic 718, Compensation—Stock Compensation.

Narrative to Summary Compensation Table

Employment Letters

The current terms of employment for Messrs. Reali, Anglum, Nosenzo, D'Adamio and Ms. Pavesio are documented in their employment letters dated March 12, 2020, August 2, 2017, November 18, 2016, July 11, 2017 and June 13, 2013, respectively, with Mr. Reali's employment letter subsequently amended as of April 24, 2020. The terms of Mr. Bihl's prior employment are documented in his offer letter dated November 4, 2013 as amended on October 17, 2019 to reflect his status as a partner. Pursuant to their respective employment letters, Mr. Bihl was hired to serve as the Chief Executive Officer, Mr. Reali was hired to serve as the Chief Executive Officer following Mr. Bihl's retirement, Mr. Anglum was promoted on August 7, 2017 to serve as the Chief Financial Officer (after serving as the interim Chief Financial Officer effective May 1, 2017), Mr. Nosenzo was hired to serve as Chief Commercial Officer, Mr. D'Adamio was hired to serve as Senior Vice President and General Counsel and Ms. Pavesio was hired to serve as Chief Science Officer. Mr. Bihl also served as a member

of the Bioventus LLC board of managers until his retirement on April 19, 2020 and Mr. Reali now serves as a member of the Bioventus LLC board of managers. In connection with this offering, we intend to enter into new employment agreements with Messrs. Reali, Anglum, Nosenzo, D'Adamio, and Ms. Pavesio.

2020 Salaries

The named executive officers were entitled to receive a base salary in 2020 to compensate them for services rendered to us. The base salary payable to each named executive officer is intended to provide a fixed component of compensation reflecting the named executive officer's skill set, experience, role and responsibilities. The annual base salaries payable to Messrs. Reali, Anglum, Nosenzo, D'Adamio and Ms. Pavesio as of December 31, 2020, were $615,000, $389,881, $518,451, $405,794 and $419,630 respectively, which reflect merit increases which were effective March 29, 2020 for the named executive officers other than Mr. Reali. In connection with the COVID-19 pandemic, we implemented a 20% reduction in base salary for each of our employees with a base salary of $100,000 or greater, including each of our named executive officers, effective May 31, 2020 and ending June 27, 2020, which reductions are reflected in the actual salary paid in the summary compensation table.

Effective as of the consummation of this offering, we intend to increase the salaries of Messrs. Reali, Anglum, D'Adamio and Ms. Pavesio to $700,000, $430,000, $420,000 and $430,000, respectively.

2020 Incentive Bonuses

With respect to their services in 2020, Messrs. Reali, Anglum, D'Adamio, Ms. Pavesio and Mr. Bihl are eligible to earn an annual performance-based cash bonus pursuant to the 2020 Executive Annual Incentive Plan – Non Commercial, or the Non Commercial AIP (with Mr. Bihl's bonus pro-rated for the portion of the year for which he provided service prior to his retirement date), and Mr. Nosenzo is eligible to earn an annual performance-based cash bonus pursuant to the 2020 Executive Annual Incentive Plan – Chief Commercial Officer, or the Commercial AIP. Bonuses earned by our named executive officers under both the Non Commercial AIP and Commercial AIP are based upon weighted minimum, target and maximum achievement of both business and personal performance measures. The Non Commercial AIP and the Commercial AIP objective business measures in 2020 were (1) Global Revenue, (2) Adjusted Global EBITDA and (3) multiple osteoarthritis treatment achievements, including submission of an IND application to FDA for "Biologic" placental tissue product in the third quarter of 2020, the launch of a GTP placental tissue product in the fourth quarter of 2020 and the achievement of $100,000 in 2020 revenue with respect to such placental tissue product. The personal performance standards are based on the named executive officers' performance ratings.

Mr. Reali's and Mr. Bihl's target incentive for 2020 was 100% of his annual base salary; Mr. Nosenzo's was 75% of his annual base salary; and Messrs. Anglum, D'Adamio and Ms. Pavesio's was 50% of their respective annual base salaries.

Objective business measures and personal performance will be weighted as 80% and 20%, respectively, of the annual bonuses under the Non Commercial AIP and the Commercial AIP. Payouts for the objective business measures under the Non Commercial AIP and the Commercial AIP will range from 50% for minimum achievement, 100% for target achievement, to 200% for maximum achievement, which amounts shall correspond to 95%, 100%, and 105% achievement of the applicable objective business measure target, respectively. The personal performance component of the award amount will range from 50% for minimum achievement, to 100% for target achievement, and to 200% for maximum achievement. We expect the targets for future incentives for each of our named executive officers to generally remain the same pursuant to their expected new employment agreements.

The actual level of achievement of the performance measures and the actual bonus amounts payable to the named executive officers under the Non Commercial AIP and the Commercial AIP for fiscal year 2020 have not yet been determined. The amount of the performance-based cash incentives earned by each named executive

officer with respect to fiscal year 2020 performance will be determined by the board of managers in February 2021 and paid in March 2021.

Equity-Based Compensation

We currently maintain the Bioventus LLC profits interest plan, which we call the Management Incentive Plan or the MIP, pursuant to which we granted 333,330 profits interest units of Bioventus LLC, or Profits Interest Units, to Mr. Bihl on December 2, 2013. In connection with Mr. Bihl's retirement, we redeemed or plan to redeem all of his Profits Interest Units as described below under "—Severance." On and following the date of this offering, the MIP will be terminated and no further awards will be made under the MIP.

We also currently maintain the Bioventus Phantom Profits Interest Plan, which was renamed the Bioventus Stock Plan on June 1, 2020, and which we call the Phantom Plan, pursuant to which we granted time-vesting phantom plan units, or Time Phantom Units, and performance-vesting phantom plan units, or Performance Phantom Units. The Time Phantom Units generally vest ratably over five years (20% on the first anniversary of the date of grant and 5% quarterly thereafter) and entitle the holder to a cash payment, in an amount determined by reference to the value of our Profits Interest Units, with respect to any vested Time Phantom Units upon the earlier of a termination from service or certain distribution events with respect to the Company's profits interest units. In the event of a qualifying distribution event prior to a termination, all Time Phantom Units fully vest. All Performance Phantom Units vest on June 1, 2021, subject to the achievement of 2020 corporate revenue goals (other than Performance Phantom Units granted to Ms. Pavesio on June 1, 2015, which we call the Value Creation Phantom Units and which fully vested on June 1, 2018 based on the 2017 409A enterprise valuation, as described below in "—Outstanding Equity Awards as Fiscal Year End") and all Performance Phantom Units that do not so vest expire and are forfeited. In connection with this offering, we intend to terminate the Phantom Plan and settle all awards thereunder 12 months following such termination. We expect that, in connection with the Phantom Plan termination, Bioventus Inc. will assume obligations of Bioventus LLC and that Phantom Plan awards will be paid in the form of shares of Class A common stock (or, in the case of terminated employees who hold vested Phantom Plan awards as of 12 months following the termination of the Phantom Plan, in the form of cash). It is anticipated that the number of shares of Class A common stock received by each participant, including our named executive officers, will be determined by dividing (A) the value of the participant's vested Phantom Units (after giving effect to any accelerations in vesting in connection with this offering, as described below) as of the date of plan termination by (B) the initial public offering price of Class A common stock (with any terminated employees holding vested Phantom Plan awards receiving the cash value of such shares). It is anticipated that, to the extent that a Time Phantom Unit is not otherwise vested as of the date the Phantom Plan is terminated, payment with respect to such Time Phantom Unit will be subject to the holder's continued employment with us through the applicable vesting date or the twelve month anniversary of plan termination, if earlier. It is further anticipated that Performance Phantom Units (excluding the Value Creation Phantom Units) will vest according to forecasted 2020 revenue or based on a comparison of forecasted 2020 revenue against peer benchmarks, in either case, as determined by the board of managers in its discretion, as of the date of this offering and payment with respect to vested Performance Phantom Units will be subject to the holder's continued employment with us through June 1, 2021. On and following the date of this offering, no further awards will be made under the Phantom Plan.

Each of our named executive officers holds Phantom Plan awards in Bioventus LLC as set forth below in "—Outstanding Equity Awards at Fiscal-Year End."

On June 25, 2020, in connection with the commencement of his employment with us, Mr. Reali was granted 417,804 Time Phantom Units. In addition, on July 30, 2020, Mr. Reali was granted an option to purchase up to 5,935 equity interests of Bioventus LLC at a per unit price of $42.12 at any time prior to July 30, 2021 (or the termination of his service, if earlier). No other named executive officers received a grant of equity or phantom equity awards in 2020.

New Equity-Based Compensation

In connection with the offering, we intend to terminate the MIP and the Phantom Plan and to adopt a new incentive award plan in order to facilitate the grant of cash and equity incentives to our non-employee directors, employees (including our named executive officers) and consultants and employees and consultants of our subsidiaries and to enable our Company and our subsidiaries to obtain and retain the services of these individuals, which is essential to our long-term success. We expect that the plan will be effective prior to this offering, subject to approval of such plan by our stockholders. In connection with this offering, we intend to grant awards with respect to shares of Class A common stock under such plan to certain of our employees, including our named executive officers. For additional information about the new incentive award plan and the intended grants to be made under such plan in connection with this offering, please see the section titled "New incentive arrangements—2021 Incentive Award Plan" below.

Severance

The employment letters in effect as of December 31, 2020 for each of our named executive officers provide for severance payments upon termination of employment by us at any time without cause (other than as a result of death or disability) or a termination by the named executive officer for good reason (as defined below) *during the two year period following the date of a change in control (as defined in the respective employment letter). In the event of a termination by us without cause, each of our named executive officers would be entitled to receive (1) twelve months' base salary, payable in a lump sum within 60 days following termination of employment, (2) 100% of their respective target annual cash incentive, payable in a lump sum within 60 days following termination of employment, and (3) payment of COBRA premiums for the first twelve months of coverage following termination of employment. In the event of a termination by Messrs. Anglum, Nosenzo, D'Adamio and Ms. Pavesio for good reason during the two-year period following a change in control, Messrs. Anglum, Nosenzo, D'Adamio and Ms. Pavesio would be entitled to receive the same severance payments and benefits as in the case of termination by us without cause. In the event of a termination by Mr. Reali for good reason during the two-year period following a change in control, under his employment letter Mr. Reali is entitled to receive enhanced severance equal to 18 months of each of his base salary and his target annual cash incentive, each payable in a lump sum on or about 60 days following termination of employment, as well as payment of COBRA premiums for the first 18 months of coverage following termination of employment. The severance payments are conditioned upon execution and delivery of a release and compliance with confidentiality and restrictive covenant obligations as set forth in a separate proprietary information agreement.*

In connection with his retirement on April 19, 2020, Mr. Bihl was not entitled to receive any severance or other benefits under his employment letter. Subsequent to his retirement, we entered into an agreement with Mr. Bihl on June 12, 2020, pursuant to which he received a payment on June 16, 2020 of $9.25 million, which represented a $918,953 payment in full for amounts due to Mr. Bihl under the Phantom Plan, a $6,328,629 payment for the redemption of 150,252 of his Profits Interest Units under the MIP, and an additional cash payment of $2,006,796 to reflect the COVID-19-related decrease in value of his Phantom Plan award and the redeemed portion of his MIP award. Pursuant to this agreement, Mr. Bihl is further entitled to receive a payment with respect to the remainder of his MIP award on or before June 16, 2021 in an amount equal to the greater of (a) $7,711,231 and (b) the fair market value of such remaining MIP award as of the date of payment, as well as an additional cash payment of $1,543,147 to reflect the COVID-19-related decrease in value of the remaining portion of his MIP award. We retained the right to accelerate the redemption of such remaining MIP award and the associated June 16, 2021 payments by paying Mr. Bihl the amounts due on an earlier date, and we anticipate accelerating such payments in connection with this offering.

For purposes of the existing employment letters, "cause" is defined generally as the occurrence of any one of the following events by a named executive officer: (i) conviction (including a guilty plea or plea of nolo contendere) of any felony or any other crime involving fraud, violence or dishonesty, (ii) commission of or

participation in a fraud or act of dishonesty or misrepresentation against Bioventus LLC, (iii) violation of any written and fully executed contract or agreement between the named executive officer and Bioventus LLC, including without limitation, breach of the restrictive covenants agreement, (iv) gross negligence or willful misconduct, (v) continued and substantial failure to perform applicable duties or (vi) violation of any material policies, practices or procedures of Bioventus LLC; and "good reason" is defined generally as the occurrence of any one of the following events without either express prior written consent or full cure within 30 days of written notice provided to Bioventus LLC and, within the two-year period following the date of a change in control: (i) a material diminution of duties or responsibilities, (ii) a material reduction in salary, other than for across-the-board reductions similarly affecting all senior executive officers, (iii) the relocation of the named executive officer's principal office, or principal place of employment, to a location more than 50 miles from the location of the principal office or place of business as of the effective date of the employment letter, or (iv) a failure to pay earned compensation to the named executive officer.

In connection with this offering, we expect to enter into new employment agreements with each of Messrs. Reali, Anglum, Nosenzo, D'Adamio, and Ms. Pavesio that will supersede their existing severance arrangements. Under these new employment agreements, it is anticipated that, upon a termination without cause or resignation by the named executive officer with good reason, each of our named executive officers will be entitled to (i) twelve months' base salary (eighteen months in the case of Mr. Reali), payable in equal installments over the twelve month period (eighteen month period in the case of Mr. Reali) following such termination, (ii) 100% of target annual cash incentive (150% in the case of Mr. Reali), payable in equal installments over the twelve month period (eighteen month period in the case of Mr. Reali) following such termination, and (iii) payment of COBRA premiums for the first twelve months of coverage following termination of employment (eighteen months in the case of Mr. Reali). Additionally, upon a termination without cause or resignation by the named executive officer with good reason within the 24 month period following a change in control, each of our named executive officers will be entitled to (i) eighteen months' base salary (twenty-four months in the case of Mr. Reali), payable in a lump sum within 60 days following such termination, (ii) 150% of target annual cash incentive (200% in the case of Mr. Reali), payable in a lump sum within 60 days following such termination, (iii) a lump sum payment equal to eighteen months (twenty-four months in the case of Mr. Reali) of COBRA premiums within 60 days following such termination, and (iv) full vesting acceleration of all equity awards. These severance payments will be conditioned upon execution and delivery of a release and compliance with the restrictive covenants described below in "—Restrictive Covenants."

Restrictive Covenants

Our named executive officers are subject to certain post-employment restrictive covenants, including twelve-month non-competition and non-solicitation obligations, as set forth in proprietary information agreements entered into with each named executive officer. Further, the employment letters for each of our named executive officers provide for mutual non-disparagement obligations.

In connection with this offering, we expect to enter into new post-employment restrictive covenants with our named executive officers, including twelve-month (and eighteen months in the case of Mr. Reali) non-competition and non-solicitation obligations (increased to eighteen-months (and twenty-four months in the case of Mr. Reali) in the event a named executive officer receives change in control severance, as described above) and perpetual confidentiality and non-disparagement obligations.

Retirement Plans

Bioventus LLC currently maintains a 401(k) retirement savings plan, or the 401(k) plan, in which all Bioventus LLC employees, including our named executive officers, who satisfy certain eligibility requirements may participate. The Internal Revenue Code allows eligible employees to defer a portion of their compensation, within prescribed limits, on a pre-tax basis through contributions to the 401(k) plan. Under the terms of the 401(k) plan, we currently make (a) non-discretionary matching contributions equal to 50% of the employee's

contributions, up to a maximum of 6% of the employee's eligible compensation and (b) a non-elective contribution equal to 4.5% of the employee's compensation for the plan year. Due to the COVID-19 crisis, we suspended the 4.5% non-elective contribution effective May 3, 2020, but have reinstated such benefit effective December 26, 2020. Further, our board of managers has discretion under the 401(k) plan to provide for annual discretionary matching contributions based on eligible compensation contributed by each employee and (ii) discretionary non-elective contributions in an amount determined by the board at year end, subject to continued employment through year end. We believe that providing a vehicle for tax-deferred retirement savings though the 401(k) plan adds to the overall desirability of our executive compensation package and further incentivizes our employees, including our named executive officers, in accordance with our compensation policies. Following the consummation of this offering, we anticipate that our employees will continue to be eligible to participate in a 401(k) plan maintained by us.

Employee Benefits

All of our full-time employees and working partners, including our named executive officers, are eligible to participate in health and welfare plans maintained by Bioventus LLC, including:

- medical, dental and vision benefits;
- medical flexible spending accounts and health savings account;
- short-term and long-term disability insurance;
- basic life and accidental death & dismemberment insurance; and
- group accident, critical illness and hospital indemnity plans.

Our named executive officers participate in these plans on the same basis as other eligible employees. We do not maintain any supplemental health and welfare plans for our named executive officers. We reimburse our named executive officers for the full cost of their personal cellular phones. We believe the benefits described above are necessary and appropriate to provide a competitive compensation package to our named executive officers.

Section 280G

The employment letters for Messrs. Reali, Anglum and D'Adamio provide and the new employment agreements we intend to enter into with our named executive officers in connection with this offering are anticipated to provide that, in the case of their receipt of any payments in connection with a change in control (as defined in the employment letter), or that would otherwise be considered an "excess parachute payment" within the meaning of Section 280G of the Code, such payments will be reduced to the maximum amount that does not trigger the excise tax imposed by Section 4999 of the Code if Messrs. Reali, Anglum and D'Adamio would be better off on a net after-tax basis with such reduction.

Retention Plan

On April 13, 2020, we initiated a retention plan with Mr. Nosenzo for an aggregate amount of $520,000 less applicable taxes. Payments of $260,000 will be paid on each of May 4, 2021 and May 4, 2022, subject to Mr. Nosenzo's continued service through each such date; provided that if Mr. Nosenzo's employment is terminated for a reason that would qualify Mr. Nosenzo for severance benefits under his offer letter (x) before the May 4, 2021 payment date he will receive $260,000 in a single lump sum within 60 days following termination of employment and (y) after the May 4, 2021 payment date but before the May 4, 2022 payment date he will receive $260,000 in a lump sum within 60 days following the termination date. Any such payments are in addition to any severance benefits under Mr. Nosenzo's offer letter.

Outstanding Equity Awards at Fiscal Year-End

The following table summarizes the number of option awards and profits interest units (including the number of profits interest units underlying Phantom Units) for our named executive officers as of December 31, 2020. For additional information about the outstanding equity awards granted to our named executive officers, please see the section titled "—Equity-based compensation" above.

		Option awards				Stock awards	
Name	Grant Date	Number of securities underlying unexercised options (#) exercisable	Number of securities underlying unexercised options (#) unexercisable	Option Exercise Price ($)	Option Expiration Date	Number of profits interest units (including profits interest units underlying phantom units(1)) that have not vested (2)(#)	Market Value(3) of profits interest units (including profits interest units underlying phantom units) that have not vested ($)
Kenneth Reali	6/24/2020					417,804(4)	$7,716,840
	7/30/2020	5,935(5)	—(5)	$ 42.12(5)	7/30/2021(5)		
Gregory O. Anglum	4/04/2016					2,000(6)	$ 94,300
	5/01/2017					28,500(6)	$1,257,420
	9/17/2018					20,000(6)	$ 580,600
John E. Nosenzo	2/06/2017					31,250(7)	$1,378,750
	9/17/2018					25,000(7)	$ 725,750
Anthony D'Adamio	8/14/2017					14,000(8)	$ 617,680
	9/17/2018					15,000(8)	$ 435,450
Alessandra Pavesio	9/17/2018					20,000(9)	$ 580,600

(1) The Phantom Units do not have an expiration date; provided that any Phantom Units granted on September 17, 2018 that do not vest as a result of achieving 2020 revenue targets on June 1, 2021 will expire.

(2) This column shows the number of Phantom Units held by our other named executive officers that have not vested. Phantom Units generally represent the right to receive cash amounts from us based on the distributions that would be made to an equivalent number of profits interests with an equivalent benchmark amount. The benchmark amounts represent the cumulative distributions that must be made by us pursuant to the Bioventus LLC Agreement before a grantee is entitled to receive any distributions or payments in respect of such grantee's units. The benchmark amount for Mr. Anglum's 2016 grant of Phantom Units is $472,003,000, for Messrs. Nosenzo, Anglum, and D'Adamio's 2017 grant is $510,000,000, for Messrs. Anglum, Nosenzo and D'Adamio's and Ms. Pavesio's 2018 grant of Phantom Units is $703,691,178, and for Mr. Reali's 2020 grant of Phantom Units on June 25, 2020 is $840,849,878.

(3) Market value is determined based on an independent valuation report on the fair market value of the Company.

(4) Mr. Reali was granted 417,804 Phantom Units on June 25, 2020; 20% of such grant will vest on April 13, 2021 and 5% will vest each quarter thereafter.

(5) Mr. Reali was granted 5,935 options to purchase equity interests of Bioventus LLC on July 30, 2020, all of which were fully vested and exercisable at the time of grant.

(6) Mr. Anglum was granted 20,000 Phantom Units on April 4, 2016 and 95,000 Phantom Units on May 1, 2017; 20% of each grant vested on the first anniversary of the grant date and 5% vests each quarter thereafter. Mr. Anglum was also granted 20,000 Phantom Units on September 17, 2018; these units will vest on June 1, 2021 at 100% if 2020 revenue is greater than or equal to $391.8 million and at 75% if 2020 revenue is greater than or equal to $336.0 million.

(7) Mr. Nosenzo was granted 125,000 Phantom Units on February 6, 2017; 20% of these Phantom Units vested on February 6, 2018 and 5% vests each quarter thereafter. Mr. Nosenzo was also granted 25,000 Phantom

Units on September 17, 2018; these units will vest on June 1, 2021 at 100% if 2020 revenue is greater than or equal to $391.8 million and at 75% if 2020 revenue is greater than or equal to $336.0 million.

(8) Mr. D'Adamio was granted 40,000 Phantom Units on August 14, 2017; 20% of such grant vested on the first anniversary of the grant date and 5% vests each quarter thereafter. Mr. D'Adamio was also granted 15,000 Phantom Units on September 17, 2018; these units will vest on June 1, 2021 at 100% if 2020 revenue is greater than or equal to $391.8 million and at 75% if 2020 revenue is greater than or equal to $336.0 million.

(9) Ms. Pavesio was granted 20,000 Phantom Units on September 17, 2018; these units will vest on June 1, 2021 at 100% if 2020 revenue is greater than or equal to $391.8 million and at 75% if 2020 revenue is greater than or equal to $336.0 million. Ms. Pavesio was also granted 83,333 Phantom Units on July 22, 2013, 15,000 Phantom Units on June 1, 2015, and 11,392 Phantom Units on April 21, 2016, all of which were fully vested as of December 31, 2020.

Director Compensation

The following table sets forth information concerning the compensation of the current members of the Bioventus LLC board of managers for the year ended December 31, 2020.

Name	Year	Fees Earned or Paid in Cash ($)(1)	Total ($)(2)
William A. Hawkins(3)	2020	90,000	90,000
Susan M. Stalnecker(3)	2020	60,000	60,000
Guy P. Nohra	2020	—	—
Martin P. Sutter	2020	—	—
Bradley J. Cannon	2020	—	—
David J. Parker	2020	—	—
Philip G. Cowdy	2020	—	—
Guido J. Neels	2020	—	—

(1) Mr. Hawkins received an annual retainer of $40,000 for his service as a member of the board and an additional annual retainer fee of $50,000 for his service as chairman of the board. Ms. Stalnecker received an annual retainer fee of $50,000 for her service as a member of the board and an additional annual retainer fee of $10,000 for her service on the audit committee of the board. No other members of our board received any cash compensation in 2020.

(2) No members of our board received equity compensation awards in 2020.

(3) As of December 31, 2020, Mr. Hawkins held 50,000 Phantom Units, 95% of which were vested and 5% of which were unvested, and Ms. Stalnecker held 50,000 Phantom Units, 40% of which were vested and 60% of which were unvested, respectively. The benchmark amount for Mr. Hawkins's grant of Phantom Units is $472,003,000 and the benchmark amount for Ms. Stalnecker's grant of Phantom Units is $703,691,178.

In connection with our December 11, 2015 offer to Mr. Hawkins to join the Bioventus LLC board of managers as its chairman, we agreed, pursuant to an offer letter, effective January 1, 2016, to (1) pay Mr. Hawkins an annual retainer fee of $40,000 for his service as a member of the board and $50,000 for his service as chairman of the board, each payable in quarterly instalments in arrears and pro-rated for any partial period of service and (2) award Mr. Hawkins a one-time grant of 50,000 Phantom Units under the Phantom Plan.

Effective November 28, 2018, pursuant to an offer letter with Ms. Stalnecker providing for her appointment as a member of our board and chair of the audit committee, we agreed to (1) pay Ms. Stalnecker an annual retainer fee of $50,000 for her service as a member of the board and $10,000 for her participation in the audit committee, each payable in quarterly installments in arrears and pro-rated for any partial period of service and (2) award Ms. Stalnecker 50,000 Phantom Units under the Phantom Plan.

In connection with this offering, we intend to adopt a compensation policy that, effective upon the closing of this offering, will be applicable to all of our non-employee directors. The material terms of the non-employee director compensation policy will be summarized in a subsequent filing.

New Incentive Arrangements

2021 Incentive Award Plan

In connection with the offering, we intend to adopt a 2021 incentive award plan, subject to approval by our stockholders, under which we may grant cash and equity incentive awards to eligible service providers in order to attract, motivate and retain the talent for which we compete. The material terms of the incentive award plan will be summarized in a subsequent filing.

New Equity Awards

In connection with this offering, we intend to grant equity awards with respect to shares of Class A common stock under the 2021 incentive award plan to certain of our employees, including our named executive officers, or the Offering Grants. No determination has been made as to the types or amounts of awards that will be granted to specific individuals pursuant to the 2021 incentive award plan.

ESPP

In connection with the offering, we intend to adopt an employee stock purchase plan, subject to approval by our stockholders, the material terms of which will be summarized in a subsequent filing.

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

The following is a description of transactions since January 1, 2018 to which we have been a party in which the amount involved exceeds $120,000 and in which any of our directors, executive officers or beneficial holders of more than 5% of our Class A common stock, or an affiliate or immediate family member thereof, had or will have a direct or indirect material interest.

Each agreement described below is filed as an exhibit to the registration statement of which this prospectus forms a part, and the following descriptions are qualified by reference to such agreements.

Compensation arrangements for our directors and named executive officers are described in this prospectus under the section entitled “Executive compensation.”

We also describe below certain other transactions and relationships with our directors, executive officers and stockholders.

Limitation of Liability and Indemnification

Our amended and restated certificate of incorporation and our amended and restated bylaws, each of which will be effective upon the closing of this offering, will provide that we will indemnify our directors and officers to the fullest extent permitted under Delaware law, which prohibits our amended and restated certificate of incorporation from limiting the liability of our directors for the following:

- any breach of the director’s duty of loyalty to us or our stockholders;
- acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- unlawful payment of dividends or unlawful stock repurchases or redemptions; or
- any transaction from which the director derived an improper personal benefit.

Our amended and restated certificate of incorporation and our amended and restated bylaws will also provide that if Delaware law is amended to authorize corporate action further eliminating or limiting the personal liability of a director, then the liability of our directors will be eliminated or limited to the fullest extent permitted by Delaware law, as so amended. This limitation of liability does not apply to liabilities arising under the federal securities laws and does not affect the availability of equitable remedies such as injunctive relief or rescission.

Our amended and restated certificate of incorporation and our amended and restated bylaws will also provide that we shall have the power to indemnify our employees and agents to the fullest extent permitted by law. Our amended and restated bylaws also permit us to secure insurance on behalf of any officer, director, employee or other agent for any liability arising out of his or her actions in this capacity, regardless of whether we would have the power to indemnify such person against such expense, liability or loss under the General Corporation Law of the State of Delaware. We have obtained directors’ and officers’ liability insurance.

In connection with this offering, we intend to enter into separate indemnification agreements with our directors and executive officers, in addition to indemnification provided for in our amended and restated certificate of incorporation and amended and restated bylaws. These agreements, among other things, provide for indemnification of our directors and executive officers for expenses, judgments, fines and settlement amounts incurred by this person in any action or proceeding arising out of this person’s services as a director or executive officer or at our request. We believe that these provisions in our amended and restated certificate of incorporation and amended and restated bylaws and indemnification agreements are necessary to attract and retain qualified persons as directors and executive officers.

The above description of the indemnification provisions of our amended and restated certificate of incorporation, our amended and restated bylaws and our indemnification agreements is not complete and is qualified in its entirety by reference to these documents, each of which is filed as an exhibit to this registration statement to which this prospectus forms a part.

The limitation of liability and indemnification provisions in our amended and restated certificate of incorporation and amended and restated bylaws may discourage stockholders from bringing a lawsuit against directors for breach of their fiduciary duties. They may also reduce the likelihood of derivative litigation against directors and officers, even though an action, if successful, might benefit us and our stockholders. A stockholder's investment may be harmed to the extent we pay the costs of settlement and damage awards against directors and officers pursuant to these indemnification provisions. Insofar as indemnification for liabilities under the Securities Act may be permitted to directors, officers or persons controlling us pursuant to the foregoing provisions, we have been informed that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable. There is no pending litigation or proceeding naming any of our directors or officers as to which indemnification is being sought, nor are we aware of any pending or threatened litigation that may result in claims for indemnification by any director or officer.

Tax Receivable Agreement

We expect to obtain an increase in our share of the tax basis of the assets of Bioventus LLC when (as described below under "—Bioventus LLC Agreement—LLC Interest Redemption Right") the Continuing LLC Owner receives shares of our Class A common stock or, if we and the Continuing LLC Owner agree, cash in connection with an exercise of the Continuing LLC Owner's right to have its LLC Interests redeemed by Bioventus LLC or, at the election of Bioventus Inc., directly exchanged (such basis increases, together with the basis increases resulting from certain distributions (or deemed distributions) from Bioventus LLC, "the Basis Adjustments." We intend to treat such redemptions or exchanges of LLC Interests as the direct purchase of LLC Interests by Bioventus Inc. from the Continuing LLC Owner for U.S. federal income and other applicable tax purposes, regardless of whether such LLC Interests are surrendered by the Continuing LLC Owner to Bioventus LLC for redemption or sold to Bioventus Inc. upon the exercise of our election to acquire such LLC Interests directly. A Basis Adjustment may have the effect of reducing the amounts that we would otherwise pay in the future to various tax authorities. The Basis Adjustments may also decrease gains (or increase losses) on future dispositions of certain capital assets to the extent tax basis is allocated to those capital assets.

In connection with the transactions described above, we will enter into the Tax Receivable Agreement with the Continuing LLC Owner. The Tax Receivable Agreement will provide for our payment to the Continuing LLC Owner of 85% of the amount of tax benefits, if any, that we actually realize, or in some circumstances are deemed to realize, as a result of any Basis Adjustments and certain other tax benefits arising from payments under the Tax Receivable Agreement. Bioventus LLC will have in effect an election under Section 754 of the Code effective for each taxable year in which a redemption or exchange (including deemed exchange) of LLC Interests for shares of our Class A common stock or cash occurs. These Tax Receivable Agreement payments are not conditioned upon any continued ownership interest in either Bioventus LLC or us by the Continuing LLC Owner. The rights of the Continuing LLC Owner under the Tax Receivable Agreement are assignable to transferees of its LLC Interests (other than Bioventus Inc. as transferee pursuant to subsequent redemptions (or exchanges) of the transferred LLC Interests). We expect to benefit from the remaining 15% of tax benefits, if any, that we may actually realize.

The actual Basis Adjustments, as well as any amounts paid to the Continuing LLC Owner under the Tax Receivable Agreement, will vary depending on a number of factors, including:

- *the timing of any subsequent redemptions or exchanges*—for instance, the increase in any tax deductions will vary depending on the fair value, which may fluctuate over time, of the depreciable or amortizable assets of Bioventus LLC at the time of each redemption or exchange;
- *the price of shares of our Class A common stock at the time of redemptions or exchanges*—the Basis Adjustments, as well as any related increase in any tax deductions, is directly related to the price of shares of our Class A common stock at the time of each redemption or exchange;
- *the extent to which such redemptions or exchanges are taxable*—if a redemption or exchange is not taxable for any reason, increased tax deductions will not be available; and

- *the amount and timing of our income*—the Tax Receivable Agreement generally will require Bioventus Inc. to pay 85% of the tax benefits as and when those benefits are treated as realized under the terms of the Tax Receivable Agreement. Except as discussed below in cases of (i) a material breach of a material obligation under the Tax Receivable Agreement, (ii) a change of control or (iii) an early termination of the Tax Receivable Agreement, if Bioventus Inc. does not have taxable income, it will generally not be required to make payments under the Tax Receivable Agreement for that taxable year because no tax benefits will have been realized. However, any tax benefits that do not result in realized tax benefits in a given taxable year may generate tax attributes that may be utilized to generate tax benefits in future taxable years. The utilization of any such tax attributes will result in payments under the Tax Receivable Agreement.

For purposes of the Tax Receivable Agreement, cash savings in income tax will be computed by comparing Bioventus Inc.'s actual income tax liability to the amount of such taxes that it would have been required to pay had there been no Basis Adjustments and had the Tax Receivable Agreement not been entered into. The Tax Receivable Agreement will generally apply to each of our taxable years, beginning with the first taxable year ending after the consummation of the offering. There is no maximum term for the Tax Receivable Agreement; however, the Tax Receivable Agreement may be terminated by us pursuant to an early termination procedure that requires us to pay the Continuing LLC Owner an agreed upon amount equal to the estimated present value of the remaining payments to be made under the agreement (calculated based on certain assumptions, including regarding tax rates and utilization of the Basis Adjustments).

The payment obligations under the Tax Receivable Agreement are obligations of Bioventus Inc. and not of Bioventus LLC. Although the actual timing and amount of any payments that may be made under the Tax Receivable Agreement will vary, we expect that the payments that we may be required to make to the Continuing LLC Owner could be significant. Assuming no material changes in the relevant tax law and that we earn sufficient taxable income to realize all potential tax benefits that are subject to the Tax Receivable Agreement, we expect that the tax savings associated with the purchase of LLC Interests in connection with this offering, together with future redemptions or exchanges of all remaining LLC Interests owned by the Continuing LLC Owner pursuant to the Bioventus LLC Agreement as described above, would aggregate to approximately $ million over 20 years from the date of this offering based on the assumed initial public offering price of $ per share of our Class A common stock, which is the midpoint of the range set forth on the cover page of this prospectus, and assuming all future redemptions or exchanges would occur one year after this offering. Under such scenario, assuming future payments are made on the date each relevant tax return is due, without extensions, we would be required to pay approximately 85% of such amount, or approximately $ million, over the 20-year period from the date of this offering. The actual amounts we will be required to pay under the Tax Receivable Agreement will depend on, among other things, the timing of subsequent redemptions or exchanges of LLC Interests by the Continuing LLC Owner, the price of our shares of Class A common stock at the time of each such redemption or exchange, and the amounts and timing of our future taxable income, and may be significantly different from the amounts described in the preceding sentence. Any payments made by us to the Continuing LLC Owner under the Tax Receivable Agreement will generally reduce the amount of overall cash flow that might have otherwise been available to us or to Bioventus LLC and, to the extent that we are unable to make payments under the Tax Receivable Agreement for any reason, the unpaid amounts generally will be deferred and will accrue interest until paid by us. Decisions made by us in the course of running our business, such as with respect to mergers, asset sales, other forms of business combinations or other changes in control, may influence the timing and amount of payments that are received by the Continuing LLC Owner under the Tax Receivable Agreement. For example, the earlier disposition of assets following a transaction that results in a Basis Adjustment will generally accelerate payments under the Tax Receivable Agreement and increase the present value of such payments. We anticipate funding ordinary course payments under the Tax Receivable Agreement from distributions from Bioventus LLC out of distributable cash, to the extent permitted by our agreements governing our indebtedness. See "Certain relationships and related party transactions—Bioventus LLC Agreement."

The Tax Receivable Agreement provides that if (i) we materially breach any of our material obligations under the Tax Receivable Agreement, (ii) certain mergers, asset sales, other forms of business combination, or other changes of control were to occur, on or before December 31, 2021 or (iii) we elect an early termination of the Tax Receivable Agreement, then our obligations, or our successor's obligations, under the Tax Receivable Agreement would be based on certain assumptions, including an assumption that we would have sufficient taxable income to fully utilize all potential future tax benefits that are subject to the Tax Receivable Agreement. The Tax Receivable Agreement also provides that in the case of certain mergers, asset sales, other forms of business combination or other changes of control occurring on or after December 31, 2021, payments under the Tax Receivable Agreement would be based on certain assumptions, including an assumption that in each taxable year ending on or after the change of control, we would have taxable income equal to the greater of (A) actual taxable income for such taxable year and (B) the product of (x) four and (y) the highest taxable income in any of the four fiscal quarters ended prior to the change in control (increased by 10% for each taxable year beginning with the second taxable year following the change in control), in each case, as adjusted to take into account our actual percentage ownership in Bioventus LLC for the taxable year for which the tax benefit payment is being determined.

As a result of the foregoing, (i) we could be required to make cash payments to the Continuing LLC Owner that are greater than the specified percentage of the actual benefits we ultimately realize in respect of the tax benefits that are subject to the Tax Receivable Agreement, and (ii) if we materially breach any of our material obligations under the Tax Receivable Agreement or if we elect to terminate the Tax Receivable Agreement early, we would be required to make an immediate cash payment equal to the present value of the anticipated future tax benefits that are the subject of the Tax Receivable Agreement, which payment may be made significantly in advance of the actual realization, if any, of such future tax benefits. In these situations, our obligations under the Tax Receivable Agreement could have a material adverse effect on our liquidity and could have the effect of delaying, deferring or preventing certain mergers, asset sales, other forms of business combination, or other changes of control. For example, should we elect to terminate the Tax Receivable Agreement immediately following this offering, assuming no material changes in the relevant tax laws or tax rates and that we earn sufficient taxable income to realize all potential tax benefits that are subject to the Tax Receivable Agreement, we estimate that the aggregate of termination payments would be approximately $ million, based on the assumed initial public offering price of $ per share of our Class A common stock, which is the midpoint of the range set forth on the cover page of this prospectus and assuming LIBOR were to be %. There can be no assurance that we will be able to finance our obligations under the Tax Receivable Agreement. We may elect to completely terminate the Tax Receivable Agreement early only with the written approval of a majority of our directors other than any directors that have been appointed or designated by the Continuing LLC Owner or any of such person's affiliates. See "Risk Factors—Risks related to our organizational structure and the Tax Receivable Agreement—In certain cases, payments under the Tax Receivable Agreement to the Continuing LLC Owner may be accelerated or significantly exceed the actual benefits we realize in respect of the tax attributes subject to the Tax Receivable Agreement."

Payments under the Tax Receivable Agreement will be based on the tax reporting positions that we determine. Pursuant to the Tax Receivable Agreement, the Continuing LLC Member is required to reimburse us for cash payments previously made to it pursuant to the Tax Receivable Agreement if any tax benefits actually realized by us are subsequently challenged by a taxing authority and ultimately disallowed. In addition, but without duplication of any amounts previously reimbursed by the Continuing LLC Owner, any excess cash payments made by us to the Continuing LLC Owner will be netted against any future cash payments that we might otherwise be required to make under the terms of the Tax Receivable Agreement. However, a challenge to any tax benefits actually realized by us may not arise for a number of years following the initial time of such payment and we might not determine that we have effectively made an excess cash payment to the Continuing LLC Owner for a number of years following the initial time of such payment. Moreover, there can be no assurance that any excess cash payments for which the Continuing LLC Owner has a reimbursement obligation under the Tax Receivable Agreement will be repaid to us. As a result, it is possible that we could make cash payments under the Tax Receivable Agreement that are substantially greater than our actual cash tax savings. The applicable U.S. federal income tax rules are complex and factual in nature, and we cannot assure you that the

IRS or a court will not disagree with our tax reporting positions. We will have full responsibility for, and sole discretion over, all Bioventus' and Bioventus LLC's tax matters, including the filing and amendment of all tax returns and claims for refund and defense of all tax contests, subject to certain participation and approval rights held by the Continuing LLC Owner.

Payments are generally due under the Tax Receivable Agreement within a specified period of time following the filing of our tax return for the taxable year with respect to which the payment obligation arises, although interest on such payments will begin to accrue at a rate of LIBOR plus 100 basis points from the due date (without extensions) of such tax return and ending on the date that such payments are required to be made under the terms of the Tax Receivable Agreement. Any late payments that may be made under the Tax Receivable Agreement will continue to accrue interest at LIBOR plus 500 basis points from the due date of such payments under the Tax Receivable Agreement until such payments are made, including any late payments that we may subsequently make because we did not have enough available cash to satisfy our payment obligations at the time at which they originally arose, including as a result of restrictions on payments to our equity owners in the agreements governing our indebtedness.

Bioventus LLC Agreement

We will operate our business through Bioventus LLC and its subsidiaries. In connection with the completion of this offering, we and the Continuing LLC Owner will enter into Bioventus LLC's second amended and restated limited liability company agreement, which we refer to as the "Bioventus LLC Agreement." The operations of Bioventus LLC, and the rights and obligations of the holders of LLC Interests, will be set forth in the Bioventus LLC Agreement.

Appointment as Manager

Under the Bioventus LLC Agreement, we will become a member and the sole manager of Bioventus LLC. As the sole manager, we will be able to control all of the day-to-day business affairs and decision-making of Bioventus LLC. As such, we, through our officers and directors, will be responsible for all operational and administrative decisions of Bioventus LLC and the day-to-day management of Bioventus LLC's business. Pursuant to the terms of the Bioventus LLC Agreement, we cannot, under any circumstances, be removed as the sole manager of Bioventus LLC except by our election.

Compensation

We will not be entitled to compensation for our services as manager. We will be entitled to reimbursement or capital contribution credit by Bioventus LLC for fees and expenses incurred on behalf of Bioventus LLC, including all expenses associated with this offering and maintaining our corporate existence.

Distributions

The Bioventus LLC Agreement will require "tax distributions" to be made by Bioventus LLC to its members, as that term is defined in the agreement. Tax distributions will be made to members on a pro rata basis, including us, in an amount sufficient to allow the members, including us, to pay taxes owed in respect of income allocated by Bioventus LLC and to allow us to meet our obligations under the Tax Receivable Agreement (as described above under "—Tax Receivable Agreement"). The Bioventus LLC Agreement will also allow for distributions to be made by Bioventus LLC to its members on a pro rata basis out of "distributable cash," as that term is defined in the agreement. We expect Bioventus LLC may make distributions out of distributable cash periodically to the extent permitted by our agreements governing our indebtedness and necessary to enable us to cover our operating expenses and other obligations, including our tax liability and obligations under the Tax Receivable Agreement, as well as to make dividend payments, if any, to the holders of our Class A common stock.

LLC Interest Redemption Right

The Bioventus LLC Agreement will provide a redemption right to the Continuing LLC Owner which will entitle it to have its LLC Interests redeemed, at its election, for newly-issued shares of our Class A common stock on a one-for-one basis or a cash payment equal to a volume weighted average market price of one share of Class A common stock for each LLC Interest redeemed (subject to customary adjustments, including for stock splits, stock dividends and reclassifications). If the Continuing LLC Owner elects to receive a cash payment, we may elect to settle such redemption with Class A common stock in lieu of a cash payment, provided that if we elect to do so, the Continuing LLC Owner has the option to rescind its redemption request within a specified time period. Upon the exercise of the redemption right, the redeeming member will surrender its LLC Interests to Bioventus LLC for cancellation. The Bioventus LLC Agreement will require that we contribute cash or shares of our Class A common stock to Bioventus LLC in exchange for an amount of newly-issued LLC Interests in Bioventus LLC that will be issued to us equal to the number of LLC Interests redeemed from the Continuing LLC Owner. Bioventus LLC will then distribute the cash or shares of our Class A common stock to the Continuing LLC Owner to complete the redemption. In the event of such a redemption election by the Continuing LLC Owner, Bioventus Inc. may effect a direct exchange of cash or Class A common stock for such LLC Interests in lieu of such a redemption. Whether by redemption or exchange, we will be obligated to ensure that at all times the number of LLC Interests that we own equals the number of shares of Class A common stock issued by us (subject to certain exceptions for treasury shares and shares underlying certain convertible or exchangeable securities).

Indemnification

The Bioventus LLC Agreement will provide for indemnification of the manager, members and officers of Bioventus LLC and their respective subsidiaries or affiliates.

Stockholders Agreement

Substantially concurrent with the closing of this offering, the Voting Group, which will hold Class A common stock or Class B common stock representing approximately % of the combined voting power of our Class A and Class B common stock, intends to enter into the Stockholders Agreement.

Voting Agreement

Pursuant to the terms of the Stockholders Agreement, EW Healthcare Partners, Spindletop Healthcare Capital, Pantheon Global, Ampersand Capital, Alta Partners and their respective affiliates, as members of the Voting Group, whom we refer to as the Essex Members, collectively will have the right to designate up to three individuals to be included in the slate of nominees recommended by our board of directors. Smith & Nephew, Inc. and Smith & Nephew (Europe) B.V., as the other members of the Voting Group, will have the right to designate up to two individuals to be included in the slate of nominees recommended by our board of directors. The number of individuals that the Essex Members, Smith & Nephew, Inc. and Smith & Nephew (Europe) B.V. may designate will decrease if they dispose of certain percentages of the shares of our Class A common stock or Class B common stock, as applicable, that they own on the date this offering is consummated. At such time as the Essex Members or Smith & Nephew, Inc. and Smith & Nephew (Europe) B.V. own less than % of the shares of Class A common stock and Class B common stock that they owned on the date this offering is consummated, the Essex Members or Smith & Nephew, Inc. and Smith & Nephew (Europe) B.V., as the case may be, will no longer have designation rights under the Stockholders Agreement. Until such time, or if the Stockholders Agreement is otherwise terminated in accordance with its terms, the parties to the Stockholders Agreement will agree to vote their shares of Class A common stock and Class B common stock in favor of the election of the nominees of the Essex Members, Smith & Nephew, Inc. and Smith & Nephew (Europe) B.V. to our board of directors upon their nomination by the nominating and corporate governance committee of our board of directors.

Voting Group Approvals

Under the Stockholders Agreement, any increase or decrease in the size of our board of directors or any committee, and any amendment to our organizational documents, will in each case require the approval of the

Essex Members, for so long as the Essex Members collectively own at least % of the total shares of our Class A common stock owned by them as of the date this offering is consummated, and will also require the approval of Smith & Nephew, Inc. and Smith & Nephew (Europe) B.V. and their affiliates, for so long as Smith & Nephew, Inc. and Smith & Nephew (Europe) B.V. and their affiliates own at least % of the total shares of our Class A common stock and Class B common stock owned by them as of the date this offering is consummated.

Registration Rights Agreement

We intend to enter into the Registration Rights Agreement with the Original LLC Owners in connection with this offering. The Registration Rights Agreement will provide the Original LLC Owners certain registration rights whereby, at any time following our initial public offering and the expiration of any related lock-up period, the Continuing LLC Owner can require us to register under the Securities Act shares of Class A common stock issuable to it upon, at our election, redemption or exchange of its LLC Interests, and the Former LLC Owners can require us to register under the Securities Act the shares of Class A common stock issued to them in connection with the Transactions. The Registration Rights Agreement will also provide for piggyback registration rights for the Original LLC Owners.

Kenneth M. Reali Option Agreement

In July 2020, we entered into an agreement with our CEO, Ken Reali, providing him an option to acquire 5,935 units in Bioventus LLC at a price of $42.12 per unit. Upon joining and accepting the role of CEO, Mr. Reali expressed his desire to make a personal investment in our company. The terms of Mr. Reali's agreement provide for an option period of 12 months and is priced at the Bioventus LLC's 409A valuation from April 2020. This agreement was reviewed and approved by the Compensation Committee and ratified by our entire board of managers.

Policies and Procedures for Related Party Transactions

Our board of directors will adopt a written related person transaction policy, to be effective upon the closing of this offering, setting forth the policies and procedures for the review and approval or ratification of related person transactions. This policy will cover, with certain exceptions set forth in Item 404 of Regulation S-K under the Securities Act, any transaction, arrangement or relationship, or any series of similar transactions, arrangements or relationships, in which we were or are to be a participant, where the amount involved exceeds $120,000 in any fiscal year and a related person had, has or will have a direct or indirect material interest, including without limitation, purchases of goods or services by or from the related person or entities in which the related person has a material interest, indebtedness, guarantees of indebtedness and employment by us of a related person.

In reviewing and approving any such transactions, our audit committee is tasked to consider all relevant facts and circumstances, including, but not limited to, whether the transaction is on terms comparable to those that could be obtained in an arm's length transaction and the extent of the related person's interest in the transaction. All of the transactions described in this section occurred prior to the adoption of this policy. In connection with the review and approval or ratification of a related person transaction, management must disclose to the audit committee or disinterested directors, as applicable, the name of the related person and the basis on which the person is a related person, the material terms of the related person transaction, including the approximate dollar value of the amount involved in the transaction, and all the material facts as to the related person's direct or indirect interest in, or relationship to, the related person transaction. Management must advise the audit committee or disinterested directors, as applicable, as to whether the related person transaction complies with the terms of our agreements governing our material outstanding indebtedness that limit or restrict our ability to enter into a related person transaction, and whether the related person transaction will be required to be disclosed in our applicable filings under the Securities Act or the Exchange Act, and related rules, and, to the extent required to be disclosed, management must ensure that the related person transaction is disclosed in accordance with such Acts and related rules. Management must advise the committee or disinterested directors, as applicable, as to whether the related person transaction constitutes a "personal loan" for purposes of Section 402 of the Sarbanes-Oxley Act.

PRINCIPAL STOCKHOLDERS

The following table presents information as to the beneficial ownership of our Class A common stock and Class B common stock, after the consummation of the Transactions, including this offering, for:

- each person, or group of affiliated persons, known by us to beneficially own more than 5% of our Class A common stock or our Class B common stock;
- each named executive officer;
- each of our directors; and
- all executive officers and directors as a group.

As described in "Transactions" and "Certain relationships and related party transactions," the Continuing LLC Owner will be entitled to have its LLC Interests redeemed for Class A common stock on a one-for-one basis, or, if Bioventus Inc. and the Continuing LLC Owner agree, cash equal to the market value of the applicable number of our shares of Class A common stock. In addition, at Bioventus' election, Bioventus may effect a direct exchange of such Class A common stock or such cash (if mutually agreed) for such LLC Interests in lieu of such a redemption. In connection with this offering, we will issue to the Continuing LLC Owner one share of Class B common stock for each LLC Interest it owns. As a result, the number of shares of Class B common stock listed in the table below correlates to the number of LLC Interests the Continuing LLC Owner will own immediately prior to and after this offering (but after giving effect to the Transactions other than this offering). See "Transactions."

The number of shares beneficially owned by each stockholder as described in this prospectus is determined under rules issued by the SEC and includes voting or investment power with respect to securities. Under these rules, beneficial ownership includes any shares as to which the individual or entity has sole or shared voting power or investment power. In computing the number of shares beneficially owned by an individual or entity and the percentage ownership of that person, shares of common stock subject to options, or other rights, including the redemption right described above, held by such person that are currently exercisable or will become exercisable within 60 days of , are considered outstanding, although these shares are not considered outstanding for purposes of computing the percentage ownership of any other person. Unless otherwise indicated, the address of each of the individuals and entities named below is c/o Bioventus Inc., 4721 Emperor Boulevard, Suite 400, Durham, NC 27703. Each of the stockholders listed has sole voting and investment power with respect to the shares beneficially owned by the stockholder unless noted otherwise, subject to community property laws where applicable.

Name of Beneficial Owner	Shares of Class A Common Stock Beneficially Owned				Shares of Class B Common Stock Beneficially Owned				Total Common Stock Beneficially Owned	
	After Giving Effect to the Transactions and Before the Offering		After Giving Effect to the Transactions and After the Offering		After Giving Effect to the Transactions and Before the Offering		After Giving Effect to the Transactions and After the Offering		After Giving Effect to the Transactions and Before the Offering	After Giving Effect to the Transactions and After the Offering
	Number	%	Number	%	Number	%	Number	%	%	%
5% Stockholders										
EW Healthcare Partners(1)		%		%	—	*	—	*	%	%
Smith & Nephew(2)		%		%		%		%	%	%
Spindletop Healthcare Capital L.P.(3)		%		%	—	*	—	*	%	%
Pantheon Global Co-Investment Opportunities Fund L.P.(4)		%		%	—	*	—	*	%	%
Ampersand Capital(5)		%		%	—	*	—	*	%	%
Alta Partners VIII, L.P.(6)		%		%	—	*	—	*	%	%
Named Executive Officers and Directors										
Kenneth M. Reali	—	*	—	*	—	*	—	*	*	*
Gregory O. Anglum	—	*	—	*	—	*	—	*	*	*
John E. Nosenzo	—	*	—	*	—	*	—	*	*	*
William A. Hawkins	—	*	—	*	—	*	—	*	*	*
Philip G. Cowdy	—	*	—	*	—	*	—	*	*	*
Guido J. Neels	—	*	—	*	—	*	—	*	*	*
Guy P. Nohra	—	*	—	*	—	*	—	*	*	*
David J. Parker	—	*	—	*	—	*	—	*	*	*
Martin P. Sutter	—	*	—	*	—	*	—	*	*	*
Susan M. Stalnecker	—	*	—	*	—	*	—	*	*	*
All directors and executive officers as a group (12 persons)	—	*	—	*	—	*	—	*	*	*

* Represents beneficial ownership of less than 1%.

(1) Represents shares held by EW Healthcare Partners Acquisition Fund, L.P., which we refer to as the "Essex Stockholder." EW Healthcare Partners Acquisition Fund GP, L.P., a Delaware limited partnership, is the general partner of the Essex Stockholder and is referred to as the "Partnership," and EW Healthcare Partners Acquisition Fund UGP, LLC, a Delaware limited liability company, is the general partner of the Partnership and is referred to as the "General Partner." Martin P. Sutter, Petri Vainio, Ronald W. Eastman, and Scott Barry are the managers of the General Partner, and each is referred to as a "Manager" and collectively as the "Managers." The Partnership is deemed to have sole voting and dispositive power with respect to the shares held by the Essex Stockholder. The Managers are deemed to have shared voting and dispositive power with respect to the shares held by the Essex Stockholder by unanimous consent and through the Partnership. Each Manager disclaims beneficial ownership of such shares except to the extent of his pecuniary interest therein. The address of the Essex Stockholder is 21 Waterway Avenue, Suite 225, The Woodlands, Texas 77380.

(2) Represents the shares of Class A common stock held by Smith & Nephew (Europe) B.V., a wholly-owned indirect Dutch subsidiary of Smith & Nephew plc, and the shares of Class B common stock held by Smith & Nephew, Inc., a wholly-owned indirect U.S. subsidiary of Smith & Nephew plc. The address of Smith & Nephew (Europe) B.V. is Bloemlaan 2, 2132 NP Hoofddorp, Netherlands. The address of Smith & Nephew, Inc. is 7135 Goodlett Farms, Cordova, Tennessee 38106.

(3) Represents shares held by Spindletop Healthcare Capital L.P. Evan Melrose, MD is the Manager of the General Partner of the General Partner of Spindletop Healthcare Capital L.P. and may be deemed to have shared voting and dispositive power with respect to the shares held by Spindletop Healthcare Capital L.P. The address of Spindletop Healthcare Capital L.P. is 3571 Far West Blvd., PMB #108, Austin, Texas 78731.

(4) Represents shares held by Pantheon Global Co-Investment Opportunities Fund L.P. David Braman, Susan Long McAndrews and Lily Wong are directors of Pantheon Global Co-Investment Opportunities GP Limited, the general partner of Pantheon Global Co-Investment Opportunities Fund, L.P. and make the investment and voting decisions with respect to shares held by of Pantheon Global Co-Investment Opportunities Fund, L.P. The address of Pantheon Global Co-Investment Opportunities Fund L.P. is 600 Montgomery Street, 23rd Floor, San Francisco, CA 94111.

(5) Represents shares held by Ampersand CF-Holdings, LLC, which we refer to as the "Ampersand Capital Stockholder." Herbert H. Hooper, the Managing Member of the General Partner of the General Partner of the ultimate parent of the Ampersand Capital Stockholder, may be deemed to have voting and dispositive power with respect to shares held by the Ampersand Capital Stockholder. The address of the Ampersand Capital Stockholder is in care of Ampersand Capital Partners, 55 William Street, Suite 240, Wellesley, Massachusetts 02481.

(6) Represents shares held by Alta Partners VIII, L.P. Alta Partners Management VIII, LLC is the general partner of Alta Partners VIII, L.P. Guy Nohra, Daniel Janney and Farah Champsi are managing directors of Alta Partners Management VIII, LLC and exercise shared voting and investment powers with respect to the shares owned by Alta Partners VIII, L.P. Each of the reporting persons disclaims beneficial ownership of such shares, except to the extent of their proportionate pecuniary interest therein, if any. The principal business address of Alta Partners VIII, L.P. is One Embarcadero Center, 37th Floor San Francisco, CA 94111.

DESCRIPTION OF CAPITAL STOCK

The following descriptions of our capital stock and provisions of our amended and restated certificate of incorporation, and our bylaws, each of which will be in effect prior to the completion of this offering, are summaries and are qualified by reference to the amended and restated certificate of incorporation and the bylaws, which are filed as exhibits to the registration statement of which this prospectus forms a part.

Our current authorized capital stock consists of shares of Common Stock, par value $ per share. As of the consummation of this offering, our authorized capital stock will consist of shares of Class A common stock, par value $, shares of Class B common stock, par value $ per share, and shares of preferred stock.

Common Stock

As of the consummation of this offering, there will be shares of our Class A common stock issued and outstanding, and shares of our Class B common stock issued and outstanding.

Class A Common Stock

Voting Rights

Holders of our Class A common stock will be entitled to cast one vote per share. Holders of our Class A common stock will not be entitled to cumulate their votes in the election of directors. Generally, all matters to be voted on by stockholders must be approved by a majority (or, in the case of election of directors, by a plurality) of the votes entitled to be cast by all holders of Class A common stock and Class B common stock present in person or represented by proxy, voting together as a single class. Except as otherwise provided by law, amendments to the amended and restated certificate of incorporation must be approved by a majority or, in some cases, a super-majority of the combined voting power of all shares of Class A common stock and Class B common stock, voting together as a single class.

Dividend Rights

Holders of Class A common stock will share ratably (based on the number of shares of Class A common stock held) if and when any dividend is declared by the board of directors out of funds legally available therefor, subject to any statutory or contractual restrictions on the payment of dividends and to any restrictions on the payment of dividends imposed by the terms of any outstanding preferred stock.

Liquidation Rights

On our liquidation, dissolution or winding up, each holder of Class A common stock will be entitled to a pro rata distribution of any assets available for distribution to common stockholders.

Other Matters

No shares of Class A common stock will be subject to redemption or have preemptive rights to purchase additional shares of Class A common stock. Holders of shares of our Class A common stock do not have subscription, redemption or conversion rights. There will be no redemption or sinking fund provisions applicable to the Class A common stock. Upon consummation of this offering, all the outstanding shares of Class A common stock will be validly issued, fully paid and non-assessable.

Class B Common Stock

Issuance of Class B Common Stock with LLC Interests

Shares of Class B common stock will only be issued in the future to the extent necessary to maintain a one-to-one ratio between the number of LLC Interests held by the Continuing LLC Owner and the number of shares of Class B common stock issued to the Continuing LLC Owner. Shares of Class B common stock are transferable only together with an equal number of LLC Interests. Shares of Class B common stock will be cancelled on a one-for-one basis if we, at the election of the Continuing LLC Owner, redeem or exchange its LLC Interests pursuant to the terms of the Bioventus LLC Agreement.

Voting Rights

Holders of Class B common stock will be entitled to cast one vote per share, with the number of shares of Class B common stock held by the Continuing LLC Owner being equivalent to the number of LLC Interests held by such Continuing LLC Owner. Holders of our Class B common stock will not be entitled to cumulate their votes in the election of directors.

Generally, all matters to be voted on by stockholders must be approved by a majority (or, in the case of election of directors, by a plurality) of the votes entitled to be cast by all Class A and Class B stockholders present in person or represented by proxy, voting together as a single class. Except as otherwise provided by law, amendments to the amended and restated certificate of incorporation must be approved by a majority or, in some cases, a super-majority of the combined voting power of all shares of Class A common stock and Class B common stock, voting together as a single class.

Dividend Rights

Holders of our Class B common stock will not participate in any dividend declared by the board of directors.

Liquidation Rights

On our liquidation, dissolution or winding up, holders of Class B common stock will not be entitled to receive any distribution of our assets.

Transfers

Pursuant to the Bioventus LLC Agreement, each holder of Class B common stock agrees that:

- the holder will not transfer any shares of Class B common stock to any person unless the holder transfers an equal number of LLC Interests to the same person; and
- in the event the holder transfers any LLC Interests to any person, the holder will transfer an equal number of shares of Class B common stock to the same person.

Other Matters

No shares of Class B common stock will have preemptive rights to purchase additional shares of Class B common stock. Holders of shares of our Class B common stock do not have subscription, redemption or conversion rights. There will be no redemption or sinking fund provisions applicable to the Class B common stock. Upon consummation of this offering, all outstanding shares of Class B common stock will be validly issued, fully paid and nonassessable.

Preferred Stock

Our amended and restated certificate of incorporation will provide that our board of directors has the authority, without action by the stockholders, to designate and issue up to shares of preferred stock in one or more classes or series and to fix the powers, rights, preferences, privileges and restrictions of each class or series of preferred stock, including dividend rights, conversion rights, voting rights, redemption privileges, liquidation preferences and the number of shares constituting any class or series, which may be greater than the rights of the holders of the common stock. There will be no shares of preferred stock outstanding immediately after this offering.

The purpose of authorizing our board of directors to issue preferred stock and determine its rights and preferences is to eliminate delays associated with a stockholder vote on specific issuances. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions, future financings and other corporate purposes, could have the effect of making it more difficult for a third-party to acquire, or could discourage a third-party from seeking to acquire, a majority of our outstanding voting stock. Additionally, the issuance of preferred stock may adversely affect the holders of our Class A common stock by restricting dividends on the Class A common stock, diluting the voting power of the Class A common stock or subordinating the liquidation rights of the Class A common stock. As a result of these or other factors, the issuance of preferred stock could have an adverse impact on the market price of our Class A common stock.

Exclusive Venue

Our amended and restated certificate of incorporation, as it will be in effect upon the closing of this offering, will provide that unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware, to the fullest extent permitted by applicable law, be the sole and exclusive forum for: (1) any derivative action or proceeding brought on our behalf; (2) any action asserting a claim of breach of a fiduciary duty owed by any of our directors, officers or other employees or stockholders to us or our stockholders; (3) any action asserting a claim against us arising pursuant to any provision of the DGCL, our amended and restated certificate of incorporation or our amended and restated bylaws, or as to which the DGCL confers exclusive jurisdiction on the Court of Chancery; or (4) any action asserting a claim against us, any director or our officers or employees that is governed by the internal affairs doctrine; officers; provided that the exclusive forum provisions will not apply to suits brought to enforce any liability or duty created by the Exchange Act, or to any claim for which the federal courts have exclusive jurisdiction. Unless we consent in writing to the selections of an alternative forum, the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act, subject to and contingent upon a final adjudication in the State of Delaware of the enforceability of such exclusive forum provision.

Anti-Takeover Effects of Provisions of our Amended and Restated Certificate of Incorporation, our Bylaws and Delaware Law

Our amended and restated certificate of incorporation and amended and restated bylaws, as they will be in effect upon completion of this offering, also contain provisions that may delay, defer or discourage another party from acquiring control of us. We expect that these provisions, which are summarized below, will discourage coercive takeover practices or inadequate takeover bids. These provisions are also designed to encourage persons seeking to acquire control of us to first negotiate with our board of directors, which we believe may result in an improvement of the terms of any such acquisition in favor of our stockholders. However, they also give our board of directors the power to discourage acquisitions that some stockholders may favor.

Classified Board of Directors

Our amended and restated certificate of incorporation will provide that our board of directors will be divided into three classes, with the classes as nearly equal in number as possible and each class serving three-year

staggered terms. In addition, our amended and restated certificate of incorporation will provide that directors may only be removed from our board of directors with cause. These provisions may have the effect of deferring, delaying or discouraging hostile takeovers, or changes in control of us or our management.

Authorized but Unissued Shares

The authorized but unissued shares of common stock and preferred stock are available for future issuance without stockholder approval, subject to any limitations imposed by the listing standards of Nasdaq. These additional shares may be used for a variety of corporate finance transactions, acquisitions and employee benefit plans. The existence of authorized but unissued and unreserved common stock and preferred stock could make more difficult or discourage an attempt to obtain control of us by means of a proxy contest, tender offer, merger or otherwise.

Requirements for Advance Notification of Stockholder Meetings, Nominations and Proposals

Our amended and restated certificate of incorporation will provide that stockholders at an annual meeting may only consider proposals or nominations specified in the notice of meeting or brought before the meeting by or at the direction of our board of directors or by a qualified stockholder of record on the record date for the meeting, who is entitled to vote at the meeting and who has delivered timely written notice in proper form to our secretary of the stockholder's intention to bring such business before the meeting. Our amended and restated certificate of incorporation will provide that, subject to applicable law, special meetings of the stockholders may be called only by a resolution adopted by the affirmative vote of the majority of the directors then in office. Our bylaws will prohibit the conduct of any business at a special meeting other than as specified in the notice for such meeting. In addition, any stockholder who wishes to bring business before an annual meeting or nominate directors must comply with the advance notice and duration of ownership requirements set forth in our bylaws and provide us with certain information. These provisions may have the effect of deferring, delaying or discouraging hostile takeovers or changes in control of us or our management.

Stockholder Action by Written Consent

Pursuant to Section 228 of the DGCL, any action required to be taken at any annual or special meeting of the stockholders may be taken without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, is signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares of our stock entitled to vote thereon were present and voted, unless our amended and restated certificate of incorporation provides otherwise. Our amended and restated certificate of incorporation will provide that stockholder action by written consent will be permitted only if the action to be effected by such written consent and the taking of such action by such written consent have been previously approved by the board of directors.

Amendment of Amended and Restated Certificate of Incorporation or Bylaws

The DGCL provides generally that the affirmative vote of a majority of the shares entitled to vote on any matter is required to amend a corporation's certificate of incorporation or bylaws, unless a corporation's certificate of incorporation or bylaws, as the case may be, requires a greater percentage. Upon completion of this offering, our bylaws may be amended or repealed by a majority vote of our board of directors or by the affirmative vote of the holders of at least 66- $^{2}/_{3}$% of the votes which all our stockholders would be entitled to cast in any annual election of directors. In addition, the affirmative vote of the holders of at least 66- $^{2}/_{3}$% of the votes which all our stockholders would be entitled to cast in any election of directors will be required to amend or repeal or to adopt any provisions inconsistent with any of the provisions of our certificate described above.

The foregoing provisions of our amended and restated certificate of incorporation and bylaws could discourage potential acquisition proposals and could delay or prevent a change in control. These provisions are

intended to enhance the likelihood of continuity and stability in the composition of our board of directors and in the policies formulated by our board of directors and to discourage certain types of transactions that may involve an actual or threatened change of control. These provisions are designed to reduce our vulnerability to an unsolicited acquisition proposal. The provisions also are intended to discourage certain tactics that may be used in proxy fights. However, such provisions could have the effect of discouraging others from making tender offers for our shares and, as a consequence, they also may inhibit fluctuations in the market price of our shares of Class A common stock that could result from actual or rumored takeover attempts. Such provisions also may have the effect of preventing changes in our management or delaying or preventing a transaction that might benefit you or other minority stockholders.

In addition, we are subject to Section 203 of the DGCL. Subject to certain exceptions, Section 203 prevents a publicly held Delaware corporation from engaging in a "business combination" with any "interested stockholder" for three years following the date that the person became an interested stockholder, unless the interested stockholder attained such status with the approval of our board of directors or unless the business combination is approved in a prescribed manner. A "business combination" includes, among other things, a merger or consolidation involving us and the "interested stockholder" and the sale of more than 10% of our assets. In general, an "interested stockholder" is any entity or person beneficially owning 15% or more of our outstanding voting stock and any entity or person affiliated with or controlling or controlled by such entity or person.

Because we have "opted out" of Section 203 of the DGCL in our amended and restated certificate of incorporation, the statute will not apply to business combinations involving us.

Limitations on Liability and Indemnification of Officers and Directors

Our amended and restated certificate of incorporation and bylaws provide indemnification for our directors and officers to the fullest extent permitted by the DGCL. Prior to the completion of this offering, we intend to enter into indemnification agreements with each of our directors that may, in some cases, be broader than the specific indemnification provisions contained under Delaware law. In addition, as permitted by Delaware law, our amended and restated certificate of incorporation includes provisions that eliminate the personal liability of our directors for monetary damages resulting from breaches of certain fiduciary duties as a director. The effect of this provision is to restrict our rights and the rights of our stockholders in derivative suits to recover monetary damages against a director for breach of fiduciary duties as a director, except that a director will be personally liable for:

- any breach of his duty of loyalty to us or our stockholders;
- acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
- any transaction from which the director derived an improper personal benefit; or
- improper distributions to stockholders.

These provisions may be held not to be enforceable for violations of the federal securities laws of the United States.

Corporate Opportunities

In recognition that partners, principals, directors, officers, members, managers and/or employees of the Original LLC Owners and their affiliates and investment funds, which we refer to as the Corporate Opportunity Entities, may serve as our directors and/or officers, and that the Corporate Opportunity Entities may engage in activities or lines of business similar to those in which we engage, our amended and restated certificate of incorporation provides for the allocation of certain corporate opportunities between us and the Corporate

Opportunity Entities. Specifically, none of the Corporate Opportunity Entities has any duty to refrain from engaging, directly or indirectly, in the same or similar business activities or lines of business that we do. In the event that any Corporate Opportunity Entity, through its partner, principal, director, officer, member, manager or employee or otherwise, acquires knowledge of a potential transaction or matter which may be a corporate opportunity for itself and us, we will not have any expectancy in such corporate opportunity, and the Corporate Opportunity Entity will not have any duty to communicate or offer such corporate opportunity to us and may pursue or acquire such corporate opportunity for itself or direct such opportunity to another person. In addition, if a director of our Company who is also a partner, principal, director, officer, member, manager or employee of any Corporate Opportunity Entity acquires knowledge of a potential transaction or matter which may be a corporate opportunity for us and a Corporate Opportunity Entity, we will not have any expectancy in such corporate opportunity. Messrs. Philip G. Cowdy, Guido J. Neels, Guy P. Nohra, David J. Parker and Martin P. Sutter, who will serve as directors on our Board of Directors, are or are affiliated with Original LLC Owners. In the event that any other director of ours acquires knowledge of a potential transaction or matter which may be a corporate opportunity for us we will not have any expectancy in such corporate opportunity unless such potential transaction or matter was presented to such director expressly in his or her capacity as such.

By becoming a stockholder in our Company, you will be deemed to have notice of and consented to these provisions of our amended and restated certificate of incorporation. Any amendment to the foregoing provisions of our amended and restated certificate of incorporation requires the affirmative vote of at least two-thirds of the voting power of all shares of our common stock then outstanding.

Dissenters' Rights of Appraisal and Payment

Under the DGCL, with certain exceptions, our stockholders will have appraisal rights in connection with a merger or consolidation. Pursuant to Section 262 of the DGCL, stockholders who properly demand and perfect appraisal rights in connection with such merger or consolidation will have the right to receive payment of the fair value of their shares as determined by the Delaware Court of Chancery.

Stockholders' Derivative Actions

Under the DGCL, any of our stockholders may bring an action in our name to procure a judgment in our favor, also known as a derivative action, provided that the stockholder bringing the action is a holder of our shares at the time of the transaction to which the action relates or such stockholder's stock thereafter devolved by operation of law and such suit is brought in the Court of Chancery in the State of Delaware.

Listing

Our Class A common stock will be listed on Nasdaq under the trading symbol "BVS".

Transfer Agent and Registrar

Upon the closing of this offering, the transfer agent and registrar for our Class A common stock will be American Stock Transfer & Trust Company, LLC.

Stockholders Agreement

In connection with this offering, we will enter into the Stockholders Agreement with the Voting Group pursuant to which the Voting Group will have specified board representation rights, governance rights and other rights. See "Certain relationships and related party transactions—Stockholders Agreement."

SHARES ELIGIBLE FOR FUTURE SALE

Immediately prior to this offering, there was no public market for our Class A common stock. Future sales of substantial amounts of Class A common stock in the public market (including shares of Class A common stock issuable upon redemption or exchange of LLC Interests), or the perception that such sales may occur, could adversely affect the market price of our Class A common stock. Although we have applied to have our Class A common stock listed on Nasdaq, we cannot assure you that there will be an active public market for our Class A common stock.

Upon the closing of this offering, we will have outstanding an aggregate of shares of Class A common stock, assuming the issuance of shares of Class A common stock offered by us in this offering and the issuance of shares of Class A common stock to the Former LLC Owners. In addition, upon the closing of this offering, the Phantom Plan will be terminated and Phantom Plan Participants will hold rights to receive shares of Class A common stock upon settlement of their awards between twelve and 24 months following the termination of the Phantom Plan (as more fully described above under "Executive compensation—Narrative to summary compensation table—Equity-based compensation"). In connection with the offering, each profits interest unit awarded under the MIP will be exchanged for LLC Interests which may then be exchanged for shares of Class A common stock (upon redemption or cancellation of the same number of their shares of our Class B common stock) or a cash payment (subject to certain conditions). Of these shares, all shares sold in this offering will be freely tradable without restriction or further registration under the Securities Act, except for any shares purchased by our "affiliates," as that term is defined in Rule 144 under the Securities Act, whose sales would be subject to the Rule 144 resale restrictions described below, other than the holding period requirement. The remaining outstanding shares of our common stock will be "restricted securities" as that term is defined under Rule 144 of the Securities Act.

Subject to the lock-up agreements described below and the provisions of Rules 144 and 701 under the Securities Act, these restricted securities (including shares of Class A common stock issuable upon redemption or exchange of LLC Interests) will be available for sale in the public market as follows:

- no shares will be available for sale until 180 days after the date of this prospectus, subject to certain limited exceptions provided for in the lock-up agreements; and

- shares, plus any shares purchased by our affiliates in this offering, will be eligible for sale beginning more than 180 days after the date of this prospectus, subject, in the case of shares held by our affiliates, to the volume limitations under Rule 144.

Lock-up Agreements

In connection with this offering, our officers and directors, and certain of our stockholders, have each entered into a lock-up agreement with the underwriters of this offering that restricts the sale of shares of our common stock by those parties for a period of 180 days after the date of this prospectus without the prior written consent of the representatives. However, the representatives, on behalf of the underwriters, may, in their discretion, choose to release any or all of the shares of our common stock subject to these lock-up agreements at any time prior to the expiration of the lock-up period without notice. For more information, see "Underwriting." Upon the expiration of the lock-up period, substantially all of the shares subject to such lock-up restrictions will become eligible for sale, subject to the limitations discussed above.

Rule 144

Affiliate Resales of Restricted Securities

In general, beginning 90 days after the effective date of the registration statement of which this prospectus is a part, a person who is an affiliate of ours, or who was an affiliate at any time during the 90 days before a sale, who has beneficially owned shares of our Class A common stock for at least 180 days would be entitled to sell in

"broker's transactions" or certain "riskless principal transactions" or to market makers, a number of shares within any three-month period that does not exceed the greater of:

- 1% of the number of shares of our Class A common stock then outstanding; and
- the average weekly trading volume in our Class A common stock on Nasdaq during the four calendar weeks preceding the filing of a notice on Form 144 with respect to such sale.

Affiliate resales under Rule 144 are also subject to the availability of current public information about us. In addition, if the number of shares being sold under Rule 144 by an affiliate during any three-month period exceeds 5,000 shares or has an aggregate sale price in excess of $50,000, the seller must file a notice on Form 144 with the SEC and Nasdaq concurrently with either the placing of a sale order with the broker or the execution directly with a market maker.

Non-Affiliate Resales of Restricted Securities

In general, beginning 90 days after the effective date of the registration statement of which this prospectus is a part, a person who is not an affiliate of ours at the time of sale, and has not been an affiliate at any time during the 90 days preceding a sale, and who has beneficially owned shares of our Class A common stock for at least six months but less than a year, is entitled to sell such shares subject only to the availability of current public information about us. If such person has held our shares for at least one year, such person can resell under Rule 144(b)(1) without regard to any Rule 144 restrictions, including the 90-day public company requirement and the current public information requirement.

Non-affiliate resales are not subject to the manner of sale, volume limitation or notice filing provisions of Rule 144.

Rule 701

In general, under Rule 701, any of an issuer's employees, directors, officers, consultants or advisors who purchases shares from the issuer in connection with a compensatory stock or option plan or other written agreement before the effective date of a registration statement under the Securities Act is entitled to sell such shares 90 days after such effective date in reliance on Rule 144. An affiliate of the issuer can resell shares in reliance on Rule 144 without having to comply with the holding period requirement, and non-affiliates of the issuer can resell shares in reliance on Rule 144 without having to comply with the current public information and holding period requirements.

The SEC has indicated that Rule 701 will apply to typical stock options granted by an issuer before it becomes subject to the reporting requirements of the Exchange Act, along with the shares acquired upon exercise of such options, including exercises after an issuer becomes subject to the reporting requirements of the Exchange Act.

Equity Plans

We intend to file one or more registration statements on Form S-8 under the Securities Act to register the offer and sale of all shares of Class A common stock (i) issuable under our stock plans and (ii) issuable to the Stock Plan Participants under the Phantom Plan. We expect to file the registration statement covering shares offered pursuant to our stock plans shortly after the date of this prospectus, permitting the resale of such shares by non-affiliates in the public market without restriction under the Securities Act and the sale by affiliates in the public market subject to compliance with the resale provisions of Rule 144.

Registration Rights

Upon the closing of this offering, the holders of shares of Class A common stock (including the holders of LLC Interests redeemable or exchangeable for shares of Class A common stock) or their transferees

will be entitled to various rights with respect to the registration of these shares under the Securities Act. Registration of these shares under the Securities Act would result in these shares becoming fully tradable without restriction under the Securities Act immediately upon the effectiveness of the registration. See “Certain relationships and related party transactions—Registration Rights Agreement” for additional information. Shares covered by a registration statement will be eligible for sale in the public market upon the expiration or release from the terms of the lock-up agreement described in “—Lock-up agreements.”

MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES TO NON-U.S. HOLDERS

The following discussion is a summary of the material U.S. federal income tax consequences to Non-U.S. Holders (as defined below) of the purchase, ownership and disposition of our Class A common stock issued pursuant to this offering, but does not purport to be a complete analysis of all potential tax effects. The effects of other U.S. federal tax laws, such as estate and gift tax laws, and any applicable state, local or non-U.S. tax laws are not discussed. This discussion is based on the U.S. Internal Revenue Code of 1986, as amended, or the Code, Treasury Regulations promulgated thereunder, judicial decisions, and published rulings and administrative pronouncements of the IRS, in each case in effect as of the date hereof. These authorities may change or be subject to differing interpretations. Any such change or differing interpretation may be applied retroactively in a manner that could adversely affect a Non-U.S. Holder of our Class A common stock. We have not sought and will not seek any rulings from the IRS regarding the matters discussed below. There can be no assurance the IRS or a court will not take a contrary position to that discussed below regarding the tax consequences of the purchase, ownership and disposition of our Class A common stock.

This discussion is limited to Non-U.S. Holders that hold our Class A common stock as a "capital asset" within the meaning of Section 1221 of the Code (generally, property held for investment). This discussion does not address all U.S. federal income tax consequences relevant to a Non-U.S. Holder's particular circumstances, including the impact of the Medicare contribution tax on net investment income. In addition, it does not address consequences relevant to Non-U.S. Holders subject to special rules, including, without limitation:

- U.S. expatriates and former citizens or long-term residents of the United States;
- persons subject to the alternative minimum tax;
- persons holding our Class A common stock as part of a hedge, straddle or other risk reduction strategy or as part of a conversion transaction or other integrated investment;
- banks, insurance companies, and other financial institutions;
- brokers, dealers or traders in securities;
- "controlled foreign corporations," "passive foreign investment companies," and corporations that accumulate earnings to avoid U.S. federal income tax;
- partnerships or other entities or arrangements treated as partnerships for U.S. federal income tax purposes (and investors therein);
- tax-exempt organizations or governmental organizations;
- persons deemed to sell our Class A common stock under the constructive sale provisions of the Code;
- persons who hold or receive our Class A common stock pursuant to the exercise of any employee stock option or otherwise as compensation;
- tax-qualified retirement plans;
- "qualified foreign pension funds" as defined in Section 897(I)(2) of the Code and entities all of the interests of which are held by qualified foreign pension funds; and
- persons subject to special tax accounting rules as a result of any item of gross income with respect to the stock being taken into account in an applicable financial statement.

If an entity treated as a partnership for U.S. federal income tax purposes holds our Class A common stock, the tax treatment of an owner in such an entity will depend on the status of the partner, the activities of such entity and certain determinations made at the owner level. Accordingly, entities treated as partnerships holding our Class A common stock and the owners in such entities should consult their tax advisors regarding the U.S. federal income tax consequences to them.

THIS DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. INVESTORS SHOULD CONSULT THEIR TAX ADVISORS WITH RESPECT TO THE APPLICATION OF THE U.S. FEDERAL INCOME TAX LAWS TO THEIR PARTICULAR SITUATIONS AS WELL AS ANY TAX CONSEQUENCES OF THE PURCHASE, OWNERSHIP AND DISPOSITION OF OUR CLASS A COMMON STOCK ARISING UNDER THE U.S. FEDERAL ESTATE OR GIFT TAX LAWS OR UNDER THE LAWS OF ANY STATE, LOCAL OR NON-U.S. TAXING JURISDICTION OR UNDER ANY APPLICABLE INCOME TAX TREATY.

Definition of a Non-U.S. Holder

For purposes of this discussion, a "Non-U.S. Holder" is any beneficial owner of our Class A common stock that is neither a "U.S. person" nor an entity treated as a partnership for U.S. federal income tax purposes. A U.S. person is any person that, for U.S. federal income tax purposes, is or is treated as any of the following:

- an individual who is a citizen or resident of the United States;
- a corporation created or organized under the laws of the United States, any state thereof, or the District of Columbia;
- an estate, the income of which is subject to U.S. federal income tax regardless of its source; or
- a trust that (1) is subject to the primary supervision of a U.S. court and the control of one or more "United States persons" (within the meaning of Section 7701(a)(30) of the Code), or (2) has a valid election in effect to be treated as a United States person for U.S. federal income tax purposes.

Distributions

As described in the section entitled "Dividend policy," we do not anticipate declaring or paying dividends to holders of our Class A common stock in the foreseeable future. However, if we do make distributions of cash or property on our Class A common stock, such distributions will constitute dividends for U.S. federal income tax purposes to the extent paid from our current or accumulated earnings and profits, as determined under U.S. federal income tax principles. Amounts not treated as dividends for U.S. federal income tax purposes will constitute a return of capital and first be applied against and reduce a Non-U.S. Holder's adjusted tax basis in its Class A common stock, but not below zero. Any excess will be treated as capital gain and will be treated as described below under "—Sale or other taxable disposition."

Subject to the discussion below on effectively connected income, dividends paid to a Non-U.S. Holder of our Class A common stock will be subject to U.S. federal withholding tax at a rate of 30% of the gross amount of the dividends (or such lower rate specified by an applicable income tax treaty, provided the Non-U.S. Holder furnishes a valid IRS Form W-8BEN or W-8BEN-E (or other applicable documentation) certifying qualification for the lower treaty rate). A Non-U.S. Holder that does not timely furnish the required documentation, but that qualifies for a reduced treaty rate, may obtain a refund of any excess amounts withheld by timely filing an appropriate claim for refund with the IRS. Non-U.S. Holders should consult their tax advisors regarding their entitlement to benefits under any applicable income tax treaty.

If dividends paid to a Non-U.S. Holder are effectively connected with the Non-U.S. Holder's conduct of a trade or business within the United States (and, if required by an applicable income tax treaty, the Non-U.S. Holder maintains a permanent establishment in the United States to which such dividends are attributable), the Non-U.S. Holder will be exempt from the U.S. federal withholding tax described above. To claim the exemption, the Non-U.S. Holder must furnish to the applicable withholding agent a valid IRS Form W-8ECI, certifying that the dividends are effectively connected with the Non-U.S. Holder's conduct of a trade or business within the United States.

Any such effectively connected dividends will be subject to U.S. federal income tax on a net income basis at the regular graduated rates. A Non-U.S. Holder that is a corporation also may be subject to a branch profits tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty) on such effectively connected dividends, as adjusted for certain items. Non-U.S. Holders should consult their tax advisors regarding any applicable tax treaties that may provide for different rules.

Sale or Other Taxable Disposition

Subject to the discussion below under ‘‘Information reporting and backup withholding’’ and ‘‘Additional withholding tax on payments made to foreign accounts,’’ a Non-U.S. Holder will not be subject to U.S. federal income tax on any gain realized upon the sale or other taxable disposition of our Class A common stock unless:

- the gain is effectively connected with the Non-U.S. Holder’s conduct of a trade or business within the United States (and, if required by an applicable income tax treaty, the Non-U.S. Holder maintains a permanent establishment in the United States to which such gain is attributable);
- the Non-U.S. Holder is a non-resident alien individual present in the United States for 183 days or more during the taxable year of the disposition and certain other requirements are met; or
- our Class A common stock constitutes a U.S. real property interest, or USRPI, by reason of our status as a U.S. real property holding corporation, or USRPHC, for U.S. federal income tax purposes.

Gain described in the first bullet point above generally will be subject to U.S. federal income tax on a net income basis at the regular graduated rates. A Non-U.S. Holder that is a corporation also may be subject to a branch profits tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty) on such effectively connected gain, as adjusted for certain items.

Gain described in the second bullet point above will be subject to U.S. federal income tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty), which may be offset by U.S. source capital losses of the Non-U.S. Holder (even though the individual is not considered a resident of the United States), provided the Non-U.S. Holder has timely filed U.S. federal income tax returns with respect to such losses.

With respect to the third bullet point above, we believe we currently are not, and do not anticipate becoming, a USRPHC. Because the determination of whether we are a USRPHC depends, however, on the fair market value of our USRPIs relative to the fair market value of our non-U.S. real property interests and our other business assets, there can be no assurance we currently are not a USRPHC or will not become one in the future. Even if we are or were to become a USRPHC, gain arising from the sale or other taxable disposition by a Non-U.S. Holder of our Class A common stock will not be subject to U.S. federal income tax if our Class A common stock is “regularly traded,” as defined by applicable Treasury Regulations, on an established securities market, and such Non-U.S. Holder owned, actually or constructively, 5% or less of our Class A common stock throughout the shorter of the five-year period ending on the date of the sale or other taxable disposition or the Non-U.S. Holder’s holding period.

Non-U.S. Holders should consult their tax advisors regarding potentially applicable income tax treaties that may provide for different rules.

Information Reporting and Backup Withholding

Payments of dividends on our Class A common stock will not be subject to backup withholding, provided the applicable withholding agent does not have actual knowledge or reason to know the holder is a United States person and the holder either certifies its non-U.S. status, such as by furnishing a valid IRS Form W-8BEN, W-8BEN-E or W-8ECI, or otherwise establishes an exemption. However, information returns are required to be filed with the IRS in connection with any distributions on our Class A common stock paid to the Non-U.S. Holder, regardless of whether such distributions constitute dividends or whether any tax was actually withheld. In

addition, proceeds of the sale or other taxable disposition of our Class A common stock within the United States or conducted through certain U.S.-related brokers generally will not be subject to backup withholding or information reporting, if the applicable withholding agent receives the certification described above and does not have actual knowledge or reason to know that such holder is a United States person, or the holder otherwise establishes an exemption. Proceeds of a disposition of our Class A common stock conducted through a non-U.S. office of a non-U.S. broker generally will not be subject to backup withholding or information reporting.

Copies of information returns that are filed with the IRS may also be made available under the provisions of an applicable treaty or agreement to the tax authorities of the country in which the Non-U.S. Holder resides or is established.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules may be allowed as a refund or a credit against a Non-U.S. Holder's U.S. federal income tax liability, provided the required information is timely furnished to the IRS.

Additional Withholding Tax on Payments Made to Foreign Accounts

Withholding taxes may be imposed under Sections 1471 to 1474 of the Code (such Sections commonly referred to as the Foreign Account Tax Compliance Act, or FATCA) on certain types of payments made to non-U.S. financial institutions and certain other non-U.S. entities. Specifically, a 30% withholding tax may be imposed on dividends on, or (subject to the proposed Treasury Regulations discussed below) gross proceeds from the sale or other disposition of, our Class A common stock, in each case, paid to a "foreign financial institution" or a "non-financial foreign entity" (each as defined in the Code), unless (1) the foreign financial institution undertakes certain diligence and reporting obligations (including providing sufficient documentation evidencing its compliance (or deemed compliance) with FATCA), (2) the non-financial foreign entity either certifies it does not have any "substantial United States owners" (as defined in the Code) or furnishes identifying information regarding each substantial United States owner, or (3) the foreign financial institution or non-financial foreign entity otherwise qualifies for an exemption from these rules. If the payee is a foreign financial institution and is subject to the diligence and reporting requirements in (1) above, it must enter into an agreement with the U.S. Department of the Treasury requiring, among other things, that it undertake to identify accounts held by certain "specified United States persons" or "United States-owned foreign entities" (each as defined in the Code), annually report certain information about such accounts, and withhold 30% on certain payments to non-compliant foreign financial institutions and certain other account holders. Foreign financial institutions located in jurisdictions that have an intergovernmental agreement with the United States governing FATCA may be subject to different rules.

Under the applicable Treasury Regulations and administrative guidance, withholding under FATCA generally applies to payments of dividends on our Class A common stock. While withholding under FATCA would have applied to payments of gross proceeds from the sale or other disposition of such stock on or after January 1, 2019, proposed Treasury Regulations eliminate FATCA withholding on payments of gross proceeds entirely. Taxpayers generally may rely on these proposed Treasury Regulations until final Treasury Regulations are issued.

Prospective investors should consult their tax advisors regarding the potential application of withholding under FATCA to their investment in our Class A common stock.

UNDERWRITING

Under the terms and subject to the conditions in an underwriting agreement dated the date of this prospectus, the underwriters named below, for whom Morgan Stanley & Co. LLC, J.P. Morgan Securities LLC and Goldman Sachs & Co. LLC are acting as representatives, have severally agreed to purchase, and we have agreed to sell to them, severally, the number of shares of Class A common stock indicated below:

Name	Number of Shares
Morgan Stanley & Co. LLC	
J.P. Morgan Securities LLC	
Goldman Sachs & Co. LLC	
Canaccord Genuity LLC	
Total:	

The underwriters and the representatives are collectively referred to as the "underwriters" and the "representatives," respectively. The underwriters are offering the shares of Class A common stock subject to their acceptance of the shares from us and subject to prior sale. The underwriting agreement provides that the obligations of the several underwriters to pay for and accept delivery of the shares of Class A common stock offered by this prospectus are subject to the approval of certain legal matters by their counsel and to certain other conditions. The underwriters are obligated to take and pay for all of the shares of Class A common stock offered by this prospectus if any such shares are taken. However, the underwriters are not required to take or pay for the shares covered by the underwriters' over-allotment option described below.

The underwriters initially propose to offer part of the shares of Class A common stock directly to the public at the offering price listed on the cover page of this prospectus and part to certain dealers at a price that represents a concession not in excess of $ per share under the public offering price. After the initial offering of the shares of Class A common stock, the offering price and other selling terms may from time to time be varied by the representatives.

We have granted to the underwriters an option, exercisable for 30 days from the date of this prospectus, to purchase up to additional shares of Class A common stock at the public offering price listed on the cover page of this prospectus, less underwriting discounts and commissions. The underwriters may exercise this option solely for the purpose of covering over-allotments, if any, made in connection with the offering of the shares of Class A common stock offered by this prospectus. To the extent the option is exercised, each underwriter will become obligated, subject to certain conditions, to purchase about the same percentage of the additional shares of Class A common stock as the number listed next to the underwriter's name in the preceding table bears to the total number of shares of Class A common stock listed next to the names of all underwriters in the preceding table.

At our request, the underwriters have reserved for sale, at the initial public offering price, up to 5% of the shares offered by this prospectus for sale to some of our officers, employees and consultants. If these persons purchase reserved shares, this will reduce the number of shares available for sale to the general public. Any reserved shares that are not so purchased will be offered by the underwriters to the general public on the same terms as the other shares offered by this prospectus.

The following table shows the per share and total public offering price, underwriting discounts and commissions, and proceeds before expenses to us. These amounts are shown assuming both no exercise and full exercise of the underwriters' option to purchase up to an additional shares of Class A common stock.

	Per Share	Total	
		No Exercise	Full Exercise
Public offering price	$	$	$
Underwriting discounts and commissions to be paid by us	$	$	$
Proceeds, before expenses to us	$	$	$

The estimated offering expenses payable by us, exclusive of the underwriting discounts and commissions, are approximately $. We have agreed to reimburse the underwriters for certain expenses relating to this offering up to $.

The underwriters have informed us that they do not intend sales to discretionary accounts to exceed 5% of the total number of shares of Class A common stock offered by them.

We have applied to list our Class A common stock for quotation on Nasdaq under the trading symbol “BVS.”

We and all directors and officers and the holders of substantially all of our LLC Interests prior to the Transactions (each, a “lock-up party” and collectively, the “lock-up parties”) have agreed that, without the prior written consent of the representatives, on behalf of the underwriters, we and they will not, during the period ending 180 days after the date of this prospectus (the “restricted period”):

- offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend or otherwise transfer or dispose of, directly or indirectly, any shares of common stock or any securities convertible into or exercisable or exchangeable for shares of common stock (including without limitation, options or warrants to purchase common stock and LLC Interests or such other securities which may be deemed to be beneficially owned by the lock-up party in accordance with the rules and regulations of the SEC and securities which may be issued upon exercise of a stock option or warrant (any such securities, the “Restricted Securities”));
- enter into any hedging, swap or other agreement or transaction that transfers, in whole or in part, any of the economic consequences of ownership of the Restricted Securities;
- make any demand for or exercise any right with respect to the registration of any Restricted Securities; or
- publicly disclose the intention to do any of the foregoing,

whether any such transaction described above is to be settled by delivery of Restricted Securities, in cash or otherwise. The lock-up parties have also acknowledged and agreed that the foregoing precludes them from engaging in any hedging or other transactions designed or intended, or which could reasonably be expected to lead to or result in, a sale or disposition of any Restricted Securities, or securities convertible into or exercisable or exchangeable for Restricted Securities, even if any such sale or disposition transaction or transactions would be made or executed by or on behalf of someone other than the lock-up party.

The representatives, in their sole discretion, may release Restricted Securities subject to the lock-up agreements described above in whole or in part at any time.

In order to facilitate the offering of the Class A common stock, the underwriters may engage in transactions that stabilize, maintain or otherwise affect the price of the Class A common stock. Specifically, the underwriters may sell more shares than they are obligated to purchase under the underwriting agreement, creating a short position. A short sale is covered if the short position is no greater than the number of shares available for purchase by the underwriters under the over-allotment option. The underwriters can close out a covered short sale

by exercising the over-allotment option or purchasing shares in the open market. In determining the source of shares to close out a covered short sale, the underwriters will consider, among other things, the open market price of shares compared to the price available under the over-allotment option. The underwriters may also sell shares in excess of the over-allotment option, creating a naked short position. The underwriters must close out any naked short position by purchasing shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the Class A common stock in the open market after pricing that could adversely affect investors who purchase in this offering. As an additional means of facilitating this offering, the underwriters may bid for, and purchase, shares of Class A common stock in the open market to stabilize the price of the Class A common stock. These activities may raise or maintain the market price of the Class A common stock above independent market levels or prevent or retard a decline in the market price of the Class A common stock. The underwriters are not required to engage in these activities and may end any of these activities at any time.

We and the underwriters have agreed to indemnify each other against certain liabilities, including liabilities under the Securities Act.

A prospectus in electronic format may be made available on websites maintained by one or more underwriters participating in this offering. The representatives may agree to allocate a number of shares of Class A common stock to underwriters for sale to their online brokerage account holders. Internet distributions will be allocated by the representatives to underwriters that may make Internet distributions on the same basis as other allocations.

The underwriters and their respective affiliates are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, investment research, principal investment, hedging, financing and brokerage activities. Certain of the underwriters and their respective affiliates have, from time to time, performed, and may in the future perform, various financial advisory and investment banking services for us, for which they received or will receive customary fees and expenses.

In addition, in the ordinary course of their various business activities, the underwriters and their respective affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (including bank loans) for their own account and for the accounts of their customers and may at any time hold long and short positions in such securities and instruments. Such investment and securities activities may involve our securities and instruments. The underwriters and their respective affiliates may also make investment recommendations or publish or express independent research views in respect of such securities or instruments and may at any time hold, or recommend to clients that they acquire, long or short positions in such securities and instruments.

Pricing of the Offering

Prior to this offering, there has been no public market for our Class A common stock. The initial public offering price was determined by negotiations between us and the representatives. Among the factors considered in determining the initial public offering price were our future prospects and those of our industry in general, our sales, earnings and certain other financial and operating information in recent periods, and the price-earnings ratios, price-sales ratios, market prices of securities, and certain financial and operating information of companies engaged in activities similar to ours.

Selling Restrictions

European Economic Area

In relation to each Member State of the European Economic Area (each, a “Relevant State”), no securities have been offered or will be offered pursuant to the offering to the public in that Relevant State prior to the

publication of a prospectus in relation to the securities which has been approved by the competent authority in that Relevant State or, where appropriate, approved in another Relevant State and notified to the competent authority in that Relevant State, all in accordance with the Prospectus Regulation, except that offers of securities may be made to the public in that Relevant State at any time under the following exemptions under the Prospectus Regulation:

(a) to any legal entity which is a qualified investor as defined under Article 2 of the Prospectus Regulation;

(b) to fewer than 150 natural or legal persons (other than qualified investors as defined under Article 2 of the Prospectus Regulation), subject to obtaining the prior consent of the representatives for any such offer; or

(c) in any other circumstances falling within Article 1(4) of the Prospectus Regulation,

provided that no such offer of securities shall require us or any of our representatives to publish a prospectus pursuant to Article 3 of the Prospectus Regulation or supplement a prospectus pursuant to Article 23 of the Prospectus Regulation.

For the purposes of this provision, the expression an "offer to the public" in relation to any securities in any Relevant State means the communication in any form and by any means of sufficient information on the terms of the offer and any securities to be offered so as to enable an investor to decide to purchase any securities, and the expression "Prospectus Regulation" means Regulation (EU) 2017/1129 (as amended).

United Kingdom

No securities have been offered or will be offered pursuant to the offering to the public in the United Kingdom prior to the publication of a prospectus in relation to the securities which has been approved by the Financial Conduct Authority, except that it may make an offer to the public in the United Kingdom of any securities at any time:

(a) to any legal entity which is a qualified investor as defined under Article 2 of the UK Prospectus Regulation;

(b) to fewer than 150 natural or legal persons (other than qualified investors as defined under Article 2 of the UK Prospectus Regulation), subject to obtaining the prior consent of the representatives for any such offer; or

(c) in any other circumstances falling within Section 86 of the FSMA,

provided that no such offer of the securities shall require us or any of our representatives to publish a prospectus pursuant to Section 85 of the FSMA or supplement a prospectus pursuant to Article 23 of the UK Prospectus Regulation.

For the purposes of this provision, the expression an "offer to the public" in relation to the securities in the United Kingdom means the communication in any form and by any means of sufficient information on the terms of the offer and any securities to be offered so as to enable an investor to decide to purchase or subscribe for any securities and the expression "UK Prospectus Regulation" means Regulation (EU) 2017/1129 as it forms part of domestic law by virtue of the European Union (Withdrawal) Act 2018 and the expression "FSMA" means the Financial Services and Markets Act 2000.

Each underwriter has represented and agreed that:

(a) it has only communicated or caused to be communicated and will only communicate or cause to be communicated an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the FSMA received by it in connection with the issue or sale of the shares of our Class A common stock in circumstances in which Section 21(1) of the FSMA does not apply to us; and

(b) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the shares of our Class A common stock in, from or otherwise involving the United Kingdom.

LEGAL MATTERS

The validity of the issuance of our Class A common stock offered in this prospectus will be passed upon for us by Latham & Watkins LLP. The validity of the issuance of our Class A common stock offered in this prospectus will be passed upon for the underwriters in connection with this offering by Simpson Thacher & Bartlett LLP, New York, New York.

EXPERTS

The audited financial statements as of and for the year ended December 31, 2019 of Bioventus LLC included in this prospectus and elsewhere in the registration statement have been so included in reliance on the report of Grant Thornton LLP, or GT, independent registered public accountants, upon the authority of said firm as experts in accounting and auditing.

The financial statements for the year end December 31, 2018 included in this prospectus have been so included in reliance on the report (which contains an emphasis of matter paragraph relating to the Company's identification of noncompliance with certain U.S. Federal statutes and regulations to which the Company is subject and the Company's voluntary self-disclosure to the U.S. Department of Health and Human Services Office of Inspector General. As a result of the noncompliance, the Company may be subject to civil monetary penalties, as well as repayment obligations related to previously reimbursed claims and fines as described in Notes 2 and 13 to the financial statements) of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

CHANGE IN REGISTERED PUBLIC ACCOUNTANT

We dismissed PricewaterhouseCoopers LLP, or PwC, as our independent auditor on November 1, 2019. Our Audit, Compliance and Quality Committee participated in and approved our change in independent registered public accounting firm. On November 20, 2019, we engaged GT as our independent registered public accounting firm for the year ended December 31, 2019. Concurrent with GTs appointment, we engaged GT to audit our consolidated financial statements as of and for the year ended December 31, 2019.

The report of PwC on the financial statements of Bioventus LLC as of and for the year ended December 31, 2018 did not contain any adverse opinions or disclaimer of opinion and was not qualified as to uncertainty, audit scope or accounting principles; however, it does include an emphasis of matter paragraph relating to the Company's identification of noncompliance with certain U.S. Federal statutes and regulations to which the Company is subject and the Company's voluntary self-disclosure to the OIG. As a result of the noncompliance, the Company may be subject to civil monetary penalties, as well as repayment obligations related to previously reimbursed claims and fines as described in Notes 2 and 13 to the financial statements.

During the audit of the year ended December 31, 2018 and subsequent interim period through November 1, 2019, there were no disagreements with PwC on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure that, if not resolved to PwC's satisfaction, would have caused PwC to make reference to the subject matter of the disagreement in connection with its report and (ii) no "reportable events" (as defined in Item 304(a)(1)(v) of Regulation S-K), except for the material weaknesses in our internal control over financial reporting related to (a) an ineffective design of internal controls to review reimbursement claims in order to identify non-compliance with regulations and contract terms and (b) an effective design of internal controls to establish and review a reimbursement claim reserve for errors related to the determination of medical necessity from such non-compliance.

We requested that PwC provide us with a letter addressed to the SEC stating whether or not it agrees with the above disclosure. A copy of PwC's letter, dated January 19, 2021, is attached as Exhibit 16.1 to the registration statement of which this prospectus is a part.

During the year ended December 31, 2018 and the subsequent interim period through November 20, 2019, neither we, nor any person on our behalf, consulted GT with respect to either (i) the application of accounting principles to a specified transaction, either completed or proposed, or the type of audit opinion that may be rendered on our financial statements, and no written report or oral advice was provided to us by GT that GT concluded was an important factor considered by us in reaching a decision as to the accounting, auditing or financial reporting issue or (ii) any matter that was either the subject of a disagreement, as that term is described in Item 304(a)(1)(iv) of Regulation S-K and the related instructions to Item 304 of Regulation S-K, or a reportable event, as that term is described in Item 304(a)(1)(v) of Regulation S-K.

WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement on Form S-1 under the Securities Act with respect to the shares of Class A common stock offered hereby. This prospectus, which constitutes a part of the registration statement, does not contain all of the information set forth in the registration statement or the exhibits and schedules filed therewith, certain portions of which are omitted as permitted by the rules and regulations of the SEC. For further information with respect to Bioventus Inc. and the shares of Class A common stock offered hereby, reference is made to the registration statement and the exhibits and schedules filed therewith. Statements contained in this prospectus regarding the contents of any contract or any other document that is filed as an exhibit to the registration statement are not necessarily complete, and each such statement is qualified in all respects by reference to the full text of such contract or other document filed as an exhibit to the registration statement. The SEC also maintains a website that contains reports, proxy and information statements and other information regarding registrants, like us, that file electronically with the SEC. The address of that website is www.sec.gov.

As a result of this offering, we will be required to file periodic reports, proxy statements and other information with the SEC. These periodic reports, proxy statements and other information will be available for inspection and copying at the SEC's public reference room and the website of the SEC referred to above. We also maintain a website at www.bioventus.com, through which you may access these materials free of charge as soon as reasonably practicable after they are electronically filed with, or furnished to, the SEC. Information contained on our website is not a part of this prospectus and the inclusion of our website address in this prospectus is an inactive textual reference only.

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BIOVENTUS LLC

Years ended December 31, 2019 and 2018

Nine months ended September 26, 2020 and September 28, 2019 (unaudited)

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Board of Managers
Bioventus LLC

Opinion on the financial statements

We have audited the accompanying consolidated balance sheet of Bioventus LLC (a Delaware Limited Liability Company) and subsidiaries (the "Company") as of December 31, 2019, the related consolidated statements of operations and comprehensive income (loss), changes in members' equity, and cash flows for the year ended December 31, 2019, and the related notes (collectively referred to as the "financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2019, and the results of its operations and its cash flows for the year ended December 31, 2019, in conformity with accounting principles generally accepted in the United States of America.

Change in accounting principle

As discussed in Note 2 to the consolidated financial statements, the Company has changed its method of accounting for leases in 2019 due to the adoption of FASB Accounting Standards Codification (Topic 842), Leases.

Basis for opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audit. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB and in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audit we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audit included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audit also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audit provides a reasonable basis for our opinion.

/s/ GRANT THORNTON LLP

We have served as the Company's auditor since 2019.

Raleigh, North Carolina
October 6, 2020

Report of Independent Registered Public Accounting Firm

To the Board of Managers and Members of Bioventus LLC

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheet of Bioventus LLC and its subsidiaries (the "Company") as of December 31, 2018, and the related consolidated statements of operations and comprehensive income (loss), of changes in members' equity and of cash flows for the year then ended, including the related notes (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2018, and the results of its operations and its cash flows for the year then ended in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's consolidated financial statements based on our audit. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit of these consolidated financial statements in accordance with the standards of the PCAOB and in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud.

Our audit included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audit also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audit provides a reasonable basis for our opinion.

Emphasis of Matter

As discussed in Notes 2 and 13 to the consolidated financial statements, the Company has identified noncompliance with certain U.S. Federal statutes and regulations to which the Company is subject and made a voluntary self-disclosure to the U.S. Department of Health and Human Services Office of Inspector General. As a result of the noncompliance, the Company may be subject to civil monetary penalties, as well as repayment obligations related to previously reimbursed claims and fines. Management's evaluation of the impact of these material contingencies is also discussed in Note 13.

/s/ PricewaterhouseCoopers LLP

Raleigh, North Carolina
August 15, 2019, except for the effects of disclosing net loss per unit information discussed in Note 14 and the effects of discontinued operations discussed in Note 17 to the consolidated financial statements, as to which the date is October 6, 2020

We served as the Company's auditor from 2012 to 2019.

BIOVENTUS LLC

Consolidated statements of operations and comprehensive income (loss)
Years ended December 31, 2019 and 2018
(Dollars in thousands, except per unit and per share data)

	2019	2018
Net sales	$ 340,141	$ 319,177
Cost of sales (including depreciation and amortization of $22,399 and $20,614, respectively)	90,935	84,168
Gross profit	249,206	235,009
Selling, general and administrative expense	198,475	191,672
Research and development expense	11,055	8,095
Change in fair value of contingent consideration	—	(739)
Restructuring costs	575	1,373
Depreciation and amortization	7,908	8,615
Loss on impairment of intangible assets	—	489
Operating income	31,193	25,504
Interest expense	21,579	19,171
Other (income) expense	(75)	226
Other expense	21,504	19,397
Income from continuing operations before income taxes	9,689	6,107
Income tax expense	1,576	1,664
Net income from continuing operations	8,113	4,443
Loss from discontinued operations, net of tax	1,815	16,650
Net income (loss)	6,298	(12,207)
Loss attributable to noncontrolling interest	553	—
Net income (loss) attributable to unit holders	6,851	(12,207)
Other comprehensive income (loss), net of tax		
Change in prior service cost and unrecognized (loss) gain for defined benefit plan adjustment	(78)	131
Change in foreign currency translation adjustments	(322)	(334)
Other comprehensive loss	(400)	(203)
Comprehensive income (loss)	$ 6,451	$ (12,410)
Net income from continuing operations attributable to unit holders	$ 8,666	$ 4,443
Accumulated and unpaid preferred distributions	(5,955)	(5,781)
Net income allocated to participating shareholders	(1,555)	—
Net income (loss) from continuing operations attributable to common unit holders	1,156	(1,338)
Loss from discontinued operations, net of tax	1,815	16,650
Net loss attributable to common unit holders	$ (659)	$ (17,988)
Net loss per unit attributable to common unit holders—basic and diluted (Note 14)		
Net income (loss) from continuing operations	$ 0.24	$ (0.27)
Loss from discontinued operations, net of tax	0.37	3.40
Net loss attributable to common unit holders	$ (0.13)	$ (3.67)
Weighted average common units outstanding, basic and diluted	4,900	4,900
Unaudited pro forma net income per share—basic (Note 19):		
Unaudited pro forma net income from continuing operations		
Unaudited pro forma net loss from discontinued operations, net of tax		
Unaudited pro forma net income attributable to unit holders		
Unaudited pro forma net income per share—diluted (Note 19):		
Unaudited pro forma net income from continuing operations		
Unaudited pro forma net loss from discontinued operations, net of tax		
Unaudited pro forma net income attributable to unit holders		

The accompanying notes are an integral part of these consolidated financial statements.

BIOVENTUS LLC

Consolidated balance sheets
December 31, 2019 and 2018
(Dollars in thousands)

	2019	2018
Assets		
Current assets:		
Cash and cash equivalents	$ 64,520	$ 42,774
Accounts receivable, net	85,128	72,569
Inventory	27,326	27,396
Prepaid and other current assets	6,059	5,615
Total current assets	183,033	148,354
Property and equipment, net	4,489	4,759
Goodwill	49,800	49,800
Intangible assets, net	216,510	237,029
Operating lease assets	15,267	—
Investments and other assets	3,308	2,781
Total assets	$ 472,407	$ 442,723
Liabilities and Members' Equity		
Current liabilities:		
Accounts payable	$ 6,440	$ 8,207
Accrued liabilities	52,827	50,984
Accrued equity-based compensation	15,547	—
Long-term debt	10,000	5,250
Other current liabilities	4,201	987
Total current liabilities	89,015	65,428
Long-term debt, less current portion	187,965	189,578
Accrued equity-based compensation, less current portion	25,255	33,063
Deferred tax liability	3,874	3,955
Other long-term liabilities	20,681	5,432
Total liabilities	326,790	297,456
Commitments and contingencies (Note 13)		
Members' equity (preferred unit liquidation preference of $204,443 and $198,488 at December 31, 2019 and 2018, respectively)	285,147	285,153
Accumulated other comprehensive loss	(465)	(65)
Accumulated deficit	(141,700)	(139,821)
Equity attributable to unit holders	142,982	145,267
Noncontrolling interest	2,635	—
Total members' equity	145,617	145,267
Total liabilities and members' equity	$ 472,407	$ 442,723

The accompanying notes are an integral part of these consolidated financial statements.

BIOVENTUS LLC

Consolidated statements of changes in members' equity
Years ended December 31, 2019 and 2018
(Dollars in thousands)

	Members' Equity	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Noncontrolling Interest	Total Members' Equity
Balance at December 31, 2017	$ 285,114	$ 138	$ (119,795)	$ —	$ 165,457
Profits interest compensation	39	—	—	—	39
Distribution to members	—	—	(7,819)	—	(7,819)
Net loss attributable to unit holders	—	—	(12,207)	—	(12,207)
Defined benefit plan adjustment	—	131	—	—	131
Translation adjustment	—	(334)	—	—	(334)
Balance at December 31, 2018	285,153	(65)	(139,821)	—	145,267
Profits interest forfeitures	(6)	—	—	—	(6)
Distribution to members	—	—	(8,730)	—	(8,730)
Acquisition of noncontrolling interest	—	—	—	3,188	3,188
Net income (loss) attributable to unit holders	—	—	6,851	(553)	6,298
Defined benefit plan adjustment	—	(78)	—	—	(78)
Translation adjustment	—	(322)	—	—	(322)
Balance at December 31, 2019	$ 285,147	$ (465)	$ (141,700)	$ 2,635	$ 145,617

The accompanying notes are an integral part of these consolidated financial statements.

BIOVENTUS LLC

Consolidated statements of cash flows
Years ended December 31, 2019 and 2018
(Dollars in thousands)

	2019	2018
Operating activities:		
Net income (loss):	$ 6,298	$ (12,207)
Less: Net loss from discontinued operations	1,815	16,650
Net income from continuing operations	8,113	4,443
Adjustments to reconcile net income to net cash provided by operating activities from continuing operations:		
Depreciation and amortization	30,316	29,238
Loss on impairment of intangible assets	—	489
Change in fair value of contingent consideration	—	(739)
Payment of contingent consideration in excess of amount established in purchase accounting	(945)	(3,558)
Provision for doubtful accounts	2,242	2,538
Profit interest, management incentive plan and liability-classified awards compensation	10,844	14,325
Change in fair value of Equity Participation Rights unit	565	1,009
Deferred income taxes	(348)	(79)
Unrealized foreign currency transaction losses and other	395	106
Amortization of debt discount and capitalized loan fees, net	1,583	1,686
Loss on debt retirement and modification	3,352	—
Changes in operating assets and liabilities, net of acquisitions:		
Accounts receivable	(14,909)	(12,130)
Inventories	(1,427)	3,256
Accounts payable and accrued expenses	6,646	12,148
Other current assets and liabilities	(3,882)	(422)
Net cash provided by operating activities from continuing operations	42,545	52,310
Net cash used in operating activities of discontinued operations	(1,832)	(7,123)
Net cash provided by operating activities	40,713	45,187
Investing activities:		
Investment and acquisition of distribution rights	(6,000)	(3,500)
Acquisition of VIE	430	—
Purchase of property and equipment and other	(2,342)	(2,561)
Net cash used in investing activities from continuing operations	(7,912)	(6,061)
Net cash used in investing activities of discontinued operations	—	(40)
Net cash used in investing activities	(7,912)	(6,101)
Financing activities:		
Proceeds from the issuance of long-term debt, net of issuance costs	198,134	—
Payments on long-term debt	(199,500)	(5,250)
Long-term refinancing costs	(367)	—
Principal payments toward finance lease obligations and notes payable	(81)	(160)
Distribution to members	(9,137)	(7,846)
Net cash used in financing activities	(10,951)	(13,256)
Effect of exchange rate changes on cash	(104)	(160)
Net change in cash and cash equivalents	21,746	25,670
Cash and cash equivalents at the beginning of the period	42,774	17,104
Cash and cash equivalents at the end of the period	$ 64,520	$ 42,774
Supplemental disclosure of cash flow information		
Cash paid for income taxes	$ 1,577	$ 1,944
Cash paid for interest	$ 15,450	$ 17,273
Supplemental disclosure of noncash investing and financing activities		
Accrued acquisition of distribution rights	$ —	$ 6,000
Accounts payable for purchase of property and equipment	$ 34	$ 184
Accrued member distribution	$ 499	$ 906

The accompanying notes are an integral part of these consolidated financial statements.

BIOVENTUS LLC

Notes to consolidated financial statements
(Dollars in thousands, except per unit and per share data)

1. Organization and basis of presentation of financial information

The Company

Bioventus LLC, Bioventus or the Company, is a limited liability company formed under the laws of the state of Delaware on November 23, 2011 and operates as a partnership. Bioventus is a global medical device company, conducting business in various countries, primarily in North America and Europe, with approximately 690 employees. The Company is focused on developing and commercializing clinically differentiated, cost efficient and minimally invasive treatments that engage and enhance the body's natural healing processes.

On November 23, 2011, Smith & Nephew plc filed a certificate of formation for the Company. On January 3, 2012, a series of agreements were executed with investment vehicles sponsored and managed by Essex Woodlands, or Essex, a healthcare growth equity firm, in order to effect a spin-off of affiliates of Smith & Nephew plc biologic and clinical therapies segment (the Business) into Bioventus.

On May 4, 2012 the Spin-off occurred and affiliates of Smith & Nephew plc sold certain assets related to the Business' worldwide operations to Essex and the assets were subsequently contributed by Essex to Bioventus in addition to $20,000 cash in exchange for 5,100 preferred units, representing a 51% ownership interest. As part of the Spin-off, affiliates of Smith & Nephew plc then contributed certain other assets, primarily related to the Business' remaining worldwide operations, to Bioventus for 4,900 common units, representing a 49% ownership interest. As a result, the Company commenced operations in Durham, North Carolina, USA, which is its headquarters.

Principles of consolidation

The consolidated financial statements have been prepared in conformity with U.S. generally accepted accounting principles, or U.S. GAAP. The consolidated financial statements include the Company, its subsidiaries and investments in which the Company has control. Amounts pertaining to the non-controlling ownership interests held by third parties in the operating results and financial position of the Company's controlled subsidiaries are reported as non-controlling interests. All intercompany balances and transactions have been eliminated in consolidation.

Unaudited pro forma net income per common unit

Unaudited pro forma basic and diluted net loss per unit reflects the conversion of all outstanding units of members' capital as if the conversion had occurred at the beginning of the period or the date of issuance, if later. The unaudited pro forma basic and diluted net income per unit amounts do not give effect to the issuance of shares from the planned initial public offering, nor do they give effect to potential dilutive securities where the impact would be anti-dilutive.

Reclassifications

Certain prior period amounts have been reclassified to conform to the current period presentation. These changes had no effect on previously reported total revenues, net income (loss), comprehensive income (loss), members' equity or cash flows. Unless otherwise noted, all financial information in the consolidated financial statement footnotes reflect the Company's results from continuing operations. Discontinued operation is discussed further in Note 17.

Segment reporting

The Company identifies a business as an operating segment if: (i) it engages in business activities from which it may earn revenues and incur expenses; (ii) its operating results are regularly reviewed by the Chief Operating Decision Maker, or CODM, to make decisions about resources to be allocated to the segment and assess its performance; and (iii) it has available discrete financial information. The Company's CODM is its Chief Executive Officer. The CODM reviews financial information at the operating segment level to allocate resources and to assess the operating results and financial performance for each operating segment.

The Company's two reportable segments are U.S. and International (discussed further in Note 15 and 16). U.S. and International products are primarily sold to physicians spanning the orthopedic continuum, including sports medicine, total joint reconstruction, hand and upper extremities, foot and ankle, podiatric surgery, trauma, spine and neurosurgery, as well as directly to their patients.

Use of estimates

The preparation of financial statements in accordance with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, and the disclosure of contingent assets and liabilities, at the date of the financial statements, as well as the reported amounts of revenues and expenses during the period. On an ongoing basis, management evaluates these estimates, including those related to contractual allowances and sales incentives, allowances for doubtful accounts, inventory reserves, goodwill and intangible assets impairment, useful lives of long lived assets, noncontrolling interest, fair value measurements, litigation and contingent liabilities, income taxes, and equity-based compensation. Management bases its estimates on historical experience, future expectations and other relevant assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from those estimates.

2. Summary of significant accounting policies

Recent accounting pronouncements

Leases

In February 2016, the Financial Accounting Standards Board, or FASB, issued guidance that requires lessees to recognize the rights and obligations resulting from leases as assets and liabilities. It also modifies the classification criteria and the accounting for sales-type and direct financing leases for the lessor.

The Company adopted this guidance January 1, 2019, using the cumulative-effect adjustment transition method, which applies the new guidance at the effective date with no restatement of prior periods. In addition, the Company elected the transition package of practical expedients permitted within the new lease guidance, which among other things allowed the Company to carry forward the historical lease classification of existing leases at the time of adoption. The Company also elected not to separate lease components from non-lease components and to exclude short-term leases from its consolidated balance sheet. The adoption of the new guidance resulted in recognizing net lease assets of $12,003 and lease liabilities of $12,827 to the consolidated balance sheet as of January 1, 2019 and reclassifying deferred rent and lease incentive liabilities required under the previous lease guidance to lease assets. There was no impact to the consolidated statement of operations or statements of cash flows. There was also no impact to liquidity or debt covenant compliance under the Company's agreements.

The Company determines if an arrangement is a lease at inception. Operating leases are separately stated on the consolidated balance sheets as operating lease assets, and current and noncurrent operating lease obligations. Finance leases are included in property and equipment, and separately stated as current and noncurrent finance

lease obligations on the consolidated balance sheets. Operating lease costs are recognized on a straight-line basis over the lease term and are included in selling, general and administrative expense. Finance lease amortization and interest are included in depreciation and amortization expense and interest expense, respectively.

Operating lease assets represent the Company's right to use an underlying asset for the lease term and lease liability obligations represent the Company's obligation to make lease payments arising from the lease. Operating lease assets and liabilities are recognized at commencement date based on the present value of fixed lease payments over the lease term. The Company's lease terms may include options to extend or terminate the lease when it is reasonably certain that the Company will exercise that option. The Company estimates its incremental borrowing rate based on the information available at commencement date in determining the present value of its lease payments, as the implicit rate in its leases is not readily determinable. In addition, the Company uses a portfolio approach to determine its incremental borrowing rate. The operating lease asset also includes any advance lease payments made and excludes any lease incentives and lease direct costs (discussed further in Note 13).

Other

In June 2016, the FASB issued new accounting guidance that significantly changes how entities will measure credit losses for most financial assets and certain other instruments that are not measured at fair value through net income. The guidance is effective for annual and interim periods beginning after December 15, 2019. The Company has adopted the guidance on January 1, 2020. Based on the Company's preliminary evaluation, this guidance is expected to primarily impact its trade accounts receivables; however, it does not expect a material impact to its consolidated financial statements.

In August 2017, the FASB issued new guidance amending the hedge accounting model to enable entities to better portray risk management activities in the financial statements. The guidance eliminates the requirement to separately measure and report hedge ineffectiveness and generally requires the entire change in the fair value of a hedging instrument to be presented in the same statement of operations line as the hedged item. The Company adopted this guidance January 1, 2019 and there was no material impact on its consolidated financial statements.

In August 2018, the FASB issued new guidance addressing a customer's accounting for implementation costs incurred in a cloud computing arrangement, or CCA, that is considered a service contract. Under the new guidance, implementation costs for a CCA should be evaluated for capitalization using the same approach as implementation costs associated with internal-use software. The capitalized implementation costs should be expensed over the term of the hosting arrangement, which includes any reasonably certain renewal periods. Capitalized implementation costs should be assessed for impairment like long-lived assets. The Company will adopt this guidance on January 1, 2020. The Company does not believe the new guidance will have a material impact on its consolidated financial statements.

In August 2018, the FASB issued new guidance modifying the disclosure requirements on fair value measurements. The guidance eliminates the requirement to disclose the amount of and reasons for transfers between Level 1 and Level 2 of the fair value hierarchy, the policy for timing of transfers between levels and the valuation processes for Level 3 fair value measurements. The guidance modifies certain disclosures related to investments measured at net asset value and clarifies that companies are to disclose uncertainties in measurements as of the reporting date. The guidance requires additional disclosure related to changes in unrealized gains and losses included in other comprehensive income for recurring Level 3 fair value measurements as well as the range and weighted average, or other quantitative information would be a more reasonable and rational method, of significant unobservable inputs used to develop Level 3 fair value measurements. The guidance is effective for annual reporting periods beginning after December 31, 2019. Early adoption is permitted upon issuance. The additional disclosures and description of any measurement uncertainty amendments should be applied prospectively for the most recent interim or annual period in the initial year of adoption. All other amendments should be applied retrospectively to all periods presented upon their effective

date. The Company will adopt this guidance on January 1, 2020. The Company does not believe the new guidance will have a material impact on its consolidated financial statements.

In December 2019, the FASB issued new guidance amending the accounting for income taxes. The guidance eliminates certain exceptions to the guidance in ASC 740 related to the approach for intraperiod tax allocation, the methodology for calculating income taxes in an interim period and the recognition of deferred tax liabilities for outside basis differences as well as simplifying aspects of the accounting for franchise taxes and enacted changes in tax laws or rates and clarifies the accounting for transactions that result in a step-up in the tax basis of goodwill. The guidance also clarifies that single-member limited liability companies and similar disregarded entities that are not subject to income tax are not required to recognize an allocation of consolidated income tax expense in their separate financial statements, but they could elect to do so. The guidance is effective for annual and interim periods beginning after December 15, 2020. Early adoption is permitted in interim or annual periods for which financial statements have not been made available for issuance. Entities that elect to early adopt the amendments in an interim period should reflect any adjustments as of the beginning of the annual period that includes that interim period. Certain amendments are to be applied prospectively while others are retrospective. The Company is currently evaluating the impact of this guidance on its consolidated financial statements.

Variable Interest Entity

The Company reviews each investment and collaboration agreement to determine if it has a variable interest in the entity. In assessing whether the Company has a variable interest in the entity as a whole, the Company considers and makes judgments regarding the purpose and design of entity, the value of the licensed assets to the entity, the value of the entity's total assets and the significant activities of the entity. If the Company has a variable interest in the entity as a whole, the Company assesses whether or not the Company is a primary beneficiary of that variable interest entity, or VIE, based on a number of factors, including: (i) which party has the power to direct the activities that most significantly affect the VIE's economic performance, (ii) the parties' contractual rights and responsibilities pursuant to the collaboration agreement, and (iii) which party has the obligation to absorb losses of or the right to receive benefits from the VIE that could be significant to the VIE. If the Company determines that it is the primary beneficiary of a VIE at the onset of the collaboration, the collaboration is treated as a business combination and the Company consolidates the financial statement of the VIE into the Company's consolidated financial statements. On a quarterly basis, the Company evaluates whether it continues to be the primary beneficiary of the consolidated VIE. If the Company determines that it is no longer the primary beneficiary of a consolidated VIE, it deconsolidates the VIE in the period the determination is made.

Assets and liabilities recorded as a result of consolidating VIEs' financial results into the Company's consolidated balance sheet do not represent additional assets that could be used to satisfy claims against the Company's general assets or liabilities for which creditors have recourse to the Company's general assets.

Noncontrolling Interest

The Company records noncontrolling interest related to the consolidated VIEs on its consolidated balance sheet. The Company records loss attributable to noncontrolling interest on its consolidated statements of operations, which reflects the VIE's net loss for the reporting period, adjusted for changes in the noncontrolling interest holders claim to net assets, including contingent milestone and royalty payments, which are evaluated each reporting period.

Deconsolidation and discontinued operations

Upon the occurrence of certain events and on a regular basis, the Company evaluates whether it no longer has a controlling interest in its subsidiaries, including consolidated VIEs. If the Company determines it no longer has a controlling interest, the subsidiary is deconsolidated. The Company records a gain or loss on

deconsolidation based on the difference on the deconsolidation date between (i) the aggregate of (a) the fair value of any consideration received, (b) the fair value of any retained noncontrolling investment in the former subsidiary and (c) the carrying amount of any noncontrolling interest in the subsidiary being deconsolidated, less (ii) the carrying amount of the former subsidiary's assets and liabilities.

The Company assesses whether a deconsolidation is required to be presented as discontinued operations in its consolidated financial statements on the deconsolidation date. This assessment is based on if the deconsolidation represents a strategic shift that has or will have a major effect on the Company's operations or financial results. If the Company determines that a deconsolidation requires presentation as a discontinued operation on the deconsolidation date, or at any point during the one-year period following such date, it will present the former subsidiary as a discontinued operation in current and comparative period financial statements.

Effect of foreign currency

The assets and liabilities of foreign subsidiaries whose functional currency is the local currency are translated into U.S. dollars at rates of exchange in effect at the close of their month end. Equity accounts are translated at their historical rates. Revenues and expenses are translated at the exchange rate on the transaction date. Translation gains and losses are accumulated within accumulated other comprehensive loss as a separate component of members' equity.

Foreign currency transaction gains and losses are included in other expense on the consolidated statements of operations and comprehensive income (loss). There were nominal losses for the year ended December 31, 2019 and losses of $234 for the year ended December 31, 2018.

Other comprehensive income (loss)

Comprehensive income (loss) consists of two components: net income (loss) and other comprehensive income (loss). Other comprehensive income (loss) refers to gains and losses that under U.S. GAAP are recorded as an element of members' equity and are excluded from net income (loss). The Company's other comprehensive income (loss) consists of a defined benefit plan adjustment and foreign currency translation adjustments from those subsidiaries not using the U.S. dollar as their functional currency.

Cash and cash equivalents

Cash equivalents consist of highly liquid investments with an original maturity of three months or less at date of purchase. The Company's cash is primarily held in financial institutions in the United States and the Netherlands. The Company maintains cash balances in the United States in excess of the federally insured limits. The Company did not have restricted cash as of December 31, 2019 and 2018.

Derivatives

The Company uses derivative instruments to manage exposures to interest rates. Derivatives are recorded on the balance sheet at fair value at each balance sheet date and the Company does not designate whether the derivative instrument is an effective hedge. Changes in the fair values of derivative instruments are recognized in the consolidated statements of operations and comprehensive income (loss). The Company has entered, and may in the future enter, into derivative contracts related to its debt.

Fair value

The Company records certain assets and liabilities at fair value (discussed further in Note 8). Fair value is defined as the price that would be received from selling an asset or paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants at the

measurement date. A three-level fair value hierarchy that prioritizes the inputs used to measure fair value is described below. This hierarchy requires entities to maximize the use of observable inputs and minimize the use of unobservable inputs. Assets and liabilities are categorized based on the lowest level that is significant to the valuation.

The three levels of inputs used to measure fair value are as follows:

- Level 1—Quoted prices in active markets for identical assets or liabilities;
- Level 2—Observable inputs other than quoted prices included within Level 1, such as quoted prices for similar assets and liabilities in active markets; quoted prices for identical or similar assets and liabilities in markets that are not active; or other inputs that are observable or can be corroborated by observable market data; and
- Level 3—Unobservable inputs that are supported by little or no market data. This includes certain pricing models, discounted cash flow methodologies and similar techniques that use significant unobservable inputs.

Revenue recognition

Sale of Products

The Company derives revenue primarily from the sale of its osteoarthritic, or OA, joint pain treatment and joint preservation products, which are hyaluronic acid, or HA, viscosupplementation therapies, BGS products and a Minimally Invasive Fracture Treatment product. The Company sells product directly to healthcare institutions, patients, distributors and dealers. The Company also enters arrangements with pharmacy and health benefit managers that provide for negotiated rebates, chargebacks and discounts with respect to the purchase of the Company's products.

The Company recognizes revenue at a point in time upon transfer of control of the promised product to customers in an amount that reflects the consideration it expects to receive in exchange for those products. The Company excludes from revenues taxes collected from customers and remitted to governmental authorities.

Revenues are recorded at the transaction price, which is determined as the contracted price net of estimates of variable consideration resulting from discounts, rebates, returns, chargebacks, contractual allowances, estimated third-party payer settlements, and certain distribution and administration fees offered in our customer contracts and other indirect customer contracts relating to the sale of our products. The Company establishes reserves for the estimated variable consideration based on the amounts earned or eligible to be claimed on the related sales. Where appropriate, these estimates take into consideration a range of possible outcomes, which are probability-weighted for relevant factors such as the Company's historical experience, current contractual requirements, specific known market events and trends, industry data and forecasted customer buying and payment patterns. The amount of variable consideration is included in the transaction price only to the extent that it is probable that a significant reversal in the amount of the cumulative revenue recognized will not occur in a future period. The Company regularly reviews all reserves and update them at the end of each reporting period as needed. There were no adjustments arising from the change in estimates of variable consideration that were significant for the years ended December 31, 2019 and 2018.

OA Joint Pain Treatment and Joint Preservation

Revenue from customers, such as healthcare providers, distribution centers or specialty pharmacies is recognized at the point in time when control is transferred to the customer, typically upon shipment.

Distributor chargebacks

The Company has preexisting contracts with established rates with many of the distributors' customers who require the distributors to sell our product at their established rate. The Company offers chargebacks to distributors who supply these customers with our products. The Company reduces revenue at the time of sale for the estimated future chargebacks. The Company records chargeback reserves as a reduction of accounts receivable and base the reserves on the expected value by using probability-weighted estimates of volume of purchases, inventory holdings and historical chargebacks requested for each distributor.

Discounts and gross-to-net deductions

The Company offers retrospective discounts and gross-to-net deductions linked to the volume of purchases which may increase at negotiated thresholds within a contract-buying period. The Company reduces revenue and records the reserve as a reduction to accounts receivable for the estimated discount and rebate at the most likely amount the customer will earn, based on historical buying trends and forecasted purchases.

Minimally Invasive Fracture Treatment

The Company recognizes revenue from third-party payers, such as governmental agencies, insurance companies or managed care providers, when the Company transfers control to the patient, typically when the patient has accepted the product or upon delivery. The Company records this revenue at the contracted rate, net of contractual allowances and estimated third-party payer settlements at the time of sale, or an estimated price based on historical data and other available information for non-contracted payers. The Company estimates the contractual allowances using the portfolio approach and based on probability weighting historical data and collections history within those portfolios. The portfolios determined using the portfolio approach consist of the following customer groups: government payers, commercial payers, and patients. The Company recognizes revenue from patients (self-pay and insured patients with coinsurance and deductible responsibilities) based on billed amounts giving effect to any discounts and implicit price concessions. Implicit price concessions represent differences between amounts billed and the amounts the Company expects to collect from patients, which considers historical collection experience and current market conditions.

Settlements with third-party payers for retroactive revenue adjustments due to audits, reviews or investigations are considered variable consideration and are included in the determination of the estimated transaction price using the most likely outcome method. These settlements are estimated based on the terms of the payment agreement with the payer, correspondence from the payer and historical settlement activity, including an assessment to ensure that it is probable that a significant reversal in the amount of cumulative revenue recognized will not occur when the uncertainty associated with the retroactive adjustment is subsequently resolved. Estimated settlements are adjusted in future periods as adjustments become known (that is, new information becomes available), or as years are settled or are no longer subject to such audits, reviews and investigations. The Company is not aware of any claims, disputes or unsettled matters with any payer that would materially affect revenues for which the Company has not adequately provided for or disclosed in the accompanying consolidated financial statements (discussed further in Note 13).

Product returns

The Company estimates the amount of returns and reduces revenue in the period the related product revenue is recognized. The Company records a liability for expected returns based on probability-weighted historical data.

Bone Graft Substitute

Most of the Company's BGS product sales are through consignment inventory with hospitals, where ownership remains with the Company until the hospital or ambulatory surgical center, or ASC, performs a

surgery and consumes the consigned inventory. The Company recognizes revenue when the surgery has been performed. The customer does not have control of the product until the customer consumes it, as the Company is able to require the return or transfer of the product to a third-party. An unconditional obligation to pay for the product does not exist until the customer consumes it.

Accounts receivable, net

Accounts receivable, net are amounts billed and currently due from customers. The Company records the amounts due net of allowance for doubtful accounts. The Company maintains an estimated allowance for doubtful accounts to provide for receivables the Company does not expect to collect. The Company bases the allowance on an assessment of customer creditworthiness, historical payment experience, the age of outstanding receivables and other information as applicable. Collection of the consideration that the Company expects to receive typically occurs within 30 to 90 days of billing. The Company applies the practical expedient for contracts with payment terms of one year or less which does not consider the effects of the time value of money. Occasionally, the Company enters into payment agreements with patients that allow payment terms beyond one year. In those cases, the financing component is not deemed significant to the contract.

Contract assets

Contract assets consist of unbilled amounts resulting from estimated future royalties from an international distributor that exceeds the amount billed. Contract assets totaling $261 and $472 as of December 31, 2019 and 2018, are included in prepaid and other current assets on the consolidated balance sheets, respectively.

Contract liabilities

Contract liabilities consist of customer advance payments and deferred revenue. Occasionally for certain international customers, the Company requires payments in advance of shipping product and recognizing revenue resulting in contract liabilities. Contract liabilities were nominal as of December 31, 2019 and 2018 and are included in accrued liabilities on the consolidated balance sheets.

Shipping and handling

The Company classifies amounts billed for shipping and handling as a component of net sales. The related shipping and handling fees and costs as well as other distribution costs are included in cost of sales. The Company has elected to recognize shipping and handling activities that occur after control of the related product transfers to the customer as fulfillment costs and are included in cost of sales.

Contract costs

The Company applies the practical expedient of recognizing the incremental costs of obtaining contracts as an expense when incurred as the amortization period of the assets that the Company otherwise would have recognized is one year or less. These incremental costs include the Company’s sales incentive programs for the internal sales force and third-party sales agents as the compensation is commensurate with annual sales activities. These costs are included in selling, general and administrative expense on the consolidated statements of operations and comprehensive income (loss).

Inventory

The Company values its inventory at the lower of cost or net realizable value and adjusts for the value of inventory that is estimated to be excess, obsolete or otherwise unmarketable. Cost is determined using the first-in, first-out (FIFO) method. Elements of cost in inventory include raw materials, direct labor, manufacturing

overhead and inbound freight. The Company records allowances for excess and obsolete inventory based on historical and estimated future demand and market conditions.

Business combinations

Accounting for acquisitions requires the Company to recognize separately from goodwill assets acquired and the liabilities assumed at their acquisition date fair values. Goodwill as of the acquisition date is measured as the excess of consideration transferred over the net of the acquisition date fair values of the assets acquired and the liabilities assumed. While best estimates and assumptions are used to accurately value assets acquired and liabilities assumed at the acquisition date, as well as contingent consideration where applicable, estimates are inherently uncertain and subject to refinement. During the measurement period, which may be up to one year from the acquisition date, the Company may record adjustments to the assets acquired and liabilities assumed with a corresponding offset to goodwill. Upon the conclusion of the measurement period or final determination of the values of assets acquired or liabilities assumed, whichever comes first, any subsequent adjustments are recorded to our consolidated statements of operations and comprehensive income (loss). Subsequent changes in the estimated fair value of contingent consideration are recognized in earnings in the period of change.

Long-lived assets

Property and equipment

Property and equipment are stated at cost less accumulated depreciation and amortization. Depreciation and amortization expense are recognized using the straight-line method over the estimated useful life of each asset, or the shorter of the lease term or useful life if related to leasehold improvements. The useful lives are as follows (in years):

Computer software and hardware	3-5
Leasehold improvements	7
Machinery and equipment	7
Furniture and fixtures	7

Goodwill and intangible assets

Finite-lived intangible assets were initially recorded at fair value upon acquisition and are amortized using the straight-line method over their estimated useful lives as follows (in years):

	Weighted Average Useful Life
Intellectual property	17.1
Distribution rights	12.1
Customer relationships	10.0
Developed technology	5.0

Goodwill is not amortized but is evaluated for impairment annually or more frequently if events or changes in circumstances indicate that goodwill might be impaired. The Company reviews goodwill for impairment by applying a quantitative impairment analysis where the fair value of the reporting unit is compared with the carrying value (including goodwill). The Company determines the fair value of each reporting unit based on an income approach. The value of each reporting unit is determined on a stand-alone basis from the perspective of a market participant and represents the price estimated to be received in a sale of the reporting unit in an orderly transaction between market participants at the measurement date. The Company performs its annual goodwill impairment test on October 31st. If the fair value of the reporting unit is less than its carrying value, the Company will recognize the difference as an impairment loss, which is limited to the amount of goodwill allocated to the reporting units. There were no impairment charges for the years ended December 31, 2019 and 2018.

Software development costs

The Company capitalizes internal and external costs incurred to develop internal-use software during the application development stage for software design, configuration, coding and testing upon placing the asset in service and then amortizes these costs on a straight-line basis over the estimated useful life of the product, not to exceed three years. The Company does not capitalize costs that are precluded from capitalization in authoritative guidance, such as preliminary project phase costs, training costs or data conversion costs. Capitalized software costs totaled $14,119 and $13,027 as of December 31, 2019 and 2018 and the related accumulated amortization totaled $12,184 and $11,301 as of December 31, 2019 and 2018, respectively. Depreciation expense was $1,138 and $1,204 for the years ended December 31, 2019 and 2018, respectively.

The carrying values of property, equipment, intangible assets as well as other long-lived and indefinite lived assets are reviewed for recoverability if the facts and circumstances suggest that a potential impairment may have occurred. If this review indicates that carrying values may not be recoverable the Company will perform an assessment to determine if an impairment charge is required to reduce carrying values to estimated fair value. If quoted market prices are not available, the Company estimates fair value using an undiscounted value of estimated future cash flows. During 2018, the Company determined that it would no longer sell a specific BGS product and as a result, an intangible asset related to this product was fully written off and the Company recognized impairment charges of $489 for the year ended December 31, 2018, which is included on the consolidated statements of operations and comprehensive income (loss). Upon retirement or sale of property and equipment, the cost of assets disposed of and the related accumulated depreciation and amortization are removed from the accounts, and any resulting gain or loss is included in income from operations.

Other than in-process research and development, or IPR&D, described below, there were no events, facts or circumstances for the December 31, 2019 that resulted in any other impairment charges to the Company’s property, equipment, intangible or other long-lived assets.

Acquired in-process research and development

The fair value of IPR&D assets acquired in a business combination are capitalized and accounted for as indefinite-lived intangible assets and are not amortized until development is completed and the product is available for sale. Once the product is available for sale, the asset is transferred to developed technology and amortized over its estimated useful life. Impairment tests for IPR&D assets occur at least annually in December, or more frequently if events or changes in circumstances indicate that the asset might be impaired. If the fair value of the intangible assets is less than the carrying amount, an impairment loss is recognized for the difference. There were no events, facts or circumstances for the years ended December 31, 2019 and 2018 that resulted in any impairment charges to the Company’s IPR&D.

Deferred Offering Costs

Deferred offering costs, consisting of legal, accounting, filing and other fees related to the initial public offering, are capitalized. The deferred offering costs will be offset against proceeds from the initial public offering upon the effectiveness of the initial public offering. In the event the initial public offering is terminated, all capitalized deferred offering costs would be expensed. As of December 31, 2019 and 2018, there were no deferred offering costs capitalized.

Concentration of risk

The Company provides credit, in the normal course of business, to its customers. The Company does not require collateral or other securities to support customer receivables. Credit losses are provided for through allowances and have historically been materially within management’s estimates.

Certain suppliers provide the Company with product that results in a significant percentage of total sales for the years ended December 31 as follows:

	2019	2018
Supplier A	20%	12%
Supplier B	19%	17%
Supplier C	15%	20%

Accounts payable to these significant suppliers at December 31 were as follows:

	2019	2018
Supplier A	$3,586	$ 426
Supplier B	$ 697	$ 457
Supplier C	$ 360	$1,605

Certain products provide the Company with a significant percentage of total sales for the years ended December 31 as follows:

	2019	2018
Product A	30%	38%
Product B	20%	12%
Product C	19%	17%
Product D	15%	20%

Restructuring costs

The Company has restructured portions of its operations and future restructuring activities are possible. Identifying and calculating the cost to exit these operations requires certain assumptions to be made, the most significant of which are anticipated future liabilities. Although estimates have been reasonably accurate in the past, significant judgment is required, and these estimates and assumptions may change as additional information becomes available and facts or circumstances change. Restructuring costs are recorded at estimated fair value. Key assumptions in determining the restructuring costs include negotiated terms and payments to terminate contractual obligations.

Profits interest compensation

The Company measures profits interest compensation cost at the grant date based on the fair value of the award and recognizes this cost as compensation expense over the required or estimated service period for awards expected to vest. Certain awards are liability-classified, which require they be remeasured at each reporting date. Compensation expense is included in Selling, general and administrative expense and Research and development expense on the consolidated statement of operations and comprehensive income (loss) based upon the classification of the employees who were granted the awards.

The Company uses the Monte Carlo option model to determine the fair value to the granted profits interest awards and other equity instruments. Expected stock price volatility is based on an average of several peer public companies due to the Company’s limited operating history. The risk-free interest rate is based on a treasury instrument whose term is consistent with the expected life of the award. The dividend yield percentage is zero because the Company neither currently pays dividends nor intends to do so during the expected term. The expected term of awards represents the time the awards are expected to be outstanding. The expected term is based on the estimated time until a liquidity or Distribution Event as defined in the amended and restated limited liability company agreement of Bioventus LLC, or LLC Agreement, discussed further in Note 10.

Advertising costs

Advertising costs include costs incurred to promote the Company's business and are expensed as incurred. Advertising costs were $2,351 and $2,916 for the years ended December 31, 2019 and 2018, respectively.

Research and development expense

Research and development expense consist primarily of employee compensation and related expenses as well as contract research organization services. Internal research and development costs are expensed as incurred. Research and development costs incurred by third parties are expensed as the contracted work is performed.

Net income (loss) per unit

Basic income (loss) per common unit is determined by dividing the net income (loss) allocable to common unit holders by the weighted average number of common units outstanding during the periods presented. Diluted loss per common unit is computed by dividing the net income (loss) allocable to common unit holders on an "if converted" basis by the weighted average number of actual common units outstanding and, when dilutive, the unit equivalents that would arise from the assumed conversion of convertible instruments.

Contingencies

The Company records a liability in the consolidated financial statements on an undiscounted basis for loss contingencies when a loss is known or considered probable and the amount may be reasonably estimated. If the reasonable estimate of known or probable loss is a range, and no amount within the range is a better estimate than any other, the minimum amount of the range is accrued. If a loss is reasonably possible but not known or probable, and may be reasonably estimated, the estimated loss or range of loss is disclosed. Legal fees expected to be incurred in connection with a loss contingency are not included in the estimated loss contingency. The Company accrues for any legal costs as they are incurred.

Income taxes

Bioventus is treated as a partnership for U.S. tax purposes. Accordingly, the profits and losses are passed through to the members and included in their income tax returns. The Company has been required to make tax distributions to its members in an amount equal to 40% of the members' taxable income attributable to their ownership. The tax rate applied for purposes of this distribution may be changed only by approval of the Company's Board of Managers.

Certain wholly owned subsidiaries of Bioventus are taxable entities for U.S. or foreign tax purposes and file tax returns in their local jurisdictions. Income tax expense includes U.S. federal, state and international income taxes. Certain items of income and expense are not reported in income tax returns and financial statements in the same year. The income tax effects of these differences are reported as deferred income taxes. Valuation allowances are provided to reduce the related deferred tax assets to an amount which will, more likely than not, be realized.

The Company recognizes a tax benefit from any uncertain tax positions only if they are more likely than not to be sustained upon examination based on the technical merits of the position. The amount of the accrual for which an exposure exists is measured as the largest amount of benefit determined on a cumulative probability basis that the Company believes is more likely than not to be realized upon ultimate settlement of the position. Components of the reserve, if relevant, are classified as a current or noncurrent liability in the consolidated balance sheet based on when the Company expects each of the items to be settled. Interest and penalties related to unrecognized tax benefits are recognized as a component of income tax expense.

Subsequent Events

The Company has considered the effects of subsequent events through October 6, 2020, the date the Company's consolidated financial statements were issued.

3. Balance sheet information

Accounts receivable, net

Accounts receivable, net of allowances, consisted of the following as of December 31:

	2019	2018
Accounts receivable	$ 89,274	$ 77,066
Less:		
Allowances for doubtful accounts	(4,146)	(4,497)
	$ 85,128	$ 72,569

Changes in the allowances for doubtful accounts were as follows for the years ended December 31:

	2019	2018
Balance, beginning of period	$ (4,497)	$ (3,795)
Provision for losses	(2,242)	(2,538)
Write-offs, net of recoveries	2,593	1,836
	$ (4,146)	$ (4,497)

Inventory

Inventory consisted of the following as of December 31:

	2019	2018
Raw materials and supplies	$ 3,349	$ 3,998
Finished goods	24,509	23,968
Gross	27,858	27,966
Excess and obsolete reserves	(532)	(570)
	$ 27,326	$ 27,396

Changes in excess and obsolete reserves for inventory were as follows for the years ended December 31:

	2019	2018
Balance, beginning of period	$ (570)	$ (485)
Provision for losses	(870)	(1,059)
Write-offs	908	974
	$ (532)	$ (570)

Property and equipment, net

Property and equipment consisted of the following as of December 31:

	2019	2018
Computer equipment and software	$ 16,854	$ 18,371
Leasehold improvements	2,918	2,461
Furniture and fixtures	1,451	1,431
Machinery and equipment	1,138	1,052
Assets not yet placed in service	370	200
	22,731	23,515
Less accumulated depreciation	(18,242)	(18,756)
	$ 4,489	$ 4,759

Depreciation expense was $2,579 and $3,439 for the years ended December 31, 2019 and 2018, respectively.

Goodwill and intangible assets, net

There were no changes to goodwill during the years ended December 31, 2019 and 2018. Following is a summary of goodwill by reportable segment:

	U.S.	International	Consolidated
Balance at December 31, 2018 and 2019	$ 41,040	$ 8,760	$ 49,800

Intangible assets consisted of the following as of December 31:

	2019	2018
Intellectual property	$ 263,422	$ 258,588
Distribution rights	59,700	59,700
Customer relationships	57,700	57,700
IPR&D	11,095	9,650
Developed technology and other	4,649	4,648
Total carrying amount	396,566	390,286
Less accumulated amortization:		
Intellectual property	(100,982)	(84,900)
Distribution rights	(28,716)	(23,670)
Customer relationships	(46,407)	(41,567)
Developed technology and other	(3,404)	(3,120)
Total accumulated amortization	(179,509)	(153,257)
Intangible assets, net before currency translation	217,057	237,029
Currency translation	(547)	—
	$ 216,510	$ 237,029

In August 2019, the Company invested in Harbor Medtech Inc., or Harbor, and consolidated its financial statements with the Company's (discussed further in Note 4). As a result of this consolidation, $4,834 of intellectual property and $1,445 of IPR&D was added to intangible assets. The remaining $9,650 of IPR&D consists of research and development progress toward the next-generation of a BGS product for which the Company filed a 510(k) in 2019 and intends to begin commercialization in 2020.

Amortization expense related to intangible assets was $26,252 and $26,622 for the years ended December 31, 2019 and 2018 of which $6,416 and $7,766 are included in ending inventory at December 31, 2019 and 2018, respectively. Estimated amortization expense for the years ended December 31, 2020 through 2024 is expected to be $27,106, $27,106, $22,754, $21,141 and $20,103, respectively.

Investments

VIE

On August 23, 2019, the Company purchased 285,714 shares of Harbor's Series C Preferred Stock or 3.1% of fully diluted shares for $1,000 in cash. In addition, the Company and Harbor entered into an exclusive license and development collaboration agreement, or Collaboration Agreement, for purposes of developing a product for orthopedic uses to be commercialized by the Company and supplied by Harbor (discussed further in Note 13). As a result of these transactions, the Company determined that it had a variable interest in Harbor. The Company

also concluded that it was the primary beneficiary since it controls the significant activities of Harbor through the Collaboration Agreement. Accordingly, the Company accounted for the $1,000 investment in Harbor as a business combination and consolidated Harbor in its consolidated financial statements with a noncontrolling interest for the remaining 96.9% (discussed further in Note 4).

Harbor assets that can only be used to settle Harbor obligations and Harbor liabilities for which creditors do not have recourse to the general credit of the Company are as follows as of December 31, 2019:

Cash and cash equivalents	$ 1,127
Property and equipment, net	60
Intangible assets, net	6,122
Operating lease assets	231
Other assets	59
	$ 7,599
Accounts payable and accrued liabilities	$ 458
Other current liabilities	2,395
Deferred income tax	215
Other long-term liabilities	872
	$ 3,940

Other

On January 30, 2018, the Company purchased 337,397 shares of CartiHeal (2009) Ltd., or CartiHeal, a privately held entity, Series F Convertible Preferred Stock or 2.8% of fully diluted shares for $2,500 in cash. The investment does not have a readily determinable fair value. Under the measurement alternative, the investment is recorded at cost, less any impairment, plus or minus any changes resulting from observable price changes in orderly transactions for an identical or similar investment of the same issuer. There have not been any impairments or adjustments to the investment. This investment is included in investment and other assets on the consolidated balance sheet.

Accrued liabilities

Accrued liabilities consisted of the following at December 31:

	2019	2018
Gross-to-net deductions	$ 14,622	$ 4,238
Bonus and commission	14,200	12,255
Reserve for estimated overpayments from third-party payers	6,801	12,468
Compensation and benefits	3,231	3,139
Income and other taxes	2,555	2,032
Distribution rights	—	6,000
Other liabilities	11,418	10,852
	$ 52,827	$ 50,984

4. Business combination

As discussed in Note 3, on August 23, 2019, the Company invested $1,000 in Harbor. Harbor is a corporation formed under the laws of the state of Delaware on October 12, 2010. The Company accounted for the Harbor investment as a business combination using the acquisition method of accounting whereby the total

purchase price was preliminarily allocated to tangible and intangible assets acquired and liabilities assumed based on respective fair values. The total cash purchase price was $1,000.

The fair value of the Harbor intellectual property and IPR&D was determined using the income approach through an excess earnings analysis, with projected earnings discounted at a rate of 16.5%. The $1,445 of IPR&D consists of research and development progress toward developing a product for orthopedic uses. The fair value of the noncontrolling interest was calculated as estimated fair value of net assets acquired less the Bioventus' purchase price.

The following table summarizes the preliminary fair values of the assets acquired and liabilities assumed at the acquisition date:

Cash and cash equivalents	$ 1,430
Intellectual property (10-year useful life)	4,834
IPR&D	1,445
Other assets	70
Accounts payable and accrued liabilities	(932)
Other current liabilities	(1,696)
Other long-term liabilities	(697)
Deferred income tax	(266)
Estimated fair value of net assets acquired	4,188
Bioventus purchase price	1,000
Fair value of Harbor's noncontrolling interest	3,188
	$ —

The results of Harbor operations have been included in the accompanying consolidated financial statements subsequent to acquisition date. The Company has not disclosed post-acquisition or pro-forma losses attributable to Harbor as they did not have a material effect on the Company's consolidated statements of operations and comprehensive income (loss).

Nearly all the liabilities assumed are payable to Harbor shareholders. The notes payable primarily consists of $1,196 in promissory notes to various Harbor shareholders that mature August 31, 2020 and have an interest rate of 8%. Payments are due monthly. The remaining $500 of notes payable are two convertible promissory notes, or Convertible Notes, to Harbor shareholders that was entered on August 22, 2019 and were scheduled to mature on November 18, 2019. On March 27, 2020, the Convertible Notes were converted to 142,858 of Harbor Series C Preferred Stock and warrants for 428,572 shares of the Harbor common stock exercisable at a price of $1.167 per share with a 5-year exercise period expiring March 27, 2025.

5. Debt

2016 credit agreement

On November 15, 2016, the Company entered into a $250,000 credit agreement, or 2016 Credit Agreement, with JPMorgan Chase Bank, N.A., as well as a syndicate of other entities. The 2016 Credit Agreement was comprised of a $210,000 term loan, or 2016 Term Loan, with an original issue discount, or OID, of $4,200, and a $40,000 revolving facility, or 2016 Revolver. All obligations under the 2016 Credit Agreement were guaranteed by the Company and certain of the Company's wholly owned subsidiaries. The obligations under the 2016 Credit Agreement were collateralized by substantially all the assets of the Company. The 2016 Term Loan and 2016 Revolver were to mature on November 15, 2021. As of December 31, 2018, $194,828 was outstanding on the 2016 Term Loan, net of the OID of $2,705 and deferred financing costs of $1,967. As of December 31, 2018, there was no outstanding balance on the 2016 Revolver and one nominal letter of credit, or LOC, outstanding,

leaving approximately $39,917 available. On December 6, 2019, all outstanding balances under the 2016 Credit Agreement were paid in full. As a result, $1,728 of OID and $1,257 of deferred financing costs were written off and recorded in interest expense.

As of December 31, 2018, the 2016 Term Loan interest rate including a margin of 6.25% was 8.77%. The 2016 Revolver included a commitment fee at 0.40% of the average daily amount of the available revolving commitment, assuming any swingline loans outstanding were $0. There were no swingline loans outstanding as of December 31, 2018. The fee was payable quarterly in arrears on the last day of the calendar quarters.

During November 2016, the Company entered into an interest rate swap agreement totaling $52,500 with a term of three years as required by the 2016 Credit Agreement (discussed further in Note 6). As of December 31, 2018, the effective interest rate, including the applicable lending margin, on 26.3% or $52,500, of the outstanding principal of the Company's 2016 Term Loan was fixed at 7.90% using the interest rate swap. The Company's effective weighted average interest rate on all outstanding debt, including the commitment fee and interest rate swap, was 8.74% as of December 31, 2018.

2019 Credit Agreement

On December 6, 2019, the Company entered into a $250,000 credit and guaranty agreement, or 2019 Credit Agreement, with Wells Fargo Bank National Association, or Wells, as well as a syndicate of other banks, or Lenders. The 2019 Credit Agreement is comprised of a $200,000 term loan, or Term Loan, with an OID of $666, and a $50,000 revolving facility, or Revolver. All obligations under the 2019 Credit Agreement are guaranteed by the Company and certain of the Company's wholly owned subsidiaries. Substantially all the assets of the Company collateralize the obligations under the 2019 Credit Agreement. The Term Loan and Revolver mature on December 6, 2024, or Maturity.

Term Loan

As of December 31, 2019, $197,965 was outstanding on the Term Loan, net of original issue discount of $657 and deferred financing costs of $1,378. As of December 31, 2019, the Term Loan interest rate including a margin of 2.25% was 3.96%. Scheduled quarterly principal payments are as follows with the final payment of $125,000 at Maturity:

	Quarterly payment
2020	$ 2,500
2021 and 2022	$ 3,750
2023 and 2024	$ 5,000

The Company may voluntarily prepay the Term Loan without premium or penalty upon prior notice. The Company may be required to make additional principal payments on the Term Loan dependent upon the generation of certain cash flow events as defined in the 2019 Credit Agreement. These additional prepayments will be applied to the scheduled installments of principal in direct order of maturity of the Base Rate, or BR portions of the Term Loan first and then the Eurodollar portions of the Term Loan.

Revolver

The Revolver is a five-year revolving credit facility of $50,000 which includes revolving and swingline loans as well as LOCs and, inclusive of all, cannot exceed $50,000 at any one time. LOCs are available in an amount not to exceed $7,500. Revolving loans are due at the earlier of termination or Maturity. Swingline loans are available as BR interest rate option loans only and must be outstanding for at least five days. Swingline loans are due the fifteenth or last day of a calendar month or Maturity whichever is earlier. As of December 31, 2019, there was no outstanding balance on the Revolver and one nominal LOC outstanding, leaving approximately $49,917 available.

Interest

The Term Loan and Revolver permits at the Company's election either Eurodollar or BR interest rate options for the entire amount or certain portions of the loans and have interest rates equal to a formula driven base interest rate plus a margin, tied to a leverage ratio. The leverage ratio is the ratio of debt to consolidated EBITDA as defined in the 2019 Credit Agreement, or Bank EBITDA, for four consecutive quarters at the end of each period.

BR portions of the Term Loan have interest due the last day of each calendar quarter-end. Eurodollar portions of the Term Loan have one, two, three or six-month interest reset periods and interest is due on the last day of each three-month period or the last day of the loan term if less than three months. In advance of the last day of the current Eurodollar Loan, the Company may select a new loan type so long as it does not extend beyond Maturity. The outstanding Term Loan has been a Eurodollar Loan since inception and is an auto-renewing one-month loan for setting an interest rate. In addition, the Term Loan has an interest due date concurrent with any scheduled principal repayment or prepayment.

Interest is calculated based on a 360-day year except for BR loans where the base interest is the Wells Prime Rate, in which case it is calculated based on a calendar-day year. The base interest rate for all BR loans is equal to the highest of (a) the Wells Prime Rate, (b) the greater of the Federal Funds Effective Rate or Overnight Bank Funding Rate plus 1/2% and (c) the Eurodollar Rate for a USD deposit with a maturity of one month plus 1.0%. The base interest rate for all Eurodollar Loans is equal to the rate determined for such day in accordance with the following formula with the Term Loan having a floor of 0%:

$$\frac{\text{LIBOR}}{1\text{—Eurocurrency Reserve Requirements}}$$

Pricing grids are used to determine the loan margins based on the type of loan and the leverage ratio. The initial Eurodollar and BR loans have a margin of 2.25% and 1.25%, respectively. Loan margin is adjusted after the quarterly financial statements are delivered to the lenders in accordance with the pricing grid below:

Leverage ratio	Eurodollar	BR
> 2.50 to 1.00	2.50%	1.50%
>1.50 to 1.00 and < 2.50 to 1.00	2.25%	1.25%
> 1.25 to 1.00 and <1.50 to 1.00	1.75%	0.75%
> 0.75 to 1.00 and <1.25 to 1.00	1.50%	0.50%
< 0.75 to 1.00	1.25%	0.25%

The Revolver includes a commitment fee at 0.25% of the average daily amount of the available revolving commitment, assuming any swingline loans outstanding are $0. There were no swingline loans outstanding as of December 31, 2019. The fee is payable quarterly in arrears on the last day of the calendar quarters and at Maturity. The commitment fee rate is adjusted after the quarterly financial statements are delivered to lenders based on the pricing grid below:

Leverage ratio	Commitment fee rate
> 2.50 to 1.00	0.30%
>1.50 to 1.00 and < 2.50 to 1.00	0.25%
> 1.25 to 1.00 and <1.50 to 1.00	0.20%
> 0.75 to 1.00 and <1.25 to 1.00	0.15%
< 0.75 to 1.00	0.10%

Fees are charged on all outstanding LOCs at an annual rate equal to the margin in effect on Eurodollar revolving loans. A fronting fee of 0.125% per year on the undrawn and unexpired amount of each LOC is payable as well. The fees are payable quarterly in arrears on the last day of the calendar quarters.

As of December 31, 2019, the Company's effective weighted average interest rate on all outstanding debt, including the commitment fee and interest rate swap, was 3.27%.

Other

The 2019 Credit Agreement contains customary affirmative and negative covenants, including those related to financial reporting and notification, restrictions on the declaration or payment of certain distributions on or in respect of the Company's equity interests, restrictions on acquisitions, investments and certain other payments, limitations on the incurrence of new indebtedness, limitations on transfers, sales and other dispositions of Company assets, as well as limitations on making changes to the Company's business and organizational documents. Financial covenant requirements include a maximum debt leverage ratio as well as an interest coverage ratio not less than 3.00 to 1.00 as defined in the 2019 Credit Agreement. As of December 31, 2019, the Company complied with the financial covenants in the 2019 Credit Agreement.

Each Lender may provide an additional Term or Revolving Loan by executing and delivering notice specifying the terms, if doing so would not cause certain undesired events to occur as defined in the 2019 Credit Agreement or extend repayment beyond Maturity. The aggregate amount of all additional borrowings may not exceed the greater of $100,000 and the trailing four quarters Bank EBITDA without the consent of the Lenders holding more than 50% of the total outstanding debt under the 2019 Credit Agreement.

Financing costs

During December 2019, the Company paid financing costs totaling $2,117 in order to refinance the 2016 Credit Agreement. The Company recorded $269 directly to selling, general and administrative expense and the remaining $1,848 was capitalized to the consolidated balance sheet. One lender participating in the 2016 Credit Agreement became a lender in the 2019 Credit Agreement and, as a result, $2,985 related to 2016 Term Loan was written off and recorded as interest expense. The $269 recorded in selling, general and administrative expense and the $2,985 recorded in interest expense total the $3,252 of loss on debt retirement and modification.

Total capitalized deferred fees for the Term Loan of $1,398 and Revolver of $653 are being amortized to interest expense on a straight-line basis over each of the respective lives, which approximates the effective interest method. The Company recorded $711 and $745 in interest expense associated with these deferred costs for the years ended December 31, 2019 and 2018, respectively.

Contractual maturities of long-term debt as of December 31, 2019, were as follows:

2020	$ 10,000
2021	15,000
2022	15,000
2023	20,000
2024	140,000
Deferred finance costs	(1,378)
Original issue discount	(657)
Total long-term debt	197,965
Less current portion	(10,000)
Total	$187,965

6. Derivatives

The Company does not use derivative financial instruments for speculative or trading purposes. In November 2016, the Company entered an interest rate swap effective November 30, 2016 to limit its exposure to

changes in the variable interest rate on its 2016 Term Loan (as discussed in Note 5). The interest rate swap was not designated as a hedge. Effective November 30, 2019 the interest rate swap expired leaving no balance as of December 31, 2019. The fair value of the Company's derivative was recorded in the Company's consolidated balance sheets as other current asset totaling $430 as of December 31, 2018. The effect of the Company's derivatives on interest expense (income) in the consolidated statements of operations and comprehensive income (loss) totaled $96 and ($334) for the years ended December 31, 2019 and 2018, respectively.

7. Members' equity

Members' equity consisted of the following at December 31:

	2019	2018
Preferred	$ 168,000	$ 168,000
Common	113,373	113,373
Profits interest (discussed further in Note 10)	3,774	3,780
	$ 285,147	$ 285,153

The authorized number of common and preferred units is unlimited. On May 4, 2012, 4,900 common units and 5,100 preferred units, or 2012 Preferred Units, were issued. During November 2015, the Company obtained a $50,000 capital contribution from its existing members and 1,490 in preferred units were issued, or 2015 Preferred Units. The common and preferred members have stated rights and privileges, which include, but are not limited to: (1) voting and Company governance, (2) the transfer of membership interests and (3) dissolutions and liquidation of the Company.

Each preferred unit carries a priority payout (the Liquidation Preference as defined in the LLC agreement) upon certain events, including but not limited to a qualified initial public offering, sale of the Company or a liquidation or dissolution of the Company. The initial Liquidation Preference for the 2012 and 2015 Preferred Units are $23.14 and $33.57, respectively. Until preferred units are converted to common units, the preferred units will also accrue a distribution right, or Preferred Distribution, at a rate of 3% per annum and if it is unpaid, such Preferred Distribution shall be added annually to the Liquidation Preference.

In addition to other units, one member owns the only Equity Participation Right Unit, or EPR Unit. The EPR Unit is junior to the common units and its only entitlement is 0.55% of available distributions arising from a Distribution Event (discussed further in note 8). Upon the conclusion of a Distribution Event, the EPR Unit will cease to exist and all entitlements will end.

8. Fair value measurements

Recurring fair value measurements

As of December 31, 2019, there were no assets or liabilities measured at fair value using Level 1 or Level 2 inputs. The following table provides information, by level, for liabilities that were measured at fair value on a recurring basis using Level 3 inputs:

Liability	Balance Sheet Caption	Level 3
Management incentive plan awards	Accrued equity-based compensation	$ 15,547
Liability-classified awards	Accrued equity-based compensation, less current portion	25,255
EPR	Other long-term liabilities	5,457
		$ 46,259

As of December 31, 2018, there were no assets or liabilities measured at fair value using Level 1 inputs. The following table provides information for assets and liabilities that are measured at fair value on a recurring basis using Level 2 and Level 3 inputs:

	Total	Level 2	Level 3
Assets:			
Interest rate swaps	$ 430	$ 430	$ —
Liabilities:			
Contingent consideration	$ 945	$ —	$ 945
Management incentive plan and liability-classified awards	33,063	—	33,063
EPR liability	4,892	—	4,892
Total liabilities	$ 38,900	$ —	$ 38,900

Below is a summary of the valuation techniques used in determining fair value:

Contingent consideration—The Company initially valued contingent consideration related to business combinations using a probability-weighted calculation of potential payment scenarios discounted at rates reflective of the risks associated with the expected future cash flows. Key assumptions used to estimate the fair value of contingent consideration include revenue, net new business and operating forecasts and the probability of achieving the specific targets. After the initial valuation, the Company's best estimate is assigned 100% probability.

Interest rate swaps—The Company values interest rate swaps by discounting cash flows of the swap. Forward curves and volatility levels are used to estimate future cash flows that are not certain. These are determined using observable market inputs when available and based on estimates when not available.

MIP and liability-classified awards—The Company values these awards using the Monte Carlo option model to allocate fair value. Key assumptions used to estimate the fair value include expected stock price volatility, risk-free interest rate, dividend yield and the average time the award is expected to be outstanding.

EPR—The Company values the EPR Unit using a probability-weighted calculation of potential payment scenarios discounted at rates reflective of the risks associated with the expected future cash flows. Key assumptions used to estimate the fair value of the EPR Unit include the timing and amount available from a Distribution Event. In October 2014, the percentage that will be applied to distributions resulting from a Distribution Event became fixed at 0.55%. The revaluation for the EPR liability is recognized in interest expense on the consolidated statements of operations and comprehensive income (loss).

The following table summarize the changes in the Level 3 liabilities measured on a recurring basis for the years ended December 31:

	Contingent consideration		MIP and liability-classified awards		EPR liability	
	2019	2018	2019	2018	2019	2018
Beginning balance	$ 945	$ 5,242	$33,063	$18,382	$ 4,892	$ 3,883
Initial estimate	—	—	5,464	4,253	—	—
Forfeitures	—	—	(1,013)	(391)	—	—
Change in fair value	—	(739)	6,290	10,914	565	1,009
Payment	(945)	(3,558)	(3,002)	(95)	—	—
Ending balance	$ —	$ 945	$40,802	$33,063	$ 5,457	$ 4,892

The contingent consideration change in fair value of ($739) for the year ended December 31, 2018 was primarily driven by lower forecasted sales in subsequent years as well as 2018 sales being lower than those estimated at December 31, 2017 partially offset by interest on discounted cash flows.

Non-recurring fair value measurements and fair value disclosures

The carrying value of the 2016 and 2019 Credit Agreement and other indebtedness was not materially different from fair value at December 31, 2019 and 2018, respectively. The fair value of these obligations was determined based on discounted cash flows using estimated incremental borrowing rates for obligations with similar characteristics.

9. Restructuring costs

Restructuring costs are not allocated to the Company's reportable segments as they are not part of the segment performance measures regularly reviewed by management. These charges are included in restructuring expenses in the consolidated statement of operations and comprehensive income (loss).

In the fourth quarter of 2018, the Company adopted a restructuring plan to improve the performance of International operations, principally through headcount reduction and closing offices in certain countries as the Company shifts to an indirect distribution model in these countries. The plan was completed in 2019 and for the years ended December 31, 2019 and 2018, the Company recorded total pre-tax charges of $575 and $1,373, respectively, primarily related to severance. The Company's costs totaled $1,948, consulting and compensation for departing employees that remained through the transition totaled $1,569 and other associated costs totaled $379.

During the years ended December 31, 2019 and 2018 the Company made payments and provision adjustments for the plan as presented below:

	Employee severance and temporary labor costs	Other charges	Total
Balance at December 31, 2017	$ 723	$ —	$ 723
Expenses incurred	1,078	295	1,373
Payments made	(804)	(89)	(893)
Balance at December 31, 2018	997	206	1,203
Expenses incurred	491	84	575
Payments made	(1,488)	(290)	(1,778)
Balance at December 31, 2019	$ —	$ —	$ —

10. Benefit plans

Equity-based compensation plans

The Company operates two equity-based compensation plans, or the Plans, the MIP and the Phantom Plan. The awards granted under both plans represent a non-managing, non-voting interest in the Company designed for grantees to share in the future appreciation of the value of the Company. Awards granted under the MIP Plan and the 2015 Phantom Units are liability-classified and the 2012 Phantom Units are equity-classified. At December 31, 2019, 2,437,192 units are authorized to be awarded and 307,092 units were available for award. Profits interest compensation of $10,844 and $14,325 was recognized for the years ended December 31, 2019 and 2018, respectively. The expense is included in selling, general and administrative expense and research and development expense on the consolidated statement of operations and comprehensive income (loss) based upon

the classification of the employee. Profits interest (forfeiture) compensation of ($111) and $490 were recognized in loss from discontinued operations for the years ended December 31, 2019 and 2018, respectively. As of December 31, 2019, there was approximately $7,162 of unrecognized compensation expense to be recognized over a weighted-average period of 1.1 years.

MIP liability-classified

The awards granted under MIP vested 25% upon the first anniversary of the grant date, 6.25% per quarter thereafter and were fully vested at December 2, 2017. Receipt of value will be realized upon sale of the Company or a liquidation or dissolution of the Company as defined in the LLC Agreement, or MIP Distribution Event, and will be based on the grantees vested ownership of their award in proportion to the Company's equity, including vested interests under both the MIP and Phantom Plan, after all debt and equity holders have been repaid. There are cumulative distributions that must be made to the members before distributions are made, or Benchmark Amount. The Benchmark Amount is $281,372 for MIP awards. The MIP award allows the grantee to force a cash settlement after December 2, 2018 if the grantee retires. The grantee announced his intention to retire in 2020. The proceeds received by the MIP grantee upon a forced cash settlement will be calculated on the same basis as if a MIP Distribution Event occurred. The value to be allocated to the MIP grantee will be calculated as the greater of fair value in an arms-length transaction or the earnings before interest, tax, depreciation and amortization, or EBITDA, multiple of the Spin-out times the annualized most recent 6-month EBITDA. The MIP awards are re-measured to fair value at each reporting date and are included in other long-term liabilities on the consolidated balance sheet (as discussed in Note 8). As of December 31, 2019, $15,547 was recorded as current accrued equity-based compensation on the consolidated balance sheet.

2012 Phantom Units equity-classified

Awards granted under the Phantom Plan in 2012 generally vested over a five-year period. Receipt of value will be realized upon the closing of a sale of units representing a percentage interest of more than 66.66%, or the sale of all or substantially all of the assets of the Company, provided such event constitutes a change of control, or Phantom Plan Distribution Event, and will be based on the grantees vested ownership of their award in proportion to the Company's equity, including vested interests under both the MIP and Phantom Plan, after all debt and equity holders have been repaid. Payment amount for vested awards shall be equal to an amount that would be payable with respect to the equivalent number of Phantom Units with an equivalent Benchmark Amount that was pursuant to the LLC Agreement, which was $281,372, subject to change as defined in the Phantom Plan.

2015 "value creation" Phantom Units liability-classified

"Value Creation" Phantom Plan awards were granted in 2015 with a three-year cliff vesting related to the 2017 enterprise value, which, exceeded the required value of $740,000. As a result, 100.0% vesting was achieved in 2018 on the third anniversary of the award. Receipt of value will be realized upon a Phantom Plan Distribution Event or termination that was not for cause, whichever comes first. The payment amount for vested awards shall be an amount that would be allocated to an equivalent number of Phantom Units with an equivalent Benchmark Amount, or $394,899, upon a Phantom Plan Distribution Event or upon termination as if the Company were liquidated on the termination date at fair market value. Payment will be based on the grantees vested ownership of their award in proportion to the Company's equity, including vested interests under both the MIP and Phantom Plan, after all debt and equity holders have been repaid. The 2015 Phantom Plan awards are re-measured to fair value at each reporting date and are included in accrued equity-based compensation, less current portion on the consolidated balance sheet (as discussed in Note 8).

2015 Phantom Units liability-classified

Phantom Plan Awards granted in 2015 generally vest over a five-year period. Most of the awards vest 20% on each of the first five anniversaries from the grant date. Certain awards vest 20% upon the first anniversary of

the grant date and 5% per quarter thereafter. Receipt of value will be realized upon a Phantom Plan Distribution Event or termination, that was not for cause, whichever comes first. The payment amount for vested awards shall be an amount that would be allocated to an equivalent number of Phantom Units with an equivalent Benchmark Amount, upon a Phantom Plan Distribution Event or upon termination as if the Company were liquidated on the termination date at fair market value. Payment will be based on the grantees vested ownership of their award in proportion to the Company's equity, including vested interests under both the MIP and Phantom Plan, after all debt and equity holders have been repaid. The 2015 Phantom Plan awards are re-measured to fair value at each reporting date and are included in accrued equity-based compensation, less current portion on the consolidated balance sheet (as discussed in Note 8).

2018 "value creation" Phantom Units liability-classified

"Value Creation" Phantom Plan awards were granted in 2018 with a three-year cliff vesting related to the annual 2020 net sales.

2020 net sales	<$350,600	>$350,600 but <$370,800	>$370,800 but <$391,800	>$391,800
Percent vested	0.0%	50.0%	75.0%	100.0%

Receipt of value will be realized upon a Phantom Plan Distribution Event or termination that was not for cause, whichever comes first. The payment amount for vested awards shall be an amount that would be allocated to an equivalent number of Phantom Units with an equivalent Benchmark Amount, or $703,691, upon a Phantom Plan Distribution Event or upon termination as if the Company were liquidated on the termination date at fair market value. Payment will be based on the grantees vested ownership of their award in proportion to the Company's equity, including vested interests under both the MIP and Phantom Plan, after all debt and equity holders have been repaid. The 2018 "Value Creation" Phantom Plan awards are re-measured to fair value at each reporting date and are included in accrued equity-based compensation, less current portion on the consolidated balance sheet (as discussed in Note 8).

The assumptions utilized to determine the fair value of the awards for the years ended December 31 are indicated in the following table:

	2019	2018
Expected dividend yield	0.0%	0.0%
Expected volatility	35.0%	30.0%
Risk-free interest rate	1.5%	2.7%
Time to exit event (in years)	1.5	1.0

A summary of the award activity of the Plans is as follows (number of awards in thousands):

	MIP and 2012 Phantom Units		Other Phantom Units	
	Number of awards	Weighted average grant-date fair value	Number of awards	Weighted average grant-date fair value
Outstanding at December 31, 2018	993	$ 5.46	1,150	$ 9.12
Granted	—	$ —	160	$ 15.31
Converted to cash	—	$ —	(93)	$ 4.84
Forfeited	(2)	$ 9.70	(78)	$ 10.61
Outstanding at December 31, 2019	991	$ 5.44	1,139	$ 10.24
Awards vested at December 31, 2019	989	$ 5.43	471	$ 6.76

There were no 2012 Phantom Unit awards granted in 2018. The weighted average grant date fair value per Other Phantom Unit awards granted in the year ended December 31, 2018 was $14.93.

	MIP and 2012 Phantom Units		Other Phantom Units	
	Number of awards	Weighted average grant-date fair value	Number of awards	Weighted average grant-date fair value
Nonvested at December 31, 2018	12	$ 9.65	719	$ 11.09
Vested during 2019	8	$ 9.56	134	$ 8.33
Nonvested at December 31, 2019	2	$ 10.01	667	$ 12.71

The total fair value of MIP and 2012 Phantom Units vested in the years ended December 31, 2019 and 2018 was $80 and $184, respectively. The total fair value of 2015 Phantom Units vested in the years ended December 31, 2019 and 2018 was $3,696 and $6,130, respectively.

Defined contribution plans

The Company has various defined contribution plans or plans that share profit which are offered in Canada, Germany, the Netherlands and the United Kingdom. In some cases, these plans are required by local laws or regulations. Contributions are primarily discretionary, except in some countries where contributions are contractually required. These plans cover substantially all eligible employees in the countries where the plans are offered either voluntarily or statutorily.

In the U.S., the Company provides a 401(k) defined contribution plan (U.S. Plan) that covers substantially all U.S. employees that meet minimum age requirements. The Company matches 50% of the employees' contribution up to 6% of the employees' wages. In addition, the Company contributes 4.5% of the employees' wages to the U.S. Plan.

For the years ended December 31, 2019 and 2018 Company contributions totaled $5,401 and $5,462, respectively, for all global plans. The expense is included in cost of sales, selling, general and administrative expense and research and development expense on the consolidated statement of operations and comprehensive income (loss) based upon the classification of the employee.

11. Income taxes

On December 22, 2017, the Tax Cuts and Jobs Act, or Tax Act, was enacted. The Tax Act significantly revised U.S. corporate income tax law by reducing the U.S. statutory federal corporate income tax rate to 21% effective January 1, 2018. The Company completed its accounting for the tax effects of the Tax Act as of December 31, 2018 recognizing a nominal adjustment to the provisional amounts recorded at December 31, 2017.

The Tax Act also subjects companies to tax on Global intangible low-taxed income (GILTI) earned by certain foreign subsidiaries. FASB guidance states that the Company can make an accounting policy election to either recognize deferred taxes for temporary basis differences expected to reverse as GILTI in future years or provide for the tax expense related to GILTI in the year the tax is incurred as a period expense only. Due to Bioventus LLC's pass-through structure for U.S. income tax purposes, related deferred taxes are not recognized on the consolidated balance sheet. The Company has included an estimate for GILTI related to operations in the effective income tax rate. The impact of GILTI was nominal for the years ended December 31, 2019 and 2018.

The components of income (loss) from continuing operations before income taxes for the years ended December 31 are as follows:

	2019	2018
Taxable subsidiaries:		
Domestic	$ 2,679	$ 2,925
Foreign	2,967	(1,393)
	5,646	1,532
Other domestic subsidiaries	4,043	4,575
Income from continuing operations before income taxes	$ 9,689	$ 6,107

	2019	2018
Federal income taxes:		
Current	$ 932	$ 891
Deferred	(345)	(294)
Foreign income taxes:		
Current	815	472
Deferred	—	180
State income taxes:		
Current	177	380
Deferred	(3)	(1)
Change in tax rates—deferred	—	36
Income tax expense	$ 1,576	$ 1,664

The differences between the effective income tax rate and the federal statutory income tax rates for the years ended December 31 by taxable and other subsidiaries are as follows:

	2019	2018
U.S. statutory federal corporate income tax rate	21.0%	21.0%
LLC flow-through structure	(8.8)	(15.7)
State and local income taxes, net of federal benefit	2.4	7.3
Foreign rate differential	1.7	11.5
Provision to return adjustment	—	3.1
Effective income tax rate	16.3%	27.2%

The Company’s effective tax rate differs from statutory rates primarily due to Bioventus LLC’s pass-through structure for U.S. income tax purposes while being treated as taxable in certain states and various foreign jurisdictions as well as for certain subsidiaries. In addition, certain states assess income taxes on pass-through structures.

Deferred tax assets and liabilities are determined based on the difference between financial statement and tax bases using enacted tax rates in effect for the year in which the differences are expected to reverse. The components of the deferred taxes were as follows:

	2019	2018
Deferred tax assets:		
Net operating losses	$ 3,530	$ —
Tax credit carryforwards and other	390	—
Gross deferred tax assets	3,920	—
Valuation allowance	(2,423)	—
Total deferred tax assets	1,497	—
Deferred tax liability:		
Acquired intangible	(5,371)	(3,955)
Net deferred tax liability	$(3,874)	$(3,955)

At December 31, 2019, the Company had federal and state net operating loss carryforwards related to Harbor of $24,349 expiring at various dates from 2020 through 2037 and approximately $900 with no expiration date.

Under current tax law, the utilization of tax attributes will be restricted if an ownership change, as defined, were to occur. Section 382 of the U.S. Internal Revenue Code of 1986, as amended, or the Internal Revenue Code, provides, in general, that if an “ownership change” occurs with respect to a corporation with net operating and other loss carryforwards, such carryforwards will be available to offset taxable income in each taxable year after the ownership change only up to the “Section 382 Limitation” for each year. The Company’s ability to use its loss carryforwards will be limited in the event of an ownership change.

During the year ended December 31, 2018, Dutch income taxes were imposed on a negotiated percentage of sales. The Company has an agreement with the Dutch taxing authorities where the Company’s Netherland subsidiary will incur but not have to pay income taxes in years when the subsidiary is operating at a loss.

Minimal interest and penalties were incurred for the years ended December 31, 2019 and 2018. The Company is subject to audit by various taxing jurisdictions for the years 2015 through 2019.

12. Related-party transactions

The Company made cash tax distributions of $9,137 and $7,846 to its members in an amount equal to approximately 40% of the members’ estimated taxable income for the years ended December 31, 2019 and 2018, respectively. At December 31, 2019 and 2018, there were tax distributions payable to tax authorities on the members behalf totaling $473 and $572 as well as tax distributions payable to the members totaling $26 and $334, respectively.

13. Commitments and contingencies

Leases

The Company leases its office facilities as well as other property, vehicles and equipment under operating leases. The Company also leases certain office equipment under finance leases. The remaining lease terms range from 1 month to 9 years.

The components of lease cost were as follows:

	2019
Operating lease cost	$ 2,529
Short-term lease cost*	358
Financing lease cost:	
Amortization of finance lease assets	48
Interest on lease liabilities	3
Total lease cost	$ 2,938

* Includes variable lease cost and sublease income, which are immaterial.

Supplemental cash flow information and non-cash activity related to leases were as follow:

	2019
Cash paid for amounts included in the measurement of lease liabilities:	
Operating cash flows from operating leases	$2,343
Operating cash flows from finance leases	$ 3
Finance cash flows from finance leases	$ 43
Right-of-use assets obtained in exchange for lease obligations:	
Operating leases	$5,016
Finance leases	$ —

Current and noncurrent operating and finance lease liabilities are included in other current liabilities and other long-term liabilities, respectively, on the consolidated balance sheet. Other balance sheet information related to leases are as follows:

	2019
Operating leases	
Operating lease assets	$ 15,267
Operating lease liabilities—current	$ 1,814
Operating lease liabilities—noncurrent	14,513
Total operating lease liabilities	$ 16,327
Finance leases	
Finance lease assets	$ 20
Finance lease liabilities—current	$ 41
Finance lease liabilities—noncurrent	13
Total finance lease liabilities	$ 54

	2019
Weighted average remaining lease term (years):	
Operating leases	8.0
Finance leases	1.8
Weighted average discount rate:	
Operating leases	5.0%
Finance leases	4.1%

Maturities of lease liabilities as of December 31, 2019 were as follows:

	Operating leases	Finance leases
2020	$ 2,572	$ 42
2021	2,452	7
2022	2,397	7
2023	2,230	—
2024	2,246	—
Thereafter	7,991	—
Total future lease payments	19,888	56
Less amounts representing interest	(3,561)	(2)
Present value of future lease payments	$ 16,327	$ 54

As disclosed under the previous lease accounting standard, future minimum lease payments for finance leases and non-cancelable operating leases as of December 31, 2018 were as follows:

	Operating leases	Capital leases
2019	$ 2,672	$ 45
2020	2,093	40
2021	1,569	7
2022	1,516	7
2023	1,388	—
2024 and thereafter	7,015	—
Total minimum payments	$ 16,253	99
Less amounts representing interest		(2)
Present value of capital lease obligations		97
Less current maturities		(42)
Capital lease obligations, less current maturities		$ 55

The gross value of assets under capital leases as of December 31, 2018 was approximately $2,806 with accumulated depreciation of $2,738. These assets mainly consist of computer and office equipment, which are included in property and equipment. Depreciation of capital lease assets is included in depreciation and amortization expense as well as cost of sales in the consolidated statements of operations and comprehensive income (loss). Rent expense was $2,858 for the year ended December 31, 2018. Certain facility leases provide for reduced rent periods. As of December 31, 2018, these rent concessions totaling $696 have been reflected in accrued liabilities and other long-term liabilities in the consolidated balance sheets.

OIG's Provider Self-Disclosure

The Company identified non-compliance with certain U.S. federal statutes and requirements governing the Medicare program in 2018 related to improper completion of Certificate for Medical Necessity, or CMN, forms and in November 2018 made a voluntary self-disclosure to the Office of Inspector General of the U.S. Department of Health and Human Services, or the OIG, pursuant to the OIG's Provider Self-Disclosure Protocol related to this matter. This non-compliance is subject to statutory Civil Monetary Penalties, or CMP, on a per claim basis that ranges from nothing to $1 per instance of non-compliance. The Company has estimated the number of impacted claims with improperly completed CMN forms based on the extrapolation of an occurrence rate found in a statistical sample of CMN forms and calculated the potential fine for all impacted claims based on the range above as nothing to $10,800 in aggregate. Although the statutory CMP are reasonably possible, the Company does not believe it is probable that they will be incurred. Additionally, the OIG could require

repayment of the total dollar amount of the impacted claims or $30,060 as well as assessing an additional fine equivalent to half the dollar amount of impacted claims or $15,030 for an aggregate potential impact of $55,890. The Company does not believe the requirement to repay the claims and associated fines is probable. Accordingly, no accrual has been recorded for these potential repayment obligations related to improper completion of CMN forms and potential fines at this time. While these matters are not considered probable, the ultimate outcome of these matters is uncertain. In the event of an unfavorable outcome to the Company, these contingencies could have a material adverse effect on the Company's financial position, results of operations, liquidity and cash flows.

Reserve for estimated overpayments from all third-party payers

The Company maintains a reserve for reimbursement claims related to its Bone Growth Stimulator Products that may have been processed for payment by the Company without adequate medical records support. The Company held a reserve of $6,801 and $12,468 at December 31, 2019 and 2018, respectively for these amounts. The Company refunded Medicare $7,458 related to known and estimated overpayments for medical necessity included in this reserve for periods through December 31, 2018. Certain of these overpayments were identified as potential overpayments in the Company's OIG self-disclosure in November 2018. The OIG is currently reviewing the Company's self-disclosure. The Company's reserve was estimated using extrapolation of an error rate from a statistical sample, which represents the Company's best estimate as of the date of the financial statements, but because of the uncertainty inherent in such estimates, the ultimate resolution may be materially different.

Other matters

As discussed in Note 3, on August 23, 2019, the Company and Harbor entered into an exclusive Collaboration Agreement for purposes of developing a product for orthopedic uses to be commercialized by the Company and supplied by Harbor. Upon execution of the Collaboration Agreement, the Company paid a nominal license fee for certain technology and intellectual property licenses owned by Harbor and for the assignment of a third-party license used in the product development. The third-party license assigned to the Company is subject to 3% royalty on commercial sales of product developed with the licensed patent(s), or a minimum of $25 per quarter beginning 2023, regardless of commercial sales and will remain in effect until earlier of expiration of the licensed patent, or terminated by the Company and ceased selling of the licensed product. The Company will also make two one-time payments totaling $6,000 contingent upon the successful completion of the following milestones: $1,000 upon receiving regulatory approval, or Regulatory Milestone, and $5,000 upon achieving a pre-established net sales target, or Net Sales Milestone. Unless earlier terminated, the Collaboration Agreement will remain in effect until the earlier of 8 years or payment of the Net Sales Milestone. In addition, contingent on Harbor obtaining certain debt or equity financing and the achievement of certain milestones, the Company has agreed to purchase additional shares of Harbor's Series C Preferred Stock for $1,000.

On May 29, 2019, the Company and Musculoskeletal Transplant Foundation, Inc. d/b/a MTF Biologics, or MTF, entered into a collaboration and development agreement, or Development Agreement, whereby both parties will undertake a collaborative program to develop one or more products for orthopedic application to be commercialized by the Company and supplied by MTF. The development will be performed over several phases. The Company is obligated to pay $4,250 for the third phase as well as $444 upon the receipt of samples, and another $444 upon initiation of the first clinical trial conducted under an Investigational New Drug Application. The Company paid cash of $1,250 in June 2019, of which $1,146 is included in research and development expense on the consolidated statement of operations and comprehensive income (loss) and the remaining $104 is included in prepaid and other current assets on the consolidated balance sheet. Additional fees for the subsequent phases will be determined as the development work progresses. The Development Agreement continues until the date when the parties execute a supply agreement for the commercial products.

On December 9, 2016, the Company entered into an amended and restated license agreement for the exclusive U.S. distribution and commercialization rights of a single injection, OA product with the supplier of the Company's single injection OA product for the non-U.S. market. In November 2018, the Company was notified and a unique reimbursement code became effective for the product on January 1, 2019 resulting in the Company making an additional $4,000 cash payment in January 2019 which was recognized as a liability as of December 31, 2018 and included in accrued liabilities on the consolidated balance sheet as well as an intangible asset. The Company began selling the product in the U.S. in 2018 and as of January 1, 2019 became subject to minimum purchase requirements. The agreement requires the Company to pay royalties on net sales. Royalties related to this agreement totaled $7,622 and $3,082 for the years ended December 31, 2019 and 2018, respectively, and are included in cost of sales on the consolidated statement of operations and comprehensive income (loss).

On June 30, 2016, the Company entered into an amended and restated distribution agreement with the sole supplier of the Company's five injection OA product. This agreement provided non-exclusive U.S. market distribution rights until May 4, 2019. No additional payments were required to amend and restate the distribution agreement. In February 2018, the Company entered into an amended and restated distribution agreement effective May 2018, which provides exclusive U.S. market distribution rights until May 2028. The Company paid $2,000 and $1,000 in cash to the supplier in May 2019 and 2018, respectively, which was capitalized as an intangible asset. The additional $2,000 paid in May 2019, was recorded as liability as of December 31, 2018 and included in accrued liabilities on the consolidated balance sheet.

As part of a supply agreement entered on February 9, 2016 for the Company's three injection OA product, the Company is subject to annual minimum purchase requirements for ten years. After the initial ten years, the agreement will automatically renew for an additional five years unless terminated by the Company or the seller in accordance with the agreement.

The Company has an exclusive license and supply agreement for the use of bioactive glass in certain of its BGS products. The Company has a world-wide, royalty bearing license, as well as the right to sublicense, for the use of certain developed technologies related to spine repair. The Company was required to pay a royalty on all commercial sales revenue from the licensed products. The agreement expired in April 2019. The Company has an exclusive license agreement for bioactive bone graft putty. The Company is required to pay a royalty on all commercial sales revenue from the license products with a minimum annual royalty payment through 2023, the date the agreement will expire, upon the expiration of the patent held by the licensor. These royalties are included in cost of sales on the consolidated statement of operations and comprehensive income (loss).

On October 3, 2014, the Company purchased certain BGS assets and the resulting BGS business from a biologics company. The purchase price included contingent consideration which consists of up to $12,000 for various cash earn-out payments upon the achievement of certain net sales targets through December 31, 2019, a royalty on future net sales of certain BGS products beginning January 1, 2019 through December 31, 2023 and a supply agreement with the previous owner ending in October 2018. Under the terms of the supply agreement, the Company purchased the BGS products at prices above the market rate. In May 2017, the Company entered into an agreement with the previous owners to end exclusivity for certain BGS products and to extend the supply agreement for the other BGS products for an additional six months to April 2019. In addition, the duration for achieving sales targets to trigger certain earn-out payments was extended through June 30, 2020. There are no estimated contingent consideration payments remaining as of December 31, 2019.

From time to time, the Company causes LOCs to be issued to provide credit support for guarantees, contractual commitments and insurance policies. The fair values of the LOCs reflect the amount of the underlying obligation and are subject to fees payable to the issuers, competitively determined in the marketplace. As of December 31, 2019 and 2018, the Company had a LOCs for $83 and $84, respectively, outstanding with one of the Company's banking institutions.

The Company currently maintains insurance for risks associated with the operation of its business, provision of professional services and ownership of property. These policies provide coverage for a variety of potential losses, including loss or damage to property, bodily injury, general commercial liability, professional errors and omissions and medical malpractice. The Company is self-insured for health insurance covering most of its employees located in the United States. The Company maintains stop-loss insurance on a “claims made” basis for expenses in excess of $150 per member per year.

In the normal course of business, the Company periodically becomes involved in various claims and lawsuits, and governmental proceedings and investigations that are incidental to the business. With respect to governmental proceedings and investigations, like other companies in our industry, the Company is subject to extensive regulation by national, state and local governmental agencies in the U.S. and in other jurisdictions in which the Company and its affiliates operate. As a result, interaction with governmental agencies is ongoing. The Company’s standard practice is to cooperate with regulators and investigators in responding to inquiries. The outcomes of legal actions are not within the Company’s complete control and may not be known for extended periods of time. Other than the matters discussed above, management of the Company, after consultation with legal counsel, does not believe there are any unrecorded matters that will have a material adverse effect upon the Company’s financial statements.

14. Net loss per unit

The following table presents the computation of basic and diluted net loss per unit for the years ended December 31 as follows:

	2019	2018
Net income from continuing operations attributable to unit holders	$ 8,666	$ 4,443
Accumulated and unpaid preferred distributions	(5,955)	(5,781)
Net income allocated to participating shareholders	(1,555)	—
Net income (loss) from continuing operations attributable to common unit holders	1,156	(1,338)
Loss from discontinued operations, net of tax	1,815	16,650
Net loss attributable to common unit holders	$ (659)	$(17,988)
Net loss per unit attributable to common unit holders—basic and diluted		
Net income (loss) from continuing operations	$ 0.24	$ (0.27)
Loss from discontinued operations, net of tax	0.37	3.40
Net loss attributable to common unit holders	$ (0.13)	$ (3.67)
Weighted average units used in computing basic and diluted net loss per common unit	4,900	4,900

The computation of diluted earnings per unit for the year ended December 31, 2019 and 2018 excludes the effect of potential common units that would be issued upon the conversion of preferred units. The effect of these 6,590 units would be antidilutive due to the Company being in a net loss position and these units only convert upon completion of a Distribution Event.

15. Net Sales

The Company attributes net sales to external customers to the U.S. and to all foreign countries based on the location from which the sale originated. The following table presents our net sales by segment disaggregated by geographic markets and major products for the years ended December 31 as follows:

	2019	2018
Primary geographic markets:		
U.S.	$ 305,072	$ 282,895
International	35,069	36,282
Total net sales	$ 340,141	$ 319,177
Major product lines:		
OA joint pain treatment and joint preservation	$ 182,082	$ 155,576
Minimally invasive fracture treatment	103,504	121,032
Bone graft substitutes	54,555	42,569
Total net sales	$ 340,141	$ 319,177

16. Segments

Segment information by asset is not disclosed as it is not reviewed by the CODM or used to allocate resources or to assess the operating results and financial performance. We believe EBITDA, adjusted for additional non-operational factors disclosed in the table below, or Adjusted EBITDA, is a key measure for internal reporting. Adjusted EBITDA should not be considered in isolation or as a substitute for consolidated net income (loss) attributable to the Company, the most closely analogous U.S. GAAP measure. Adjusted EBITDA is not defined in the same manner by all companies and may not be comparable to other similarly titled measures of other companies unless the definition is the same. The following table presents segment adjusted EBITDA reconciled to income from continuing operations before income taxes for the years ended December 31 as follows:

	2019	2018
Segment adjusted EBITDA		
U.S.	$ 71,673	$ 67,480
International	7,515	4,691
Depreciation and amortization	(30,316)	(29,238)
Interest expense	(21,579)	(19,171)
Loss on impairment of intangible assets	—	(489)
Equity compensation	(10,844)	(14,325)
Loss on debt retirement and modification	(367)	—
Change in fair value of contingent consideration	—	739
Restructuring costs	(575)	(1,373)
Realized and unrealized foreign currency loss	(8)	(234)
Other non-recurring costs	(5,810)	(1,973)
Income from continuing operations before income taxes	$ 9,689	$ 6,107

17. Discontinued operations

In December 2018, the Company, under the direction and authority of the Company's Board of Managers, committed to shut down the bone morphogenetic protein, or BMP, research and development program which had been reported as its own segment in previous years. Substantially all operations, including project close documentation, contract termination, vacating the facility and ultimately the termination of the employees,

ceased by March 2019 and as a result the BMP research and development program met the criteria for discontinued operations. Included in prepaid and other current assets on the consolidated balance sheet is net property and equipment classified as current assets held for sale totaling $172 and $224 as of December 31, 2019 and 2018, respectively. The following table summarizes the statement of operations information from discontinued operations for the years ended December 31:

	2019	2018
Research and development expense	$ 1,773	$ 7,127
Loss on disposal	52	9,638
Income tax benefit	(10)	(115)
Loss from discontinued operations, net of tax	$ 1,815	$16,650

18. Subsequent events

COVID-19 pandemic impact

In December 2019, an outbreak of the Coronavirus Disease 2019, or COVID-19, originated in China and has since spread to other countries, including the U.S. On March 11, 2020, the World Health Organization characterized COVID-19 as a pandemic. In addition, multiple jurisdictions in the U.S. have declared a state of emergency. It is anticipated that these impacts will continue for some time. There have been moderate disruptions and restrictions on our employees' ability to work. Future potential impacts may include significant disruptions or restrictions on our employees' ability to work, loss of revenue and diminished future cash flows among others. An estimate of the financial statement effect cannot be made at this time other than those described below. Continued volatility could impact the carrying value of goodwill, intangible assets, long-lived assets, right of use assets, and investment securities as well as the valuation of equity-based compensation plans.

On March 24, 2020, the Company increased its cash position by borrowing $49,000 on its Revolver as a precautionary measure to preserve financial flexibility in view of the uncertainty resulting from the COVID-19 pandemic. The $49,000 was repaid on September 24, 2020.

On March 27, 2020, the U.S. enacted the Coronavirus Aid, Relief and Economic Security Act, or CARES Act. The CARES Act is an emergency economic stimulus package that includes spending and tax breaks to strengthen the U.S. economy and fund a nationwide effort to curtail the effect of COVID-19. While the CARES Act provides sweeping tax changes in response to the COVID-19 pandemic, some of the more significant provisions which are expected to impact the Company's financial statements include removal of certain limitations on utilization of net operating losses and increasing the ability to deduct interest expense, as well as amending certain provisions of the previously enacted Tax Act. The Company continues to quantify the impact, if any, that the CARES Act will have on its financial position, results of operations or cash flows.

As a result of the CARES Act, on May 15, 2020, the Company began deferring employer social security payroll tax payments through the remainder of the 2020 calendar year of which, 50% is deferred until December 31, 2021, with the remaining 50% deferred until December 31, 2022, all of which will be initially recorded in other long-term liabilities on the condensed consolidated balance sheet.

As a result of the CARES Act and at the direction of the U.S. Department of Health and Human Services ("HHS"), the Company received a $1,247 Provider Relief Fund Payment in April 2020. The Company determined it complied with the conditions to be able to keep and use the funds to reimburse for health care related expenses and lost revenue attributable to the public health emergency resulting from COVID-19. The payment will be recorded as other income on the consolidated statement of operations and comprehensive income (loss). A second Provider Relief Fund Payment totaling $2,854 was received in July 2020.

As of March 28 2020, due to the COVID-19 triggering event, the Company performed a fair value assessment of its liability-classified MIP and 2015 Phantom Plan awards and determined that the fair value decreased by $7,849 primarily attributable to a change in management's forecast of future net sales because of uncertainty in the market and the economy from the impact of COVID-19.

Other

On January 22, 2020, the Company invested in CartiHeal through a Simple Agreement for Future Equity, or SAFE, by paying cash of $152. On July 15, 2020, the Company entered into an Option and Equity Purchase Agreement with CartiHeal. Under the terms of the agreement, the Company purchased 1,014,267 shares of CartiHeal Series G Preferred Shares for $15,000 and the SAFE converted to 12,825 in Series G-1 Preferred Shares. As a result, the Company's equity ownership in CartiHeal increased to 10.03% of fully diluted shares. The Company will, if needed, purchase an additional 338,089 of CartiHeal Series G Preferred Shares for $5,000, for the completion of a certain study. The Company has an exclusive option to acquire the remaining equity in CartiHeal which may be exercised at any time up to and within 45 days following notice of FDA approval for a CartiHeal product currently in development. In addition, upon the same FDA approval, CartiHeal may exercise an option within 45 days that requires the Company to complete the acquisition of the remaining equity in CartiHeal.

On March 26, 2020, the Company entered into an interest rate swap agreement to limit its exposure to changes in the variable interest rate on its Term Loan (as discussed in Note 5). The interest rate swap was not designated as a hedge and expires December 6, 2024. The interest rate swap totaled $100,000, or 50% of the Term Loan outstanding principal at December 31, 2019, and as of March 26, 2020, the Term Loan effective interest rate, including the applicable lending margin of 2.25%, is fixed at 2.88%.

The Company refunded Medicare $1,500 of the reserve for estimated overpayments from third-party payors during June 2020 related to known and estimated overpayments for medical necessity for periods through December 31, 2019.

In June 2020, the sole MIP awardee exercised the right to force a cash settlement for 150,252 of the 333,330 vested units resulting in a payment of $6,329. The Company agreed to cash settle for the remaining 183,078 units in June 2021.

On October 5, 2020, the Company purchased 285,714 additional shares of Harbor's Series C Preferred Stock for $1,000 (as discussed in Note 13).

19. Unaudited pro forma net income per share

Pro forma basic net income per share is calculated by dividing net loss attributable to Class A common stockholders by the number of weighted average shares of Class A common stock after giving effect to the corporate conversion. Pro forma diluted net income per share reflects the exchange of shares of Class B common stock and an adjustment to the net loss attributable to non-controlling interests.

	Year ended December 31, 2019
Net income per share, basic and diluted:	
Numerator	
Net income from continuing operations	
Less: Net income attributable to non-controlling interests	
Net income from continuing operations attributable to Class A common stockholders	—
Net income per share from continuing operations, basic	
Net income per share from continuing operations, diluted	
Numerator	
Net income attributable to unit holders	
Less: Net income attributable to non-controlling interests	
Net income attributable to Class A common stockholders	—
Net income per share, basic	
Net income per share, diluted	
Denominator	
Shares of Class A common stock held by the Former LLC Owners	
Weighted-average shares of common stock, basic	
Shares of Class A common stock held by the Former LLC Owners	
Shares of Class B common stock held by the Former LLC Owners	
Weighted-average shares of common stock, diluted	

BIOVENTUS LLC

Condensed consolidated statements of operations and comprehensive income
Nine months ended September 26, 2020 and September 28, 2019
(Dollars in thousands, except per unit and per share data)
(Unaudited)

	Nine Months Ended	
	September 26, 2020	September 28, 2019
Net sales	$ 222,570	$ 242,587
Cost of sales (including depreciation and amortization of $16,076 and $17,149, respectively)	62,521	66,810
Gross profit	160,049	175,777
Selling, general and administrative expense	131,104	144,021
Research and development expense	8,311	7,911
Restructuring costs	—	540
Depreciation and amortization	5,305	5,815
Operating income	15,329	17,490
Interest expense	7,095	13,935
Other (income) expense	(4,539)	71
Other expense	2,556	14,006
Income from continuing operations before income taxes	12,773	3,484
Income tax expense	302	684
Net income from continuing operations	12,471	2,800
Loss from discontinued operations, net of tax	—	1,616
Net income	12,471	1,184
Loss attributable to noncontrolling interest	1,164	30
Net income attributable to unit holders	13,635	1,214
Other comprehensive income (loss), net of tax		
Change in foreign currency translation adjustments	687	(577)
Comprehensive income	$ 14,322	637
Net income from continuing operations attributable to unit holders	$ 13,635	$ 2,830
Accumulated and unpaid preferred distributions	(4,525)	(4,421)
Net income allocated to participating shareholders	(5,225)	—
Net income (loss) from continuing operations attributable to common unit holders	3,885	(1,591)
Loss from discontinued operations, net of tax	—	1,616
Net income (loss) attributable to common unit holders	$ 3,885	$ (3,207)
Net income (loss) per unit attributable to common unit holders—basic and diluted (Note 12)		
Net income (loss) from continuing operations	$ 0.79	$ (0.32)
Loss from discontinued operations, net of tax	—	0.33
Net income (loss) attributable to common unit holders	$ 0.79	$ (0.65)
Weighted average common units outstanding, basic and diluted	4,900	4,900
Unaudited pro forma net income per share—basic (Note 13):		
Unaudited pro forma net income from continuing operations		
Unaudited pro forma net loss from discontinued operations, net of tax		
Unaudited pro forma net income attributable to unit holders		
Unaudited pro forma net income per share—diluted (Note 13):		
Unaudited pro forma net income from continuing operations		
Unaudited pro forma net loss from discontinued operations, net of tax		
Unaudited pro forma net income attributable to unit holders		

The accompanying notes are an integral part of these consolidated financial statements.

BIOVENTUS LLC

Condensed consolidated balance sheets as of September 26, 2020 (Unaudited) and December 31, 2019
(Dollars in thousands)

	September 26, 2020	December 31, 2019
Assets		
Current assets:		
Cash and cash equivalents	$ 72,478	$ 64,520
Accounts receivable, net	80,813	85,128
Inventory	34,705	27,326
Prepaid and other current assets	5,145	6,059
Total current assets	193,141	183,033
Property and equipment, net	5,886	4,489
Goodwill	49,800	49,800
Intangible assets, net	196,688	216,510
Operating lease assets	13,906	15,267
Investment and other assets	19,856	3,308
Total assets	$ 479,277	$ 472,407
Liabilities and Members' Equity		
Current liabilities:		
Accounts payable	$ 8,790	$ 6,440
Accrued liabilities	73,019	52,827
Accrued equity-based compensation	9,580	15,547
Long-term debt	16,250	10,000
Other current liabilities	4,095	4,201
Total current liabilities	111,734	89,015
Long-term debt, less current portion	177,025	187,965
Accrued equity-based compensation, less current portion	22,086	25,255
Deferred income taxes	3,436	3,874
Other long-term liabilities	19,657	20,681
Total liabilities	333,938	326,790
Commitments and contingencies (Note 8)		
Members' equity (preferred unit liquidation preference of $208,968 and $204,443 at September 26, 2020 and December 31, 2019, respectively)	285,173	285,147
Accumulated other comprehensive income (loss)	222	(465)
Accumulated deficit	(142,176)	(141,700)
Equity attributable to Bioventus LLC members	143,219	142,982
Noncontrolling interest	2,120	2,635
Total members' equity	145,339	145,617
Total liabilities and members' equity	$ 479,277	$ 472,407

The accompanying notes are an integral part of these consolidated financial statements.

BIOVENTUS LLC

Condensed consolidated statements of changes in members' equity
Nine months ended September 26, 2020 and September 28, 2019
(Dollars in thousands)
(Unaudited)

	Members' equity	Accumulated other comprehensive (loss) income	Accumulated deficit	Noncontrolling interest	Total members' equity
Balance at December 31, 2019	$ 285,147	$ (465)	$ (141,700)	$ 2,635	$ 145,617
Profits interest compensation	26	—	—	—	26
Distribution to members	—	—	(14,111)	—	(14,111)
Debt conversion	—	—	—	649	649
Net income (loss)	—	—	13,635	(1,164)	12,471
Translation adjustment	—	687	—	—	687
Balance at September 26, 2020	$ 285,173	$ 222	$ (142,176)	$ 2,120	$ 145,339

	Members' equity	Accumulated other comprehensive loss	Accumulated deficit	Noncontrolling interest	Total members' equity
Balance at December 31, 2018	$ 285,153	$ (65)	$ (139,821)	$ —	$ 145,267
Profits interest forfeitures	(8)	—	—	—	(8)
Distribution to members	—	—	(9,648)	—	(9,648)
Acquisition of noncontrolling interest	—	—	—	3,188	3,188
Net income (loss)	—	—	1,214	(30)	1,184
Translation adjustment	—	(577)	—	—	(577)
Balance at September 28, 2019	$ 285,145	$ (642)	$ (148,255)	$ 3,158	$ 139,406

The accompanying notes are an integral part of these consolidated financial statements.

BIOVENTUS LLC

Condensed consolidated statements of cash flows
Nine months ended September 26, 2020 and September 28, 2019
(Dollars in thousands)
(Unaudited)

	Nine Months Ended	
	September 26, 2020	September 28, 2019
Operating activities:		
Net income	$ 12,471	$ 1,184
Net loss from discontinued operations	—	1,616
Net income from continuing operations	12,471	2,800
Adjustments to reconcile net income to net cash provided by operating activities from continuing operations:		
Depreciation and amortization	21,789	22,972
Payment of contingent consideration in excess of amount established in purchase accounting	—	(959)
Provision for expected credit losses	1,089	2,211
Profits interest plan and liability-classified awards compensation	619	3,252
Change in fair value of Equity Participation Rights unit	(788)	14
Change in fair value of interest rate swap	1,980	71
Deferred income taxes	(438)	(222)
Amortization of debt discount and capitalized loan fees, net	407	1,264
Other, net	(235)	574
Changes in operating assets and liabilities:		
Accounts receivable	3,361	(3,671)
Inventories	(7,004)	(3,827)
Accounts payable and accrued expenses	11,568	(198)
Other current assets and liabilities	1,933	(2,952)
Net cash provided by operating activities from continuing operations	46,752	21,329
Net cash used in operating activities of discontinued operations	(400)	(1,663)
Net cash provided by operating activities	46,352	19,666
Investing activities:		
Equity method investments	(16,630)	—
Purchase of property and equipment	(2,331)	(1,778)
Acquisition of distribution rights	—	(6,000)
Acquisition of VIE	—	430
Net cash used in investing activities from continuing operations	(18,961)	(7,348)
Net cash provided by investing activities from discontinued operations	172	—
Net cash used in investing activities	(18,789)	(7,348)
Financing activities:		
Borrowing on revolver	49,000	—
Payment on revolver	(49,000)	—
Payments on long-term debt	(5,000)	(2,625)
Distribution to members	(14,691)	(9,015)
Net cash used in financing activities	(19,691)	(11,640)
Effect of exchange rate changes on cash	86	171
Net change in cash and cash equivalents	7,958	849
Cash and cash equivalents at the beginning of the period	64,520	42,774
Cash and cash equivalents at the end of the period	$ 72,478	$ 43,623
Supplemental disclosure of noncash investing and financing activities		
Accrued member distributions	$ 607	1,540

The accompanying notes are an integral part of these consolidated financial statements.

BIOVENTUS LLC

Notes to condensed consolidated financial statements
(Dollars in thousands, except for per unit and per share data)
(Unaudited)

1. Summary of significant accounting policies

Unaudited interim financial information

The accompanying unaudited consolidated financial statements of the Company have been prepared in accordance with U.S. GAAP for interim financial information under Rule 10-01 of Regulation S-X. Pursuant to these rules and regulations they do not include all information and notes required by U.S. GAAP for complete financial statements. In the opinion of management, all adjustments (consisting of normal recurring adjustments) considered necessary for a fair statement of the Company's financial condition and results of operations have been included. Operating results for the periods presented are not necessarily indicative of the results that may be expected for the full year. As such, the information included in this report should be read in conjunction with the Company's audited consolidated financial statements for the year ended December 31, 2019. The balance sheet at December 31, 2019 has been derived from the audited consolidated financial statements of the Company but does not include all the disclosures required by U.S. GAAP.

Operating results attributable to the BMP research and development business are presented as discontinued operations on the consolidated statements of operations and comprehensive income (Refer to Note 11. Discontinued Operations).

We reclassified certain prior period amounts to conform to the current period presentation.

COVID-19 pandemic impact

In December 2019, an outbreak of COVID-19 originated in China and spread to other countries, including the U.S. On March 11, 2020, the World Health Organization characterized COVID-19 as a pandemic and was subsequently declared a national emergency. The Company remains focused on protecting the health and wellbeing of its employees, partners, patients, and the communities in which it operates while assuring the continuity of its business operations.

The impact of COVID-19 on the Company's business is highly uncertain and difficult to predict, as information surrounding the pandemic is rapidly evolving. Although the U.S. and other countries implemented plans to ease social distancing and quarantine measures, there are still many unknowns and risks, such as the possibility of U.S. states or other countries returning to a state of quarantine or the return to more stringent social distancing, when elective procedures will return to a pre COVID-19 pace, the impact to capital markets and the possibility of local and global economic recession. Any resulting economic disruption could have a material impact on our business. In addition, the long-term impact of COVID-19 on the Company's business will depend on many factors, including, but not limited to, the duration and severity of the pandemic and the impact it has on our partners, patients and communities in which we operate, all of which are uncertain. The Company's future results of operations and liquidity will be materially impacted due to the decrease in elective procedures and could be further impacted by delays in payments from customers, supply chain interruptions, extended "shelter in place" orders or advisories, facility closures or other reasons related to the pandemic. As of the date of issuance of these condensed consolidated financial statements, the extent to which COVID-19 could materially impact the Company's financial conditions, liquidity or results of operations is uncertain.

On March 27, 2020, the CARES Act was signed into law, which is aimed at providing emergency assistance and health care for individuals, families, and businesses affected by the COVID-19 pandemic and generally supporting the U.S. economy. The CARES Act, among other things, includes provisions relating to refundable

payroll tax credits, deferment of employer social security payments, net operating loss carryback periods, alternative minimum tax credit refunds, and modifications to the net interest deduction limitations. The Company has not quantified the full impact of the CARES Act.

The Company deferred employer social security payroll tax payments from May 2020 until the remainder of the 2020 calendar year of which, 50% is deferred until December 31, 2021, with the remaining 50% deferred until December 31, 2022. The Company has deferred $1,229 as of September 26, 2020, all of which has been recorded in other long-term liabilities on the condensed consolidated balance sheet. The Company is in the process of analyzing other provision to determine the financial impact on our condensed consolidated financial statements. Refer to Note 7. Income Taxes for further information.

As a result of the CARES Act and at the direction of the U.S. Department of Health and Human Services, or HHS, the Company received a $1,247 Provider Relief Fund Payment in April 2020. The Company determined it complied with the conditions to be able to keep and use the funds to reimburse for health care related expenses and lost revenue attributable to the public health emergency resulting from COVID-19. A second Provider Relief Fund Payment totaling $2,854 was received in July 2020. The payments were recorded as other income on the condensed consolidated statement of operations and comprehensive income for the nine months ended September 26, 2020.

Recent accounting pronouncements

The Company has elected to comply with non-accelerated public company filer effective dates of adoption. Therefore, the required effective dates for adopting new or revised accounting standards as described below are specific to non-accelerated public company filers, which are generally earlier than when emerging growth companies are required to adopt.

Accounting Pronouncements Recently Adopted

The FASB issued Accounting Standards Update 2016-13, *Financial Instruments-Credit Losses*, or ASU 2016-13, in June 2016 that significantly changes accounting for credit losses for most financial assets and certain other instruments that are not measured at fair value through net income. ASU 2016-13 requires that an entity measure and recognize expected credit losses for financial assets held at amortized cost and replaces the incurred loss impairment methodology in prior GAAP with a methodology that considers a broad range of information for the estimation of credit losses. The Company adopted ASU 2016-13 on January 1, 2020 prospectively and the adoption did not have a material impact on the Company’s consolidated financial statements.

In August 2018, the FASB issued Accounting Standards Update 2018-15, *Intangibles-Goodwill and Other-Internal-Use Software*, or ASU 2018-15 addressing a customer’s accounting for implementation costs incurred in a CCA that is considered a service contract. Under ASU 2018-15, implementation costs for a CCA should be evaluated for capitalization using the same approach as implementation costs associated with internal-use software. The capitalized implementation costs should be expensed over the term of the hosting arrangement, which includes any reasonably certain renewal periods. Capitalized implementation costs should be assessed for impairment like long-lived assets. The Company adopted ASU 2018-15 on January 1, 2020 prospectively and it had no material impact on the consolidated financial statements.

In August 2018, the FASB issued Accounting Standards Update 2018-13, *Fair Value Measurement*, or ASU 2018-13, modifying the disclosure requirements on fair value measurements and eliminates the requirement to disclose the amount of and reasons for transfers between Level 1 and Level 2 of the fair value hierarchy, the policy for timing of transfers between levels and the valuation processes for Level 3 fair value measurements. ASU 2018-13 modifies certain disclosures related to investments measured at net asset value and clarifies that companies are to disclose uncertainties in measurements as of the reporting date. ASU 2018-13 requires additional disclosure related to changes in unrealized gains and losses included in other comprehensive income

for recurring Level 3 fair value measurements as well as the range and weighted average, or other quantitative information that would be a more reasonable and rational method, of significant unobservable inputs used to develop Level 3 fair value measurements. The additional disclosures and description of any measurement uncertainty amendments should be applied prospectively for the most recent interim or annual period in the initial year of adoption. All other amendments should be applied retrospectively to all periods presented upon their effective date. The Company adopted ASU 2018-13 on January 1, 2020 and it did not have a material impact on its consolidated financial statements.

New Accounting Pronouncements Not Yet Adopted

In December 2019, the FASB issued Accounting Standards Update 2019-12, *Income Taxes*, or ASU 2019-12, which amended the accounting for income taxes. ASU 2019-12 eliminates certain exceptions to the guidance for income taxes related to the approach for intra-period tax allocation, the methodology for calculating income taxes in an interim period and the recognition of deferred tax liabilities for outside basis differences as well as simplifying aspects of the accounting for franchise taxes and enacted changes in tax laws or rates and clarifies the accounting for transactions that result in a step-up in the tax basis of goodwill. ASU 2019-12 is effective for annual and interim periods beginning after December 15, 2020. Early adoption is permitted in interim or annual periods for which financial statements have not been made available for issuance. Entities that elect to early adopt the amendments in an interim period should reflect any adjustments as of the beginning of the annual period that includes that interim period. Certain amendments are to be applied prospectively while others are retrospective. The Company is currently evaluating the impact of this guidance on its consolidated financial statements.

2. Balance sheet information

Accounts receivable, net

Accounts receivable, net are amounts billed and currently due from customers. The Company records the amounts due net of allowance for credit losses. Collection of the consideration that the Company expects to receive typically occurs within 30 to 90 days of billing. The Company applies the practical expedient for contracts with payment terms of one year or less which does not consider the effects of the time value of money. Occasionally, the Company enters into payment agreements with patients that allow payment terms beyond one year. In those cases, the financing component is not deemed significant to the contract.

Accounts receivable, net of allowances, consisted of the following as of:

	September 26, 2020	December 31, 2019
Accounts receivable	$ 85,697	$ 89,274
Less: Allowance for credit losses	(4,884)	(4,146)
	$ 80,813	$ 85,128

The Company maintains an allowance for credit losses for estimated losses resulting from the inability of its customers to make required payments. The allowance for credit losses is calculated by region and by customer type, where appropriate considering several factors including age of accounts, collection history, historical account write-offs, current economic conditions, and supportable forecasted economic expectations. Due to the short-term nature of its receivables, the estimate of expected credit losses is based on aging of the account receivable balances. The allowance is adjusted on a specific identification basis for certain accounts as well as pooling of accounts with similar characteristics. An increase in the provision for credit losses may be required when the financial condition of the Company's customers or its collection experience deteriorates. The Company has a diverse customer base with no single customer representing ten percent of sales or accounts receivable. Historically, the Company's reserves have been adequate to cover credit losses. The Company's exposure to

credit losses may increase if its customers are adversely affected by changes in health care laws, coverage and reimbursement, economic pressures or uncertainty associated with local or global economic recessions, disruption associated with the COVID-19 pandemic, or other customer-specific factors. The Company considered the current and expected future economic and market conditions surrounding the COVID-19 pandemic and determined that the estimate of credit losses was not significantly impacted. Estimates are used to determine the allowance, which are based on an assessment of anticipated payment and all other historical, current and future information that is reasonably available.

A roll-forward of the allowance for credit losses is as follows:

	Nine Months Ended	
	September 26, 2020	September 28, 2019
Beginning balance	$ (4,146)	$ (4,497)
Provision for losses	(1,089)	(2,211)
Write-offs	628	1,960
Recoveries	(277)	(299)
Ending balance	$ (4,884)	$ (5,047)

Inventory

Inventory consisted of the following as of:

	September 26, 2020	December 31, 2019
Raw materials and supplies	$ 4,153	$ 3,349
Finished goods	31,209	24,509
Gross	35,362	27,858
Excess and obsolete reserves	(657)	(532)
	$ 34,705	$ 27,326

Goodwill and intangible assets, net

There were no changes to goodwill during the nine months ended September 26, 2020. Intangible assets consisted of the following as of:

	September 26, 2020	December 31, 2019
Intellectual property	$ 263,422	$ 263,422
Distribution rights	59,700	59,700
Customer relationships	57,700	57,700
IPR&D	1,445	11,095
Developed technology and other	13,998	4,649
Total carrying amount	396,265	396,566
Less accumulated amortization:		
Intellectual property	(113,188)	(100,982)
Distribution rights	(33,012)	(28,716)
Customer relationships	(50,037)	(46,407)
Developed technology and other	(3,475)	(3,404)
Total accumulated amortization	(199,712)	(179,509)
Intangible assets, net before currency translation	196,553	217,057
Currency translation	135	(547)
	$ 196,688	$ 216,510

The Company filed a 510(k) in 2019 and began commercializing a next-generation surgical product in third quarter of 2020. As a result, $9,650 of IPR&D was reclassified to developed technology and will be amortized over 10 years increasing the estimated amortization expense by $965 each year. Amortization expense related to intangible assets was $20,503 and $19,613 for the nine months ended September 26, 2020 and September 28, 2019 of which $6,712 and $6,469, respectively, is included in ending inventory.

Investments

VIEs

On August 23, 2019, the Company purchased 285,714 shares of Harbor's Series C Preferred Stock or 3.1% of fully diluted shares for $1,000 in cash. The Company and Harbor entered into an exclusive Collaboration Agreement for purposes of developing a product for orthopedic uses to be commercialized by the Company and supplied by Harbor. As a result of these transactions, the Company determined that it had a variable interest in Harbor. On March 27, 2020, two convertible promissory notes to Harbor shareholders totaling $500 were converted to 142,858 of Harbor Series C Preferred Stock and warrants for 428,572 shares of the Harbor common stock exercisable at a price of $1.167 per share with a 5-year exercise period expiring March 27, 2025. The Company continues to conclude that it is the primary beneficiary since it controls the significant activities of Harbor through the Collaboration Agreement. The Company has consolidated Harbor in its consolidated financial statements with a noncontrolling interest for the remaining 95.3% and 96.9% as of September 26, 2020 and December 31, 2019, respectively. On October 5, 2020, the Company purchased an additional 285,714 shares of Harbor's Series C Preferred Stock for $1,000 in cash decreasing the noncontrolling interest to 91.4%.

Harbor assets that can only be used to settle Harbor obligations and Harbor liabilities for which creditors do not have recourse to the general credit of the Company are as follows:

	September 26, 2020	December 31, 2019
Cash and cash equivalents	$ 271	$ 1,127
Property and equipment, net	165	60
Intangible assets, net	5,755	6,122
Operating lease assets	192	231
Other assets	74	59
	$ 6,457	$ 7,599
Accounts payable and accrued liabilities	$ 374	$ 458
Other current liabilities	2,323	2,395
Deferred income taxes	—	215
Other long-term liabilities	675	872
	$ 3,372	$ 3,940

Equity Method

Investments in which the Company can exercise significance influence, but do not control, are recorded under the equity method of accounting and are included in investments and other assets on the consolidated balance sheets. The Company's share of net earnings or losses is included in other (income) expense within the consolidated statements of operations and comprehensive income. The Company evaluates investments for impairment whenever events or changes in circumstances indicate that the carrying amounts of such investments may be impaired. Impairment losses are recorded within earnings within the current period.

On January 30, 2018, the Company purchased 337,397 shares of CartiHeal, a privately held entity, Series F Convertible Preferred Stock or 2.8% of fully diluted shares for $2,500 in cash. The investment does not have a readily determinable fair value. On January 22, 2020, the Company made an additional investment in CartiHeal, through a SAFE by paying cash of $152. On July 15, 2020, CartiHeal completed an equity financing that the Company participated in and as a result, the Company received 12,825 in Series G-1 Preferred Shares and the SAFE terminated.

In addition, on July 15, 2020, the Company entered into an Option and Equity Purchase Agreement with CartiHeal. Under the terms of the agreement, the Company purchased 1,014,267 shares of CartiHeal Series G Preferred Shares for $15,000. As a result, the Company's equity ownership in CartiHeal increased to 10.03% of its fully diluted shares. The CartiHeal investment, included capitalized transaction costs of $1,478 and the $152 investment in January 2020, totaling $16,630 was recorded as an equity method investment beginning in July 2020, as the Company can exercise significant influence over CartiHeal but does not have control. It is included within investments and other assets on the consolidated balance sheet.

The Company will, if needed, purchase an additional 338,089 of CartiHeal Series G Preferred Shares for $5,000, for the completion of a certain study. The Company has an exclusive option to acquire the remaining equity in CartiHeal, which may be exercised at any time up to and within 45 days following notice of the U.S. Food and Drug Administration ("FDA") approval for a CartiHeal product currently in development. In addition, upon the same FDA approval, CartiHeal may exercise an option within 45 days that requires the Company to complete the acquisition of the remaining equity in CartiHeal.

Accrued liabilities

Accrued liabilities consisted of the following as of:

	September 26, 2020	December 31, 2019
Gross-to-net deductions	$ 36,079	$ 14,622
Bonus and commission	9,793	14,200
Reserve for estimated overpayments from third-party payers	5,139	6,801
Compensation and benefits	4,620	3,231
Income and other taxes	2,508	2,555
Other liabilities	14,880	11,418
	$ 73,019	$ 52,827

3. Financial instruments

Long-term debt consists of the following:

	September 26, 2020	December 31, 2019
Term loan due December 2024 (2.66% at September 26, 2020)	$ 195,000	$ 200,000
Less:		
Current portion of long-term debt	(16,250)	(10,000)
Unamortized debt issuance cost	(1,168)	(1,378)
Unamortized discount	(557)	(657)
	$ 177,025	$ 187,965

The Company increased its cash position by borrowing $49,000 on its Revolver as a precautionary measure to preserve financial flexibility in view of the current uncertainty resulting from the COVID-19 pandemic during the first quarter of 2020. The $49,000 balance was repaid September 24, 2020. The 2019 Credit Agreement requires the Company to comply with financial and other covenants. The Company complied with all covenants in the 2019 Credit Agreement as of September 26, 2020.

The estimated fair value of the Term Loan as of September 26, 2020 was $187,106. The fair value of these obligations was determined by using a discounted cash flow model based on current market interest rates available to the Company. These inputs are corroborated by observable market data for similar obligations and are classified as Level 2 instruments within the fair value hierarchy.

The Company enters into interest rate swap agreements to limit its exposure to changes in the variable interest rate on its long-term debt. On March 26, 2020, the Company entered an interest rate swap agreement with one of its Lenders, which expires in December 2024. The interest rate swap was not designated as a hedge. The Company has no other active derivatives and the swap is carried at fair value on the balance sheet (Refer to Note 4). There were no outstanding derivatives as of December 31, 2019. Interest expense of $1,980 was recorded within the consolidated statements of operations and comprehensive income related to the change in fair value of the swap for the nine months ended September 26, 2020.

The notional amount of the swap totaled $100,000, or 51.3%, of the Term Loan outstanding principal at September 26, 2020. The swap locked in the variable portion of the interest rate on the $100,000 notional at 0.64%. The total long-term debt effective interest rate, with the applicable lending margin of 2.50% and the impact of the swap is fixed at 2.98% as of September 26, 2020.

4. Fair value measurements

Our process for determining fair value have not changed from those described in the December 31, 2019 audited consolidated financial statements of the Company.

There were no assets measured at fair value on a recurring basis and there were no liabilities valued at fair value using Level 1 inputs. The following table provides information for liabilities measured at fair value on a recurring basis using Level 2 and Level 3 inputs:

	September 26, 2020			December 31, 2019
	Total	Level 2	Level 3	Total
Interest rate swap	$ 1,982	$ 1,982	$ —	$ —
Management incentive plan and liability-classified awards	31,666	—	31,666	40,802
Equity Participation Right	4,669	—	4,669	5,457
Total liabilities	$ 38,317	$ 1,982	$ 36,335	$ 46,259

Interest rate swap

The Company values interest rate swaps using discounted cash flows. Forward curves and volatility levels are used to estimate future cash flows that are not certain. These are determined using observable market inputs when available and based on estimates when not available. The fair value of the swap was recorded in the Company's consolidated balance sheets within accrued liabilities. Changes in fair value are recognized as interest expense within the consolidated statements of operations and comprehensive income.

MIP and liability-classified awards

The Company operates two equity-based compensation plans, the MIP and the Phantom Plan. The estimated fair value reflects assumptions made by management as of September 26, 2020, including the impact of COVID-19 on significant unobservable assumptions, such as the expected timing and volume of elective procedures and the impact of these procedures on future revenues which impact the equity value. However, as the impact of COVID-19 on the Company's business is highly uncertain and difficult to predict, and as information surrounding the pandemic is rapidly evolving, the actual amount ultimately paid could be higher or lower than the fair value. The Company has classified $9,580 of the balance as accrued equity-based compensation and $22,086 as accrued equity-based compensation, less current portion as of September 26, 2020. Any changes in fair value are recorded as an operating expense and included within selling, general and administrative expense and research and development expense on the consolidated statement of operations and comprehensive income based upon the classification of the employee.

The following table provides a reconciliation of the beginning and ending balances for the MIP and liability-classified awards at fair value using significant unobservable inputs or Level 3:

Balance at December 31, 2019	$ 40,802
Initial estimate	3,518
Forfeitures	(1,076)
Change in fair value	(1,849)
Payments	(9,729)
Balance at September 26, 2020	$ 31,666

The $1,849 decrease in fair value for the nine months ended September 26, 2020 is primarily attributable to a change in management's forecast of future net sales because of uncertainty in the market and the economy from the impact of COVID-19. In June 2020, the sole MIP awardee exercised the right to force a cash settlement for 150,252 of the 333,330 vested units resulting in a payment of $6,329. The Company agreed to cash settle for the remaining 183,078 units in June 2021 or early at the option of the Company subject to a floor.

EPR Unit

One member owns the only EPR Unit and its only entitlement is 0.55% of available distributions arising from the closing of a sale of units representing a percentage interest of more than 66.66%, or the sale of all or substantially all of the assets of the Company, provided such event constitutes a change of control, or Distribution Event. Upon the conclusion of a Distribution Event, the EPR Unit will cease to exist and all entitlements will end. The estimated fair value reflects assumptions made by management as of September 26, 2020, including potential payment scenarios discounted at rates reflective of the risks associated with the expected future cash flows. The fair value of the EPR Unit was recorded in the Company's condensed consolidated balance sheets as other long-term liabilities. The revaluation for the EPR liability is recognized in interest expense on the consolidated statements of operations and comprehensive income.

The following table provides a reconciliation of the beginning and ending balances for the EPR Unit at fair value using significant unobservable inputs Level 3:

Balance at December 31, 2019	$5,457
Change in fair value	(788)
Balance at September 26, 2020	$4,669

The Company estimated the fair value of the Plans and EPR Unit using a Monte Carlo simulation. This fair value measurement is based on significant inputs that are unobservable in the market, and thus represents a Level 3 measurement. The key assumptions used in applying the valuation model include the Company's equity value, the expected timing until a liquidity event, applicable discount rates applied, and equity volatility. In addition, for the EPR Unit, the estimated accrued preferred distribution at the liquidity event date totaling $44,628 as it is senior in order of payment. Significant changes in these assumptions could result in a significantly higher or lower fair value.

The following table provides a range of key assumptions used within the valuation of the awards as of September 26, 2020:

Valuation technique	Unobservable inputs	Range	Weighted average
Option pricing approach	Time to liquidity event	1.0	1.0
	Risk free rate	0.16%	0.16%
	Equity volatility	40.5% - 100.17%	55.0%
	Equity value	$840,000 - $970,000	$900,000
	Lack of marketability discount	12.0%	12.0%

5. Restructuring costs

Restructuring costs are not allocated to the Company's reportable segments as they are not part of the segment performance measures regularly reviewed by management. These charges are included in restructuring expenses in the consolidated statements of operations and comprehensive income.

The Company adopted a restructuring plan during the fourth quarter of 2018 to improve the performance of International operations, principally through headcount reduction and closing offices in certain countries as the Company shifted to an indirect distribution model in these countries. The plan was completed in 2019. The Company recorded total pre-tax charges of $540 during the nine months ended September 28, 2019 primarily related to severance.

The Company's restructuring charges and payments for all plans are comprised of the following:

	Employee severance and temporary labor costs	Other charges	Total
Balance at December 31, 2018	$ 997	$ 206	$ 1,203
Expenses incurred	460	80	540
Payments made	(1,457)	(286)	(1,743)
Balance at September 28, 2019	$ —	$ —	$ —

6. Equity-based compensation

Excluding the $1,849 decrease in fair market value discussed in Note 4, profits interest compensation of $2,468 and $3,252 was recognized for the nine months ended September 26, 2020 and September 28, 2019, respectively, with $2,139 and $2,924 included in selling, general and administrative expense and the balance in research and development expense. Profits interest forfeiture of $111 was recognized in loss from discontinued operations for the nine months ended September 28, 2019. As of September 26, 2020, there was approximately $8,084 of unrecognized compensation expense to be recognized over a weighted-average period of 1.3 years based on time to vest.

As discussed in Note 4, 150,252 MIP units were converted to cash during the nine months ended September 26, 2020 with a grant date fair value of $4.89. A summary of the award activity of the Phantom Plan for the nine months ended September 26, 2020 is as follows (number of awards in thousands):

	Number of awards	Weighted-average grant-date fair value
Outstanding at December 31, 2019	1,139	$ 10.24
Granted	553	$ 10.29
Converted to cash	(114)	$ 5.98
Forfeited	(115)	$ 13.31
Outstanding at September 26, 2020	1,463	$ 10.35

7. Income taxes

Income tax provisions for interim periods are based on an estimated annual income tax rate, adjusted for discrete tax items. As a result, the Company's interim effective tax rates may vary significantly from the statutory tax rate and the annual effective tax rate. The effective tax rate was 2.4% and 19.6% for the nine months ended September 26, 2020 and September 28, 2019, respectively. The primary factor affecting the Company's effective tax rate for the for the nine months ended September 26, 2020, was Bioventus LLC's pass-through structure for U.S. income tax purposes, while being treated as taxable in certain states and various foreign jurisdictions as well as for certain subsidiaries. The Company does not expect the CARES Act to have a significant impact on the tax provision for income.

8. Commitments and contingencies

Leases

The Company leases its office facilities as well as other property, vehicles and equipment under operating leases. The Company also leases certain office equipment under nominal finance leases. The remaining lease terms range from 6 months to 8 years.

The components of lease cost were as follows:

	Nine Months Ended	
	September 26, 2020	September 28, 2019
Operating lease cost	$ 1,943	$ 1,871
Short-term lease cost[a]	285	178
Total lease cost	$ 2,228	$ 2,049

(a) Includes variable lease cost and sublease income, which are immaterial.

Supplemental cash flow information and non-cash activity related to operating leases were as follows:

	Nine Months Ended	
	September 26, 2020	September 28, 2019
Operating cash flows from operating leases	$ 1,920	$ 1,757
Right-of-use assets obtained in exchange for lease obligations	$ —	$ 4,643

Supplemental balance sheet and other information related to operating leases were as follows:

	September 26, 2020	December 31, 2019
Operating lease assets	$ 13,906	$ 15,267
Operating lease liabilities- current	$ 1,803	$ 1,814
Operating lease liabilities- noncurrent	13,183	14,513
Total operating lease liabilities	$ 14,986	$ 16,327
Weighted average remaining lease term (years)	7.3	8.0
Weighted average discount rate	5.0%	5.0%

OIG's Provider Self-Disclosure

The Company identified non-compliance with certain U.S. federal statutes and requirements governing the Medicare program in 2018 related to improper completion of CMN forms and in November 2018 made a voluntary self-disclosure to the OIG pursuant to the OIG's Provider Self-Disclosure Protocol related to this matter. This non-compliance is subject to statutory CMP on a per claim basis that ranges from nothing to $1 per instance of non-compliance. The Company has estimated the number of impacted claims with improperly completed CMN forms based on the extrapolation of an occurrence rate found in a statistical sample of CMN forms and calculated the potential fine for all impacted claims based on the range above as nothing to $10,800 in aggregate. Although the statutory CMP are reasonably possible, the Company does not believe it is probable that they will be incurred. Additionally, the OIG could require repayment of the total dollar amount of the impacted claims or $30,060 as well as assessing an additional fine equivalent to half the dollar amount of impacted claims or $15,030 for an aggregate potential impact of $55,890. The Company does not believe the requirement to repay the claims and associated fines is probable. Accordingly, no accrual has been recorded for these potential repayment obligations related to improper completion of CMN forms and potential fines at this time. While these matters are not considered probable, the ultimate outcome of these matters is uncertain. In the event of an unfavorable outcome to the Company, these contingencies could have a material adverse effect on the Company's financial position, results of operations, liquidity and cash flows. In October 2019, the Company's legal counsel, received a letter from the Office of the United States Attorney in the Middle District of North Carolina, or the USAO, stating that the USAO would be working with the OIG to resolve the Company's self-disclosure. Subsequently, the Company's legal counsel received requests for further information which was furnished. At this time, the matter remains pending and there has been no indication from the USAO or OIG on the potential outcome of the matter or if claims will be asserted for any additional amounts.

Reserve for estimated overpayments from all third-party payers

The Company maintains a reserve for reimbursement claims related to its Bone Growth Stimulator system that may have been processed for payment by the Company without adequate medical records support. The Company held a reserve of $5,139 and $6,801 at September 26, 2020 and December 31, 2019, respectively, for these amounts. The Company refunded Medicare $7,458 in 2019 and $1,519 during the nine months ended September 26, 2020 related to known and estimated overpayments for medical necessity included in this reserve for periods through December 31, 2019. Certain of these overpayments were identified as potential overpayments in the Company's OIG self-disclosure in November 2018. The OIG is currently reviewing the Company's self-disclosure. The Company's reserve was estimated using extrapolation of an error rate from a statistical sample, which represents the Company's best estimate as of the date of the financial statements, but because of the uncertainty inherent in such estimates, the ultimate resolution may be materially different.

Other matters

On December 9, 2016, the Company entered into an amended and restated license agreement for the exclusive U.S. distribution and commercialization rights of a single injection OA product with the supplier of the Company's single injection OA product for the non-U.S. market. The agreement requires the Company to meet annual minimum purchase requirements and pay royalties on net sales. Royalties related to this agreement totaled $7,038 and $4,973 for the nine months ended September 26, 2020 and September 28, 2019, respectively. These royalties are included in cost of sales on the consolidated statement of operations and comprehensive income.

As part of a supply agreement entered on February 9, 2016, for the Company's three injection OA product, the Company is subject to annual minimum purchase requirements for ten years. After the initial ten years, the agreement will automatically renew for an additional five years unless terminated by the Company or the seller in accordance with the agreement. The agreement requires the Company to pay royalties on net sales. Royalties related to this agreement totaled $2,122 and $3,238 for the nine months ended September 26, 2020 and September 28, 2019, respectively. These royalties are included in cost of sales on the consolidated statement of operations and comprehensive income.

The Company has an exclusive license and supply agreement for the use of bioactive glass in certain of its BGS products. The Company has a world-wide, royalty bearing license, as well as the right to sublicense, for the

use of certain developed technologies related to spine repair. The Company was required to pay a royalty on all commercial sales revenue from the licensed products. The agreement expired in April 2019. The Company has an exclusive license agreement for bioactive bone graft putty. The Company is required to pay a royalty on all commercial sales revenue from the license products with a minimum annual royalty payment through 2023, the date the agreement will expire, upon the expiration of the patent held by the licensor. These royalties are included in cost of sales on the consolidated statement of operations and comprehensive income.

On October 3, 2014, the Company purchased a BGS business. The purchase price included contingent consideration, which consisted of a supply agreement with the previous owner and up to $12,000 for various cash earn-out payments upon the achievement of certain net sales targets, both of which have expired. It also included a royalty on future net sales of certain BGS products beginning January 1, 2019 through December 31, 2023. There are no estimated contingent consideration payments remaining as of September 26, 2020.

In the normal course of business, the Company periodically becomes involved in various claims and lawsuits, and governmental proceedings and investigations that are incidental to the business. With respect to governmental proceedings and investigations, like other companies in our industry, the Company is subject to extensive regulation by national, state and local governmental agencies in the U.S. and in other jurisdictions in which the Company and its affiliates operate. As a result, interaction with governmental agencies is ongoing. The Company's standard practice is to cooperate with regulators and investigators in responding to inquiries. The outcomes of legal actions are not within the Company's complete control and may not be known for extended periods of time. Other than the matters discussed above, management of the Company, after consultation with legal counsel, does not believe there are any unrecorded matters that will have a material adverse effect upon the Company's financial statements.

9. Revenue recognition

Our policies for recognizing sales have not changed from those described in the audited consolidated financial statements of the Company. The Company attributes net sales to external customers to the U.S. and to all foreign countries based on the legal entity from which the sale originated. The following table presents our net sales by segment disaggregated by geographic markets and major product lines as follows:

	Nine Months Ended	
	September 26, 2020	September 28, 2019
Primary geographic markets:		
U.S.	$ 204,022	$ 218,228
International	18,548	24,359
Total net sales	$ 222,570	$ 242,587
Major product lines:		
OA joint pain treatment and joint preservation	$ 118,932	$ 127,623
Minimally invasive fracture treatment	61,433	76,749
Bone graft substitutes	42,205	38,215
Total net sales	$ 222,570	$ 242,587

Contract assets and liabilities

Contract assets consist of unbilled amounts resulting from estimated future royalties from an international distributor that exceeds the amount billed and the right to payment is not solely subject to the passage of time. Contract assets totaling $126 and $261 as of September 26, 2020 and December 31, 2019, are included in prepaid and other current assets on the consolidated balance sheets.

Contract liabilities consist of customer advance payments or deposits and deferred revenue. Occasionally for certain international customers, the Company requires payments in advance of shipping product and recognizing revenue resulting in contract liabilities. Contract liabilities were nominal as of September 26, 2020 and December 31, 2019 and are included in accrued liabilities on the consolidated balance sheets.

10. Segments

The Company's two reportable segments are U.S. and International. The Company's products are primarily sold to orthopedists, musculoskeletal and sports medicine physicians, podiatrists, neurosurgeons and orthopedic spine surgeons, as well as to their patients. The Company does not disclose segment information by asset as the CODM does not review or use it to allocate resources or to assess the operating results and financial performance.

The following table presents segment adjusted EBITDA reconciled to income from continuing operations before income taxes:

	Nine Months Ended	
	September 26, 2020	September 28, 2019
Segment adjusted EBITDA from continuing operations		
U.S.	$ 42,800	$ 44,406
International	1,489	4,077
Depreciation and amortization	(21,789)	(22,972)
Interest expense	(7,095)	(13,935)
Equity compensation	(619)	(3,252)
COVID-19 benefits, net	4,158	—
Succession and transition charges	(5,345)	—
Restructuring costs	—	(540)
Foreign currency impact	58	(146)
Other non-recurring costs	(884)	(4,154)
Income from continuing operations before income taxes	$ 12,773	$ 3,484

11. Discontinued operations

In December 2018, the Company, under the direction and authority of the Company's Board of Managers, committed to shut down the BMP research and development program, which had been reported as a segment in previous years. Substantially, all operations, including project close documentation, contract termination, vacating the facility and ultimately the termination of the employees, ceased by March 2019 and as a result the BMP research and development program met the criteria for discontinued operations. There was no activity related to BMP during the second quarter of 2019. The Company sold the remaining $172 held for sale asset and paid the remaining $400 accrued liability from the BMP research and development program during the nine months ended September 26, 2020.

The following table summarizes the statement of operations information from discontinued operations:

	Nine Months Ended September 28, 2019
Research and development expense	$ 1,626
Income tax benefit	(10)
Loss from discontinued operations, net of tax	$ 1,616

12. Net income (loss) per unit

The following table presents the computation of basic and diluted net income (loss) per unit as follows:

	Nine Months Ended	
	September 26, 2020	September 28, 2019
Net income from continuing operations attributable to unit holders	$ 13,635	$ 2,830
Accumulated and unpaid preferred distributions	(4,525)	(4,421)
Net income allocated to participating shareholders	(5,225)	—
Net income (loss) from continuing operations attributable to common unit holders	3,885	(1,591)
Loss from discontinued operations, net of tax	—	1,616
Net income (loss) attributable to common unit holders	$ 3,885	$ (3,207)
Net income (loss) per unit attributable to common unit holders—basic and diluted		
Net income (loss) from continuing operations	$ 0.79	$ (0.32)
Loss from discontinued operations, net of tax	—	0.33
Net income (loss) attributable to common unit holders	$ 0.79	$ (0.65)
Weighted average units used in computing basic and diluted net income (loss) per common unit	4,900	4,900

The computation of diluted earnings per unit for the nine months ended September 26, 2020 and September 28, 2019 excludes the effect of potential common units that would be issued upon the conversion of preferred units. The effect of these 6,590 units would be antidilutive due to the impact of the accumulated and unpaid preferred distributions as well as the Company being in a net loss position for the nine months ended September 28, 2019. These units only convert upon completion of a Distribution Event.

13. Unaudited pro forma net income per share

Pro forma basic net income per share is calculated by dividing net loss attributable to Class A common stockholders by the number of weighted average shares of Class A common stock after giving effect to the corporate conversion. Pro forma diluted net income per share reflects the exchange of shares of Class B common stock and an adjustment to the net loss attributable to non-controlling interests.

	Nine Months Ended September 26, 2020
Net income per share, basic and diluted:	
Numerator	
Net income from continuing operations	
Less: Net income attributable to non-controlling interests	
Net income from continuing operations attributable to Class A common stockholders	
Net income per share from continuing operations, basic	
Net income per share from continuing operations, diluted	
Numerator	
Net income attributable to unit holders	
Less: Net income attributable to non-controlling interests	
Net income attributable to Class A common stockholders	
Net income per share, basic	
Net income per share, diluted	
Denominator	
Shares of Class A common stock held by the Former LLC Owners	
Weighted-average shares of common stock, basic	
Shares of Class A common stock held by the Former LLC Owners	
Shares of Class B common stock held by the Former LLC Owners	
Weighted-average shares of common stock, diluted	

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Until , 2021 (25 days after the date of this prospectus), all dealers that effect transactions in our securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligations to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

Shares

Class A Common Stock

P r o s p e c t u s

Morgan Stanley *J.P. Morgan* *Goldman Sachs & Co. LLC*

Canaccord Genuity

, 2021

PART II

Information not Required in Prospectus

Item 13. Other Expenses of Issuance and Distribution.

The following table sets forth the fees and expenses, other than the underwriting discounts and commissions, payable by the registrant in connection with the offer and sale of Class A common stock being registered. All amounts shown are estimates except for the SEC, registration fee, the Financial Industry Regulatory Authority, Inc., or FINRA, filing fee and exchange listing fee.

Item	Amount to be paid
SEC registration fee	$ *
FINRA filing fee	*
Exchange listing fee	*
Printing expenses	*
Legal fees and expenses	*
Accounting fees and expenses	*
Transfer agent fees and expenses	*
Miscellaneous expenses	*
Total	$ *

* To be completed by amendment

Item 14. Indemnification of Directors and Officers.

Section 102 of the Delaware General Corporation Law of the State of Delaware, or DGCL, permits a corporation to eliminate the personal liability of directors of a corporation to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director, except where the director breached his or her duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit. Our amended and restated certificate of incorporation provides that none of our directors shall be personally liable to us or our stockholders for monetary damages for any breach of fiduciary duty as a director, notwithstanding any provision of law imposing such liability, except to the extent that the DGCL prohibits the elimination or limitation of liability of directors for breaches of fiduciary duty.

Section 145 of the DGCL provides that a corporation has the power to indemnify a director, officer, employee or agent of the corporation, or a person serving at the request of the corporation for another corporation, partnership, joint venture, trust or other enterprise in related capacities against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with an action, suit or proceeding to which he or she was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of such position, if such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, in any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful, except that, in the case of actions brought by or in the right of the corporation, no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or other adjudicating court determines that, despite the adjudication of liability but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Our amended and restated bylaws provide that we will indemnify each person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding (other than an

action by or in the right of us) by reason of the fact that he or she is or was, or has agreed to become, a director or officer, or, while a director or officer, is or was serving, or has agreed to serve, at our request as a director, officer, partner, employee or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (all such persons being referred to as an Indemnitee), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees), liabilities, losses, judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding and any appeal therefrom, if such Indemnitee acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, our best interests, and, with respect to any criminal action or proceeding, he or she had no reasonable cause to believe his or her conduct was unlawful. Our amended and restated bylaws provide that we will indemnify any Indemnitee who was or is a party to or threatened to be made a party to any threatened, pending or completed action or suit by or in the right of us to procure a judgment in our favor by reason of the fact that the Indemnitee is or was, or has agreed to become, a director or officer, or, while a director or officer, is or was serving, or has agreed to serve, at our request as a director, officer, partner, employee or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise, or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees) actually and reasonably incurred in connection with such action, suit or proceeding, and any appeal therefrom, if the Indemnitee acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, our best interests, except that no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to us, unless a court determines that, despite such adjudication but in view of all of the circumstances, he or she is entitled to indemnification of such expenses. Notwithstanding the foregoing, to the extent that any Indemnitee has been successful, on the merits or otherwise, he or she will be indemnified by us against all expenses (including attorneys' fees) actually and reasonably incurred in connection therewith. Expenses must be advanced to an Indemnitee under certain circumstances.

We have entered into indemnification agreements with each of our directors and officers. These indemnification agreements may require us, among other things, to indemnify our directors and officers for some expenses, including attorneys' fees, judgments, fines and settlement amounts incurred by a director or officer in any action or proceeding arising out of his or her service as one of our directors or officers, or any of our subsidiaries or any other company or enterprise to which the person provides services at our request.

We maintain a general liability insurance policy that covers certain liabilities of directors and officers of our corporation arising out of claims based on acts or omissions in their capacities as directors or officers.

In any underwriting agreement we enter into in connection with the sale of Class A common stock being registered hereby, the underwriters will agree to indemnify, under certain conditions, us, our directors, our officers and persons who control us within the meaning of the Securities Act of 1933, as amended, or the Securities Act, against certain liabilities.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to our directors, officers and controlling persons pursuant to the foregoing provisions, or otherwise, we have been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. Please read "Item 17. Undertakings" for more information on the SEC's position regarding such indemnification provisions.

Item 15. Recent sales of Unregistered Securities.

On July 15, 2016, the registrant agreed to issue ten shares of common stock, par value $0.001 per share, to a former officer of the registrant in exchange for $0.01, which were transferred to an officer of the registrant on September 22, 2020 and will be redeemed upon closing of this offering. The issuance was exempt from registration under Section 4(a)(2) of the Securities Act, as a transaction by an issuer not involving any public offering.

Item 16. Exhibits and Financial Statement Schedules

(a) *Exhibits.* See the Exhibit Index attached to this registration statement, which is incorporated by reference herein.

(b) *Financial Statement Schedules.* Schedules not listed above have been omitted because the information required to be set forth therein is not applicable or is shown in the Financial Statements or notes thereto.

Item 17. Undertakings.

(a) The undersigned Registrant undertakes that in a primary offering of securities of the undersigned Registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned Registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned Registrant relating to the offering required to be filed pursuant to Rule 424 (§ 230.424 of this chapter);

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned Registrant or used or referred to by the undersigned Registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned Registrant or its securities provided by or on behalf of the undersigned Registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned Registrant to the purchaser.

(b) The undersigned Registrant hereby undertakes to provide to the underwriters at the closing specified in the underwriting agreement certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registration has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer, or controlling person of the Registrant in the successful defense of any action, suit, or proceeding) is asserted by such director, officer, or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction, the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

(d) The Registrant hereby further undertakes that:

(1) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the Registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

EXHIBIT INDEX

Exhibit no.	Description
1.1*	Form of Underwriting Agreement.
3.1	Certificate of Incorporation of Bioventus Inc., as currently in effect.
3.2*	Form of Amended and Restated Certificate of Incorporation of Bioventus Inc., to be effective upon the closing of this offering.
3.3	Bylaws of Bioventus Inc., as currently in effect.
3.4*	Form of Amended and Restated Bylaws of Bioventus Inc., to be effective upon the closing of this offering.
4.1	Specimen Stock Certificate evidencing the shares of Class A common stock.
5.1*	Opinion of Latham & Watkins LLP.
10.1*	Form of Tax Receivable Agreement, to be effective upon the closing of this offering.
10.2*	Form of Registration Rights Agreement, to be effective upon the closing of this offering.
10.3	Amended and Restated Limited Liability Company Agreement of Bioventus LLC, as amended, as currently in effect.
10.4*	Form of Second Amended and Restated Bioventus LLC Limited Liability Company Agreement, to be effective upon the closing of this offering.
10.5†	Amended and Restated License Agreement, dated as of December 9, 2016, by and between Bioventus LLC, Q-Med AB and Nestlé Skin Health S.A.
10.6†	Amended and Restated Supply Agreement, dated as of December 9, 2016, by and between Bioventus LLC and Q-Med AB.
10.7†	Exclusive License, Supply and Distribution Agreement, dated as of February 9, 2016, by and between IBSA Institut Biochimique SA (Switzerland) and Bioventus LLC.
10.7(a)†	Amendment No. 1 to Exclusive License, Supply and Distribution Agreement, dated as of December 31, 2018, by and between IBSA Institut Biochimique SA (Switzerland) and Bioventus LLC.
10.7(b)*†	Amendment No. 2 to Exclusive License, Supply and Distribution Agreement, dated as of December 31, 2020, by and between IBSA Institut Biochimique SA (Switzerland) and Bioventus LLC.
10.8*	Form of Stockholders Agreement, to be effective upon the closing of this offering.
10.9†	Amended and Restated Exclusive Distribution Agreement No. 2 by and between Seikagaku Corporation and Bioventus LLC, effective December 22, 2020.
10.10	Option and Equity Purchase Agreement, dated as of July 15, 2020, among Bioventus LLC, CartiHeal (2009) Ltd., the Securityholders set forth on Schedule 1.01(a) thereto, each of the Securityholders from time to time party thereto and Elron Electronic Industries Ltd., in its capacity as the Securityholder Representative.
10.11	Credit and Guaranty Agreement, dated as of December 6, 2019, among Bioventus LLC, Wells Fargo Bank, N.A., as administrative agent, and the lenders thereto.
10.12#	Bioventus LLC Management Incentive Plan.
10.13#	Bioventus LLC Phantom Profits Interest Plan, as amended and restated.

Exhibit no.	Description
10.14#	Management Incentive Plan Award Agreement, dated as of December 2, 2013, by and between Bioventus LLC and Anthony P. Bihl III.
10.15#	Phantom Profits Interest Plan Award Agreement, dated as of April 21, 2016, by and between Bioventus LLC and Anthony P. Bihl III.
10.16#	Phantom Profits Interest Plan Award Agreement, dated as of September 17, 2018, by and between Bioventus LLC and Anthony P. Bihl III.
10.17#	Phantom Profits Interests Plan Award Agreement, dated as of January 1, 2016, by and between Bioventus LLC and William A. Hawkins.
10.18#	Phantom Profits Interests Plan Award Agreement, dated as of October 9, 2018, by and between Bioventus LLC and Susan M. Stalnecker.
10.19#	Phantom Profits Interests Plan Award Agreement, dated as of June 25, 2020, by and between Bioventus LLC and Kenneth M. Reali.
10.20#	Phantom Profits Interests Plan Award Agreement, dated as of April 4, 2016, by and between Bioventus LLC and Gregory O. Anglum.
10.21#	Phantom Profits Interests Plan Award Agreement, dated as of October 27, 2017, by and between Bioventus LLC and Gregory O. Anglum.
10.22#	Phantom Profits Interests Plan Award Agreement, dated as of September 17, 2018, by and between Bioventus LLC and Gregory O. Anglum.
10.23#	Phantom Profits Interests Plan Award Agreement, dated as of February 6, 2017, by and between Bioventus LLC and John E. Nosenzo.
10.24#	Phantom Profits Interests Plan Award Agreement, dated as of September 17, 2018, by and between Bioventus LLC and John E. Nosenzo.
10.25#	Phantom Profits Interests Plan Award Agreement, dated as of July 22, 2013, by and between Bioventus LLC and Alessandra Pavesio.
10.26#	Phantom Profits Interests Plan Award Agreement, dated as of June 1, 2015, by and between Bioventus LLC and Alessandra Pavesio.
10.27#	Phantom Profits Interests Plan Award Agreement, dated as of April 21, 2016, by and between Bioventus LLC and Alessandra Pavesio.
10.28#	Phantom Profits Interests Plan Award Agreement, dated as of September 17, 2018, by and between Bioventus LLC and Alessandra Pavesio.
10.29#	Phantom Profits Interests Plan Award Agreement, dated as of October 27, 2017, by and between Bioventus LLC and Anthony D’Adamio.
10.30#	Phantom Profits Interests Plan Award Agreement, dated as of September 17, 2018, by and between Bioventus LLC and Anthony D’Adamio.
10.31#	Employment Letter, dated as of June 13, 2013, by and between Bioventus LLC and Alessandra Pavesio.
10.32#	Employment Letter, dated as of November 4, 2013, by and between Bioventus LLC and Anthony P. Bihl III.
10.32(a)#	Amendment to Employment Letter, dated as of October 17, 2019, by and between Bioventus LLC and Anthony P. Bihl III.
10.33#	Director Offer Letter, dated as of December 11, 2015, by and between Bioventus LLC and William A. Hawkins.

Exhibit no.	Description
10.34#	Employment Letter, dated as of November 18, 2016, by and between Bioventus LLC and John E. Nosenzo.
10.35#	Retention Letter, dated April 13, 2020, by and between Bioventus LLC and John E. Nosenzo.
10.36#	Employment Letter, dated as of July 11, 2017, by and between Bioventus LLC and Anthony D'Adamio.
10.37#	Employment Letter, dated as of August 2, 2017, by and between Bioventus LLC and Gregory O. Anglum.
10.38#	Director Offer Letter, dated as of October 3, 2018, by and between Bioventus LLC and Susan M. Stalnecker.
10.39#	Employment Letter, dated as of March 12, 2020, by and between Bioventus LLC and Kenneth M. Reali.
10.40#	Amendment to Employment Letter, dated as of April 24, 2020, by and between Bioventus LLC and Kenneth M. Reali.
10.41#	Payout Agreement Letter, dated as of June 12, 2020, by and between Bioventus LLC and Anthony P. Bihl, III.
10.42#	Phantom Profits Interest Plan Award Agreement, dated as of June 25, 2020, by and between Bioventus LLC and Kenneth M. Reali
10.43#	Option Letter, dated as of July 30, 2020, by and between Bioventus LLC and Kenneth M. Reali
10.44*	Form of Indemnification Agreement.
16.1	Letter from PricewaterhouseCoopers LLP.
21.1*	List of subsidiaries of Bioventus Inc.
23.1	Consent of Grant Thornton LLP.
23.2	Consent of PricewaterhouseCoopers LLP.
23.3*	Consent of Latham & Watkins LLP (included in Exhibit 5.1).
24.1	Power of Attorney (included on signature page).

* To be filed by amendment.
\# Indicates management contract or compensatory plan.
† Certain portions of this exhibit have been omitted pursuant to Regulation S-K, Item (601)(b)(10).
\+ Schedules omitted pursuant to Item 601(a)(5) of Regulation S-K. Bioventus, Inc. agrees to furnish supplementally a copy of any omitted schedule to the SEC upon request.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant has duly caused this Registration Statement on Form S-1 to be signed on its behalf by the undersigned, thereunto duly authorized, in Durham, North Carolina, on this 19th day of January, 2021.

Bioventus Inc.

By: /s/ Kenneth M. Reali
Name: Kenneth M. Reali
Title: Chief Executive Officer and Director

SIGNATURES AND POWER OF ATTORNEY

Each of the undersigned officers and directors of Bioventus Inc. hereby constitutes and appoints Kenneth M. Reali and Gregory O. Anglum, and each of them any of whom may act without joinder of the other, the individual's true and lawful attorneys-in-fact and agents, each with full power of substitution and resubstitution for the person and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement (or any other registration statement for the same offering that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act of 1933), and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite or necessary to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed below by the following persons on behalf of the Registrant and in the capacities indicated on January 19, 2021:

Name	Title
/s/ Kenneth M. Reali Kenneth M. Reali	Chief Executive Officer and Director (Principal Executive Officer)
/s/ Gregory O. Anglum Gregory O. Anglum	Senior Vice President and Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)
/s/ William A. Hawkins III William A. Hawkins III	Chairman
/s/ Phillip G. Cowdy Phillip G. Cowdy	Director
/s/ Guido J. Neels Guido J. Neels	Director
/s/ Guy P. Nohra Guy P. Nohra	Director
/s/ David J. Parker David J. Parker	Director
/s/ Susan M. Stalnecker Susan M. Stalnecker	Director
/s/ Martin P. Sutter Martin P. Sutter	Director

Exhibit 3.1

CERTIFICATE OF INCORPORATION
OF
BIOVENTUS INC.

FIRST: The name of the corporation is Bioventus Inc, (the *"Corporation").*

SECOND: The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street, in the city of Wilmington, County of New Castle, 19801. The name of its registered agent at such address is The Corporation Trust Company.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware (the "*DGCL*").

FOURTH: The total number of shares of stock which the Corporation shall have authority to issue is 100 shares, having a par value of $.001 per share. All such shares are Common Stock.

FIFTH: The name and mailing address of the incorporator is:

Jeanne M. Forneris
Bioventus LLC
4721 Emperor Boulevard
Suite 100
Durham, North Carolina 27703

SIXTH: In furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the Corporation (the "*Board of Directors*") is expressly authorized to make, alter or repeal the bylaws of the Corporation (the "*Bylaws*").

SEVENTH: Election of directors comprising the Board of Directors (each such director, in its capacity as such, a "*Director*") need not be by written ballot unless the Bylaws shall so provide.

EIGHTH: No Director shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL, or (iv) for any transaction from which the Director derived an improper personal benefit.

NINTH: The Corporation expressly elects not to be governed by Section 203 of the DGCL.

I, THE UNDERSIGNED, being the sole incorporator hereinbefore named, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, do make this certificate, herein declaring and certifying that this is my act and deed and the facts herein stated are true, and accordingly have hereunto set my hand this 22nd day of December, 2015,

/s/ Jeanne M. Forneris

Jeanne M. Forneris
Sole Incorporator

Exhibit 3.3

BYLAWS

OF

BIOVENTUS INC.

As effective on December 22, 2015

BYLAWS

OF

BIOVENTUS INC.

ARTICLE I.

Meetings of Stockholders

Section 1.1. Annual Meetings. If required by applicable law, an annual meeting of stockholders shall be held for the election of directors at such date, time and place, if any, either within or without the State of Delaware, as may be designated by resolution of the board of directors of the Corporation (the "Board of Directors") from time to time. Any other proper business may be transacted at the annual meeting. The Board of Directors may postpone, reschedule or cancel any annual meeting of stockholders previously scheduled by the Board of Directors.

Section 1.2. Special Meetings. Special meetings of stockholders for any purpose or purposes may be called at any time by the Board of Directors, but such special meetings may not be called by any other person or persons. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice. The Board of Directors may postpone, reschedule or cancel any special meeting of stockholders previously scheduled by the Board of Directors.

Section 1.3. Notice of Meetings. Whenever stockholders are required or permitted to take any action at a meeting, a notice of the meeting shall be given that shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the meeting) and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by law, the certificate of incorporation or these bylaws, the notice of any meeting shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at the meeting as of the record date for determining the stockholders entitled to notice of the meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the corporation.

Section 1.4. Adjournments. Any meeting of stockholders, annual or special, may adjourn from time to time to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for determination of stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record as of the record date so fixed for notice of such adjourned meeting.

Section 1.5. Quorum. Except as otherwise provided by law, the certificate of incorporation or these bylaws, at each meeting of stockholders the presence in person or by proxy of the holders of a majority in voting power of the outstanding shares of stock entitled to vote at the meeting shall be necessary and sufficient to constitute a quorum. In the absence of a quorum, the stockholders so present may, by a majority in voting power thereof, adjourn the meeting from time to time in the manner provided in Section 1.4 of these bylaws until a quorum shall attend. Shares of its own stock belonging to the corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the corporation or any subsidiary of the corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity.

Section 1.6. Organization. Meetings of stockholders shall be presided over by the Chairperson of the Board, if any, or in his or her absence by the Vice Chairperson of the Board, if any, or in his or her absence by the President, or in his or her absence by a Vice President, or in the absence of the foregoing persons by a chairperson designated by the Board of Directors, or in the absence of such designation by a chairperson chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence the chairperson of the meeting may appoint any person to act as secretary of the meeting.

Section 1.7. Voting; Proxies. Except as otherwise provided by or pursuant to the provisions of the certificate of incorporation, each stockholder entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of stock held by such stockholder which has voting power upon the matter in question. Each stockholder entitled to vote at a meeting of stockholders or to express consent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary of the corporation a revocation of the proxy or a new proxy bearing a later date. Voting at meetings of stockholders need not be by written ballot. At all meetings of stockholders for the election of directors at which a quorum is present a plurality of the votes cast shall be sufficient to elect. All other elections and questions presented to the stockholders at a meeting at which a quorum is present shall, unless otherwise provided by the certificate of incorporation, these bylaws, the rules or regulations of any stock exchange applicable to the corporation, or applicable law or pursuant to any regulation applicable to the corporation or its securities, be decided by the affirmative vote of the holders of a majority in voting power of the shares of stock of the corporation which are present in person or by proxy and entitled to vote thereon.

Section 1.8. Fixing Date for Determination of Stockholders of Record.

(a) In order that the corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

(b) In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which shall not be more than sixty (60) days prior to such other action. If no such record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

(c) Unless otherwise restricted by the certificate of incorporation, in order that the corporation may determine the stockholders entitled to express consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date for determining stockholders entitled to express consent to corporate action in writing without a meeting is fixed by the Board of Directors, (i) when no prior action of the Board of Directors is required by law, the record date for such purpose shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation in accordance with applicable law, and (ii) if prior action by the Board of Directors is required by law, the record date for such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

Section 1.9. List of Stockholders Entitled to Vote. The officer who has charge of the stock ledger shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting (provided, however, if the record date for determining the stockholders entitled to vote is less than ten (10) days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date), arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting at least ten (10) days prior to the meeting (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of meeting or (ii) during ordinary business hours at the principal place of business of the corporation. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 1.9 or to vote in person or by proxy at any meeting of stockholders.

Section 1.10. Action By Written Consent of Stockholders. Unless otherwise restricted by the certificate of incorporation, any action required or permitted to be taken at any annual or special meeting of the stockholders may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the corporation having custody of the book in which minutes of proceedings of stockholders are recorded. Delivery made to the corporation’s registered office shall be by hand or by certified or registered mail, return receipt requested. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall, to the extent required by law, be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for notice of such meeting had been the date that written consents signed by a sufficient number of holders to take the action were delivered to the corporation.

Section 1.11. Inspectors of Election. The corporation may, and shall if required by law, in advance of any meeting of stockholders, appoint one or more inspectors of election, who may be employees of the corporation, to act at the meeting or any adjournment thereof and to make a written report thereof. The corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. In the event that no inspector so appointed or designated is able to act at a meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath to execute faithfully the duties of inspector with strict impartiality and according to the best of his or her ability. The inspector or inspectors so appointed or designated shall (i) ascertain the number of shares of capital stock of the corporation outstanding and the voting power of each such share, (ii) determine the shares of capital stock of the corporation represented at the meeting and the validity of proxies and ballots, (iii) count all votes and ballots, (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (v) certify their determination of the number of shares of capital stock of the corporation represented at the meeting and such inspectors' count of all votes and ballots. Such certification and report shall specify such other information as may be required by law. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders of the corporation, the inspectors may consider such information as is permitted by applicable law. No person who is a candidate for an office at an election may serve as an inspector at such election.

Section 1.12. Conduct of Meetings. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board of Directors may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the person presiding over any meeting of stockholders shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding person, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the presiding person of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the presiding person of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. The presiding person at any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if such presiding person should so determine, such presiding person shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board of Directors or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

ARTICLE II.

Board of Directors

Section 2.1. Number; Qualifications. The Board of Directors shall consist of one or more members, the number thereof to be determined from time to time by resolution of the Board of Directors. Directors need not be stockholders.

Section 2.2. Election; Resignation; Vacancies. The Board of Directors shall initially consist of the persons named as directors in the certificate of incorporation or elected by the incorporator of the corporation, and each director so elected shall hold office until the first annual meeting of stockholders or until his or her successor is duly elected and qualified. At the first annual meeting of stockholders and at each annual meeting thereafter, the stockholders shall elect directors each of whom shall hold office for a term of one year or until his or her successor is duly elected and qualified, subject to such director's earlier death, resignation, disqualification or removal. Any director may resign at any time upon notice to the corporation. Unless otherwise provided by law or the certificate of incorporation, any newly created directorship or any vacancy occurring in the Board of Directors for any cause may be filled by a majority of the remaining members of the Board of Directors, although such majority is less than a quorum, or by a plurality of the votes cast at a meeting of stockholders, and each director so elected shall hold office until the expiration of the term of office of the director whom he or she has replaced or until his or her successor is elected and qualified.

Section 2.3. Regular Meetings. Regular meetings of the Board of Directors may be held at such places within or without the State of Delaware and at such times as the Board of Directors may from time to time determine.

Section 2.4. Special Meetings. Special meetings of the Board of Directors may be held at any time or place within or without the State of Delaware whenever called by the President, any Vice President, the Secretary, or by any member of the Board of Directors. Notice of a special meeting of the Board of Directors shall be given by the person or persons calling the meeting at least twenty-four hours before the special meeting.

Section 2.5. Telephonic Meetings Permitted. Members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 2.5 shall constitute presence in person at such meeting.

Section 2.6. Quorum; Vote Required for Action. At all meetings of the Board of Directors the directors entitled to cast a majority of the votes of the whole Board of Directors shall constitute a quorum for the transaction of business. Except in cases in which the certificate of incorporation, these bylaws or applicable law otherwise provides, a majority of the votes entitled to be cast by the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 2.7. Organization. Meetings of the Board of Directors shall be presided over by the Chairperson of the Board, if any, or in his or her absence by the Vice Chairperson of the Board, if any, or in his or her absence by the President, or in their absence by a chairperson chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence the chairperson of the meeting may appoint any person to act as secretary of the meeting.

Section 2.8. Action by Unanimous Consent of Directors. Unless otherwise restricted by the certificate of incorporation or these bylaws, any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board of Directors or such committee, as the case may be, consent thereto in writing or by electronic transmission and the writing or writings or electronic transmissions are filed with the minutes of proceedings of the board or committee in accordance with applicable law.

ARTICLE III.

Committees

Section 3.1. Committees. The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of the committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent permitted by law and to the extent provided in a resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it.

Section 3.2. Committee Rules. Unless the Board of Directors otherwise provides, each committee designated by the Board of Directors may make, alter and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board of Directors conducts its business pursuant to Article II of these bylaws.

ARTICLE IV.

Officers

Section 4.1. Officers; Election; Qualifications; Term of Office; Resignation; Removal; Vacancies. The Board of Directors shall elect a President and Secretary, and it may, if it so determines, choose a Chairperson of the Board and a Vice Chairperson of the Board from among its members. The Board of Directors may also choose one or more Vice Presidents, one or more Assistant Secretaries, a Treasurer and one or more Assistant Treasurers and such other officers as it shall from time to time deem necessary or desirable. Each such officer shall hold office until the first meeting of the Board of Directors after the annual meeting of stockholders next succeeding his or her election, and until his or her successor is elected and qualified or until his or her earlier resignation or removal. Any officer may resign at any time upon written notice to the corporation. The Board of Directors may remove any officer with or without cause at any time, but such removal shall be without prejudice to the contractual rights of such officer, if any, with the corporation. Any number of offices may be held by the same person. Any vacancy occurring in any office of the corporation by death, resignation, removal or otherwise may be filled for the unexpired portion of the term by the Board of Directors at any regular or special meeting.

Section 4.2. Powers and Duties of Officers. The officers of the corporation shall have such powers and duties in the management of the corporation as may be prescribed in a resolution by the Board of Directors and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the Board of Directors. The Board of Directors may require any officer, agent or employee to give security for the faithful performance of his or her duties.

Section 4.3. Appointing Attorneys and Agents; Voting Securities of Other Entities. Unless otherwise provided by resolution adopted by the Board of Directors, the Chairperson of the Board, the President or any Vice President may from time to time appoint an attorney or attorneys or agent or agents of the corporation, in the name and on behalf of the corporation, to cast the votes which the corporation may be entitled to cast as the holder of stock or other securities in any other corporation or other entity, any of whose stock or other securities may be held by the corporation, at meetings of the holders of the stock or other securities of such other corporation or other entity, or to consent in writing, in the name of the corporation as such holder, to any action by such other corporation or other entity, and may instruct the person or persons so appointed as to the manner of casting such votes or giving such consents, and may execute or cause to be executed in the name and on behalf of the corporation and under its corporate seal or otherwise, all such written proxies or other instruments as he or she may deem necessary or proper. Any of the rights set forth in this Section 4.3 which may be delegated to an attorney or agent may also be exercised directly by the Chairperson of the Board, the President or the Vice President.

ARTICLE V.

Stock

Section 5.1. Certificates. The shares of the corporation shall be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Every holder of stock represented by certificates shall be entitled to have a certificate signed by or in the name of the corporation by the Chairperson or Vice Chairperson of the Board of Directors, if any, or the President or a Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary, of the corporation certifying the number of shares owned by such holder in the corporation. Any of or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if such person were such officer, transfer agent, or registrar at the date of issue.

Section 5.2. Lost, Stolen or Destroyed Stock Certificates; Issuance of New Certificates. The corporation may issue a new certificate of stock in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the corporation may require the owner of the lost, stolen or destroyed certificate, or such owner’s legal representative, to give the corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

ARTICLE VI.

Indemnification and Advancement of Expenses

Section 6.1. Right to Indemnification. The corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (a "Covered Person") who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding"), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer of the corporation or, while a director or officer of the corporation, is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such Covered Person. Notwithstanding the preceding sentence, except as otherwise provided in Section 6.3, the corporation shall be required to indemnify a Covered Person in connection with a proceeding (or part thereof) commenced by such Covered Person only if the commencement of such proceeding (or part thereof) by the Covered Person was authorized in the specific case by the Board of Directors of the corporation.

Section 6.2. Advancement of Expenses. The corporation shall to the fullest extent not prohibited by applicable law pay the expenses (including attorneys' fees) incurred by a Covered Person in defending any proceeding in advance of its final disposition, provided, however, that, to the extent required by law, such payment of expenses in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by the Covered Person to repay all amounts advanced if it should be ultimately determined that the Covered Person is not entitled to be indemnified under this Article VI or otherwise.

Section 6.3. Claims. If a claim for indemnification under this Article VI (following the final disposition of such proceeding) is not paid in full within sixty days after the corporation has received a claim therefor by the Covered Person, or if a claim for any advancement of expenses under this Article VI is not paid in full within thirty days after the corporation has received a statement or statements requesting such amounts to be advanced, the Covered Person shall thereupon (but not before) be entitled to file suit to recover the unpaid amount of such claim. If successful in whole or in part, the Covered Person shall be entitled to be paid the expense of prosecuting such claim to the fullest extent permitted by law. In any such action, the corporation shall have the burden of proving that the Covered Person is not entitled to the requested indemnification or advancement of expenses under applicable law.

Section 6.4. Nonexclusivity of Rights. The rights conferred on any Covered Person by this Article VI shall not be exclusive of any other rights which such Covered Person may have or hereafter acquire under any statute, provision of the certificate of incorporation, these bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

Section 6.5. Other Sources. The corporation's obligation, if any, to indemnify or to advance expenses to any Covered Person who was or is serving at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise or nonprofit entity shall be reduced by any amount such Covered Person may collect as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, enterprise or non-profit enterprise.

Section 6.6. Amendment or Repeal. Any right to indemnification or to advancement of expenses of any Covered Person arising hereunder shall not be eliminated or impaired by an amendment to or repeal of these bylaws after the occurrence of the act or omission that is the subject of the civil, criminal, administrative or investigative action, suit or proceeding for which indemnification or advancement of expenses is sought.

Section 6.7. Other Indemnification and Advancement of Expenses. This Article VI shall not limit the right of the corporation, to the extent and in the manner permitted by law, to indemnify and to advance expenses to persons other than Covered Persons when and as authorized by appropriate corporate action.

ARTICLE VII.

Miscellaneous

Section 7.1. Fiscal Year. The fiscal year of the corporation shall be determined by resolution of the Board of Directors.

Section 7.2. Seal. The corporate seal shall have the name of the corporation inscribed thereon and shall be in such form as may be approved from time to time by the Board of Directors.

Section 7.3. Manner of Notice. Except as otherwise provided herein or permitted by applicable law, notices to directors and stockholders shall be in writing and delivered personally or mailed to the directors or stockholders at their addresses appearing on the books of the corporation. Without limiting the manner by which notice otherwise may be given effectively to stockholders, and except as prohibited by applicable law, any notice to stockholders given by the corporation under any provision of applicable law, the certificate of incorporation, or these bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Any such consent shall be revocable by the stockholder by written notice to the corporation. Any stockholder who fails to object in writing to the corporation, within 60 days of having been given written notice by the corporation of its intention to send the single notice permitted under this Section 7.3, shall be deemed to have consented to receiving such single written notice. Notice to directors may be given by telecopier, telephone or other means of electronic transmission.

Section 7.4. Waiver of Notice of Meetings of Stockholders, Directors and Committees. Any waiver of notice, given by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of the stockholders, directors, or members of a committee of directors need be specified in a waiver of notice.

Section 7.5. Form of Records. Any records maintained by the corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept on, or by means of, or be in the form of, any information storage device or method, provided that the records so kept can be converted into clearly legible paper form within a reasonable time.

Section 7.6. Amendment of Bylaws. These bylaws may be altered, amended or repealed, and new bylaws made, by the Board of Directors, but the stockholders may make additional bylaws and may alter and repeal any bylaws whether adopted by them or otherwise.

Exhibit 4.1


bioventus™
INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE
SEE REVERSE FOR CERTAIN DEFINITIONS
CUSIP
THIS CERTIFIES THAT
IS THE OWNER OF
FULLY PAID AND NONASSESSABLE SHARES OF THE CLASS A COMMON STOCK, PAR VALUE $0.001 PER SHARE, OF
BIOVENTUS INC.
transferable on the books of the Corporation in person or by duly authorized attorney upon surrender of this certificate properly endorsed.
This certificate is not valid until countersigned and registered by the Transfer Agent and Registrar.
Witness the facsimile seal of the Corporation and the facsimile signatures of its duly authorized officers.
Dated:
SR. VICE PRESIDENT AND CHIEF FINANCIAL OFFICER
BIOVENTUS INC. CORPORATE SEAL 2015 DELAWARE
CHIEF EXECUTIVE OFFICER
AMERICAN STOCK TRANSFER & TRUST COMPANY, LLC


ABCorp
711 ARMSTRONG LANE
COLUMBIA, TN 38401
PROOF OF DECEMBER 3, 2020
BIOVENTUS INC.
WO - 20000352 FACE
OPERATOR: DIS
REV. 1
PLEASE INITIAL THE APPROPRIATE SELECTION FOR THIS PROOF: OK AS IS OK WITH CHANGES MAKE CHANGES AND SEND ANOTHER PROOF
COLORS SELECTED FOR PRINTING. INTAGLIO PRINTS IN SC-13 RED. LOGO PRINTS IN 4 COLOR PROCESS.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM	– as tenants in common
TEN ENT	– as tenants by the entireties
JT TEN	– as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT MIN ACT– _____ (Cust) Custodian _____ (Minor)
under Uniform Gifts to Minors Act _____ (State)

Additional abbreviations may also be used though not in the above list.

For value received, the undersigned hereby sells, assigns and transfers unto

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER

_____
(PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS, INCLUDING ZIP CODE OF ASSIGNEE)

_____

_____ shares
of the common stock represented by the within Certificate, and do hereby irrevocably constitute and appoint

_____ Attorney
to transfer the said stock on the books of the within named Corporation with full power of substitution in the premises.

Dated _____

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATEVER.

Signature(s) Guaranteed:

_____
THE SIGNATURE(S) SHOULD BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION (BANKS, STOCKBROKERS, SAVINGS AND LOAN ASSOCIATIONS AND CREDIT UNIONS WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM), PURSUANT TO S.E.C. RULE 17Ad-15.

ABCorp Secure since 1795	711 ARMSTRONG LANE COLUMBIA, TN 38401 (931) 388-3003	PROOF OF: OCTOBER 13, 2020 BIOVENTUS INC. WO - 20000352 BACK OPERATOR: DKS
PRODUCTION COORDINATOR: RACHAEL PORTER 931-305-2898		NEW

PLEASE INITIAL THE APPROPRIATE SELECTION FOR THIS PROOF: ☐OK AS IS ☐OK WITH CHANGES ☐MAKE CHANGES AND SEND ANOTHER PROOF

Exhibit 10.3

EXECUTION VERSION

BIOVENTUS LLC

AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT

dated as of

May 4, 2012

among

SMITH & NEPHEW, INC.,

BELUGA I, INC.,

BELUGA II, INC.,

BELUGA III, INC.,

BELUGA IV, INC.,

BELUGA V, INC.,

BELUGA VI, INC.,

BELUGA VII, INC.,

BELUGA VII-A, INC.,

BELUGA VIII, INC.

and

BIOVENTUS LLC

TABLE OF CONTENTS

AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT

OF

BIOVENTUS LLC

THIS AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (this "**Agreement**") of Bioventus LLC (the "**Company**") is dated as of May 4, 2012 among the Company, Smith & Nephew, Inc., a Delaware corporation ("**S&N**"), Beluga I, Inc., a Delaware corporation ("**Beluga I**"), Beluga II, Inc., a Delaware corporation ("**Beluga II**"), Beluga III, Inc., a Delaware corporation ("**Beluga III**"), Beluga IV, Inc., a Delaware corporation ("**Beluga IV**"), Beluga V, Inc., a Delaware corporation ("**Beluga V**"), Beluga VI, Inc., a Delaware corporation ("**Beluga VI**"), Beluga VII, Inc., a Delaware corporation ("**Beluga VII**"), Beluga VII-A, Inc., a Delaware corporation ("**Beluga VII-A**"), Beluga VIII, Inc., a Delaware corporation ("**Beluga VIII**"), Mark A. Augusti and each other Member listed on the signature pages hereto from time to time.

WITNESSETH:

WHEREAS, the Company was formed as a limited liability company pursuant to Delaware Law by filing a Certificate of Formation with the Office of the Secretary of State of the State of Delaware on November 23, 2011, and S&N, as the sole initial member, entered into a Limited Liability Company Agreement of the Company (the "**Initial LLC Agreement**") dated November 29, 2011;

WHEREAS, on the date hereof, pursuant to transactions consummated in accordance with (i) the Purchase Agreement (as amended from time to time, the "**Purchase Agreement**") dated as of January 3, 2012 among S&N, Smith & Nephew plc ("**S&N plc**") and the Essex Members, (ii) the Contribution Agreement (as amended from time to time, the "**S&N-Company Contribution Agreement**") dated as of January 3, 2012 among S&N, S&N plc, the Essex Members and the Company and (iii) the Contribution Agreement (as amended from time to time, the "**Essex-Company Contribution Agreement**", and together with the S&N-Company Contribution Agreement, the "**U.S. Contribution Agreements**") dated as of January 3, 2012 among the Essex Members and the Company, the Company has issued Preferred Units to each Essex Member and Common Units and an EPR Unit to S&N, in each case in the amounts set forth on Schedule I hereto;

WHEREAS, immediately following the closing of the transactions contemplated by the U.S. Contribution Agreements, the Essex Members shall hold 4,659,153 Preferred Units in the aggregate and S&N shall hold 4,476,440 Common Units and one EPR Unit;

WHEREAS, on the date hereof, the Profits Interest Members shall be issued 288,889 Profits Interest Units in the aggregate pursuant to the Management Incentive Plan and certain Award Agreements (in each case, as defined below) between the Company and such Profits Interest Members;

WHEREAS, the parties hereto wish to enter into this Agreement, effective immediately following the consummation of the transactions contemplated by the Essex-Company Contribution Agreement, to, among other things, (i) amend and restate the Initial LLC Agreement in its entirety and to memorialize the recapitalization of the Company, (ii) admit the Essex Members and the Profits Interest Members as Members, (iii) provide for the management of the Company and (iv) set forth the respective rights and obligations of Members of the Company generally;

WHEREAS, on June 1, 2012, pursuant to transactions consummated in accordance with the OUS Contribution and Purchase Agreement (the "**OUS Contribution Agreement**") dated as of January 3, 2012 among S&N plc, the Essex Members and the Company, the Company will issue 440,847 Preferred Units in the aggregate to the Essex Members and 423,560 OUS Units to Smith & Nephew OUS, Inc., a Delaware corporation ("**S&N Blocker**") and/or to S&N;

WHEREAS, immediately following the Initial OUS Closing (as defined in the OUS Contribution Agreement), the Essex Members shall hold 5,100,000 Preferred Units in the aggregate and S&N and S&N Blocker shall hold 4,900,000 Common Units and OUS Units in the aggregate (in each case, assuming that no Units have been Transferred by, or otherwise issued to, any such Person prior to the Initial OUS Closing); and

WHEREAS, the parties hereto intend that the rights of the OUS Units hereunder will include a claim on the OUS Gain, on the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1
DEFINITIONS

Section 1.01 *Definitions.* (a) As used herein, the following terms have the following meanings:

"**Affiliate**" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such other Person. For purposes of this definition, (i) "**control**" when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "**controlling**" and "**controlled**" have correlative meanings, and (ii) no Member or any of its Affiliates shall by reason of this Agreement or the Related Documents be deemed to be an Affiliate of any other Member or of the Company.

"**Applicable Class Percentage**" means, as of any applicable time, with respect to any Class of Profits Interest Units, (i) the Outstanding Number of Profits Interest Units of such Class of Profits Interest Units *divided by* (ii) the total number of Units then outstanding, excluding the EPR Unit.

"**Applicable Law**" means, with respect to any Person, any transnational, domestic or foreign federal, provincial, state or local law (statutory, common or otherwise), constitution, directive, treaty, convention, ordinance, code, rule, regulation, order, injunction, judgment, decree, ruling, writ, stipulation, determination, award or other similar requirement enacted, adopted, promulgated, applied or entered by a Governmental Authority that is binding upon or applicable to such Person, as amended unless expressly specified otherwise.

"**Assumed Tax Rate**" means 40%, or such higher rate as may from time to time be determined by the Board of Managers.

"**Award Agreement**" means a grant, purchase or other agreement between the Company and a Profits Interest Member pursuant to which the Company has issued Profits Interest Units to such Profits Interest Member or between the Company and any grantee under the Phantom Profits Interest Units Plan pursuant to which the Company has issued Phantom Profits Interest Units to such grantee.

"**Benchmark Amount**" means, with respect to any Class of Profits Interest Units, the cumulative distributions that must be made by the Company to the Members pursuant to Section 4.01 (other than Preferred Distributions and Accrued Preferred Distributions and, for the avoidance of doubt, any Tax Distribution (or distribution treated as a Tax Distribution) made pursuant to Section 4.02) and Sections 10.05(a)(ii) through (v) before a Profits Interest Member is entitled to receive any distributions in respect of the Profits Interest Units of such Class of Profits Interest Units.

"**Book Value**" means, with respect to any property of the Company, the Company's adjusted basis in such property for federal income tax purposes, *provided* that (i) the initial Book Value of any property contributed to the Company shall the gross fair market value of such asset on the date of the contribution, and (ii) Book Value shall be adjusted from time to time to reflect the adjustments required or permitted by Treasury Regulations Section 1.704-l(b)(2)(iv)(e)-(g).

"**Business Day**" means a day, other than Saturday, Sunday or other day on which commercial banks in New York, New York or London, England are authorized or required by Applicable Law to close.

"**Capital Account**" means the separate account established by the Company for each Member according to the rules of Treasury Regulation Section 1.704-l(b)(2)(iv). For this purpose, the Company may (in the discretion of the Board of Managers), upon the occurrence of the events specified in Treasury Regulation Section 1.704-l(b)(2)(iv)(f), increase or decrease the Capital Accounts in accordance with the rules of such regulation and Treasury Regulation Section 1.704-l(b)(2)(iv)(g) to reflect a revaluation of Company property.

"**Capital Contribution**" means any cash, third party promissory obligations (valued at the fair market value thereof) or other property (valued at the fair market value thereof) which a Member contributes to the Company. The Capital Contribution of each of the Members for their Units is set forth on Schedule I attached hereto, as the same may be amended from time to time in accordance with the requirements of this Agreement. Each Member (other than the Investors) acknowledges and agrees that Schedule I may be redacted or information thereon may otherwise be aggregated to prevent disclosure of confidential information as the Board of Managers may determine from time to time.

"**Certificate of Formation**" means the Certificate of Formation of the Company filed with the office of the Secretary of State of the State of Delaware, as it may be amended from time to time.

"**Class Entitlement per Unit**" means, as of any applicable time, with respect to any Class of Profits Interest Units, an amount equal to (i) the Applicable Class Percentage of such Class of Profits Interest Units *multiplied by* (ii) the excess, if any, of (A) the Amount Available for Distribution over (B) the sum of the Benchmark Amount applicable to such Class of Profits Interest Units and the amount of the EPR Entitlement, if any, *divided by* (iii) the Outstanding Number of Profits Interest Units of such Class of Profits Interest Units.

"**Class of Profits Interest Units**" means, collectively, any and all Profits Interest Units having the same Benchmark Amount (regardless of whether granted or issued pursuant to separate grants or issuances).

"**Clinical Therapies Field**" means (i) bone growth stimulation of the type addressed by the Exogen product, (ii) joint fluid therapy of the type addressed by the Supartz and Durolane products and (iii) the products addressed by the ScoliScore co-marketing arrangement and the GE Ultrasound distribution agreement/pilot, in each case as conducted through S&N's Biologics and Clinical Therapies Global Business Unit.

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

"**Common Unit**" means a Unit representing a fractional part of the Members' ownership interests in the Company and having the rights and obligations specified with respect to Common Units in this Agreement.

"**Company Securities**" means (i) any Units or other equity or equity- linked securities of the Company, (ii) any securities convertible into or exchangeable for Units or other equity or equity-linked securities of the Company and (iii) any options, warrants or other rights to acquire Units or other equity or equity-linked securities of the Company.

"**Damages**" has the meaning assigned to such term in the S&N-Company Contribution Agreement.

"**EPR Unit**" means the Unit issued in partial consideration for the Capital Contribution of S&N made pursuant to the S&N-Company Contribution Agreement representing the right to receive the EPR Entitlement, if any, as provided in Section 10.05(a)(iv) and Annex G, and having the other rights set forth on Annex G.

"**Essex**" means Essex Woodlands Health Ventures VIII, L.P., a Delaware limited partnership.

"**Essex Commitment Letter**" means the letter agreement dated as of January 3, 2012 among S&N plc, S&N and Essex Fund VIII.

"**Essex Fund VIII**" means Essex Woodlands Health Ventures Fund VIII, L.P., a Delaware limited partnership.

"**Essex Funds**" means, collectively, (i) Essex Fund VIII, (ii) Essex Woodlands Health Ventures Fund VIII-A, L.P., a Delaware limited partnership, (iii) Essex Woodlands Health Ventures Fund VIII-B, L.P., a Delaware limited partnership and (iv) White Pine Medical LLC.

"**Essex GP**" means Essex Woodlands Health Ventures VIII, LLC, the general partner of Essex.

"**Essex Investors**" means each of the Essex Funds, Spindletop Healthcare Capital, L.P., Pantheon Global Co-Investment Opportunities Fund, L.P. ("**Pantheon**"), Ampersand 2006 Limited Partnership, Ampersand 2011 Limited Partnership and Alta Partners VIII, LP.

"**Essex Member**" means each of Beluga I, Beluga II, Beluga III, Beluga IV, Beluga V, Beluga VI, Beluga VII, Beluga VII-A and Beluga VIII, for so long as such Person is a Member and is controlled by Essex or Essex GP. For purposes of this definition, "controlled" has the meanings assigned to such terms in the definition of "Affiliate" herein.

"**Exit**" means the first to occur of (i) consummation of a Company Sale or (ii) consummation of a Qualified Initial Public Offering.

"**Expense Side Letter**" means the letter agreement dated as of January 3, 2012 among S&N, Essex and the Company.

"**Fair Market Value**" means the fair market value of the Company and its Subsidiaries, as determined using commonly accepted valuation techniques where applicable, based upon the aggregate amount that would be recovered by the holders of the Company Securities if all of the Company Securities were sold to a buyer in a single transaction and the proceeds from such transaction were allocated to the holders of the Company Securities as if the proceeds were distributed in a liquidation or dissolution of the Company pursuant to Article 10 hereof or, as applicable, the fair market value of the OUS Subsidiary and its Subsidiaries, as determined using commonly accepted valuation techniques where applicable, based upon the aggregate amount that would be recovered by the Company if the OUS Subsidiary were sold to a buyer in a single transaction.

"**Family Group**" means a Member's spouse and descendants (whether by birth or adoption) and any trust solely for the benefit of such Member and/or such Member's spouse and/or such Member's descendants (by birth or adoption), parents or dependents, or any charitable trust the grantor of which is such Member and/or one or more members of the Member's Family Group.

"**Fiscal Year**" means the annual period ending on December 31 of each year, or as otherwise determined by the Board of Managers in accordance with the provisions of this Agreement.

"**GAAP**" means generally accepted accounting principles in the United States.

"**Governmental Authority**" means any transnational, domestic or foreign federal, provincial, state or local governmental, regulatory or administrative authority (including the Centers for Medicare & Medicaid Services), department, court, agency or official, including any political subdivision thereof.

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

"**IFRS**" means the International Financial Reporting Standards as issued by the International Accounting Standards Board and as adopted by the European Union.

"**Indebtedness**" of any Person means, without duplication: (i) all obligations of such Person for borrowed money, (ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments (other than performance, surety and similar bonds or instruments), (iii) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable and accrued expenses arising in the ordinary course of business, (iv) all obligations of such Person as lessee under any leases which are required to be capitalized in accordance with GAAP, (v) all obligations of others of the type described above secured by a Lien on any asset of such Person whether or not such obligation is assumed by such Person and (vi) all obligations of others of the type described above guaranteed by such Person.

"**Initial Public Offering**" means the initial Public Offering.

"**Investor**" means each of (i) S&N and its Permitted Transferees and (ii) each of the Essex Members and its Permitted Transferees.

"**License Agreement**" means the License Agreement dated as of the date hereof between S&N and the Company.

"**Lien**" means, with respect to any property or asset, any mortgage, lien, pledge, charge, security interest or encumbrance in respect of such property or asset.

"**Management Incentive Plan**" means the Bioventus LLC Management Incentive Plan effective as of the date hereof.

"**Member**" means each Person that executed this Agreement as a member on the signature pages hereto and any other Person who may from time to time be admitted to the Company as an additional or substitute member as provided herein, in each case in such Person's capacity as a member of the Company.

"**Member Entity Transfer**" means, in the case of any Investor, a direct or indirect sale, assignment, disposition, exchange, pledge, encumbrance, hypothecation or other transfer by its shareholders, partners or members of the equity interests of such Member or any participation or interest therein or any agreement or commitment to do any of the foregoing.

"**Orthobiologics Field**" means Active Therapies targeted at Orthopedic Applications, as conducted through S&N's Biologics and Clinical Therapies Global Business Unit, but excludes the Clinical Therapies Field. As used herein, "**Active Therapies**" means cell-based therapies, small molecules, growth factors, gene therapy, and other novel biologically-active materials such as peptides and statins or inert products that, when combined in an active matrix or delivery substrate, promote bone healing, cartilage regeneration and/or soft tissue healing.

"**Orthopedic Applications**" mean any of the following: total or partial joint arthroplasty, orthopedic arthroscopic procedures commonly referred to as sports medicine procedures, spinal procedures and other procedures related to orthopedic specialty areas.

"**OUS Gain**" means, at the time of any transaction giving rise to distributions pursuant to Section 10.05(a), an amount equal to the lower of (i) the excess, if any, of (A) the Fair Market Value of the OUS Subsidiary and its Subsidiaries, if any, as reasonably determined by S&N, *over* (B) $20,000,000 and (ii) the total amount available for distribution pursuant to Sections 10.05(a)(v)(B) through (D).

"**OUS Subsidiary**" means the Subsidiary of the Company that will purchase the OUS Assets and assume the OUS Assumed Liabilities (as each such term is defined in the OUS Contribution Agreement) pursuant to the OUS Contribution Agreement.

"**OUS Unit**" means a Unit representing a fractional part of the Members' ownership interests in the Company and having the rights and obligations specified with respect to OUS Units in this Agreement.

"**Outstanding Common Percentage**" means, as of any applicable time, (i) the total number of Common Units then outstanding *divided by* (ii) the sum of (A) the total number of Common Units then outstanding and (B) the total number of OUS Units then outstanding.

"**Outstanding Number of Profits Interest Units**" means, with respect to any Class of Profits Interest Units, the total number of Profits Interest Units of such Class of Profits Interest Units then outstanding.

"**Outstanding OUS Percentage**" means, as of any applicable time, (i) the total number of OUS Units then outstanding *divided by* (ii) the sum of (A) the total number of Common Units then outstanding and (B) the total number of OUS Units then outstanding.

"**Percentage Interest**" means, with respect to each Investor, at any time, a fraction representing the ownership percentage of the Company, the numerator of which is the number of Units held by such Investor, and the denominator of which is the aggregate number of Units held by all Investors. For the avoidance of doubt, (i) as of the closing of the transactions contemplated by the U.S. Contribution Agreements, the aggregate Percentage Interest of the Essex Members is 51% and the Percentage Interest of S&N is 49% and (ii) each Investor's Percentage Interest shall be determined without regard to the EPR Unit.

"**Permitted Transferee**" means, (i) with respect to any Investor, any Affiliate of such Investor for so long as such Affiliate remains an Affiliate of such Investor or (ii) with respect to any Member that is a natural person, any Transferee pursuant to the applicable laws of descent or distribution or among a Member's Family Group. For the avoidance of doubt, S&N Blocker shall be deemed to be a Permitted Transferee for all purposes under this Agreement. Notwithstanding anything to the contrary set forth herein, a Transferee that is an entity shall be a Permitted Transferee of a Member only if such Transferee is an entity that is organized under the laws of a jurisdiction within the United States.

"**Person**" means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a Governmental Authority.

"**Phantom Profits Interests Plan**" means the Bioventus LLC Phantom Profits Interests Plan effective as of the date hereof.

"**Phantom Profits Interest Unit**" means an award under the Phantom Profits Interests Plan.

"**Preferred Unit**" means a Unit representing a fractional part of the Members' ownership interests in the Company and having the rights and obligations specified with respect to Preferred Units in this Agreement.

"**Profits Interest Member**" means a Member that holds Profits Interest Units (in such Member's capacity as a holder thereof).

"**Public Offering**" means an underwritten public offering of equity securities of the Company or any of its Subsidiaries pursuant to an effective registration statement under the Securities Act, other than pursuant to a registration statement on Form S-4 or Form S-8 or any similar or successor form.

"**Qualified Initial Public Offering**" means an Initial Public Offering on a leading national exchange which yields net proceeds to the Company (excluding amounts, if any, used to repay the S&N Note and after the payment of investment banking fees, underwriting discounts, commissions, costs and other reasonable out-of-pocket expenses and other customary expenses incurred by the Company in connection with such Initial Public Offering) of at least $60,000,000 and which results in an aggregate equity valuation of the Company of at least $400,000,000.

"**Related Documents**" means the S&N-Company Contribution Agreement, the Purchase Agreement, the Essex-Company Contribution Agreement, the OUS Contribution Agreement, the License Agreement, the Transition Services Agreement, the Reverse Transition Services Agreement, the Essex Commitment Letter and the Expense Side Letter.

"**Return Preparer**" means the "Income Tax Return Preparer" for the Company as defined in Section 7701(a)(36) of the Code, not taking into account Section 7701(a)(36)(B), which at all times shall be a nationally recognized accounting firm.

"**Reverse Transition Services Agreement**" means the Reverse Transition Services Agreement dated as of the date hereof among S&N plc, S&N and the Company.

"**ROFO Percentage**" means, with respect to any Investor other than the Transferring Member and for any Transfer subject to Section 8.04, a fraction the numerator of which is the number of Units owned, directly or indirectly, by such Investor immediately prior to such Transfer and the denominator of which is the number of Units owned, directly or indirectly, by all Investors other than the Offering Member immediately prior to such Transfer. For the avoidance of doubt, an Investor's ROFO Percentage shall be determined without regard to the EPR Unit.

"**ROFR Percentage**" means, with respect to any Investor other than the Offering Member and for any Transfer subject to Section 8.03, a fraction the numerator of which is the number of Units owned, directly or indirectly, by such Investor immediately prior to such Transfer and the denominator of which is the number of Units owned, directly or indirectly, by all Investors other than the Offering Member immediately prior to such Transfer. For the avoidance of doubt, an Investor's ROFR Percentage shall be determined without regard to the EPR Unit.

"**S&N Accounting Month**" means the monthly accounting period of S&N and its Affiliates as in effect from time to time, as provided to the Company pursuant to Section 9.18.

"**S&N Accounting Quarter**" means the quarterly accounting period of S&N and its Affiliates as in effect from time to time, as provided to the Company pursuant to Section 9.18.

"**S&N Note**" means the senior secured note between S&N, as borrower, and Smith & Nephew Holdings, Inc., as lender, in aggregate principal amount of $160,000,000, which note was assumed by the Company pursuant to the S&N-Company Contribution Agreement. To the extent the S&N note is assigned or transferred in part from time to time in accordance with the terms thereof, all references herein to the "S&N Note" shall be deemed to refer to all notes created by or issued in connection with such transfers or assignments, collectively.

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

"**Service**" means the Internal Revenue Service.

"**Specified Asset Sale**" means any sale, transfer, issuance, conveyance, assignment or other disposition of any Collateral (as defined in the S&N Note) (other than in the ordinary course of business) in each case with a value of more than $1,500,000 in the aggregate in any Fiscal Year from all such sales, transfers, issuances, conveyances, assignments or other dispositions.

"**Subsidiary**" of any Person means any entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by such Person.

"**Tag-Along Percentage**" means, for any Tag-Along Sale, a fraction the numerator of which is the number of Units proposed to be Transferred by the Essex Offering Member in such Tag-Along Sale and the denominator of which is the aggregate number of Units owned, directly or indirectly, by the Essex Offering Member immediately prior to such Tag-Along Sale.

"**Tag-Along Portion**" means, with respect to any Member other than the Essex Offering Member and for any Tag-Along Sale, (i) the number of Units (excluding, for the avoidance of doubt, the EPR Unit) owned, directly or indirectly, by such Member immediately prior to such Tag-Along Sale *multiplied by* (ii) the Tag-Along Percentage.

"**Tax Matters Member**" means the Member designated as such pursuant to Section 6.04.

"**Transfer**" means, with respect to any Units, (i) when used as a verb, to sell, assign, dispose of, exchange, pledge, encumber, hypothecate or otherwise transfer such Units or any participation or interest therein, whether directly or indirectly, or agree or commit to do any of the foregoing and (ii) when used as a noun, a direct or indirect sale, assignment, disposition, exchange, pledge, encumbrance, hypothecation, or other transfer of such Units or any participation or interest therein or any agreement or commitment to do any of the foregoing; "**Transferee**" means a person to whom a Transfer is made or is proposed to be made; and "**Transferor**" means a person that Transfers or proposes to Transfer. For the avoidance of doubt, the term "Transfer" includes (i) a direct or indirect sale, assignment, disposition, exchange, pledge, encumbrance, hypothecation or other transfer however structured (whether pursuant to merger, consolidation, business combination or other similar transaction or by operation of law) and (ii) any Member Entity Transfer.

"**Transition Services Agreement**" means the Transition Services Agreement dated as of the date hereof among S&N plc, S&N and the Company.

"**Treasury Regulations**" means the Treasury regulations promulgated under the Code, as such Treasury Regulations may be amended from time to time. Any reference herein to a particular provision of the Treasury Regulations means, where appropriate, the corresponding successor provision.

"**Unreturned Capital Amount**" means, with respect to each Common Unit or OUS Unit, an amount equal to the excess, if any, of (i) the aggregate amount of Capital Contributions made in exchange for or on account of such Common Unit or OUS Unit (including all such amounts set forth on Schedule I), over (ii) the aggregate amount of prior distributions made by the Company on account of such Common Unit or OUS Unit pursuant to Section 4.01.

"**U.S. Gain**" means, at the time of any transaction giving rise to distributions pursuant to Section 10.05(a), the difference between (i) the total amount available for distribution pursuant to Sections 10.05(a)(v)(B) through (D) *minus* (ii) the OUS Gain.

(b) Each of the following terms is defined in the Section set forth opposite such term:

Term	Section
Accrued Preferred Distribution	Annex C
Active Therapies	1.01(a)
Agreement	Preamble
Amount Available for Distribution	Annex G
Adjusted Common/OUS Percentage	Annex G
Applicable Common/OUS Percentage	Annex G
Applicable EPR Percentage	Annex G
Automatic Conversion	9.11(b)
Beluga I	Preamble
Beluga II	Preamble

Term	Section
Beluga III	Preamble
Beluga IV	Preamble
Beluga V	Preamble
Beluga VI	Preamble
Beluga VII	Preamble
Beluga VII-A	Preamble
Beluga VIII	Preamble
Board of Managers	5.01(a)
Breaching Investor	9.19
Business Development Committee	9.12
Certificate	3.02
Chairman	5.01(a)(iv)
Common/OUS Percentage	Annex G
Company	Preamble
Company Party	7.01
Company Sale	9.01(a)
Competitor	9.01(b)
Competitor Change of Control of S&N	9.05
Competitor Sale	9.01(b)
Confidential Information	9.09(a)
Converted Common Unit	Annex C
Core Competencies	Annex D
Corporate Conversion	9.11(a)
Deciding Member	8.03(a)
Delaware Law	2.01
Drag-Along Sale	8.06(a)
Drag-Along Sale Notice	8.06(b)
Drag-Along Sale Price	8.06(b)
Drag-Along Transferee	8.06(a)
Electing Members	8.04(a)
e-mail	11.01
EPR Entitlement	Annex G
Essex-Company Contribution Agreement	Recitals
Essex Offering Members	8.05(a)
Essex Purchase	9.06(b)(iii)
Essex Purchase Option	9.06(b)(iii)
Essex Purchase Option Period	9.06(b)(iii)
Essex Units	8.06(a)
Exchange Act	5.01(b)
FDA	9.16(b)
Financial Advisor	9.06(a)
First EPR Event	Annex G
First Post-IPO EPR Event	Annex G
Fund	9.09(d)

Term	Section
Fund Manager	9.09(d)
Indemnified Service	7.01
Independent	5.01(b)
Initial Liquidation Preference	Annex C
Initial LLC Agreement	Recitals
Initiating Members	8.06(a)
IPO Entity	9.11(a)
IPO Percentage	9.11(b)
IRS Notice	4.10(b)
Issuance Notice	3.05(a)
Liquidating Event	10.02
Liquidation Preference	Annex C
Management Incentive Plan	3.01(b)
Manager	5.01(a)
Member Entity ROFR Price	8.03(a)
Member Entity ROFO Price	8.04(b)
Member Unit ROFO Price	8.04(e)
Member Unit ROFR Price	8.03(e)
New Product Partnership	9.04(b)
Non-Breaching Investor	9.19
Orthobiologics Commitment	Annex D
Offer	8.04(b)
Offer Notice	8.03(a)
Offering Member	8.03(a)
Other Business	9.10(b)
Other Management Equity Awards	3.01(b)(iii)
Other Management Equity Plan	Annex A
Other Members	8.06(a)
OUS Contribution Agreement	Recitals
OUS Subsidiary Sale	9.02
Pantheon	1.01(a)
Pantheon Fund	9.09(d)
Parent	Preamble
Percentage Milestone	Annex G
PIM Tag-Along Trigger Event	8.05(a)
Preferred Distribution	Annex C
Preferred Percentage	Annex G
Preferred Transfer Event	Annex C
Proceeding	7.01
Profits Interest Unit	3.01(b)
Purchase Agreement	Recitals
Recommended Exit	9.06(b)(i)
Recommended Exit Notice	9.06(b)(i)
Recommended Exit Veto Period	9.06(b)(ii)

Term	Section
Regulatory Allocations	4.07(b)
Remaining Securities	3.05(b)
Replacement EPR Security	Annex G
ROFO Notice	8.04(a)
ROFO Period	8.04(b)
ROFO Response Notice	8.04(b)
ROFO Termination	8.04(d)
ROFR Period	8.03(b)
ROFR Right to Purchase	8.03(b)
ROFR Termination	8.03(d)
S&N	Preamble
S&N Acquisition	9.04(a)
S&N Blocker	Recitals
S&N-Company Contribution Agreement	Recitals
S&N plc	Recitals
Safe Harbor Election	4.10(b)
Similar Confidentiality Obligations	9.09(d)
Tag-Along Notice	8.05(a)
Tag-Along Response Notice	8.05(b)
Tag-Along Right	8.05(b)
Tag-Along Right Period	8.05(b)
Tag-Along Sale	8.05(a)
Tagging Member	8.05(b)
Tax Distribution	4.02(a)
Transfer Conversion	Annex C
Transferring Member	8.04(a)
Units	3.01(a)
U.S. Contribution Agreements	Recitals
Veto	9.06(b)(ii)
Veto Party	9.06(b)(v)

ARTICLE 2
FORMATION AND PURPOSES OF THE COMPANY

Section 2.01 *Formation of the Company*. The Company has previously been formed pursuant to the Delaware Limited Liability Company Act, 6 Del. Code § 18-101 *et seq.* (as amended, and any successor to such statute, "**Delaware Law**"). The rights and liabilities of the Members shall be as provided for in Delaware Law if not otherwise expressly modified or provided for in this Agreement.

Section 2.02 *Name of the Company*. The name of the Company shall be "Bioventus LLC" or such other name as the Board of Managers shall approve.

Section 2.03 *Purpose of the Company*. The purpose of the Company is to engage in any lawful act or activity for which limited liability companies may be formed under the Delaware Law and in any and all activities necessary or incidental to the foregoing. In furtherance of its purpose, the Company shall have and may exercise all the powers now or hereafter conferred by Delaware Law on limited liability companies. The Company shall have the power to do any and all acts necessary, appropriate, proper, advisable, incidental or convenient to or for the protection and benefit of the Company, and shall have, without limitation, any and all of the powers that may be exercised on behalf of the Company by the Members, it being understood that (i) the operation of the Company is subject to the provisions of this Agreement and (ii) no Member shall be entitled to bind the Company, except as contemplated by this Agreement or as established by the Board of Managers in the manner contemplated hereby.

Section 2.04 *Place of Business of the Company*. The principal place of business of the Company shall be located at such place as shall be determined from time to time by the Board of Managers. The Company shall also have such additional offices as shall be determined from time to time by the Board of Managers.

Section 2.05 *Registered Office and Registered Agent*. The address of the registered office of the Company in the State of Delaware is c/o Corporation Trust Center, 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801. The name of the registered agent for service of process on the Company at such address is The Corporation Trust Company.

Section 2.06 *Term*. The Company commenced on the date of the filing of the Certificate of Formation, and the term of the Company shall continue until the dissolution of the Company in accordance with the provisions of Article 10 hereof or as otherwise provided by law.

Section 2.07 *Title to the Company Property*. All property of the Company and its Subsidiaries, whether real or personal, tangible or intangible, shall be deemed to be owned by the Company or its Subsidiaries, as the case may be, as an entity, and no Member, individually, shall have any direct ownership interest in such property.

Section 2.08 *Filing of Certificates*. The officers of the Company shall file and publish all such certificates, notices, statements or other instruments required by law (a) to evidence the formation of the Company and (b) for the operation of the Company in all jurisdictions where the Company may elect from time to time to do business.

Section 2.09 *Limitation on Liability*. Except as required by Delaware Law, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and no Member shall be obligated for any such debt, obligation or liability of the Company solely by reason of being a Member. Other than with respect to the Essex Members (vis-à -vis each other), the Members shall not act as agents for one another or incur debts, obligations or liabilities on behalf of other Members.

ARTICLE 3
CAPITAL CONTRIBUTIONS AND MEMBERSHIP UNITS

Section 3.01 *Units*. (a) The Members' ownership interests in the Company shall be represented by units having the rights and obligations specified in this Agreement with respect to Preferred Units, Common Units, the OUS Units, the EPR Unit and the Profits Interest Units (collectively, the "**Units**") . Subject to Sections 3.01(b) and 5.02(b), the Company shall have the authority to issue an unlimited number of Units, of which 4,659,153 Preferred Units, 4,476,440 Common Units, one EPR Unit and 288,889 Profits Interest Units have been issued and are outstanding as of the date of this Agreement.

(b) Profits Interest Units. (i) Subject to the applicable terms and conditions hereof, the Company may grant (at any time and from time to time) non-managing, non-voting Units designated as "Profits Interest Units" (such Units, "**Profits Interest Units**") under the Management Incentive Plan or Phantom Profits Interest Units under the Phantom Profits Interests Plan to one or more individuals rendering, or who will render, services for the benefit of the Company and/or its Subsidiaries. The terms and conditions of the Profits Interest Units and the Phantom Profits Interest Units, which shall be set forth in the applicable Award Agreement in each case, shall be consistent with the terms and conditions of this Agreement and the Management Incentive Plan or the Phantom Profits Interests Plan, as applicable, and shall, subject to the applicable terms and conditions hereof and thereof, otherwise be determined solely by the Board of Managers. Neither the terms nor the conditions applicable to any Profits Interest Unit need be identical or similar to any other Profits Interest Unit.

(ii) Upon the issuance of Profits Interest Units pursuant hereto, Schedule I will be deemed amended to reflect the issuance of such Profits Interest Units and the holder thereof and the Board of Managers will thereby be permitted to insert a replacement Schedule I hereto to reflect such amendment, subject to the proviso set forth in the definition of Capital Contribution.

(iii) Without the prior written approval of S&N and the Essex Members, acting in their capacity as Members, the Company shall not be permitted to issue Profits Interest Units, Phantom Profits Interest Units or any other form of employee, management or other service provider equity or equity-related awards (such other forms of employee, management or other service provider equity or equity-related awards, collectively, "**Other Management Equity Awards**") that could result in aggregate distributions to the holders thereof in excess of 10% of the aggregate amount, if any, available for distribution pursuant to Section 10.05(a)(v) (such amount determined, solely for this purpose, as if there were no Phantom Profits Interest Units or Other Management Equity Awards). Any purported issuance of Profits Interest Units, Phantom Profits Interest Units or Other Management Equity Awards in contravention of this Section 3.01(b)(iii) will be null and void *ab initio.*

(iv) Notwithstanding anything else herein to the contrary, unless S&N and the Essex Members, acting in their capacity as Members, expressly agree otherwise in writing:

(A) the Benchmark Amount for a specified Class of Profits Interest Units shall not be less than the greater of (1) the fair market value of the assets of the Company, net of its liabilities, at the time the Class of Profits Interest Unit is issued (as determined in good faith by the Board of Managers), and (2) $231,372,549.02; and

(B) the Benchmark Amount for each outstanding Class of Profits Interest Units shall be increased if and when any Capital Contribution is made after the issuance of such Class of Profits Interest Units (other than the Capital Contributions contemplated by the OUS Contribution Agreement) by the amount of the fair market value of such Capital Contribution.

(c) Subject to Section 3.05, Section 5.02(b) and Annex A hereto, from time to time after the date hereof, the Board of Managers may cause the Company to offer and issue additional Units with such powers, preferences and rights, and subject to such qualifications, limitations and restrictions, as the Board of Managers may determine; *provided* that the Company may not offer or issue (i) any additional EPR Units or any other Units with substantially similar powers, preferences and rights to those of the EPR Unit or (ii) any Company Securities pursuant to the Management Incentive Plan other than the Profits Interest Units or pursuant to the Phantom Profits Interests Plan other than the Phantom Profits Interest Units.

(d) The Units held by each Member as of the date hereof is set forth on Schedule I attached hereto, as the same may be amended from time to time in accordance with the requirements of this Agreement or to reflect any changes resulting from any Transfers or other adjustments to the Units.

Section 3.02 *Certificates*. All Units shall be issued in certificated form. Each certificate representing Units (a "**Certificate**") shall bear such legends as the Board of Managers may consider necessary or advisable to facilitate compliance with this Agreement, the Securities Act and any other securities law, including, without limitation, legends referring to the transfer restrictions contained herein and stating that the Units represented by such Certificate have not been registered under the Securities Act. Each Certificate shall be executed by an authorized officer of the Company on behalf of the Company and shall state the Company's name, the name of the applicable Member, the number and type of Units represented by such Certificate, the date of issuance of the Certificate, the number of the Certificate and such other information as determined by the Company as applicable for the Certificate.

Section 3.03 *Additional Capital Contributions*. Except as expressly set forth in this Agreement, no Member shall be required to make any additional capital contributions to the Company.

Section 3.04 *Other Matters*. (a) Except as otherwise provided in (and subject to the provisions of) this Agreement and except for any distributions made to the Members according to their respective interests in distributions in accordance with Article 4 or Article 10 hereof, in each case made in compliance with this Agreement, no Member shall receive a return of any of its Capital Contributions, or, in the case of the Investors, any of the amounts represented by such Investor's Percentage Interest. Under circumstances requiring a return of any Capital Contributions, no Member shall have the right to receive property other than cash except as may be specifically provided herein.

(b) No Member or any Affiliate thereof shall receive any interest, salary or drawing with respect to its Capital Contributions or its Percentage Interest or for services rendered on behalf of the Company or otherwise in its capacity as a Member or otherwise, except as contemplated by this Agreement or the Related Documents or any other agreement in writing with the Company approved by the Board of Managers in accordance with the requirements of Section 5.02.

(c) Except as provided herein, no Member shall have any right to (i) withdraw as a Member of the Company, (ii) withdraw from the Company all or any part of such Member's Capital Contributions, (iii) receive property other than cash in return for such Member's Capital Contributions, or (iv) receive any distribution from the Company except in accordance with Article 4 or Article 10 hereof.

(d) Upon any Transfer of Units in accordance with the terms of this Agreement (other than a Member Entity Transfer), the Transferee shall succeed to the Capital Account of the Transferor to the extent attributable to the Transferred Units. For the avoidance of doubt, in the case of a Preferred Transfer Event, the Transferee shall not succeed to the Capital Account of the Transferor to the extent of the Accrued Preferred Distribution.

(e) If the Company shall subdivide or split (whether by distribution or otherwise) the outstanding Preferred Units into a greater number of Units or combine or reclassify the outstanding Preferred Units into a smaller number of Units, the same subdivision, split, combination or reclassification, as the case may be, shall be carried out on the outstanding Common Units, OUS Units and Profits Interest Units. By way of example, if the Preferred Units are split 10 to 1, then the Common Units, the OUS Units and the Profits Interest Units will also be split 10 to 1. Upon the occurrence of any such adjustment to the Common Units, the OUS Units and the Profits Interest Units, the Company shall promptly (i) compute such adjustment in accordance with the terms hereof and furnish to the holders of the Common Units, the OUS Units and the Profits Interest Units a certificate setting forth such adjustment and showing in reasonable detail the facts upon which such adjustment is based, (ii) appropriately adjust Schedule I hereto, and (iii) issue to each holder of Common Units, OUS Units or Profits Interest Units, upon the surrender of the Certificate or Certificates representing such holder's Common Units, OUS Units or Profits Interest Units at the time of such adjustment, a new Certificate or Certificates appropriately reflecting such adjustment. Adjustments shall be made successively whenever any event giving rise to such an adjustment under this Section 3.04(e) shall occur.

(f) If the Company shall subdivide or split (whether by distribution or otherwise) the outstanding Common Units or OUS Units into a greater number of Units or combine or reclassify the outstanding Common Units or OUS Units into a smaller number of Units, the same subdivision, split, combination or reclassification, as the case may be, shall be carried out on the outstanding Units of the other types. By way of example, if the Common Units are split 10 to 1, then the OUS Units and the Profits Interest Units will also be split 10 to 1 (and, for the avoidance of doubt, the Preferred Units will also be split 10 to 1 in accordance with Annex C hereto). Upon the occurrence of any such adjustment to the Common Units or the OUS Units, the Company shall promptly (i) compute such adjustment in accordance with the terms hereof and furnish to the holders of the other type of Units a certificate setting forth such adjustment and showing in reasonable detail the facts upon which such adjustment is based, (ii) appropriately adjust Schedule I hereto, and (iii) issue to each holder of the other type of Units, upon the surrender of the Certificate or Certificates representing such holder's Units at the time of such adjustment, a new Certificate or Certificates appropriately reflecting such adjustment. Adjustments shall be made successively whenever any event giving rise to such an adjustment under this Section 3.04(f) shall occur.

(g) If the Company shall subdivide or split (whether by distribution or otherwise) the outstanding Profits Interest Units into a greater number of Units or combine or reclassify the outstanding Profits Interest Units into a smaller number of Units, the same subdivision, split, combination or reclassification, as the case may be, shall be carried out on the outstanding Units of the other types. By way of example, if the Profits Interest Units are split 10 to 1, then the Common Units, and the OUS Units will also be split 10 to 1 (and, for the avoidance of doubt, the Preferred Units will also be split 10 to 1 in accordance with Annex C hereto). Upon the occurrence of any such adjustment to the Profits Interest Units, the Company shall promptly (i) compute such adjustment in accordance with the terms hereof and furnish to the holders of the other type of Units a certificate setting forth such adjustment and showing in reasonable detail the facts upon which such adjustment is based, (ii) appropriately adjust Schedule I hereto, and (iii) issue to each holder of the other type of Units, upon the surrender of the Certificate or Certificates representing such holder's Units at the time of such adjustment, a new Certificate or Certificates appropriately reflecting such adjustment. Adjustments shall be made successively whenever any event giving rise to such an adjustment under this Section 3.04(g) shall occur.

(h) The holders of the Common Units and OUS Units shall be entitled to one vote per Common Unit or OUS Unit on all matters on which the holders of the Common Units and OUS Units are entitled to vote.

Section 3.05 *Preemptive Rights*. (a)The Board of Managers shall have the authority to issue Company Securities in such amounts and at such purchase prices per Company Security as determined by the Board of Managers, subject to the provisions of this Section 3.05 and Section 5.02(b). Subject to Section 3.05(f), the Company shall deliver written notice (an "Issuance Notice") to each Investor of any proposed issuance by the Company of any Company Securities at least 20 days prior to the proposed issuance date. The Issuance Notice shall specify the cash price at which such Company Securities are to be issued and the other material terms of the issuance. Subject to Section 3.05(e) and Section 3.05(f), each Investor shall be entitled to purchase up to such Investor's Percentage Interest of the Company Securities proposed to be issued, at the price and on the terms specified in the Issuance Notice.

(b) An Investor shall deliver written notice of its election to purchase such Company Securities to the Company and each other Investor within 15 days of receipt of the Issuance Notice. Such delivery of notice (which notice shall specify the number (or amount) of Company Securities to be purchased by the Investor submitting such notice) to the Company shall constitute exercise by such Investor of its rights under this Section 3.05 and a binding agreement of such Investor to purchase, at the price and on the terms specified in the Issuance Notice, the number (or amount) of Company Securities specified in such Investor's notice, and, in the case of S&N, any election made pursuant to Section 3.05(e). If, at the termination of such 15-day period, any Investor shall not have exercised its rights to purchase any of its *pro rata* percentage of such Company Securities, such Investor shall be deemed to have waived all of its rights under this Section 3.05 with respect to the purchase of such Company Securities (but, for the avoidance of doubt, shall not have waived its rights with respect to any future purchase of Company Securities). To the extent that any Investor does not exercise its rights under the first and second sentences of this Section 3.05(b) in full, the Company shall provide the Investors who have elected to exercise their rights in full with the opportunity to purchase the remaining Company Securities which were the subject of the Issuance Notice (the "**Remaining Securities**")**.** In such event, such Investors may elect to purchase any or all of the Remaining Securities; *provided* that each such electing Investor shall receive its proportionate share of the Remaining Securities based on the aggregate number of Company Securities such Investors as a group elect to purchase if such number is more than the number or amount of Remaining Securities.

(c) The Company shall have 90 days from the date of the Issuance Notice to consummate the proposed issuance of any or all of such Company Securities that the Investors have not elected to purchase at the price and upon terms that are not less favorable to the Company than those specified in the Issuance Notice; *provided* that, if such issuance is subject to regulatory approval, such 90-day period shall be extended until the expiration of five Business Days after all such approvals have been received, but in no event later than 180 days from the date of the Issuance Notice. The closing of any purchase of such Company Securities that Investors have elected to purchase pursuant to such Issuance Notice shall take place at the same time as the issuance to non-investors.

(d) If the Investors have elected to purchase all of the Company Securities proposed to be issued at any one time pursuant to this Section 3.05, the consummation of such purchase shall take place as soon as practicable (but in no event more than 45 days) following the receipt of all notices from the Investors indicating such election; *provided* that if such purchase is subject to regulatory approval, such 45-day period shall be extended until the expiration of 5 Business Days after all such approvals have been received, but in no event later than 90 days following the receipt of such election notices. At the consummation of the issuance of such Company Securities, the Company shall issue the Company Securities to be purchased by each Investor exercising preemptive rights pursuant to this Section 3.05 registered in the name of such Investor, against payment by such Investor of the purchase price for such Company Securities as specified in the Issuance Notice. If the Company proposes to issue any Company Securities after such 45-day (or up to 90-day, as applicable) period (as it may be extended as provided above), it shall again comply with the procedures set forth in this Section 3.05.

(e) Notwithstanding the foregoing, in lieu of paying in cash the entire purchase price of any Company Securities that S&N has elected to purchase in any issuance of Company Securities pursuant to this Section 3.05, S&N may elect, in its sole discretion, to pay up to 25% of the aggregate purchase price of such Company Securities by Transferring to the Company debt obligations of the Company held by S&N in an aggregate principal amount equal to the portion of the aggregate purchase price that S&N has elected to pay pursuant to this Section 3.05(e).

(f) Notwithstanding the foregoing, no Investor shall be entitled to purchase Company Securities as contemplated by this Section 3.05 in connection with issuances of (i) Company Securities to employees of the Company or any of its Subsidiaries pursuant to the Management Incentive Plan (and for the avoidance of doubt, Phantom Units pursuant to the Phantom Profits Interest Plan), (ii) Converted Common Units pursuant to conversion rights as set forth in Annex C, (iii) Preferred Units and OUS Units pursuant to the OUS Contribution Agreement, or (iv) Company Securities as consideration for any bona fide, arm's-length direct or indirect merger, acquisition or similar transaction approved by the Board of Managers in accordance with the provisions of this Agreement. The Company shall not be obligated to consummate, nor be liable to any Investor if the Company has not consummated, any proposed issuance of Company Securities pursuant to this Section 3.05 for whatever reason, regardless of whether it shall have delivered an Issuance Notice in respect of such proposed issuance.

(g) This Section 3.05 shall terminate upon consummation of an Initial Public Offering.

Section 3.06 *Agreement to be Bound*. No Transfer of Units otherwise permitted pursuant to this Agreement (other than any Transfer pursuant to a Public Offering) shall be effective unless prior (and as a condition) to such Transfer, the Transferee (if not already a party to this Agreement) shall have executed and delivered to the Company an instrument or instruments reasonably satisfactory to the Board of Managers confirming that such Transferee has agreed to be bound as a "Member" by the terms of this Agreement, a copy of which instrument shall be maintained on file with the Secretary of the Company and shall include the address of such Transferee to which notices hereunder shall be sent; *provided*, *however*, that, in the event of any Member Entity Transfer, the applicable Member shall remain bound by the terms of this Agreement, and the applicable Transferee shall not be bound as a "Member" by the terms of this Agreement solely by reason of such Transfer. Furthermore, no Transfer under this Agreement shall relieve the Transferor (including, in the case of a Member Entity Transfer, the applicable Member) from any of its obligations hereunder arising prior to such Transfer, and such Transferor and Transferee shall be jointly and severally liable with respect to any such obligations. Prior to issuing Units to any new Members, the Company will require such Member to agree to be bound by this Agreement in the manner described above.

ARTICLE 4
DISTRIBUTIONS AND ALLOCATIONS

Section 4.01 *Distributions*. The Company may periodically make distributions of available cash to the Members holding Preferred Units, Common Units and OUS Units at such times and in such amounts as are approved by the Board of Managers, subject to the applicable requirements of Section 5.02(b) and Annex C. Except (a) as otherwise set forth in this Article 4 or (b) for the payment of Preferred Distributions and Accrued Preferred Distributions (in each case, in accordance with the terms of this Agreement, and subject to the restrictions contained in this Agreement and the S&N Note), each distribution shall be made to the holders of Preferred Units, the Common Units and the OUS Units ratably among such holders based upon the number of Units held by each such holder as of the time of such distribution. Distributions pursuant to this Section 4.01 shall be made to the holders of record of Preferred Units, Common Units and OUS Units as they appear on Schedule I at the close of business on the applicable record date, which shall be a date not less than 10 days nor more than 60 days before the date on which the distribution is to be made, as fixed by the Board of Managers.

Section 4.02 *Tax Distributions*. (a) Notwithstanding any other provision of this Agreement, the Board of Managers shall cause the Company to make distributions to each Member (including, for the avoidance of doubt, Profits Interest Members, regardless of whether such Members' Profits Interest Units have vested) at such times as shall be reasonably determined to enable such Member to pay federal, state and local income taxes, including estimated taxes, in an amount equal to the product of (i) the net profit allocated to such Member pursuant to Section 4.06 and (ii) the Assumed Tax Rate (each such distribution, a "**Tax Distribution**")**.**

(b) Notwithstanding anything to the contrary otherwise set forth in this Agreement, (i) Tax Distributions shall not be treated as an advance distribution of amounts otherwise distributable to the Members pursuant to Section 4.01 and Section 10.05 and shall not reduce such amounts and (ii) any distribution to a Member pursuant to this Agreement (including a distribution pursuant to Section 10.05) shall be treated first as a Tax Distribution made to such Member in an amount equal to the aggregate amount of Tax Distributions required to be made to such Member pursuant to this Section 4.02 from the date of this Agreement that have not previously been made.

Section 4.03 *Distributions in Violation of Delaware Law*. Notwithstanding any provision of this Agreement to the contrary, the Board of Managers shall not be required to make a distribution to a Member if such distribution would violate Delaware Law or any other Applicable Law.

Section 4.04 *Amounts Withheld.* The Company is authorized to withhold from distributions, or with respect to allocations, to the Members and to pay over to any federal, state, local or foreign government any amounts which it reasonably determines may be required to be so withheld pursuant to the Code or any provisions of any other federal, state, local or foreign law. All amounts withheld pursuant to the Code or any provision of any state, local or foreign tax law with respect to any allocation or distribution to any Member shall be treated as amounts distributed to such Member pursuant to this Article for all purposes under this Agreement. The Company shall provide each Member with documentation substantiating that such withholdings were in fact paid to the relevant governmental entity. Each Member shall indemnify the Company for any Damages incurred or sustained by the Company with respect to any amounts required to be withheld from any distributions, or with respect to allocations, to such Member and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto.

Section 4.05 *Dissolution*. Upon dissolution and winding up of the Company, the Company shall make distributions in accordance with Section 10.04.

Section 4.06 *Allocations*. (a) After taking into account the special allocations set forth in Section 4.07, and subject to Section 4.06(b) and Section 4.06(c), profits and losses for any Fiscal Year shall be allocated among the Members in such a manner that, as of the end of such Fiscal Year, the sum of (i) the Capital Account of each Member, (ii) such Member's share of minimum gain (as determined according to Treasury Regulation Section 1.704-2(g)), and (iii) such Member's partner nonrecourse debt minimum gain (as defined in Treasury Regulation Section 1.704-2(i)(3)) shall be equal to the respective net amounts, positive or negative, which would be distributed to them or for which they would be liable to the Company under this Agreement, determined as if the Company were dissolved, its affairs wound up and (A) all of the assets of the Company were sold on the last day of such Fiscal Year for cash equal to their respective Book Values (except that assets of the Company actually sold during such Fiscal Year shall be treated as sold for the consideration received therefor), (B) all Company liabilities were satisfied (limited, with respect to each "partner nonrecourse liability" and "partner nonrecourse debt," as defined in Treasury Regulation Section 1.704-2(b)(4), to the Book Value of the assets of the Company securing such liabilities) and (C) the net assets were immediately distributed to the Members in accordance with Section 10.05. For purposes of allocating profits and losses pursuant to this Section 4.06 (and Section 4.07, to the extent applicable), all outstanding Profits Interest Units shall be treated as vested Profits Interest Units (and therefore, shall be treated as outstanding for purposes of this Agreement, and shall be allocated a share of the Company's profit and loss in accordance with this Article 4); *provided*, that, if a Member's unvested Profits Interest Units are forfeited and the Company has made a Safe Harbor Election (as defined in Section 4.10(b)) that applies to the forfeited Profits Interest Units, then profits and losses arising in the Fiscal Year in which such forfeiture occurs shall be allocated in compliance with then applicable IRS guidance with respect to Safe Harbor Elections. If any allocation of losses for any Fiscal Year would cause a Member to have an adjusted capital account deficit (determined according to Treasury Regulation Section 1.704-l(b)(2)(ii)(d)), those losses instead shall be allocated to the other Members *pro rata* until their Capital Accounts are reduced to zero, and any remaining losses will be allocated to each Member in accordance with the relative number of Units held by such Member.

(c) Notwithstanding the foregoing, the current profits and losses of the Company (determined, for the avoidance of doubt, without regard to any unrealized income, gains, losses, deductions and expenditures) that would otherwise be allocated pursuant to Section 4.06(a) by reference to Section 10.05(a)(v)(C), if any, shall be allocated pursuant to this Section 4.06(c) solely to the holders of the Common Units and the holders of the OUS Units by reference to the Outstanding Common Percentage and the Outstanding OUS Percentage, respectively; *provided* that, for the avoidance of doubt, the allocations made pursuant to this Section 4.06(c), and distributions made pursuant to Section 10.05(a)(v) as a result thereto, shall not impact in any way (i) the amount of profit and/or loss that is allocable to any of the Essex Members pursuant to this Agreement or (ii) the amount and/or priority of any distributions from the Company to which any of the Essex Members are entitled pursuant to this Agreement. The parties hereto intend that allocations made pursuant to this Section 4.06(c) shall result in aggregate allocations consistent with the distribution requirements of Section 10.05(a)(v)(C).

Section 4.07 *Special Allocations*. (a) Prior to any allocations required pursuant to Section 4.06(a) hereof, the Members shall be allocated items of income, gain, loss or deduction that would be required to be so allocated under (i) Treasury Regulation Section 1.704-2(f) and (g) (relating to allocations required in connection with a minimum gain chargeback), (ii) Treasury Regulation Section 1.704-2(i) (relating to allocations required in connection with a partner minimum gain chargeback), (iii) Treasury Regulation Section 1.704-l(b)(2)(ii)(d)(4), (5), or (6) and Treasury Regulation Section 1.704-1 (relating to allocations required in connection with a qualified income offset) and (iv) as otherwise required pursuant to Section 704(b) of the Code and the Treasury Regulations promulgated thereunder.

(b) The allocations set forth above in Section 4.06(b) and Section 4.07(a) (collectively, the "**Regulatory Allocations**") are intended to comply with certain requirements of the Treasury Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss or deduction pursuant to this Section 4.07(b). Therefore, notwithstanding any other provisions of this Article 4 (other than the Regulatory Allocations), the Board of Managers shall make such offsetting special allocations of Company income, gain, loss or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of this Agreement and all Company items were allocated pursuant to this Article 4 without regard to the Regulatory Allocations.

Section 4.08 *Tax Allocations*. (a) Except as otherwise provided in this Section 4.08 or required by the Code or other Applicable Law, the income, gains, losses, deductions and credits of the Company will be allocated, for federal, state and local income tax purposes, among the Members in the same proportions as such items are allocated pursuant to Section 4.06.

(b) Items of Company taxable income, gain, loss and deduction with respect to any property contributed to the capital of the Company in connection with its formation shall, solely for income tax purposes, be allocated among the Members in accordance with Section 704(c) of the Code under the "traditional method" so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its Book Value.

(c) If the Book Value of any Company asset is adjusted pursuant to the requirements of Treasury Regulations Section 1.704-1 (b)(2)(iv)(e) or (f), subsequent allocations of items of taxable income, gain, loss and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Book Value in the same manner as under Section 704(c) of the Code.

(d) Allocations pursuant to this Section 4.08 are solely for purposes of federal, state, and local income taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of profits, losses, other items, or distributions pursuant to any provision hereof.

(e) The Members acknowledge the income tax consequences of the allocations made by this Article 4 and hereby agree to be bound by the provisions of this Article 4 in reporting their respective shares of Company income and loss for income tax purposes.

Section 4.09 *Reimbursement of Essex Member Administrative Expenses*. Each Essex Member that (a) is treated as a corporation for U.S. federal income tax purposes, (b) was formed solely for the purpose of holding Units, and (c) does not hold any investment other than Units or undertake any activities except with respect to holding Units, shall be entitled to reimbursement from the Company for reasonable administrative expenses incurred in connection with the formation of such Essex Member and its investment in the Company that would not have been incurred if the Essex Funds were to invest directly in a corporate entity without utilizing an Essex Member (including the preparation and filing of tax returns); *provided* that the aggregate of all payments made by the Company under this Section 4.09 relating or attributable to such expenses incurred by the Essex Members in any Fiscal Year shall not exceed $350,000. Reimbursement payments made under this Section 4.09 shall be treated as "guaranteed payments" for U.S. federal income tax purposes.

Section 4.10 *Provisions Relating to Profits Interest Unit*. (a) Profits Interest Units may be granted in accordance with Section 3.01(b) in exchange for services provided or to be provided to the Company and/or its Subsidiaries. Consistent with the foregoing, Profits Interest Units are intended to be treated as "profits interests" under IRS Revenue Procedure 93-27 and IRS Revenue Procedure 2001-43 and the provisions hereof shall be interpreted and applied consistently therewith. Subject to Section 3.01(b)(iv), if a Profits Interest Unit is issued after the date hereof, then the Board of Managers may make appropriate adjustments to the terms of such Profits Interest Unit in order for such Profits Interest Unit to be treated as a "profits interest" as described in the immediately preceding sentence, including adjusting the Benchmark Amount in respect of such Profits Interest Units (*e.g.*, increasing the Benchmark Amount if Capital Contributions are made subsequent to the issuance of such Profits Interest Unit).

(b) Each Member hereby authorizes and directs the Company to make an election (the "**Safe Harbor Election**") to value any Profits Interest Units issued by the Company as compensation for services at liquidation value as the same may be permitted pursuant to or in accordance with temporarily or finally promulgated successor rules to Proposed Regulations Section 1.83-3(1) and the proposed Revenue Procedure set forth in IRS Notice 2005-43 (the "**IRS Notice**")**.** For purposes of making such Safe Harbor Election, the Tax Matters Member is hereby designated as the "partner who has responsibility for federal income tax reporting" by the Company and, accordingly, execution of such Safe Harbor election by the Tax Matters Member constitutes execution of a "Safe Harbor Election" in accordance with Section 3.03(1) of the IRS Notice. The Company and each Member shall comply with all requirements of the Safe Harbor Election described in the IRS Notice, including the requirement that each Member prepare and file all federal income tax returns reporting the income tax effects of each interest in the Company issued by the Company covered by the Safe Harbor Election in a manner consistent with the requirements of the IRS Notice.

(c) Each Member hereby authorizes the Board of Managers to amend Section 4.10(b) to the extent necessary to achieve substantially the same tax treatment with respect to any interest in the Company transferred to a service provider by the Company in connection with services provided to the Company and/or its Subsidiaries as set forth in Section 4 of the IRS Notice (*e.g.*, to reflect changes from the rules set forth in the IRS Notice in subsequent IRS guidance), provided that such amendment is not materially adverse to such Member (as compared with the after-tax consequences that would result if the provisions of the IRS Notice applied to all interests in the Company transferred to a service provider by the Company in connection with services provided to the Company and/or its Subsidiaries). A Member's obligations to comply with the requirements of this Section 4.10 shall survive such Member's ceasing to be a Member of the Company and/or the termination, dissolution, liquidation and winding up of the Company, and, for purposes of this Section 4.10, the Company shall be treated as continuing in existence.

ARTICLE 5
THE BOARD OF MANAGERS

Section 5.01 *Board of Managers*. (a) Except as otherwise provided in this Agreement, the business and affairs of the Company shall be managed by or under the direction of a board of managers (the "**Board of Managers**"), which shall initially be composed of nine managers (each, a "**Manager**"). The Board of Managers shall be designated as follows:

(i) The Essex Members may designate five Managers;

(ii) S&N may designate two Managers so long as S&N's Percentage Interest is greater than or equal to 15%;

(iii) The Company's Chief Executive Officer shall be a Manager; and

(iv) The Chairman of the Board of Managers (the "**Chairman**") shall be a Manager.

(b) The Chairman shall be selected by the Essex Members, *provided* that the Chairman shall at all times be Independent. "**Independent**" with respect to a Manager, shall have the meaning assigned to the term "independent director" as such term is defined from time to time in the New York Stock Exchange's listing standards (or the principal national securities exchange on which the Company's common equity is then traded) and is not an "affiliate" or an "associate" (as such terms are defined in Rule 12b-2 of the Securities Exchange Act of 1934, as amended ("**Exchange Act**")) or any member of the "immediate family" (as such term is defined in Rule 16a-l of the Exchange Act) of a director or executive officer of the Company or any of the Essex Members or their respective Affiliates and shall not have (or have had during the past three years) any employment arrangement or other material commercial arrangement with any such person.

(c) The Company and each Member will take all actions that are necessary and within its power in order to ensure that the composition of the Board of Managers is as set forth in Section 5.01(a) and Section 5.01(b).

(d) Except as otherwise expressly provided in this Agreement, the Board of Managers shall have the power on behalf and in the name of the Company to carry out any and all of the purposes of the Company described in Section 2.03 and to perform all acts which it may, in its discretion, deem necessary or desirable in furtherance of such purposes.

Section 5.02 *Quorum and Manner of Acting*. (a) Except as otherwise expressly provided in this Agreement, (i) the presence (in person or by telephone) of a majority of the total number of Managers shall constitute a quorum for the transaction of business and (ii) the affirmative vote of at least a majority of the Managers present at a meeting at which a quorum exists shall be the act of the Board of Managers. The Chairman of the Board of Managers shall appoint a person to act as secretary of each meeting of the Board of Managers and keep the minutes thereof. Any Manager may designate another individual to attend a meeting of the Board of Managers and such individual shall have the full power and authority to take any action which such Manager would otherwise be entitled to take.

(b) Without limiting the generality of Section 5.02(a), except as otherwise expressly provided in this Agreement or any Related Document, any material matters relating to the management of the Company, including the actions set forth on Annex A hereto, shall require the approval of the Board of Managers and where applicable shall be subject to the approval rights of S&N acting in its capacity as a Member as set forth on Annex A.

Section 5.03 *Time and Place of Meetings*. The Board of Managers shall hold its meetings at least bi-monthly, at such place, either within or without the State of Delaware or by telephone (provided that at least four meetings per year shall be held in person), and at such time as may be determined from time to time by the Board of Managers. Each Investor shall use reasonable efforts to cause the Managers appointed by such Investor to attend each meeting of the Board of Managers.

Section 5.04 *Regular Meetings*. Notice of the place and time of any regular meeting of the Board of Managers shall be given to each Manager by the Company at least five Business Days before the meeting date, and such notice shall include an agenda, any proposed resolutions and appropriate background information regarding the matters to be acted upon. The business conducted at any regular meeting shall be limited to the items set forth in the agenda. The Board of Managers shall schedule its meetings using good faith efforts to accommodate any scheduling conflicts of the Managers. Regular meetings of the Board of Managers shall only be scheduled for a Business Day during normal business hours, unless otherwise agreed by the Essex Members and S&N.

Section 5.05 *Special Meetings*. Special meetings of the Board of Managers may be called upon the written request of any two Managers. Notice of special meetings of the Board of Managers shall be given to each Manager at least five Business Days before the meeting date in such manner as is determined by the Board of Managers, and shall include a statement of the purpose or purposes of such special meeting, any proposed resolutions and appropriate background information regarding the matters to be acted upon. A written waiver of any such notice signed by the Manager entitled thereto, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a Manager at a meeting shall constitute a waiver of notice of such meeting, except when such Manager attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. The business conducted at any special meeting shall be limited to the purpose or purposes set forth in the notice thereof, unless otherwise agreed by the Essex Members and S&N.

Section 5.06 *Committees*. Subject to Section 5.02(b), the Board of Managers may designate one or more committees. Any such committee, to the extent provided in the resolution of the Board of Managers, shall have and may exercise all the powers and authority of the Board of Managers in the management of the business and affairs of the Company, subject to the applicable approval rights of S&N pursuant to Annex A. Each committee shall keep regular minutes of its meetings and report the same to the Board of Managers when requested by any Investor.

Section 5.07 *Subsidiaries*. Unless otherwise agreed by the Essex Members and S&N, the board of directors or comparable governing body of each Subsidiary of the Company with a board of directors or equivalent body shall be comprised of the individuals who are serving as Managers in accordance with Section 5.01. The other provisions of this Article 5 (including Annex A) shall apply *mutatis mutandis* to each such Subsidiary of the Company.

Section 5.08 *Action by Consent*. Any action required or permitted to be taken at any meeting of the Board of Managers or of any committee thereof may be taken without a meeting, if all members of the Board of Managers or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Managers or committee, as the case may be.

Section 5.09 *Telephonic Meetings*. Subject to Section 5.03, members of the Board of Managers or any committee thereof may participate in a meeting of the Board of Managers or such committee, as the case may be, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

Section 5.10 *Resignation*. Any Manager may resign at any time by giving written notice to the Board of Managers of the Company. The resignation of any Manager shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5.11 *Term*; *Vacancies*. Each Manager shall hold office until his or her successor is appointed, or until his or her earlier death, resignation or removal. Any Manager may be removed, with or without cause, at any time by the Investor or the Affiliate of such Investor that appointed such Manager. Vacancies on the Board of Managers may only be filled by the Investor or the Affiliate of such Investor that appointed the departing Manager. In connection with each appointment or removal of a Manager, the Investor or the Affiliate of such Investor making such appointment or removal shall give written notice thereof to the Company and the other Members.

ARTICLE 6
ACCOUNTING AND TAX MATTERS

Section 6.01 *Auditors and Financial Statements*. (a) The Company's independent public accountants shall at all times be an independent public accounting firm of nationally recognized standing, as selected by the Board of Managers from time to time.

(b) The Company shall adopt and follow IFRS, consistently applied, and all financial terms used herein shall, to the extent not otherwise defined be interpreted according to IFRS; *provided* that, if the Board of Managers determines that the Company shall adopt and follow GAAP in lieu of IFRS, the Company shall thereafter adopt and follow GAAP, consistently applied, and all financial terms used herein shall, to the extent not otherwise defined, be interpreted according to GAAP in accordance with their common usage by auditors in the United States. Without limitation of the other rights of the Members under this Agreement, each Investor and its independent auditors shall be entitled to have reasonable access to and consultation with the Company's management (including its finance and accounting staff) and the Company's independent public accountants and, as long as S&N and its Permitted Transferees hold, in the aggregate, at least 9.9% of the outstanding Units (determined without regard to the EPR Unit and any outstanding Profits Interest Units), such Investor shall be entitled to review such accountants' work papers (to the extent made available to the Company) and the information made available to the Company in connection with the preparation and audit of the Company's financial statements. The Company shall cause its independent public accountants to make such work papers and information available to the Investors and otherwise to cooperate with the Investors and their independent auditors as reasonably requested in accordance with this Section 6.01(b). The Company shall afford each Investor and its auditors and other authorized representatives such other reasonable access to the Company's books of account, financial and other records as an Investor may reasonably request upon reasonable prior notice and during normal business hours of the Company.

Section 6.02 *Partnership for Tax Purposes*. The Members hereby agree that the Company shall be treated as a partnership for tax purposes under United States federal, state and local income tax laws or other laws, and further agree not to take any position or to make any election, in a tax return or otherwise, inconsistent herewith. Neither the Company nor any Member shall elect to treat the Company as an association taxable as a corporation without the prior affirmative vote or unanimous written consent of all of the Investors.

Section 6.03 *Taxable Year*. The Company's accounting period for federal income tax purposes shall be the Fiscal Year, unless the Board of Managers shall determine otherwise (subject to Section 5.02) in compliance with Applicable Law.

Section 6.04 *Tax Matters Member*. (a) Generally. The Tax Matters Member shall be responsible for undertaking the statutory responsibilities of the "Tax Matters Partner" under Subchapter C of Section 63 of Subtitle F of the Code (as set forth in the Code and the Treasury Regulations), as well as such other responsibilities as are assigned to it pursuant to this Agreement. The Tax Matters Member shall act in good faith with regard to the best interests of each of the Members in carrying out the responsibilities assigned to it pursuant to this Section 6.04(a).

(b) Designation of Tax Matters Member. Beluga I is hereby designated as the Tax Matters Member of the Company.

(c) Filing of Returns. The Tax Matters Member shall be responsible for (i) selecting the Return Preparer; *provided* that, as long as S&N and its Permitted Transferees hold, in the aggregate, at least 9.9% of the outstanding Units (determined without regard to the EPR Unit and any outstanding Profits Interest Units), such selection shall be subject to the approval of S&N, which shall not be unreasonably withheld, conditioned or delayed, and (ii) for the timely filing of all returns relating to taxes of the Company and its Subsidiaries. All income and franchise tax returns of, or relating to the Company and its Subsidiaries, shall be provided to S&N for review and comment not later than 60 Business Days prior to the due date (including extensions). S&N shall be entitled to meet and discuss all income and franchise tax matters relating to the Company and its Subsidiaries with the Return Preparer and Tax Matters Member, and provide comments not later than 30 Business Days prior to the due date (including extensions). As long as S&N and its Permitted Transferees hold, in the aggregate, at least 9.9% of the outstanding Units (determined without regard to the EPR Unit and any outstanding Profits Interest Units), the Tax Matters Member shall not file any tax return of the Company without S&N's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. S&N shall be given reasonable access to all income and franchise tax returns, work papers, supporting materials, written communications with the Service or any other taxing authority and other materials relating to income and franchise tax matters of the Company and its Subsidiaries. The Company shall, or shall cause the Return Preparer to, deliver to each Member and, if necessary, each former Member, prior to April 15th of each year or thereafter as soon as reasonably practicable, Internal Revenue Service Schedule K-l (or substantially similar report setting forth in sufficient detail information which shall enable such Member or former Member to prepare its federal and state income tax returns). Further, the Company shall, or shall cause the Return Preparer to, provide S&N information and access to information concerning the Company and its Subsidiaries that S&N reasonably requests in order for it to determine its federal, state, local, and foreign tax liability and timely file any tax returns (including estimated tax and information returns).

(d) Audits and Administrative and Judicial Proceedings, (i) Subject to the following sentence, the Tax Matters Member is authorized and required to represent the Company, its Subsidiaries, or any combination thereof in connection with any proceeding relating to any of them with the Service and any other taxing authority. In the event that the Company shall be the subject of a partnership- level audit by any federal, state or local taxing authority (such as an audit pursuant to the TEFRA audit rules of Subchapter C of Chapter 63 of the Internal Revenue Code), to the extent that the Company is treated as an entity for purposes of such audit (including administrative settlement and judicial review), the Tax Matters Member, subject to Section 6.04(d)(ii), shall be authorized to act for, and its decision shall be final and binding upon, the Company and each Member thereof; *provided, however*, that the Tax Matters Member shall take such action as may be necessary to cause each other Member to become a "notice partner" within the meaning of Section 6231(a)(8) of the Code.

(ii) With respect to communications between the Company or any Subsidiary and the Service or any other taxing authority regarding any income or franchise tax of the Company or any Subsidiary (including with respect to any audit described in Section 6.04(d)(i) or Section 6.04(d)(iii)), the Tax Matters Member shall, or shall cause the Return Preparer to: (A) mail a copy of any written communication to each Member within 10 Business Days of the receipt or sending of such written communication; (B) summarize for each Member any significant verbal communication within 10 Business Days of such communication; and (C) permit each Member (other than the Profits Interest Members, unless such communications specifically relate to such Profit Interest Member's rights and obligations hereunder) to have an opportunity to participate in such communications, to the extent reasonably practicable. S&N shall have the reasonable opportunity to participate in any communication, including any conversation or meeting, with any taxing authority. As long as S&N and its Permitted Transferees hold, in the aggregate, at least 9.9% of the outstanding Units (determined without regard to the EPR Unit and any outstanding Profits Interest Units), S&N's consent, not to be unreasonably withheld, conditioned or delayed, shall be required prior to: (1) the filing of a request for an administrative adjustment, (2) prior to the filing of a request for judicial review of an administrative adjustment, and (3) agreeing to an extension of the statute of limitations for any assessment. S&N's consent, not to be unreasonably withheld, conditioned or delayed, shall be required prior to agreeing to any settlement of any income or franchise tax where the share of S&N and its Permitted Transferees, taken together, of the item or items at issue with respect to all tax years under examination is, in the aggregate, in excess of $250,000.

(iii) Notwithstanding anything to the contrary in Section 6.04(e), S&N and the S&N Blocker shall indemnify the Tax Matters Member, the Company and their respective Affiliates against, and hold the Tax Matters Member, the Company and their respective Affiliates harmless from, any and all Damages actually incurred or sustained by Tax Matters Member, the Company and any of their respective Affiliates in connection with an audit, litigation or other similar proceeding with respect to taxes or any tax return of the Company to the extent such Damages arise from the allocation requirement in Section 4.06(c) or the distribution requirement in Section 10.05(a)(v)(C); *provided* that, without limiting the rights of S&N otherwise provided herein, S&N shall have the right to participate in (but not control) any such audit, litigation or other similar proceeding to the extent related to the allocation requirement in Section 4.06(c) or the distribution requirement in Section 10.05(a)(v)(C).

(e) Costs. All reasonable out-of-pocket expenses incurred by the Tax Matters Member and S&N in connection with the matters described in Section 6.04(d) shall be paid or reimbursed by the Company. If the Company does not have sufficient assets to pay any such costs, then the Investors shall contribute all needed funds for the prosecution of the audit, administrative settlement or judicial review within 10 Business Days upon call of the Tax Matters Member, which call shall require that such contributions be made by the Investors in accordance with their Percentage Interests for the tax period under examination (or the arithmetic average of their Percentage Interests for the tax period under examination if more than one taxable year shall be under examination).

(f) Survival. The provisions of Sections 6.04(a)-6.04(e) shall be continuing covenants that shall survive the winding up and dissolution of the Company.

(g) Tax Elections and Schedules. (i) *Tax Elections.* The Company shall make any tax elections as the Board of Managers may determine necessary; *provided* that, as long as S&N and its Permitted Transferees hold, in the aggregate, at least 9.9% of the outstanding Units (determined without regard to the EPR Unit and any outstanding Profits Interest Units), any such elections may only be made with the prior written approval of S&N, which shall not be unreasonably withheld, conditioned or delayed; and *provided*, *further*, that the Company shall (A) make an election pursuant to Section 754 of the Code and (B) elect to use the "traditional method" under Section 704(c) of the Code to take account of any variation between the adjusted basis of any property contributed to the Company for federal income tax purposes and its Book Value.

(ii) *Tax Schedules.* S&N and the Essex Members agree that the allocation of value and tax basis for purposes of Section 704(c) of the Code among the assets contributed by S&N pursuant to the S&N-Company Contribution Agreement on the date hereof shall be as set forth on Annex E and that the allocation of value and tax basis for purposes of Section 704(c) of the Code among the assets contributed by the Essex Members pursuant to the Essex-Company Contribution Agreement on the date hereof shall be as set forth on Annex F. On the date hereof, S&N shall provide on Annex E a good faith estimate of the allocation of federal income tax basis and value of each asset it contributed pursuant to the S&N-Company Contribution Agreement on the date hereof, and within 90 Business Days after the date hereof, S&N and the Essex Members shall agree to and finalize the allocation of federal income tax basis and value of each asset. On the date hereof, the Essex Members shall provide on Annex F a good faith estimate of the allocation of federal income tax basis and value of each asset it contributed pursuant to the Essex-Company Contribution Agreement on the date hereof, and within 90 Business Days after the date hereof, S&N and the Essex Members shall agree to and finalize the allocation of federal income tax basis and value of each asset. Unless otherwise required by a "determination" (within the meaning of Section 1313(a) of the Code), S&N, the Essex Members, the Tax Matters Member, the Company and its Subsidiaries shall not take any position inconsistent with Annex E or Annex F or the final federal income tax basis without the prior affirmative vote or unanimous written consent of all of the Investors. In the event that any of the allocations described in this Section 6.04(g)(ii) are disputed by any taxing authority, the party receiving notice of such dispute shall promptly notify and consult with the Company and the other party concerning the resolution of such dispute.

ARTICLE 7
INDEMNIFICATION

Section 7.01 *Indemnification*. The Company will indemnify as set forth below any Member or person who serves as an officer, Manager or employee of the Company (each, a "Company Party") in connection with any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding") relating to such Company Party's status as a Member or service as an officer, Manager or employee of the Company or (at the Company's request) of another entity in which the Company or any of its Subsidiaries has an interest (such Company Party's "**Indemnified Service**")**:**

(a) The Company shall indemnify and hold harmless the Company Party, to the fullest extent permitted by Applicable Law, against all liability and loss suffered and expenses (including attorneys' fees) actually and reasonably incurred by the Company Party in connection with any Proceeding in which the Company Party is made or is threatened to be made a party by reason of the Company Party's Indemnified Service.

(b) The Company Party must give notice promptly to the Company's chief legal officer or company secretary *(provided* that if no such position exists, the Company shall designate a responsible officer for purposes of this Section) of any Proceeding for which indemnity may be sought hereunder. The Company shall have the right to select counsel to represent the Company Party at the Company's expense and to control the defense and disposition of such Proceeding for so long as the Company expects to provide indemnity with regard to such Proceeding. If such counsel determines that a conflict of interest exists between the Company and the Company Party, then the Company Party may retain separate counsel at the Company's expense to participate in the Proceeding to the extent necessary to protect Company Party's interest; *provided* that the Company shall not be obliged to pay for more than one separate counsel for all Company Parties in connection with any one Proceeding. In addition, the Company Party may, at any time, retain separate counsel at the Company Party's expense to participate in the Proceeding.

(c) Notwithstanding the foregoing, the Company Party shall not be entitled to indemnity from the Company under this Section 7.01 or otherwise in connection with (x) a Proceeding (or part thereof) commenced by the Company Party, unless such commencement was authorized by the Board of Managers, (y) a Proceeding commenced by the Company or any of its Subsidiaries against the Company Party, or (z) a Proceeding that is based upon, results from, or relates to:

(i) any acts or omissions by the Company Party occurring prior to commencement, or after termination, of the Indemnified Service;

(ii) any willful misconduct, bad faith or active and deliberate dishonesty by the Company Party, or acts or omissions by which the Company Party personally gained in fact a financial profit or other advantage to which the Company Party was not legally entitled;

(iii) any acts or omissions of the Company Party that were outside the scope of the Indemnified Service; or (iv) any violation by the Company Party of the Company's Code of Conduct and Business Principles (or equivalent policy) or similar integrity policy of the Company or any of its Subsidiaries.

(d) To the extent permitted under Applicable Law, the Company shall advance to the Company Party expenses (including attorneys' fees) in connection with a Proceeding for which indemnity is sought under this Section 7.01; *provided*, *however*, that (i) such advances shall be made only upon prior receipt of an undertaking by the Company Party to repay immediately all amounts advanced if it is ultimately determined that such Company Party was not entitled to indemnification under this Section 7.01 and (ii) the Company may decline to advance expenses if the Board of Managers reasonably determines in good faith at any time that it is likely that the Company Party will not be entitled to indemnification under this Section 7.01.

(e) The Company's obligation to indemnify or to advance expenses to the Company Party shall be reduced by any amount the Company Party collects as indemnification or advancement of expenses from any other source, including the entity served and its insurer. The Company Party will take such action as the Company may reasonably request to collect, or enable the Company to collect, from such other sources.

Section 7.02 *Standard of Care*; *Elimination of Fiduciary Duties*. (a) To the extent that any Company Party is performing duties on behalf of the Company, each such Company Party is to perform such duties in good faith and within the scope of authority conferred upon such Company Party.

(b) Each Company Party, in the performance of his or her duties, is entitled to rely in good faith on information, opinions, reports or other statements, including financial statements, books of account and other financial data, if prepared or presented by: (i) one or more other Company Parties, if the Person relying on the statements reasonably believes that the Person preparing or presenting the material is reliable and competent in that matter; or (ii) legal counsel, public accountants or other Persons, as to matters that the Person relying on the statements reasonably believes are within the Person's professional or expert competence.

(c) Without limiting any other provision hereof (including, without limitation, Section 9.13), pursuant to Section 18-1101 of the Delaware Limited Liability Company Act, any fiduciary duties of any Investor or any Profits Interest Member (but, in the case of any Profits Interest Member, solely in his or her capacity as a Member hereunder, and not in any other capacity, whether as a Manager, officer, director or employee of the Company) to the Company or to any other Member that would otherwise apply at law or in equity are hereby eliminated to the fullest extent permitted under Delaware Law and any other Applicable Law; *provided* that the foregoing will not (i) eliminate the obligation of each Member to act in compliance with the express terms of this Agreement (including, without limitation, Section 9.13), (ii) be deemed to eliminate the implied contractual covenant of good faith and fair dealing, and (iii) apply in the case of gross negligence or willful misconduct.

Section 7.03 *Insurance*. The Company may purchase and maintain insurance on behalf of any person who is or was a Manager, officer, director, employee or agent of the Company or any of its Subsidiaries, or is or was serving at the request of the Company or any of its Subsidiaries as a Manager, officer, director, employee or agent of another corporation, partnership, joint venture, limited liability company, trust or other enterprise against any expense, liability or loss incurred by such person in any such capacity or arising out of his or her status as such, whether or not the Company or any of its Subsidiaries would have the power to indemnify such Person against such liability under Delaware Law; *provided* that, to the extent the Company purchases and maintains insurance on behalf of any Manager or director of the Company or any of its Subsidiaries, such insurance shall cover all Managers or directors of the Company or the applicable Subsidiary on an equal and non-discriminatory basis.

Section 7.04 *Miscellaneous*. *(a)* The rights and authority conferred in this Article 7 shall not be exclusive of any other right which any person may otherwise have or hereafter acquire.

(b) Neither the amendment of this Article 7, nor, to the fullest extent permitted by Delaware Law, any modification of law, shall eliminate or reduce the effect of this Article 7 in respect of any acts or omissions occurring prior to such amendment or modification.

(c) No provision of this Article 7 shall limit or affect any Member’s obligation to comply with the express terms of this Agreement or the Related Documents.

(d) This Article 7 shall not modify, alter or otherwise have any effect on any indemnification rights of any Person pursuant to the Related Documents.

ARTICLE 8
TRANSFER OF INTERESTS

Section 8.01 *General Restrictions*. (a) No Transfer of any or all Units may be made by any Member or its Affiliates (and each Member shall ensure that no Transfer by it or any of its Affiliates is made) except for Transfers (i) to Permitted Transferees (provided that any such Transfer is made in accordance with this Agreement and any applicable Award Agreement under which the Transferor is bound), (ii) in accordance with Section 8.03 (Right of First Refusal), Section 8.04 (Right of First Offer), Section 8.05 (Tag-Along Rights), Section 8.06 (Drag-Along Sale), Section 9.04 (S&N Rights of First Negotiation), and Section 9.06 (S&N Right to Compel an Exit), (iii) in a Public Offering, (iv) by any of the Essex Members or its Permitted Transferees (A) prior to the second anniversary of the date hereof with the prior written consent of S&N or (B) in accordance with Section 8.09 (Essex Syndication Right), or (v) by S&N or its Permitted Transferees prior to the second anniversary of the date hereof with the prior written consent of the Essex Members. Notwithstanding the first sentence of this Section 8.01(a), no Member may (1) pledge, encumber or hypothecate any of its Company Securities or (2) enter into any derivative, swap, participation or similar arrangement that transfers, directly or indirectly, in whole or in part, any of the economic consequences of ownership of such Units. The restrictions set forth in this Section 8.01(a) shall terminate upon the consummation of a Qualified Initial Public Offering or on such earlier date as is specified in this Section 8.01(a).

(b) Immediately prior to any Permitted Transferee of any Member ceasing to be a Permitted Transferee thereof, such Permitted Transferee shall Transfer the Units then held by such Permitted Transferee to the Member from which it received such Units (or to another Permitted Transferee of such Member), and such Transfer shall not be subject to the provisions of this Article 8.

(c) Any Transfer of Units which is not made in compliance with the provisions of this Agreement, including Section 3.06 hereof, shall be void and no such Transfer shall be recognized on the books and records of the Company or any other Person. Notwithstanding anything else contained herein, no Transfer shall be made except in compliance with the Securities Act. If reasonably requested by the Board of Managers, each Transferee Member agrees to pay, prior to or simultaneously with the time of the Transfer, all expenses, including reasonable attorneys' fees, incurred by the Company in connection with such Transfer.

(d) Notwithstanding anything to the contrary in this Agreement, (i) Transfers of shares of Smith & Nephew plc or any successor thereof shall not be considered Transfers prohibited by this Section 8.01 and (ii) this Section 8.01 shall not be applicable in connection with any Transfer by Smith & Nephew plc and its Subsidiaries, pursuant to a transaction or series of related transactions, of all or substantially all of the business of Smith & Nephew plc and its Subsidiaries (taken as a whole).

(e) No Member may Transfer (i) any Common Units to any Transferee unless such Member simultaneously Transfers to the applicable Transferee a number of OUS Units that represents the same proportion of the total number of OUS Units held by such Member and its Permitted Transferees as the number of Common Units being Transferred represents of the total number of Common Units held by such Member and its Permitted Transferees, or (ii) any OUS Units to any Transferee unless such Member simultaneously Transfers to the applicable Transferee a number of Common Units that represents the same proportion of the total number of Common Units held by such Member and its Permitted Transferees as the number of OUS Units being Transferred represents of the total number of OUS Units held by such Member and its Permitted Transferees.

(f) No Member Entity Transfer may be effected unless the applicable Member (i) does not own any assets of any kind other than Units, (ii) does not have any liabilities of any kind, including Indebtedness, other than any liabilities associated with its ownership of Units or pursuant to the Transaction Documents, and (iii) is an entity organized under the laws of a jurisdiction within the United States.

Section 8.02 *Transferee Rights*. Any Person who is a Transferee of any portion of a Member's Units in accordance with this Agreement shall become a substitute Member; *provided*, *however*, that, in the event of any Member Entity Transfer, the applicable Member shall remain a Member, and the applicable Transferee shall not become a substitute Member solely by reason of such Transfer. A Permitted Transferee of any Units or rights attributable to the Units of any Member shall be entitled to receive distributions of cash or other property from the Company to the extent of the rights under such Units.

Section 8.03 *Right of First Refusal*. (a) Subject to Section 8.08, if applicable, from and after the second anniversary of the date of this Agreement, if any Investor (the "**Offering Member**") receives an unsolicited offer or proposal (whether or not binding) from a third party and proposes to Transfer (in one transaction or in a series of transactions, including, for the avoidance of doubt, either directly or indirectly through a Member Entity Transfer) any Units to such third party (other than (i) to a Permitted Transferee, (ii) in a Public Offering, (iii) in a sale pursuant to Section 8.05, (iv) in a Company Sale (except that any Company Sale by means of a Transfer of less than all of the Units then outstanding shall be subject to this Section 8.03) or (v) in a Drag-Along Sale), the Offering Member shall give written notice (the "**Offer Notice**") to (A) S&N, S&N Blocker (after S&N Blocker becomes a Member) and the Permitted Transferees thereof (if any of the Essex Members or any Permitted Transferee thereof is the Offering Member) or (B) the Essex Members and the Permitted Transferees thereof (if S&N or any Permitted Transferee thereof is the Offering Member) (S&N and S&N Blocker, on the one hand, or the Essex Members, on the other hand, the "**Deciding Members**") and the Company of such proposal. The Offer Notice shall specify (1) the number of Units proposed to be Transferred (in the case of a Member Entity Transfer, as determined in accordance with Section 8.08(a)(i)), (2) the proposed purchase price (which shall consist solely of cash consideration, and which shall be, in the case of a Member Entity Transfer, the price at which the Offering Member proposes to Transfer the equity interests of the applicable Member pursuant to such Member Entity Transfer (the "**Member Entity ROFR Price**")), (3) the identity of the proposed third party Transferee and (4) the other material terms and conditions of the proposed Transfer, including any additional information with respect to the Transfer required to be included in the Offer Notice pursuant to Section 8.03(e) and, with respect to Section 8.05 hereof, the number of Units eligible to be Transferred pursuant to Section 8.05 by the Members exercising their Tag Along Rights and the purchase price to be received with respect to such Units.

(b) Each Deciding Member shall have the right and option (the "**ROFR Right to Purchase**"), exercisable within 30 days after the date of the Offer Notice, to purchase up to its ROFR Percentage of the Units proposed to be Transferred at the price (which shall be in cash payable by wire transfer of immediately available funds in U.S. Dollars) and on the terms and conditions set forth in the Offer Notice by providing written notice of that election to the Offering Member (and the other Investors). In the case of a proposed indirect Transfer of Units by the Offering Member through a Member Entity Transfer subject to this Section 8.03(b), each Deciding Member shall have the further right and option, exercisable by inclusion of such Deciding Member's election in the written notice referred to in the immediately preceding sentence, to exercise its ROFR Right to Purchase with respect to either the Units held by the Offering Member (subject to Section 8.03(e)) or the equity interests of the Offering Member proposed to be Transferred pursuant to such Member Entity Transfer. If any Deciding Member fails to elect to purchase its ROFR Percentage of the Units within such 30-day period, the Offering Member shall give prompt written notice of such failure to those other Deciding Members (if any) who do offer to purchase up to their ROFR Percentage pursuant to the ROFR Right to Purchase and such other Deciding Members may purchase on a *pro rata* basis, based on the number of Units they have previously elected to purchase, all of the balance thereof (or commit to purchase all of the balance thereof) at the price and on the terms and conditions set forth in the Offer Notice by providing written notice of that election to the Offering Member within 10 days after the expiration of the 30-day period described above (such 30-day period, as may be extended by the additional 10- day period, the "**ROFR Period**"). Any offer to purchase Units pursuant to the ROFR Right to Purchase shall be irrevocable and binding on the Deciding Member making such offer, subject only to compliance by the Offering Member with the terms of this Section 8.03. The failure of any Deciding Member to advise the Offering Member of such Deciding Member's decision to purchase Units within the applicable periods described above shall be deemed to constitute a notification to the Offering Member of a decision not to exercise the ROFR Right to Purchase.

(c) The closing for all Transfers of the Units purchased pursuant to the exercise of the ROFR Right to Purchase shall occur within 30 days after the expiration of the ROFR Period (which 30-day period shall be extended to up to 90 days in the event any required approval of such sales from any governmental entity, including termination or expiration of the applicable waiting period under the HSR Act, has not then been obtained), or at such other time as may be mutually agreed upon by the Offering Member and the applicable Deciding Members purchasing the Units, with the Offering Member being required to provide representations and indemnification to such purchasers only with respect to due authorization, valid execution and delivery, good title to the Units and no Liens on such Units (except as may arise under the terms of this Agreement). If any purchasing Deciding Member shall default in its obligations to purchase Units pursuant to this Section 8.03(c), the other purchasing Deciding Members shall be entitled to purchase the Units that such defaulting Deciding Member failed to purchase on the same basis as the other Units purchased by the non-defaulting Deciding Members; *provided* that such purchase shall take place within 10 Business Days of such default.

(d) Upon the failure of (i) the Deciding Members to exercise their Rights to Purchase with respect to all (and not less than all) of the Units subject to an Offer Notice in accordance with Section 8.03(b) or (ii) the purchasing Deciding Members to purchase all (and not less than all) of the Units subject to such Offer Notice pursuant to Section 8.03(c) within the time designated therein for closing, as applicable (the time of such applicable failure, the "**ROFR Termination**"), the Offering Member shall be relieved of such Offering Member's obligations under this Section 8.03 with respect to that particular proposed Transfer and, subject to Section 8.05, such Offering Member shall be permitted, for a 90-day period commencing upon the ROFR Termination (which 90-day period shall be extended up to 180 days in the event any required approval of such sales from any governmental entity, including termination or expiration of the applicable waiting period under the HSR Act, has not then been obtained), to Transfer the Units subject to the Offer Notice to the third party(s) set forth in the Offer Notice at a price not lower, and on other terms and conditions in the aggregate not significantly more favorable to the third party(s), than offered to the Deciding Members in the Offer Notice. If, at the end of such 90-day (or up to 180-day, as applicable) period, the Offering Member has not completed such Transfer to such third party(s), then all the restrictions on Transfer contained in this Agreement with respect to Units subject to such Offer Notice shall again be in effect.

(e) Notwithstanding any other provision of this Section 8.03 to the contrary, in connection with any proposed indirect Transfer of Units through a Member Entity Transfer subject to this Section 8.03, if any Deciding Member exercises its ROFR Right to Purchase with respect to the Units held by the Offering Member, rather than with respect to the equity interests of the Offering Member proposed to be Transferred pursuant to such Member Entity Transfer, such Deciding Member agrees that the price that it shall pay to the Offering Member for such Units in connection with the exercise of its ROFR Right to Purchase (the "**Member Unit ROFR** Price") shall be equal to (i) the Member Entity ROFR Price *plus* (ii) an amount equal to the product of:

$$\text{Gain} = x \left[\frac{1}{(1 - T)} - 1 \right]$$

For purpose of this Section 8.03(e), the Offering Member's "**Gain**" equals the excess, if any, of the Member Entity ROFR Price over the Offering Member's basis in its Units for U.S. federal income tax purposes, and "**T**" equals the Assumed Tax Rate. In connection with any proposed indirect Transfer of Units through a Member Entity Transfer subject to this Section 8.03, the Offering Member shall include the Member Unit ROFR Price and shall certify its basis in the relevant Units for U.S. federal income tax purposes in the Offer Notice.

(f) This Section 8.03 shall terminate upon the consummation of a Qualified Initial Public Offering.

Section 8.04 *Right of First Offer*. (a) Subject to Section 8.08, if applicable, from and after the second anniversary of the date of this Agreement, if any Investor (the "**Transferring Member**") proposes to Transfer (in one transaction or in a series of transactions, including, for the avoidance of doubt, either directly or indirectly through a Member Entity Transfer) any Units to a third party (other than (i) to a Permitted Transferee, (ii) in a Public Offering, (iii) in a sale pursuant to Section 8.05, (iv) in a Company Sale (except that any Company Sale by means of a Transfer of less than all of the Units then outstanding shall be subject to this Section 8.04), (v) in a Drag-Along Sale, or (vi) in a sale pursuant to Section 8.03), the Transferring Member shall give written notice (the "**ROFO Notice**") to (A) S&N, S&N Blocker (after S&N Blocker becomes a Member) and the Permitted Transferees thereof (if any of the Essex Members or any Permitted Transferee thereof is the Transferring Member) or (B) the Essex Members and the Permitted Transferees thereof (if S&N, S&N Blocker or any Permitted Transferee thereof is the Transferring Member) (S&N and S&N Blocker, on the one hand, or the Essex Members, on the other hand, the "**Electing Members**") and the Company of such proposed Transfer and the number of Units proposed to be Transferred pursuant thereto (in the case of a Member Entity Transfer, as determined in accordance with Section 8.08(a)(i)).

(b) The Electing Members shall have the right and option, exercisable within 30 days after the date of the ROFO Notice, to make an offer (the "**Offer**") to purchase up to their respective ROFO Percentages of the Units proposed to be Transferred at a price proposed by the Electing Members (which shall be in cash payable by wire transfer of immediately available funds in U.S. Dollars) (the "**Member Entity ROFO Price**") and on the terms and conditions proposed by the Electing Members by providing written notice of the Offer to the Transferring Member (and the other Investors). In the case of a proposed indirect Transfer of Units by the Transferring Member through a Member Entity Transfer subject to this Section 8.04(b), each Electing Member a shall have the further right and option, exercisable by inclusion of such Electing Member's election in the written notice referred to in the immediately preceding sentence, to exercise its right to make an Offer with respect to either the Units held by the Transferring Member (subject to Section 8.04(e)) or the equity interests of the Transferring Member proposed to be Transferred pursuant to such Member Entity Transfer. If any Electing Member fails to make an Offer to purchase its ROFO Percentage of the Units within such 30-day period, the Transferring Member shall give prompt written notice of such failure to those other Electing Members (if any) who do make an Offer to purchase up to their ROFO Percentage and such other Electing Members may make an Offer to purchase on a *pro rata* basis, based on the number of Units they have previously offered to purchase, all of the balance thereof (or commit to purchase all of the balance thereof) at the price and on the terms and conditions proposed by such Electing Member by providing written notice of that proposal to the Transferring Member within 10 days after the expiration of the 30-day period described above (such 30-day period, as may be extended by the additional 10-day period, the "**ROFO Period**")**.** Within 30 days after the end of the ROFO Period, the Transferring Member shall provide written notice (the "**ROFO Response Notice**") to any Electing Member that has made an Offer prior to the end of the ROFO Period as to whether the Transferring Member accepts or rejects such Electing Member's Offer, and the Transferring Member shall be deemed to have rejected the Offer of any Electing Member if it fails to so notify such Electing Member. Any Offer made by any Electing Member pursuant to this Section 8.04(b) shall be irrevocable and binding on the Electing Member making such Offer, subject only to compliance by the Transferring Member with the terms of this Section 8.04.

(c) The closing for all Transfers of the Units purchased by the Electing Members pursuant to the Transferring Member's acceptance of any Offer shall occur within 30 days after the expiration of the ROFO Period (which 30-day period shall be extended to up to 90 days in the event any required approval of such sales from any governmental entity, including termination or expiration of the applicable waiting period under the HSR Act, has not then been obtained), or at such other time as may be mutually agreed upon by the Transferring Member and the applicable Electing Members purchasing the Units, with the Transferring Member being required to provide representations and indemnification to such purchasers only with respect to due authorization, valid execution and delivery, good title to the Units and no Liens on such Units (except as may arise under the terms of this Agreement). If any purchasing Electing Member shall default in its obligations to purchase Units pursuant to this Section 8.04(c), the other purchasing Electing Members shall be entitled to purchase the Units that such defaulting Electing Member failed to purchase on the same basis as the other Units purchased by the non-defaulting Electing Members; *provided* that such purchase shall take place within 10 Business Days of such default.

(d) Upon the failure of (i) the Electing Members to exercise their right to make an Offer with respect to all (and not less than all) of the Units subject to a ROFO Notice in accordance with Section 8.04(b) or (ii) the purchasing Electing Members to purchase all (and not less than all) of the Units subject to such ROFO Notice pursuant to Section 8.04(c) within the time designated therein for closing, as applicable (the time of such applicable failure, the "**ROFO Termination**"), the Transferring Member shall be relieved of such Transferring Member's obligations under this Section 8.04 with respect to that particular proposed Transfer and, subject to Section 8.05, such Transferring Member shall be permitted, for a 90-day period commencing upon the ROFO Termination (which 90-day period shall be extended up to 180 days in the event any required approval of such sales from any governmental entity, including termination or expiration of the applicable waiting period under the HSR Act, has not then been obtained), to Transfer the Units subject to the ROFO Notice to one or more third party(s) at a price not lower, and on other terms and conditions in the aggregate not significantly more favorable to the third party(s), than offered to the Transferring Member by the Electing Members. If, at the end of such 90-day (or up to 180-day, as applicable) period, the Transferring Member has not completed such Transfer to one or more third party(s), then all the restrictions on Transfer contained in this Agreement with respect to Units subject to such ROFO Notice shall again be in effect.

(e) Notwithstanding any other provision of this Section 8.04 to the contrary, in connection with any proposed indirect Transfer of Units through a Member Entity Transfer subject to this Section 8.04, if any Electing Member makes an Offer with respect to the Units held by the Transferring Member, rather than with respect to the equity interests of the Transferring Member proposed to be Transferred pursuant to such Member Entity Transfer, such Electing Member agrees that the price that it shall pay to such Transferring Member for such Units (the "**Member Unit ROFO Price**") shall be equal to (i) the Member Entity ROFO Price plus (ii) an amount equal to the product of:

$$\text{Gain} = x \left[\frac{1}{(1 - T)} - 1 \right]$$

For purpose of this Section 8.04(e), the Transferring Member's "**Gain**" equals the excess, if any, of the Member Entity ROFO Price over the Transferring Member's basis in its Units for U.S. federal income tax purposes, and "**T**" equals the Assumed Tax Rate. In connection with any proposed indirect Transfer of Units through a Member Entity Transfer subject to this Section 8.04, the Transferring Member shall include the Member Unit ROFO Price and shall certify its basis in the relevant Units for U.S. federal income tax purposes in the ROFO Response Notice.

(f) This Section 8.04 shall terminate upon the consummation of a Qualified Initial Public Offering.

Section 8.05 *Tag-Along Rights*. (a) Subject to Sections 8.07 and, if applicable, 8.08, at any time following a ROFR Termination pursuant to Section 8.03(d) or a ROFO Termination pursuant to Section 8.04(d), if the Essex Members or any of their Permitted Transferees (the "**Essex Offering Members**") propose to Transfer (in one transaction or in a series of transactions, including, for the avoidance of doubt, a Member Entity Transfer) any Units (other than (i) to a Permitted Transferee, (ii) in a Public Offering or (iii) in a sale pursuant to Section 8.06) to a third party Transferee (a "**Tag-Along Sale**"), such Essex Offering Members shall provide each Investor (other than the Essex Offering Members and their Permitted Transferees) and, in the case that the proposed Tag-Along Sale would constitute a Transfer of Units representing a Percentage Interest of more than 66.66% (such Transfer, a "**PIM Tag-Along Trigger Event**") if effectuated, each Profits Interest Member, written notice (the "**Tag-Along Notice**") of the terms and conditions of such proposed Transfer (which terms and conditions, including price, shall comply with the provisions of Section 8.03(d) or Section 8.04(d), as applicable), and each such Investor and, in the case of a Profits Interest Member Tag-Along Trigger Event, each such Profits Interest Member, shall have the opportunity to participate in such Transfer in accordance with this Section 8.05.

(b) Each Investor (other than the Essex Offering Members and their Permitted Transferees), and in the case that the proposed Tag-Along Sale would constitute a PIM Tag-Along Trigger Event if effectuated, each Profits Interest Member, shall have the right (a "**Tag-Along Right**"), exercisable by written notice (a "**Tag-Along Response Notice**") given to the Essex Offering Members within 10 Business Days following its receipt of the Tag-Along Notice (the "**Tag-Along Right Period**"), to require the Essex Offering Members to include in the proposed Transfer up to a number of Units representing such Member's Tag- Along Portion (each such exercising Member, a "**Tagging Member**")**;** *provided* that (i) notwithstanding anything else contained herein to the contrary, no Profits Interest Member shall have the right to Transfer any unvested Profits Interest Units pursuant to this Section 8.05 and (ii) in the case of a proposed indirect Transfer of Units through a Member Entity Transfer subject to this Section 8.05(b), S&N Blocker (after S&N Blocker becomes a Member) and its Permitted Transferees shall have the right, exercisable by inclusion of its election in the Tag-Along Response Notice, to require the Essex Offering Members to include in the proposed Transfer the equity interests of S&N Blocker or such Permitted Transferee in lieu of the Units held by S&N Blocker or such Permitted Transferee; and *provided*, *further*, that the Essex Offering Members shall be entitled to include the number of Units proposed to be Transferred by the Essex Offering Members as set forth in the Tag-Along Notice (reduced, to the extent necessary, so that each Tagging Member shall be able to include its Tag-Along Portion) and such additional Units as permitted by Section 8.05(c). If any Member has not exercised its Tag-Along Right in full prior to the expiration of the Tag-Along Right Period, such Member shall be deemed to have waived its Tag-Along Right with respect to the remaining portion of its Tag-Along Portion in connection with the Transfer of Units described in the Tag-Along Notice. Each Tag-Along Response Notice shall include wire transfer or other instructions for payment of any consideration for the Units being transferred in the Tag-Along Sale. Delivery of a Tag-Along Response Notice shall constitute an irrevocable exercise by such Tagging Member of its Tag-Along Right with respect to the number of Units specified in such Tag-Along Response Notice, subject to the provisions of this Section 8.05 and Sections 8.07 and, if applicable, 8.08.

(c) If (i) any Member declines to exercise its Tag-Along Right or (ii) any Tagging Member elects to exercise its Tag-Along Right with respect to less than such Tagging Member's full Tag-Along Portion, the Essex Offering Members shall be entitled to Transfer in the Tag-Along Sale a number of Units held by them equal to the number of Units in respect of which Tag-Along Rights were not exercised, at a price not higher, and on other terms and conditions in the aggregate not significantly more favorable to the Essex Offering Members, than offered to the Investors in the Tag-Along Notice.

(d) The Essex Offering Members will use commercially reasonable efforts to obtain the agreement of the prospective Transferee to the participation of the Tagging Members in any contemplated Transfer, and the Essex Offering Members will not effect any Transfer of any of its Units to the prospective Transferee unless, simultaneously with such Transfer, the prospective Transferee purchases from each Tagging Member the Units which such Tagging Member is entitled to and elects to sell to such prospective Transferee pursuant to this Section 8.05.

(e) The purchase from the Members exercising Tag-Along Rights pursuant to this Section 8.05 shall be on the same terms and conditions, including any representations, warranties, covenants, indemnities and form of consideration, and on the same date of Transfer, as are received by the Essex Offering Members and stated in the Tag-Along Notice, and shall be subject to Sections 8.07 and, if applicable, 8.08; *provided* that the consideration from such sale shall be allocated among the Members (or their direct or indirect owners, in the case of a Member Entity Transfer) at the same price per Unit, except in the case of a Tag-Along Sale involving (i) a Transfer of all outstanding Units (determined without regard to the EPR Unit) or (ii) a Transfer of Profits Interest Units (other than a Tag-Along Sale described in Section 8.05(e)(i)), in which case the consideration from such sale shall be allocated among the Members (or their direct or indirect owners, in the case of a Member Entity Transfer) pursuant to the provisions of Sections 10.05 and 10.06 (taking into account the applicable Benchmark Amount of each Profits Interest Unit so Transferred); *provided*, *further*, that in the case of any Tag-Along Sale described in Section 8.05(e)(ii), (1) for the avoidance of doubt, the holders of the Profits Interest Units so Transferred shall not receive any portion of the consideration from such sale unless and until each of the holders of outstanding Preferred Units and former holders of Preferred Units previously Transferred pursuant to a Preferred Transfer Event and the holders of outstanding Common Units, OUS Units and the EPR Unit have received consideration from such sale in respect of such Units equal to the aggregate amount that each such holder or former holder is entitled to receive with respect to such Units pursuant to Sections 10.05(a)(i) through 10.05(a)(iv); and (2) any Profits Interest Units so Transferred shall be cancelled upon the consummation of such Tag-Along Sale, may not be reissued at any time thereafter and shall not be entitled to any future distributions whatsoever pursuant to this Agreement. Promptly after the consummation of the Tag-Along Sale (but in no event later than two Business Days thereafter), the Essex Offering Members shall (B) notify the Tagging Members thereof, (C) remit to the Tagging Members the total consideration for the Units of the Tagging Members Transferred pursuant thereto *less* the Tagging Members' *pro rata* share of any applicable escrows, holdbacks or adjustments in purchase price and any transaction expenses as determined in accordance with Sections 8.07 and, if applicable, 8.08, with the cash portion of the purchase price paid by wire transfer of immediately available funds in accordance with the wire transfer instructions in the applicable Tag-Along Response Notices and (D) furnish such other evidence of the completion and the date of completion of such transfer and the terms thereof as may be reasonably requested by the Tagging Members. The Essex Offering Members shall promptly remit to the Tagging Members any additional consideration payable to the Tagging Members upon the release of any escrows, holdbacks or adjustments in purchase price. No Tagging Members shall be required, for the purpose of exercising its Tag-Along Right under this Section 8.05, to comply with the provisions of Section 8.03 or Section 8.04, as applicable, in connection with such Transfer.

(f) If at the end of the 90-day period commencing upon the expiration of the Tag-Along Right Period (which 90-day period shall be extended up to 180 days in the event any required approval of such sales from any governmental entity, including termination or expiration of the applicable waiting period under the HSR Act, has not then been obtained), the Essex Offering Members have not completed the Transfer of all the Units proposed to be sold by the Essex Offering Members and all Tagging Members on the terms and conditions set forth in the Tag-Along Notice, all the restrictions on Transfer contained in this Agreement with respect to Units owned by the Essex Offering Members shall again be in effect.

(g) Notwithstanding anything to the contrary contained in this Section 8.05, there shall be no liability on the part of the Essex Offering Members to any Member in the event that the Transfer of Units to the Person contemplated pursuant to this Section 8.05 is not completed for any reason whatsoever, *provided* that the Essex Offering Members comply with all of the provisions of Section 8.03, Section 8.04, this Section 8.05, and Sections 8.07 and, if applicable, 8.08.

(h) This Section 8.05 shall terminate upon the consummation of a Qualified Initial Public Offering.

Section 8.06 *Drag-Along Sale*. *(a)* Subject to Sections 8.07, 9.01 and, if applicable, 8.08, if at any time after the second anniversary of the date of this Agreement, (i) the Essex Members and their Permitted Transferees (the "**Initiating Members**") propose to Transfer (in one transaction or in a series of transactions, including, for the avoidance of doubt, a Member Entity Transfer) all of their Units (the "**Essex Units**") to a third party that is not a Permitted Transferee of any of such Essex Members (such Transfer, a "**Drag-Along Sale**" and such Transferee, the "**Drag-Along Transferee**") and (ii) the Percentage Interest of the Essex Members and their Permitted Transferees at such time is, in the aggregate, greater than or equal to 51%, then the Initiating Members may elect, subject to the provisions of this Section 8.06, to require each other Member (the "**Other Members**") to Transfer in the Drag-Along Sale all of the Units then held by such Other Members for the consideration and on the terms and conditions described in the Drag-Along Sale Notice, and each Other Member will be deemed to have consented to (and agrees to waive any dissenter's rights, appraisal rights or similar rights in connection with) such Drag-Along Sale and agrees to take all necessary action to transfer such Other Member's Units on the terms and conditions specified in the Drag-Along Sale Notice; *provided*, *however*, that, notwithstanding anything to the contrary contained herein, at the election of S&N Blocker (after S&N Blocker becomes a Member) or any Permitted Transferee thereof, any Drag-Along Sale shall be structured to permit any Transfer of Units by S&N Blocker or such Permitted Transferee pursuant to such Drag-Along Sale to be effected indirectly pursuant to the Transfer of the equity interests of S&N Blocker or such Permitted Transferee.

(b) If the Initiating Members elect to exercise their rights pursuant to Section 8.06(a), the Initiating Members shall provide written notice of such Drag-Along Sale to the Other Members (a "**Drag-Along Sale Notice**") specifying the purchase price (the "**Drag-Along Sale Price**") that the Initiating Members propose be paid by the Drag-Along Transferee and the other material terms and conditions of the proposed Transfer.

(c) In connection with any Drag-Along Sale, (i) each Member (or its direct or indirect owners, in the case of a Member Entity Transfer) shall be entitled to receive the same form of consideration paid by the Drag-Along Transferee, (ii) if any Members (or their direct or indirect owners, in the case of a Member Entity Transfer) are given an option as to the form of consideration to be received, all Members (or their direct or indirect owners, in the case of a Member Entity Transfer) will be given the same option, and (iii) the aggregate consideration from such Drag-Along Sale shall be allocated among the Members (or their direct or indirect owners, in the case of a Member Entity Transfer) as provided in Sections 10.05 and 10.06.

(d) The Initiating Members shall be permitted, for a 120-day period commencing upon the delivery of the Drag-Along Sale Notice (which 120-day period shall be extended up to 180 days in the event any required approval from any governmental entity, including termination or expiration of the applicable waiting period under the HSR Act, has not then been obtained), to effect a Drag-Along Sale at a price not lower, and on terms and conditions in the aggregate no more favorable to the Drag-Along Transferee(s), than described to the Other Members in the Drag-Along Sale Notice. If, at the end of such 120-day (or up to 180-day, as applicable) period, a Drag-Along Sale has not been consummated, then all the restrictions on Transfer contained in this Agreement shall again be in effect.

(e) If the Initiating Members shall effect a Drag-Along Sale in accordance with Section 8.06(d), each Other Member shall be required to participate in the Drag-Along Sale on the terms and conditions set forth in the Drag-Along Notice (which terms and conditions will also apply to the Initiating Members) and to tender all of its Units as set forth below. Not later than 10 days prior to the consummation of Drag-Along Sale, each of the Other Members shall deliver to a representative of the Initiating Members designated in the Drag-Along Sale Notice wire transfer instructions for payment of the consideration to be received in such Drag-Along Sale and an unconditional agreement to allow the Company to cause the books and records of the Company to show that such Units are bound by the provisions of this Section 8.06(e) and that such Other Member's Units shall be transferred to the Drag-Along Transferee concurrently with the consummation of the Drag-Along Sale and the delivery of the consideration therefor to such Other Member (or, if such Other Member refuses to accept delivery of such consideration, deposit of such consideration with a third party escrow agent reasonably acceptable to the Company).

(f) If the Drag-Along Sale shall not have been consummated during the period provided in Section 8.06(d), (i) the Initiating Members shall return to each of the Other Members any documents in the possession of the Initiating Members executed by the Other Members in connection with such proposed Drag-Along Sale, (ii) the Company shall cause the books and records of the Company to show that the Units of the Other Members are no longer bound by the provisions of Section 8.06(e) with respect to the applicable Drag-Along Sale and (iii) all the restrictions on Transfer contained in this Agreement or otherwise applicable at such time with respect to any Units shall again be in effect.

(g) Concurrently with the consummation of the Drag-Along Sale pursuant to this Section 8.06, the Initiating Members shall give written notice thereof to the Other Members, shall remit to each of the Other Members that have surrendered the applicable instruments, if any, the net consideration (payable by wire transfer in accordance with such Other Member's wire transfer instructions) for the Units Transferred pursuant hereto.

(h) Notwithstanding anything contained in this Section 8.06, there shall be no liability on the part of the Initiating Members to the Other Members if the Drag-Along Sale is not consummated for whatever reason, regardless of whether the Initiating Members have delivered a Drag-Along Sale Notice. Whether to effect a Drag-Along Sale pursuant to this Section 8.06 shall be in the sole and absolute discretion of the Initiating Members.

(i) This Section 8.06 shall terminate upon the consummation of an Initial Public Offering.

Section 8.07 *Additional Conditions to Tag-Along Sales and Drag-Along Sales*. (a) Each Member shall be obligated to pay only its *pro rata* share (based on the aggregate consideration received by such Member in respect of the Units Transferred by such Member) of expenses incurred in connection with a consummated Tag-Along Sale or Drag-Along Sale to the extent such expenses are incurred for the benefit of all Members participating in such Tag-Along Sale or Drag-Along Sale and are not otherwise paid by the Company or another Person.

(b) Subject to Section 8.08, if applicable, each Member shall (i) make such representations, warranties and covenants and enter into such definitive agreements as are reasonably required in the proposed Transfer and as are customary for transactions of the nature of the proposed Transfer, *provided* that if the Members are required to provide any representations or indemnities in connection with such Transfer, liability for misrepresentation or indemnity shall (as to such Members) be expressly stated to be several but not joint and each Member shall not be liable for more than its *pro rata* share (based on the aggregate consideration received by such Member in respect of the Units Transferred by such Member) of any liability for misrepresentation or indemnity and (ii) be required to bear its *pro rata* share (based on the aggregate consideration received by such Member in respect of the Units Transferred by such Member) of any escrows, holdbacks or adjustments in purchase price.

Section 8.08 *Special Provisions for Member Entity Transfers*. (a) Notwithstanding anything herein to the contrary, for purposes of Sections 8.03, 8.04, 8.05 and 8.06:

(i) The number of Units Transferred pursuant to any Member Entity Transfer shall be deemed to be equal to (A) the number of Units held by the applicable Member at the time of such Member Entity Transfer *multiplied by* (B) the percentage of the total issued and outstanding equity interests of such Member to be Transferred pursuant to such Member Entity Transfer; and

(ii) The other terms and conditions of any Transfer of Units by any Deciding Member, Electing Member, Tagging Member, Other Member pursuant to Section 8.03, 8.04, 8.05 or 8.06, as applicable, in connection with any Member Entity Transfer subject to such Section (including any representations, warranties, covenants or indemnities to be provided with respect thereto) shall be substantially the same as the corresponding terms and conditions of such Member Entity Transfer, with only such differences therefrom as are necessary in light of the differences in the equity interests so Transferred.

(b) Notwithstanding anything herein to the contrary, for purposes of Sections 8.03, 8.04 and 8.05 (other than for purposes of allocating the consideration among the Members in connection with a Tag-Along Sale described in Section 8.05(e)(i) or (ii)), the purchase price per Unit Transferred pursuant to any Member Entity Transfer shall be deemed to be equal to (i) the aggregate purchase price paid by the applicable Transferee for the equity interests of the applicable Member Transferred pursuant to such Member Entity Transfer, *divided by* (ii) the number of Units Transferred pursuant to such Member Entity Transfer (as determined in accordance with Section 8.08(a)(i)).

(c) Notwithstanding anything herein to the contrary, in the case of a Transfer by any Essex Member, S&N Blocker or any Permitted Transferee thereof otherwise permitted pursuant to this Agreement, such Transfer, at the election of such Investor or Permitted Transferee (but subject to the applicable terms and conditions of this Agreement), shall be structured either as a direct transfer of Units held by such Essex Member, S&N Blocker or Permitted Transferee or a Member Entity Transfer by the owner(s) of such Essex Member, S&N Blocker or Permitted Transferee.

Section 8.09 *Essex Syndication Right*. Until the six-month anniversary of the date of this Agreement, any of the Essex Members may Transfer (in one or a series of transactions) up to 49% of the Units held by such Essex Member as of the date hereof to one or more third parties; *provided* that any such Transfer (a) shall be subject to Section 3.06, (b) shall require the prior written approval of S&N (such approval not to be unreasonably withheld) and (c) shall not result in such Essex Member ceasing to be controlled by an Essex Fund or Essex, as applicable; and *provided*, *further*, that, if an Essex Member Transfers any Units pursuant to this Section 8.09 for a price per Unit in excess of (i) the Initial Liquidation Preference *plus* (ii) the Accrued Preferred Distribution with respect to such Unit, then such Essex Member shall pay S&N or its designee 49% of such excess with respect to all Units so Transferred promptly upon the consummation of such Transfer. Any Transferee of an Essex Member pursuant to this Section 8.09 shall be deemed to be a Permitted Transferee of such Essex Member for all purposes of this Agreement.

ARTICLE 9
CERTAIN COVENANTS

Section 9.01 *S&N Right to Veto Sale*. (a) Until the first anniversary of the date of this Agreement, the Company shall not effect, and neither the Company, the Essex Members nor any of their respective Affiliates shall enter into, any agreement, arrangement or understanding (whether or not binding) with respect to a Company Sale without the prior written consent of S&N (which may be withheld in S&N's sole discretion). "**Company Sale**" means, directly or indirectly, including by means of a Drag-Along Sale, (i) the Transfer of all or substantially all of the assets of the Company and its Subsidiaries to a Person or Persons other than S&N or any of its Affiliates, (ii) the merger of the Company or any of its Subsidiaries with a Person or Persons other than S&N or any of its Affiliates, which results in such Person or Persons owning a majority of the equity of the surviving entity, or (iii) the Transfer of Units representing a Percentage Interest of more than 50%, or the Transfer of a controlling equity interest of the Company or any of its Subsidiaries, to any Person or Persons other than S&N, an Essex Member or any of their respective Affiliates.

(b) Until the third anniversary of the date of this Agreement, the Company shall not effect, and neither the Company, any Essex Member nor any of its Affiliates shall enter into, any agreement, arrangement or understanding (whether or not binding) with respect to a Competitor Sale without the prior written consent of S&N (which may be withheld in S&N's sole discretion). "**Competitor Sale**" means, directly or indirectly, (i) the Transfer of all or substantially all of the assets of the Company and its Subsidiaries to a Competitor, (ii) the merger of the Company with a Competitor, or (iii) the Transfer of any Units held by an Essex Member or its Affiliates to a Competitor; and a Competitor Sale shall include any of the foregoing transactions in which a Competitor is participating either alone or in combination with any other Competitor or third party. "**Competitor**" means any of Johnson & Johnson, Stryker Corporation, Zimmer Holdings, Inc., Medtronic, Inc., Synthes or Biomet, Inc., including, in each case, any Affiliates or successors of each such company, as well as any entity to which any such company transfers all or substantially all of those of its assets that compete with the Company or with S&N.

Section 9.02 *OUS Subsidiary Sale*. Unless otherwise agreed by S&N and the Essex Members, other than in connection with a Company Sale, the Company shall not effect, and neither the Company nor any of its Affiliates shall enter into any agreement, arrangement or understanding (whether or not binding) with respect to, an OUS Subsidiary Sale. "**OUS Subsidiary Sale**" means, directly or indirectly, (i) the Transfer of all or substantially all of the assets of the OUS Subsidiary and its Subsidiaries, (ii) a merger, consolidation, reorganization, combination or other similar transaction involving the OUS Subsidiary or any of its Subsidiaries, which results in a Person or Persons other than the Company owning a majority of the equity of the surviving entity, or (iii) the Transfer of a controlling equity interest in the OUS Subsidiary.

Section 9.03 *Company Sale Process*. The Company and the Members agree that neither the Company nor any of the Members may effect any Company Sale that is reasonably anticipated to result in aggregate consideration payable to the Investors pursuant to Section 10.05 that is less than the full amount of the distributions provided for in Sections 10.05(a)(i) - 10.05(a)(iv) unless:

(a) the Company Sale is conducted pursuant to a customary business sale process run by the Company and subject to the oversight of the Board of Managers with the assistance of a reputable nationally recognized independent financial advisor;

(b) such business sale process results in a Company Sale at fair value, as reasonably determined by the Board of Managers with the assistance of such financial advisor;

(c) S&N and its Affiliates are entitled to participate as a bidder in such business sale process on the same terms and conditions applicable to other bidders invited to participate or participating in such process; and

(d) without limiting the foregoing clauses (a) through (c), if such business sale process results in a Company Sale that would result in aggregate consideration payable to the Investors pursuant to Section 10.05 that is less than the full amount of the distributions provided for in Sections 10.05(a)(i) - 10.05(a)(iv), then S&N, S&N Blocker (after S&N Blocker becomes a Member) and the Permitted Transferees thereof shall be entitled to purchase all (but not less than all) of the Units of the other Members in lieu of the consummation of such Company Sale. The Company shall promptly provide written notice to S&N, S&N Blocker and the Permitted Transferees thereof of the identity of the proposed purchaser and the material terms and conditions of the proposed sale. The provisions of Section 8.03 shall apply *mutatis mutandis* to S&N's and S&N Blocker's rights pursuant to this Section 9.03(d).

Section 9.04 *S&N Rights of First Negotiation*. (a) Until the third anniversary of the date of this Agreement, so long as S&N's Percentage Interest is greater than or equal to 15%, none of the Company, any Essex Member or any Affiliate of any Essex Member shall, directly or indirectly, solicit, negotiate, encourage or otherwise discuss or agree with any Person (other than S&N and its Affiliates) or enter into any agreement, arrangement or understanding (whether or not binding) with respect to, a Company Sale or Qualified Initial Public Offering, unless and until the Company (or the Essex Member or its Affiliates, as the case may be) has (i) notified S&N in writing of its desire to effect a Company Sale or Qualified Initial Public Offering, (ii) provided S&N with the opportunity to negotiate with the Company (or the Essex Member or its Affiliates) on an exclusive basis for 60 days after the date of such notice regarding the acquisition by S&N of all or substantially all of the assets of the Company and its Subsidiaries (or all or substantially all of the Units held by the Essex Members and their Permitted Transferees, whether by purchase of the Units, a Member Entity Transfer, merger or otherwise, as the case may be) (any such acquisition, an "**S&N Acquisition**") and (iii) if S&N elects to negotiate as set forth in the preceding clause (ii), to negotiate in good faith with S&N regarding an S&N Acquisition.

(b) Until the earlier of (i) the seventh anniversary of the date of this Agreement, (ii) the first anniversary of the consummation of a Company Sale and (iii) the six month anniversary of a Competitor Change of Control of S&N, the Company shall not, directly or indirectly, solicit, negotiate, encourage or otherwise discuss or agree with any Person (other than S&N and its Affiliates) or enter into any agreement, arrangement or understanding (whether or not binding) with respect to, a New Product Partnership unless and until the Company has (A) notified S&N in writing of its desire to enter into such New Product Partnership, (B) provided S&N with the opportunity to negotiate with the Company on an exclusive basis for 60 days after the date of such notice regarding the entry by S&N into such New Product Partnership with the Company, and (C) if S&N elects to negotiate as set forth in the preceding clause (B), to negotiate in good faith with S&N regarding such New Product Partnership with S&N. "**New Product Partnership**" means an agreement or other arrangement between the Company and one or more Persons regarding the development, manufacture, marketing or distribution of a new product.

Section 9.05 *Competitor Change of Control of S&N*. Notwithstanding anything herein to the contrary, within 60 days of a Competitor Change of Control of S&N, the Essex Members may elect, by delivering notice of such election in writing to the Company and S&N, to terminate any or all of the rights of S&N set forth in Section 5.01(a)(ii), Section 9.01, Section 9.04, Section 9.07, Section 9.12 and Annex A (*provided* that S&N shall at all times be entitled to receive such information relating to the Company and its Subsidiaries as is reasonably necessary for S&N and its Affiliates to estimate and realize the value of, and account properly for, its investment and otherwise to comply with their obligations under Applicable Law, including compliance obligations). "**Competitor Change of Control of S&N**" means the consummation of (a) a Transfer of all or substantially all of the assets or equity of Smith & Nephew plc and its Subsidiaries to a Competitor or (b) a merger of Smith & Nephew plc with a Competitor.

Section 9.06 *S&N Exit Right*. (a) If an Exit has not occurred prior to the seventh anniversary of the date of this Agreement, then, upon the written request of S&N at any time and from time to time thereafter (but not more frequently than once during any twelve-month period) until the consummation of an Exit, the Company shall engage an investment bank or other financial advisor of nationally recognized reputation designated by the Board of Managers, subject to the consent of S&N, which shall not be unreasonably withheld, conditioned or delayed, to serve as the Company's financial advisor (the "**Financial Advisor**"). The Company shall instruct the Financial Advisor to commence an orderly process to result in an Exit with the objective of achieving the highest practicable value for the Investors. The Company shall use its best efforts to reach agreement with the Investors on the optimal structure and the terms and conditions for the Exit and will retain independent legal counsel of appropriate expertise. The fees and expenses of both the Financial Advisor and such legal counsel shall be borne by the Company. The Company shall require the Financial Advisor to keep each of S&N and Essex currently advised as to its efforts, any expressions of interest or offers or proposals that are received and any other information relevant to the process conducted pursuant to this Section 9.06.

(b) (i) The Company shall require the Financial Advisor to deliver to the Company, S&N and Essex written notice (the "**Recommended Exit Notice**") within 60 days of the engagement of the Financial Advisor that sets forth the Financial Advisor's recommendation as to the Exit that will achieve the highest practicable value for the Investors (the "**Recommended** Exit"); *provided*, *however*, that, notwithstanding anything to the contrary contained herein, at the election of any Essex Member, S&N Blocker (after S&N Blocker becomes a Member) or any Permitted Transferee thereof, any Recommended Exit shall be structured to permit any Transfer of Units by such Investor pursuant to such Recommended Exit to be effected indirectly through a Member Entity Transfer. The Recommended Exit Notice shall include reasonably detailed information with respect to the terms and conditions of the Recommended Exit (including with respect to structure, consideration and the identity of the parties involved) and, if applicable, the forms or current drafts of any proposed definitive agreements with respect thereto.

(ii) If a Veto Party notifies the Company within 10 days of the date of the Recommended Exit Notice (the "**Recommended Exit Veto Period**") that it objects to the consummation of the Recommended Exit (a "**Veto**"), the Company shall not proceed with such Recommended Exit and shall terminate the process related thereto; *provided* that, for the avoidance of doubt, notwithstanding any Veto by S&N pursuant to this Section 9.06(b)(ii)), the Essex Members and their Permitted Transferees may nevertheless exercise their rights pursuant to Section 8.06 with respect to such Recommended Exit; and *provided*, *further*, that, notwithstanding any Veto by either Veto Party pursuant to this Section 9.06(b)(ii), this Section 9.06 shall continue to apply and be available to S&N in accordance with its terms thereafter.

(iii) If no Veto Party has submitted a Veto prior to the expiration of the Recommended Exit Veto Period in accordance with the terms of Section 9.06(b)(ii), then the Essex Members shall have the option (the "**Essex Purchase Option**"), in their sole discretion, in lieu of the Company proceeding with the Recommended Exit, to purchase (the "**Essex Purchase**") all (but not less than all) of the Units then held by S&N and its Permitted Transferees upon the terms and conditions set forth in this Section 9.06(b)(iii). The Essex Purchase Option shall be exercisable by the Essex Members upon written notice to S&N within two days after the expiration of the Recommended Exit Veto Period (the "**Essex Purchase Option Period**"). Any Essex Purchase shall be (A) for an aggregate purchase price (which shall be in cash payable by wire transfer of immediately available funds in U.S. Dollars) equal to the aggregate amount that S&N and its Permitted Transferees would have received upon the consummation of the applicable Recommended Exit pursuant to the terms hereof, including, without limitation, Sections 10.05 and 10.06, and (B) on the other terms and conditions set forth in the Recommended Exit Notice, to the extent applicable, and otherwise on reasonable and customary terms and conditions for transactions of the nature of the Essex Purchase, with S&N and its Permitted Transferees being required to provide representations and indemnification to the Essex Members only with respect to due authorization, valid execution and delivery, good title to the Units and no Liens on such Units (except as may arise under the terms of this Agreement); *provided* that the closing of the Essex Purchase shall occur within 30 days after the expiration of the Essex Purchase Option Period (which 30-day period shall be extended to up to 90 days in the event any required approval of such purchase from any Governmental Authority, including termination or expiration of the applicable waiting period under the HSR Act, has not then been obtained), or at such other time as may be mutually agreed upon by S&N and the Essex Members.

(iv) If the Essex Members do not exercise the Essex Purchase Option prior to the expiration of the Essex Purchase Option Period in accordance with the terms of Section 9.06(b)(iii), then the Company and each Member shall use their respective reasonable best efforts to consummate the Recommended Exit as promptly as practicable on terms and conditions that in the aggregate are not less favorable to the Investors than those specified in the Recommended Exit Notice.

(v) "**Veto Party**" means (A) prior to the eighth anniversary of the date of this Agreement, either S&N or the Essex Members, and (B) thereafter, S&N only.

(c) Subject to the provisions of Section 9.06(b), each Member shall, and, if applicable, shall use its reasonable best efforts to cause each Manager designated by such Member (such reasonable best efforts to include, to the extent necessary, removal or replacement of any such Manager) to, vote for, execute any necessary consents in favor of, and enter into such definitive agreements as may be reasonably necessary or desirable for transactions of the nature of, the engagement of the Financial Advisor, the Recommended Exit and the Essex Purchase, as applicable. The Company and each Member shall reasonably cooperate with the Financial Advisor in its efforts, and the Company shall prepare such documents and information as may reasonably be required in connection with the process conducted, in each case pursuant to this Section 9.06.

Section 9.07 *Information and Other Rights*. (a) The Board of Managers shall furnish to each Investor:

(i) As soon as practicable and, in any event, no later than six Business Days following the end of each S&N Accounting Month, (A) the preliminary unaudited consolidated balance sheet of the Company and its Subsidiaries as at the end of such S&N Accounting Month, (B) the related preliminary unaudited statements of operations and information pertaining to transactions between the Company and its Subsidiaries, on the one hand, and S&N and its Affiliates, on the other hand, for such S&N Accounting Month and for the portion of the Fiscal Year then ended, in the case of each of clause (A) and (B), prepared in accordance with IFRS (or, if the Board of Managers has determined that the Company shall adopt and follow GAAP in lieu of IFRS pursuant to Section 6.01, prepared in accordance with GAAP), and (C) a forecast of the Company's performance for the remainder of the Fiscal Year relative to the Company's annual operating budget for such Fiscal Year, and a forecast of the Company's performance for the following Fiscal Year;

(ii) As soon as practicable and, in any event, no later than six Business Days following the end of each S&N Accounting Quarter (including, for the avoidance of doubt, the end of the Fiscal Year), (A) the preliminary unaudited consolidated balance sheet of the Company and its Subsidiaries as at the end of such S&N Accounting Quarter, (B) the related preliminary unaudited statements of operations and information pertaining to transactions between the Company and its Subsidiaries, on the one hand, and S&N and its Affiliates, on the other hand, and S&N for such S&N Accounting Quarter and for the portion of the Fiscal Year then ended, in the case of each of clause (A) and (B), prepared in accordance with IFRS (or, if the Board of Managers has determined that the Company shall adopt and follow GAAP in lieu of IFRS pursuant to Section 6.01, prepared in accordance with GAAP, together with a reconciliation to IFRS), (C) a forecast of the Company's performance for the remainder of the Fiscal Year relative to the Company's annual operating budget for such Fiscal Year and (D) a forecast of the Company's performance for the following Fiscal Year;

(iii) As soon as practicable and, in any event, within 30 days after the end of each fiscal month, the final management accounts for such fiscal month, which shall contain at a minimum (A) the unaudited statements of operations and cash flows for such fiscal month and the portion of the Fiscal Year ended at the end of such fiscal month, in each case compared to the Company's annual operating budget for such Fiscal Year, and (B) the unaudited consolidated balance sheet at the end of such fiscal month, along with an ageing of trade receivables.

(iv) As soon as practicable and, in any event, within 75 days after the end of each Fiscal Year, (A) the audited consolidated balance sheet of the Company and its Subsidiaries as at the end of such Fiscal Year and the related audited statement of operations and cash flows for such Fiscal Year and the related footnotes, in each case prepared in accordance with IFRS (or, if the Board of Managers has determined that the Company shall adopt and follow GAAP in lieu of IFRS pursuant to Section 6.01, prepared in accordance with GAAP, together with a reconciliation to IFRS) and audited by the Company's independent public accountants, (B) a comparison of the figures in the financial statements delivered pursuant to clause (A) with the figures for the previous Fiscal Year and the figures in the Company's annual operating budget and (C) any management letters or other correspondence from such accountants;

(v) As soon as practicable and, in any event, not less than 15 days prior to the beginning of each Fiscal Year, the Company's annual operating budget for such Fiscal Year;

(vi) Such information as is provided to any lender or other financing source of the Company or any of its Subsidiaries; and

(vii) As promptly as reasonably practicable, such other information with respect to the Company or any of its Subsidiaries as may reasonably be requested by such Investor.

The financial statements and other information provided pursuant to Sections 9.07(a)(i)-9.07(a)(ii) shall be in a presentational format reasonably acceptable to S&N.

(b) Subject to restrictions imposed by Applicable Law, any confidentiality or non-disclosure provision (in either case to the extent relating to third party information) in any agreement to which the Company is a party and the obligations set forth in Section 9.10, the Investors will have, with respect to the Company and each Subsidiary of the Company, the right to: (i) inspect properties, (ii) periodically consult with representatives of management and obtain information with respect to the business and affairs of the Company and its Subsidiaries (including without limitation with respect to scientific, technical, clinical and other information relating to the Orthobiologics Field), (iii) consult with members of the Board of Managers and the board of directors or other governing bodies of the Subsidiaries or any committees thereof with respect to all matters, (iv) inspect the books and records of the Company or any of its Subsidiaries and (v) perform audits to ensure that the Company has adequate procedures in place to comply with the matters set forth in Section 9.14, subject, in each case, to the execution of a customary non-disclosure agreement and other reasonable safeguards to address conflicts of interests.

Section 9.08 *Maintenance and Inspection of Records*. The accounting books and records, minutes of proceedings of the Board of Managers and of the Members and all other information pertaining to the Company and its Subsidiaries that is required to be made available to the Members under Delaware Law shall be kept at such place or places designated by the Board of Managers or in the absence of such designation, at the principal place of business of the Company, *provided* that a Profits Interest Member shall only be able to review and examine such information pertaining to the Company as required under Delaware Law and redacted or aggregated as necessary to prevent disclosure of confidential information as may be determined by the Board of Managers from time to time.

Section 9.09 *Confidentiality*. (a) During the term of this Agreement and thereafter, each party hereto shall, and shall cause its Subsidiaries and controlled Affiliates to, maintain in confidence and use only for purposes of the business of the Company and its Subsidiaries, this Agreement and the Related Documents, all Confidential Information, except to the extent that the Company and S&N agree otherwise with respect to particular Confidential Information in the possession of or furnished to S&N. "**Confidential Information**" means all information concerning the Company or its Subsidiaries or the financial condition, business, operations or prospects of the Company or its Subsidiaries in the possession of or furnished to any Member (including by virtue of its present or former right to designate a Manager to the Board of Managers). Each party shall exercise the same care and safeguards with respect to Confidential Information as is used to maintain the confidentiality of its own information of like character, but will, at a minimum, use reasonable care.

(b) Any party may disclose Confidential Information to its Subsidiaries, Affiliates, directors, officers, employees, counsel, advisers, consultants, outside contractors and other agents, on the condition that such Persons agree to keep the Confidential Information confidential to the same extent as such disclosing party is required to keep the Confidential Information confidential, solely to the extent it is reasonably necessary or appropriate to fulfill its obligations or to exercise its rights under this Agreement or the Related Documents; *provided* that the disclosing party shall remain liable with respect to any breach of this Section 9.09 by any such Subsidiaries, Affiliates, counsel, advisers, consultants, outside contractors and other agents.

(c) Notwithstanding Section 9.09(a) or Section 9.09(b) above, a party may disclose such Confidential Information (i) to the extent that the such party is legally compelled (by oral questions, interrogatories, request for information or documents, subpoena, civil investigative demand or similar process) to disclose any of the Confidential Information, (ii) for purposes of reporting to its stockholders the performance of the Company and its Subsidiaries and for purposes of including applicable information in its financial statements to the extent required by Applicable Law or applicable accounting standards, (iii) to the extent required to be disclosed by Applicable Law, rule or regulation; *provided* that in connection with any such disclosure, (A) a disclosing party shall only disclose such Confidential Information as is required to be disclosed in connection with the foregoing, (B) to the extent reasonably practicable, a disclosing party shall provide the other party with prompt and advance written notice of any such intended disclosure so that such other party has a reasonable opportunity to limit such disclosure, or (if applicable, and to the extent reasonable practicable) seek a protective order or other appropriate remedy to prevent such disclosure and (C) a disclosing party shall use its reasonable efforts to seek confidential treatment (consistent with the terms hereof) by the Person to whom such disclosure is made. The parties acknowledge that money damages would not be a sufficient remedy for any breach of the provisions of this Section 9.09 and that the non-breaching party shall be entitled to equitable relief in a court of law in the event of, or to prevent, a breach or threatened breach of this Section 9.09.

(d) The Essex Members represent and warrant to the other parties hereto that the Essex Members are owned directly by the Essex Investors, which, in certain cases, are funds-of-funds (each, a "**Fund**") that have certain reporting obligations to their respective investors and equity holders regarding the nature and performance of their investment in the Company, and each Fund is managed or advised by such Fund's general partner, investment manager, or Person serving in a similar capacity (each, a "**Fund Manager**"). Notwithstanding anything to the contrary in this Section 9.09 or elsewhere in this Agreement, the parties hereto hereby acknowledge and agree that (i) each Essex Member may disclose Confidential Information to each Fund and its respective Fund Managers and (ii) each Fund Manager and each Fund may disclose to its direct and indirect equity holders the following information: (A) the name and address of the Company, the year of its formation, and a brief description of its strategy or focus, (B) the fact that such Fund is a direct or indirect security-holder of the applicable Essex Member and that such Essex Member owns securities of the Company, and, if applicable, the fact that such Fund invested in the Company alongside investment funds managed by Essex GP, (C) the number, type, and relative percentages of securities of the Company that are held directly or indirectly by such Fund, (D) the total amount of such Fund's direct or indirect investment in the Company, (E) the amount of distributions received directly or indirectly by such Fund from the Company, (F) the net asset value of such Fund's direct or indirect investment in the Company, (G) such ratios and performance information as calculated by such Fund Manager using the information in clauses (D) through (F) above, (H) with respect to any distribution in-kind of securities, the name and issuer of such securities, the number of such securities distributed to such Fund and the fair market value at the time of distribution, and (I) such other information as may be required to be disclosed by Applicable Law or GAAP standards or principles applicable to such Fund Manager or Fund; *provided* that, (1) with respect to the disclosure of any Confidential Information pursuant to Section 9.09(d)(i), such disclosure shall be made on the condition that the Funds and the Fund Managers agree to keep any such Confidential Information confidential to the same extent as the Essex Members are required to keep the Confidential Information confidential pursuant to the terms hereof; (2) with respect to the disclosure of any Confidential Information pursuant to Section 9.09(d)(ii), such disclosure shall be made on the condition that the recipient of such information be bound by confidentiality obligations that are similar to those that are applicable to the Essex Members pursuant to this Agreement ("**Similar Confidentiality Obligations**"); (3) with respect to any disclosure made under Section 9.09(d)(ii)(I), such Essex Member shall cause the Fund or Fund Manager with which it is affiliated to comply with the advance notice and other requirements set forth in Section 9.09(c)(iii)(A) through (C); and (4) each Essex Member shall remain liable with respect to any breach of this Section 9.09 by such Essex Member, its respective Funds or Fund Managers and their respective direct or indirect equity holders *(provided* that, for purposes of determining whether any such breach has occurred, (x) except as provided in clause (y) of this proviso, such direct or indirect equity holders shall be deemed to be bound by the provisions of this Section 9.09, and (y) in the case of the direct or indirect equity holders of any funds-of-funds managed or advised by Pantheon or any of its Affiliates (each, a "**Pantheon Fund**"), such direct or indirect equity holders shall be deemed only to be bound by the terms of any Similar Confidentiality Obligations then applicable to such direct or indirect equity holders).

(e) The obligation not to disclose Confidential Information shall not apply to any part of such Confidential Information that (i) is or becomes patented, published, or otherwise part of the public domain other than by acts of a party in contravention of this Agreement; (ii) is disclosed to a party by a third party, unless such Confidential Information was obtained by such third party directly or indirectly from a party hereto on a confidential basis; (iii) prior to disclosure under this Agreement, was already in the possession of the disclosing party, unless such Confidential Information was obtained directly or indirectly from the other party hereto on a confidential basis; or (iv) is independently acquired or developed by a disclosing party other than by acts of a party in contravention of this Agreement.

Section 9.10 *Corporate Opportunities*; *Non-Solicitation*. Except as provided with regard to the Essex Members in Section 9.13:

(a) In no event shall any Member or any individual serving as a Manager be liable to the Company, any Subsidiary of the Company or to any party hereto for breaches of fiduciary or other similar duties by virtue of the fact that such individual fails to bring a business opportunity to the attention of the Company or any Subsidiary of the Company or presents a business opportunity to a Member or an Affiliate of a Member (rather than, or in addition to, presenting such opportunity to the Company). This Section 9.10 shall not apply to any Member who is an employee of the Company or any Subsidiary of the Company.

(b) Without limiting the generality of the foregoing, the Members expressly acknowledge and agree that (i) each Member and its Affiliates are permitted to have, and may presently or in the future have, investments or other business relationships, ventures, agreements or arrangements with, or ownership of, entities engaged in the same or a similar business to the business conducted by the Company and its Subsidiaries, and in related businesses other than through the Company and its Subsidiaries (an "**Other Business**"), (ii) each Member or its Affiliates have or may develop a strategic relationship with businesses that are or may be competitive with the Company and its Subsidiaries, (iii) no Member or its Affiliates (including any Managers designated by such Member) will be prohibited by virtue of their investment in the Company and its Subsidiaries or their service on the Board of Managers from pursuing and engaging in any such activities, (iv) no Member or its Affiliates (including any Managers designated by such Member) will be obligated to inform the Company of any such opportunity, relationship or investment, (v) the other Members will not acquire, be provided with an option or opportunity to acquire or be entitled to any interest or participation in any Other Business as a result of the participation therein of a Member or its Affiliates (including any Managers designated by such Member), (vi) the Members expressly waive, to the fullest extent permitted by Applicable Law, any rights to assert any claim that such involvement breaches any duty owed to any Member, or the Company or its Subsidiaries or to assert that such involvement constitutes a conflict of interest by such Persons with respect to the Company or its Subsidiaries and (vii) nothing contained herein shall limit, prohibit or restrict any Member, any of its Affiliates or any current or former Manager designated by such Member from serving on the board of directors or other governing body or committee of any Other Business. This Section 9.10(b) shall not apply to any Member who is an employee of the Company or any Subsidiary of the Company.

(c) Prior to the 18-month anniversary of the date of this Agreement, each Member agrees that it shall use its reasonable best efforts to cause the Company not to, directly or through any controlled Affiliate (and the Essex Members shall cause Essex and its managed investment funds and controlled Affiliates thereof not to), directly target, solicit or hire (including in any consulting capacity) any salaried employee of S&N, the Essex Members, any Affiliate of S&N, or any controlled Affiliate of any of the Essex Members without the prior written approval of the Chief Executive Officer of S&N, in the case of any such employee of S&N or any of its Affiliates, or any authorized person of Essex, in the case of any such employee of the Essex Members or any of their controlled Affiliates, in any case except for any such employee terminated by S&N, Essex or any applicable Affiliate of S&N or Essex.

(d) Prior to the 18-month anniversary of the date of this Agreement, S&N agrees that it and its Affiliates shall not, and, each of the Essex Members agrees that Essex and its managed investment funds and controlled Affiliates thereof shall not, hire (including in any consulting capacity) any employee of the Company or any of its Subsidiaries without the prior written approval of the Chief Executive Officer of the Company, except for any employee terminated by the Company or any of its Subsidiaries.

(e) As used in this Section 9.10, "controlled" has the meaning set forth in the definition of the term "Affiliate" in Section 1.01(a).

Section 9.11 *Certain Matters Relating to an Initial Public Offering*. (a) If the Board of Managers approves an Initial Public Offering in accordance with the terms of this Agreement (including the provisions of Annex A), the Board of Managers shall, unless otherwise agreed by the Investors, and subject to Section 9.11(e), cause the Company to effect a conversion to corporate or other limited liability form or other appropriate reorganization (whether by conversion to a subchapter C corporation, merger, consolidation into a corporation, recapitalization or reorganization, sale of securities, formation of a new parent entity or otherwise) that is reasonably acceptable to the Investors, giving effect to the same voting and corporate governance provisions contained herein (the "**Corporate Conversion**", and the resulting entity with respect to which the Initial Public Offering is expected to be consummated, the "**IPO Entity**"). Each Member hereby consents to such Initial Public Offering and Corporate Conversion and shall vote for (to the extent it has any voting rights) and raise no objections against such Initial Public Offering and Corporate Conversion, and each Member shall, at the request of the Board of Managers, take all actions (including any actions required to pursuant to Section 9.11(e)) reasonably necessary or desirable to effect such Initial Public Offering and Corporate Conversion.

(b) Pursuant to the Corporate Conversion, and subject to Section 9.11(e), all Units held by each Member immediately prior to the Corporate Conversion shall automatically be converted (the "**Automatic Conversion**") into newly issued equity interests of the IPO Entity representing such Member's IPO Percentage of the total number of issued and outstanding equity interests of the IPO Entity. Subject to the provisions of Annex G, all of the equity interests of the IPO Entity issued pursuant to the Corporate Conversion shall be (i) of a single class and have the same rights, powers, preferences, qualifications, limitations and restrictions as all other such equity interests and (ii) duly and validly issued, fully paid and non-assessable and free of all Liens (except as may arise under the terms of this Agreement) and not subject to any preemptive rights. "**IPO Percentage**" means, with respect to any Member, the percentage of the total distributions to the Members pursuant to Section 10.05 that such Member would have received if the Company were dissolved, its affairs wound up and (A) all of the assets of the Company were sold for cash equal to the sum of the aggregate equity valuation of the Company indicated by the pricing of the Initial Public Offering and the amount of the Company's liabilities, (B) all of the Company's liabilities were satisfied and (C) the net assets were immediately distributed to the Members in accordance with Section 10.05.

(c) Subject to Section 9.11(b), prior to the consummation of an Initial Public Offering, the Members shall, and shall cause the relevant publicly-traded entity to, enter into agreements containing rights and obligations of the parties that are substantially similar to those contained in this Agreement, other than the rights and obligations of this Agreement that expressly terminate upon the consummation of the Initial Public Offering. If any of such agreements are inconsistent with the rules of the principal exchange on which the shares of the publicly-traded entity are listed, the terms of such agreements shall be modified to the extent necessary to reflect such rules; *provided* that such agreements shall, as closely as possible, give effect to the provisions of this Section 9.11(c).

(d) If the Essex Members and their Permitted Transferees participate in an Initial Public Offering permitted by this Agreement, S&N and its Permitted Transferees shall be permitted to participate in such Initial Public Offering in accordance with Section 9.11(b). Upon the consummation of the Initial Public Offering, the holders of Units (or such common stock as the Units have been converted into) shall have registration rights substantially as set forth in Annex B hereto.

(e) Notwithstanding anything to the contrary contained herein, at the election of any Essex Member, S&N Blocker (after S&N Blocker becomes a Member) or any Permitted Transferee thereof, in connection with a Corporate Conversion and Automatic Conversion, the Company shall effect a merger, consolidation, recapitalization, reorganization or other transaction with such Investor that is reasonably acceptable to such Investor and the effect of which is that the owners of the equity interests of such Investor receive equity interests of the IPO Entity representing such Investor's IPO Percentage of the total number of issued and outstanding equity interests of the IPO Entity; *provided* that the Company and such Investor shall use their respective reasonable best efforts to effect any such merger, consolidation, recapitalization, reorganization or other transaction in a tax-efficient manner. Any Permitted Transferee that seeks to participate in a transaction of the nature described in this Section 9.11(e) shall not, prior to such transaction, (i) own any assets of any kind other than Units and (ii) have any liabilities of any kind, including Indebtedness.

Section 9.12 *Business Development Meetings*. The Company and S&N shall jointly constitute a business development committee (the "**Business Development Committee**") for the purpose of discussing trends, technologies and developments with respect to the business of the Company and its Subsidiaries, and such other matters as the members of the Business Development Committee determine to address from time to time, subject to any restrictions imposed by Applicable Law or any confidentiality or non-disclosure provision (in either case to the extent relating to third party information) in any agreement to which the Company or S&N is a party and other reasonable safeguards to address conflicts of interests. The Company and S&N shall mutually determine the members of the Business Development Committee (which shall include representatives of S&N and the Company), dates, times and locations (*provided* that the Business Development Committee will meet at least two times per year), format, costs and content.

Section 9.13 *Essex Duties*. For so long as the Essex Members and their Affiliates, in the aggregate, have the right to designate a majority of the Board of Managers of the Company, the Essex Members will use their reasonable best efforts to ensure that S&N and its Affiliates are afforded by the Company and the Board of Managers all of the protections that would be available to them under Applicable Law as minority shareholders of a Delaware corporation.

Section 9.14 *Investor Duties*. The Investors agree to use reasonable best efforts to direct the Board of Managers to ensure that at all times the Company (a) adopts and enforces ethics and compliance policies and programs designed to comply with all Applicable Law and industry ethical codes and (b) safeguards the reputations of the Company and the Investors.

Section 9.15 *Orthobiologics Commitment*. The Company shall undertake and satisfy the Orthobiologics Commitment, as set forth on Annex D hereto.

Section 9.16 *Compliance with Applicable Law*. (a) The Company will at all times comply, and shall cause each of its Subsidiaries to comply, with the requirements of Applicable Law, including (i) the Federal Health Care Program Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b), and any anti-kickback law of any U.S. state, (ii) the Federal False Claims Act, 31 U.S.C. § 3729, and any false claim or fraud law of any U.S. state, (iii) the Federal civil monetary penalty statute, 42 U.S.C. § 1320a-7a(5), (iv) the U.S. Foreign Corrupt Practices Act of 1977, 15 U.S.C. §§ 78dd-l, et seq., (v) the Federal Physician Self-Referral Law, 42 U.S.C. §§ 1395nn et seq., and any physician self-referral law of any U.S. state, and (vi) the Federal Food and Drug and Cosmetic Act, including the provisions thereof relating to establishment registration, registration of clinical trials, investigational use, pre-market clearance, licensure, or application approval, good manufacturing practices, good laboratory practices, good clinical practices, product listing, labeling, advertising and promotion, and recordkeeping and filing of reports.

(b) The Company shall promptly notify the Investors upon receipt of any complaint, order, citation, notice or other written communication from any Person with respect to, or upon the Company's obtaining knowledge of, the existence or alleged existence of a significant violation by the Company or any of its Subsidiaries of any Applicable Law, including (i) any warning or untitled letter, report of inspection observations (including U.S. Food and Drug Administration (the "**FDA**") Form 483s), establishment inspection report, notice of violation, clinical hold or other documents from the FDA or any other Governmental Authority relating to the products of the Company's business and alleging a lack of compliance by the Company or any of its Subsidiaries with any Applicable Law or regulatory requirements in connection with the Company's business or (ii) any written notice or other written communication from the FDA or any other Governmental Authority which (A) enjoins production at any facility of the Company's business or (B) enters or proposes to enter into a consent decree with, or permanent injunction of, the Company or any of its Subsidiaries relating to the conduct of the Company's business.

Section 9.17 *Certain Members' Assets and Liabilities*. For so long as any Essex Member or, after S&N Blocker becomes a Member, S&N Blocker owns any Units, such Member shall not own any other assets of any kind or incur, create, assume or permit to exist any liabilities or obligations of such Member of any kind, including Indebtedness, and shall take no actions other those incidental to such Member's ownership of the Units.

Section 9.18 *S&N Accounting Periods*. Not later than the beginning of the last S&N Accounting Quarter of each Fiscal Year, S&N shall notify the Company of the S&N Accounting Months and S&N Accounting Quarters for the following Fiscal Year.

Section 9.19 *Remedies Upon Breach*. In the event of any breach of any obligation under this Agreement or any Related Document by any Investor (the "**Breaching Investor**"), if and to the extent that any other Investor actually incurs or sustains any Damages arising out of, with respect to or by reason of such breach (the "**Non-Breaching Investor**"), then (a) the Non-Breaching Investor is authorized, upon written notice to the Breaching Investor, to set off and apply any and all Indebtedness or other obligations at any time owing by the Non-Breaching Investor (including pursuant to this Agreement or any Related Document) to or for the credit or the account of the Breaching Investor against any and all such Damages, and (b) the Non-Breaching Investor's shall have, in addition to any other recourse available to it against the Breaching Investor pursuant to this Agreement or any other Related Document or at law or equity, an express right to recourse against any and all assets of the Breaching Investor (including the Units and any proceeds thereof or thereon held by the Breaching Investor) *provided* that any amounts recovered by the Non-Breaching Investor pursuant to this Section 9.19 shall be without duplication of any amounts actually recovered by the Non-Breaching Investor pursuant to the other provisions of this Agreement or the Related Documents.

ARTICLE 10
TERM, DISSOLUTION AND LIQUIDATION

Section 10.01 *Term*. The term of the Company shall continue from the date hereof until its termination pursuant to Section 10.02.

Section 10.02 *Liquidating Events*. The Company shall dissolve and commence winding up prior to the expiration of the term upon the first to occur of any of the following events (each a "**Liquidating Event**"):

(a) the unanimous vote of the Investors to dissolve, wind up and liquidate the Company; or

(b) the entry of a decree of judicial dissolution pursuant to Section 18-802 of Delaware Law.

Section 10.03 *Winding Up*. Upon the occurrence of a Liquidating Event, the Company shall continue solely for the purposes of winding up its affairs in an orderly manner, liquidating its assets, and satisfying or making reasonable provisions for the satisfaction of the claims of its creditors and Members, and no Member or the Board of Managers (or any member thereof) shall take any action that is inconsistent with, or not necessary to or appropriate for, the winding up of the Company's business and affairs; *provided that* all covenants contained in this Agreement and obligations provided for in this Agreement shall continue to be fully binding upon the Members until such time as the property or the proceeds from the sale thereof has been distributed pursuant to this Article 10 and the Company has terminated. The Investors shall be responsible for overseeing the winding up and dissolution of the Company. The Investors shall take full account of the Company's properties, assets and liabilities, and the Company's affairs shall be wound up in a prompt and orderly manner.

Section 10.04 *Distribution Upon Dissolution of the Company*. In connection with a liquidation or dissolution of the Company, the Company's property, or the proceeds from the sale thereof, shall be applied and distributed in accordance with Section 18-804 of Delaware Law in the following order:

(a) *first*, to (i) the satisfaction (whether by payment or by the making of reasonable provision for payment) of all of the Company's debts and liabilities to creditors that are not Members or Managers and (ii) the payment of all principal, interest or any other amounts that remain outstanding under the S&N Note;

(b) *second*, to the satisfaction (whether by payment or by the making of reasonable provision for payment) of all of the Company's debts and liabilities to creditors that are Members or Managers (other than as provided for under Section 10.04(a)(ii)); and

(c) *third*, the balance, if any, to the Members as set forth in Section 10.05.

Section 10.05 *Liquidation or Dissolution*. (a) Upon any liquidation or dissolution of the Company, distributions shall be made to the Members as follows:

(i) *first*, (A) the former holders of Preferred Units previously Transferred pursuant to a Preferred Transfer Event are entitled to be paid the Accrued Preferred Distribution with respect to each such Transferred Preferred Unit, and (B) the holders of the Preferred Units then outstanding are entitled to be paid the aggregate accrued and unpaid Preferred Distribution (for the avoidance of doubt, relating to the current Fiscal Year and all prior Fiscal Years) with respect to each such Preferred Unit as of such time, in each case, before any distribution of assets is made pursuant to any of the following subparagraphs of this Section 10.05(a);

(ii) *second*, the holders of the Preferred Units then outstanding are entitled to be paid the Liquidation Preference with respect to each such Preferred Unit as of such time (for the avoidance of doubt, taking into account any reduction of such Liquidation Preference in respect of distributions made pursuant to Section 10.05(a)(i)(B), as provided by Section 4(b) of Annex C). before any distribution of assets is made pursuant to any of the following subparagraphs of this Section 10.05(a);

(iii) *third*, (A) the holders of the Common Units (other than the Converted Common Units) then outstanding are entitled to be paid, with respect to each Common Unit (other than the Converted Common Units), the Unreturned Capital Amount with respect to each such Common Unit,

(B) the holders of the OUS Units then outstanding are entitled to be paid, with respect to each OUS Unit, the Unreturned Capital Amount with respect to each such OUS Unit, and (C) the holders of the Converted Common Units then outstanding are entitled to be paid, with respect to each Converted Common Unit, the Liquidation Preference with respect to the Preferred Unit that was converted into such Converted Common Unit pursuant to Section 3 of Annex C (for the avoidance of doubt, taking into account any increase to such Liquidation Preference pursuant to the proviso set forth in the last sentence of Section 4(a) of Annex C), minus the Accrued Preferred Distribution with respect to such Preferred Unit, in each case, before any distribution of assets is made pursuant to the following subparagraphs of this Section 10.05(a);

(iv) *fourth*, the holder of the EPR Unit is entitled to be paid, with respect to the EPR Unit, the EPR Entitlement (if any) payable in accordance with Section 1 of Annex G, before any distribution of assets is made pursuant to the following subparagraph of this Section 10.05(a); and

(v) *fifth*:

(A) the holders of any vested Profits Interest Units of any Class of Profits Interest Units are entitled to be paid, with respect to each such Profits Interest Unit held by such holders, the Class Entitlement per Unit, if any, of such Class of Profits Interest Units; *provided* that in no event shall the sum of (1) the aggregate amount of any distributions pursuant to this Section 10.05(a)(v)(A) and (2) the aggregate amount of any payments to the holders of any Phantom Profits Interest Units or any Other Management Equity Awards exceed 10% of the amount available for distribution to the Members pursuant to this Section 10.05(a)(v) (such amount determined, solely for this purpose, as if there were no Phantom Profits Interest Units or Other Management Equity Awards), and any such distributions or payments shall be adjusted as determined by the Board of Managers *pro rata* in accordance with the number of vested Profits Interest Units, Phantom Profits Interest Units and any Other Management Equity Awards outstanding at such time to the extent necessary in order to avoid aggregate distributions or payments that would exceed the foregoing cap; and *provided*, *further*, that, for the avoidance of doubt, the holders of any unvested Profits Interest Units of any Class of Profits Interest Units are not entitled to be paid any amount at all pursuant to this Section 10.05(a)(v)(A);

(B) the holders of the Preferred Units and the Converted Common Units are entitled to be paid, with respect to each such Unit held by such holders, the *pro rata* share per Unit of the Preferred Percentage of the remaining amount available for distribution to the Members;

(C) (1) the holders of the OUS Units are entitled to be paid, with respect to each such OUS Unit held by such holders, the *pro rata* share per Unit of the lesser of (I) the excess of (x) the cumulative amount of net profit previously allocated to such holders pursuant to Section 4.06 that is attributable to U.S. Gain over (y) the aggregate distributions made with respect to such OUS Units attributable to U.S. Gain and (II) an amount equal to the product of (x) the Common/OUS Percentage *multiplied by* (y) the U.S. Gain, and (2) the holders of the Common Units (other than the Converted Common Units) are entitled to be paid, with respect to each such Common Unit held by such holders, the *pro rata* share per Unit of the amount equal to (I) the product of (x) the Common/OUS Percentage *multiplied by* (y) the U.S. Gain, *minus* (II) the amount paid to the holders of the OUS Units pursuant to Section 10.05(a)(v)(C)(l); and

(D) the holders of the OUS Units are entitled to be paid, with respect to each such Unit held by such holders, the *pro rata* share per Unit of the product of (1) the Common/OUS Percentage *multiplied by* (2) the OUS Gain.

(b) If, upon any liquidation or dissolution of the Company, the available assets of the Company are insufficient to pay the full amount of the liquidating distributions provided for in Section 10.05(a)(i), then the holders of the Preferred Units (or, in the case of Section 10.05(a)(i)(A), the former holders of the Preferred Units) shall share ratably in the total amount available for distribution pursuant to Section 10.05(a)(i) in proportion to the full liquidating distributions to which they would have been respectively entitled had the available assets of the Company been sufficient to pay the full amount of the liquidating distributions provided for in Section 10.05(a)(i).

(c) If, upon any liquidation or dissolution of the Company, the available assets of the Company are sufficient to pay the full amount of the liquidating distributions provided for in Section 10.05(a)(i), but insufficient to pay the full amount of the liquidating distributions provided for in Section 10.05(a)(ii), then the holders of the Preferred Units shall share ratably in the total amount available for distribution pursuant to Section 10.05(a)(ii) in proportion to the full liquidating distributions to which they would have been respectively entitled had the available assets of the Company been sufficient to pay the full amount of the liquidating distributions provided for in Section 10.05(a)(ii).

(d) If, upon any liquidation or dissolution of the Company, the available assets of the Company are sufficient to pay the full amount of the liquidating distributions provided for in Sections 10.05(a)(i) and 10.05(a)(ii), but insufficient to pay the full amount of the liquidating distributions provided for in Section 10.05(a)(iii), then the holders of the Common Units (including, for the avoidance of doubt, the Converted Common Units) and the OUS Units shall share ratably in the total amount available for distribution pursuant to Section 10.05(a)(iii) in proportion to the full liquidating distributions to which they would have been respectively entitled had the available assets of the Company been sufficient to pay the full amount of the liquidation distributions provided for in Section 10.05(a)(iii).

Section 10.06 *Company Sale*. Any Company Sale, and any other consolidation or merger of the Company or any of its Subsidiaries with or into any Person or Persons, Transfer of all or substantially all of the assets of the Company and its Subsidiaries to any Person or Persons or Transfer of all of the Units then outstanding (whether pursuant to any Drag-Along Sale, Tag-Along Sale or otherwise) to any Person or Persons, shall be deemed to constitute a liquidation, dissolution and winding up of the Company solely for purposes of (a) in the case of a Company Sale where the proceeds of such Company Sale are payable to the Company, distributing the proceeds thereof and (b) in the case of a Company Sale where the proceeds of such Company Sale are payable to the Members and/or the owners of the equity interests of the Members, allocating the proceeds thereof among such Persons, and such proceeds shall be distributed or allocated, as the case may be, in accordance with Section 10.05. For the avoidance of doubt, this Section 10.06 shall apply to any of the transactions referred to in the immediately preceding sentence without regard to whether the proceeds of such transaction are payable to the Company or the Members (or, in the case of a Member Entity Transfer, the holders of the equity interests of the applicable Member) pursuant to the terms of such transaction, and the Company and the Members hereby agree to take all action necessary to effect the distribution or allocation of proceeds of any such transaction as provided by this Section 10.06.

Section 10.07 *Rights of Members*; *Resignation*. (a) Except as otherwise provided in this Agreement, each Member shall look solely to the property of the Company for the return of its Capital Contributions, and, except in respect of the Company's Indebtedness or obligations to a Member, shall have no right or power to demand or receive property other than cash from the Company.

(b) No Member shall resign from the Company (in its capacity as a Member) prior to the dissolution and winding up of the Company in accordance with this Agreement.

ARTICLE 11
MISCELLANEOUS

Section 11.01 *Notices*. All notices, requests and other communications to any party or to the Company shall be in writing (including telecopy or similar writing and electronic mail ("**e-mail**") transmission, so long as a receipt of such e-mail is requested and received) and shall be given,

if to the Company to:

Bioventus LLC
4271 Emperor Boulevard
Durham, NC 27703
Attention: Mark A. Augusti
Facsimile No.: 919-474-6893

with a copy (which shall not constitute notice) to:

Bioventus LLC
4271 Emperor Boulevard
Durham, NC 27703
Attention: Jeanne M. Forneris
Facsimile No.: 919-474-6893

if to any Essex Member to:

Essex Woodlands
280 Park Avenue, 27th Floor East
New York, New York 10017
Attention: Scott Barry
Facsimile No.: (212) 922-0551
E-mail: sbarry@ewhv.com

with a copy (which shall not constitute notice) to:

Reed Smith LLP
599 Lexington Avenue, 22nd Floor
New York, New York 10022
Attention: Patrick F. Rice, Esq.
Facsimile No.: (212) 521-5450
E-mail: price@reedsmith.com

if to S&N or S&N Blocker, to:

Smith & Nephew, Inc.
7135 Goodlett Farms
Cordova, TN 38106
Attention: Chief Legal Officer
Facsimile No.: 901-396-7824
E-mail: company.secretary@smith-nephew.com

with a copy (which shall not constitute notice) to:

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Attention: Ajay B. Lele
Facsimile No.: 212-701-5800

if to any other Member, to:

The address specified in the Company's records

or to such other address or telecopier number as such party or the Company may hereafter specify for the purpose by notice to the other parties and the Company. Each such notice, request or other communication shall be effective when delivered at the address specified in this Section 11.01 during regular business hours.

Section 11.02 *Representations and Warranties*. (a) Each Member hereby acknowledges that the Units have not been issued by the Company pursuant to a registration statement under the Securities Act. Neither the Company, nor any other Person has any obligation or intention to effect the registration of the Units for sale, transfer or disposition by the Members under the Securities Act or Applicable Law, or to take any action that would make available any exemption from the registration requirements of the Securities Act or Applicable Law. Members must therefore hold such Units indefinitely unless a subsequent registration or exemption therefrom is available and is obtained. No federal or state agency has reviewed the issuance of the Units pursuant hereto or approved or disapproved the Units to be issued pursuant hereto for investment or any other purpose.

(b) Each Member acknowledges that (i) it is acquiring the Units for its own account, as principal and not on behalf of any other party or parties and for investment and not with a view to the resale or distribution of all or any part of such Units and (ii) it has been afforded the opportunity to ask questions of, and to obtain any information from, the Company and the Board of Managers as it deems necessary to determine the suitability and advisability of the purchase of the Units pursuant hereto and the merits and risk of entering into this Agreement.

Section 11.03 *Amendments*; *No Waivers*. (a) Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by S&N, S&N Blocker (after S&N Blocker becomes a Member), each of the Essex Members and the Company, or in the case of a waiver, by the Member against whom the waiver is to be effective; *provided* that any amendment that adversely and disproportionately affects any Member shall require the approval of such Member.

(b) No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

Section 11.04 *Expenses*. Except as provided in the Expense Side Letter, all costs and expenses incurred by the parties in connection with this Agreement shall be paid by the party incurring such costs or expenses.

Section 11.05 *Public Announcements*. No party to this Agreement shall issue any news release or make any public announcement, written or oral, relating to this Agreement or any Related Document or the existence of any arrangement between the parties, without the prior written consent of the party whether named in such news release or other public announcement or not, except where such news release or other public announcement is compelled by judicial or administrative process or by other requirements of law or by the rules of any securities exchange or national securities quotative system pursuant to a listing agreement therewith; *provided* that in such event, the party issuing same shall still use reasonable efforts to consult with the other party, whether named in such news release or public announcement or not, a reasonable time prior to its release to allow the other party to comment thereon and, after its release, shall provide the other party with a copy thereof.

Section 11.06 *Successors and Assigns*. The provisions of this Agreement shall be binding upon and inure to the benefit of the Members and their respective successors and permitted assigns. Notwithstanding the foregoing, neither this Agreement nor any right, remedy, obligation or liability arising hereunder or by reason hereof shall be assignable other than in connection with a Transfer permitted pursuant to Article 8. This Agreement is for the sole benefit of the Members and the Company, and, except as otherwise contemplated herein, nothing herein expressed or implied shall give or be construed to give any Person, other than the Members and the Company, any legal or equitable rights hereunder. With respect to the Profits Interest Members, any benefit conferred on any other Member(s) to the exclusion of the Profits Interest Members is for the sole benefit of such other Member(s) and nothing herein shall give or be construed to give any Profits Interest Members any legal or equitable rights hereunder with respect to such benefit.

Section 11.07 *Headings*. Headings are for ease of reference only and shall not form a part of this Agreement.

Section 11.08 *Governing Law*. This Agreement shall be construed in accordance with and governed by the law of the State of Delaware without giving effect to the principles of conflicts of laws thereof.

Section 11.09 *Jurisdiction*. Any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement may be brought against any of the parties in any federal court located in the State of Delaware or any Delaware state court, and each of the parties hereby consents to the exclusive jurisdiction of such court (and of the appropriate appellate courts) in any such suit, action or proceeding and waives any objection to venue laid therein. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, the parties agree that service of process upon such party at the address referred to in Section 11.01, together with written notice of such service to such party, shall be deemed effective service of process upon such party.

Section 11.10 *WAIVER OF JURY TRIAL*. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 11.11 *Entire Agreement*. This Agreement (including the Annexes constituting a part of this Agreement; all references to this Agreement shall be deemed to include each Annex to this Agreement) and any other writing signed by authorized representatives of each of the parties after the date hereof that specifically references this Agreement, constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements, understandings and negotiations, both written and oral between the parties with respect to the subject matter hereof. Except as expressly provided herein, this Agreement is not intended to confer upon any Person other than the parties hereto any rights or remedies hereunder.

Section 11.12 *Counterparts*; *Effectiveness*. This Agreement may be signed in any number of counterparts, each of which shall be deemed an original. This Agreement shall become effective when each party shall have received a counterpart hereof signed by each of the other parties. An executed copy or counterpart hereof delivered by facsimile shall be deemed an original instrument.

Section 11.13 *Severability*. If any provision of this Agreement or the application thereof to any Person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other Persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

Section 11.14 *Further Assurances*. The Members shall execute and deliver such further instruments and do such further acts and things as may be required to carry out the intent and purpose of this Agreement.

Section 11.15 *Specific Performance*. The parties hereto agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement or to enforce specifically the performance of the terms and provisions hereof in any federal or state court located in the State of Delaware, in addition to any other remedy to which they are entitled at law or in equity.

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IN WITNESS WHEREOF, the parties hereto have entered into this Agreement or have caused this Agreement to be duly executed by their respective authorized officers, in each case as of the day and year first above written.

SMITH & NEPHEW, INC.

By: /s/ R. Gordon Howe
Name: R. Gordon Howe
Title: Senior Vice President
Global Planning & Development

[Signature Page to LLC Agreement]

BELUGA I, INC.

By: BELUGA BV, LLC, as its Attorney- in-Fact

By: ESSEX WOODLANDS HEALTH VENTURES VIII, LLC, its manager

By: /s/ Martin P. Sutter
Name: Martin P. Sutter
Title: Manager

BELUGA II, INC.

By: BELUGA BV, LLC, as its Attorney- in-Fact

By: ESSEX WOODLANDS HEALTH VENTURES VIII, LLC, its manager

By: /s/ Martin P. Sutter
Name: Martin P. Sutter
Title: Manager

BELUGA III, INC.

By: BELUGA BV, LLC, as its Attorney- in-Fact

By: ESSEX WOODLANDS HEALTH VENTURES VIII, LLC, its manager

By: /s/ Martin P. Sutter
Name: Martin P. Sutter
Title: Manager

BELUGA IV, INC.

By: BELUGA BV, LLC, as its Attorney- in-Fact

By: ESSEX WOODLANDS HEALTH VENTURES VIII, LLC, its manager

By: /s/ Martin P. Sutter
Name: Martin P. Sutter
Title: Manager

BELUGA V, INC.

By: BELUGA BV, LLC, as its Attorney- in-Fact

By: ESSEX WOODLANDS HEALTH VENTURES VIII, LLC, its manager

By: /s/ Martin P. Sutter
Name: Martin P. Sutter
Title: Manager

BELUGA VI, INC.

By: BELUGA BV, LLC, as its Attorney- in-Fact

By: ESSEX WOODLANDS HEALTH VENTURES VIII, LLC, its manager

By: /s/ Martin P. Sutter
Name: Martin P. Sutter
Title: Manager

BELUGA VII, INC.

By: BELUGA BV, LLC, as its Attorney- in-Fact

By: ESSEX WOODLANDS HEALTH VENTURES VIII, LLC, its manager

By: /s/ Martin P. Sutter
Name: Martin P. Sutter
Title: Manager

BELUGA VII-A, INC.

By: BELUGA BV, LLC, as its Attorney- in-Fact

By: ESSEX WOODLANDS HEALTH VENTURES VIII, LLC, its manager

By: /s/ Martin P. Sutter
Name: Martin P. Sutter
Title: Manager

BELUGA VIII, INC.

By: BELUGA BV, LLC, as its Attorney- in-Fact

By: ESSEX WOODLANDS HEALTH VENTURES VIII, LLC, its manager

By: /s/ Martin P. Sutter
Name: Martin P. Sutter
Title: Manager

BIOVENTUS LLC

By: /s/ Mark A. Augusti
Name: Mark A. Augusti
Title: Chief Executive Officer

[Signature Page to LLC Agreement]

/s/ Mark A. Augusti

MARK A. AUGUSTI

[Signature Page to LLC Agreement]

Schedule I – Capital Contributions and Units (as of May 4, 2012)

Member	Class of Units	Number of Units	Capital Contribution
Smith & Nephew, Inc.	Common Units	4,476,440	$103,572,549.02
	EPR Unit	1	
Beluga I	Preferred Units	1,968,048	$ 45,535,227.29
Beluga II	Preferred Units	141,897	$ 3,283,101.84
Beluga III	Preferred Units	61,694	$ 1,427,441.10
Beluga IV	Preferred Units	197,422	$ 4,567,803.06
Beluga V	Preferred Units	710,718	$ 16,444,065.65
Beluga VI	Preferred Units	513,296	$ 11,876,262.59
Beluga VII	Preferred Units	296,132.5	$ 6,851,694.02
Beluga VII-A	Preferred Units	296,132.5	$ 6,851,694.02
Beluga VIII	Preferred Units	473,812	$ 10,962,710.43
Mark A. Augusti	Profits Interest Units	288,889	$ 0

EXHIBIT A

Annex A
Certain Approval Rights

Subject to the specific approval rights of S&N included in Sections A, B and C of this Annex A, neither the Company nor any of its Subsidiaries may take any of the actions set forth in this Annex A without the approval of the Board of Managers.

A. S&N Approval Rights

Neither the Company nor any of its Subsidiaries may take any of the actions set forth in this Section A without the prior written approval of S&N in its capacity as a Member so long as S&N and its Permitted Transferees hold any Units:

1. Amendment of the Certificate of Formation, this Agreement or any similar organizational document of the Company or any of its Subsidiaries.

2. (i) Entry into, or amendment, renewal or extension of, any agreements or transactions (other than consummation of the transactions contemplated by the Related Documents in accordance with their terms) between the Company or any of its Subsidiaries, on the one hand, and any Member or its Affiliates, on the other hand (other than ordinary course employment-related agreements with Profits Interest Members or grants to Profits Interest Members of Profits Interest Units under the Management Incentive Plan or Phantom Profits Interest Units under the Phantom Profits Interests Plan), or (ii) any amendment of a Related Document.

3. Entry into or amendment any contract of the Company or any of its Subsidiaries purporting to bind S&N or its Affiliates (*e.g.* non-compete restrictions, non-solicitation restrictions, exclusivity obligations).

4. Any change in the Company's Fiscal Year.

B. Additional S&N Approval Rights

Neither the Company nor any of its Subsidiaries may take any of the actions set forth in this Section B without the prior written approval of S&N in its capacity as a Member so long as S&N and its Permitted Transferees hold at least 15% of the outstanding Units:

1. Any issuance or authorization of Company Securities or other equity securities of the Company or any of its Subsidiaries, or any interests convertible into or exchangeable for equity interests of the Company or any of its Subsidiaries, except for any issuance or authorization (i) to the then existing Members made in accordance with the requirements of Section 3.05 of this Agreement and (ii) pursuant to any of the exceptions set forth in Section 3.04(f) of this Agreement which otherwise complies with the restrictions set forth in this Annex A (*provided* that the matters described in clauses (i) and (ii) shall still require the approval of the Board of Managers).

2. Split, combine or reclassify (whether by distribution or otherwise) any Company Securities or any securities of any of its Subsidiaries or redeem, repurchase or otherwise acquire or offer to redeem, repurchase, or otherwise acquire any Company Securities or any securities of any of its Subsidiaries.

3. The declaration or payment of any distributions by the Company except for (i) Preferred Distributions, (ii) any distributions made pursuant to Section 10.05 of this Agreement, (iii) any other distributions that are paid to the holders of Preferred Units, the Common Units and the OUS Units ratably among such holders based upon the number of Units held by each such holder as of the time of such distribution and (iv) any Tax Distributions (*provided* that the declaration or payment of the distributions described in clauses (i), (ii) and (iii) shall (x) require the approval of the Board of Managers and (y) be subject to any restrictions applicable to the Company pursuant to the S&N Note and any S&N approval rights pursuant to Section C below).

4. Any decision to effect an Initial Public Offering that would be consummated prior to the one year anniversary of the date of this Agreement.

5. Any decision to effect an Initial Public Offering that is not a Qualified Initial Public Offering.

6. Any increase or decrease in the size of the Board of Managers, or any change in the right to designate Managers provided for in Section 5.01 of this Agreement (including the relative representation on the Board by the designees of S&N and the Essex Members).

7. Any change in the principal nature of the business of the Company or any of its Subsidiaries or any entry into any line of business unrelated to the principal nature of the business of the Company or any of its Subsidiaries.

8. (i) Any material amendment to the Management Incentive Plan or the Phantom Profits Interest Plan or (ii) the adoption or any material amendment of any other plan or arrangement providing for the allocation (including notionally) of profits, proceeds or assets of the Company (each, an "**Other Management Equity Plan**"); *provided* that such approval shall not be unreasonably withheld, conditioned or delayed by S&N (*provided*, *however*, that nothing in this item B.8 shall limit or otherwise affect any consent rights specifically provided to S&N under this Agreement, the Management Incentive Plan, the Phantom Profits Interest Plan or any Other Management Equity Plan.

C. Note-Related S&N Approval Rights

Neither the Company nor any of its Subsidiaries may take any of the actions set forth in this Section C without the prior written approval of S&N in its capacity as a Member so long as (i) any amounts remain outstanding under the S&N Note and (ii) the S&N Note is held by S&N or any of its Affiliates:

1. Entry into or consummation of any Specified Asset Sale, unless (i) the proceeds thereof consist exclusively of cash and (ii) the Company prepays the outstanding principal amount of the S&N Note in an amount equal to at least 75% of the excess of (I) the amount of such proceeds over (II) the product of (A) the lesser of (x) the taxable gain, if any, that would be recognized by the Company with respect to such Specified Asset Sale and (y) an estimate (not less than zero) of the taxable income of the Company for the taxable year during which such Specified Asset Sale occurs, for which a Tax Distribution has not yet been made, as reasonably determined by the Board of Managers and (B) the Assumed Tax Rate, together with accrued and unpaid interest under the S&N Note on such amount, promptly following receipt by the Company or any of its Subsidiaries of such proceeds.

2. Any of the actions described in Sections 3.02(a), (b), (c) or (h) of the S&N Note.

D. Other Matters Requiring Approval of the Board of Managers

1. Except for any transaction effected in accordance with the requirements of Sections 8.06 or 9.06 of this Agreement, any sale or Transfer of all or substantially all of the assets or equity interests of the Company or any Subsidiary of the Company (whether effected by merger, consolidation, recapitalization, reorganization, reclassification or similar transaction).

2. Any participation outside the ordinary course of business in joint ventures, partnerships or similar arrangements.

3. Approval or amendment of any operating budget or any expenditure which (together with other expenditures) would result in a deviation of more than (i) 50% from any line item of the then-current operating budget or (ii) 20% from the aggregate expenditures set forth in the then-current operating budget.

4. Selection or removal of the executive officers of the Company.

5. Determination of compensation or other benefits of any executive officer of the Company or any Subsidiary of the Company and the adoption or modification of any material benefit plans for employees of the Company or any Subsidiary of the Company.

6. Entering into or amending any material contract of the Company or any of its Subsidiaries.

7. The initiation, failure to defend or appear, or settlement by the Company or any of its Subsidiaries of any material litigation, arbitration or other similar material judicial or regulatory proceedings.

8. Any incurrence, creation or assumption of (or amendment of any instrument representing) Indebtedness by the Company or any Subsidiary of the Company.

9. The making of any loans or advances to, guarantees for the benefit of, or investments by the Company or any of its Subsidiaries in, any Person (other than a wholly owned Subsidiary of the Company and other than trade credit in the ordinary course of business).

10. Any change to the Fiscal Year of the Company (for federal income tax purposes, financial reporting purposes or otherwise).

11. Selection or removal of principal auditors, banks, financial advisors, investment banks, consulting firms or legal counsel.

12. Any acquisition (in a single transaction or a series of related transactions) of any material assets or properties by the Company or any Subsidiary of the Company.

13. Any material capital or research and development expenditures by the Company or any Subsidiary of the Company other than as set forth in the operating budget referred to in item 3 above.

14. Any material sales, transfers, leases, pledges or other dispositions of any property or assets by the Company or any Subsidiary of the Company other than any such transaction made in the ordinary course of business.

15. The filing of any petition by or on behalf of the Company or any of its Subsidiaries seeking relief under any bankruptcy, insolvency or other similar law, or the dissolution, liquidation, winding up or reorganization of the Company or any Subsidiary of the Company.

16. The entry into any contract, agreement or understanding to do any of the foregoing.

EXHIBIT B

Annex B
Registration Rights

SECTION 1. *Definitions*. (a) Capitalized terms used but not defined herein shall have the meanings assigned to them in the Agreement. For purposes of this Annex B, the following terms have the following meanings:

"**Commission**" means the United States Securities and Exchange Commission and any successor federal agency administering the Securities Act.

"**Common Stock**" means, collectively, any series or class of common stock of the Company that may be issued by the Company from time to time that has the right to vote in the general election of directors.

"**Company**" means such entity as is determined by the Members in accordance with Section 9.11 of the Agreement to serve as the publicly-traded entity upon an Initial Public Offering.

"**Members**" means the Persons who are Members (as defined in the Agreement), in their capacity as shareholders of the Company.

"**Registrable Securities**" means (i) all shares of Common Stock owned of record by a Member and (ii) all shares of Common Stock that may be issued to such Member in respect of shares of Common Stock or other equity securities of the Company pursuant to any conversion, exchange, stock dividend, split or combination, recapitalization, merger, consolidation, other reorganization or otherwise. As to any particular Registrable Securities, such securities shall cease to be Registrable Securities when (i) the offer and sale of such securities shall have been registered under the Securities Act, the registration statement with respect to such offer or sale of such securities shall have become effective under the Securities Act and such securities shall have been disposed of pursuant to such effective registration statement, (ii) such securities shall have been sold pursuant to Rule 144, (iii) such securities shall have been otherwise transferred, if new certificates or other evidences of ownership for them not bearing a legend restricting further transfer and not subject to any stop transfer order or other restrictions on transfer shall have been delivered by the Company and subsequent disposition of such securities shall not require registration or qualification of such securities under the Securities Act or any state securities laws then in force or (iv) such securities shall cease to be outstanding.

"**Registration**" means a registration of a bona fide public offering and sale of shares of Common Stock or other equity securities of the Company pursuant to an effective registration statement under the Securities Act (other than pursuant to a registration statement on Form S-4 or Form S-8 or any successor or similar form) and in compliance with all applicable state securities laws, and "Register" means to effect such a registration.

"**Registration Expenses**" means all expenses of the Company incident to the Company's performance of or compliance with the provisions of this Annex B, including all reasonable, out-of-pocket Commission and stock exchange or automated interdealer quotation system registration fees, filing and listing fees and expenses, fees and expenses of compliance with securities or blue sky laws (including reasonable fees and disbursements of counsel for the underwriters in connection with blue sky qualifications of the Registrable Securities), rating agency fees, fees and expenses of the transfer agent and registrar for the securities, printing expenses, messenger and delivery expenses, the fees and expenses incurred in connection with the listing of the securities to be registered on each securities exchange or automated interdealer quotation system on which Registrable Securities are to be listed or on which similar securities issued by the Company are to be listed in connection with such transaction, fees and disbursements of counsel for the Company and all independent certified public accountants for the Company (including the expenses of any annual audit, special audit and "cold comfort" letters required in connection therewith or incident thereto), the fees and disbursements of underwriters customarily paid by issuers or sellers of securities (but not including any underwriting discounts or commissions or transfer taxes, if any, attributable to the sale of Registrable Securities by the holders of such Registrable Securities, or any fees or expenses of counsel), fees and expenses of any qualified independent underwriter or any person acting in a similar capacity under the rules of the Financial Industry Regulatory Authority, fees and disbursements of one counsel retained in connection with each such Registration by the Members, such counsel to be selected by the Members who hold two-thirds of the Registrable Securities being Registered, fees and expenses of any special experts retained by the Company in connection with such Registration, fees and expenses of other Persons retained by the Company, and expenses relating to any analyst or investor presentation or any "road shows" undertaken by the Company in connection with the registration, marketing or selling of the Registrable Securities.

"**Representative**" means, with respect to a particular Person, any director, officer, general partner, limited partner, co-owner, member, nominee, managing director, financial advisor, accountant, legal counsel, consultant, agent or controlling Person of such Person.

SECTION 2. *Demand Registration Rights*. (a) Following the earlier of (x) 180 days after the effective date of the registration statement for the Initial Public Offering and (y) the expiration of the period during which the managing underwriters for the Initial Public Offering shall prohibit the Company from effecting any other public sale or distribution of Registrable Securities, upon written notice to the Company from S&N, on the one hand, or the Essex Members collectively, on the other hand (the "**Requesting Member**") (which notice shall specify the number and the intended method of disposition of Registrable Securities), the Company shall

(i) promptly give written notice of such requested Registration to each of the Members then owning Registrable Securities and

(ii) use its reasonable best efforts to effect and maintain the Registration on an appropriate form under the Securities Act of offers and sales of (x) Registrable Securities by the Requesting Member and by each other Member which shall have made a written request to the Company for Registration thereof (which request shall specify the number of Registrable Securities) within 10 Business Days after the giving of such written notice by the Company (collectively, the "**Demand Securities**") and (y) any securities which the Company may elect to Register in connection with the offering of Demand Securities and such other securities as the Company may be obligated to include due to other piggyback registration rights, if any, granted to third parties, in each case in accordance with the intended method or methods of disposition specified by the Requesting Member, subject to the other provisions of this Annex B; *provided* that the Company shall not be obligated to effect any Registration pursuant to this Section 2 except in accordance with the following provisions:

(iii) no Requesting Member shall be entitled to make more than two (2) requests for Registration pursuant to this Section 2, other than Registrations requested to be effected pursuant to a registration statement on Form S-3 under the Securities Act (or any successor thereto), for which an unlimited number of requests pursuant to this Section 2 shall be permitted; *provided* that at the time of such request the Company is eligible for use of Form S-3 under the Securities Act (or any successor thereto);

(iv) no Requesting Member shall be entitled to request any Registration pursuant to this Section 2 until at least six (6) months after the closing of the last Registration and sale of Company securities subject to this Section 2 or Section 3 of this Annex B;

(v) the Company shall not be required to effect any Registration pursuant to this Section 2 unless the anticipated gross proceeds of the Registrable Securities sought to be registered by the Requesting Member exceed $10,000,000; and

(vi) if, after a request for Registration pursuant to this Section 2 has been made, the Board of Managers (or the board of directors of the Company or other equivalent governing body) has determined, in good faith, that the filing of a registration statement to effect such a Registration pursuant to this Section 2 would require the disclosure of material information which the Company has a reasonable justification for keeping confidential on the grounds that such disclosure would materially interfere with a proposed or pending bona fide material financing, acquisition or other material transaction of the Company, the Company shall not be obligated to effect such a Registration pursuant to this Section 2 until the earlier of the expiration of 90 days after the Company first makes such good faith determination or the completion of such transaction, negotiations or bidding; *provided* that the Company shall not be permitted to exercise its rights under this Section 2(a)(vi) more than twice (not to exceed 90 days in the aggregate) during any twelve-month period.

(b) Subject to Section 2(a) of this Annex B, the Requesting Member may, in the notice delivered pursuant to Section 2(a) of this Annex B, elect that the requested Registration be pursuant to an underwritten offering. Upon such election by the Requesting Member (or, in the event the Requesting Member does not so elect, if the Company elects an underwritten offering), a majority of the Board of Managers (or, the board of directors of the Company or other equivalent governing body) shall have the right to designate the managing underwriter(s) and, in such case, the Company shall not be required to include the Registrable Securities of a Member in the underwritten offering unless such Member accepts the reasonable and customary terms of the underwritten offering as agreed upon between the Company and the managing underwriter(s) so designated.

(c) If a Registration pursuant to this Section 2 involves an underwritten offering, and the managing underwriter shall advise the Company in writing (with a copy to each holder of Demand Securities) that, in its opinion, the number of securities requested to be included in such Registration (including securities of the Company which are not Registrable Securities) should be limited due to market or other conditions, the Company will include in such Registration, to the extent of the number which the Company is so advised in writing can be sold in such offering, (i) first, Demand Securities, *pro rata* among the holders thereof requesting such Registration on the basis of the number of such securities requested to be included by such holders, (ii) second, any securities which the Company has elected to Register pursuant to Section 2(a) of this Annex B in connection with the offering of Demand Securities and (iii) third, such other securities the Company may be obligated to include due to other piggyback registration rights granted to third parties.

(d) The Requesting Member(s) requesting a Registration under this Section 2 may, at any time prior to the effective date of the registration statement relating to such Registration, revoke such request by providing written notice thereof to the Company, with the following consequences:

(i) if such request is withdrawn prior to the filing date of the applicable registration statement, such withdrawn registration shall count as a requested Registration for purposes of Section 2(a)(iii) of this Annex B unless the Requesting Member promptly reimburses the Company for all Registration Expenses incurred by the Company in connection with the preparation of such registration statement for filing; or

(ii) if such request is withdrawn after the filing date of the applicable registration statement but prior to its effective date, such withdrawn registration shall count as a requested Registration for purposes of Section 2(a)(iii) of this Annex B unless the Requesting Member promptly reimburses the Company for all Registration Expenses incurred by the Company in connection with such withdrawn registration.

(e) Except as provided in Section 2(d) of this Annex B, any Registration requested by any Requesting Member pursuant to Section 2(a) of this Annex B shall not be deemed to have been effected (and, therefore, not requested for purposes of Section 2(a) of this Annex B):

(i) unless such Registration has become effective and has remained effective for the period set forth in Section 12(a)(i) of this Annex B (subject to Section 12(b) of this Annex B); *provided* that a Registration which does not become effective after the Company has filed a registration statement with respect thereto solely by reason of the refusal to proceed by the Requesting Member (other than a refusal to proceed based upon the advice of counsel relating to a matter with respect to the Company) shall be deemed to have been effected by the Company at the request of such Requesting Member;

(ii) if after such Registration has become effective such Registration is interfered with by any stop order, injunction or other order or requirement of the Commission or other governmental entity for any reason other than a misrepresentation or an omission by the Requesting Member and, as a result thereof, the Registrable Securities requested by the Requesting Member to be registered cannot be completely distributed in accordance with the plan of distribution set forth in the related registration statement;

(iii) if the closing pursuant to the purchase agreement or underwriting agreement entered into in connection with such Registration does not occur; or

(iv) if, as a result of a determination made pursuant to Section 2(c) of this Annex B by a managing underwriter, the Requesting Member shall not be entitled to include in such Registration at least 50% of the Registrable Securities that such Requesting Member requested pursuant to Section 2(a) of this Annex B to be included in such Registration.

(f) Any Registration effected pursuant to Section 3 of this Annex B shall not be deemed to have been requested by a Requesting Member pursuant to this Section 2.

(g) At any time following the date when the Company becomes eligible to use Form S-3 under the Securities Act for secondary sales, upon written request of a Requesting Member, the Company shall use its reasonable best efforts to file a "shelf" registration statement (the "**Shelf Registration**") with respect to all or any portion of such Member's Registrable Securities, if requested by such Member, on an appropriate form pursuant to Rule 415 (or any similar provision that may be adopted by the Commission) under the Securities Act and to cause such Shelf Registration to become effective and to keep such Shelf Registration in effect until such Member shall no longer hold any Registrable Securities.

SECTION 3. *Piggyback Registration Rights*. (a) If, at any time following the completion of an Initial Public Offering, the Company proposes to effect a Registration, whether or not for sale for its own account, in a manner which would permit Registration of Registrable Securities for sale to the public under the Securities Act (other than a Registration pursuant to Section 2 of this Annex B), it shall give prompt written notice to the Members holding Registrable Securities of its intention to do so and of such Members' rights under this Section 3, at least ten Business Days prior to the anticipated filing date of the registration statement relating to such Registration. Such notice shall offer all such Members holding Registrable Securities the opportunity to include in such Registration such number of Registrable Securities as each such Member may request. Upon the written request of any such Member made within 5 Business Days after the receipt of the Company's notice (which request shall specify the number of Registrable Securities intended to be disposed of by such Member), the Company shall use its reasonable best efforts to include in such Registration all of the Registrable Securities which the Company has been so requested to Register by the Members holding such Registrable Securities pursuant to this Section 3(a); *provided* that the Company shall not be obligated to effect any Registration pursuant to this Section 3 except in accordance with the following provisions:

(i) if such Registration involves an underwritten offering, all Members requesting that their Registrable Securities be included in the Company's Registration must, upon request by the underwriter(s), sell their Registrable Securities to such underwriter(s) selected by the Company on the same terms and conditions as apply to the Company or any selling securityholder, including executing and delivering such underwriting agreements or other agreements (including legal opinions) to which the Company or any such selling securityholder has agreed to execute and deliver;

(ii) if, at any time after giving written notice of its intention to register any securities pursuant to this Section 3, the Company shall determine for any reason not to Register or to withdraw Registration of such securities, the Company shall give written notice to all Members holding Registrable Securities included in such Registration and, thereupon, shall be relieved of its obligation to Register (or maintain the effectiveness of the Registration of) any Registrable Securities in connection with such Registration (without prejudice, however, to the rights of the Members immediately to request that such Registration be effected as a Registration under Section 2 of this Annex B);

(iii) the Company shall not be required to effect any Registration of Registrable Securities under this Section 3 incidental to the registration of any of its securities in connection with mergers, acquisitions, exchange offers, subscription offers, dividend reinvestment plans or stock option or other executive or employee benefit or compensation plans (including any registration of securities on a Form S-4 or S-8 registration statement or any successor or similar forms); and

(iv) no Registration of Registrable Securities effected under this Section 3 shall relieve the Company of its obligation to effect Registrations of Registrable Securities pursuant to Section 2 of this Annex B.

(b) If a Registration pursuant to this Section 3 involves an underwritten offering, and the managing underwriter shall advise the Company in writing (with a copy to each Member requesting inclusion of Registrable Securities in such Registration) that, in its opinion, the number of securities requested to be included in such Registration (including securities of the Company which are not Registrable Securities) should be limited due to market or other conditions, the Company shall include in such Registration (i) *first*, the securities the Company proposes to sell, (ii) *second*, the Registrable Securities requested to be included therein pursuant to this Section 3, *pro rata* among the requesting Members and the holders of such securities on the basis of the number of Registrable Securities requested to be included in such Registration by such Members and (iii) *third*, any other securities requested to be included in such Registration *pro rata* among the holders of such securities on the basis of the number of shares requested to be Registered by such holders or as they may otherwise agree.

SECTION 4. *Registration Expenses*. Subject to Section 2(d) of this Annex B, the Company shall pay all Registration Expenses in connection with each Registration of Registrable Securities requested pursuant to this Annex B and any other actions that may be taken in connection with any such Registration as contemplated by this Annex B; *provided* that the Company shall not be obligated to pay any underwriting discounts or commissions or transfer taxes, if any, relating to the Transfer of securities Transferred by Persons other than the Company pursuant to any such Registration.

SECTION 5. *Restrictions on Public Sales by Members*. In connection with any underwritten offering of securities of the Company, including any offering contemplated by this Annex B (other than pursuant to a Shelf Registration), each Member agrees that, whether or not such Member's Registrable Securities are included in such Registration, it shall consent and agree to comply with any "hold back" or "lock-up" restriction, relating to Registrable Securities or any other securities of the Company then owned by such holder, that may be reasonably requested by the managing underwriter(s) of such offering. The Company hereby also agrees to use its reasonable efforts to cause each other holder of equity securities or securities convertible into or exchangeable or exercisable for such securities (other than in the case of equity securities issued under dividend reinvestment plans or employee stock plans) purchased directly from the Company otherwise than in a public offering to so agree, to the extent reasonably requested by the managing underwriter(s) of such offering.

SECTION 6. *Indemnification by the Company*. In the event of any Registration of any Registrable Securities pursuant to this Annex B, the Company shall indemnify and hold harmless, to the full extent permitted by law, each of the Members holding any Registrable Securities included in such registration statement, its Representatives, each other person who participates as an underwriter in the offering or sale of such securities and each other Person, if any, who controls, is controlled by or is under common control with such Member or any such underwriter within the meaning of the Securities Act, against any and all losses, claims, damages or liabilities, joint or several, and reasonable, out-of-pocket expenses (including any amounts paid in any settlement effected with the Company's consent) to which such Member, any such Representative or any such underwriter or controlling Person may become subject under the Securities Act, state securities or blue sky laws, common law or otherwise, insofar as such losses, claims, damages or liabilities (or actions or proceedings in respect thereof) or expenses arise out of or are based upon (a) any untrue statement or alleged untrue statement of any material fact contained in any information conveyed in connection with such Registration at or prior to the time of sale, or in any registration statement under which such securities were Registered, any preliminary, final or summary prospectus contained therein, or any amendment or supplement thereto, (b) any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading or (c) any violation by the Company of any law applicable to the Company and relating to action required of or inaction by the Company in connection with any such Registration, and the Company shall reimburse such Member and each such Representative or underwriter and controlling Person for any legal or any other expenses reasonably incurred by them in connection with investigating or defending such loss, claim, liability, action or proceeding; *provided* that the Company shall not be liable in any such case to the extent that any such loss, claim, damage, liability (or action or proceeding in respect thereof) or expense arises out of or is based upon any untrue statement or alleged untrue statement or omission or alleged omission made in any information conveyed by the Company in connection with such Registration at or prior to the time of sale, or in such registration statement or amendment or supplement thereto or in any such preliminary, final or summary prospectus, in each case in reliance upon and in conformity with written information furnished to the Company through an instrument duly executed by such Member or any such Representative or underwriter specifically stating that it is for use in the preparation thereof. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such Member or any such Representative or underwriter and shall survive the transfer of such securities by such Member.

SECTION 7. *Indemnification by the Members and Underwriters*. The Company may require, as a condition to including any Registrable Securities in any registration statement filed in accordance with Annex B, that the Company shall have received an undertaking reasonably satisfactory to it from the holders of such Registrable Securities and any underwriter, to indemnify and hold harmless severally, and not jointly, in the same manner and to the same extent as set forth in Section 6 of this Annex B, the Company and its Representatives and all other prospective sellers and their respective Representatives, and their respective controlling Persons with respect to any statement or alleged statement in or omission or alleged omission from such information, registration statement, any preliminary, final or summary prospectus contained therein, or any amendment or supplement thereto, if such statement or alleged statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to the Company or its representatives through an instrument duly executed by or on behalf of such Member or underwriter, as the case may be, specifically stating that it is for use in the preparation of such information, registration statement, preliminary, final or summary prospectus or amendment or supplement thereto, or a document incorporated by reference into any of the foregoing. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Company, any other prospective seller, their respective Representatives or their respective controlling Persons and shall survive the transfer of such securities by such Member; *provided* that no such Member shall be liable under this Section 7 for any amounts exceeding the product of the purchase price per Registrable Security and the number of Registrable Securities being sold pursuant to such registration statement or prospectus by such Member (net of any underwriters' or placement agents' fees, discounts or commissions related thereto); *provided*, *further*, that no underwriter shall be liable under this Section 7 for any amounts exceeding the total price at which the Registrable Securities purchased by it and distributed to the public were offered to the public.

SECTION 8. *Notices of Claims, Etc*. Promptly after receipt by an indemnified party hereunder of written notice of the commencement of any action or proceeding with respect to which a claim for indemnification may be made pursuant to this Annex B, such indemnified party shall, if a claim in respect thereof is to be made against an indemnifying party, promptly give written notice to the latter of the commencement of such action; *provided* that the failure of any indemnified party to give notice as provided herein shall not relieve the indemnifying party of its obligations under the preceding Sections of this Annex B, except to the extent that the indemnifying party is actually materially prejudiced by such failure to give notice. In case any such action is brought against an indemnified party, unless in such indemnified party's reasonable judgment (a) a conflict of interest between such indemnified and indemnifying parties may exist in respect of such claim, (b) the claim is criminal in nature or (c) the claim involves material civil liability on the part of an indemnified party, the indemnifying party shall be entitled to participate in and, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party, and after notice from the indemnifying party of its election so to assume the defense thereof, the indemnifying party shall not be liable to such indemnified party for any legal or other reasonable, out-of-pocket expenses subsequently incurred by the latter in connection with the defense thereof, unless in such indemnified party's reasonable judgment a conflict of interest between such indemnified and indemnifying parties arises in respect of such claim after the assumption of the defense thereof, and the indemnifying party shall not be subject to any liability for any settlement made without its consent (which consent shall not be unreasonably withheld). No indemnified party shall consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect to such claim or litigation. No indemnified party shall consent to entry of any judgment or enter into any settlement of any such action the defense of which has been assumed by an indemnifying party without the consent of such indemnifying party. An indemnifying party who is not entitled to, or elects not to, assume the defense of a claim shall not be obligated to pay the fees and expenses of more than one counsel (in addition to any local counsel) for all parties indemnified by such indemnifying party with respect to such claim, unless in the reasonable judgment of any indemnified party a conflict of interest may exist between such indemnified party and any other of such indemnified parties with respect to such claim, in which event the indemnifying party shall be obligated to pay the fees and expenses of such additional counsel or counsels.

SECTION 9. *Other Indemnification*. Indemnification similar to that specified in the preceding Sections of this Annex B (with appropriate modifications) shall be given by the Company and each Member holding Registrable Securities with respect to any required Registration or other qualification of securities under any law other than the Securities Act.

SECTION 10. *Indemnification Payments*. The indemnification required by Section 6 and Section 7 of this Annex B shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or expense, loss, damage or liability is incurred.

SECTION 11. *Contribution*. (a) If the indemnification provided for in Section 6 and Section 7 of this Annex B is unavailable to an indemnified party in respect of any expense, loss, claim, damage or liability referred to therein, then each indemnifying party, in lieu of indemnifying such indemnified party, shall contribute to the amount paid or payable by such indemnified party as a result of such expense, loss, claim, damage or liability (i) in such proportion as is appropriate to reflect the relative benefits received by the Company, on the one hand, and the participating Members or underwriter(s), as the case may be, on the other hand, from the distribution of the Registrable Securities or (ii) if the allocation provided by clause (i) above is not permitted by Applicable Law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company, on the one hand, and of the participating Members or underwriter(s), as the case may be, on the other hand, in connection with the statements or omissions which resulted in such expense, loss, damage or liability, as well as any other relevant equitable considerations. The relative fault of the Company, on the one hand, and of the participating Members or underwriter(s), as the case may be, on the other hand, shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or omission to state a material fact relates to information supplied by the Company, by the participating Members or by the underwriter(s) and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission; *provided* that the foregoing contribution agreement shall not inure to the benefit of any indemnified party if indemnification would be unavailable to such indemnified party by reason of the provisions of either Section 6 and Section 7 of this Annex B, and in no event shall the obligation of any indemnifying party to contribute under this Section 11 exceed the amount that such indemnifying party would have been obligated to pay by way of indemnification if the indemnification provided for under Section 6 and Section 7 of this Annex B had been available under the circumstances.

(b) The Company and the holders of Registrable Securities agree that it would not be just and equitable if contribution pursuant to this Section 11 were determined by *pro rata* allocation (even if the holders and any underwriters were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to in Section 11(a) of this Annex B. The amount paid or payable by an indemnified party as a result of the losses, claims, damages and liabilities referred to in Section 11(a) of this Annex B shall be deemed to include, subject to the limitations set forth in the preceding sentence and Section 8 of this Annex B, any legal or other reasonable, out-of-pocket expenses incurred by such indemnified party in connection with investigating or defending any such action or claim.

(c) Notwithstanding the provisions of this Section 11, no holder of Registrable Securities or underwriter shall be required to contribute any amount in excess of the amount by which (i) in the case of any such holder, the net proceeds received by such holder from the sale of Registrable Securities or (ii) in the case of an underwriter, the total price at which the Registrable Securities purchased by it and distributed to the public were offered to the public, exceeds, in either case, the amount of any damages that such holder or underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

SECTION 12. *Registration Procedures*. (a) If and whenever the Company is required to effect or cause the Registration of any Registrable Securities pursuant to this Annex B, the Company shall, as promptly as reasonably practicable:

(i) prepare in reasonable cooperation with the selling Members (and, in the event of an underwritten offering, with the underwriter(s)), and file with the Commission (subject to Section 2(a)(vi) of this Annex B), and otherwise in a manner consistent with the provisions of this Annex B, a registration statement with respect to such Registrable Securities on any form for which the Company then qualifies or which counsel for the Company shall deem appropriate as the case may be, and which form shall be available for the sale of the Registrable Securities in accordance with the intended methods of distribution thereof, and, except in the case of a registration pursuant to Section 3 of this Annex B, use its reasonable best efforts to cause such registration statement to become and remain effective for a period of not less than 120 days (or such shorter period in which all of the Registrable Securities included in such registration statement have been sold thereunder, but which shall not expire before the expiration of the 90-day period referred to in Section 4(3) of the Securities Act and Rule 174 thereunder, if applicable) or, in the case of a Shelf Registration, for so long as any Registrable Securities covered thereby are outstanding; *provided* that at least seven days before filing with the Commission a registration statement or prospectus or any amendments or supplements thereto, the Company shall (A) furnish to one counsel selected by the Requesting Member(s), in the event of a Registration effected pursuant to Section 2 of this Annex B, or selected by the holders of a majority of the Registrable Securities covered by such registration statement, in the event of any other Registration, copies of all such documents proposed to be filed (other than documents filed pursuant to the Exchange Act and incorporated by reference into such registration statement), which documents shall be subject to the timely review of such counsel, and (B) notify each holder of Registrable Securities covered by such registration statement of any stop order issued or threatened by the Commission and take all reasonable actions required to prevent the entry of such stop order or to remove it if entered;

(ii) prepare and file with the Commission such amendments and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective for the period required pursuant to Section 12(a)(i) of this Annex B and comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement during such period in accordance with the intended methods of disposition by the seller or sellers thereof set forth in such registration statement;

(iii) furnish to each holder of Registrable Securities covered by the registration statement and to each underwriter, if any, of such Registrable Securities, such number of copies of such registration statement, each amendment and supplement thereto (in each case including all exhibits thereto, unless otherwise available via EDGAR), and the prospectus included in such registration statement (including each preliminary prospectus), a copy of any and all material transmittal letters or other material correspondence to or received from the Commission or any other governmental entity or self-regulatory body or other Person having jurisdiction (including any domestic or foreign securities exchange) relating to such Registration and the related offering, and such other documents, as such Person may reasonably request, in order to facilitate the public sale or other disposition of the Registrable Securities owned by such holder;

(iv) use its reasonable best efforts to register or qualify such Registrable Securities covered by such registration statement under such other securities or blue sky laws of such jurisdictions as any holder, and underwriter, if any, of Registrable Securities covered by such registration statement shall reasonably request, and do any and all other acts and things which may be reasonably necessary or advisable to enable such seller to consummate the disposition in such jurisdictions of the Registrable Securities owned by such seller; *provided* that the Company shall not for any such purpose, be required to (A) qualify to do business as a foreign corporation in any jurisdiction where, but for the requirements of this Section 12, it is not then so qualified, (B) subject itself to taxation in any such jurisdiction or (C) take any action which would subject it to consent to general or unlimited service of process to which it is not then so subject;

(v) notify in writing and on a timely basis each seller of Registrable Securities covered by such registration statement, at any time when a prospectus relating thereto is required to be delivered under the Securities Act, of the happening of any event which comes to the Company's attention if as a result of such event the prospectus included in such registration statement, as then in effect, includes any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading and at the request of any such seller, deliver a reasonable number of copies of an amended or supplemental prospectus as may be necessary so that, as thereafter delivered to the purchasers of such Registrable Securities, such prospectus shall not include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading;

(vi) use its reasonable best efforts to cause all such Registrable Securities to be listed on such national securities exchange as may be designated by the Company, and enter into such customary agreements including a listing application and indemnification agreement in customary form, *provided* that the applicable listing requirements are satisfied, and to provide a transfer agent and registrar for such Registrable Securities covered by such registration statement no later than the effective date of such registration statement;

(vii) in the case of such registration that involves an underwritten offering, (A) use its reasonable best efforts to furnish to any underwriter of such Registrable Securities (1) an opinion of counsel for the Company, addressed to such underwriter and dated the date of the closing under the underwriting agreement and (2) "comfort" letters addressed to such underwriter and signed by the independent public accountants who have audited the financial statements of the Company and (B) use its commercially reasonable efforts to furnish to any Member selling such Registrable Securities (1) an opinion of counsel for the Company, addressed to such selling Member and dated the date of the closing under the underwriting agreement and (2) "comfort" letters addressed to such selling Member and signed by the independent public accountants who have audited the financial statements of the Company, in each case in customary form and covering matters of the type customarily covered in such opinions and letters;

(viii) after the filing of the registration statement, notify each seller of Registrable Securities named in such registration statement in writing of the effectiveness thereof and of any stop order issued or threatened by the Commission and take all reasonable actions required to prevent the entry of such stop order or to remove it if entered and notify each seller of Registrable Securities of such lifting or withdrawal of such order;

(ix) in the case of such registration that involves an underwritten offering, use its reasonable best efforts to have appropriate officers of the Company (A) attend any "road shows" and analyst and investor presentations scheduled in connection with any such Registration and (B) cooperate as reasonably requested by the holders of Registrable Securities in the marketing of the Registrable Securities; all reasonable out of pocket costs and expenses incurred by the Company or such officers in connection with such attendance or cooperation shall be paid by the Company;

(x) give the sellers of Registrable Securities named in such registration statement and the underwriters, if any, and their respective counsel and accountants, such reasonable and customary access to its books, records and properties and such opportunities to discuss the business and affairs of the Company with its officers and the independent public accountants who have certified the financial statements of the Company as shall be necessary, in the opinion of such sellers and such underwriters or their respective counsel, to conduct a reasonable investigation within the meaning of the Securities Act;

(xi) use its reasonable best efforts to comply with all applicable rules and regulations of the Commission, and make available to its security holders, as soon as reasonably practicable, an earnings statement or such other document satisfying the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder; and

(xii) execute and deliver all reasonable and customary instruments and documents (including, in an underwritten offering, an underwriting agreement in customary form) and take such other reasonable and customary actions and obtain such reasonable and customary certificates and opinions in order to effect a Public Offering of such Registrable Securities; *provided* that the Company may require each holder of Registrable Securities as to which any Registration is being effected to furnish to the Company such reasonable and customary information regarding such holder and the distribution of such Registrable Securities as the Company may from time to time reasonably request in writing in connection with effecting such offering.

(b) Each holder of Registrable Securities shall, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 12(a)(v) of this Annex B, discontinue disposition of the Registrable Securities pursuant to the registration statement covering such Registrable Securities until such holder's receipt of the copies of the supplemented or amended prospectus contemplated by Section 12(a)(v) of this Annex B, and, if so directed by the Company, such holder shall deliver to the Company (at the Company's expense) all copies, other than permanent file copies, then in such holder's possession, of the prospectus covering such Registrable Securities at the time of receipt of such notice.

SECTION 13. *Rule 144 and Form S-3*. If the Company shall have filed a registration statement pursuant to the requirements of Section 12 of the Exchange Act or a registration statement pursuant to the requirements of the Securities Act, the Company shall (a) file the reports required to be filed by it under the Securities Act and the Exchange Act and the rules and regulations adopted by the Commission thereunder (or, if the Company is not required to file such reports, it shall, upon the request of any holder of Registrable Securities, make publicly available other information), and it shall take such further action as any holder of Registrable Securities may reasonably request, all to the extent required from time to time to enable such holder to sell shares of Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by (i) Rule 144 or (ii) any similar rule or regulation hereafter adopted by the Commission and (b) use its reasonable best efforts to cause the conditions 1, 2 and 3 under General Instruction I.A. of Form S-3 (or any successor form and conditions) under the Securities Act for the filing of registration statements under this Annex B to be met. Upon the request of any holder of Registrable Securities, the Company shall deliver to such holder a written statement as to whether it has complied with such requirements.

SECTION 14. *Registration Rights to Others*. If the Company shall at any time hereafter provide to any holder of any securities of the Company rights with respect to the registration of such securities under the Securities Act, (a) such rights shall not be in conflict with or adversely affect any of the rights provided in this Annex B to any Member and (b) if such rights are provided on terms or conditions more favorable to such holder than the terms and conditions provided in this Annex B, the Company shall provide (by way of amendment to this Annex B or otherwise) such more favorable terms or conditions to each Member.

SECTION 15. *Assignment of Rights*. Each Essex Member or S&N may assign some or all of its rights pursuant to this Annex B to (a) any Permitted Transferee of such Member or (b) any third-party Transferee of its Registrable Securities; *provided* that in either case, such Transferee agrees in writing to be bound by the provisions of this Annex B.

EXHIBIT C

Annex C

Terms of Preferred Units and Converted Common Units

SECTION 1. *Liquidation Preference*. As of the date hereof, each Preferred Unit shall be entitled to an initial liquidation preference of $23.137254902 per Preferred Unit, as adjusted from time to time pursuant to Section 5 of this Annex C (as adjusted, the "**Initial Liquidation Preference**")**.** The Initial Liquidation Preference shall be adjusted from time to time after the date hereof as provided by Sections 4 and 5 of this Annex C (as adjusted, the "**Liquidation Preference**")**.**

SECTION 2. *Rank*. The Preferred Units shall, with respect to rights upon liquidation, dissolution or winding up of the Company, rank senior to all other Units and each other class or series of equity securities issued by the Company.

SECTION 3. *Conversion*. (a) Each Preferred Unit shall automatically be converted (i) upon the Automatic Conversion of the Preferred Units, as provided in Section 9.11(b) of this Agreement, and (ii) upon the occurrence of a Preferred Transfer Event with respect to the applicable Preferred Unit (a "**Transfer Conversion**")**.** Subject to Section 3(b) of this Annex C, in the case of a Transfer Conversion or an Automatic Conversion, each applicable Preferred Unit shall be converted into (A) one Common Unit (each, a "**Converted Common Unit**") and (B) the right to receive a cash payment, without interest, in an amount equal to the accrued and unpaid aggregate Preferred Distribution in respect of such Preferred Unit (the "**Accrued Preferred Distribution**")**;** ***provided*** that the Accrued Preferred Distribution shall only be payable in accordance with Section 4(b) of this Annex C from and after the earliest to occur of (1) the making of a distribution by the Company pursuant to Section 10.05 or Section 10.06 of this Agreement, (2) the consummation of a Qualified Initial Public Offering and (3) such time as no amounts remain outstanding under the S&N Note. "**Preferred Transfer Event**" means, with respect to any Preferred Unit, the consummation of any Transfer of such Preferred Unit (including, for the avoidance of doubt, by means of a Member Entity Transfer) to any Person other than a Transfer (I) to a Permitted Transferee, (II) in accordance with Section 8.09 of this Agreement or (III) pursuant to any transaction referred to in Section 10.06 of this Agreement.

(b) Notwithstanding anything to the contrary contained herein, in connection with (i) any Company Sale (whether pursuant to any Drag-Along Sale, Tag-Along Sale or otherwise) where the proceeds of such Company Sale are payable to the Members and/or the owners of the equity interests of any Essex Member, the allocation of the proceeds thereof shall be determined as if the Accrued Preferred Distribution were then payable; (ii) any Qualified Initial Public Offering, the issuance of the equity interests of the IPO Entity pursuant to the related Automatic Conversion under Section 9.11(b) shall be determined as if the Accrued Preferred Distribution were then payable; and (iii) any Initial Public Offering that is not a Qualified Public Offering, the Essex Members shall have the option to elect that the issuance of the equity interests of the IPO Entity pursuant to the related Automatic Conversion under Section 9.11(b) be determined (A) as if the Accrued Preferred Distribution were then payable, in which case the Company shall hold in escrow the equity interests of the IPO Entity issued in respect of the Accrued Preferred Distribution pursuant to the Automatic Conversion and the Essex Members shall not be entitled to Transfer such equity interests or exercise any voting rights or receive any dividends or other distributions in respect thereof, in each case in this clause (A) until such time as the limitations on the payment of Preferred Distributions in this Agreement (including Annex A) and the S&N Note terminate in accordance with their terms, or (B) as if the Accrued Preferred Distribution were not then payable, in which case the Accrued Preferred Distribution shall remain a right to receive a cash payment in accordance with the terms and conditions of this Agreement and the S&N Note, including, without limitation, Section 4(b) of this Annex C.

(c) In connection with any Automatic Conversion or Transfer Conversion, the holder of the Preferred Units to be converted shall surrender to the Company the Certificate or Certificates representing such Preferred Units at or prior to the time at which the Automatic Conversion or Transfer Conversion becomes effective.

(d) After the effectiveness of an Automatic Conversion or Transfer Conversion, the Company shall (i) appropriately adjust Schedule I hereto, (ii) issue the applicable Member a new Certificate representing the Converted Common Units to which such Member is entitled, if applicable, (iii) if less than all of the Preferred Units represented by the surrendered Certificate or Certificates are so converted, issue a new Certificate representing the Preferred Units that have not been converted, and (iv) to the extent the Accrued Preferred Distribution is not then payable, declare and set apart for payment out of the assets of the Company legally available for distributions to the Members an amount of cash equal to the aggregate Accrued Preferred Distribution with respect to the Preferred Units so converted.

(e) Each conversion shall be deemed to have been effected (i) upon the consummation of the Corporate Conversion, in the case of an Automatic Conversion or (ii) upon the consummation of the Preferred Transfer Event, in the case of a Transfer Conversion. All Converted Common Units will, upon delivery, be duly and validly issued, fully paid and non-assessable, free of all Liens (except as may arise under the terms of this Agreement) and not subject to any preemptive rights. Upon the effectiveness of conversion, the Preferred Units so converted shall no longer be deemed to be outstanding and all rights of a holder with respect to such converted Preferred Units shall immediately terminate except (A) in the case of an Automatic Conversion, the right to receive equity interests of the IPO Entity pursuant to Section 9.11(b) and Section 3(b) of this Annex C (and, in the case of an Automatic Conversion in connection with an Initial Public Offering that is not a Qualified Initial Public Offering, the right to receive the aggregate Accrued Preferred Distributions with respect to the converted Preferred Units in cash, if the Essex Members so elect pursuant to Section 3(b)(iii)(B) of this Annex C), or (B) in the case of a Transfer Conversion, the right of the applicable Transferee to receive the Converted Common Units and the right of the applicable Transferor to receive the aggregate Accrued Preferred Distributions with respect to the Transferred Preferred Units pursuant to this Section 3.

(f) The Company shall pay any and all issuance, delivery and transfer taxes in respect of the issuance or delivery of the equity interests of the IPO Entity or the Converted Common Units, as applicable. The Company shall not, however, be required to pay any tax in respect of any transfer involved in the issuance or delivery of the equity interests of the IPO Entity or the Converted Common Units, as applicable, in a name other than that of the holder of the Preferred Units so converted, and no such issuance or delivery shall be made unless and until the Person requesting such issuance or delivery has paid to the Company the amount of any such tax or has established to the Company’s satisfaction that such tax has been paid.

SECTION 4. *Distributions*. (a) Until the earliest to occur of (i) an Automatic Conversion, with respect to the Preferred Units so converted, (ii) a Transfer Conversion, with respect to the Preferred Units so converted, and (iii) the consummation of a Company Sale, with respect to all Preferred Units, the Liquidation Preference of each such Preferred Unit shall accrue a distribution (the "**Preferred Distribution**") with respect to each Fiscal Year at a rate per annum equal to 3% of the Liquidation Preference in effect as of the first day of such Fiscal Year; *provided*, that if the Liquidation Preference is reduced during such Fiscal Year as provided in Section 4(b) of this Annex C, the Preferred Distribution with respect to the amount of such decrease shall cease to accrue as of the date of such decrease. Preferred Distributions for any period other than a full Fiscal Year shall be computed on the basis of a 365-day year and the actual number of days elapsed. The amount of the Preferred Distribution per Preferred Unit accrued for each Fiscal Year shall be added to the Liquidation Preference of such Preferred Unit as of the first day of the immediately succeeding Fiscal Year, *provided* that, notwithstanding the foregoing, in the event of an Automatic Conversion or a Preferred Transfer Event, the Preferred Distribution per Preferred Unit accrued for the portion of the Fiscal Year up to and including the date of such Automatic Conversion or Preferred Transfer Event, as applicable, shall be added to the Liquidation Preference of such Preferred Unit immediately prior to the conversion of such Preferred Unit pursuant to Section 3(a) of this Annex C.

(b) Subject to the limitations contained in this Agreement (including Annex A) or in the S&N Note, the Board of Managers may elect to pay any accrued and unpaid Preferred Distributions and Accrued Preferred Distributions in cash at any time. Any cash payment of Preferred Distributions in respect of any Preferred Unit in accordance with the preceding sentence or any other distribution in respect of such Preferred Unit pursuant to Section 4.01 or Section 10.05(a)(i)(B) of this Agreement shall be applied (i) first, to reduce (but not below zero) the amount of the Preferred Distribution with respect to such Preferred Unit accrued for the Fiscal Year during which such payment is made and (ii) second, to reduce the Liquidation Preference of such Preferred Unit.

SECTION 5. *Certain Adjustments*. If the Company shall subdivide or split (whether by distribution or otherwise) the outstanding Common Units, OUS Units or Profits Interest Units into a greater number of Units or combine or reclassify the outstanding Common Units, OUS Units or Profits Interest Units into a smaller number of Units, (a) the same subdivision, split, combination or reclassification, as the case may be, shall be carried out on the outstanding Preferred Units and (b) the Liquidation Preference shall be appropriately adjusted. By way of example, if the Common Units, OUS Units or Profits Interest Units are split 10 to 1, then the Preferred Units will also be split 10 to 1 and the Liquidation Preference then in effect will be multiplied by 1/10. Upon the occurrence of any such adjustment to the Preferred Units, the Company shall (i) compute such adjustment in accordance with the terms hereof and furnish to the holders of the Preferred Units a certificate setting forth such adjustment and showing in reasonable detail the facts upon which such adjustment is based, (ii) appropriately adjust Schedule I hereto and (iii) issue to each holder of Preferred Units, upon the surrender of the Certificate or Certificates representing such holder's Preferred Units at the time of such adjustment, a new Certificate or Certificates appropriately reflecting such adjustment. Adjustments shall be made successively whenever any event giving rise to such an adjustment under this Section 5 of this Annex C shall occur.

SECTION 6. *Voting*. The holders of the Preferred Units shall be entitled to vote on all matters on which the holders of the Common Units and the OUS Units are entitled to vote, and each Preferred Unit shall be entitled to the same number of votes as each Common Unit or OUS Unit.

EXHIBIT D

Annex D
Orthobiologics Commitment

SECTION 1. *General Commitment*. Subject to Section 2 of this Annex D, the Company shall invest at least $120,000,000 before the fifth anniversary of the date of this Agreement, in the following areas (such spending commitment, the "**Orthobiologics Commitment**"):

(a) Programs related to the development of products or services relating to the Orthobiologics Field;

(b) Building internal capabilities in the areas of science, pre-clinical development, clinical/medical affairs and regulatory affairs related to products or services in the Orthobiologics Field ("**Core Competencies**");

(c) Acquisition or licensing of additional products or services in the Orthobiologics Field (provided that only the amount equal to the value of the acquisition or license to the extent related to the Orthobiologics Field will be credited towards satisfaction of the Orthobiologics Commitment); and

(d) Any other areas as approved by the Board of Managers (which approval must include the approval of each of the Managers appointed by S&N to the Board of Managers).

SECTION 2. *Reduction of the Orthobiologics Commitment*. (a) The total amount of the Orthobiologics Commitment will be reduced by $0.25 per dollar to the extent that the aggregate revenues generated by the Exogen, Supartz and Durolane products (including any revenues generated by product line extensions of such products) are less than the following dollar amounts in the following respective calendar years:

- 2012: $248,600,000;
- 2013: $265,900,000;
- 2014: $285,400,000;
- 2015: $294,100,000; and
- 2016: $294,100,000;

provided that to the extent actual revenues in any such year exceed the applicable annual target set forth above, such excess will accumulate and be credited against any aggregate shortfall for the five-year period.

(b) Any amounts paid by the Company pursuant to Section 11.06(b) of the S&N-Company Contribution Agreement will reduce the Orthobiologics Commitment on a dollar-for-dollar basis.

SECTION 3. *Further Conditions*. In addition to the foregoing, for purposes of satisfying the Orthobiologics Commitment, (a) the Company will invest at least $40,000,000 in research and development relating to the Orthobiologics Field by the fifth anniversary of the date of this Agreement, (b) a maximum of $20,000,000 can be credited against the Orthobiologics Commitment in respect of spending on building Core Competencies, and (c) a maximum of $80,000,000 can be credited against the Orthobiologics Commitment in respect of spending on acquisitions or partnering deals.

SECTION 4. *Failure to Fulfill the Orthobiologics Commitment*. If the Company has not fulfilled the Orthobiologics Commitment in full (*i.e.*, the entire $120,000,000) by the fifth anniversary of the date of this Agreement, the Company will, on the fifth anniversary of the date of this Agreement, pay S&N an amount in cash equal to 25% of the amount of the Orthobiologics Commitment that was not fulfilled.

SECTION 5. *Additional Matters*. (a) Approval of the Board of Managers (which approval must include the approval of each of the Managers appointed by S&N to the Board of Managers) shall be required to waive expenditure of any portion of the Orthobiologics Commitment.

(b) Research and development spend in the Clinical Therapies Field over and above $14,000,000 per 12-month period for any of the consecutive 12- month periods beginning on the date hereof and ending on the fifth anniversary of the date of this Agreement, excluding any amounts already deemed to count towards satisfaction of the Orthobiologics Commitment, will count towards satisfaction of the Orthobiologics Commitment if and to the extent approved by the Board of Managers (which approval must include the approval of each of the Managers appointed by S&N to the Board of Managers).

EXHIBIT E

Annex E
Allocation for Assets Contributed per S&N-Company Contribution Agreement

[attached]

Draft Annex E based on P3 Balance Sheet

	Tax Basis	FMV
Goodwill	—	266,981,545
Distribution Rights	—	1,753,460
Q-MED (US Rights Only)	1	1
Seikagaku	1,594,919	1,594,919
Tyre Buyout	360,750	360,750
Newbauer Perkins Buyout	445,359	445,359
Odle Buyout	1,507,921	1,507,921
Software/IT	550,701	1,895,025
PPE	1,662,796	2,459,853
Construction in progress	481	481
Intercompany Trade Debtors	3,692,651	3,692,651
Intercompany Non Trade Debtors	130,816	130,816
	9,946,394	**280,822,781**

Note 1: The tax basis for the Q-Med agreement has been allocated between the US and OUS rights on the basis of the agreed fair market value.

Note 2: For this estimate the higher of net book value or net tax value has been used as an approximation of fair market value for the intangible assets and net book value has been used as an approximation of fair market value for the tangible assets.

EXHIBIT F

Annex F
Allocation for Assets Contributed per Essex-Company Contribution Agreement

[attached]

Annex F
Allocation for Assets Contributed per Essex-Company Contribution Agreement

	FMV	Tax Basis
Net Inventory	21,683,627	21,683,627
Net 3P Trade Debtors	35,645,648	35,645,648
3P Non trade debtors	2,470,725	2,470,725
Exogen, Inc.	28,000,000	28,000,000
TOTAL	87,800,000	87,800,000

EXHIBIT G

Annex G
Terms of EPR Unit

SECTION 1. *EPR Entitlement*. (a) The EPR Unit shall not entitle its holder to any rights, privileges, preferences or powers other than the right to receive the EPR Entitlement, if any, in connection with the First EPR Event, as provided in this Annex G. After the occurrence of the First EPR Event, the EPR Unit shall no longer be deemed to be outstanding and all rights of the holder thereof shall immediately terminate except the right to receive the EPR Entitlement, if any.

(b) "**EPR Entitlement**" means an amount equal to the Applicable EPR Percentage of the Amount Available for Distribution.

(c) "**Amount Available for Distribution**" means the aggregate amount available for distribution pursuant to Sections 10.05(a)(ii) through 10.05(a)(v).

(d) "**First EPR Event**" means the first to be consummated of: (A) the Automatic Conversion of Units in connection with any Qualified Initial Public Offering, (B) any Company Sale, (C) any Drag-Along Sale, (D) any Tag-Along Sale pursuant to which all of the then outstanding Units are Transferred and (E) any liquidation or dissolution of the Company pursuant to Article 10 of this Agreement or otherwise (it being understood that an Initial Public Offering (or any Automatic Conversion of Units in connection therewith) that is not a Qualified Initial Public Offering shall not constitute the First EPR Event).

(e) "**Applicable EPR Percentage**" means (i) at any time on or prior to November 4, 2013, zero, (ii) at any time after November 4, 2013, (A) with respect to any transaction giving rise to distributions pursuant to Section 10.05(a) other than the First EPR Event, zero, and (B) with respect to the First EPR Event, a percentage determined and accrued daily on the basis of straight-line interpolation between the percentages and dates set forth in the table below, based on the actual number of days elapsed within the applicable period; *provided* that the Applicable EPR Percentage shall cease to accrue and shall become fixed (subject to adjustment pursuant to Section 1(f) of this Annex G) upon the earliest to occur of (1) the First EPR Event, (2) the earliest date on which no amounts remain outstanding under the S&N Note, (3) the date on which the S&N Note ceases to be held by S&N or any of its Affiliates and (4) May 4, 2017:

Time Period	Percentage Milestone
From and after November 4, 2013 to May 4, 2015	0 – 0.89%
From and after May 4, 2015 to May 4, 2016	0.89% – 1.61%
From and after May 4, 2016 to May 4, 2017	1.61% – 2.50%

Each reference to 0.89%, 1.61% or 2.50% in the table above shall be a "**Percentage Milestone**".

(f) In the event of any issuance by the Company of Units to any Person that is not an Affiliate of any Investor (including any issuance of Units by the Company in exchange for property as a result of the Company's acquisition of the assets or equity of another Person, including by merger, reorganization or otherwise, but excluding any issuance of Profits Interest Units by the Company), each of (i) the Applicable EPR Percentage then in effect and (ii) each Percentage Milestone then in effect shall be adjusted by multiplying such number by (A) the total number of Units outstanding immediately prior to such issuance *divided by* (B) the total number of Units outstanding immediately after such issuance, in each case in this clause (ii) excluding any Profits Interest Units outstanding at the applicable time.

SECTION 2. *Related Definitions*. For purposes of this Agreement:

(a) "**Applicable Common/OUS Percentage**" means, as of any applicable time, the difference between (i) the quotient of (A) the total number of Common Units (other than Converted Common Units) and OUS Units then outstanding *divided by* (B) the total number of Units then outstanding, excluding any Profits Interest Units and the EPR Unit then outstanding (the "**Adjusted Common/OUS Percentage**"), *minus* (ii) the product of (A) the quotient of (1) the total distributions made to the Members pursuant to Section 10.05(a)(v)(A) *divided by* (2) the Amount Available for Distribution *multiplied by* (B) the sum of (1) the Adjusted Common/OUS Percentage and (2) the Applicable EPR Percentage.

(b) "**Common/OUS Percentage**" means such percentage (expressed as a decimal, which shall not exceed 1.0) of the total distributions made to the Members pursuant to Sections 10.05(a)(v)(B) through (D) as results in the total distributions made in respect of Common Units (other than Converted Common Units) and OUS Units pursuant to Section 10.05(a) being equal to the Applicable Common/OUS Percentage of the Amount Available for Distribution.

(c) "**Preferred Percentage**" means one *minus* the Common/OUS Percentage.

SECTION 3. *Replacement EPR Security Upon a Non-Qualifying IPO*. In connection with any Initial Public Offering that is not a Qualified Initial Public Offering, the Company and the Members hereby agree to provide for the holder of the EPR Unit to receive, in exchange for the EPR Unit pursuant to the applicable Corporate Conversion, an equity security of the IPO Entity (the "**Replacement EPR Security**") that gives effect to the intent of the EPR Unit following the Initial Public Offering and entitles its holder to substantially the same rights, privileges, preferences and powers with respect to the IPO Entity as the EPR Unit entitles its holder to with respect to the Company (including, for the avoidance of doubt, the accrual of the Applicable EPR Percentage as determined in Section 1(e) of this Annex G); *provided*, however, that, in lieu of the EPR Entitlement provided for in this Annex G, the holder of the Replacement EPR Security shall be entitled to receive, upon the occurrence of the First Post-IPO EPR Event, newly issued equity interests of the IPO Entity of the same class as the equity interests issued pursuant to the applicable Corporate Conversion (or, if as of such First Post-IPO EPR Event such class of equity interests has subsequently changed, the securities or other consideration that such class of equity interests has changed into) constituting the Applicable EPR Percentage of the total issued and outstanding equity interests of the IPO Entity at the time of such issuance (after giving effect to such issuance). "**First Post-IPO EPR Event**" means the first to occur of (a) the First EPR Event and (b) the earliest date after the consummation of the Initial Public Offering on which no amounts remain outstanding under the S&N Note.

SECTION 4. *Transfer*. The EPR Unit shall be transferable in accordance with the terms and conditions of this Agreement generally applicable to the Transfer of Units.

SECTION 5. *Voting and Other Rights*. Notwithstanding anything to the contrary contained in this Agreement, (a) the EPR Unit shall not entitle the holder thereof to any voting or other rights, except as set forth in this Annex G and (b) the EPR Unit shall be disregarded for purposes of any determination or calculation of the number of Units provided for in this Agreement.

Exhibit 10.5

Execution Version

AMENDED AND RESTATED LICENSE AGREEMENT – US

BETWEEN

BIOVENTUS LLC

AND

Q-MED AB

AND

NESTLÉ SKIN HEALTH S.A.

December 9, 2016

[***] Certain information in this document has been excluded pursuant to Regulation S-K, Item 601(b)(10). Such excluded information is not material and would likely cause competitive harm to the registrant if publicly disclosed.

AMENDED AND RESTATED LICENSE AGREEMENT – US

This Amended and Restated License Agreement – US (together with all schedules and exhibits attached hereto, the "**Agreement**"), is made and entered into this December 9, 2016 (the "**Amendment Effective Date**"), by and among **Q-Med AB**, a limited liability company organized under the laws of the Kingdom of Sweden with corporate registration number 556258-6882 ("**Q-Med**"), **Nestlé Skin Health S.A.**, a corporation organized under the laws of Switzerland ("**NSH**"), and **Bioventus LLC**, a limited liability company organized under the laws of Delaware ("**Bioventus**"). Each of (i) Q-Med and NSH, on the one hand, and (ii) Bioventus, on the other hand, shall be referred to herein as a "**Party**" and collectively as the "**Parties**." This Agreement shall amend, supersede and replace the Current US License Agreement (as defined below).

BACKGROUND:

Q-Med has developed its DUROLANE® product containing polymerized and cross-linked hyaluronic acid, wherein the hyaluronic acid is derived from non-animal sources, for the treatment of articular osteoarthritis in synovial joints. On June 27, 2006 (the "**Initial Effective Date**"), Smith & Nephew, Inc. ("**S&N**") and Q-Med entered into: (i) that certain License Agreement (as amended by the Amendment, dated July 13, 2009, the "**Original License Agreement**") pursuant to which Q-Med granted, and S&N obtained, the rights and licenses set forth therein with respect to such DUROLANE® product, and (ii) that certain Supply Agreement (the "**Original Supply Agreement**").

Pursuant to a Consent and Waiver Letter, dated December 31, 2011, from S&N to Q-Med (the "**Consent Letter**"), (i) certain terms of the Original License Agreement were amended (as so amended, the "**Amended License Agreement**"), (ii) certain terms of the Original Supply Agreement were amended (as so amended, the "**Amended Supply Agreement**") and (iii) Q-Med consented to the assignment by S&N of its rights and obligations under the Amended License Agreement to Bioventus Limited, a limited liability company organized under the laws of Jersey.

Pursuant to an Amended and Restated License Agreement – Worldwide Excluding the US (ROW), dated December 31, 2013, Q-Med, Galderma S.A. ("**GSA**") and Bioventus Limited further amended the Amended License Agreement to cover matters related to the worldwide territory excluding the United States (the "**Current ROW License Agreement**") and simultaneously entered into an amendment to the Amended License Agreement (the "**Current US License Agreement**") and the Amended Supply Agreement (the "**Current US Supply Agreement**"), in each case to cover matters related to the United States, while pursuant to an Amended and Restated Supply Agreement – Worldwide Excluding the US (ROW), dated December 31, 2013, Q-Med, GSA and Bioventus Coöperatief U.A., a limited liability company organized under the laws of the Netherlands, further amended the Amended Supply Agreement to cover matters related to the worldwide territory excluding the United States (the "**Current ROW Supply Agreement**").

Pursuant to a Nasha Trademark License dated November 16, 2015 ("**Current Nasha License Agreement**"), Q-Med and Galderma licensed the NASHA trademark to Bioventus Limited to cover matters related to the worldwide territory excluding the United States.

Q-Med, NSH, GSA and Bioventus desire to amend and restate the Current US License Agreement by entering into this Agreement and simultaneously enter into an amendment to the Current US Supply Agreement ("**New US Supply Agreement**") and a license agreement similar to the Current Nasha Trademark License to cover matters in the United States ("**New Nasha Amended License Agreement**").

The Parties agree as follows:

Article 1. DEFINITIONS

1.1 Definitions. For the purposes of this Agreement, the following words and phrases shall have the following meanings:

"**AAA**" shall have the meaning set forth in Section 13.3.

"**Affiliate**" of an entity means any company or entity which controls, is controlled by or is under common control with such company or entity, where control, for purposes of this definition, means (i) the possession, directly or indirectly, of the power to direct the management or policies of the company or entity or to veto any material decision relating to the management or policies of the company or entity or a majority of the composition of the board of directors (or similar governing body), in each case, whether through the ownership of voting securities or by contract, or (ii) the beneficial ownership, directly or indirectly, of at least fifty percent (50%) of the voting securities of a Person.

"**Agreement**" shall have the meaning set forth in the Preamble.

"**Amended License Agreement**" shall have the meaning set forth in the Background.

"**Amended Supply Agreement**" shall have the meaning set forth in the Background.

"**Amendment Effective Date**" shall have the meaning set forth in the Preamble.

"**Bioventus**" shall have the meaning set forth in the Preamble.

"**Bioventus Change of Control**" means (x) the acquisition by a Third Party of a majority of the combined voting power of the then outstanding voting securities of Bioventus, (y) the sale, transfer or other disposition to a Third Party of all or substantially all of the assets of Bioventus to which this Agreement relates or (z) the merger or consolidation of Bioventus, as a result of which Persons who were stockholders of Bioventus, as applicable, immediately prior to such merger or consolidation, do not, immediately thereafter, own, directly or indirectly, more than fifty percent (50%) of the combined voting power of the merged or consolidated company.

"**Bioventus Indemnified Parties**" shall have the meaning set forth in Section 10.1.

"**Breaching Party**" shall have the meaning set forth in Section 12.2.

"**Business Day**" means any day between and including Monday through Friday; *provided*, that, with respect to any payment to be made or forecast or notice to be provided hereunder by a Party, if the date on which such payment, forecast or notice is due falls on a national bank holiday in the country in which the principal place of business of either Party (or, in the case of a payment, only the paying Party) is located, such payment or notice shall be due on the next day on which banks in such country(ies) are open for business and such forecast shall be due on the preceding day on which banks in such country(ies) are open for business.

"**Chinese Study**" means the **[***]**.

"**Commercialization**" or "**Commercialize**" means, with respect to a product, any and all activities directed to marketing, promoting, distributing, importing, offering to sell and/or selling such product, including market research, medical education programs, securing appropriate reimbursement, billing and coding support for physicians and clinics, product related public relations, planning, detailing, marketing, distribution, creative development of visual sales aids, support of medical meetings, direct mail, telemarketing, and tele-detailing, media placement and advertising, field marketing events such as peer influence programs featuring medical thought leaders, educational grants, sales meetings, adverse event reporting and post-market surveillance studies, whether for marketing purposes, regulatory compliance or as a condition to obtaining a Regulatory Approval.

"**Commercially Reasonable Efforts**" means, with respect to the efforts to be expended by a Party relative to objective, reasonable, diligent, and good faith efforts utilizing sound and reasonable scientific, business and medical practice and judgment to accomplish such objective that such Party would normally use to accomplish a similar objective under similar circumstances; it being understood and agreed that with respect to the Commercialization of Licensed Product by Bioventus, such effort shall be substantially equivalent to those efforts and resources commonly used by global medical device companies for other medical devices at a similar stage in its development or product life and is of similar market potential taking into account efficacy, safety, anticipated labeling, the competitiveness of alternative products in the marketplace, the patent and other proprietary position of the product, the likelihood of regulatory approval, commercial value of the Licensed Product, alternative products and other relevant factors.

"**Competitive Product**" means any single-injection-regimen or dual-injection-regimen medical device approved by the FDA for the treatment of pain or other symptoms of osteoarthritis (OA) of the knee whose mode of action is based primarily on hyaluronic acid (sodium hyaluronate).

"**Confidential Information**" shall have the meaning set forth in Section 11.1.

"**Consent Letter**" shall have the meaning set forth in the Background.

"**Control**" or "**Controlled**" means, with respect to any item of Information or any intellectual property right, the possession (other than pursuant to this Agreement) of the right or ability of a Party or any of its Affiliates to grant to the other Party or a Third Party access to and/or a license under such item or right as provided herein without violating the terms of any agreement or arrangement with any Third Party existing before or after the Initial Effective Date.

"**Current Nasha License Agreement**" shall have the meaning set forth in the Background.

"**Current ROW License Agreement**" shall have the meaning set forth in the Background.

"**Current ROW Supply Agreement**" shall have the meaning set forth in the Background.

"**Current US License Agreement**" shall have the meaning set forth in the Background.

"**Current US Supply Agreement**" shall have the meaning set forth in the Background.

"**Durolane IP Claim**" shall have the meaning set forth in Section 10.3(a).

"**FDA**" means the U.S. Food and Drug Administration.

"**Field Infringement**" shall have the meaning set forth in Section 7.3(a).

"**HA**" means hyaluronic acid and any derivatives thereof (other than Stabilized HA).

"**IDE**" means an investigational device exemption or other applications required to be submitted to Regulatory Authorities and be approved or otherwise legally effective before the commencement of any human clinical study of a Licensed Product.

"**Improvement**" means any improvement or modification of a Licensed Product in the Licensed Field.

"**Information**" means any and all know-how and information, trade secrets, clinical development and other technical and marketing information (whether or not confidential, proprietary, patented or patentable), and all tangible embodiments of any of the foregoing in written, electronic or any other form, that are necessary or reasonably useful, in the ordinary course of business, for Commercializing a Licensed Product in the Territory; *provided*, that Information shall not include information that either Party is under an obligation to Third Parties not to disclose, such as patient data.

"**Initial Effective Date**" shall have the meaning set forth in the Background.

"**Initial Regulatory Approval Date**" shall have the meaning set forth in Section 6.1(b).

"**Initial Variable Royalty Amount**" shall have the meaning set forth in Section 6.3.

"**Invention**" means all improvements, inventions, discoveries and other improvements (whether or not patentable), know-how and information, trade secrets, pre-clinical and clinical development and other information (whether or not confidential, proprietary, patented or patentable), and all tangible embodiments of any of the foregoing in written, electronic or any other form, that are generated, conceived or first reduced to practice in the course of conducting activities under this Agreement by one or more individuals who are employees, agents, consultants or subcontractors of one of the Parties.

"**J-Code Date**" means the date the unique CMS J-code for the Licensed Product becomes effective.

"**Knowledge**" means the actual knowledge of the officers and directors of Q-Med or NSH.

"**Licensed Field**" means the prevention or treatment of pain due to osteoarthritis.

"**Licensed Product**" means the product comprising a biocompatible gel composition formed from Stabilized HA, which product is currently manufactured by Q-Med under the trademark, "DUROLANE®" in the form in existence on the Amendment Effective Date (including all Improvements thereto).

"**Lien**" means any pledge, security interest, lien, reservation, exception, covenant, condition, restriction, lease, encumbrance, charge, judgment, license or claim.

"**Losses**" shall have the meaning set forth in Section 10.1.

"**Minimum Sales Requirement**" shall have the meaning set forth in Section 6.4.

"**Net Sales**" means the gross sales invoiced to Third Parties by Bioventus, its Affiliates or Sublicensees for the Licensed Products in finished packaged form (including all syringes and other administration devices and accessories), less the following deductions (to the extent such amounts are included in the amount invoiced for such Licensed Product):

(a) any refunds for rejects, defects and returned product (including those subject to recall), any trade, quantity, promotional and other customary discounts actually allowed and taken directly with respect to such sales, including, without limitation, administration, data and inventory management fees paid in connection with sales to wholesalers and specialty pharmacies; *provided*, that where any such discount is based on sales of a bundled set of products in which Licensed Product is included, the discount shall be allocated to such Licensed Product on a pro rata basis based upon the sales value (i.e. the unit average selling price in the prior quarter multiplied by the unit volume) of such Licensed Product relative to the sales value contributed by the other constituent products in the bundled set, with respect to such sale;

(b) any rebates (including rebates to governmental authorities and managed care organizations);

(c) any sales, use, occupation, or excise taxes, duties or other governmental charges imposed and paid with respect to the sale, delivery or use of such Licensed Products (excluding national, state or local taxes based on income); and

(d) any freight, postage, or transportation insurance charges.

"**New Nasha Amended License Agreement**" shall have the meaning set forth in the Background.

"**New US Supply Agreement**" shall have the meaning set forth in the Background.

"**Notice of Claim**" shall have the meaning set forth in Section 13.3.

"**Original License Agreement**" shall have the meaning set forth in the Background.

"**Original Supply Agreement**" shall have the meaning set forth in the Background.

"**Out-of-Field Use**" shall have the meaning set forth in Section 5.1.

"**Party**" and "**Parties**" shall have the meaning set forth in the Preamble.

"**Person**" means an individual, a corporation, a partnership, a limited liability company, a trust, an unincorporated association, a governmental entity or other Regulatory Authority, or any other entity or body.

"**Q-Med**" shall have the meaning set forth in the Preamble.

"**Q-Med Field**" means all fields that are not included in the Licensed Field.

"**Q-Med Indemnified Parties**" shall have the meaning set forth in Section 10.2.

"**Q-Med Information**" means all Information that is Controlled by Q-Med or NSH at any time prior to, or on, the Amendment Effective Date, or during the Term.

"**Q-Med IP**" means the Q-Med Patents, the Q-Med Trademarks and the Q-Med Information, other than the Q-Med Manufacturing Technology.

"**Q-Med Manufacturing Technology**" means, to the extent Controlled by Q-Med or NSH at any time prior to, or on, the Amendment Effective Date, or during the Term, any and all know-how and information, trade secrets and other technical information (whether or not confidential, proprietary, patented or patentable), and all tangible embodiments of any of the foregoing in written, electronic or any other form, that relates to the synthesis, formulation, manufacture, finishing, or packaging of Licensed Product, including any analytical methods and other quality control and assurance methods, including all processes, procedures, and techniques.

"**Q-Med Patents**" means the patent and patent applications set forth on Schedule A and any other patent or patent application in the Territory Controlled by Q-Med or NSH at any time prior to, or on, the Amendment Effective Date, or during the Term that covers the composition of matter or a method of manufacture or use of a Licensed Product in the Licensed Field, together with any extensions, reissues, continuations, divisionals, continuations-in-part, reexamination certificates, substitutions or renewals, supplemental protection certificates or certificates of inventions thereof Controlled by Q-Med, NSH, or any of their Affiliates.

"**Q-Med Trademarks**" means each trademark set forth on Schedule B and the durolane.com domain name.

"**Quality Agreement**" means the Amended and Restated Quality Agreement – US, dated as of the date hereof, entered into by Q-Med and Bioventus. The Quality Agreement will be an exhibit to the New US Supply Agreement and incorporated therein.

"**Quarterly Period**" means each fiscal quarter of Bioventus.

"**Quarterly Royalty Amount**" shall have the meaning set forth in Section 6.3.

"**Regulatory Approval**" means, with respect to a product, any and all approvals (including any necessary governmental price or reimbursement approvals), licenses, registrations or authorizations of the applicable Regulatory Authority necessary for the use, storage, import, promotion, marketing and sale of such product in the Territory.

"**Regulatory Authority**" means the FDA and any competent or other governmental authority (whether federal, state, provincial, municipal or other) regulating the exportation, importation, use, or Commercialization of medical devices.

"**Regulatory Filing**" means the relevant application for Regulatory Approval of a Licensed Product.

"**Royalty Year**" means each fiscal year of Bioventus beginning in the year in which, following Regulatory Approval of a Licensed Product (if applicable), the Licensed Product is first commercially sold by Bioventus in the Territory to a Third Party.

"**S&N**" shall have the meaning set forth in the Background.

"**Shortfall Payment**" shall have the meaning set forth in Section 6.5(a).

"**Stabilized HA**" means polymerized and cross-linked hyaluronic acid, wherein the hyaluronic acid is derived from non-animal sources.

"**Sublicensee**" means an entity to which Bioventus grants a sublicense of its rights pursuant to Section 2.2 of this Agreement or otherwise grants any right to promote, distribute and sell a Licensed Product in the Territory (other than wholesalers and physical distributors).

"**Supply Purchase Price**" means the purchase price paid by Bioventus under the New US Supply Agreement for the Licensed Products.

"**Term**" shall have the meaning set forth in Section 12.1.

"**Termination Date**" shall have the meaning set forth in Section 12.1.

"**Terminating Party**" shall have the meaning set forth in Section 12.2.

"**Territory**" means the **[***]**.

"**Third Party**" means any Person other than Q-Med, NSH, Bioventus or their respective Affiliates.

"**Unit**" means one (1) pre-filled syringe containing three (3) milliliters of Licensed Product or such other units of Licensed Product as the Parties shall designate and specify in the applicable Specifications.

"**Variable Royalty**" shall have the meaning set forth in Section 6.2(a).

1.2 Interpretation

(a) Whenever any provision of this Agreement uses the term "including" (or "includes"), such term shall be deemed to mean "including without limitation" and "including but not limited to" (or "includes without limitations" and "includes but is not limited to") regardless of whether the words "without limitation" or "but not limited to" actually follow the term "including" (or "includes");

(b) "Herein," "hereby," "hereunder," "hereof," and other equivalent words shall refer to this Agreement as an entirety and not solely to the particular portion of this Agreement in which any such word is used;

(c) All definitions set forth herein shall be deemed applicable whether the words defined are used herein in the singular or the plural;

(d) Unless otherwise provided, all references to Sections, Articles and Appendices are to Sections, Articles and Appendices of and to this Agreement;

(e) All references to days, months, quarters, or years are references to calendar days, calendar months, calendar quarters, or calendar years; and

(f) Any reference to any supranational, national, federal, state, local, or foreign statue or law shall be deemed to also refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

Article 2. LICENSE GRANTS

2.1 Grant. Q-Med and NSH hereby grant to Bioventus the exclusive license under the Q-Med IP to Commercialize, but not to develop or manufacture, the Licensed Product in the Licensed Field in the Territory. Bioventus may sublicense the rights granted under this Section 2.1 only to the extent provided in Section 2.2.

2.2 Right to Sublicense. Bioventus may sublicense the rights granted under Section 2.1 without the consent of Q-Med or NSH to (i) any of its Affiliates so long as such entity remains an Affiliate, and (ii) any Third Party approved by Q-Med (such approval not to be unreasonably withheld, conditioned or delayed). In each such sublicensing case, Bioventus shall remain jointly and severally liable to Q-Med for compliance with the terms of this Agreement, including all diligence, payment and reporting obligations. If Bioventus grants any such sublicense, it shall promptly notify Q-Med in writing and provide such information about the Sublicensee and the sublicense agreement as Q-Med reasonably requests. Bioventus shall cause such sublicensees to comply fully with the terms and conditions set forth in this Agreement and applicable laws and regulations with respect to the Commercialization of the Licensed Product.

2.3 Improvements. Subject to Section 6.5(b), all Improvements Controlled by Q-Med or NSH, including without limitation, prior to, or on, the Amendment Effective Date, or during the Term, shall be included under the licenses granted to Bioventus under Section 2.1.

2.4 Reservation of Rights; No Implied Rights. Except as expressly stated herein, Bioventus shall have no other right to use, or interest in, the Q-Med IP. Specifically, Bioventus shall not have any interest in any patents, trademarks or other intellectual property owned, licensed, developed or controlled by Q-Med or NSH, other than such rights in the Licensed Field as are expressly provided in this Agreement. Q-Med and NSH make no grant of intellectual property rights by implication. Bioventus makes no express or implied grant of intellectual property rights.

Article 3. RESTRICTIVE COVENANTS

3.1 Non-Compete. Subject to Section 6.5(c), during the period commencing on the Amendment Effective Date and ending on the earlier of (a) the Termination Date, and (b) the **[***] ([***])** anniversary of the Initial Regulatory Approval Date, neither Q-Med nor NSH, nor any of their Affiliates, shall, directly or indirectly, Commercialize in the Licensed Field in the Territory any Competitive Product. Subject to Section 6.5(c), during the period commencing on the Amendment Effective Date and ending on the earlier of (a) the Termination Date, and (b) the **[***]** (**[***]**) anniversary of the Amendment Effective Date, neither Bioventus nor any of its Affiliates shall, directly or indirectly, Commercialize in the Licensed Field in the Territory any Competitive Product, other than Licensed Products. For clarity, Bioventus and its Affiliates shall retain their respective rights to Commercialize any multi-injection (three or more) HA products in the Licensed Field and in the Territory.

Article 4. REGULATORY

4.1 Regulatory Obligations.

(a) Responsibilities. Bioventus will be solely responsible for obtaining (and solely responsible for the costs of obtaining) Regulatory Approvals of Licensed Product in the Territory. Notwithstanding the foregoing, and in addition to Bioventus' access rights to Regulatory Submissions (as such term is defined in the New US Supply Agreement) as set forth in Section 2.5 of the New US Supply Agreement, Q-Med and NSH shall use Commercially Reasonable Efforts to provide to Bioventus in a timely manner the internal resources to support Bioventus' activities to Commercialize the Licensed Products in the Territory, including manufacturing activities, quality activities, and preparation of data and written materials relating to Q-Med's and NSH's confidential regulatory and manufacturing information for Bioventus' submission or presentation to the FDA or that may be requested by authorities. As Bioventus will be providing the clinical data for any FDA filings, Q-Med and NSH may elect to support, but do not have the obligation to support, work on the clinical data-related sections of any FDA filing.

(b) Participation. Bioventus will conduct all regulatory matters with the FDA. Q-Med and NSH shall have the right, but not the obligation, to attend all FDA meetings and review all written correspondence with the FDA prior to any submission. Bioventus will give reasonable consideration to Q-Med's and NSH's comments. For clarity, Bioventus, on the one hand, and Q-Med and NSH, on the other hand, will each have the right to review the other Party's correspondence with the FDA regarding the Licensed Products. In furtherance of the foregoing, Bioventus shall provide to Q-Med and NSH, and Q-Med and NSH shall provide to Bioventus, any written materials received from the FDA within **[***]** (**[***]**) Business Days of receipt thereof, and Bioventus shall provide to Q-Med and NSH, and Q-Med and NSH shall provide to Bioventus, any written materials to be provided to the FDA that involve substantive issues associated with the Licensed Products prior to submission thereof, and each Party will use Commercially Reasonable Efforts to provide to the other Party such written materials within a reasonable amount of time to allow the other Party to comment on such written materials prior to submission thereof. For the avoidance of doubt, (i) no materials shall be submitted to the FDA without the prior approval of the other Party unless the circumstances make obtaining such prior approval reasonably impractical and (ii) complete and accurate copies of all submissions to the FDA shall be provided to the other Party.

4.2 Ownership of Regulatory Approvals. All IDEs and other Regulatory Approvals for the sale of Licensed Product in the Licensed Field submitted or amended after the Initial Effective Date shall be submitted and owned by Bioventus or one of its Affiliates.

4.3 Adverse Event Reporting. The Parties shall comply with the safety data exchange procedures governing the coordination of collection, investigation, reporting, and exchange of information concerning adverse events and product complaints in effect on the Amendment Effective Date which are sufficient to permit each Party to comply with its vigilance and medical device reporting and other legal obligations, including, in the case of Q-Med, any such obligations in respect of other products containing HA that are manufactured or sold by Q-Med. The safety data exchange procedures will be promptly updated if required by changes in legal requirements or by agreement between the Parties. Bioventus shall be responsible for reporting all adverse events to the appropriate Regulatory Authorities in the Territory in accordance with applicable laws and regulatory requirements and for establishing and maintaining all required files of product complaints and reportable events. Bioventus shall ensure that its Affiliates and Sublicensees comply with all such reporting obligations.

4.4 Other Regulatory Matters. Except as otherwise expressly provided in this Article 4, Bioventus shall comply with all other legal and regulatory requirements to obtain and maintain all Regulatory Approvals and to Commercialize the Licensed Product in the Licensed Field in the Territory, including establishment and device listing obligations. Each Party shall comply with its respective obligations under the Quality Agreement.

Article 5. COMMERCIALIZATION

5.1 Prohibited Marketing and Sales Activities. Bioventus shall cause its and its Affiliates' and permitted Sublicensees' sales representatives to promote the sale of the Licensed Product to only physicians and other medical professionals who practice medicine, and their patients, in the Licensed Field. Bioventus shall use Commercially Reasonable Efforts, subject to and conditioned upon compliance with all laws, rules and regulations applicable to Bioventus business and operations, to prevent the marketing, promotion and sale of the Licensed Product by Bioventus, its Affiliates and Sublicensees and distributors for use outside the Licensed Field (an "**Out-of-Field Use**"). If Q-Med believes that Licensed Products have been or are being used for an Out-of-Field Use, Q-Med shall present Bioventus with such evidence of such Out-of-Field Use available to Q-Med. Subject to the right to dispute such claim pursuant to the procedures set forth in Section 13.3, Bioventus shall take prompt action seeking to further prevent the marketing, promotion and sale of Licensed Product for an Out-of-Field Use.

5.2 Compliance with Laws. Bioventus shall, and shall cause all Affiliates and Sublicensees to, comply with all applicable federal, national, state, provincial and local laws, regulations, rules, orders and guidelines applicable to the transportation, labeling, Commercialization and use of the Licensed Product. Q-Med and NSH shall, and shall cause their Affiliates to, comply with all applicable federal, national, state, provincial and local laws, regulations, rules, order and guidelines applicable to their performance of any of their duties and obligations of this Agreement.

5.3 Labeling. To the extent required by applicable law, all labeling, packaging and promotional materials for the Licensed Product shall display such names and logos, including the identity of the manufacturer of the Licensed Product, as directed by Q-Med.

Article 6. CONSIDERATION AND PAYMENTS

6.1 Milestone Payments.

(a) As compensation for data and manufacturing documentation with respect to the Licensed Products generated by Q-Med at its own expense, Bioventus will pay to Q-Med AB one non-refundable fee of **[***]** Dollars (**[***]** USD) within **[***]** (**[***]**) Business Days after the Amendment Effective Date.

(b) Bioventus will pay to Q-Med AB one non-refundable fee of **[***]** Dollars (**[***]** USD) within **[***]** (**[***]**) Business Days after receiving Regulatory Approval for the first Licensed Product that has a duration claim of **[***]** (**[***]**) months or longer (the date of receipt of such Regulatory Approval, the "**Initial Regulatory Approval Date**").

(c) Bioventus will pay to Q-Med AB one non-refundable fee of **[***]** Dollars (**[***]** USD) within **[***]** (**[***]**) Business Days after the first J-Code Date.

6.2 Variable Compensation.

(a) Bioventus shall pay Q-Med a variable annual royalty on the Unit sales of the Licensed Products ("**Variable Royalty**"). The Variable Royalty shall be calculated annually within **[***]** (**[***]**) days after the end of each Royalty Year so that the aggregate amount of the Supply Purchase Price and the Variable Royalty in the Royalty Year equals **[***]** percent (**[***]**%) of Bioventus' Net Sales of Licensed Products for that Royalty Year. For the avoidance of doubt, the aggregate of the Variable Royalty and the purchase price of the Licensed Product shall never be less than SEK **[***]**.

(b) If in any Royalty Year after the one year anniversary of the J-Code Date, Unit sales of Licensed Products are greater than **[***]** (**[***]**) times the applicable Minimum Sales Requirement for such Royalty Year, then with respect to the incremental Unit sales in such Royalty Year that are greater than **[***]** (**[***]**) times the applicable Minimum Sales Requirement but less than **[***]** (**[***]**) times the applicable Minimum Sales Requirement, the Variable Royalty with respect to such incremental Unit sales shall be calculated so that the aggregate amount of the Supply Purchase Price and the Variable Royalty equals **[***]** percent (**[***]**%) of Bioventus' Net Sales of Licensed Products for that Royalty Year. By way of example, if in Royalty Year 3, Bioventus sold an aggregate of **[***]** Units, then the Variable Royalty for Royalty Year 3 would be calculated so that the aggregate amount of the Supply Purchase Price and the Variable Royalty equals **[***]** percent (**[***]**%) of Bioventus' Net Sales of the first **[***]** Units of Licensed Products sold in Royalty Year 3 and the aggregate amount of the Supply Purchase Price and the Variable Royalty equals **[***]** percent (**[***]**%) of Bioventus' Net Sales of the last **[***]** Units of Licensed Products sold in Royalty Year 3.

(c) If in any Royalty Year after the one year anniversary of the J-Code Date, Unit sales of Licensed Products are greater than **[***]** (**[***]**) times the applicable Minimum Sales Requirement for such Royalty Year, then with respect to the incremental Unit sales in such Royalty Year that are greater than **[***]** (**[***]**) times the applicable Minimum Sales Requirement, the Variable Royalty with respect to such incremental Unit sales shall be calculated so that the aggregate amount of the Supply Purchase Price and the Variable Royalty equals **[***]** percent (**[***]**%) of Bioventus' Net Sales of Licensed Product that Royalty Year. By way of example, if in Royalty Year 3, Bioventus sold an aggregate of **[***]** Units, then the Variable Royalty for Royalty Year 3 would be calculated so that the aggregate amount of the Supply Purchase Price and the Variable Royalty equals **[***]** percent (**[***]**%) of Bioventus' Net Sales of the first **[***]** Units of Licensed Products sold in Royalty Year 3, the aggregate amount of the Supply Purchase Price and the Variable Royalty equals **[***]** percent (**[***]**%) of Bioventus' Net Sales of next **[***]** Units of Licensed Products sold in Royalty Year 3, and the aggregate amount of the Supply Purchase Price and the Variable Royalty equals **[***]** percent (**[***]**%) of Bioventus' Net Sales of the last **[***]** Units of Licensed Products sold in Royalty Year 3.

6.3 Variable Royalty Payment Structure. The Variable Royalty payments due under this Agreement will be paid in SEK within **[***]** (**[***]**) days after the end of each successive Quarterly Period of each Royalty Year. Within **[***]** (**[***]**) days after Bioventus' receipt of an invoice from Q-Med within a Quarterly Period for the supply of Licensed Products under the New US Supply Agreement, Bioventus shall pay Q-Med an initial Variable Royalty equal to SEK **[***]** minus any price increase in the purchase price of the Licensed Products pursuant to Sections 3.1 and 3.2 of the New US Supply Agreement per invoiced Unit ("**Initial Variable Royalty Amount**"). At the end of each Quarterly Period Bioventus shall calculate the Variable Royalty for such Quarterly Period ("**Quarterly Royalty Amount**"), and, if the Quarterly Royalty Amount is less than the Initial Variable Royalty Amount, no further Variable Royalty will be due from Bioventus for such Quarterly Period. If, however, the Quarterly Royalty Amount is greater than the Initial Variable Royalty Amount, then Bioventus shall pay Q-Med such amount to true up the Variable Royalty payment for such Quarterly Period. For the purpose of converting U.S. dollars in which any royalties arise into SEK, the rate of exchange to be applied shall be the average rate of exchange for the last **[***]** (**[***]**) Business Days of the relevant Quarterly Period as reported in the Wall Street Journal.

6.4 Minimum Sales Requirements. Bioventus will be subject to annual aggregate minimum sales requirements applicable to the Licensed Product that has a unique CMS J-code as set forth below ("**Minimum Sales Requirement**"). For clarity, the Minimum Sales Requirements will not apply if the Licensed Product does not receive a unique CMS J-code, and no Minimum Sales Requirement will apply for any period prior to the J-Code Date. Bioventus' obligation to meet the Minimum Sales Requirements shall be conditioned on Q-Med's satisfaction of its obligations under the New US Supply Agreement. Any quantity deficiency in Q-Med's timely fulfillment of firm orders under the New US Supply Agreement shall be credited towards the aggregate minimum sales amounts below.

Year	Aggregate Minimum Units
Year 1	[***] units
Year 2	[***] units
Year 3	[***] units
Year 4	**[***]** units
Year 5	[***] units

Years 6 and thereafter: Such Minimum Sales Requirement as the Parties may mutually agree; provided that if the Parties are unable to agree, the Minimum Sales Requirement shall be the greater of (i) **[***]** units and (ii) the number of units constituting the Minimum Sales Requirement for the prior year; provided further, however, that in no event shall the Minimum Sales Requirement exceed **[***]** percent (**[***]**%) of the total number of single injection HA treatments in the Territory for the prior year.

6.5 Failure to Meet the Minimum Sales Requirement.

(a) If the Unit sales of Licensed Products for any Royalty Year are less than the Minimum Sales Requirement for such Royalty Year, Bioventus may satisfy its obligations under Section 6.2 by paying Q-Med the amount equal to the shortfall in the Variable Royalty (as defined in Section 6.2(a)) due to the failure to meet the Minimum Sales Requirement ("**Shortfall Payment**"). The amount of the Shortfall Payment for a Royalty Year shall be calculated according to the following formula:

SP = ((NS x MSR) x**[***]**) - (VS + U x SPP)

Where:

SP = the Shortfall Payment for the applicable Royalty Year

NS = Bioventus' Net Sales for the applicable Royalty Year divided by the actual Units sold for the applicable Royalty Year

MSR = the Minimum Sales Requirement for the applicable Royalty Year

VR = the Variable Royalty due from (or already paid by) Bioventus for the applicable Royalty Year as calculated under Section 6.2

U = the Minimum Sales Requirement for the applicable Royalty Year minus the actual Units sold for the applicable Royalty Year

SPP = the Supply Purchase Price

(b) If, after the period consisting of the Royalty Year in which the J-Code Date occurs and the next **[***]** consecutive Royalty Years after that, a Shortfall Payment is due for **[***]** (**[***]**) consecutive Royalty Years, NSH and Q-Med may convert the license granted to Bioventus in Section 2.1 to a non-exclusive license upon **[***]** (**[***]**) days' prior written notice to Bioventus.

(c) Upon Bioventus' license converting to non-exclusive pursuant to Section 6.5(b), (i) each Party's non-compete obligations under Section 3.1 shall immediately end and shall not prevent any Party from Commercializing any HA product in the Territory; (ii) the license granted to Bioventus in Section 2.1 shall not include Improvements Controlled by Q-Med or NSH after the date the license becomes non-exclusive; (iii) Bioventus shall assign the Q-Med Trademarks to Q-Med; and (iv) Bioventus shall promptly amend and/or provide Q-Med access to Bioventus' regulatory filings for the Licensed Products in the Territory as may be necessary to allow Third Parties to distribute the Licensed Products.

(d) Bioventus' failure to meet the Minimum Sales Requirement shall not be a breach of this Agreement and NSH's and Q-Med's sole and exclusive remedy in the event of a failure by Bioventus to meet the Minimum Sales Requirement is to convert the exclusive license granted under this Agreement to a non-exclusive license pursuant to Section 6.5(b).

6.6 Interest. In addition to any other remedies available to Q-Med, if Bioventus fails to pay any amounts when due, Bioventus shall pay Q-Med interest thereon at an annual rate equal to the rate of interest per annum publicly announced from time to time by JPMorgan Chase Bank as its prime rate in effect on the date such payment is due at its principal office in New York City, *plus* **[***]** percent (**[***]**%) (or the highest rate permitted by law, if lower).

6.7 Records. Bioventus, its Affiliates and Sublicensees shall, during the Term and for a period of **[***]** (**[***]**) years thereafter, maintain complete and accurate books and records of account relating to the sale of the Licensed Product in the Territory.

6.8 Audits. Q-Med shall have the right up until the date that is **[***]** (**[***]**) years after the payment of a Variable Royalty, to have an independent certified public accountant reasonably acceptable to Bioventus examine the relevant books and records of Bioventus and its Affiliates during normal business hours to verify such Variable Royalty and any associated Shortfall Payments. In the event a determination is made that Q-Med has been underpaid, Bioventus shall promptly pay to Q-Med the amount by which Q-Med was underpaid, together with interest thereon as provided in Section 6.6. The fees and expenses of the accountant performing any verification pursuant to this Section 6.8 shall be paid by Q-Med; *provided*, that, if a determination is made that the amount paid to Q-Med with respect to any calendar year was less than **[***]** percent (**[***]**%) of the amount properly due to Q-Med, Bioventus shall promptly reimburse Q-Med for the costs of such verification. In the event a determination is made that Q-Med has been overpaid, Q-Med shall promptly pay Bioventus the amount by which Q-Med was overpaid without any interest thereon.

6.9 Taxes. The payments pursuant to this Article 6 shall be made without deductions for taxes, assessments, fees or charges of any kind.

6.10 Trademark Registrations. From and after the Amendment Effective Date, Bioventus shall be solely responsible for the payment of all fees and expenses incurred in connection with maintaining the DUROLANE trademarks included in the Q-Med Trademarks (including, without limitation, prosecuting any current pending applications). Q-Med and NSH shall use Commercially Reasonable Efforts to provide Bioventus with all necessary support in connection with maintaining and prosecuting presently existing trademark registrations and applications for the DUROLANE trademarks included in the Q-Med Trademarks and the filing of new applications in the Territory, including, without limitation, providing Bioventus or its named attorneys with all documents, information, necessary powers of attorney and approvals required in order to permit Bioventus or its attorneys to maintain and prosecute such registrations and applications.

6.11 Provision of Information. Within **[***]** (**[***]**) Business Days of the Amendment Effective Date, Q-Med and NSH shall provide to Bioventus a docket report for the DUROLANE trademarks included in the Q-Med Trademarks listing all trademarks, their status, the next action due and the contact information for the Person handling the prosecution and maintenance of the trademarks, and will use Commercially Reasonable Efforts to provide any other information and documents to enable Bioventus to fulfill its obligations under Sections 6.10 and 4.1.

Article 7. INTELLECTUAL PROPERTY

7.1 Ownership. Subject to the terms hereof, including the licenses and other rights granted hereunder, all Inventions shall be owned as follows, with all issues of inventorship determined by United States patent law:

(a) Q-Med/NSH Sole Inventions. Subject to the license granted under Section 2.1, Q-Med or NSH shall own the entire right, title and interest in and to all Inventions (and patents and other intellectual property rights thereto) made solely by their employees, agents, consultants or subcontractors.

(b) Bioventus Sole Inventions. Bioventus shall own the entire right, title and interest in and to all Inventions (and patents and other intellectual property rights thereto) made solely by its employees, agents, consultants or subcontractors; provided that upon termination of this Agreement, the parties shall use commercially reasonable efforts to provide Q-Med with a non-exclusive license to any Improvements to the Licensed Products developed by Bioventus during the term of this Agreement (such license to be on customary commercially reasonable terms).

7.2 Prosecution and Maintenance. Q-Med or NSH shall, at its expense, direct the filing, prosecution (including any interferences, oppositions, reissuance, and re-examinations) and maintenance of all Q-Med Patents. If Q-Med or NSH wish to abandon any patent application or patent that is a Q-Med Patent, it shall give Bioventus **[***]** (**[***]**) days' prior written notice of the desired abandonment. Q-Med and NSH shall not abandon any such Q-Med Patent except upon the prior written consent of Bioventus. On Bioventus' request, which may be provided at any time after the notice of desired abandonment, Q-Med and NSH shall assign to Bioventus any such patent application and patent Q-Med or NSH wish to abandon.

7.3 Infringement Claims against Third Parties.

(a) To the extent either Party becomes aware that any of the Q-Med Patents is being infringed by a Third Party's sale or use of a product for use in the Licensed Field, and such suspected infringement does or is reasonably likely to adversely affect the Commercialization of the Licensed Product in the Licensed Field (the "**Field Infringement**"), the Party first having knowledge of such Field Infringement shall promptly notify the other in writing. The notice shall set forth the facts of such Field Infringement in reasonable detail, to the extent known. The Parties shall thereafter consult and cooperate fully to determine a course of action, including the commencement of legal action by either or both Parties, to terminate any such infringement in accordance with the terms set forth below.

(b) Q-Med shall have the first right, but not the obligation, to bring an action or take other appropriate steps in respect of such Field Infringement. Except to the extent the Parties otherwise agree to share costs, Q-Med shall be responsible for all reasonable attorney's fees and other costs incurred by it in any litigation or other actions in respect of such Field Infringement.

(c) If Q-Med fails to undertake efforts to investigate such a Field Infringement within **[***]** (**[***]**) days after it receives a written request from Bioventus to do so, or if Q-Med fails to bring an action to abate such a Field Infringement within **[***]** (**[***]**) days after it receives a written request from Bioventus, or if Q-Med discontinues the prosecution of any such action after filing, or in the event that a Manufacturing License (as defined in the New US Supply Agreement) has been granted pursuant to the New US Supply Agreement, Bioventus may, in its discretion, undertake such action as it deems necessary to enforce the Q-Med Patents in respect of such Field Infringement. In no event shall either Party settle any action referred to in this Section 7.3 with any Third Party if such settlement would materially affect any of the rights of the other Party (as determined by that Party in its reasonable discretion) under this Agreement or Q-Med's other products containing Stabilized HA, without the prior approval of the other Party, which approval shall not be unreasonably withheld or delayed.

(d) In connection with any action contemplated under this Section 7.3, the Parties shall cooperate fully and shall provide each other with any information or assistance that either may reasonably request. Each Party shall keep the other informed of developments in any action or proceeding, including the status of any settlement negotiations and the terms of any offer related thereto. If the enforcing Party reasonably determines that the other Party is an indispensable party to the action or it would otherwise be desirable for such other Party to join such action or proceeding to obtain a more effective remedy, such other Party shall consent to be joined. In such event, such other Party shall have the right, at its expense, to be represented in that action by counsel of its own choice. No settlement, compromise or other disposition of any such proceeding that concerns any Q-Med Patent shall be entered into without Q-Med's prior written consent.

(e) If either Party exercises the rights conferred in this Section 7.3 and recovers any damages or other sums in such action, suit or proceeding or in settlement thereof, such damages or other sums recovered shall first be applied to all out-of-pocket costs and expenses incurred by such Party in connection therewith, including attorneys' fees. If, after such reimbursement, any funds shall remain from such damages or other sums recovered, **[***]** percent (**[***]**%) of the amount of any recovery remaining shall then be allocated to the Party enforcing the Q-Med Patents under this Section 7.3 and the remaining balance to the other Party. Notwithstanding the foregoing, if the Parties agreed to share the costs incurred in respect of any such action, suit or proceeding, such damages or other sums recovered shall be shared in the same proportion as such costs were shared.

(f) Notwithstanding anything to the contrary in this Section 7.3, Q-Med shall have the sole right to enforce all Q-Med Patents in respect of any actual or suspected infringement by a Third Party's sale or use of a product for use in the Q-Med Field.

Article 8. Q-MED TRADEMARKS

8.1 Ownership of Q-Med Trademarks. Q-Med and NSH hereby assign to Bioventus all rights in and to the Q-Med Trademarks, together with the goodwill associated with or attached to the Q-Med Trademarks. All use of the Q-Med Trademarks by Q-Med and NSH shall inure to the benefit of Bioventus. Bioventus shall have the sole right to prosecute and maintain the Q-Med Trademarks.

8.2 No Contest. Q-Med and NSH each agree that neither Q-Med or NSH, nor their Affiliates will: (a) contest, oppose or challenge, or assist any party in contesting, opposing or challenging, Bioventus' ownership of the applicable Q-Med Trademarks (or the distinctiveness or validity of the applicable Q-Med Trademarks); (b) at any time do or fail to do any act or thing that will in any way impair Bioventus' ownership of or rights in and to the Q-Med Trademarks, or any registration thereof; (c) register or attempt to register any Q-Med Trademark in the Territory in the name of any party other than Bioventus; (d) oppose Bioventus' registration of any applicable Q-Med Trademark (alone or with other words or designs) in any jurisdiction; or (e) make any application for or register any trademark, service mark, trade name, business name, domain, URL or any other name, term, design or designation identical, incorporating or confusingly similar to the Q-Med Trademarks.

Article 9. REPRESENTATIONS, WARRANTIES AND COVENANTS

9.1 Q-Med and NSH Representations and Warranties. Q-Med and NSH, jointly and severally, each represent, warrant and covenant to Bioventus, as of the Amendment Effective Date, that:

(a) It has the legal power to extend the rights granted to Bioventus under this Agreement and that it has not made, and throughout the term of this Agreement will not make, any commitments to others inconsistent with such rights;

(b) Except in respect of rights granted to the Q-Med IP for products other than the Licensed Product, Q-Med and NSH own all rights, title and interest in and to the Q-Med IP free and clear of any options, guarantees, Liens, either written, oral, or implied, or any other encumbrances, including any claim of current or former employees or contractors of Q-Med or NSH, or of any of their Affiliates, and to the extent that any such employees or contractors have developed any Q-Med IP, such parties have assigned, or are under an ongoing obligation to so assign, to Q-Med or NSH all of their rights therein, including intellectual property rights;

(c) Except for rights that have expired or were terminated in writing prior to the Initial Effective Date and no longer have any force or effect, neither Q-Med nor NSH has granted a right to any Third Party to develop, market, sell, promote, or distribute in the Territory a Licensed Product for use in the Licensed Field;

(d) The Q-Med IP is not the subject of any notice or claim to Q-Med or NSH regarding any infringement of any such rights in respect of any use in the Licensed Field, and, to the Knowledge of Q-Med and NSH, no Third Party is infringing any Q-Med IP in respect of any use in the Licensed Field, and Q-Med Trademarks are not the subject of any notice or claim to Q-Med or NSH regarding any infringement of any such rights, and, to the Knowledge of Q-Med and NSH, no Third Party is infringing any Q-Med Trademarks;

(e) Neither Q-Med nor NSH has any Knowledge that any Q-Med Patents that are part of the Q-Med IP are invalid or unenforceable; and neither Q-Med nor NSH has made any claims, which are now outstanding, against a Third Party alleging infringement of any of the Q-Med Patents in the Licensed Field or of any of the Q-Med Trademarks;

(f) Neither this Agreement nor the transactions contemplated hereby shall result in Q-Med or NSH granting to any Third Party any right with respect to any Q-Med IP in the Licensed Field or Q-Med or NSH being bound by, or subject to, any non-compete (other than Section 3.1) or other restriction on the use of the Q-Med IP in the Licensed Field;

(g) Neither Q-Med nor NSH has received any notice from any governmental authority to the effect that either of them has not materially complied with or is not now in material compliance with material laws and regulations relating to the manufacture, use or sale of the Licensed Product;

(h) There are no claims, actions, suits or other proceedings pending, or to the Knowledge of Q-Med and NSH, threatened which, would reasonably be expected to materially and adversely affect the ability of Q-Med or NSH to perform its obligations hereunder;

(i) Neither Q-Med nor NSH has filed for bankruptcy, is insolvent, has proposed a compromise or arrangement to its creditors generally, has had any petition or a receiving order in bankruptcy filed against it, has made a voluntary assignment in bankruptcy, has taken any proceeding with respect to a compromise of arrangement with its creditors, has taken any proceeding to have it declared either bankrupt or liquidated, has taken any proceeding to have a receiver appointed for any part of its assets, and has had any execution, charging order, levy or distress warrant become enforceable or become levied upon any of its assets;

(j) To the Knowledge of Q-Med and NSH, there have been no claims or judicial proceedings concerning any of the Q-Med Patents in respect of any use in the Licensed Field and no such claims have been threatened;

(k) Each of Q-Med and NSH are duly organized, validly existing and in good standing under the laws of each of its jurisdiction of organization and has all requisite corporate power and authority to own and operate its properties and assets, to execute and deliver this Agreement, and to perform its obligation hereunder and thereunder;

(l) (i) Q-Med's and NSH's execution, delivery and performance of this Agreement has been duly authorized by Q-Med and NSH and this Agreement and the New US Supply Agreement will each be, upon its execution and delivery, a valid and binding legal obligation of Q-Med and NSH, enforceable in accordance with its terms;

(m) The execution, delivery and performance of this Agreement and the New US Supply Agreement do not and will not (i) violate, conflict with or result in the breach of any provision of the corporate charter or by-laws (or similar organizational documents) of Q-Med or NSH, (ii) violate or conflict with any law or governmental order applicable to Q-Med or NSH, or their assets, properties or businesses, or (iii) conflict with, result in a breach of, constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, require any consent under, or give to others any rights of termination, amendment, acceleration, suspension, revocation or cancellation of, or result in the creation of any encumbrance on any of its outstanding shares of capital stock or any of the assets or properties of Q-Med or NSH pursuant to any note, bond, mortgage, indenture, contract, agreement, lease, sublease, license, permit, franchise or other instrument or arrangement to which either of them are a party or by which any of Q-Med's or NSH's shares of capital stock or any of Q-Med's or NSH's assets or properties is bound or affected;

(n) No permit, approval, authorization or consent of any Person is required in connection with the execution, delivery and performance by Q-Med and NSH of this Agreement and the New US Supply Agreement or the consummation of the transactions contemplated hereby;

(o) Q-Med and NSH have informed Bioventus as to the development of any Improvements, setting forth with particularity the nature of the Improvement, including, in the case of proposed changes to a Licensed Product, test data, and whether either of them intend to prepare, file, prosecute and maintain domestic or foreign patents with respect thereto;

(p) To the Knowledge of Q-Med and NSH, there are no outstanding and unresolved deficiencies regarding the source materials, manufacturing process or procedures or quality control processes that would materially affect the safety or quality of Licensed Product manufactured or supplied as of, or after, the Amendment Effective Date; and

(q) Q-Med and NSH shall maintain in good standing the Q-Med Patents, the trademarks licensed under the New Nasha Amended License Agreement, and all applications and registrations associated with such trademarks.

9.2 Bioventus Representations and Warranties. Bioventus represents, warrants and covenants, as of the Amendment Effective Date, that:

(a) Bioventus is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and has all requisite corporate power and authority to own and operate its properties and assets, to execute and deliver this Agreement and to perform its obligation hereunder;

(b) Bioventus' execution, delivery and performance of this Agreement has been duly authorized by Bioventus, and this Agreement will be, upon its execution and delivery, a valid and binding legal obligation of Bioventus, enforceable in accordance with its terms;

(c) The execution, delivery and performance of this Agreement do not and will not (i) violate, conflict with or result in the breach of any provision of its corporate charter or by-laws (or similar organizational documents) of Bioventus, (ii) violate or conflict with any law or governmental order applicable to Bioventus or its assets, properties or businesses, or (iii) conflict with, result in a breach of, constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, require any consent under, or give to others any rights of termination, amendment, acceleration, suspension, revocation or cancellation of, or result in the creation of any encumbrance on any of its outstanding shares of capital stock or any of the assets or properties of Bioventus pursuant to any note, bond, mortgage, indenture, contract, agreement, lease, sublease, license, permit, franchise or other instrument or arrangement to which it is a party or by which any of Bioventus' shares of capital stock or any of Bioventus' assets or properties is bound or affected; and

(d) Other than as expressly stated in this Agreement, no Permit, approval, authorization or consent of any person is required in connection with the execution, delivery and performance by Bioventus of this Agreement or the consummation of the transactions contemplated hereby;

9.3 Limitations on Warranties. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 9.1 ABOVE, Q-MED DISCLAIMS ALL WARRANTIES WHATSOEVER WITH RESPECT TO THE Q-MED PATENTS AND THE LICENSED PRODUCT, EITHER EXPRESS OR IMPLIED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THERE IS NO EXPRESS OR IMPLIED WARRANTY: (a) OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, (b) THAT ANY Q-MED PATENTS ARE VALID OR ENFORCEABLE, OR (c) THAT THE USE OF THE LICENSED PRODUCT WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER RIGHTS. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 9.2 ABOVE, BIOVENTUS DISCLAIMS ALL WARRANTIES WHATSOEVER WITH RESPECT TO THE BIOVENTUS PATENTS, EITHER EXPRESS OR IMPLIED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THERE IS NO EXPRESS OR IMPLIED WARRANTY: (a) OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, (b) THAT ANY BIOVENTUS PATENTS ARE VALID OR ENFORCEABLE, OR (c) THAT THE USE OR PRACTICE OF ANY BIOVENTUS PATENTS WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER RIGHTS.

Article 10. INDEMNIFICATION

10.1 Q-Med Indemnification. Except to the extent provided in Section 10.2, Q-Med and NSH shall indemnify, defend and hold harmless Bioventus and its Affiliates and Sublicensees, and its and their respective officers, directors, shareholders, successors, assigns, agents, employees and insurers to the extent the same become subject to a claim in such capacity ("**Bioventus Indemnified Parties**") from and against any and all damages, losses, claims, expenses, obligations or liabilities, including reasonable attorneys' fees and disbursements, (collectively, "**Losses**") arising out of or in connection with:

(a) the breach of any of Q-Med's or NSH's representations and warranties made hereunder or under the New US Supply Agreement; and

(b) the breach of any of Q-Med's or NSH's covenants or agreements made hereunder.

10.2 Bioventus Indemnification. Except to the extent provided in Section 10.1, Bioventus shall indemnify, defend and hold harmless Q-Med and NSH, and their Affiliates and its and their respective officers, directors, shareholders, successors, assigns, agents, employees and insurers to the extent the same become subject to a claim in such capacity ("**Q-Med Indemnified Parties**") from and against any and all Losses arising out of or in connection with:

(a) the breach of any of Bioventus' representations and warranties made hereunder or under the New US Supply Agreement; and

(b) the breach of any of Bioventus' covenants or agreements made hereunder.

10.3 Intellectual Property Infringement Claims.

(a) Q-Med and NSH shall indemnify, defend and hold harmless the Bioventus Indemnified Parties from and against any and all Losses (including expert fees and expenses) in connection with any claims, actions or proceedings instituted against any of the Bioventus Indemnified Parties, including all appeals thereof, that arise out of or result from the infringement of a Third Party's patent rights or the misappropriation by Q-Med or NSH of any trade secrets of a Third Party by the importation, offer for sale, sale or use of the Licensed Product for any use in the Licensed Field or, to the extent such claims, actions or proceedings arise of the composition of matter of the Licensed Product, any use to treat osteoarthritis in other synovial joints (a "**Durolane IP Claim**"). For the avoidance of doubt, Durolane IP Claims do not include claims arising out of the infringement of patents claiming any use outside of the Licensed Field. Q-Med's and NSH's indemnification obligations under Section 10.3(a) exclude indemnification for increased, enhanced or treble damages assessed under 35 U.S.C. 284 in an infringement action as a result of any willful or intentional acts or conduct on the part of any of the Bioventus Indemnified Parties, except to the extent Bioventus acts in reliance upon a legal opinion or other directive provided by or at the request of Q-Med or NSH.

(b) In connection with any Durolane IP Claim by a Third Party, Q-Med shall be responsible for the payment of all royalties and all other payments to such Third Party under any license or other agreement entered into by Q-Med or NSH or, with the approval and at the direction of Q-Med, Bioventus in respect of the use of such Third Party's IP rights to Commercialize the Licensed Product for the uses referred to in paragraph (a) above. Q-Med shall have the sole right, in its sole discretion, to settle any such claim or enter into any such license or other settlement agreement.

10.4 Limitations on Indemnification

(a) Notwithstanding anything to the contrary herein, except with respect to claims arising out of fraud or intentional misrepresentation, in no event shall Q-Med and NSH, collectively on the one hand, or Bioventus, on the other hand, be liable for Losses pursuant to Sections 10.1(a) or 10.2(a), as applicable, in excess of the amounts paid by Bioventus pursuant to Article VI hereof.

(b) Notwithstanding anything to the contrary herein, no Party shall be obligated to indemnify any other Party hereunder to the extent such claim arises from the Party seeking indemnification or such Party's or its Affiliates', sublicensees', or assigns' intentional misconduct or breach of its representations or warranties hereunder.

10.5 Procedure. The Party seeking indemnification under Sections 10.1, 10.2 or 10.3 shall provide the indemnifying Party with written notice of any claim or action within ten days of its receipt thereof, and shall afford the indemnifying Party the right to control the defense and settlement of such claim or action, including the right to select counsel. The Party seeking indemnification shall provide reasonable assistance to the indemnifying Party in the defense of such claim or action, including providing access to witnesses and documents for discovery or the prosecution of any claims and defenses. If the defendants in any such action include both Parties, and the indemnified Party concludes that there may be legal defenses available to it which are inconsistent with those available to the indemnifying Party, the indemnified Party shall have the right to select separate counsel to participate in the defense of such action on its behalf, and the indemnified Party shall bear the cost and expense of such separate defense, unless and to the extent the Parties otherwise agree or it is determined through arbitration hereunder that such costs and expense are or were required to be indemnified by the indemnifying Party and are or were required to be incurred separately due to such inconsistent defenses. Should the indemnifying Party determine not to defend such claim or action, the indemnified Party shall have the right to maintain the defense of such claim or action and the indemnifying Party shall provide reasonable assistance to it in the defense of such claim or action and shall bear the reasonable cost and expense of such defense (including reasonable attorneys' fees). Except to the extent provided in Section 10.3(b), neither Party shall settle any such claim or action in a way that materially adversely impacts the other Party without the prior approval of such other Party (which approval shall not be unreasonably withheld). Withholding such approval for any reason unrelated to the litigation expenses, liability, or damages in the pending claim or the settlement terms thereof shall be unreasonable.

10.6 Insurance. Each Party shall (and shall cause its respective Affiliates, as required, to), promptly after the Amendment Effective Date and extending throughout the Term and for a period of not less than **[***]** (**[***]**) months following the termination or expiration of this Agreement, carry or be subject to coverage (as a named insured) under product liability insurance in an amount of not less than **[***]** dollars ($**[***]**) limit, which insurance shall be written on a "claims-made" policy basis with an insurance carrier rated at least **[***]** by Bests Rating Service or a comparable rating by a comparable rating service (including **[***]** by Standard & Poor's and **[***]** by Moody's). Q-Med and NSH shall provide Bioventus with evidence of coverage contemplated hereby, in the form of certificates of insurance, as reasonably requested in writing, which certificates shall provide that the insurer shall notify the other Party at least **[***]** (**[***]**) days prior to any cancellation or nonrenewal.

Article 11. CONFIDENTIAL INFORMATION

11.1 Treatment of Confidential Information. Each Party receiving Confidential Information of the other Party shall (a) maintain in confidence such Confidential Information to the same extent such Party maintains its own proprietary industrial information of similar kind and value (but at a minimum each Party shall use Commercially Reasonable Efforts), (b) not disclose such Confidential Information to any Third Party without prior consent of the other Party, and (c) not use such Confidential Information for any purpose except those permitted by this Agreement. "Confidential Information" means all non-public, proprietary data or information and materials received by either Party from the other Party pursuant to this Agreement or prior to the date hereof that are designated as confidential in writing by the disclosing Party. Notwithstanding the foregoing, information that is orally, electronically or visually disclosed by a Party, or is disclosed in writing without an appropriate letter, stamp or legend, shall constitute Confidential Information of a Party (i) if the disclosing Party, within 30 days after such disclosure, delivers to the other Party a written document describing the information and referencing the place and date of such oral, visual, electronic or written disclosure and the names of the persons to whom such disclosure was made, or (ii) such information is of the type that is customarily considered to be confidential information by persons engaged in activities that are substantially similar to the activities being engaged in by the Parties. Notwithstanding Section 11.2 or anything other provision of this Article 11, in no event shall Bioventus disclose or use any Q-Med Manufacturing Technology, except as permitted under Section 11.3 hereof, Section 6.2 of the New US Supply Agreement or as expressly permitted under this Agreement in connection with the submission of Regulatory Filings.

11.2 Exceptions. A Party shall not have the obligations set forth in Section 11.1 with respect to any portion of such Confidential Information that it can show by adequate documentation: (a) is publicly disclosed by the disclosing Party, either before or after it becomes known to the receiving Party; (b) was known to the receiving Party, without obligation to keep it confidential, prior to when it was received from the disclosing Party; (c) is subsequently disclosed to the receiving Party by a Third Party lawfully in possession thereof without obligation to keep it confidential; (d) has been published by a Third Party; or (e) has been independently developed by the receiving Party without the aid, application or use of Confidential Information. Information that is otherwise Confidential Information and consists of a combination of information shall not be deemed to be in the public domain if individual elements of such information are in the public domain, unless the specific combination of those elements is also in the public domain.

11.3 Required Disclosures. This Article 11 shall not be construed to prohibit disclosure of Confidential Information to the extent that such disclosure is required to by law or valid order of a court or other governmental authority; *provided*, that the disclosing Party shall (to the extent permitted) give the other Party prior notice of such required disclosure and cooperate with such other Party in order that such other Party may seek a protective order or relief to prevent or limit the Confidential Information required to be disclosed; *provided*, *further*, that the disclosing Party shall only disclose that portion of the Confidential Information that such Party is advised by its legal counsel is required to be disclosed by law.

11.4 Permitted Disclosures. Nothing contained herein shall prevent either Party from disclosing information to the extent such information is required to be disclosed (a) for the purposes of compliance with governmental regulations, or (b) to Sublicensees for the purpose of sublicensing; *provided*, that the Sublicensee is subject to confidentiality obligations commensurate with those in Article 11.1. In addition, nothing contained herein or in any other agreement between the Parties shall prevent Bioventus from disclosing information to the extent Bioventus determines that such information is necessary or useful to disclose in connection with its regulatory purposes, including disclosures in connections with filings or submissions to regulatory bodies. Such permitted disclosures shall also include, in Bioventus' discretion, disclosures to Third Party consultants and advisors assisting Bioventus with regulatory work (provided that such Third Party consultants and advisors are subject to confidentiality obligations commensurate with those in Article 11.1). Prior to making disclosure to any governmental authority, each Party shall use its reasonable efforts to provide the other with notice and an opportunity to seek a protective order and confidential treatment of any such disclosure. Nothing contained herein shall prohibit any Party from making disclosure of Confidential Information to its Affiliates in connection with such Party's performance of its obligations under this Agreement or the exercise of its rights hereunder. Prior to disclosure of Confidential Information to a Party's Affiliate, such Affiliate shall execute a confidentiality agreement fully consistent with the terms and conditions of this Agreement and each Party shall be liable to the other Party for actions of its Affiliate.

11.5 Disclosure of Financial and Other Terms.

(a) No Party will issue any press release with respect to the transactions contemplated by this Agreement without the prior written consent of the other Parties, which consent shall not be unreasonably withheld or delayed. For the avoidance of doubt, a Party may re-use the text of a press release previously approved by the other Parties without further consent.

(b) Except as required by applicable laws, treaties, and regulations (including securities laws), the Parties agree that the consideration terms set forth in Article 6 of this Agreement and the pricing terms set forth in Article 3 of the US Supply Agreement (the "**Material Financial Terms**") will be considered Confidential Information of all Parties and shall be subject to the confidentiality and non-disclosure restrictions set forth in this Article 11 with respect to Confidential Information.

(c) Notwithstanding the foregoing, (i) any Party may disclose any terms as are required to be disclosed in its publicly-filed financial statements or other public statements pursuant to applicable laws, regulations, and stock exchange rules (e.g., the U.S. Securities and Exchange Commission or any other stock exchange on which securities issued by a Party may be issued) or otherwise disclosed pursuant to applicable law; provided, that (1) the terms of this Agreement shall be redacted to the greatest extent reasonably possible and (2) to the extent practicable under the circumstances, such Party shall provide the other Party with a copy of the proposed text of such statements or disclosure (including any exhibits containing this Agreement) sufficiently in advance of the scheduled release or publication thereof to afford such other Party a reasonable opportunity to review and comment upon the proposed text (including redacted versions of this Agreement).

(d) In addition, each Party shall have the right to disclose the Material Financial Terms and information regarding the development and Commercialization status of the Licensed Product under confidentiality undertakings substantially similar to those contained herein to any actual or potential acquirer, merger partner, investors or providers of financing (whether in the form of debt, equity or otherwise) and their advisors.

Article 12. TERMINATION

12.1 Term. Unless previously terminated in accordance with Section 12.2 or 12.3 of this Agreement, this Agreement shall remain in force until the **[***]** (**[***]**) anniversary of the Amendment Effective Date (such date, the "**Termination Date**" and the period from the Amendment Effective Date until such date, the "**Term**").

12.2 Termination for Default. If either Party ("**Breaching Party**") commits a material breach of its obligations under this Agreement, the other Party ("**Terminating Party**") may terminate this Agreement. The Terminating Party shall provide written notice to the Breaching Party, which notice shall identify the material breach, the intent to so terminate and the actions or conduct that it considers would be an acceptable cure of such breach. The Breaching Party shall have a period of **[***]** (**[***]**) days after such written notice is provided to cure such breach. If such breach is not cured within such **[***]** (**[***]**) day period, the Agreement shall be terminated.

12.3 Termination of the US Supply Agreement. If the New US Supply Agreement is terminated pursuant to Section 6.3 thereof, the Terminating Party (as defined in the New US Supply Agreement) may terminate this Agreement simultaneously with such termination of the New US Supply Agreement.

12.4 Termination for Patent Challenge. If Bioventus or any of its Affiliates commences or otherwise, directly or indirectly, pursues (or voluntarily assists Third Parties to pursue, other than as required by law or legal process) any proceeding seeking to have any of the Q-Med Patents revoked or declared invalid, unpatentable, or unenforceable, Q-Med or NSH may declare a material breach hereunder and shall then have the right to exercise the remedies available under Section 12.2 with immediate effect without further notice or right to cure.

12.5 Termination for Failure of Receipt of FDA Acceptance. If the FDA notifies Bioventus that the data from the Chinese Study is not sufficient for submission of a new pre-market application (PMA) for the Licensed Product, or if a PMA based on such data is ultimately not approved, Bioventus may terminate this Agreement upon written notice.

12.6 Termination Related to PMA. Provided that Q-Med has complied with its obligations under Section 4.1 of this Agreement and Section 2.5 of the New US Supply Agreement, Q-Med may terminate this Agreement upon written notice if (x) Bioventus does not submit a PMA for the Licensed Product within **[***]** (**[***]**) months of the Amendment Effective Date; (y) the Initial Regulatory Approval Date is not achieved within **[***]** (**[***]**) months after a PMA is submitted; or (z) Bioventus has not made the payment under Section 6.1(c) within **[***]** (**[***]**) months of the Amendment Effective Date.

12.7 Effect of Termination.

(a) Termination of this Agreement, for whatever reason, shall not affect any rights or obligations accrued by either Party prior to the effective date of termination. The following provisions shall survive any expiration or termination of this Agreement: Sections 4.3, 6.6, 6.7, 6.8, 6.9, 7.1, 7.3 and 12.6, and Articles 9, 10, 11 and, to the extent required to effect to the foregoing, Articles 1 and 13. Termination is not the sole remedy under this Agreement and, whether or not termination is effected, all other remedies will remain available, except as agreed to or otherwise expressly provided for herein.

(b) Upon termination of this Agreement, all rights and licenses granted by Q-Med or NSH to Bioventus hereunder shall terminate, except to the extent provided in paragraph (c) below (and for the avoidance of doubt, such rights shall revert to Q-Med and/or NSH as applicable).

(c) For a period of **[***]** (**[***]**) months following termination, Bioventus may continue to sell in the ordinary course of business, including using Commercially Reasonable Efforts to maintain pricing, Licensed Product comprising its inventory (and all licensed Product then in transit or subject to Firm Orders); *provided*, that Bioventus shall not have such rights if such termination arose out of a breach of a payment obligation or any other obligation relating specifically to the purchase or sale of Licensed Product or any other breach that would be continued or aggravated by such sale of inventory. All such sales shall be subject to all applicable terms of this Agreement and the US Supply Agreement.

(d) If Q-Med terminates this Agreement under Section 12.2, 12.3, or 12.6, Q-Med shall automatically have a non-exclusive license to use the Q-Med Trademarks and, notwithstanding anything to the contrary in this Agreement, without any additional consideration to Bioventus:

(i) Bioventus shall promptly assign to Q-Med all Regulatory Filings and Regulatory Approvals and all Information Controlled by Bioventus that relate solely to the Licensed Product, or, if such assignment is not legally permissible or such filings, approvals and Information do not relate solely to the Licensed Product, grant Q-Med the exclusive license and right to access, use, and cross-reference such filings, approvals and Information for the development and Commercialization of the Licensed Product; provided, however, Bioventus shall have no obligation to make such assignment or grant such license in the event of termination under Section 12.6;

(ii) Any Q-Med Information and other materials transferred by Q-Med to Bioventus pursuant to this Agreement in respect of the Licensed Product shall be promptly returned by Bioventus to Q-Med or at Q-Med's option, destroyed, except that Bioventus may retain one copy of any tangible embodiments included within such Information solely for the purpose of satisfying any requirements of law or as need to comply with all laws, rules or regulations applicable to Bioventus;

(iii) Bioventus shall promptly assign or otherwise grant all rights required to be assigned or granted under this Section 12.7 promptly and shall promptly (but not later than **[***]** days) transfer all tangible embodiments to which Q-Med or NSH has rights under this Section 12.7;

(iv) Bioventus shall assign the Q-Med Trademarks to Q-Med; and

(v) Bioventus shall cooperate in any reasonable manner requested by Q-Med and NSH to achieve a smooth and expeditious transition of the Commercialization of the Licensed Product to Q-Med or its licensees.

Article 13. MISCELLANEOUS

13.1 Disclaimers. IN NO EVENT SHALL EITHER PARTY OR THEIR AFFILIATES BE LIABLE FOR SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT OR ANY OTHER LEGAL THEORY. Notwithstanding anything to contrary herein or in the New US Supply Agreement, neither Party shall have any liability under this Agreement for an indemnification claim or other matter to the extent that such claim or other matter was satisfied under the New US Supply Agreement.

13.2 Choice of Law. This Agreement shall be construed, governed, interpreted and applied in accordance with the laws of the State of New York, without regard to conflict of laws principles, except that questions affecting the construction and effect of any patent or trademark shall be determined by the law of the country in which the patent was granted.

13.3 Arbitration. Any dispute arising out of or in connection with, or relating to, this Agreement, or the breach, termination, or invalidity hereof, including claims of fraud in the inducement, shall be resolved as follows. In the event of a dispute between the Parties, either Party may initiate the dispute resolution procedures of this Section 13.3 by providing written notice (the "**Notice of Claim**") to the other Party identifying the dispute and stating the desire to resolve the dispute. After receiving the Notice of Claim, respondent will respond in writing within **[***]** (**[***]**) calendar days by stating its position and setting forth a proposed resolution of the dispute. If claimant and respondent are not able to resolve the dispute within **[***]** (**[***]**) calendar days after the date of such response, the matter in dispute shall be settled by arbitration administered by the American Arbitration Association (the "**AAA**") under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The Parties hereby irrevocably and unconditionally submit to the jurisdiction of the AAA for the purposes of such proceeding, and any counterclaims that relate in any respect to this Agreement thereafter asserted by a Party to such proceedings. The arbitral tribunal shall be comprised of three arbitrators with relevant expertise in the subject matter of the dispute. The arbitrators shall have the full authority, consistent with New York law, to consider granting non-monetary relief, including, but not limited to, rescission, termination, declaratory judgment, or any form of equitable relief recognized under New York law. A Party may pursue both non-monetary and monetary relief without regard to election of remedies, but may not be granted inconsistent or duplicative remedies. The place of arbitration shall be **[***]**. The language to be used in the arbitral proceedings shall be English. The Parties agree that the losing Party shall bear the cost of the arbitration filing and hearing fees, the cost of the arbitrators and the AAA administrative expenses and the attorney's fees and reasonable associated costs and expenses of each Party. The Parties agree to reasonable document discovery provided the requesting Party makes a showing of relevance and need to the tribunal. Notwithstanding the foregoing, either Party may seek an immediate injunction from a court of competent jurisdiction (i) to prevent the disclosure of Confidential Information in violation of Article 11; or (ii) to prevent an assignment of this Agreement in violation of Section 13.4. Notwithstanding the foregoing, either Party may seek an immediate injunction from a court of competent jurisdiction to enforce the non-compete in Article 3.

13.4 Assignment. Neither this Agreement nor any of the rights and obligations arising hereunder may be assigned or transferred by either Party without the prior written consent of the other. Such consent will not be unreasonably withheld or delayed. Notwithstanding the foregoing, (a) either Party may assign this Agreement without the consent of the other Party to any Affiliate of such Party; provided, that such Affiliate assumes such assignment in writing to the other Party and the assigning Party shall remain joint and severally liable with such Affiliate for all of its obligations under this Agreement; and (b) Bioventus may assign or transfer this Agreement without the consent of Q-Med or NSH to any acquiring entity in connection with a Bioventus Change of Control.

13.5 Effect of Insolvency. To the extent permitted by applicable law: (a) the validity of this Agreement shall not be affected by any proceeding under a law relating to insolvency or adjustment of debt; (b) this Agreement shall not be subject to termination on the basis that any Party becomes a party to any insolvency proceeding or one that contemplates the adjustment of debt; and (c) if Q-Med or NSH become a debtor in a proceeding under a law relating to insolvency or adjustment of debt, Bioventus may retain its rights with respect to the Q-Med IP under this Agreement for the duration of the Term and may offset against any royalty or other payment obligations the amount of any damages caused by nonperformance of any of Q-Med's or NSH's obligations under this Agreement.

13.6 Consents. Except as may otherwise be expressly provided herein, all consents and other approvals required to be provided under this Agreement shall not be withheld or delayed unreasonably and shall be provided in writing.

13.7 Notice. Any notice to be given by one Party to the other shall be in writing and shall be deemed given when delivered personally, mailed by certified or registered mail, postage prepaid or sent by reputable international courier (such mailed notice to be effective on the date which is three business days after the date of mailing), or sent by facsimile (such facsimile notice to be effective upon receipt of confirmation (a) on the date so confirmed if prior to 5 p.m. local time on a local Business Day, or (b) if not so confirmed prior to 5 p.m. local time on a local Business Day, the following Business Day), and addressed as follows (or to such other address as a Party may designate as to itself by written notice to the other Party):

If to Q-Med:

Q-Med AB
Seminariegatan 21
SE-752 28 Uppsala
Sweden
Attention:
Telephone:
Facsimile:

If to NSH:

Nestlé Skin Health S.A.
Avenue Gratta-Paille 2
Lausanne, Vaud
Switzerland
Attention:
Telephone:
Facsimile:

If to Bioventus:

Bioventus LLC
4721 Emperor Blvd. Suite 100
Durham, NC 27703
Attn.

With a copy to
Bioventus LLC
4721 Emperor Blvd. Suite 100
Durham, NC 27703
Attn.

13.8 Force Majeure. Neither Party shall be responsible or liable in any way for failure or delay in carrying out the terms of this Agreement (other than any payment or confidentiality obligations) resulting from any cause or circumstance beyond its reasonable control, including fire, flood, other natural disasters, war, labor difficulties, interruption of transit, accident, explosion, civil commotion, delays in performance or supplies from its suppliers and subcontractors and acts of any governmental authority; *provided*, that the Party so affected shall give prompt notice thereof to the other. If any such cause prevents either Party from performing any of its material obligations hereunder for more than **[***]** (**[***]**) days, the other Party may then terminate this Agreement upon **[***]** (**[***]**) days prior notice. Except as provided in the preceding sentence, no such failure or delay shall terminate this Agreement, and each Party shall complete its obligations hereunder as promptly as reasonably practicable following cessation of the cause or circumstances of such failure or delay.

13.9 Amendment. This Agreement may be modified or amended only by written agreement of the Parties hereto signed by authorized representatives of the Parties hereto and specifically referencing this Agreement.

13.10 Entire Agreement.

(a) This Agreement, together with the New US Supply Agreement, the Quality Agreement and the New Nasha Amended License Agreement, each of their appendices, exhibits, schedules and certificates, and all documents and certificates delivered or contemplated in connection herewith and therewith constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior agreements or understandings of the Parties relating thereto.

(b) Upon the Amendment Effective Date, the Current US License Agreement shall be terminated and replaced in its entirety with this Agreement, except for purposes of indemnification obligations occurring prior to the Amendment Effective Date.

13.11 Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid or unenforceable under applicable law, such provision will be ineffective only to the extent of such prohibition, invalidity unenforceability, without invalidating the remainder of this Agreement and the Parties shall in good faith seek to agree on an alternative provision reflecting the intent of the Parties that is enforceable.

13.12 Expenses. Except as set forth in this Agreement, Q-Med, NSH and Bioventus will each bear their own expenses and the expenses of their respective Affiliates incurred in connection with the negotiation and preparation of this Agreement.

13.13 Further Actions. Q-Med, NSH and Bioventus each hereby agrees to use all reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or proper and execute and deliver such documents and other papers as may be required to make effective the transactions contemplated by this Agreement.

13.14 Waiver. Any term or provision of this Agreement may be waived at any time by the Party entitled to the benefit thereof only by a written instrument executed by such Party. No delay on the part of Q-Med, NSH or Bioventus in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any waiver on the part of Q-Med, NSH or Bioventus of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder nor will any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

13.15 Relationship of the Parties. The Parties shall each be an independent contractor in the performance of their respective obligations hereunder, and, the provisions hereof are not intended to create any partnership, joint venture, agency or employment relationship between the Parties. Each Party shall be responsible for and shall comply with all state, local, federal and foreign laws pertaining to employment taxes, income withholding and other employment related statutes applicable to that Party. Except as is expressly set forth herein, neither Party will have any right by virtue of this Agreement to bind the other Party in any manner whatsoever.

13.16 No Third Party Rights. No provision of this Agreement will be deemed or construed in any way to result in the creation of any rights or obligations in any Person not a Party to this Agreement.

13.17 Construction. This Agreement will be deemed to have been drafted by both Q-Med, NSH and Bioventus and will not be construed against either Party as the draftsperson hereof.

13.18 Enforcement. The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms. It is accordingly agreed that the Parties shall be entitled to specific performance of the terms of this Agreement, this being in addition to any other remedy to which they are entitled at law or in equity.

13.19 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same agreement.

13.20 Headings. The heading references herein are for convenience purposes only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

13.21 Appendices, Exhibits, Schedules and Certificates. Each appendix, exhibit, schedule and certificate attached hereto is incorporated herein by reference and made a part of this Agreement.

[Signatures Follow]

IN WITNESS WHEREOF, the Parties execute this Agreement as of the Amendment Effective Date.

Q-MED

By: /s/ Christian Matton
Name: Christian Matton
Title: Chairman of the Board

BIOVENTUS LLC

By: /s/ Anthony P. Bihl III
Name: Anthony P. Bihl III
Title: CEO

NESTLÉ SKIN HEALTH S.A.

By: /s/ Stuart Raetzman
Name: Stuart Raetzman
Title: Member of the Board

SCHEDULE A

Q-MED PATENTS

POLYSACCHARIDE GEL COMPOSITION

Property / Category Sub Type	Renewal date / Duration	Filing date / Reg. date	Application No / Registration No.	Country
Patent	Expiration date: Dec. 12, 2017	Granted: Oct. 27, 1998	US5827937	U.S.A

SCHEDULE B

Q-MED TRADEMARK(S)

DUROLANE

[***] Certain information in this document has been excluded pursuant to Regulation S-K, Item 601(b)(10). Such excluded information is not material and would likely cause competitive harm to the registrant if publicly disclosed.

Exhibit 10.6

AMENDED AND RESTATED SUPPLY AGREEMENT - US

BETWEEN

BIOVENTUS LLC

AND

Q-MED AB

December 9, 2016

AMENDED AND RESTATED SUPPLY AGREEMENT - US

This Amended and Restated Supply Agreement – US (together with all schedules and exhibits attached hereto, this "**Agreement**") is entered into as of December 9, 2016 (the "**Amendment Effective Date**"), between **Bioventus LLC**, a limited liability company organized under the laws of Delaware ("**Bioventus**"), Q-Med AB, a limited liability company organized under the laws of the Kingdom of Sweden with corporate registration number 556258-6882 ("**Q-Med**") and **Nestlé Skin Health S.A.**, a corporation organized under the laws of Switzerland, as guarantor of Q-Med's obligations hereunder ("**Guarantor**"). Each of (i) Q-Med and Guarantor, on the one hand, and (ii) Bioventus, on the other hand, shall be referred to herein as a "**Party**" and collectively as the "**Parties.**" This Agreement shall amend, supersede and replace the Current US Supply License Agreement (as defined below).

BACKGROUND:

On June 27, 2006 (the "**Initial Effective Date**"), Smith & Nephew, Inc. ("**S&N**") and Q-Med entered into (i) that certain Supply Agreement (the "**Original Supply Agreement**") and (ii) that certain License Agreement (the "**Original License Agreement**") pursuant to which S&N was granted rights to sell certain products containing polymerized and cross-linked hyaluronic acid, including Q-Med's DUROLANE® product and Q-Med agreed to supply S&N and its Affiliates and permitted Sublicensees (each as defined herein) with such products.

Pursuant to a Consent and Waiver Letter, dated December 31, 2011, from S&N to Q-Med (the "**Consent Letter**"), (i) certain terms of the Original Supply Agreement were amended (as so amended, the "**Amended Supply Agreement**"), (ii) certain terms of the Original License Agreement were amended (as so amended, the "**Amended License Agreement**"), and (iii) Q-Med consented to the assignment by S&N of its rights and obligations under the Amended License Agreement and the Amended Supply Agreement to Bioventus Limited, a limited liability company organized under the laws of Jersey ("**Bioventus Limited**"). Bioventus Limited assigned its rights under the Amended Supply Agreement with respect to Territory to Bioventus Coöperatief U.A., a limited liability company organized under the laws of the Netherlands ("**Coöperatief**"), to cover matters related to the worldwide territory excluding the United States.

Pursuant to an Amended and Restated Supply Agreement – Worldwide Excluding the US (ROW), dated December 31, 2013, Q-Med, Galderma S.A. ("**GSA**") and Coöperatief further amended the Amended Supply Agreement to cover matters related to the **[***]** territory excluding the United States (the "**Current ROW Supply Agreement**") and simultaneously entered into an amendment to the Amended Supply Agreement (the "**Current [***] Supply Agreement**") and the Amended License Agreement (the "**Current US License Agreement**"), in each case to cover matters related the United States, while pursuant to an Amended and Restated License Agreement – Worldwide Excluding the US (ROW), dated December 31, 2013, Q-Med, GSA and Bioventus Limited further amended the Amended License Agreement to cover matters related to the worldwide territory excluding the United States (the "**Current ROW License Agreement**").

Pursuant to a Nasha Trademark License dated November 16, 2015 ("**Current Nasha License Agreement**"), Q-Med and GSA licensed the NASHA trademark to Bioventus Limited to cover matters related to the worldwide territory excluding the United States.

Q-Med and Bioventus desire to further amend and restate the Current US Supply Agreement by entering into this Agreement and a Quality Agreement, and simultaneously entering into an amendment to the Current US License Agreement ("**New US License Agreement**"), to cover matters related the United States and a license agreement similar to the Current Nasha Trademark License to cover matters in the United States ("**New Nasha Amended License Agreement**").

The Parties hereby agree as follows:

ARTICLE 1. DEFINITIONS

1.1 Definitions. For the purposes of this Agreement, unless otherwise defined in this Agreement, the following words and phrases shall have the following meanings and all other capitalized and undefined terms shall have the meanings set forth in the New US License Agreement:

"**AAA**" has the meaning set forth in Section 9.4.

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

"**Amendment Effective Date**" has the meaning set forth in the Preamble.

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

"**Bioventus Discretionary Changes**" has the meaning set forth in Section 2.6(c).

"**Breaching Party**" has the meaning set forth in Section 6.3.

"**Business Day**" means any day between and including Monday through Friday; *provided*, that, with respect to any payment to be made or forecast or notice to be provided hereunder by a Party, if the date on which such payment, forecast or notice is due falls on a national bank holiday in the country in which the principal place of business of either Party (or, in the case of a payment, only the paying Party) is located, such payment or notice shall be due on the next day on which banks in such country(ies) are open for business and such forecast shall be due on the preceding day on which banks in such country(ies) are open for business.

"**Capacity Shortage**" has the meaning set forth in Section 2.7.

"**Consent Letter**" has the meaning set forth in the Background.

"**Current Nasha License Agreement**" has the meaning set forth in the Background.

"**Current US License Agreement**" has the meaning set forth in the Background.

"**Current US Supply Agreement**" has the meaning set forth in the Background.

"**Delinquent Payment**" has the meaning set forth in Section 3.3(b).

"**FDCA**" means the U.S. Federal Food, Drug and Cosmetic Act.

"**Firm Order**" means a written, irrevocable purchase order for the Licensed Product that shall include (a) the quantity of such Licensed Product ordered; and (b) a delivery schedule specifying the monthly delivery date for Licensed Product ordered and the shipment destination(s).

"**Firm Order Maximum Quantities**" has the meaning set forth in Section 2.2(a).

"**Forecast**" has the meaning set forth in Section 2.2(a).

"**GMP**" means Good Manufacturing Practices applicable to the Licensed Product that are promulgated or otherwise established by any Regulatory Authority, including those set forth in the FDA's Quality System Regulations in 21 C.F.R. Part 820, and the European Council Directive concerning Medical Devices, 93/42/EEC.

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

"**Labeling**" means all labels and other written, printed or graphic material upon any Licensed Product or any of its containers or wrappers accompanying such Licensed Product, including package leaflets, instructions for use and package inserts.

"**Latent Defect**" has the meaning set forth in Section 4.3.

"**Laws and Rules**" has the meaning set forth in Section 2.6(a).

"**Legally Required Changes**" has the meaning set forth in Section 2.6(a).

"**Licensed Product Claims**" has the meaning set forth in Section 4.6(a).

"**Major Supply Default**" has the meaning set forth in Section 6.2.

"**Manufacture**" and "**Manufacturing**" and other forms of such words means the manufacturing, processing, handling, packaging and quality control testing (including in-process, release and stability testing) of Licensed Product.

"**Manufacturing License Actions**" has the meaning set forth in Section 6.2.

"**Manufacturing Licensee**" has the meaning set forth in Section 6.2.

"**Market Launch**" means with regard to the Licensed Product, the date following Regulatory Approval (if applicable) on which the Licensed Product is first commercially sold by Bioventus in the United States to a Third Party.

"**New Nasha Amended License Agreement**" has the meaning set forth in the Background.

"**Original License Agreement**" has the meaning set forth in the Background.

"**Original Supply Agreement**" has the meaning set forth in the Background.

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

"**Person**" means any individual, firm, corporation, partnership, limited liability company, trust, joint venture or other entity or organization.

"**Purchase Price**" has the meaning set forth in Section 3.1.

"**Purchasers**" means Bioventus' Affiliates and their permitted Sublicensees.

"**Q-Med**" has the meaning set forth in the Preamble.

"**Q-Med Discretionary Changes**" has the meaning set forth in Section 2.6(b).

"**Q-Med Excluded Claims**" has the meaning set forth in Section 4.6(a).

"**Quality Agreement**" means the Amended and Restated Quality Agreement – US, dated as of the date hereof, by and between Q-Med and Bioventus, and attached as **Schedule A**.

"**Regulatory Submissions**" has the meaning set forth in Section 2.5.

"**S&N**" has the meaning set forth in the Background.

"**Specifications**" means the specifications and the quality control testing procedures for Licensed Product that are set forth or referenced in **Schedule B** hereto, as amended from time to time in accordance with this Agreement. All Specifications shall be consistent with applicable Regulatory Approvals. The Parties agree that the Specifications constitute a list at the effective date of those documents that control the manufacture of the Licensed Product. The documents contained in the Specifications shall be updated and kept current by mutual written agreement, and in accordance with the provisions hereof during the Term.

"**Terminating Party**" has the meaning set forth in Section 6.3.

"**Unit**" means one (1) pre-filled syringe containing three (3) milliliters of Licensed Product or such other units of Licensed Product as the Parties shall designate and specify in the applicable Specifications.

"**Visual Non-Conformity**" has the meaning set forth in Section 4.2.

1.2 Interpretation.

(a) Whenever any provision of this Agreement uses the term "including" (or "includes"), such term shall be deemed to mean "including without limitation" and "including but not limited to" (or "includes without limitations" and "includes but is not limited to") regardless of whether the words "without limitation" or "but not limited to" actually follow the term "including" (or "includes");

(b) "Herein," "hereby," "hereunder," "hereof," and other equivalent words shall refer to this Agreement as an entirety and not solely to the particular portion of this Agreement in which any such word is used;

(c) All definitions set forth herein shall be deemed applicable whether the words defined are used herein in the singular or the plural;

(d) Unless otherwise provided, all references to Sections, Articles and Appendices are to Sections, Articles and Appendices of and to this Agreement;

(e) All references to days, months, quarters, or years are references to calendar days, calendar months, calendar quarters, or calendar years; and

(f) Any reference to any supranational, national, federal, state, local, or foreign statue or law shall be deemed to also refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

ARTICLE 2. SUPPLY OF LICENSED PRODUCT

2.1 Licensed Product to be Supplied. Subject to Bioventus' rights set forth in Section 6.3 hereof, Bioventus shall, and shall cause Purchasers to, purchase from Q-Med, and Q-Med shall sell to Bioventus and the Purchasers, all of their requirements for the Licensed Product for sale in the Territory for use in only the Licensed Field. Bioventus shall, and agrees to cause the Purchasers to, purchase such Licensed Product from only Q-Med, and neither Bioventus nor any of the Purchasers shall purchase such Licensed Product from, directly or indirectly, any other Person. Licensed Product will be delivered to Bioventus in finished form for distribution to Bioventus customers and their distributees. The Licensed Product shall be labeled and packaged as initially specified by Bioventus, consistent with the labeling and packaging elements set forth in the Specifications, and consistent with Q-Med's then current manufacturing set-up. Q-Med will use Commercially Reasonable Efforts to accommodate subsequent changes to the packaging of Licensed Products requested by Bioventus.

2.2 Forecasts.

(a) Forecasts and Orders. Commencing prior to, but no later than **[***]** months before, Market Launch, and thereafter on or before the last Business Day of each month, Bioventus shall provide a forecast of its and the Purchasers' estimated monthly requirements of Licensed Product for the **[***]** month period beginning with the following month (a "**Forecast**"). Such beginning month of each Forecast shall be referred to below as "Month 1" and each subsequent month shall be numbered sequentially. The initial Forecast shall be accompanied by Firm Orders for the quantity of Licensed Product set forth in Months 1, 2 and 3 of such Forecast. The quantities of Licensed Product set forth in Months 4, 5 and 6 of each Forecast after the initial Forecast shall be for a quantity of Licensed Product that is at least **[***]** percent (**[***]**%), but not more than **[***]** percent (**[***]**%) ("**Firm Order Maximum Quantities**"), of the quantities of Licensed Product for months 4, 5 and 6, respectively, in the immediately prior Forecast. The Forecast will also include the quantities of Licensed Product forecasted for each month after Month 6 up to and including Month 24 of the Forecast, which shall all constitute good faith non-binding guidance estimates. For example, (i) the Forecast submitted on or before 31 December 2018 shall cover the period from 1 January 2019 through 31 December 2020, (ii) the quantities of Licensed Product set forth in such Forecast for January 2019, February 2019 and March 2019 shall be Firm Orders, and (iii) the quantities of Licensed Product set forth for April 2019, May 2019 and June 2019 shall be at least **[***]** percent (**[***]**%), and not more than **[***]** percent (**[***]**%), of such quantities for such month set forth in the previous Forecast (unless this is the initial Forecast).

(b) Q-Med shall satisfy all Firm Orders in conformance with the quantity, delivery, timing and other requirements of each Firm Order and in accordance with the terms of this Agreement; provided that, with respect to any Firm Order, delivery of any quantity that is within **[***]**% and **[***]**% of such Firm Order and within **[***]** (**[***]**) Business Days of the date set forth in the Firm Order shall be deemed to be in compliance with the terms hereof. Q-Med shall use Commercially Reasonable Efforts to procure or be able to procure sufficient raw materials to enable it to meet Firm Order Maximum Quantities.

(c) Failure to Purchase. If Bioventus does not provide Firm Orders for Month 4 or Month 5 that are equal to at least **[***]** percent (**[***]**%) of the quantities of Licensed Product set forth in the most recent Forecast for such months, Q-Med may nonetheless ship, and Bioventus shall pay for, up to **[***]** percent (**[***]**%) of such quantities of Licensed Product, taking into account any Firm Orders actually placed by Bioventus for such months.

(d) Q-Med's Obligations. Q-Med shall not be obligated to supply any ordered quantities of Licensed Product for Firm Orders that exceed the **[***]** percent (**[***]**%) limits set forth in Section 2.2(a), but Q-Med shall use Commercially Reasonable Efforts to supply such excess quantities within the limitations of its available production capacity and lead times.

(e) Order Limitations. The aggregate minimum order size for each Firm Order shall be **[***]** Units.

2.3 Major Forecast Changes. In the event that Bioventus' orders a number of Units for any **[***]** month period in excess of twice the number of Units initially forecasted for such **[***]** month period, Q-Med shall not be responsible for (and shall have no liability, including pursuant to Section 6.2, with respect to) the failure to provide any Units in excess **[***]**% of such initial forecast unless Bioventus has provided Q-Med with written notice of such volume at least **[***]** months before the beginning of such 12 month period.

2.4 Subcontractors. Q-Med shall have the right in connection with its obligations hereunder to contract, in whole or in part, with its Affiliates or one or more Third Parties for the Manufacture and supply of the Licensed Product to Bioventus; provided, that: (i) Q-Med shall cause such contractor to comply fully with the terms and conditions set forth in this Agreement with respect to the Manufacture and supply of the Licensed Product; and (ii) Q-Med shall remain fully responsible for the Manufacture and supply of the Licensed Product to Bioventus. Q-Med shall bear the costs and expense of any required Regulatory Approvals due to the contracting with any Affiliate or Third Party for the Manufacture and supply of the Licensed Product. The foregoing shall not affect, apply to, prevent or otherwise limit Q-Med's right to select and employ Third Party suppliers and subcontractors to provide ingredients, components, parts, and processing activities to aid Q-Med's manufacturing process.

2.5 **Right of Access to Regulatory Submissions**. To the extent Q-Med maintains device master files for the Licensed Product or other regulatory submissions of Manufacturing information which may be relevant to the Licensed Product (collectively, "**Regulatory Submissions**"), Q-Med grants Bioventus the right to cross-reference such Regulatory Submissions for the purpose of obtaining Regulatory Approvals in accordance with all applicable legal requirements and Q-Med shall provide appropriate letters of access to the applicable Regulatory Authorities in the Territory.

2.6 **Changes**. The Parties shall have the right to request and make changes to the Licensed Product subject to the provisions of this Section 2.6. Q-Med is the design history file and device master record owner for the Licensed Product. Changes to the Licensed Product will be managed under Q-Med's design control and/or change control processes as set forth in the Quality Agreement. Bioventus is the holder of Regulatory Approvals for the Licensed Product as described in Article 4 of the New US License Agreement. Approval for changes to the Licensed Product will be managed under Bioventus' Regulatory Approvals processes. With respect to any changes to the Licensed Product (regardless of whether it is a Legally Required Change, a Q-Med Discretionary Change or a Bioventus Discretionary Change), Q-Med shall provide Bioventus with reasonable prior written notice of any proposed change to the Specifications or Manufacturing of the Licensed Product.

(a) Legally Required Changes. Both Parties may initiate changes ("**Legally Required Changes**") in the Specifications, Manufacturing and other changes necessary for the Licensed Product to comply with applicable laws, rules, and regulations, including GMPs, QSRs and the requirements of Regulatory Authorities in the Territory (collectively, "**Laws and Rules**"). Both Parties shall work together to update the necessary Specifications and other related design control documentation. Q-Med will conduct or have conducted the required design control and/or change control activities. Bioventus will review the output and be responsible for acceptability of the final documentation and will make the relevant filings with the applicable Regulatory Authorities. Any costs for Legally Required Changes, including but not limited to costs for work performed by Q-Med employees, external consultants, translations, and Regulatory Authority filing fees associated with any such filings, shall be borne by **[***]**.

(b) Q-Med Discretionary Changes. Q-Med may initiate and make Manufacturing changes which are not Legally Required Changes ("**Q-Med Discretionary Changes**"). Q-Med shall notify Bioventus in writing of any desired Q-Med Discretionary Change at least **[***]** (**[***]**) months prior to the date Q-Med wishes to implement it. To the extent that any Q-Med Discretionary Change requires Regulatory Approval, Bioventus shall, at Q-Med's cost and expense, use Commercially Reasonable Efforts to take all actions reasonably requested by Q-Med in connection therewith including, without limitation, making Regulatory Filings. Bioventus shall not be financially responsible for any costs or expenses associated with Q-Med Discretionary Changes (for clarity, including any costs or expenses substantially related to changes requested by Q-Med for compliance with laws and rules for products other than the Licensed Product, costs for work performed by external consultants, translations, and Regulatory Authority filing fees associated with such filings) or for any increases in the Purchase Price of the Licensed Product. Q-Med shall reimburse Bioventus for all of the costs it incurs in seeking such Regulatory Approvals, which costs shall include reasonable costs of labor, Regulatory Authority filing fees, consulting fees, and other out of pocket costs of Bioventus. Q-Med shall not implement any Q-Med Discretionary Change requiring Regulatory Approval before such Regulatory Approval is obtained.

(c) Bioventus Discretionary Changes. Bioventus may initiate and make Manufacturing changes which are not Legally Required Changes ("**Bioventus Discretionary Changes**"). Q-Med agrees to implement such changes provided that they are commercially reasonable for Q-Med, and provided further that Bioventus shall be financially responsible for all of the costs of such changes as described in Section 3.2(a) of this Agreement. In the event that Q-Med believes in good faith that a requested Bioventus Discretionary Change is not commercially reasonable, it shall provide Bioventus with the reasons therefor and supporting documentation in connection therewith, and the Parties shall explore in good faith alternative changes that would be commercially reasonable for Q-Med.

(d) Changes to Specifications. Notwithstanding anything in this Section 2.6, and for the avoidance of doubt, any changes to the Specifications must be mutually agreed to by Q-Med and Bioventus.

2.7 Secure Manufacturing Source. Q-Med shall use its Commercially Reasonable Efforts to maintain capacity or inventory sufficient to meet Bioventus' requirements of Licensed Product as indicated in the Forecasts. At the written request of either Party, appropriate personnel from each Party will meet and discuss their then current views on the markets and demand for Licensed Product, current and planned marketing plans and initiatives and other matters pertaining to capacity and inventory planning that such Party may reasonably wish to discuss. If at any time Q-Med reasonably believes that it may not have sufficient capacity or inventory to fulfill the requirements so forecasted by Bioventus (a "**Capacity Shortage**"), whether due to insufficient manufacturing capacity or otherwise (including any of the reasons described in Section 9.2), Q-Med shall promptly notify Bioventus. If Q-Med has a plan of action with respect to such Capacity Shortage when it delivers such notice, Q-Med shall provide Bioventus with a written outline of such plan and its reasonably supported conclusions relating thereto. Q-Med may take prompt action with respect to such plan or, if Q-Med desires, Q-Med may promptly convene a meeting between Bioventus and Q-Med to discuss such plan. If Q-Med has not developed a plan of action at the time of its notice to Bioventus of the Capacity Shortage, Q-Med shall promptly convene a meeting between Bioventus and Q-Med to develop in mutual consultation a commercially reasonable course of action with respect to such Capacity Shortage. As soon as practicable after such meeting, Q-Med shall use Commercially Reasonable Efforts to carry out such mutually determined plan of action. If such plan of action includes the use of a Third Party contract manufacturer, Q-Med shall use Commercially Reasonable Efforts to contract with a Third Party to Manufacture such Licensed Product and supply the Purchasers. Q-Med shall in good faith negotiate the grant to such Third Party of license to so Manufacture such Licensed Product on the terms set forth in Schedule 6.2 and provide such other assistance as may be required to enable such Third Party to validate a manufacturing facility and commence the Manufacture of such Licensed Product in accordance with the applicable Specifications and GMP. Upon resumption of sufficient capacity at Q-Med's facilities to fulfill Bioventus' orders, Q-Med shall, subject to the terms and conditions of that Third Party license, resume the Manufacture and supply of orders in accordance with the terms set forth in Section 2.2.

2.8 **Guaranty**. Guarantor hereby unconditionally and irrevocably guarantees to Bioventus the performance in full of Q-Med's obligations under this Agreement.

ARTICLE 3. CONSIDERATION

3.1 **Pricing**.

(a) Price. The purchase price of the Licensed Product shall be SEK **[***]** per **[***]** Unit of Licensed Product.

(b) Price Adjustments. The purchase price of the Licensed Product shall not increase for the first **[***]** (**[***]**) years following Regulatory Approval in the United States. Adjustments to the purchase price thereafter shall be made in accordance with Section 3.2 hereof, and increases or decreases shall not be made more than **[***]** every year unless there is a Legally Required Change, and then in such case, not more than **[***]** every **[***]** (**[***]**) months and only in accordance with Section 3.2 hereof.

(c) Samples. The purchase price for Licensed Products that are used as samples shall be SEK **[***]** per Unit. The amount of such samples purchased by Bioventus in the initial Royalty Year shall not exceed **[***]** percent (**[***]**%) of the total Units purchased for the initial Royalty Year, and for any subsequent Royalty Year shall not exceed **[***]** percent (**[***]**%) of the total Units purchased for such Royalty Year. This Section 3.1(c) shall be of no further force and effect upon the license granted to Bioventus in Section 2.1 of the New US License Agreement being converted to a non-exclusive license in accordance with the terms thereof.

(d) Each such price, as adjusted as provided above or in Section 3.2, shall be referred to as the "**Purchase Price**".

3.2 **Bases for Purchase Price Adjustments**. Adjustments to the Purchase Price for each Licensed Product as contemplated in Section 3.1(b) hereof may be based upon:

(a) changes in costs of the Licensed Product as a result of Bioventus Discretionary Changes;

(b) changes in manufacturing costs or market conditions; and

(c) changes in costs of the Licensed Product as a result of Legally Required Changes, as described in Section 2.6(a).

If either Party desires to propose a Purchase Price adjustment, it shall provide the other Party with at least **[***]** (**[***]**) days' notice, accompanied by written documentation demonstrating such cost changes and explaining the reasons therefor. If the Parties are unable to agree on a purchase price adjustment for a Licensed Product, the Chief Executive Officers of each of the Parties will meet to discuss the proposed purchase price adjustment in good faith.

3.3 Payment Obligations.

(a) Invoices for the Purchase Price shall be issued upon shipment and shall be payable in SEK within **[***]** (**[***]**) days thereafter.

(b) All payments shall be made by wire transfer to an account designated in writing by Q-Med at least **[***]** Business Days prior to the date such payment is due or as specified in such invoice. Any required payment hereunder not made by Bioventus on or before the date specified in this Section 3.3 shall bear interest from the date such payment is due until the date it is actually received by Q-Med at an annual rate equal to the rate of interest per annum publicly announced from time to time by JPMorgan Chase Bank as its prime rate in effect on the date such payment is due at its principal office in New York City, *plus* **[***]** percent (**[***]**%) (or the highest rate permitted by law, if lower). Notwithstanding the foregoing, if at any time Bioventus has failed to make a payment in full when due (a "**Delinquent Payment**") and the aggregate amount of such Delinquent Payment exceeds **[***]** percent (**[***]**%) of the value of the most recently placed Firm Order, Q-Med shall automatically be entitled to pre-payment for all subsequent deliveries until such Delinquent Payment has been paid in full with interest from and including the date such Delinquent Payment was due (such interest to be determined in accordance with the immediately preceding sentence) but excluding the date of payment.

(c) The payments pursuant to this Article 3 are exclusive of all taxes and shall be made without deductions for taxes, assessments, fees or charges of any kind. If Bioventus is required by law to withhold any tax to the tax or revenue authorities in any country regarding any payments or royalties, such amount shall be deducted from the amounts to be paid by Bioventus, and Bioventus shall notify Q-Med and promptly furnish Q-Med with copies of any tax certificate or other documentation evidencing such withholding. Each Party agrees to cooperate with the other Party in claiming exemptions from or collecting such deductions or withholdings under any agreement or treaty from time to time in effect. All payments to Q-Med shall be made by Bioventus from the United States.

ARTICLE 4. DELIVERY AND WARRANTY

4.1 Purchases, Shipments and Delivery.

(a) Delivery Terms. Q-Med shall deliver the Licensed Product FCA (INCOTERMS 2010) Q-Med facility – **[***]** or such other facility as permitted under this Agreement, and Q-Med shall, on behalf of Bioventus and at Bioventus' expense, make such arrangements for shipping and export as may be instructed by Bioventus. Q-Med shall not be required to ship the Licensed Product to more than **[***]** (**[***]**) destinations. Q-Med shall so deliver the Licensed Product with a shelf life of at least **[***]**% of total shelf life.

(b) Orders. Q-Med's sales of Licensed Product shall be subject to the terms and limitations of this Agreement and not to any Bioventus purchase order, Q-Med order acknowledgement or other document not effectively amending this Agreement, except insofar as such order or other document establishes: (i) the quantity of Licensed Product sold; (ii) the delivery date of Licensed Product; or (iii) the destination of shipment of Licensed Product. Any additional, inconsistent or different terms and conditions contained in such other documents are hereby expressly rejected.

(c) Packing List. Q-Med shall include a packing list in each shipment of Licensed Product which shall provide the following information: (i) Bioventus purchase order number, (ii) quantity, (iii) Q-Med lot number, (iv) commercial invoice; and (v) any other legally required documentation. An electronic copy of this information shall be provided as an advance shipping notice upon delivery for shipment.

4.2 Licensed Product Acceptance. Bioventus shall be entitled to reject all or any portion of a shipment of Licensed Product within **[***]** (**[***]**) Business Days of Bioventus' receipt of such shipment of Licensed Product based solely on obvious physical, packaging or Labeling damage or defect that would be evident upon visual inspection of the packaged Licensed Product and discoverable without affecting the integrity of the Licensed Product packaging, as shipped by Q-Med (unless such obvious physical, packaging or Labeling damage or defect was attributable to an act or omission of Bioventus or any of its Affiliates or any carrier after delivery by Q-Med in accordance with Section 4.1(a) (a "**Visual Non-Conformity**")). If Bioventus does not provide notice within such time period, then Bioventus shall be deemed to have accepted such Licensed Product and waived its right to reject the shipment based upon a Visual Non-Conformity. Bioventus shall provide Q-Med with written notice of any such rejection within the period set forth above together with a reasonably detailed statement to support any such rejection. Q-Med shall notify Bioventus as promptly as reasonably possible, but in any event within **[***]** (**[***]**) Business Days after receipt of such written notice, whether it agrees with Bioventus' assertions with respect thereto. If Q-Med agrees with such assertions, all such rejected Licensed Product shall be returned to Q-Med together with the notice of rejection, a copy of the delivery receipt and the reasonably detailed statement of Bioventus' reasons for rejection and Q-Med shall replace such Licensed Product and shall reimburse Bioventus for the cost of shipping (including insurance). If Q-Med does not agree with Bioventus' assertions and Bioventus does not accept Q-Med's determination, then the Parties shall refer the dispute to a mutually acceptable independent testing laboratory for final resolution. If such independent laboratory affirms Bioventus' finding of a Visual Non-Conformity, Q-Med shall promptly supply Bioventus with the same quantity of such Licensed Product so found to be non-conforming. The cost of such independent laboratory shall be borne by the Party whose findings are contrary to the findings of such independent laboratory. While any dispute regarding nonconformity of Licensed Product is pending, Q-Med, using its Commercially Reasonable Efforts, shall replace any shipment or portion of a shipment under dispute, and Bioventus shall pay the applicable Purchase Price, subject to a credit if such dispute is resolved in Bioventus' favor.

4.3 Latent Defects. The Parties acknowledge that it is possible for Licensed Product to have defects that are not discoverable upon the visible inspection of the packaged Licensed Product (referred to herein as a "**Latent Defect**"). Latent Defects may include, by way of illustration and not definition or limitation, defects not present in preshipment samples, loss of stability or other manufacturing defects. Q-Med is responsible for all Latent Defects to the extent expressly provided for in this Agreement.

4.4 Warranties.

(a) Licensed Product Warranty. Q-Med warrants to Bioventus that it will deliver Purchasers good title to the Licensed Product free and clear of any liens, claims, charges or encumbrances. Q-Med further represents and warrants to Bioventus that Licensed Product when delivered in accordance with Section 4.1: (i) shall be Manufactured in accordance and conformity with the then applicable Specifications, (ii) shall not be adulterated or misbranded as defined in the FDCA (except to the extent arising out of Labeling provided or specified by Bioventus or marketing, promotional or sales practices by any of the Purchasers) and (iii) shall be Manufactured in compliance with GMP.

(b) Remedy. Provided that Q-Med receives, within **[***]** (**[***]**) months after delivery, prompt written notice of a nonconformity with its foregoing warranties, Q-Med, at its option and expense, will furnish Bioventus a credit, refund or replacement of such nonconforming Licensed Product.

(c) Exclusions. Q-Med's warranties do not apply to the extent any breach thereof arises out of any defect in a device provided or specified by Bioventus.

(d) THE FOREGOING WARRANTIES BY Q-MED ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF QUALITY AND PERFORMANCE, WRITTEN, ORAL OR IMPLIED, AND ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED BY Q-MED, ITS AFFILIATES AND THEIR SUBCONTRACTORS.

(e) Exclusive Remedies. Correction of nonconformities in the manner and for the period of time provided above shall be Bioventus' exclusive remedy and shall constitute fulfillment of all liabilities of Q-Med, its Affiliates and their subcontractors (including any liability for direct, indirect, special, incidental or consequential damages), whether in warranty, contract, negligence, tort, strict liability, or otherwise, with respect to any nonconformance of or defect or deficiency in the Licensed Product, except to the extent provided in Section 4.6 below.

4.5 Legal Compliance. In the Manufacture of the Licensed Product, Q-Med shall comply in all material respects with all applicable Laws and Rules, including those relating to the environment, health and safety. Following delivery of the Licensed Product, Bioventus shall comply in all material respects with all applicable Laws and Rules, including those relating to the environment, health and safety, and with all applicable GMP and customary industry practices relating to handling, storage and distribution.

4.6 Indemnity.

(a) In addition to the indemnification provided for in Section 10.2 of the New US License Agreement and subject to the terms set forth in Section 4.6(b) below, Q-Med shall indemnify, defend and hold harmless the Bioventus Indemnified Parties from and against any and all liability, claims, damage, or loss (including reasonable attorneys' and expert fees and expenses) arising out of or in connection with Third Party claims made or legal proceedings instituted against the Bioventus Indemnified Parties for bodily injuries, including death, or tangible property damage suffered or incurred by a patient to the extent caused by (i) the negligence of Q-Med in the development or manufacture of a Licensed Product, (ii) a design defect in the Licensed Product, (iii) a breach of the warranty set forth in Section 4.4 ("**Licensed Product Claims**"), or (iv) breach of the Quality Agreement; provided, that Q-Med shall not be so liable to the extent any Licensed Product Claims result from a Licensed Product that following delivery to Bioventus in accordance with Section 4.1: (x) is not handled, stored, used and otherwise managed in accordance with the Labeling (including uses indicated in the Labeling approved by the applicable Regulatory Authority) or clinical protocols, as applicable; (y) was used after expiration of the Licensed Product's labeled shelf life; or (z) has been modified or combined in any way with any other products in a manner not permitted or recommended by the Labeling for such Licensed Product ("**Q-Med Excluded Claims**"); provided, further, Q-Med shall not be obligated under this Section 4.6, and Q-Med Excluded Claims shall be deemed to include, any Licensed Product Claims arising out of: (yy) the injection or other use of needles, syringes or other delivery devices to administer a Licensed Product, including claims of pain, swelling and redness from the use of such needles, or (zz) known adverse effects listed on the Licensed Product Labeling.

(b) Each Party's indemnification obligation under Section 4.6 shall be subject to the same procedure and other rights set forth in Section 10.4 of the New US License Agreement. The exercise by a Party of its right to control the defense and settlement of a claim or action pursuant to Section 10.4 of the New US License Agreement shall not constitute a waiver of any limitation on indemnification set forth in this Section 4.6 or the right of Q-Med to reimbursement for any expense (including reasonable attorneys' and expert fees and costs) incurred in defending claims made or legal proceedings instituted against the Bioventus Indemnified Parties that are not covered by Section 4.6(a). In seeking indemnification pursuant to Section 4.6(a), the Bioventus Indemnified Parties shall, in addition to complying with the procedures in Section 10.4 of the New US License Agreement, provide with the written notice to Q-Med required under Section 10.4 of the New US License Agreement all information pertinent to such claims or proceedings, including all available information covered by Section 4.7, patient medical records, statements, reports, and demands, subject to compliance with applicable Laws and Rules relating to the privacy of patient records.

(c) Q-Med's liability in respect of Licensed Product Claim indemnity obligation under Section 4.6(a)(iii) does not extend to Licensed Product Claims arising out of the labeling, the marketing or sales practices of Bioventus or other matters for which Bioventus is responsible under Section 10.2 of the New US License Agreement. For the avoidance of doubt, nothing contained herein shall limit the rights and obligations set forth in Section 4.4(b) hereof.

(d) Bioventus shall implement all reasonable safety measures, including new or modified warnings or instructions to patients or health care professionals, recommended in writing by Q-Med regarding the Licensed Product. Q-Med shall not have any liability under Section 4.6 for Licensed Product Claims resulting from or arising out of Bioventus' breach of this section.

(e) Bioventus shall indemnify, defend and hold harmless the Q-Med Indemnified Parties from and against any and all liability, claims, damage, or loss (including reasonable attorneys' and expert fees and expenses) arising out of or in connection with Third-Party claims made or legal proceedings instituted against the Q-Med Indemnified Parties for bodily injuries, including death, or tangible property damage suffered or incurred by a patient to the extent resulting from any Bioventus Discretionary Change or Q-Med Excluded Claim.

(f) Q-Med shall indemnify, defend and hold harmless the Bioventus Indemnified Parties from and against any and all liability, claims, damage, or loss (including reasonable attorneys' and expert fees and expenses) arising out of or in connection with Third Party claims made or legal proceedings instituted against the Bioventus Indemnified Parties for bodily injuries, including death, or tangible property damage suffered or incurred by a patient to the extent resulting from any Q-Med Discretionary Change.

4.7 Licensed Product Complaints. Bioventus shall cooperate with Q-Med in investigating and resolving customer complaints concerning the Licensed Product, including, to the extent practicable and feasible, obtaining relevant medical records, interviewing the administering physician and obtaining such other information as is necessary to a full understanding of the patient's complaint, subject to compliance with applicable laws relating to the privacy of patient records. Among other things, the Parties shall promptly establish and implement a system for exchange of complaint and adverse event information between the Parties sufficient to allow each Party to comply with its respective indemnification obligations hereunder and under the New US License Agreement and adverse event reporting obligations, which shall include appropriate provisions for recording worldwide customer complaints relating to Licensed Product and prompt notice to the other Party of significant and/or potentially reportable adverse events. Bioventus shall cooperate fully with Q-Med in dealing with product complaints concerning the Licensed Product and shall take such action to promptly resolve such complaints as may be reasonably requested by Q-Med. Bioventus shall provide accurate and timely information to Q-Med about all complaints and adverse events, and shall otherwise cooperatively undertake investigations and provide information and analysis as reasonably requested by Q-Med. Bioventus shall provide appropriate medical advisory support to patients and physicians concerning the use of the Licensed Product and responding to product complaints and adverse events.

ARTICLE 5. REPRESENTATIONS AND WARRANTIES

5.1 Representations. Each Party hereby represents and warrants that:

(a) It is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and has all requisite corporate power and authority to own and operate its properties and assets, to execute and deliver this Agreement and to perform its obligation hereunder.

(b) Its execution, delivery and performance of this Agreement have been duly authorized by it and this Agreement will be, upon its execution and delivery, a valid and binding legal obligation of it, enforceable in accordance with its terms.

(c) The execution, delivery and performance of this Agreement does not and will not (i) violate, conflict with or result in the breach of any provision of its corporate charter or by-laws (or similar organizational documents), (ii) violate or conflict with any law or governmental order applicable to it or its assets, properties or businesses, or (iii) conflict with, result in a breach of, constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, require any consent under, or give to others any rights of termination, amendment, acceleration, suspension, revocation or cancellation of, or result in the creation of any encumbrance on any of its outstanding shares of capital stock or any of its assets or properties pursuant to any note, bond, mortgage, indenture, contract, agreement, lease, sublease, license, permit, franchise or other instrument or arrangement to which it is a party or by which any of its shares of capital stock or any of its assets or properties is bound or affected.

(d) Other than as expressly stated in this Agreement, no permit, approval, authorization or consent of any Person is required in connection with the execution, delivery and performance by it of this Agreement or the consummation of the transactions contemplated hereby.

5.2 Additional Representations by Q-Med. Q-Med further represents, warrants and covenants, as of the Amendment Effective Date, that:

(a) Q-Med has the legal power to extend the rights granted to Bioventus under this Agreement and that it has not made, and throughout the term of this Agreement will not make, any commitments to others inconsistent with such rights.

(b) Q-Med has received no notice from any governmental authority to the effect that it has not materially complied with or is not now in material compliance with material Laws and Rules relating to the Manufacture of the Licensed Product.

(c) There are no claims, actions, suits or other proceedings pending, or to the knowledge of Q-Med, threatened which, would reasonably be expected to materially and adversely affect the ability of Q-Med to perform its obligations hereunder.

(d) Q-Med has not filed for bankruptcy, is not insolvent, has not proposed a compromise or arrangement to its creditors generally, has not had any petition or a receiving order in bankruptcy filed against it, has not made a voluntary assignment in bankruptcy, has not taken any proceeding with respect to a compromise of arrangement with its creditors, has not taken any proceeding to have it declared either bankrupt or liquidated, has not taken any proceeding to have a receiver appointed for any part of its assets, and has not had any execution, charging order, levy or distress warrant become enforceable or become levied upon any of its assets.

(e) To the knowledge of Q-Med, there have been no claims or judicial proceedings concerning the Q-Med Manufacturing Technology and no such claims have been threatened.

5.3 **NO OTHER REPRESENTATIONS OR WARRANTIES**. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 4.4 OR IN THE NEW US LICENSE AGREEMENT, Q-MED MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, EITHER AT LAW OR IN EQUITY, RELATED TO THE LICENSED PRODUCT, INCLUDING ANY REPRESENTATION OR WARRANTY AS TO VALUE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR FOR ORDINARY PURPOSES, OR ANY OTHER MATTER.

ARTICLE 6. TERM AND TERMINATION

6.1 **Term**. Unless earlier terminated in accordance with Section 6.2 or 6.3, this Agreement shall remain in force until (and including) the termination or expiration of the New US License Agreement.

6.2 **Manufacturing License**. For purposes of this Agreement, a "**Major Supply Default**" means a failure to supply at least **[***]** percent (**[***]**%) of the aggregate quantities of Licensed Product required under any Firm Orders in **[***]** (**[***]**) consecutive months and does not cure such shortfall by supplying such shortfall within the subsequent **[***]** (**[***]**) months. Upon the occurrence of a Major Supply Default, Bioventus shall be entitled to terminate the Agreement effective immediately upon written notice to Q-Med. In addition and without limiting the other rights, remedies and obligations set forth this Agreement, upon the occurrence of a Major Supply Default (regardless of whether Bioventus has terminated the Agreement in accordance with the foregoing), Q-Med shall do the following at its sole cost and expense (the "**Manufacturing License Actions**"):

(a) assist Bioventus in identifying alternative suppliers for the Licensed Product;

(b) upon Bioventus' instruction, grant to Bioventus or to a Third Party reasonably acceptable to Bioventus (the "**Manufacturing Licensee**") the right to Manufacture the Licensed Product on the following terms (the "**Manufacturing License**"): Q-Med shall grant an irrevocable, royalty-free, exclusive license under the Q-Med IP to manufacture the Licensed Product in the Licensed Field in the Territory, including the right to sublicense its license rights to Bioventus Affiliates and Third Party contract manufacturers. For clarity, at Bioventus' option, the grant of the Manufacturing License may be accomplished by deeming that the license grant in Section 2.1 of the New US License Agreement is amended to include manufacturing.

(c) promptly, but in any event within **[***]** days after the Manufacturing Licensee is engaged, provide Bioventus or the Manufacturing Licensee, as applicable, copies of all tangible embodiments of Q-Med Manufacturing Technology then being used by Q-Med or any of its Third Party contract manufacturers to Manufacture the applicable Licensed Product, including all analytical and process techniques, standard operating procedures and batch records. Q-Med shall also provide all reagents and analytical standards used to conduct such analytical methods conducted by Q-Med and which are not commercially available.

(d) Q-Med shall further provide such technical assistance as may be reasonably required to enable Bioventus or a competent and experienced contract manufacturing organization to Manufacture the Licensed Product using the Q-Med Manufacturing Technology. All such services shall be provided at Q-Med's expense, except for out-of-pocket travel costs.

(e) assist with training and transfer of the information and technology necessary to Manufacture the Licensed Product, including access to key personnel with know-how regarding the Manufacture of the Licensed Product;

(f) grant access to Q-Med's manufacturing facility for a reasonable period of time, during regular business hours, as necessary to accomplish the transfer of the manufacturing of the Licensed Product to Bioventus or the Manufacturing Licensee, as quickly as possible; and

(g) use Commercially Reasonable Efforts (including, as appropriate, assignment of agreements to Bioventus or the Manufacturing Licensee) to cause Q-Med's raw material and component suppliers to supply such components and raw materials that are necessary for the Manufacture of the Licensed Product to be supplied directly to Bioventus or the Manufacturing Licensee, as applicable, to the same extent supplied to Q-Med for the manufacture of the Licensed Product prior to the Major Supply Default.

In the event a Manufacturing License is granted hereunder: (i) no additional compensation shall be payable to Q-Med with respect to the Manufacturing License other than the Variable Royalty otherwise payable under the New US License Agreement; (ii) the Variable Royalty payable under the New US License Agreement shall be reduced by the Purchase Price per Unit of Licensed Product sold; (iii) Bioventus' obligation to pay the Variable Royalty under the New US License Agreement shall end on the **[***]** (**[***]**) year anniversary of the granting of the Manufacturing License, and thereafter the Manufacturing License shall be completely royalty free and paid up; (iv) Q-Med shall not be responsible for any Licensed Product Manufactured by or for Bioventus under such Manufacturing License, except pursuant to clause (ii) of Section 4.6(a) of the Agreement; and (v) Q-Med shall not be obligated to supply Licensed Product to Bioventus in any specified quantities after a Third Party contract manufacturer commences delivering Licensed Product to Bioventus. If Bioventus uses a Third Party contract manufacturer to Manufacturer any Licensed Product, then, upon the expiration or termination of the supply contract with such Third Party contract manufacturer, if Q-Med has resolved the issues that caused the Major Supply Default, Bioventus will provide Q-Med with a reasonable opportunity to negotiate mutually acceptable terms for Q-Med to be reinstated as the manufacturer of the associated Licensed Products (provided that Q-Med shall be responsible for Bioventus' reasonable expenses related thereto). Nothing in Section 6.2 shall limit the remedies or rights of Bioventus in the event of a Major Supply Default and Bioventus' rights under Section 6.2 shall be in addition to all other remedies available under this Agreement at law or in equity. The foregoing notwithstanding, in no event shall Q-Med be obligated to grant a Manufacturing License hereunder (i) if the Major Supply Default is caused by a Force Majeure that lasts less than **[***]** months or (ii) if at the time of the Major Supply Default the then current Minimum Sales Requirement is less than **[***]** Units.

6.3 Early Termination. If either Party ("**Breaching Party**") commits a material breach of its obligations under this Agreement (other than a Major Supply Default, which termination right shall be governed by Section 6.2 hereof), the other Party ("**Terminating Party**") may terminate this Agreement in accordance with the terms hereof. The Terminating Party shall provide written notice to the Breaching Party, which notice shall identify the material breach, the intent to so terminate and the actions or conduct that it considers would be an acceptable cure of such breach. The Breaching Party shall have a period of **[***] ([***])** days (or, in respect of any payment default, **[***] ([***])** days) after such written notice is provided to cure such breach. If such breach is not cured within such **[***] ([***])** or **[***] ([***])** day period, as applicable, the Agreement shall be terminated.

6.4 Effect of Termination or Expiration.

(a) Upon termination of this Agreement pursuant to Section 6.3, Q-Med will furnish to Bioventus a complete inventory of all work-in-progress for the Manufacture of the Licensed Product and an inventory of all finished Licensed Product. Unless otherwise agreed to between the Parties, all stock on hand as of such termination will be dealt with promptly as provided in Section 12.6 of the New US License Agreement.

(b) Upon termination of this Agreement pursuant to Section 6.3, each of Bioventus and Q-Med will immediately at its expense return to the other Party all proprietary and confidential documents, work papers and other material of the other Party and its Affiliates relating to the transactions contemplated hereby obtained from that other Party or its Affiliates pursuant to this Agreement, whether so obtained before or after the execution hereof, and all copies, extracts or other reproductions, in whole or in part thereof which may have been made by or on behalf of Bioventus or Q-Med or their respective representatives, as the case may be, and shall deliver to the other Party or destroy all notes or memorandum or other stored information of any kind containing, reflecting or derived from such documents, work papers and other material, except that Bioventus shall have the right to retain one archival copy, which may be retained by each Party's outside counsel or in-house counsel, which copy retained by Bioventus may be used in connection with its compliance with applicable Laws and Rules. The return or destruction, as applicable, of such documents, work papers and other material (and all copies, extracts or other reproductions in whole or in part thereof) pursuant to this Section 6.4(b) shall be certified in writing by an authorized officer supervising the same. Notwithstanding such return or destruction, each Party will continue to be bound by its obligations of confidentiality under Article 8 herein. Each Party shall not use or disclose to any Person any information derived from such confidential and proprietary documents, work papers and other material of the other Party and shall be responsible for preventing the disclosure of any such information as provided in Article 8.

(c) Upon termination of this Agreement, all obligations of the Parties hereunder shall terminate, except for Sections 4.5, 4.6, 6.4, 7.2 and Articles 8 and, to the extent requires to give effect to the foregoing, Articles 1 and 9; *provided*, that termination will not relieve a defaulting or breaching Party from any liability to the other Party hereto, including the obligation to pay invoiced amounts when due. Termination shall not relieve either Party from obligations that are indicated to survive termination or expiration of this Agreement. Termination is not the sole remedy under this Agreement and, whether or not termination is effected, all other remedies will remain available, except as agreed to or otherwise expressly provided for herein. For the avoidance of doubt, termination of this Agreement shall not affect the obligation of Bioventus or its affiliates from paying royalties owed pursuant to the New US License Agreement.

6.5 Q-Med Sole Suppliers.

(a) During the period beginning on the Amendment Effective Date and ending on the date **[***]**, any interruption in Q-Med supplying Licensed Products to Bioventus under this Agreement shall not be considered a failure to supply for purposes of determining whether a Major Supply Default has occurred, or otherwise be a breach of this Agreement, to the extent that such interruption is due to problems that are the fault of **[***]**. For the avoidance of doubt, the above provision in this Section 6.5 shall automatically become null and void without any action by the Parties as soon as a second HA supplier is approved by the FDA.

(b) During the period beginning on the Initial Regulatory Approval Date, any interruption in Q-Med supplying Licensed Products to Bioventus under this Agreement shall not be considered a failure to supply for purposes of determining whether a Major Supply Default has occurred, or otherwise be a breach of this Agreement, to the extent that such interruption is due to problems that are the fault of **[***]** of any component or any raw material necessary for the production of the Licensed Products, where FDA approval of a replacement for **[***]** of such component or raw material is required and (i) Q-Med requested Bioventus to seek FDA approval of **[***]** at least **[***]** (**[***]**) months prior to the interruption; and (ii) Bioventus failed (y) to file for FDA approval of **[***]** within **[***]** (**[***]**) days after receipt of Q-Med's written notice, or (z) to use Commercially Reasonable Efforts to seek FDA approval of **[***]** after filing. For the avoidance of doubt, this Section 6.5(b) shall not apply to the initial FDA approval of a **[***]** as that situation shall be governed by Section 6.5(a).

ARTICLE 7. INSPECTION OF MANUFACTURING FACILITIES

7.1 Inspection Rights. Upon **[***]** weeks' prior written notice to Q-Med, Q-Med will permit Bioventus and Affiliates to conduct an inspection and audit of Q-Med's and/or its Affiliates' manufacturing facilities and operations to the extent used in the manufacturing, receiving, sampling, analyzing, storing, handling, packaging and shipping of Licensed Product for Bioventus in the Territory, including the receipt, storage and issuance of raw materials, labeling and packaging components and ingredients thereof (including all documentation related thereto) for the purpose of quality control and to assure compliance with GMP, applicable Laws and Rules and the terms of this Agreement. Bioventus may not conduct an audit hereunder or pursuant to the New US License Agreement more frequently than once during any twelve (12) month period; *provided*, that additional audit(s) may be conducted in the event there is a quality or compliance issue concerning a Licensed Product for Bioventus or its manufacture that Bioventus deems in good faith to be material hereunder. Bioventus may conduct such audit using its own personnel, the personnel of a Bioventus Affiliate, or a Third Party auditor/inspector and shall conduct such audit, or cause such audit to be conducted, during regular business hours and in such a manner so as to minimize interference with Q-Med's operations. Q-Med will provide Bioventus with access to relevant personnel during the audit and Q-Med will provide a written response to any written audit observations provided by Bioventus within **[***]** (**[***]**) days of Q-Med's receipt thereof. In the event that the facilities used by Q-Med to produce Licensed Product are the subject of an audit or inspection by FDA or a similar Regulatory Authority relating to the manufacture of a Licensed Product for Bioventus, Q-Med shall notify Bioventus, and, if possible under the circumstances, Bioventus or its Affiliates or representatives shall have the right to be present during such audit or inspection. The foregoing notwithstanding, Bioventus' or its Affiliates' regulatory affairs staff may with prior written notice to Q-Med make non-audit visits to Q-Med's facilities for the purpose of assisting in preparation for FDA or other Regulatory Authority visits. Bioventus acknowledges that any non-public and proprietary information provided to Bioventus during the course of such audit (regardless of whether it is marked as confidential) shall be deemed Confidential Information as defined in Section 11 of the New US License Agreement for as long as it does not fall under the exceptions in Section 11.3 of the New US License Agreement.

7.2 **Records**. Q-Med shall keep complete, accurate and detailed original records pertaining to the Manufacture, including quality control of each lot, of Licensed Product produced and manufactured by Q-Med or its Affiliates hereunder. Records shall be maintained for the longer of (i) any period required under applicable law, and (ii) a period of two (2) years after expiry of the expiration dating of such lot. For validation batches, Q-Med shall keep the documents throughout the commercial life of the relevant Licensed Product. Q-Med shall make available to Bioventus such records (including making copies thereof) without unreasonable delay to the extent reasonably requested and required by Bioventus to comply with its regulatory and other legal requirements.

7.3 **Regulatory and Quality Cooperation**.

(a) Q-Med shall promptly, and in any event, within **[***]** (**[***]**) Business Days of becoming aware, notify Bioventus of any quality, materials or manufacturing issues that arise that are likely to affect the Commercialization or marketability of the Licensed Product. Without limiting the foregoing and in addition any rights and obligations set forth in the Quality Agreement, Q-Med will notify Bioventus promptly if (i) Q-Med (or its authorized agents) is served with notice of violation of any law, regulation, permit or license which relates to the materials, quality or manufacturing of the Licensed Product; (ii) proceedings are commenced which could lead to revocation of permits of licenses which relate to the materials, quality or manufacturing of the Licensed Product; or (iii) any safety issues or regulatory actions with respect to the safety of the Licensed Products have been initiated by Q-Med or a Regulatory Authority, including but not limited to adverse events, corrective actions, recalls, clinical holds, restrictions on distribution, dosage modification or formulation changes for safety reasons. In addition, Q-Med will timely share any findings with Bioventus resulting from any audits or investigations conducted by or on behalf of Q-Med, its Affiliates or Regulatory Authorities that are likely to affect the Commercialization or marketability of the Licensed Product, or that otherwise affect the safety and quality of the Licensed Product. In addition to the foregoing, the Parties shall comply with the notification requirements relating to the Licensed Product as set forth in the Quality Agreement.

(b) Bioventus shall promptly, and in any event within **[***]** (**[***]**) Business Days, notify Q-Med of any instance where Bioventus has actual knowledge that Licensed Product (i) was not handled, stored, used and otherwise managed in accordance with the Labeling (including uses indicated in the Labeling approved by the applicable Regulatory Authority) or clinical protocols, as applicable; (ii) was used after expiration of the Licensed Product's labeled shelf life; or (iii) has been modified or combined in any way with any other products in a manner not permitted or recommended by the Labeling for such Licensed Product.

ARTICLE 8. CONFIDENTIALITY

The terms and provisions of Article 11 of the New US License Agreement are incorporated herein by reference and each Party agrees to be bound by such terms and provisions as if expressly stated herein. All non-public and proprietary data and information disclosed pursuant to this Agreement, including all batch records, Certificates of Analysis, information disclosed pursuant to Section 7.3 hereof, and other information relating to the manufacture of the Licensed Product (regardless of whether it is marked as confidential), shall be deemed "Confidential Information" as defined in Section 11 of the New US License Agreement and subject to the confidentiality provisions thereof for as long as it does not fall under the exceptions in Section 11.3 of the New US License Agreement. In no event shall Bioventus have the right to use or disclose any Q-Med Manufacturing Technology except to the extent expressly permitted under Section 11.1 of the New US License Agreement or as permitted in the event of a Major Supply Default.

ARTICLE 9. MISCELLANEOUS

9.1 **Limitation of Liability**. IN NO EVENT SHALL EITHER PARTY OR THEIR AFFILIATES BE LIABLE FOR SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT OR ANY OTHER LEGAL THEORY, and excluding any claims of Third Parties for such damages that are subject to an indemnification obligation under Section 4.6; *provided*, nothing in this Section 9.1 is intended to limit Bioventus' payment obligations under Article 3. Notwithstanding anything to contrary herein or in the New US License Agreement, neither Party shall have any liability under this Agreement for an indemnification claim or other matter to the extent that such claim or other matter was satisfied under the New US License Agreement.

9.2 **Force Majeure**. Without limiting Q-Med's obligations under Section 2.2(b), Section 2.5 and Section 6.2 hereof, Q-Med shall not be liable for loss, damage, detention, or delay, nor be deemed to be in default, from causes beyond its reasonable control or from epidemics, floods, typhoons, or any other weather condition that shall be unusually severe, earthquakes, explosions, fires, wars (declared or not), war-like situations, blockades, embargoes, revolutions, riots, insurrections, any extended interruption of public transportation, civil commotion, strikes, lockouts, acts of God or nature, changes in law or governmental regulations, or expropriation or other similar governmental action, inability to obtain necessary materials or manufacturing facilities from usual sources or from defects or delays in the performance of its suppliers or subcontractors due to any of the foregoing enumerated causes (each a "**Force Majeure**"). In the event of delay due to any such cause, the date of delivery shall be adjusted as may be reasonably necessary, but in no event more than **[***]** (**[***]**) days. In addition and without limiting the other rights, remedies and obligations set forth this Agreement, Bioventus may cancel any order, in whole or in part, which cannot be completed due to any of the foregoing causes within **[***]** (**[***]**) days after the delivery date specified in the order.

9.3 **Choice of Law**. This Agreement shall be construed, governed, interpreted and applied in accordance with the laws of the State of New York, without regard to conflict of laws principles, except that questions affecting the construction and effect of any patent shall be determined by the law of the country in which the patent was granted.

9.4 **Arbitration**. Any dispute arising out of or in connection with, or relating to, this Agreement, or the breach, termination, or invalidity hereof, including claims of fraud in the inducement, shall be resolved as follows. In the event of a dispute between the Parties, either Party may initiate the dispute resolution procedures of this Section 9.4 by providing written notice (the "**Notice of Claim**") to the other Party identifying the dispute and stating the desire to resolve the dispute. After receiving the Notice of Claim, respondent will respond in writing within **[***]** (**[***]**) calendar days by stating its position and setting forth a proposed resolution of the dispute. If claimant and respondent are not able to resolve the dispute within **[***]** (**[***]**) calendar days after the date of such response, the matter in dispute shall be settled by arbitration administered by the American Arbitration Association (the "**AAA**") under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The Parties hereby irrevocably and unconditionally submit to the jurisdiction of the AAA for the purposes of such proceeding, and any counterclaims that relate in any respect to this Agreement thereafter asserted by a Party to such proceedings. The arbitral tribunal shall be comprised of three arbitrators with relevant expertise in the subject matter of the dispute. The arbitrators shall have the full authority, consistent with New York law, to consider granting non-monetary relief, including, but not limited to, rescission, termination, declaratory judgment, or any form of equitable relief recognized under New York law. A Party may pursue both non-monetary and monetary relief without regard to election of remedies, but may not be granted inconsistent or duplicative remedies. The place of arbitration shall be **[***]**. The language to be used in the arbitral proceedings shall be English. The Parties agree that the losing Party shall bear the cost of the arbitration filing and hearing fees, the cost of the arbitrators and the AAA administrative expenses and the attorney's fees and reasonable associated costs and expenses of each Party. The Parties agree to reasonable document discovery provided the requesting Party makes a showing of relevance and need to the tribunal.

9.5 **Assignment**. Neither this Agreement nor any of the rights and obligations arising hereunder may be assigned or transferred by either Party without the prior written consent of the other. Such consent will not be unreasonably withheld or delayed. Notwithstanding the foregoing, (a) either Party may assign this Agreement without the consent of the other Party to any Affiliate of such Party; provided, that such Affiliate assumes such assignment in writing to the other Party and the assigning Party shall remain joint and severally liable with such Affiliate for all of its obligations under this Agreement; and (b) Bioventus may assign or transfer this Agreement without the consent of Q-Med to any entity that acquires substantially all of the assets of the business to which this Agreement relates, or in the event of a change of control of Bioventus.

9.6 **Insolvency**. To the extent permitted under applicable law: (a) the validity of this Agreement shall not be affected by any proceeding under a law relating to insolvency or adjustment of debt; (b) this Agreement shall not be subject to termination on the basis that any Party becomes a party to any insolvency proceeding or one that contemplates the adjustment of debt; and (c) if Q-Med becomes a debtor in a proceeding under a law relating to insolvency or adjustment of debt, Bioventus may retain its rights with respect to the Q-Med IP under this Agreement for the duration of the Term and may offset against any royalty or other payment obligations the amount of any damages caused by nonperformance of any of Q-Med's obligations under this Agreement

9.7 **Notices**. Any notice to be given by one Party to the other shall be in writing and shall be deemed given when delivered personally, mailed by certified or registered mail, postage prepaid or sent by reputable international courier (such mailed notice to be effective on the date which is **[***]** business days after the date of mailing), or sent by facsimile (such facsimile notice to be effective upon receipt of confirmation (a) on the date so confirmed if prior to 5 p.m. local time on a local Business Day, or (b) if not so confirmed prior to 5 p.m. local time on a local Business Day, the following Business Day), and addressed as follows (or to such other address as a Party may designate as to itself by written notice to the other Party):

If to Q-Med:

Q-Med AB
Seminariegatan 21
752 28 Uppsala, Sweden
Attention:
Telephone No.:
Facsimile No.:

If to Guarantor:

Nestlé Skin Health S.A.
Avenue Gratta-Paille 2
Lausanne, Vaud
Switzerland
Attention:
Telephone:
Facsimile:

If to Bioventus:

Bioventus LLC
4721 Emperor Blvd. Suite 100
Durham, NC 27703
Attn.

With a copy to
Bioventus LLC
4721 Emperor Blvd. Suite 100
Durham, NC 27703
Attn.

9.8 Amendment. This Agreement may be modified or amended only by written agreement of the Parties hereto signed by authorized representatives of the Parties hereto and specifically referencing this Agreement.

9.9 Entire Agreement.

(a) This Agreement, together with the New US License Agreement, the Quality Agreement and the New Nasha Amended License Agreement, each of their appendices, exhibits, schedules and certificates, and all documents and certificates delivered or contemplated in connection herewith and therewith constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior agreements or understandings of the Parties relating thereto.

(b) Upon the Amendment Effective Date, the Current US Supply Agreement shall be terminated and replaced in its entirety with this Agreement.

9.10 Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by, invalid or unenforceable under applicable law, such provision will be ineffective only to the extent of such prohibition, invalidity or enforceability, without invalidating the remainder of this Agreement and the Parties shall in good faith seek to agree on an alternative provision reflecting the intent of the Parties that is enforceable.

9.11 Expenses. Except as set forth in this Agreement, Q-Med and Bioventus will each bear their own expenses and the expenses of their respective Affiliates incurred in connection with the negotiation and preparation of this Agreement.

9.12 Further Actions. Q-Med and Bioventus each hereby agrees to use all reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or proper and execute and deliver such documents and other papers as may be required to make effective the transactions contemplated by this Agreement.

9.13 Waiver. Any term or provision of this Agreement may be waived at any time by the Party entitled to the benefit thereof only by a written instrument executed by such Party. No delay on the part of Q-Med or Bioventus in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any waiver on the part of either Q-Med or Bioventus of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder nor will any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

9.14 Relationship of the Parties. The Parties shall each be an independent contractor in the performance of their respective obligations hereunder, and, the provisions hereof are not intended to create any partnership, joint venture, agency or employment relationship between the Parties. Each Party shall be responsible for and shall comply with all state, local, federal and foreign laws pertaining to employment taxes, income withholding and other employment related statutes applicable to that Party. Except as is expressly set forth herein, neither Party will have any right by virtue of this Agreement to bind the other Party in any manner whatsoever.

9.15 **No Third Party Rights**. No provision of this Agreement will be deemed or construed in any way to result in the creation of any rights or obligations in any Person not a Party to this Agreement.

9.16 **Construction**. This Agreement will be deemed to have been drafted by both Q-Med and Bioventus and will not be construed against either Party as the draftsperson hereof.

9.17 **Enforcement**. The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms. It is accordingly agreed that the Parties shall be entitled to specific performance of the terms of this Agreement, this being in addition to any other remedy to which they are entitled at law or in equity.

9.18 **Counterparts**. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same agreement.

9.19 **Headings.** The heading references herein are for convenience purposes only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

9.20 **Appendices**, **Exhibits**, **Schedules and Certificates**. Each appendix, exhibit, schedule and certificate attached hereto is incorporated herein by reference and made a part of this Agreement.

[Signatures Follow]

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

Q- MED AB

By: /s/ Christian Matton
Name: Christian Matton
Title: Chairman of the Board

NESTLÉ SKIN HEALTH S.A. in its capacity as Guarantor

By: /s/ Stuart Raetzman
Name: Stuart Raetzman
Title: Member of the Board

BIOVENTUS LLC

By: /s/ Anthony P. Bihl III
Name: Anthony P. Bihl III
Title: CEO

SCHEDULE A

QUALITY AGREEMENT

SCHEDULE B

SPECIFICATIONS

1. Licensed Product specification

Durolane®, Art. No: TBD

[***]

[***] Certain information in this document has been excluded pursuant to Regulation S-K, Item 601(b)(10). Such excluded information is not material and would likely cause competitive harm to the registrant if publicly disclosed.

Exhibit 10.7

Execution Copy

EXCLUSIVE LICENSE, SUPPLY AND DISTRIBUTION AGREEMENT

by and between

IBSA INSTITUT BIOCHIMIQUE SA (SWITZERLAND)

and

BIOVENTUS LLC (UNITED STATES OF AMERICA)

HYALURONIC ACID INTRA-ARTICULAR INJECTION

GEL-SYN-3™

Table of Contents

EXCLUSIVE LICENSE, SUPPLY AND DISTRIBUTION AGREEMENT

between

IBSA INSTITUT BIOCHIMIQUE SA (SWITZERLAND)

a Swiss organization incorporated in accordance with the laws of Switzerland and having its registered office at

Via al Ponte 13, 6900 Massagno – Switzerland

e mail:

(hereinafter, **"IBSA")**

and

BIOVENTUS LLC (UNITED STATES OF AMERICA)

a limited liability company incorporated and existing under the laws of State of Delaware, United States of America and having its registered office at

4721 Emperor Blvd., Suite 100, Durham, NC 27703, USA

e mail:

(hereinafter, **"BIOVENTUS")**

IBSA and BIOVENTUS each are referred to herein as a "**Party**," and collectively, as the "**Parties**."

WHEREAS

IBSA is a company engaged in the production and marketing of pharmaceutical products/medical devices and owns patents, know-how and trademarks concerning said pharmaceutical products;

IBSA owns all rights for production and distribution of the PRODUCT, as defined below, and is free to grant a license thereunder;

BIOVENTUS after thorough evaluation of the existing documentation made available by IBSA wishes to obtain the license and the right to promote, market, distribute and sell the PRODUCT in the TERRITORY all on the terms and subject to the conditions of this Agreement; and

IBSA and BIOVENTUS hereby agree that this Preamble will be an integral part of this Agreement, having the same force and effect as the other provisions contained in this Agreement, and that accordingly the relevant terms used in this Preamble shall have the meaning defined under Art. I ("**DEFINITIONS**") of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

Art. I. DEFINITIONS

For all purposes of this Agreement the terms defined in this Article I shall have the following meaning.

I.1 **"AFFILIATES"** shall mean, with respect to any person or entity, another person or entity that controls, is controlled by or is under common control with the applicable person or entity.

I.2 **"AUTHORIZED DISTRIBUTOR"** means a BIOVENTUS AFFILIATE or a third party that either (i) is directly or indirectly controlled by BIOVENTUS or (ii) is approved by IBSA to act as BIOVENTUS's distributor of the PRODUCT, such approval not to be unreasonably withheld, conditioned or delayed.

I.3 **"CONFIDENTIAL INFORMATION"** shall mean any and all proprietary regulatory, technical, manufacturing, business, financial, operational, administrative, marketing or economic information, data, documents, designs, patents, materials, product samples and KNOW-HOW (as defined below), as well as any and all written information and documents of whatsoever kind marked, in any language, as confidential or proprietary or secret, in each case pertaining to IBSA or to BIOVENTUS, as the case may be, and disclosed by either Party to the other Party, whether orally or in writing or in whatsoever other form, in connection with the present or potential cooperation between the Parties contemplated by this Agreement.

I.4 **"EFFECTIVE DATE"** shall mean the date of the last signature of this Agreement.

I.5 "**FIRST MARKETING YEAR**" shall mean the first complete twelve-month period (from January to December) subsequent to the LAUNCH DATE of the PRODUCT in the TERRITORY by BIOVENTUS (for the sake of clarity, the PRODUCT be launched in August 2016, the FIRST MARKETING YEAR will be January 1 – December 31, 2017 and the MINIMUM PURCHASE REQUIREMENT shall become applicable starting from January 1, 2017). "SECOND MARKETING YEAR" shall mean the twelve-month period commencing from the end of the FIRST MARKETING YEAR and so on.

I.6 **"HEALTH AUTHORITIES"** shall mean the competent National Health Authorities in the TERRITORY.

I.7 **"KNOW-HOW"** shall mean all secret scientific and technical information, trade secrets and data owned by IBSA or any of its AFFILIATES relating to the PRODUCT, including all confidential technico-analytical, pharmacological, preclinical and clinical data, literature, bulletins and other pertinent information related thereto, and which may be useful to BIOVENTUS in marketing and selling the PRODUCT and/or in maintaining and in filing any necessary governmental authorizations to sell the PRODUCT.

I.8 **"LAUNCH DATE"** shall mean the date of the first commercial sale in an arm's length transaction of the PRODUCT in the TERRITORY.

I.9 **"FAILURE TO SUPPLY"** means any consecutive **[***]** months period after any required delivery date in accordance with Section XII.2 during which IBSA has not timely delivered to BIOVENTUS at least **[***]** of the quantities of PRODUCT ordered in compliance with Article XII hereof, provided that non-delivery by reason of FORCE MAJEURE shall not be a FAILURE TO SUPPLY.

I.10 **"FDA APPROVAL"** shall mean the FDA approval for the premarket approval application (PMA) **[***]** or **[***]** PRODUCT granted to Ibsa Farmaceutici Italia srl and licensed to IBSA Institut Biochimique SA.

I.11 "**GAAP**" shall mean U.S. generally accepted accounting principles as in effect at the relevant time or for the relevant period, applied on a consistent basis during the period involved.

I.12 **"MINIMUM PURCHASE REQUIREMENT"** shall have the meaning set forth in **Art.** XVI.l below.

I.13 **"NET SELLING PRICE"** shall mean the gross amount invoiced by BIOVENTUS (or by its AUTHORIZED DISTRIBUTOR, in cases where the AUTHORIZED DISTRIBUTOR is selling the PRODUCT) for sales of PRODUCT under this Agreement, minus any and all deductions actually taken by BIOVENTUS or the AUTHORIZED DISTRIBUTOR with respect to such sales in accordance with GAAP, including, but not limited to, deductions for:

(i) trade, quantity prompt pay and cash discounts, coupons, rebates and other price reductions for the PRODUCT;

(ii) credits and allowances for rejection or return of PRODUCT previously sold, bad debts, price protection and shelf stock adjustments; reprocurement charges and other similar charges and administrative, data and inventory management fees; and

(iii) rebates and chargebacks, including, but not limited to, any payments required by law to be made under Medicaid, Medicare or other government medical assistance programs.

It is understood that the deductions may not exceed **[***]** percent (**[***]**%) of the gross amount.

Notwithstanding anything to the contrary, the transfer of a PRODUCT shall not be considered a sale of a PRODUCT under this Agreement to the extent such transfer (i) is in connection with the research, development or testing of a PRODUCT or (ii) is for sample purposes.

I.14 **"PRODUCT"** shall mean the device described in Annex A to this Agreement.

I.15 **"PRODUCT COMPETITOR"** means any company that markets a hyaluronic acid product (other than the PRODUCT) in the TERRITORY for the indications set forth in the PMA for the PRODUCT.

I.16 **"REGISTRATION FILE"** shall mean all the information, including regulatory, technical and clinical data, concerning the PRODUCT (including, but not limited to, all such information on which the FDA APPROVAL is based).

I.17 **"CHANGE OF SHAREHOLDING CONTROL"** shall mean the purchase or other acquisition by a third party after the EFFECTIVE DATE of more than 50% of the voting securities of the other Party; provided however, the sale of some or all of the voting securities of a Party through one or more public offerings of registered securities shall not constitute a CHANGE OF SHAREHOLDING CONTROL, so long as no single purchaser of the voting securities acquires more than 50% of the voting securities of the other Party in such public offerings.

I.18 "**TERRITORY**" shall mean the [***].

I.19 "**TRADEMARKS**" shall mean the trademark indicated in Annex B to this Agreement.

Art. II. GRANT

II.1 IBSA hereby:

(i) grants to BIOVENTUS and its AFFILIATES, and BIOVENTUS hereby accepts from IBSA, upon and subject to all terms and conditions of this Agreement, the exclusive (even as to IBSA and its AFFILIATES) right to import, promote, market, distribute, offer for sale and sell the PRODUCT in the TERRITORY; and

(ii) assigns to BIOVENTUS, and BIOVENTUS accepts from IBSA, all right, title and interest in and to the TRADEMARK (including any goodwill related thereto).

Concurrently with the execution of this Agreement, the Parties are executing a Trademark Assignment deed in the form required by BIOVENTUS to register the assignment at the US Patent and Trademark Office.

II.2 IBSA hereby appoints BIOVENTUS, and BIOVENTUS hereby accepts appointment as IBSA's exclusive distributor of the PRODUCT in the TERRITORY and IBSA agrees not to market, sell or distribute the PRODUCT in the TERRITORY to or for the benefit of any person or entity other than BIOVENTUS, its AFFILIATES or AUTHORIZED DISTRIBUTORS. IBSA will use its best efforts to prevent any third parties from selling PRODUCT in the TERRITORY, including in cases where such third parties import the PRODUCT from outside the TERRITORY.

II.3 Except in the event of a FAILURE TO SUPPLY (as defined in Article XVI.3 below), BIOVENTUS agrees to purchase all of its requirements for the promotion and sale of the PRODUCT in the TERRITORY from IBSA on an exclusive basis for the entire duration of this Agreement. Except as set forth in Article XXI.3, BIOVENTUS shall not grant to third parties any of the rights under Paragraph II.1 above, other than to an AFFILIATE or any AUTHORIZED DISTRIBUTOR.

Art. III. DISTRIBUTION LICENSE FEE

III.1 As a consideration for the exclusive rights granted under Paragraph II.1 above, BIOVENTUS shall pay to IBSA a fee amounting to US$ **[***]** (in words, U.S. Dollars **[***]**) payable upon the EFFECTIVE DATE.

III.2 It is understood that the above-mentioned amounts are net from any applicable transfer tax in the TERRITORY.

Art.IV. OWNERSHIP OF THE REGISTRATION FILE

IV.1 The REGISTRATION FILE shall always remain property of IBSA or of any third party designated by IBSA (provided that such third party agrees to be bound by the provisions of this Agreement to the same extent as IBSA is bound). IBSA will provide BIOVENTUS with prompt notice of any changes made to the REGISTRATION FILE during the term of this Agreement. It is understood that any person or entity appointed by IBSA to participate in the manufacturing process or in the analytical control must be included in the REGISTRATION FILE and authorized by the HEALTH AUTHORITIES.

Art. V. DISCLOSURE OF SCIENTIFIC AND TECHNICAL INFORMATION – CONFIDENTIALITY

V.1 In relation to the Confidential Information disclosed by one Party to the other, each Party agrees:

A. not to publish or provide or make available any of the other Party's Confidential Information in any form to any third party (except as provided in Article V.2 below);

B. not to use or reproduce any of the other Party's Confidential Information except for use reasonably necessary for the performance of this Agreement.

V.2 Each Party may provide or make available the Confidential Information disclosed by the other:

A. to those of its employees, agents, contractors (including, in the case of BIOVENTUS, any AUTHORIZED DISTRIBUTORS) or representatives who have a need to know consistent with the receiving Party's authorized use of that Confidential Information;

B. to its AFFILIATES, in order to perform this Agreement, in which event the recipients of the Confidential Information shall be bound by obligations of confidentiality no less onerous than those contained in this clause; and

C. to any existing or potential investors, financing sources or acquirers and their respective advisors, in each case who are subject to an obligation of confidentiality.

V.3 The obligations of confidentiality and non-use set forth under Paragraph V.l above shall not apply to any part of the Confidential Information which:

A. is in or comes into the public domain in any way without breach of this Agreement by the receiving Party;

B. the receiving Party can show it was in its possession or known to it by being in its use or being recorded in its files or computers or other recording media prior to receipt from the disclosing Party and was not previously acquired by the receiving Party from the disclosing Party under an obligation of confidentiality;

C. is independently developed by the receiving Party, without use of the disclosing Party's Confidential Information;

D. is provided to the receiving Party by a third party who, to the receiving Party's knowledge, is not subject to any confidentiality obligation to the disclosing Party; or

E. is disclosed by the receiving Party (i) with the prior written consent of the disclosing Party or (ii) without such consent, after a period of 10 (ten) years from the date of termination of this Agreement.

V.4 Notwithstanding the foregoing, the receiving Party shall be entitled to make any disclosure required by law or by any governmental authority of the other Party's Confidential Information provided that it gives the other Party not less than **[***]** working days' notice of such disclosure.

V.5 Except as otherwise required by law, the Parties agree not to disclose the terms of this Agreement to third parties, other than their respective AFFILIATES, representatives and agents (and/or any existing or potential investors, financing sources or acquirers and their respective advisors, in each case who are subject to an obligation of confidentiality). Neither shall make any announcement in relation to or otherwise advertise its contents without the prior written consent of the other Party)'. Any press releases by a Party are subject to the review and approval of the other Party, which shall not be unreasonably withheld, conditioned or delayed.

Art. VI. FDA APPROVAL

VI.1 The FDA APPROVAL has been obtained by IBSA and has the following number: **[***]**.

VI.2 The FDA APPROVAL shall always remain the property of IBSA or of any third party designated by IBSA.

VI.3 For the entire duration of this Agreement IBSA shall use its best efforts to maintain the FDA approval valid and effective at its own cost and in accordance with all applicable regulations in the TERRITORY.

BIOVENTUS undertakes to reasonably assist IBSA (to the extent BIOVENTUS's assistance is necessary) at no cost in all regulatory activities related to the maintenance of the FDA APPROVAL in the TERRITORY; provided, however, that BIOVENTUS shall not be required to incur any out-of-pocket expenses in providing such assistance unless IBSA agrees to reimburse BIOVENTUS for such expenses.

Art. VII. MARKETING OF THE PRODUCT

VII.1 BIOVENTUS undertakes to use commercially reasonable efforts to launch the PRODUCT in the United States within **[***]** months from EFFECTIVE DATE.

VII.2 In marketing the PRODUCT, BIOVENTUS shall exercise the same diligence, which BIOVENTUS employs in marketing its own products of similar market potential, taking into account efficacy, safety, approved labeling, the competitiveness of alternative products in the marketplace, the patent and other proprietary position of the product, profitability, and other relevant factors commonly considered in similar circumstances.

VII.3 The PRODUCT shall be promoted in accordance with the therapeutic indications set forth in the FDA APPROVAL, as well as in compliance with any applicable law and regulation in force in the TERRITORY.

VII.4 Except for the PRODUCT, BIOVENTUS agrees not to actively promote in the TERRITORY, either directly or indirectly, any intra-articular hyaluronan injection classified as **[***]** according to WHO/ATC classification and having the same marketing positioning as the PRODUCT, without IBSA's prior written consent.

VII.5 The foregoing restrictions set forth in Paragraph VII.4 shall not apply to products already marketed in the TERRITORY by BIOVENTUS at EFFECTIVE DATE or to BIOVENTUS' promotion and sale in the TERRITORY of a single injection intra-articular hyaluronan injection for osteoarthritis during the term of this Agreement.

VII.6 IBSA will not (and will ensure that its AFFILIATES do not) actively promote in the TERRITORY (or license or otherwise permit any third party to promote in the TERRITORY), either directly or indirectly, any intra-articular hyaluronan injection classified as **[***]** according to WHO/ATC classification.

VII.7 Any promotional and marketing costs and expenses incurred by BIOVENTUS with respect to the PRODUCT in the TERRITORY shall be borne by BIOVENTUS.

VII.8 BIOVENTUS shall comply with all applicable legal and regulatory requirements with respect to promotional materials, advertising and any other material relating to the PRODUCT. Copies of all promotional materials, advertising and any other material relating to the PRODUCT, shall be submitted to IBSA.

VII.9 At IBSA's request BIOVENTUS undertakes to provide IBSA with a sales report containing such information relating to sales of the PRODUCT in the TERRITORY as necessary to calculate the transfer price to be paid to IBSA for the PRODUCT pursuant to Annex D.

Art. VIII. INTELLECTUAL PROPERTY RIGHTS

VIII.1 BIOVENTUS undertakes not to have registered and/or use in and outside the TERRITORY any marks or signs that are confusingly similar in respect of sound, appearance or meaning to the TRADEMARKS.

VIII.2 BIOVENTUS shall at its own costs and expense maintain the TRADEMARKS in force in the United States.

VIII.3 BIOVENTUS acknowledges that all the KNOW-HOW and/or documentation pertaining to the PRODUCT, as well as the relevant rights of exploitation thereof, are exclusive property of IBSA.

Art. IX. QUALITY AND QUALITY ASSURANCE

IX.1 IBSA shall supply the PRODUCT containing the substance in accordance with GMP manufacturing standards and within the technical specifications that is part of the REGISTRATION FILE. Any change by IBSA in a supplier of critical element of the PRODUCT is subject to BIOVENTUS' prior review and approval, which shall not be unreasonably withheld, conditioned or delayed.

A Quality Agreement (the **"Quality Agreement")** will be separately signed by the Parties. The Parties will use good faith efforts to negotiate and execute the Quality Agreement within **[***]** days after the EFFECTIVE DATE.

IX.2 BIOVENTUS shall promptly inspect any quantity of PRODUCT received from IBSA at BIOVENTUS's distribution center in the United States, in order to identify any breakage or shortage of material that is apparent from a visual inspection of the outer packaging of the shipment **("OBVIOUS DEFECTS")** and shall promptly inform IBSA.

In the event of any justified claim for defective, or missing PRODUCT, and upon condition that such a claim has been reported to IBSA (A) with respect to OBVIOUS DEFECTS, within **[***]** working days from the date of arrival at BIOVENTUS's distribution center in the United States or (B) with respect to any other defects, promptly after discovery by BIOVENTUS; in each case, together with reasonable evidence of the claim, IBSA shall, free of charge, make the maximum effort to replace such defective or missing PRODUCT within the earliest possible time. For the purposes hereof, "defective" PRODUCTS include any PRODUCT that does not conform to the requirements in Article IX.3 below.

IX.3 IBSA shall ensure that all PRODUCT supplied hereunder, prior to delivery to BIOVENTUS, has been manufactured, packaged, tested, stored and handled: (i) at facilities which are approved by the FDA and any other relevant HEALTH AUTHORITY and (ii) in a manner consistent with industry standards and in accordance with applicable laws, rules and regulations in the TERRITORY, including but not limited to the FDA's then-current Good Manufacturing Practices applicable to the manufacture of medical devices and pharmaceutical products for human use in the United States, as provided in the FDA's guidance documents ("**cGMP**") and in accordance with the specifications indicated in the REGISTRATION FILE as submitted to the HEALTH AUTHORITIES, the specifications set forth on Annex A and the provisions of the Quality Agreement. IBSA warrants that all PRODUCT when delivered to BIOVENTUS will not be adulterated or misbranded under the United States Food, Drug and Cosmetics Act and will have remaining expiry dating of at least **[***]** months from the date of receipt of the PRODUCT at BIOVENTUS's U.S. distribution facility.

IX.4 IBSA shall also bear the costs for freight, insurance, customs, etc., incurred for PRODUCT, which must be replaced to BIOVENTUS and for those batches of PRODUCT to be returned to IBSA, or destroyed by BIOVENTUS, as IBSA may choose.

IX.5 The replaced PRODUCT must comply with the specifications indicated in the REGISTRATION FILE and the other requirements set forth in Article IX.3.

Art. X. PHARMACOVIGILANCE OF THE PRODUCTS

X.1 The Parties shall sign the Pharmacovigilance Agreement provided in Annex C to this Agreement.

Art. XI. INDEMNIFICATIONS

XI.1 IBSA shall indemnify, defend and hold BIOVENTUS, its AFFILIATES, and any of the foregoing's respective directors, officers, employees, agents, and other representatives (each of the foregoing, a "Bioventus Indemnitee") harmless from and against all direct damages, liabilities, expenses and/or losses (collectively, "Losses"), arising from any third party claim, demand, suit, action or proceeding (a "Third Party Claim") arising out of (a) the supply under this Agreement of any PRODUCT that does not conform to the specifications set forth in Annex A, (b) IBSA's breach of this Agreement, (c) IBSA's gross negligence or willful misconduct, (d) IBSA's failure to comply with applicable law or GMP, or (e) a claim by a Third Party that (x) IBSA's performance of any obligations under this Agreement or the manufacture, sale, import, export, or other commercialization of PRODUCT or (y) any Bioventus Indemnitee's use, sale, import, or export of any Products constitutes, in the case of (x) or (y), infringement or misappropriation of a Third Party's intellectual property rights. The foregoing indemnification obligations shall not apply to the extent a Third Party Claim or Loss is a result of (i) BIOVENTUS, or its Affiliates' failure to comply with applicable law or (ii) BIOVENTUS' gross negligence or willful misconduct.

XI.2 BIOVENTUS shall indemnify, defend and hold IBSA and its Affiliates' directors, officers, employees, agents, and other representatives (each of the foregoing, an "IBSA Indemnitee") harmless from and against all Losses arising from any Third Party Claim to the extent arising out of (a) BIOVENTUS' failure to comply with applicable law with respect to the performance of this Agreement, or (b) BIOVENTUS' gross negligence or willful misconduct (c) BIOVENTUS' improper handling, storage, distribution, sale of the PRODUCT (other than any PRODUCT that does not conform to the requirements set forth in Article IX.3), (d) BIOVENTUS' use of the KNOW-HOW disclosed by IBSA in violation of this Agreement or (e) any of BIOVENTUS's marketing materials about the PRODUCT to the extent such marketing materials are inconsistent with the label approved by the relevant HEALTH AUTHORITIES.

XI.3 IN NO EVENT SHALL ANY PARTY OR ANY OF ITS AFFILIATES BE LIABLE TO ANY OTHER PARTY OR ANY AFFILIATE THEREOF FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER BASED UPON A CLAIM OR ACTION Of CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT, OR OTHERWISE, ARISING OUT OF THIS AGREEMENT, PROVIDED THAT, NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE FOREGOING SHALL NOT BE CONSTRUED TO LIMIT THE INDEMNITY OBLIGATIONS SET FORTH IN SECTION XI.1 AND XI.2 ABOVE OR EITHER PARTY'S LIABILITY FOR PATENT INFRINGEMENT.

XI.4 The foregoing indemnification obligations shall not apply to the extent a particular Third Party Claim or Loss is a result of the circumstances described in clauses (a), (b), (c), (d) or (e) of Article XI.1. Each Party's agreement to indemnify, defend, and hold harmless under Article XI.1 or XI.2, as applicable, is conditioned upon the indemnified party (a) providing written notice to the indemnifying Party of any claim, demand or action as soon as reasonably possible, and in any event no later than within **[***]** days after the indemnified party has actual knowledge of such claim, demand or action, (b) permitting the indemnifying Party to assume control over the investigation of, preparation and defense against, and settlement or voluntary disposition of any such claim, demand or action, using legal counsel selected by the indemnifying Party and reasonably acceptable to the indemnified party, (c) assisting the indemnifying Party, as reasonably requested by the indemnifying Party and at the indemnifying Party's reasonable expense, in the investigation, preparation, defense, and settlement or voluntary disposition of any such claim, demand or action, (d) not compromising, settling, or entering into any voluntary disposition of any such claim, demand or action without the indemnifying Party's prior written consent, which consent shall not be unreasonably withheld, and (e) furnishing promptly to the indemnifying Party copies of all notices and documents (including court papers) received by any indemnified party in connection with the Claim for which indemnification is being sought; provided, however, that, if the party entitled to indemnification hereunder fails to comply with any of the foregoing conditions, the indemnifying Party will only be relieved of its indemnification obligation under this Agreement to the extent materially prejudiced by such failure, hi no event may the indemnifying Party compromise, settle, or enter into any voluntary disposition of any claim, demand or action in any manner that admits material fault or wrongdoing on the part of the indemnified party or incurs non- indemnified liability on the part of the indemnified party without the prior written consent of the indemnified party.

Art. XII. SALES FORECAST AND PURCHASE ORDERS

XII.1 BIOVENTUS agrees to place orders for the following minimum quantities of each licensed PRODUCT (minimum standard batches):

[***] prefilled syringes

XII.2 Within the month of September of each calendar year, BIOVENTUS shall inform IBSA of its estimate of purchase requirements for the following year. At the beginning of each quarter, BIOVENTUS shall provide an updated rolling forecast for the year. BIOVENTUS shall issue purchase orders at least **[***]** months before the required delivery date as usual procedure and **[***]** months before the required delivery date as far as the first order is concerned or in case of any modification needed in packaging material. All orders will have to be confirmed in writing by IBSA, within **[***]** working days from receipt.

XII.3 In the event that BIOVENTUS's orders exceed the forecast, IBSA shall not be responsible for delivering quantities in excess of **[***] (**percent), more than the applicable quarterly purchase forecast.

XII.4 Since packaging material is customized for the TERRITORY market, all costs relating to the costs of destruction of the remaining stock of packaging material, resulting from a change instigated by BIOVENTUS, are to be invoiced to BIOVENTUS.

Art. XIII. TRANSFER PRICE

XIII.1 IBSA will supply the PRODUCT to BIOVENTUS in accordance with the prices and conditions as stated in Annex D to this Agreement. IBSA will supply all PRODUCT in finished form, in final packaging.

XIII.2 Any FLOOR PRICE increases will only be possible by written agreement between the Parties.

XIII.3 The initial FLOOR PRICE is stated in Annex D to this Agreement and unless unexpected circumstances occur shall not be reviewed during the first **[***]** MARKETING YEARS. Any increase of the FLOOR PRICE, which may take place no more often than every **[***]** MARKETING YEARS, will be negotiated by the Parties in good faith and such an increase will not be more than **[***] (**percent) of the current applied FLOOR PRICE.

XIII.4 In the event that, before or after **[***]** MARKETING YEARS, the prices and conditions become uneconomical to either Party, it is agreed that the matter shall be mutually discussed in good faith in order to reach equitable acceptable conditions; provided, however, that in no event will the prices be changed unless agreed to by both Parties in writing, in each of their sole discretions.

Art. XIV. PAYMENT TERMS

XIV.1 IBSA will invoice BIOVENTUS at the applicable FLOOR PRICE (as defined on Annex D) for each PRODUCT shipment (the **"FLOOR PRICE PAYMENT")**. Payment will be by direct bank transfer to a **[***]** bank payable at **[***]** days from invoice date.

XIV.2 Within **[***]** days after the end of each calendar quarter (starting with the calendar quarter in which the LAUNCH occurs): (A) BIOVENTUS will provide IBSA with a written statement of the aggregate NET SELLING PRICE received during such calendar quarter **("AGGREGATE QUARTERLY SALES"),** and the quantity of PRODUCT to which such AGGREGATE QUARTERLY SALES relates and (B) if, based on such AGGREGATE QUARTERLY SALES, the aggregate transfer price applicable to such quantity of PRODUCT (as determined pursuant to Annex D) is greater than the aggregate FLOOR PRICE PAYMENTS made to IBSA for such quantity of PRODUCT, the BIOVENTUS will pay IBSA an amount equal to the difference between such aggregate transfer price and such aggregate FLOOR PRICE PAYMENTS.

XIV.3 BIOVENTUS shall be liable for interest on any overdue payment required to be made under this Agreement, commencing on the date such payments becomes due, at an annual rate of **[***]**. If such interest rate exceeds the maximum legal rate in the jurisdiction where a claim therefore is being asserted, the interest shall be reduced to such maximum legal rate.

Art. XV. SHIPPING TERMS

XV.1 All shipments of PRODUCT shall be provided by IBSA ex-works IBSA warehouse in **[***]**.

Art. XVI. MINIMUM PURCHASE REQUIREMENT

XVI.1 Subject to Article XVI.3, BIOVENTUS undertakes to purchase from IBSA the following annual minimum quantities of PRODUCT in the TERRITORY **("MINIMUM PURCHASE REQUIREMENT"):**

1st MARKETING YEAR: **[***]** prefilled syringes

2nd MARKETING YEAR: **[***]** prefilled syringes

3rd MARKETING YEAR: **[***]** prefilled syringes

4th MARKETING YEAR onwards: **[***]** prefilled syringes

Sample units are not included in the MINIMUM PURCHASE REQUIREMENT.

XVI.2 Should BIOVENTUS fail to meet at least **[***]** of the annual MINIMUM PURCHASE REQUIREMENT during any MARKETING YEAR during the term of this Agreement (other than on account of a FAILURE TO SUPPLY (as defined in Article XVI.3), IBSA shall have the right either to ask BIOVENTUS to pay a penalty of **[***]**% of the FLOOR PRICE for the unpurchased quantities or to terminate this Agreement upon **[***]** days prior written notice to BIOVENTUS; provided, however, that this Agreement will not terminate if BIOVENTUS, by the end of such **[***]** days period, has issued purchase orders to IBSA for a quantity of PRODUCT that, when combined with the quantities previously ordered during the applicable MARKETING YEAR, equal or exceed the applicable MINIMUM PURCHASE REQUIREMENT (and, for the avoidance of doubt, such additional purchase orders may provide for a delivery date that is in January of the following MARKETING YEAR. Therefore the purchase orders needs to be issued on or before August 30th of the concerned MARKETING YEAR). Such termination by IBSA shall be IBSA's sole and exclusive remedy with respect to any failure by BIOVENTUS to meet the annual MINIMUM PURCHASE REQUIREMENT, and BIOVENTUS shall have no liability to IBSA with respect to any such failure.

Notwithstanding the foregoing, should BIOVENTUS buy **[***]** or more of the annual MINIMUM PURCHASE REQUIREMENT, IBSA shall only have the right to ask BIOVENTUS to pay a penalty of **[***]**% of the FLOOR PRICE for the unpurchased quantities as IBSA's sole and exclusive remedy for the BIOVENTUS's failure to purchase the annual MINIMUM PURCHASE REQUIREMENT.

XVI.3 If during any part of the MARKETING YEAR, a FAILURE TO SUPPLY occurs, the MINIMUM PURCHASE REQUIREMENT set forth in Article XIV.1 for such MARKETING YEAR will be reduced by a percentage equal to the percentage of the MARKETING YEAR during which such FAILURE TO SUPPLY occurred.

Art. XVII. TERMINATION

XVII.1 The initial term of this Agreement shall commence on the EFFECTIVE DATE and shall have a duration of **[***]** years. After the initial term, the Agreement will be automatically renewed for consecutive **[***]** year periods, unless one of the Parties gives to the other Party notice of termination at least **[***]** months prior to the expiry of the initial term or any renewal term.

XVII.2 Either Party may terminate this Agreement before the end of the term in the event of an uncured breach by the other Party (i) as far as IBSA is concerned, the uncured breach of any of its obligation under Paragraphs II.l., II.2, V.l, V.5, VI.3, VII.6, IX.1, IX.2, IX.3, IX.4, IX.5 XI.1 and XI.3 and the Pharmacovigilance Agreement; as far as BIOVENTUS is concerned, the uncured breach of any of its obligation under Paragraphs II.3, III.1, V.l, V.5, VII.l, VII.2, VII.3, VII.4, VII.8, VII.9, VIII.l, IX.2, XI.2, XI.3, XIV.l, XIV.2, XXI.3 and the Pharmacovigilance Agreement; in each case, by giving written notice of termination to the other Party specifying that breach and requiring the same to be remedied. The Party in breach shall be given a **[***]** month period to fulfill its obligations hereunder and, if after such period it is still in breach of contract, the Party not in breach shall have the right to terminate this Agreement forthwith, without prejudice to the obligations or liabilities of either Party already accrued prior to such termination. If the Party in breach has cured the breach by the end of the **[***]** month period, then this Agreement will not terminate.

XVII.3 This Agreement may be terminated by a Party upon written notice to the other Party if such other Party shall become insolvent, suspend payments on any of its trade payables or announced an intention to do so, is over-indebted or be unable to pay its debts as they fall due or shall make an assignment for the benefit of creditors, become involved in receivership, bankruptcy or any proceedings leading to a provisional or definitive payment moratorium, any proceeding leading to an emergency moratorium, any proceeding for a postponement of bankruptcy pursuant to article 725a of the Swiss Code of Obligations, or enter into negotiations with the majority of its creditors seeking a composition or a maturity postponements or other insolvency or debtor relief proceedings, or any similar proceedings, or in proceedings, voluntary or forced, whereby such Party is limited in the free and unrestrained exercise of its own judgment as to the carrying out of the terms of this Agreement.

Art. XVIII. RIGHTS AND DUTIES AFTER TERMINATION

XVIII.1 Upon the effective date of expiration or termination of this Agreement for whatsoever reason, BIOVENTUS shall immediately (i) refrain from using the TRADEMARK and KNOW-HOW in the TERRITORY and elsewhere and (ii) assign back to IBSA or a company indicated by IBSA, the TRADEMARK.

XVIII.2 Upon the effective date of expiration or termination of this Agreement for whatsoever reason, IBSA shall:

(i) fulfill those orders placed by BIOVENTUS and accepted by IBSA before termination; and

(ii) at its option, purchase from BIOVENTUS at the price paid by BIOVENTUS to IBSA plus landed costs, all or any part of current inventories at BIOVENTUS costs (i.e. PRODUCT cost **[***]**% (**[***]** percent) to cover transportation and handling) provided that such inventories/stock conform to the provisions of this Agreement. Such option shall be exercised by written notice within **[***]** days from the effective date of termination. Should IBSA not exercise such option, BIOVENTUS shall be entitled to sell the PRODUCT in the TERRITORY at prices which will not perturb the market and/or the ordinary distribution of the PRODUCT by IBSA or any new distributor. Any non-saleable (e.g. damaged) inventory shall be destroyed by BIOVENTUS at its own cost.

XVIII.3 Upon the effective date of expiration or termination of this Agreement for whatsoever reason, each Party shall, within **[***]** days following the termination for whatsoever reason of this Agreement, return all CONFIDENTIAL INFORMATION to the other Party. It is understood that each Party may retain in the office of its legal advisor only one copy of the written CONFIDENTIAL INFORMATION for record purposes only.

XVIII.4 It is understood and agreed by and between the Parties hereto that neither the expiration nor termination of this Agreement for whatsoever reason will oblige IBSA and/or any of its AFFILIATES to indemnify BIOVENTUS on account of such termination.

XVIII.5 Upon expiration or termination of this Agreement, IBSA shall automatically get again the full right and entitlement to market the PRODUCT. In view of the above. BIOVENTUS shall take any desirable and necessary step, that is reasonable and permitted by the laws of the TERRITORY, in order to give back to IBSA or to any other company designated in writing by IBSA, the possibility of marketing the PRODUCT in the TERRITORY;

Art. XIX. CHANGE OF SHAREHOLDING CONTROL

Each Party shall promptly inform the other Party in writing of any CHANGE OF SHAREHOLDING CONTROL. If the CHANGE OF SHAREHOLDING CONTROL would result in a PRODUCT COMPETITOR acquiring control of BIOVENTUS, notwithstanding any other provision of this Agreement, IBSA shall have the right, in each MARKETING YEAR for the entire duration of this Agreement following receipt of such notice from BIOVENTUS, either (i) to ask BIOVENTUS to pay a penalty of **[***]**% of the unpurchased quantities of the annual MINIMUM PURCHASE REQUIREMENT or (ii) to terminate this Agreement for BIOVENTUS' failure to purchase **[***]**% (**[***]** percent) of the applicable MINIMUM PURCHASE REQUIREMENT or **[***]**% (**[***]** percent) of the actual quantities purchased in the previous MARKETING YEAR, whichever is higher.

Art. XX. JURISDICTION

XX.1 This Agreement and the legal relationship between the Parties hereto shall be governed by the laws of Switzerland, without regard to provisions on the conflicts of laws.

XX.2 In the event of any dispute arising out of or in connection with the execution or the interpretation of this Agreement, both Parties will endeavor to settle such dispute amicably between themselves.

XX.3 All disputes arising in connection with this Agreement shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution in force on the date on which the Notice of Arbitration is submitted in accordance with these Rules.

The number of arbitrators shall be three.

The seat of the arbitration shall be **[***]**

The arbitral proceedings shall be conducted in English.

Art. XXI. ART. XXI MISCELLANEOUS

XXI.1 Neither Party shall be in default hereunder by reason of its delay in the performance of, or failure to perform, any of its obligations hereunder, if such delay is caused by strikes, acts of God or public enemy, riots, incendiaries, interference by civil or military authorities, compliance with government laws, rules and regulations, inability to secure necessary governmental priorities for the materials, or any circumstances beyond its control and without its fault or negligence.

XXI.2 If any of the terms or provisions of this Agreement are in conflict with any applicable statute or rule of law, then such terms or provisions shall be deemed inoperative to the extent that they may conflict therewith, and shall be modified to conform with such statute or rule of law, in such form as will most closely reflect the commercial and mutual intent of the Parties under this Agreement.

XXI.3 This Agreement will be binding upon and endure to the benefit of the Parties, their AFFILIATES and/or subsidiaries. This Agreement may not be assigned by either Party, other than to an AFFILIATE, without the prior written consent of the other Party; provided, however, that notwithstanding the foregoing, no such consent shall be required for a Party to assign this Agreement in connection with a merger, sale of all or substantially all assets or other change of control transaction involving such Party or its line of business to which this AGREEMENT relates. The Parties hereto undertake to impose the obligations of the Agreement on all their respective legal successors and/or assignees.

XXI.4 The failure by either Party to exercise any rights granted herein or to require any performance of any term of this Agreement or the waiver by either Party of any breach of this Agreement shall not prevent a subsequent exercise or enforcement of, or be deemed a waiver of any subsequent breach of the same or any other term of this Agreement.

XXI.5 No change or modification in the conditions or clauses of this Agreement shall be valid unless written and signed by both Parties.

XXI.6 This Agreement constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior and other agreements and understandings, whether oral or written.

Art. XXII. NOTICES

XXII.1 Any paper to be served or notified to the Parties shall be sent by e mail and confirmed by registered letter properly addressed to the Party concerned at the address stated in the preamble to this Agreement, and the time limit shall be counted from the date of the e mail.

XXII.2 Either Party may change such address by **[***]** days prior written notice. The contract language is English.

[Remainder of page intentionally left blank; signature page follows]

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be executed in duplicate by their duly authorized officers as of the day and year written below.

IBSA Institut Biochimique SA

(Switzerland)

/s/ Elisabetta Racca

Name: Ms. Elisabetta Racca

Title: Legal Affairs

Date: February 9, 2016

BIOVENTUS LLC

(United States of America)

/s/ Anthony P. Bihl III

Name: Anthony P. Bihl III

Title: CEO

Date: February 9, 2016

Annex A.

SPECIFICATIONS OF THE PRODUCT

Gel-Syn 0.84% Release Specification - USA market - 2014 Approval

[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]

Annex B.

TRADEMARKS

1. **GEL-SYN**™, US Trademark Application Serial No. 86/376,022, filed on September 9, 2014, published on January 1, 2015, for classes 5 and 10
2. **GELSYN-3**™, US Trademark Application Serial No.86/888,721, filed on January 27, 2016, for classes 5 and 10

Annex C.

SDEA

Standard Operating Procedure for Exchange of Safety Information (SDEA) on PRODUCT between IBSA Institut Biochimique SA and BIOVENTUS LLC

1. PURPOSE

The purpose of this document is to describe the standard operating procedures for exchange of safety information on Gel-Syn™ (hereinafter the PRODUCT), and to ensure that incidents, adverse events, abnormal use and use errors will be collected and managed by both IBSA Institut Biochimique SA (Switzerland) (hereinafter IBSA) and BIOVENTUS LLC (United States of America) (hereinafter DISTRIBUTOR) in compliance with applicable domestic, extra-European and European laws, regulations and regulatory authority guidelines in line with their respective responsibilities. IBSA Farmaceutici Italia s.r.l., a company of IBSA Group, is identified as MANUFACTURER of the PRODUCT in the terms of the Art. I paragraph 2f of the EU Directive 93/42/EEC and subsequent amendments and according to 21CFR803 “Medical Device Reporting”, concerning medical devices.

This Safety Data Exchange Agreement (hereinafter SDEA) makes reference and is to be regarded as an integral part to the existing Commercial License Agreement between DISTRIBUTOR and MANUFACTURER. This agreement may be amended only by a written document, signed by both parties.

2. SCOPE

This SDEA shall include incidents, Adverse Events, abnormal use and use errors, irrespective of the source (e.g. spontaneous, literature, regulatory authorities), arising from the use of the PRODUCT, communicated to any employee of both Parties, including representatives. This agreement covers the PRODUCT and the TERRITORY defined in the Distribution Agreement. DISTRIBUTOR delegates activities related to collection, assessment, preparation and medical review of Adverse Events including due diligence to Clinquest, Inc. (“Clinquest”) but they remain under DISTRIBUTOR responsibility.

3. DEFINITIONS

The following terms, with the exception of terms “Adverse Event” and “Parties”, should be understood as defined in the “Guideline on a Medical Devices Vigilance system (MEDDEV 2.12-1, current edition)” and in the “Medical Device Reporting” (CFR TITLE 21- Part 803).

Abnormal Use: Act or omission of an act by the operator or user of a medical device as a result of conduct which is beyond any means of risk control by the Manufacturer.

Adverse Event: Any untoward medical occurrence in a patient during the use of a medical device.

Becomes Aware—according to 21CFR803: Manufacturer “Becomes aware” of a MDR reportable event when (1) any employee becomes aware of a reportable event that is required to be reported within 30 calendar days or that is required to be reported within 5 work days pursuant to a written request from FDA; and (2) any employee, who is a person with management or supervisory responsibilities over persons with regulatory, scientific, or technical responsibilities, or a person whose duties relate to the collection and reporting of adverse events, becomes aware that a reportable event, from any information, including any trend analysis, necessitates remedial action to prevent an unreasonable risk of substantial harm to the public health.

Caused or Contributed — according to 21CFR803: Means that a death or serious injury was or may have been attributed to a medical device, or that a medical device was or may have been a factor in a death or serious injury, including events occurring as a result of: failure – malfunction – improper or inadequate design – manufacture – labeling – user error.

Complaint: Means any written, electronic, or oral communication that alleges deficiencies related to the identity, quality, durability, reliability, safety, effectiveness, or performance of a device after it is released for distribution.

Corrective Action: Action to eliminate the cause of a potential nonconformity or other undesirable situation.

Distributor – according to 21CFR803: Any person (other than manufacturer or importer) who furthers the marketing of a device from the original place of manufacture to the person who makes final delivery or sale to the ultimate user, but who does not repackage or otherwise change the container, wrapper, or labeling of the device or device package.

Field Safety Corrective Action (FSCA) – according to MEDDEV 2.12-1 rev. 8: A Field Safety Corrective Action (FSCA) is an action taken by the Manufacturer to reduce a risk of death or serious deterioration in the state of health associated with the use of a Medical Device that is already placed on the market. Such actions, whether associated with direct or indirect harm, should be reported and should be notified via a Field Safety Notice (FSN).

Field Safety Corrective Action may include:

- return of the medical device to the supplier;
- device modification;
- device exchange;
- destruction of the device;
- retrofit by purchaser of manufacturer’s modification or design change
- advice given by manufacturer regarding the use of the device and/or the follow up of patients, users or others (e.g. where the device is no longer on the market or has been withdrawn but could still possibly be in use e.g. implants or change in analytical sensitivity or specificity for diagnostic devices).

Modifications to the device may include:

- temporary or permanent changes to the labelling or the instructions for use;
- changes to the patient’s clinical management, in order to inform the patient of the risk of death or serious deterioration in health, closely linked to the characteristics of the device.

Field Safety Notice (FSN)—according to MEDDEV 2.12-1 rev.8: A communication to customers and/or users sent out by a Manufacturer or its representative in relation to a Field Safety Corrective Action.

Harm: Physical injury or damage to the health of people, or damage to property or the environment. *Immediately,* without any delay that could not be justified.

Incident:

- Any malfunction or deterioration in the characteristics and/or performance of a device, as well as any inadequacy in the labelling or the instructions for use which, directly or indirectly, might lead to or might have led to serious injury or the death of a patient, or user or of other persons or to a serious deterioration in their state of health.
- Any technical or medical reason related to the characteristics or performances of a device (see first bullet point) that leads to a systematic recall of devices of the same type by the manufacturer.

Incident causing death: An incident (adverse event) in which a medical device has caused or contributed to the death of a patient or user. To establish the causal relationship between the use of the device and the death, various factors should be considered (potential risks in using the device, characteristics of the device itself, patient conditions etc.) and the assessment carried out by the doctor and/or other healthcare professional who assisted the event, should always be taken into consideration. Even if there is a mere suspicion, the incident (adverse event) should be repotted.

Incident causing a serious injury: A serious deterioration in state of health can include:

a) life-threatening illness,

b) permanent impairment of a body function or permanent damage to a body structure,

c) a condition necessitating medical or surgical intervention to prevent a) or b).

Examples: – clinically relevant increase in the duration of a surgical procedure,

– a condition that requires hospitalisation or significant prolongation of existing hospitalisation.

d) foetal distress, foetal death or any congenital abnormality or birth defects

Information Reasonably Known – according to 21CFR803: Information that can be obtained by contacting a user facility, distributor and/or initial reporter, any information in manufacturer’s possession, or any information that can be obtained by analysis, testing or other evaluation of the device.

Information Reasonably Suggests – according to 21CFR803: Any information such as professional, scientific, or medical facts and observations or opinions, that would reasonably suggest that a device has caused or contributed to a reportable event.

Malfunction – according to MEDDEV 2.12-1 rev.8: A “malfunction” is a failure of the device to meet its performance specifications or otherwise perform as intended. Performance specifications include all claims made in the labeling for the device. The intended performance of a device refers to the intended use for which the device is labeled or marketed.

Manufacturer – according to 21CFR803: Any person who manufacturers, prepares, propagates, compounds, assembles or processes a device by chemical, physical, biological or other procedure. The term includes any person who is the U.S. agent of a foreign manufacturer.

Manufacturer – according to MEDDEV 2.12-1 rev.8: The natural or legal person with responsibility for the design, manufacture, packaging and labeling of a device before it is placed on the market under his own name, regardless of whether these operations are carried out by that person himself or on his behalf by a third party.

Medical Device Report (MDR) – according to 21CFR803: A report submitted to the FDA by the Manufacturer in the event a device may have caused or contributed to a death, serious injury, or has malfunctioned and that the device or a similar device marketed by the manufacturer would likely to cause or contribute to a death or serious injury if the malfunction were to recur.

MDR Reportable Event – according to 21CFR803: "MDI reportable event" means an event that manufacturer become aware of that reasonably suggests that one of their marketed devices:

1) may have caused or contributed to a death or serious injury, or

2) has malfunctioned and that the device or a similar device marketed by the manufacturer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur.

MDR Non-Reportable Events – according to 21CFR803: The following is a list of events that are not reportable:

- Malfunctions are not reportable if they are not likely to result in a death, serious injury or other significant adverse event experience;
- When the manufacturer determines, on the basis of qualified medical judgment, that the information that they received is inaccurate and a death or serious injury did not occur;
- When another manufacturer made the device.

Parties: The MANUFACTURER and the DISTRIBUTOR.

Periodic Summary Reporting: an alternative reporting regime that is agreed between the Manufacturer and the National Competent Authorities for reporting similar incidents with the same device or device type in a consolidated way where the root cause is known or an FSCA has been implemented.

Remedial Action: Any action other than routine maintenance or servicing of a device, necessary to prevent recurrence of a reportable event.

Report Form Manufacturer's Incident Report – according to MEDDEV 2.12-1 rev.8: The report used to notify the adverse incidents that occurred within the Member States of the European Community and all other States within the European Economic Area (EEA) with regard to medical device(s), which carry the CE marking. Annex 3 of MEDDEV 2.12-1 rev.8.

Report Form Manufacturer's Periodic Summary Report (PSR) – according to MEDDEV 2.12-1 rev.8: The report used to notify the adverse incidents that occurred within the Member States of the European Community and all other States within the European Economic Area (EEA) with regard to medical device(s), which carry the CE marking. *Annex 6 of MEDDEV 2.12-1 rev. 8.*

Report Form Manufacturer's Trend Report – according to MEDDEV 2.12-1 rev.8: The report used to notify the adverse incidents that occurred within the Member States of the European Community and all other States within the European Economic Area (EEA) with regard to medical device(s), which carry the CE marking. *Annex 7 of MEDDEV 2.12-1 rev.8.*

Serious Public Health Threat: Any event type which results in imminent risk of death, serious deterioration in state of health, or serious illness that requires prompt remedial action.

This would include:

- events that are of significant and unexpected nature such that they become alarming as a potential public health hazard, e.g. human immunodeficiency virus (HIV) or Creutzfeldt-Jacob Disease (CJD). These concerns may be identified by either the National Competent Authority or the Manufacturer.
- the possibility of multiple deaths occurring at short intervals

Trend Reporting: A reporting type used by the Manufacturer when a significant increase in events not normally considered to be Incidents (and thus that are usually excluded from individual reporting) occurred and for which pre-defined trigger levels are used to determine the threshold for reporting.

Use Error: Act or omission of an act, that has a different result to that intended by the Manufacturer or expected by the operator of the Medical Device.

Other definitions:

"*Business Day*" means a day which is NOT a Saturday, Sunday, DISTRIBUTOR or MANUFACTURER corporate or public holiday.

"*Calendar Day*" means any day including Saturday, Sunday, DISTRIBUTOR or MANUFACTURER corporate and public holidays.

"*Day 0*" means the date the DISTRIBUTOR received or becomes aware of the information.

4. GLOBAL SAFETY DATABASE

The MANUFACTURER is responsible for the vigilance of the PRODUCT and will maintain the database for the all the safety information sent by DISTRIBUTOR. This is the reference database for the safety of the PRODUCT.

Also the DISTRIBUTOR maintains a local database to record the safety information.

Each party will make its own case reference number, which will be exchanged with the other. Therefore, MANUFACTURER shall review the safety data accumulated in the global safety database periodically, in particular when reviewing the Annual Safety Reports prepared by DISTRIBUTOR, and for answering safety-related questions.

5. ADVERSE EVENTS MANAGEMENT

5.1 Collection and Exchange of Safety Information

5.1.1 Safety Information occurred outside the TERRITORY and received by the MANUFACTURER

The MANUFACTURER forwards to DISTRIBUTOR all the incident and/or any safety information related to the PRODUCT and occurred outside the TERRITORY that need to be submitted to the TERRITORY Health Authority -the Food and Drug Administration (FDA)- according to the following time-lines (calendar days).

report TYPE	METHOD OF TRANSFER	TIMELINES
5-day report	- email	Day **[***]**
Follow-up report (to 5-day report)	- email	Day **[***]**
30-day report	- email	Day **[***]**
Follow-up report (to 30-day report)	- email	Day **[***]**

5.1.2 Safety Information occurred in the TERRITORY and received by the DISTRIBUTOR

Safety information for the PRODUCT, including incidents, reports of use error and abnormal use and Adverse Events (AEs), associated or not with a technical complaint, may be acquired through reporting from multiple sources (e.g. spontaneous reports, scientific literature, regulatory authorities). DISTRIBUTOR shall collect any initial and follow-up information in accordance with own company's internal standard operating procedures and the applicable local regulatory requirements. When the DISTRIBUTOR takes knowledge of any new safety information, DISTRIBUTOR forwards immediately and in any case not later than **[***]** hours all the information available to MANUFACTURER, using xml file and CIOMS-I Form,:

Report TYPE	METHOD OF TRANSFER	TIMELINES
death or serious deterioration in state of health	- email	Day **[***]**
other cases	- email	Day **[***]**

5.2 Spontaneous reports

Once a safety report is received by DISTRIBUTOR, MANUFACTURER shall investigate each incident, adverse event, abnormal use and user error brought to its knowledge and issue an initial, a follow-up and a final report, including the case assessment, and forward them to DISTRIBUTOR for their submission to FDA, if needed.

MANUFACTURER retains responsibility for event coding, assessment of case seriousness, expectedness, and for informing DISTRIBUTOR of any changes made to case seriousness, expectedness or otherwise within **[***]** business days.

5.3 Follow-up

The DISTRIBUTOR is responsible in following-up all the incidents, adverse events, abnormal use and user errors, as needed: in any case, at least **[***]** follow-up attempts should be performed. The information, once acquired, shall be transmitted in the same way as the initial one to the MANUFACTURER.

The MANUFACTURER shall make at least **[***]** follow-up attempt for cases received by MANUFACTURER itself, that are expedited in the TERRITORY in accordance with the TERRITORY regulations.

All follow-up attempts should be documented in writing.

5.4 Reporting

MANUFACTURER shall fulfill its respective reporting obligations, in accordance with the applicable laws and regulations, in relation to the PRODUCT in the country/territory of its responsibility, unless otherwise agreed.

MANUFACTURER is responsible for the reporting to the Worldwide Health Authorities (excluding the United States) for the PRODUCT, in accordance with the applicable laws and regulations. DISTRIBUTOR, on behalf of MANUFACTURER is responsible to submit the reportable reports to FDA, as needed, and in accordance with the applicable laws and regulations. A proof of the performed submission will be sent to the MANUFACTURER.

DISTRIBUTOR will determine regulatory actions required in the TERRITORY based upon information provided by MANUFACTURER,

DISTRIBUTOR shall keep MANUFACTURER duly informed of any existing or new rule and/or regulation issued by FDA. DISTRIBUTOR is responsible for communicating MANUFACTURER without delay (and no later than the date they become effective) any important changes in safety reporting requirements.

5.5 Reconciliation of Safety Information

A reconciliation is done on **[***]** basis. **[***]**, DISTRIBUTOR shall provide MANUFACTURER with a line-listing of all the locally occurred incident, adverse event, abnormal use and error received use received in the given month and associated with the PRODUCT. The line-listing will be sent within the first **[***]** working days of the following calendar month. IBSA shall confirm correctness of the list within **[***]** working days forwarding its own line-listing. Both line-listings are used for verifying that all the safety information has been exchanged and for performing an additional check of duplicates. In case of discrepancies, the issue will be investigated by both parties.

6. TREND ANALYSIS

The MANUFACTURER is responsible for proactive scrutiny of trends in adverse events or incidents that are usually excluded from individual reporting and for preparing trend reports if a significant trend is detected.

The MANUFACTURER is responsible for communicating to DISTRIBUTOR information about such trends, as applicable.

7. FIELD SAFETY CORRECTIVE ACTIONS (FSCA) AND FIELD SAFETY NOTICES (FSN)

The MANUFACTURER is responsible for all actions to be taken as a result of the knowledge of an incident. The MANUFACTURER is required to evaluate the issue of a Field Safety Notice or to implement a Field Safety Corrective Action, depending on the severity, the results of investigations and the context characterising the occurrence of one or more incidents, when necessary. The MANUFACTURER is required to timely inform the DISTRIBUTOR about any corrective action, the will for implementing a Field Safety Corrective Action or for issuing a Field Safety Notice.

The DISTRIBUTOR is responsible for supporting the MANUFACTURER in implementing the Field Safety Corrective Action disposed by MANUFACTURER, as agreed with the Competent Authority. DISTRIBUTOR, on behalf of the MANUFACTURER, is required to inform FDA about the FSCA and/or the FSN, in accordance with the applicable laws and regulations. A proof of the performed submission will be sent to the MANUFACTURER.

8. ANNUAL SAFETY REPORTS

DISTRIBUTOR, on behalf of MANUFACTURER, shall prepare the Annual Safety Reports that need to be submitted to FDA, in accordance with the applicable laws and regulations. MANUFACTURER undertakes to supply DISTRIBUTOR with any relevant information required for the completion of these documents within **[***]** calendar days from the date of the request by DISTRIBUTOR.

DISTRIBUTOR should send to MANUFACTURER the final draft for revision not less than **[***]** weeks before submission for MANUFACTURER to review and comment. MANUFACTURER shall review the draft and provide comment to DISTRIBUTOR no later than **[***]** calendar days from its receipt.

The submission to FDA will be done by DISTRIBUTOR and a copy of the final report and of the submission letter to FDA will be provided to MANUFACTURER.

9. LITERATURE REVIEW

The DISTRIBUTOR, at least once a year, will make a search of the local literature available and when a published adverse event or incident related to the PRODUCT or its components is found to be occurred in the TERRITORY, the DISTRIBUTOR will inform the MANUFACTURER with the timelines and form described in paragraph 5.1.2.

10. ACKNOWLEDGEMENT

Upon receipt of a report, each Patty shall acknowledge receipt and provide their unique case ID number to the other Party within **[***]** business day for reconciliation purposes. These acknowledgements will be sent by fax or e-mail (for emails, the date when the message was delivered is considered the receipt date). If no acknowledgement is received for a report after **[***]** business days, the other Party will be contacted.

11. TRAINING

Each Party will ensure that its personnel are trained on market-surveillance issues, and is responsible for the training of sales representatives on the role and responsibilities in the collection and transmission of surveillance information, as well as on the safety profile of the PRODUCT, within a reasonable time period following execution of this Agreement, as necessary to ensure compliance with this Agreement and with the Applicable Law.

Each party will establish and maintain records in departmental safety files on policies and standard operating procedures to ensure compliance with this Agreement and the Applicable Law. The training has to be tracked and the evidence of the training performed by DISTRIBUTOR has to be sent to MANUFACTURER.

12. LABELLING ACTIVITIES

The MANUFACTURER is responsible for maintaining and managing the correct label of the PRODUCT in compliance with regulations and to keep the DISTRIBUTOR informed of any change in the labelling.

13. CHANGES IN REGULATORY REQUIREMENTS

The PARTIES are responsible for communicating each other without delay (and no later than the moment become effective) any changes of essential requirements in the countries where the PRODUCT is marketed by the Parties.

14. COMMON LANGUAGE

English will be used as a common language for exchange of any information between the Parties.

15. RECORDS

Both DISTRIBUTOR and MANUFACTURER will maintain records and all related documentation (or true copies of these documents) of incidents and adverse events as long as the product is on the market and for at least **[***]** years after the expiration date of the last batch issued on the market.

16. AUDITS

DISTRIBUTOR and MANUFACTURER will keep accurate records in sufficient detail. The DISTRIBUTOR will permit MANUFACTURER, its designee or an independent auditor appointed by MANUFACTURER, to conduct an audit once a year to ensure the good effectiveness of this agreement. Any audit shall be conducted at the MANUFACTURER’S expenses during the ordinary business hours and upon reasonable notice (at least **[***]** days before the date of audit).

The MANUFACTURER shall have the right to make an additional justified “for cause” audit even during the same calendar year, when required or based on the previous audit outcome. The MANUFACTURER will permit DISTRIBUTOR, its designee or independent auditor appointed by DISTRIBUTOR, to conduct an audit once a year to ensure the effectiveness of this Agreement. Any audit shall be conducted at the DISTRIBUTOR’S expense during ordinary business hours and upon reasonable notice (at least 30 days before the date of audit).

17. RISK MANAGEMENT PLAN

MANUFACTURER is responsible for establishing and maintaining the Risk Management Plan (RMP) for the PRODUCT, according to the current regulatory requirements, when needed.

18. SAFETY ACTIONS ORIGINATING IN TERRITORY (-IES)

DISTRIBUTOR shall immediately inform MANUFACTURER upon receiving information or communication regarding any possible safety actions related to the PRODUCT in the TERRITORY including, but not limited to, communications from Competent Authorities. DISTRIBUTOR shall provide a copy of any written communication to MANUFACTURER. Where applicable, the Parties shall work together to respond to such inquiries. DISTRIBUTOR shall not submit any information to FDA without prior written approval from the MANUFACTURER. Each Parties shall use its best efforts to provide the necessary information to respond in given timeframes.

If specific Corrective Actions issued by MANUFACTURER are to be taken, the DISTRIBUTOR shall implement such actions in the TERRITORY.

18.1 Safety-basedRecall

In the occurrence of a situation that may warrant a safety-based recall the Party who first becomes aware of the situation and/or within the TERRITORY shall inform the other Party within **[***]** hours. Both Parties shall work together according to their respective SOPs in order to clarify the extent of the risk and generate a risk management strategy with actions to be taken. Any PRODUCT recalls are conducted under the responsibility of the MANUFACTURER.

19. CONFIDENTIALITY

The Parties agree that all information provided by the other Party will be treated as confidential. Notwithstanding the above, DISTRIBUTOR and MANUFACTURER may quote the above-mentioned information to respond to medical queries from healthcare professionals in the TERRITORY. The MANUFACTURER may disclose such information to its subsidiaries, other companies and distributors that have marketed the PRODUCT in other countries. Once subsidiaries, companies and distributors receive this kind of information, they are bound to keep such information confidential in line with the terms of this article.

The obligations set forth in this Article will survive any termination of this SDEA for a period of **[***]** years after the effective date of termination.

The obligation of confidentiality and non-use in this Article shall not apply to information which

a) at the time of its disclosure by the disclosing Party was known by the receiving Party

b) was in the public domain or which subsequently comes into the public domain through no fault of the receiving Party

c) is independently developed by the receiving Party without use or reference to the information disclosed by the disclosing Party

d) is required by law to be disclosed.

20. MISCELLANEOUS

This SDEA will be effective upon signature of both Parties.

This SDEA may be revised as necessary to make it conform to new or amended legal or regulatory requirements in the TERRITORY. If one or more provisions of this SDEA become void, the validity of the remaining provisions shall not be affected.

This SDEA remains effective until termination of the business relationship for PRODUCT between DISTRIBUTOR and MANUFACTURER.

In case of a discrepancy between any provisions of this SDEA and the existing Agreements between DISTRIBUTOR and MANUFACTURER, the provisions of this SDEA shall apply.

21. CONTACT PERSONS

The MANUFACTURER and the DISTRIBUTOR undertake to designate a responsible person who is the reference person to ensure that this Agreement will be applied. Any change in the responsible or contact details should be notified to the other Party immediately and in no case later than **[***]** calendar days in writing.

Any written notification of changes shall be maintained with this SDEA.

SAFETY CONTACTS

IBSA Name:	Primary	***Back-up***
Title		
Telephone		
Mobile		
Fax		
E-mail		
E-mail for AE/ADR reporting		
BIOVENTUS	Primary	Back-up
Name		
Title		
Telephone		
Mobile		
Fax		
E-mail		
E-mail for AE/ADR reporting		

1. SIGNATURES

This SDEA is approved by IBSA and BIOVENTUS on the dates set forth below.

On behalf of IBSA

/s/ Mara Delledonne

Mara Delledonne
MD Vigilance

Date: 09 February 2016

On behalf of BIOVENTUS

/s/ Anthony James

Anthony James
VP, Operations & Quality

Date: 3-7-16

Annex D.

TRANSFER PRICES

BIOVENTUS will purchase exclusively from IBSA (subject to Article II.3 of the Agreement) all of its requirements of the PRODUCT for the TERRITORY, at a TRANSFER PRICE equal to **[***]** of the NET SELLING PRICE in the TERRITORY. Except as set forth in this Agreement, in no event, shall the TRANSFER PRICES from IBSA to BIOVENTUS be less than the following floor price (the **"FLOOR PRICE"):**

One box PRODUCT (Trade) containing one pre-filled syringe + one needle	**US$ [***]**
One box PRODUCT (Sample) containing one pre-filled syringe + one needle	**US$ [***] (*)**

Delivery terms: ex-works IBSA warehouse [***]

(*) Samples shall not exceed **[***]** units through the end of the calendar year 2016 and **[***]** percent (**[***]**%) of the total number of units purchased by BIOVENTUS from IBSA each MARKETING YEAR thereafter.

[***] Certain information in this document has been excluded pursuant to Regulation S-K, Item 601(b)(10). Such excluded information is not material and would likely cause competitive harm to the registrant if publicly disclosed.

AMENDMENT NO. 1 TO THE EXCLUSIVE LICENSE, SUPPLY AND DISTRIBUTION AGREEMENT

This Amendment No. 1 to the Exclusive License, Supply and Distribution Agreement (the "Amendment") is entered into on December 31, 2018 ("Effective Date") by and between Bioventus LLC, a Delaware limited liability company, with its principal place of business at 4721 Emperor Blvd. Suite 100, Durham NC 27703 ("BIOVENTUS") and IBSA Institut Biochimique SA (Switzerland), a Swiss organization, with a registered office at Via al Ponte 13, 6900 Massagno – Switzerland ("IBSA"). BIOVENTUS and the IBSA each are referred to herein as a "Party" and collectively, as the "Parties".

RECITALS

A. BIOVENTUS and IBSA entered into an Exclusive License, Supply and Distribution Agreement on February 8, 2016 ("Agreement"); and

B. BIOVENTUS desires to purchase and re-sell and IBSA desires to sell the PRODUCT, as such term is defined in the Agreement, in accordance with the terms and subject to the conditions of this Amendment.

BIOVENTUS and IBSA hereby enter into this Amendment and the Parties agree as follows.

1. **Definitions.** Except as otherwise defined in this Amendment, all capitalized terms shall have the meaning ascribed to them in the Agreement.

2. **IBSA Non-Compete**. Article VII.6 is hereby deleted in its entirety and replaced with the following:

"IBSA will not (and will ensure that its AFFILIATES do not) develop or actively promote in the TERRITORY (or license or otherwise permit any third party to promote in the TERRITORY), either directly or indirectly, any intra-articular hyaluronan injection with any of the following characteristics (each, a "Competitive Condition"): (a) the same quali-quantitative formulation as the following products containing (i) [***] (ii) [***] and (iii) [***]; (b) [***]; or (c) [***].

In the event IBSA or its AFFILIATES either directly or indirectly register, market or distribute an intra-articular hyaluronan injection that does not meet any of the Competitive Conditions (each, a "New Product") that is assigned the same HCPCS "J" code as the PRODUCT by the U.S. Center for Medicare and Medicaid Services ("CMS") or other similar federal government reimbursement code within the TERRITORY: (a) IBSA shall provide BIOVENTUS written notice of such reimbursement decision within [***] days after such decision, (b) the MINIMUM PURCHASE REQUIREMENTS for the MARKETING YEAR when such determination is made and all subsequent MARKETING YEARS shall be reduced to [***], and (c) IBSA shall pay BIOVENTUS a [***] royalty equal to [***] of the net price ("IBSA NET PRICE") of the New Product (determined in the same manner as the NET SELLING PRICE using IBSA's sales of New Product) for the [***] after such determination is made and all [***] ("Royalty Payment"). IBSA shall pay BIOVENTUS the Royalty Payment [***] within [***] days after the end of the applicable [***]. Such Royalty Payment will be made as long as the Gel-Syn Exclusive License, Supply and Distribution Agreement is in force.

In the event IBSA or its AFFILIATES decide not to directly market and distribute any New Product and plan to license or otherwise permit any third party to promote in the TERRITORY, IBSA shall first offer BIOVENTUS the exclusive right to actively promote such New Product in the TERRITORY at least [***] days before the proposed initial sale of such New Product. If BIOVENTUS responds with a request to negotiate within [***] days after receipt of such notice ("Negotiation Notice"), IBSA and BIOVENTUS shall negotiate the terms of such exclusive rights to the New Product in good faith during the [***] days following IBSA's receipt of the Negotiation Notice ("Negotiation Period"). IBSA and its AFFILIATES shall not offer or license any rights to actively promote the New Product in the TERRITORY to any third party prior to or during the Negotiation Term."

3. **Revised Minimum Purchase Requirements.** The MINIMUM PURCHASE REQUIREMENTS stated in Article XVI.1 for the 2nd, 3rd, and 4th MARKETING YEARS are hereby deleted in their entirety and replaced with the following:

"2nd MARKETING YEAR (2018): [***]

3rd MARKETING YEAR (2019): [***]

4th MARKETING YEAR (2020): [***]

5th MARKETING YEAR (2021) [***]

6th MARKETING YEAR (2022) onwards [***]

4. **Failure to Meet Minimum Purchase Requirements.** Article XVI.2 is hereby deleted in its entirety and replaced with the following:

"Should BIOVENTUS fail to issue sufficient purchase orders in order to meet the MINIMUM PURCHASE REQUIREMENT during any MARKETING YEAR during the term of this Agreement (other than on account of a FAILURE TO SUPPLY (as defined in Article XVI.3)), IBSA shall have the right to terminate this Agreement upon [***] days prior written notice to Bioventus delivered by August 1st of the concerned MARKETING YEAR; provided, however, that this Agreement will not terminate if BIOVENTUS, by the end of such [***] day period, has issued purchase orders to IBSA for a quantity of PRODUCT that, when combined with the quantities previously ordered during the applicable MARKETING YEAR, equal or exceed the applicable MINIMUM PURCHASE REQUIREMENT (and, for the avoidance of doubt, such additional purchase orders may provide for a delivery date that is in January of the following MARKETING YEAR. Therefore the purchase orders need to be issued on or before August 30th of the concerned MARKETING YEAR). Such termination by IBSA shall be IBSA's sole and exclusive remedy with respect to any failure by BIOVENTUS to meet the annual MINIMUM PURCHASE REQUIREMENT, and BIOVENTUS shall have no liability to IBSA with respect to any such failure."

5. **Trademark**. The TRADEMARK for "GEL-SYN" (application Serial No. 86/376,022) stated on Annex B is hereby deleted in its entirety.

6. **Construction.** Except as expressly modified by this Amendment, the terms of the Agreement shall remain in full force and effect.

7. **Entire Agreement**. This Amendment, including the Appendix attached hereto, which is incorporated herein by reference, and the Agreement constitute the entire agreement between the Parties pertaining to the subject matter hereof, superseding any other previous proposals, representations or statements, oral or written. Any previous agreements, other than the Agreement, between the Parties pertaining to the subject matter of this Amendment are hereby expressly canceled and terminated. Except as explicitly provided in this Amendment, any modification of this Amendment or the Agreement must be in writing and signed by authorized representatives of both Parties.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed, by their duly authorized representatives, as of the Effective Date.

BIOVENTUS LLC

(United States of America)

By: /s/ Anthony P. Bihl III
Name: Anthony P. Bihl III
Title: CEO

IBSA INSTITUT BIOCHIMIQUE SA

(Switzerland)

By: /s/ Arturo Licenziati
Name: Arturo Licenziati
Title: CEO

AMENDED AND RESTATED

EXCLUSIVE DISTRIBUTION AGREEMENT

No.2

BY AND BETWEEN

BIOVENTUS LLC

AND

SEIKAGAKU CORPORATION

EFFECTIVE AS OF DECEMBER 22, 2020

[***] Certain information in this document has been excluded pursuant to Regulation S-K, Item 601(b)(10). Such excluded information is not material and would likely cause competitive harm to the registrant if publicly disclosed.

AMENDED AND RESTATED

EXCLUSIVE DISTRIBUTION AGREEMENT No.2

This Amended and Restated Exclusive Distribution Agreement No.2 (the "Agreement"), effective as of December 22, 2020 (the "Effective Date"), by and between BIOVENTUS LLC, a Delaware limited liability company having its principal place of business at 4721 Emperor Boulevard, Durham, NC 27703 ("Distributor") and SEIKAGAKU CORPORATION, a Japanese corporation having its principal place of business at Marunouchi Center Building, 6-1, Marunouchi 1-chome, Chiyoda-ku, Tokyo 100-0005, Japan ("Company") amends and restates, in its entirety, the Amended and Restated Exclusive Distribution Agreement (the "Previous Agreement"), in effect as of May 4, 2018, by and between Distributor and Company. Distributor and Company are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

A. Company has developed and has produced in Japan over 20 years a hyaluronic acid ("HA") product and has obtained or is going to obtain the following marketing authorizations in some regions outside Japan for the Products which is more specifically defined in Section 22 and now wishes to appoint a distributor to certain regions for such Products: [***].

B. Company and SMITH & NEPHEW, INC. entered into an Exclusive Distribution Agreement on January 1, 1999 ("EDA") and amendments and supplements to the EDA thereafter (hereinafter, the EDA and any and all amendments and supplements thereto shall be collectively referred to as "Existing Agreements"), under which Company appointed SMITH & NEPHEW, INC. as the exclusive distributor of SUPARTZ, Company's HA product, in certain territories.

C. SMITH & NEPHEW, INC. has assigned all of its rights and an obligation under the Existing Agreements to Distributor and Company has consented to such assignment.

D. Company and Distributor entered into the Previous Agreement which superseded and replaced the Existing Agreements and set forth the terms and conditions for Company to supply and sell the Product (as defined herein) to Distributor and Distributor to distribute and sell the Product (as defined herein) throughout the Territory (as defined herein).

E. Company and Distributor desire to enter into the Agreement which succeeded and revises the Previous Agreements and set forth the terms and conditions for Company to supply and sell the Product to Distributor and Distributor to distribute and sell the Product throughout the Territory.

F. Unless defined elsewhere in this Agreement, capitalized terms used in this Agreement shall have the meanings set forth in Section 22.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the Parties contained in this Agreement, the Parties agree as follows:

1. APPOINTMENT AS EXCLUSIVE DISTRIBUTOR

Subject to the terms of and conditions of this Agreement, Company hereby appoints Distributor and Distributor hereby accepts such appointment during the Term, as Company's sole and exclusive distributor and Company grants Distributor the exclusive right to market, distribute and sell the Product in the Territory. Distributor may appoint as subdistributors wholly-owned subsidiaries of Distributor, upon prior written notice to Company. Distributor may appoint other third parties as subdistributors from time to time for the sale of the Product; provided, however, that Distributor shall notify Company of the name, address and outline of the business of such third party subdistributors and whether Distributor has an equity interest in such subdistributors in writing and obtain the approval of Company in writing prior to appointment, such approval not to be unreasonably withheld, delayed or conditioned on terms not directly related to the third party subdistribution arrangements. The terms and conditions of the agreement between Distributor and each subdistributor shall conform to the provisions of this Agreement, and Distributor shall require the subdistributors to observe the duties of Distributor as provided for in this Agreement, to the extent applicable. Company may appoint other additional exclusive/non-exclusive distributors in conditions of Distributor's prior approval, which may be withheld at Distributor's sole discretion.

2. RIGHTS AND TERRITORY

(a) During the Term, Distributor shall have the sole and exclusive right to market, promote, distribute and sell the Product in the United States (the "Territory").

(b) In consideration for the rights granted by Company to Distributor under Section 2. (a) above, the Distributor shall pay Company the sum of $1.0 Million on May 4, 2018, $2.0 Million on May 4, 2019 and $1.0 Million on February 1, 2021.

(c) Distributor may submit to Company a business plan to market, promote, distribute and sell the Product in [***] within [***] of the LOA Effective Date. Company shall promptly notify Distributor if and when Company obtains regulatory approval necessary for sale of the Product in [***]. Distributor may submit to Company a business plan to market, promote, distribute and sell the Product in [***] within [***] of the date it receives such notice. If Company approves of a business plan that Distributor submits under this Section 2(c), then the Parties shall amend this Agreement to include within the definition of Territory in Section 2(a) the country ([***] or [***]) to which the approved business plan relates. Approval by Company of a business plan pursuant to this Section 2(c) shall not be unreasonably withheld, delayed or conditioned on [***]. In the event that the Agreement is amended to include [***] or [***] or both, (i) Section 4(a) shall also be amended to provide for a Purchase Price equal to [***] percent ([***]%) of the Average Sales Price per Unit for Units sold outside the United States, but not less than (US) $[***] per Unit in any situation (except for [***]), and (ii) Section 4(j) shall also be added to provide that, with respect to Products sold outside of the United States and denominated in a foreign currency, the Net Sales attributable thereto shall be converted from such foreign currency into United States Dollars by utilizing the "Noon Fed Fixing Rate" announced by the Federal Reserve for the average

of the first and last day of the reporting period. At Distributor's request in connection with its preparation of a business plan for [***] or [***], and if and as market conditions may justify, the Parties shall negotiate in good faith a reduction in the foregoing minimum price per Unit based upon market conditions applicable to such country.

(d) During the Term of this Agreement, [***] unless (i) [***], and (ii) [***].

(e) Notwithstanding any provision in the MOU between the Parties dated October 25, 2013, Distributor hereby agrees and acknowledges that (i) [***] and (ii) Company may sell VISCO-3, at any time commencing on the date of this Agreement.

3. GENERAL TERMS OF SUPPLY

(a) During the Term of this Agreement, Company shall deliver and supply Units to Distributor, according to and in conformity with the shipping instructions of Distributor's purchase order for same.

(b) Orders for Units placed by Distributor shall be made by Distributor issuing to Company a purchase order which specifies (i) quantities and destination(s) of Units to be shipped, (ii) delivery dates at least [***] ([***]) days after the date of such purchase order, (iii) particulars of warehouses in [***] area, where the delivery of Product in question shall be made, and (iv) transport means (air or sea). If Company becomes aware of an event of Force Majeure, or any other event that it expects would prevent it from supplying Units ordered or forecasted to be ordered by Distributor on the specified delivery date(s), Company shall promptly notify Distributor. Provided, however, nothing contained in this Section 3(b) shall relieve Company of liability for failure to supply Product as required by an actual purchase order, except as excused for Force Majeure. Company will try, with its best efforts, to fill purchase orders placed by Distributor with delivery dates less than [***] days from the date of the purchase order, however, the actual delivery dates in this case shall be decided by Company in its sole discretion. In any such event, Company will confirm in writing the purchase order issued by Distributor, regardless of whether it is with regular or shorter delivery dates and each such purchase order shall become binding on both Parties upon and according to the confirmation in writing by Company.

(c) During the Term of this Agreement, Distributor shall provide Company with a [***]-rolling order and delivery forecast [***] (the "Annual Forecast") in Dollars and Units ([***]) each [***]. During the Term, in accordance with the terms and conditions of this Agreement, Distributor shall purchase a minimum purchase quantity. Company shall use its [***] to supply Units equal to [***]% of the Annual Forecast, if so required by the purchase orders of Distributor. Notwithstanding any other term of this Section 3(c), to the extent that a failure to meet the purchase requirements set forth in this Section 3(c) can be reasonably attributed to [***] ("Negative Developments"), including [***], then the Parties shall negotiate in good faith an appropriate reduction in the minimum purchase quantity or other appropriate means to offset the impact of the Negative Developments.

(d) After termination of this Agreement, Distributor shall cease promoting, distributing and selling the Product anywhere in the world, except for its promotion, distribution and sale of any Products remaining in its inventory as of the date of such termination within [***] of the termination.

4. PRICE AND PAYMENT TERMS

(a) During the Term of this Agreement, the purchase price payable by Distributor to Company for each Unit ("Purchase Price") shall be equal to [***] ([***]%) of the Average Selling Price per Unit ("Initial Rate"); provided that if the Purchase Price is calculated to be less than (US) $[***] per Unit in any situation ([***]) using the Initial Rate, the Purchase Price shall equal the lesser of (US) $[***] and [***] percent ([***]%) of the Average Selling Price per Unit. Notwithstanding the above, Purchase Price shall NOT be less than (US) $[***] in any case, and if in the case Purchase Price is reduced to (US) $[***] based on the above fomula, both Parties shall discuss this condition in good faith. The "Average Selling Price per Unit" is defined as (i) Net Sales for each Period divided by (ii) "Net Units Sold" in the same Period. "Period" shall mean the period consisting of [***], which will be announced by Distributor for each [***]. A [***] consists of [***]. "Net Units Sold" shall mean the total number of Units sold by Distributor to third parties ([***]), less reasonable returns of Units. The purchase price hereunder shall be settled in U.S. currency. Notwithstanding any other provision of this Section 4(a), to the extent that Negative Developments can be reasonably anticipated to adversely affect the market for the Product, then at any time thereafter Distributor may request that the Parties negotiate in good faith an appropriate reduction of the minimum purchase price or other appropriate means to offset the impact of the Negative Developments.

(b) For purposes of calculating the Average Selling Price per Unit, Distributor shall provide Company with a statement (the "Statement") (i) describing the calculation of the Net Sales from the gross sales, and (ii) Net Units Sold from the total number of Units sold; with a description of each numbers and amounts of the items reducible pursuant to Section 4(a), which were accrued during each Period, for each of the United States and the countries outside the United States no later than [***] ([***]) days after the Period in question.

(c) (i) Within [***] ([***]) days after the [***] (defined below) in question, Company shall provide a written summary on [***] for the [***] and the [***] ("Adjustment").

"[***]" shall mean [***].

(ii) Within [***] ([***]) days after Distributor's receipt of Company's summary above, Distributor shall express its agreement or disagreement to any Adjustment by Company. Such agreement shall be expressed in writing with a signature of any authorized Distributor's financial officer. If Distributor disagrees, both Parties shall enter into good faith discussion to settle the Adjustment.

(iii) Upon the agreement on the Adjustment, either of Company or Distributor, who [***], shall provide the other Party with [***], which shall [***], for [***], for [***].

(iv) The notices to be made under this Section 4 between the Parties may be made by e-mail with work files, which shall be followed by written notices satisfying the requirements of Section 17.

(d) Company shall have the right to appoint an independent public accountant, reasonably acceptable to Distributor to verify Distributor's calculation of Net Sales, Net Units Sold and Average Selling Price per Unit (the "Audit"). In the absence of any intentional misstatement of material fact by Distributor, Company shall bear the cost of such Audit unless Distributor's calculation of the Net Sales, Net Units Sold or Average Selling Price per Unit is more than [***] percent ([***]%) lower than the amounts determined by the Audit, in which case Distributor shall bear the cost.

(e) Company shall supply Distributor with Samples of the Product ("Samples") [***]. The total number of Sample Units shall be [***] and shall not exceed [***] percent ([***]%) of the Units ordered by Distributor on the current purchase order. Distributor shall [***].

(f) The Purchase Price for the Product shall be based on sales terms of FCA (warehouse in Greater Tokyo Area designated by Distributor) (Incoterms 2010), subject to the following provisions of this Section 4(f). Title, ownership, and risk of loss of the Product shall pass to Distributor upon [***]. The Parties shall cooperate in processing all claims for loss or damage to the Product. For purposes of the foregoing, the Parties intend and agree that "FCA (warehouse in Greater Tokyo Area designated by Distributor)" shall mean that (A) Company shall bear the cost, risk and responsibility to: (i) [***], (ii) [***], and (iii) [***], and (B) prior to each delivery by Company, Distributor shall bear the cost, risk and responsibility to notify Company: (i) [***], (ii) [***], and (iii) [***]. Thereafter, Distributor shall be responsible for all costs it incurs to ship the Product from the designated warehouse to the United States or other locations, including, but not limited to, freight, insurance, terminal handling charges and U.S. import customs' fees. If and insofar as the Parties' intended meaning of "FCA (warehouse in Greater Tokyo Area designated by Distributor)" is inconsistent with or contrary to the definition of such term in Incoterms 2010, the Parties' intended meaning, as detailed above, shall apply.

(g) Company shall invoice Distributor for each shipment separately and shall reference the applicable Distributor purchase order number, mode of transportation, date of shipment payment terms.

(h) Payment terms for purchases of Product by Distributor shall be net [***] ([***]) days from the date of Company's invoice by wire-transfer to Company's bank account designated on the invoice. Distributor shall pay Company a late charge of [***] percent ([***]%) per month for all payments made after the payment deadline as provided in the immediately preceding sentence.

(i) Distributor shall have absolute discretion to determine its own sale prices for the Product.

5. PRODUCT SPECIFICATIONS; QUALITY CONTROL; REGULATORY MATTERS AND COMPLIANCE WITH LAW

(a) Company shall (i) manufacture the Product in strict accordance with the quality specifications described in the Registration Dossier(s), which is exactly disclosed in ANNEX A attached herewith, or in effect from time to time in the applicable Territory, and other additional specifications agreed to by the Parties from time to time, when additional specifications are written as amendments to ANNEX A as provided in Section 5(b) below and (ii) package and label the Product in accordance with the packaging and labeling requirements decided by the Parties as provided in the Section 12(c) and added later to this Agreement as ANNEX B (collectively, the "Specifications"). Either Party shall have the right to request a change to the Specifications at any time during the Term of this Agreement. In such event, the Party wishing to request a change (the "Requesting Party") shall notify the other Party (the "Receiving Party") of its request in writing. If the Receiving Party agrees to such request, the Parties shall cooperate with each other, in good faith, to have such change to the Specifications approved in each applicable country in the Territory, and Company shall maintain sufficient inventory of the original Product to supply Distributor until the change in Specifications is so approved and the new Product can be marketed and sold. In the event of a dispute between Company and Distributor concerning the change of Specifications relating to the formulation or the manufacturing of the Product, then Company shall make the final decision. In the event of a dispute between Company and Distributor concerning change of packaging or labeling, then Distributor shall make the final decision unless such change is not cost effective or feasible, in Company's opinion. If any regulatory agency having jurisdiction in any country in the Territory requires a change to the Specifications, Company shall use its [***] to make such changes, with respect to the Products sold in the affected jurisdiction, unless such change is not cost effective or feasible as determined mutually by the Parties. If Company cannot make such change the Product shall not be sold by either Party in that jurisdiction. All expenses incurred with respect to a change in the Specifications required by a regulatory agency with respect to the sale or use of the Product in the Territory will be [***]. All expenses incurred with respect to a change in the Specifications required by a regulatory agency outside the Territory will be [***]. All expenses incurred in connection with any and all changes to Specifications except those changes to Specifications required by the FDA, or similar regulatory agency of any country in the Territory, shall be [***]. If [***] is the Requesting Party and such change in Specifications would [***], then Distributor shall [***].

(b) All changes to Specifications allowed by the provisions in Section 5(a) made subsequent to the Effective Date of this Agreement, must be made in the form of a written amendment to ANNEX A or ANNEX B.

(c) Company shall conduct quality control testing of the Product prior to shipment in accordance with the Specifications and regulatory requirements with respect to the Product as are in effect from time to time in the Territory, and such other validated quality control testing procedures agreed to by the Parties from time to time (the "Testing Methods"). Company shall retain records pertaining to such testing for a minimum of [***] ([***]) years following the expiration date of life of the Product.

(d) Company shall provide Distributor with a certificate of analysis of each shipment of Product made to Distributor. Nothing contained herein shall waive Distributor's rights with respect to latent defects or with respect to Distributor's rights under the representation and warranty provisions of this Agreement.

(e) Distributor shall notify Company and all applicable regulatory authorities in writing of reportable events involving the Product for which Distributor receives appropriate notification, as required by applicable Laws, including, without limitation, Medical Device Reports under the Post Market Surveillance program of the FDA, and maintain the files of these reports and investigations as required by applicable Laws. Company shall likewise notify Distributor in writing of any of such reportable events, including, if and to the extent required in connection with applicable Laws in the Territory, Device Vigilance Reports required by the countries of the European Union. The reporting Party shall notify the other within a reasonable time in a manner consistent with the requirements of the Law in the applicable jurisdictions.

(f) Each Party shall communicate to the other regarding any complaints received from users of the Product or Product-Drug, within a reasonable time following receipt of each complaint. Each notification of a complaint shall contain, but shall not be limited to, the lot number, expiration date, indication for actual use and description of circumstances involved in the alleged failure of the Product, to the extent such information is available. Each Party will provide additional information to the other Party as it becomes available. If Distributor receives the Product associated with a complaint relating to the performance of a Product, Distributor will mail the Product to Company via express courier for evaluation of the Product and investigation of the complaint by Company. Company shall investigate the complaint and report to Distributor the results of the investigation and decision made concerning corrective actions and detailed information concerning the corrective actions taken, if any.

(g) Each Party agrees to notify the other Party as soon as practical of any information of which it becomes aware which relates to the safety or efficacy of the Product or Product-Drug. Upon receipt of any such information, the Parties shall consult with each other in an effort to arrive at a mutually agreeable course of action that is consistent with the obligations of the Parties under this Agreement.

(h) (1) If a Party is notified by a governmental agency that a Product or Product-Drug recall or other general corrective action with respect to the Product or Product-Drug is necessary it shall immediately advise the other Party in writing of such notification by such governmental agency, and proceed with the recall or corrective action as instructed by such governmental agency.

(2) In the event either Company or Distributor believes in good faith (without notification by a governmental agency) that a Product or Product-Drug recall or other general corrective action with respect to the Product or Product-Drug is necessary or appropriate ("Proposed Recall"), the Party advocating the Proposed Recall shall notify the other Party in writing regarding its belief in this regard, and provide the other Party with a complete written explanation of the reason(s) for its belief regarding such Proposed Recall. As soon as reasonably possible following delivery of the written explanation, the Parties will mutually determine what actions are appropriate regarding such Proposed Recall. If the Parties cannot agree upon such actions, then this matter will be decided by arbitration pursuant to Section 16. Distributor will keep detailed distribution records for each lot number detailing the quantity shipped and the location where the lot was shipped as required by Law so that in the event of recall, Distributor will be able to contact the consignees.

(3) In the event any recall or general corrective action is taken with respect to the Product or Product-Drug, whether ordered by a governmental agency or otherwise, Distributor and Company will jointly determine in good faith the cause(s) of the non-conformance(s) prompting the recall or general corrective action within the time required by the applicable Law, but no later than [***] ([***]) days after the date of such recall or general corrective action, in order to establish preventive measures for the future and to assess responsibility for costs and expenses arising from the recall. At the end of this [***] ([***]) day period following the recall or general corrective action, the matter of costs and expenses will be submitted to the Presidents of Distributor and Company for their joint resolution. If the matter cannot be resolved by the Presidents of Distributor and Company within [***] ([***]) days after it has been submitted to them, either Party may initiate arbitration pursuant to Section 16.

(i) Each Party covenants that all of its activities (and the activities of its suppliers in the case of Company, and in the case of Distributor, the activities of Distributor's subdistributors under or pursuant to this Agreement) shall comply with all applicable laws, ordinances, statutes, rules and regulations (collectively "Laws"), including, without limitation, Laws arising under the federal Food, Drug and Cosmetic Act, the Safe Medical Device Act and their respective amendments.

(j) Distributor and Company shall have the right to visit each other's facilities where the Product is manufactured, stored or delivered [***] during the Term of this Agreement and for the purposes of performing an audit of the operations, facilities and records concerning the manufacturing procedures, and storage and distribution (including shipping and handling) of the Products of the other Party; provided, however, that such visits shall not give access to the other Party's proprietary technology and shall be restricted to only those persons who are directly involved in determining compliance with the terms of this Agreement and who, as provided below, received a prior written approval of other Party and that each Party shall be required to furnish to the other Party only that information necessary to make a determination of the other Party's compliance with the terms of this Agreement. Such visits shall be conducted upon written notice received at least [***] prior to the visit and during normal business hours; provided that the person who will perform the audit received the prior written approval of the other Party prior to such visit, such approval not to be unreasonably withheld or delayed. The Party who requests the audit shall select and retain at its discretion and its own cost the auditor or auditing consultant who shall conduct or otherwise assist such Party in performing the audit.

(k) In principle, Company shall obtain, by using the data it holds as of the Effective Date, the regulatory approval for the marketing, sale, distribution and use of the Product in the Territory [***] and Distributor shall assist such efforts of Company.

(l) Each Party will be granted rights to access, make reference to, and use the clinical data and regulatory filings owned by the other Party relating to the Products or Product-Drug other than Confidential and proprietary clinical data or regulatory filings of Company related to the manufacture of Products which Company shall not be obligated to provide to Distributor, but shall be obligated to provide to legal or regulatory agencies or bodies.

(m) Each Party will inform the other within a reasonable period of time as it becomes aware of any new version or amendment to any Laws which may materially affect the procedures, process, practice or activities with respect to the import, marketing, sale or use of the Product in the Territory or the manufacture of the Product.

(n) If despite reasonable efforts of a Party under Section 6(d) or Section 8(d) below, Product or Product-Drug is offered for sale or sold into the Territory by an uncontrollable third party in derogation of the rights of Distributor or outside the Territory in derogation of the rights of Company and its other distributors, Distributor and Company agree that such event shall not be deemed to constitute a breach of Section 6(d) or Section 8(d) below, respectively.

6. COMPANY'S GENERAL OBLIGATIONS

(a) During the Term of this Agreement, Company agrees to provide Distributor with the following at Company's cost in order to assist Distributor's promotional activities for Product in the Territory. Company shall have the right to hold a meeting with Distributor at the time and place to be agreed upon by the Parties to discuss alternative activities.

(i) Reasonable quantities of promotional materials and literature in English as requested by Distributor.

(ii) Medical and commercial advice and information to assist Distributor in responding to inquiries and questions made concerning the Product by other Persons, including, customers and governmental authorities.

(iii) Technical and marketing training on the Product at a designated facility of Company for reasonable, but limited number of, Distributor's competent technical and sales representatives at times and for durations to be agreed upon by the Parties; provided, however, [***] out-of-pocket costs for such training of Distributor's representatives and employees such as travelling, lodging and insurance are to be [***].

(b) Company shall maintain ISO 13485 and Medical Device Directive certification to support the right to continue to use the CE mark in commerce on the Product, but only if maintaining ISO 13485 and Medical Device Directive certification is required to sell the Product in the Territory.

(c) Company will maintain the CE marked status for the Product for the countries covered by the CE mark and maintain all certificates and approvals required in the European Union, but only if maintaining CE marked status for the Product is required to sell the Product in the Territory.

(d) During the Term, Company shall [***]. During the Term, Company shall [***].

(e) In accordance with Distributor's request and pursuant to Section 6(a) above, Company shall prepare and file all regulatory filings as may be required in the Territory to replace SMITH & NEPHEW, Inc.'s name, logo and other identifying details of the Product label with those of the Distributor.

7. COMPANY'S REPRESENTATIONS AND WARRANTIES

Company hereby represents and warrants to Distributor as follows:

(a) Company is a corporation duly organized, validly existing and in good standing under the laws of Japan and has all requisite corporate power and lawful authority to own, lease and operate its assets and to carry on its business as heretofore conducted. Company has the full legal right, corporate power and authority to execute and deliver this Agreement and the other agreements contemplated hereby and to consummate the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by Company and constitutes the valid and binding obligation of Company, enforceable against Company in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally or by general equitable principles.

(b) Company owns all rights, title and interest in the Product necessary to grant the rights contained in this Agreement to Distributor. [***], the Product does not and will not, in the Territory, infringe upon any patent, trademark, trade secret or other proprietary right of any person. Nothing contained in this Agreement is in conflict with any other agreement to which Company is a party or is otherwise bound.

(c) Company has not granted and will not grant during the Term the right to market, sell or distribute the Product or Product-Drug in the Territory to any other Person.

(d) At the time of delivery to Distributor, all Products (i) shall have been manufactured (A) in conformance with Good Manufacturing Practices (as such term is generally understood in the medical device and pharmaceutical industry), and (B) in accordance with all Laws; and (ii) shall be free of all valid liens, encumbrances and security interests.

(e) Company shall promptly replace any Product which fails to meet Specifications, or is misbranded (except to the extent such misbranding occurs as a result of the acts or omissions of Distributor) or which is otherwise defective, whether the Product is owned at the time of such event by Distributor or a third party not under the control of Company. This warranty shall not apply to any Product which has been misused, improperly stored, adulterated or modified by Distributor or any of its subdistributors.

(f) If CE Marking Certificate is required for sale of the Product in the Territory, then Company represents and warrants that the CE Marking Certificate for distribution of the Products in Europe has been obtained and is in full force and effect.

(g) At the time of delivery to Distributor, all Products shall be "merchantable" as defined in Section 2-314 of the Uniform Commercial Code, but only to the extent such warranty would be implied. All other implied warranties at law between the Parties are hereby disclaimed.

8. DISTRIBUTOR'S GENERAL OBLIGATION

During the Term of this Agreement,

(a) Distributor shall, and Distributor shall have its permitted subdistributors, transport, store, distribute, market and sell the Product in accordance with directions for storage and use as indicated on ANNEX A including any amendments thereto (as provided in Section 5(a) herein) which are in effect at the time of such transport, storage, distribution, marketing or sales.

(b) During the Term, Distributor shall exert its [***] to sell, distribute and promote the sales of the Product in the Territory. During the Term, Distributor agrees to provide Company with the following information in English (subject to occasional missing or incomplete information or delayed or undelivered communications, as may occur):

(i) Safety information relating to the Product including data, report or other information relating to its side effect in the Territory, if any.

(ii) [***] sales and inventory records and marketing reports of Products in the Territory with substantially comparable detail as are currently being provided to Company within [***] ([***]) days from the last day of each Period (as such term is defined in Section 4(a) above), including claims, complaints, questions and comments from customers relating to quality, performance and effect of Product, if any.

(c) Each [***], the Distributor shall purchase a quantity, calculated using the Net Sales units provided in the "Statement" for Average Selling Price is utilized ("Product Units"), at least equivalent to the percentage of the Market (defined below) indicated on the following table ("Minimum Order Quantity"). If Distributor fails to order the Minimum Order Quantity from Company, Distributor shall pay an amount equal to the to the number of units needed to meet the Minimum Order Quantity multiplied by [***]% of the Purchase Price within [***] ([***]) days of the determination of the Minimum Order Quantity.

Year	Percentage of Market
2021	[***]%
2022	[***]%
2023	[***]%
2024	[***]%
2025	[***]%
2026	[***]%
2027	[***]%
2028	[***]%

(d) The Minimum Order Quantity shall be calculated by dividing the Product Units by [***] in the Territory ("Market"). Distributor and Company shall mutually agree in good faith to

a methodology for calculating the Market by September 1st of the applicable year ("Methodology"); provided that the Parties shall not change the current Methodology stated on (ANNEX C) unless there is a change in the necessary reporting availability or accuracy. Distributor shall provide Company with the calculation form (ANNEX D) for each year by March 31st of the subsequent year. Company shall confirm the accuracy of the calculation within [***] ([***]) working days, provided that such confirmation shall not be unreasonably withheld, delayed or conditioned.

(e) Either Party may give written notice to the other Party ("Market Notice") in the event that a change in the number of products included in the Market. The Parties shall negotiate in good faith a reasonable and proportional change in the Minimum Order Quantity based on such change within [***] ([***]) days of receipt of a Market Notice.

(f) Distributor will provide Company with reasonable access to records for purposes of conducting quality control audits and to effect a product recall, if necessary, as provided hereunder.

(g) Distributor shall not, either directly or indirectly or through a third party, sell, deliver or market Product for sale outside the Territory without the prior written consent of Company, and shall promptly refer to Company any and all inquiries and/or orders received for sales outside the Territory. Distributor shall [***].

(h) In consideration of the right granted hereunder Distributor shall not, during the Term of this Agreement, promote, sell or distribute the Product in the Territory, except for Products purchased from Company.

(i) Distributor shall prepare in good faith and provide Company with the first draft of a business plan for the Product for the following business year no later than [***] of each calendar year. The Parties shall enter into sufficient good faith discussion based on such first draft. After considering such discussion with Company in good faith, no later than December 31 of each calendar year, Distributor shall complete, and provide Company with, the business plan for the Product for the following business year. Distributor shall discuss with Company whether it is appropriate to amend such business plan on a [***] after providing Company with relevant information pursuant to Section 8(b). For avoidance of doubt, this paragraph requires communication and discussion as provided, but does not restrict Distributor's discretion with regard to all decisions and matters concerning the development, amendment or implementation of Distributor's business plan.

(j) In connection with the re-labeling of Products, in order to prevent any occurrence of problems such as shortage of stock, Distributor shall [***] sell off any and all existing SUPARTZ products in the inventory that are in proper condition for sale and convert the packages for SUPARTZ products to Distributor's packages at [***] cost, and use [***].

9. DISTRIBUTOR'S REPRESENTATIONS AND WARRANTIES

Distributor hereby represents and warrants to Company as follows:

(a) Distributor is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and lawful authority to own, lease and operate its assets and to carry on its business as heretofore conducted. Distributor has the full legal right, corporate power and authority to execute and deliver this Agreement and the other agreements contemplated hereby and to consummate the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by Distributor and constitutes the valid and binding obligation of Distributor, enforceable against Distributor in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally or by general equitable principles.

(b) Nothing contained in this Agreement is in conflict with any other agreement to which Distributor or its Affiliates is or may become a party or is otherwise bound.

(c) Distributor shall distribute, market, and sell the Product in accordance with the Laws of the Territory. Company agrees to provide Distributor with all information and assistance required in order for Distributor to comply with the foregoing obligation to the extent reasonably possible.

10. TRANSFER OF DATA; CONFIDENTIALITY

(a) The Parties acknowledge that Company has or is in the process of conducting studies on the Product or Product-Drugs necessary to register the Product for marketing and sales in the Territory.

(b) During the Term of this Agreement: (i) Company shall provide to Distributor any subsequently acquired data which Company and Distributor reasonably determine is relevant to the safety, efficacy, regulatory status, sale, marketing or distribution of the Product or Product-Drug; and (ii) each of the Parties shall deliver to the other Party all relevant data and Registration Dossier(s) relating to use of the Product or Product-Drug, and results from any studies being conducted by or on behalf of either Party in connection therewith promptly after such data and/or Registration Dossier(s) become available.

(c) The Parties acknowledge that discussions between Company and Distributor in written form and orally will necessarily require the exchange of information that is considered confidential and proprietary by the disclosing Party. The Parties agree that any information on which the disclosing Party designates the mark "confidential" in the written form or in a written confirmation made within thirty (30) days from the oral disclosure shall be considered "Confidential Information" and shall include, without limitation, (i) the Know-How; (ii) earnings, costs, and other financial information; (iii) drawings, formulations, samples, technical data, photographs, specifications, manufacturing methods, testing procedures, clinical studies date; and (iv) marketing, sales and customer information relating to the disclosing Party's business.

(d) The Parties agree that both during the Term of this Agreement and for a period of [***] ([***]) years thereafter each Party shall keep, and shall cause the directors, officers, employees and agents of such Party or its Affiliates or third party subdistributors to keep, confidential any and all Confidential Information acquired from the other Party to the same extent as such Party protects its own confidential information, and shall not use for any other purpose than to discharge such Party's obligations and exercise its rights hereunder.

(e) Confidential Information shall not include information which (i) is or hereafter becomes available to the general public other than by reason of any default with respect to a Party's confidentiality obligation hereunder, (ii) is demonstrated by documentary evidence to have been known at the time of receipt thereof by the receiving Party, (iii) can be shown to have been developed or acquired independently without breach of any obligations contained herein, or (iv) is required to be disclosed as a result of a judicial order or decree or applicable Law or regulation; provided however, that the Party whose Confidential Information is the subject of such judicial order or decree is given the opportunity to contest the judicial order or decree prior to any disclosure.

11. PATENTS AND PROTECTION OF DISTRIBUTOR'S RIGHT TO DISTRIBUTE PRODUCT AND PRODUCT DRUG

(a) Patent Prosecution.

(i) Company will file, prosecute and maintain patents within the Territory relating to the Product packaging, use or sale (but not manufacture) of the Product ("Patents") as Company may elect. If Company elects not to file, prosecute or maintain a Patent in any country in the Territory, then Company shall notify Distributor. During the Term, Distributor shall have the right, within [***] ([***]) days following receipt of Company's notice, to assume responsibility for filing, prosecuting or maintaining such Patent, which Patent shall be considered a "Distributor Sponsored Patent." Distributor Sponsored Patents are considered Patents under this Agreement, except where expressly provided herein to the contrary.

(ii) During the Term, Company hereby grants to Distributor an exclusive royalty-free non-transferable license to use the Patents (subject to the Confidentiality provisions of Section 10 herein) in the Territory in connection with the marketing, distribution and sale of the Product. Distributor shall acknowledge the Patents (pending or granted) in Distributor's labeling and promotional materials relating to the Product.

(iii) All costs and expenses incurred with respect to the filing, prosecution and/or maintenance of Patents (other than Distributor Sponsored Patents) shall be paid by Company, including all reasonable costs for the prosecution, issuance and maintenance of Patent applications and Patents issuing thereon, and any divisional, continuations, continuation-in-part, reissue applications or Patents, Patents of addition, Patents of revalidation or the registrations or any Patent or the like.

(iv) Company shall cooperate and assist Distributor in the filing, prosecution and maintenance of Distributor Sponsored Patents. Distributor shall own all Distributor Sponsored Patents.

(b) Patent Enforcement and Enforcement of Distributor's Right to Distribute Product.

(i) If any of the Patents in the Territory are infringed by a third party during the Term, the Party which discovers the infringement shall promptly notify the other Party in writing. The Parties shall negotiate in good faith with respect to sharing of legal costs and expenses associated with enforcement of rights against the infringer and the division of any awards or settlement payments. [***]. The Parties shall keep each other informed as to the prosecution of any action for such infringement. The Parties shall cooperate with each other with respect to any such action.

12. TRADEMARKS

(a) (i) Company hereby grants to Distributor for the Term of this Agreement the exclusive, royalty-free right to use the trademarks "SUPARTZ" and "SUPARTZ FX" (or such other trademarks as may be mutually agreed by the Parties) (individually and collectively, the "Trademark") in connection with the marketing, distribution and sale of the Product in the Territory. For the avoidance of doubt, the royalty-free non-transferable license to use the Trademark set forth above shall become non-exclusive when and if the Agreement becomes non-exclusive pursuant to Section 1.

(ii) Nothing in this Section 12 shall limit Company's and its third party distributors' use of the Trademark in the Territory in marketing and promotional materials for the Product for the purpose of referencing SUPARTZ FX in accurate and non-deceptive comparative advertising that is not for the purpose of selling a product in the Territory as or under the name "SUPARTZ FX" and "SUPARTZ" or any other name likely to cause confusion.

(iii) . In the event the name "SUPARTZ FX" is not available for Company to register in a country in the Territory or is reasonably judged by the Parties to be inadequate based on special reason or situation of a country in the Territory, the Parties will select a new name from candidates proposed by Company and verified by Company to be available in the country, which mark shall also be considered a Trademark for purposes of this Agreement

(iv) Company shall register, and maintain the Trademark in the Territory as Company may elect [***]. Distributor shall assist and cooperate with Company in connection with the maintenance of Trademark in the Territory. If Company elects not to maintain the Trademark in a country within the Territory, Company shall notify Distributor and Distributor shall have the right to require Company to register and maintain the Trademark in that country ("Distributor Sponsored Trademark"). In that event, all costs and expenses thereafter incurred by Company with respect to the preparation of Trademark registration application for, and with respect to the filing and/or maintenance of the Trademark registration in that country shall be [***]. Distributor shall not use any trademark confusingly similar to the Trademark within or outside the Territory without the prior written consent of Company. Company shall not use any trademark confusingly similar to the Trademark within the Territory without the prior written consent of Distributor.

(b) Distributor may not sublicense the Trademark to any third party, however, the use of the Trademark by Distributor's Affiliates and subdistributors for marketing, distributing and selling Product is permitted and approved herewith by Company.

(c) Distributor and Company shall work together to develop a mutually acceptable package and label for the Product, which package and label shall include the Trademark and other design elements as are mutually acceptable to both Parties. The use and presentation of the names, Trademarks and logos on the packaging and labeling of the Product are to be attached hereto as ANNEX B.

(d) If the Trademark is infringed by a third party in the Territory, the Party which discovers the infringement shall promptly notify the other Party in writing. The Parties shall [***] with enforcement of rights against the infringer and the division of any awards or settlement payments. [***]. The Parties shall keep each other informed as to the prosecution of any action for such infringement. The Parties shall cooperate with each other with respect to any such action.

(e) In the event of the institution of any suit by a third party against Company or Distributor for trademark infringement involving the Trademark (other than Distributor Sponsored Trademarks), Company shall defend each such action [***] with attorneys selected by Company and reasonably acceptable to Distributor, Distributor shall assist and cooperate with Company to the extent reasonably necessary in the defense. Company shall [***] with such third party.

(f) Except as provided in Section 13, upon termination of this Agreement for any reason (other than breach by Company), the license granted in this Section 12 shall immediately terminate with respect to Trademarks (other than Distributor Sponsored Trademarks), and Distributor shall immediately cease all use of the Trademark (other than Distributor Sponsored Trademarks), except with respect to Products acquired by Distributor prior to the termination of this Agreement.

13. TERM AND TERMINATION

(a) This Agreement shall continue until the end of 2028 (“Term”), unless terminated earlier as specifically provided in Section 13.

(b) Notwithstanding the foregoing, this Agreement may be terminated by giving written notice to the other Party: (i) if the other Party commits a material breach of any term or condition of this Agreement which is susceptible to cure, and the breaching Party shall have failed to cure such breach within sixty (60) days from the receipt by it of written notice thereof from the other Party; (ii) if the other Party commits a material breach which is not susceptible to cure; (iii) if the other Party shall commence any case, proceeding or other action (A) under any applicable Law relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it as bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, wind-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver trustee, custodian or other similar official for it or for all or any substantial part of its assets; (iv) if there shall be commenced against the other Party any such case, proceeding or other action referred to in clause (iii) of this Section 13(b) which results in the entry of an order for relief; (v) if the other Party shall take any action authorizing, or in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth above in clauses (iii) or (iv) of this Section 13(b); or (vi) if the other Party shall admit in writing its inability to pay its debts as they become due. Notwithstanding the termination of this Agreement pursuant to this subsection, the non-defaulting Party shall retain all rights and remedies available at law or in equity against the defaulting Party.

(c) Company shall have the right to immediately terminate this Agreement if Distributor fails to pay any undisputed amount due under Section 4 within [***] ([***]) business days after Distributor receives written notice of nonpayment.

(d) The termination of this Agreement for any reason (other than a breach by Company) shall be without prejudice to Company's right to receive all payments accrued and unpaid at the effective date of termination or to the remedy, in accordance with the terms herein, of either Party hereto in respect of any previous breach of any covenant contained herein.

(e) Upon termination of this Agreement, each Party shall promptly (i) on request return to the requesting Party all of the requesting Party's records, materials and Confidential Information in the possession or control of the other Party, or its Affiliates, suppliers or third party subdistributors, except promotional materials reasonably required by Distributor to promote, distribute or sell Products remaining in its inventory as permitted by this Section 13(e), and (ii) discontinue all distribution of the Product, except as otherwise permitted pursuant to Section 3(d) above and 13(f) below.

(f) Termination of this Agreement shall not terminate Distributor's obligation to pay the purchase price for Product which has been received by Distributor under this Agreement, and upon any termination of this Agreement, Distributor shall continue to sell all of the remaining Products in its inventory.

(g) Upon the Effective Date the Previous Agreement shall, except as expressly provided therein or herein, terminate.

14. INDEMNIFICATION

(a) Company shall indemnify, defend and hold harmless Distributor, including its officers and directors, from and against any and all damages, liabilities, costs and expenses, including, without limitation, reasonable attorney's fees, arising out of: (i) breach of Company's representations and warranties; (ii) any claim relating to the manufacture of the Product or delivery of the Product to Distributor, including without limitation death, personal injury or damage to property resulting from defects, contamination or other condition of the Product; (iii) infringement of patents or trademarks of a third party; or (iv) the act or omission of Company, its agents and representatives. In the event the Product becomes, or if Company reasonably believes the Product is likely to become, infringing upon the proprietary rights of a third party, Company shall, in addition to its other obligations hereunder, under consultation with Distributor, use its best efforts to take such actions so as to allow Distributor to continue to sell, distribute and promote the Product in the Territory without infringement on the patents or trademarks of third parties.

In the event Distributor is enjoined, prohibited, restricted for a period of at least six (6) months from selling, distributing or marketing the Product in any part of the Territory due to patent infringement, then Distributor shall have the right to terminate this Agreement with respect to the affected portion of the Territory by providing Company with fifteen (15) days' prior written notice.

(b) Distributor shall indemnify, defend and hold harmless Company, including its officers and directors, from and against any and all damages, liabilities, costs and expenses, including without limitation reasonable attorney's fees, arising out of (i) any breach of Distributor's representations and warranties or (ii) any claim relating to the sale, marketing, distribution or other disposition of the Product by Distributor, Distributor's Affiliates or subdistributors, including without limitation, death, personal injury or damage to property resulting from the sale, marketing, or handling of the Product by Distributor, Distributor's Affiliates or Distributor's sub-distributors, unless such damage liability, cost or expense is caused by Company or breach of this Agreement by Company, in which case Company shall indemnify and hold Distributor harmless as set forth in Section 14(a) of this Agreement.

(c) If Distributor or Company intends to claim indemnification under this Section, such Party (the "Claiming Party") shall (i) promptly notify the other Party in writing of any claim or loss for which it intends to claim such indemnification, (ii) cooperate fully with the other Party and its legal representatives in the investigation of any claim or loss covered by this Section, and (iii) allow the other Party to control the defense and/or disposition of such suit or claim. Neither Party shall have any indemnification obligations hereunder to the extent that such Party's ability to defend such suit or redress such loss is prejudiced by the Claiming Party's failure to perform the obligations set forth in the preceding sentence.

(d) Each Party shall obtain and maintain a policy or policies of product liability insurance coverage that shall: (i) have a per occurrence and annual aggregate limit of not less than [***]; (ii) include Distributor as an insured with regard to Company's policy or policies, and include Company as an additional insured with regard to Distributor's policy or policies, in both cases for occurrences arising out of issues related to the responsibility of each Party, (iii) provides for at least [***] ([***]) days' advance written notice to the other Party of cancellation or material reduction in coverage and (iv) have a policy scope of [***] which will provide coverage claims. Each Party shall provide the other Party with a certificate evidencing such coverage upon reasonable request.

15. ASSIGNMENT AND SUB-DISTRIBUTION RIGHTS AND RIGHT OF FIRST REFUSAL

(a) Except as expressly provided herein to the contrary, neither Party shall assign or transfer (whether by operation of law or otherwise) its rights and obligations under this Agreement to any Person without the prior written consent of the other Party, such consent not to be unreasonably withheld, delayed, or conditioned on terms not directly related to the assignment. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the Parties hereto.

(b) Notwithstanding anything herein to the contrary, this Agreement shall continue in full force and effect in the event of a Change in Control (as defined below) involving either Party, unless as a result of or in connection with such Change in Control, (i) a Distributor Competitor (as

defined below) becomes the beneficial owner of more than 50% of the voting capital stock of Company or (ii) a Company Competitor (as defined below) becomes the beneficial owner of more than 50% of the voting capital stock of Distributor. In the case of such circumstances as described in the immediately preceding sentence, the non-transferring Party shall have the right, in its sole discretion, to immediately terminate this Agreement. For purposes of this Agreement, (i) a "Change in Control" means a transaction or a series of transactions as a result of which a Person or group (as defined in Section 13(D) of the Securities Act of 1933, as amended) acquires control (as defined in the definition of Affiliate) of a Party, (ii) "Distributor Competitor" means any Person which derives more than 50% of its revenues from the sales of orthopedic medical devices and has in excess of $[***] of sales, and (iii) "Company Competitor" means any Person which [***].

16. GOVERNING LAW AND DISPUTE RESOLUTION

(a) This Agreement shall be governed by and construed in all respects in accordance with the laws of the State of New York, without reference to the conflict of laws rules thereof or the United Nations Convention on Contracts for the International Sale of Goods.

(b) The Parties shall attempt in good faith to resolve any dispute or claim between them arising out of or relating to this Agreement promptly by negotiations between executives or other representatives of the Parties with authority to resolve the dispute. If a dispute should arise, such representatives shall confer in person or by telephone at least once and attempt to resolve the matter. Such conference shall take place within [***] ([***]) days of a written request therefor at a mutually agreed time and location. Such conference is a condition precedent to initiating arbitration as provided below, unless the responding Party fails to confer within [***] ([***]) days of the request to do so, but is not a condition precedent to initiating an action for interim injunctive or provisional relief necessary to avoid irreparable harm or to maintain the status quo.

If the dispute is not settled within [***] ([***]) days of the conference or time to confer described above, either Party may submit the dispute for arbitration. The dispute shall be finally settled under the Rules of Arbitration (the "Rules") of the International Chamber of Commerce (the "ICC"). The place of the arbitration shall be [***]. The language of the arbitration shall be English with simultaneous translation into Japanese at the request of either Party. There shall be three (3) arbitrators, one (1) of whom shall be appointed by each of the Parties in accordance with the Rules, and the third of whom shall be appointed by the ICC. The arbitrator appointed by the ICC shall act as the chairperson of the arbitrating body. The arbitrators shall decide the matters in the dispute in accordance with the laws of the State of New York, without reference to the conflict of laws rules thereof or the United Nations Convention on Contracts for the International Sale of Goods.

The arbitration shall also be governed by the United States Arbitration Act, 9 U.S.C. §§ 1-16, 201-208, including the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958. The arbitration shall be commenced and shall proceed according to the Rules, except as otherwise provided herein. Any Confidential Information disclosed in the arbitration shall be subject to the confidentiality provisions of this Agreement. Any time period specified in the Rules shall be extended or accelerated upon the Parties' written agreement. At the request of either Party, all time periods specified in the Rules may, at the discretion of the arbitrators, be accelerated or extended to the extent necessary to comply with the timetables specified in the Rules or for the reasonable management of the arbitration.

The procedures specified in this Section 16(b) shall be the sole and exclusive procedures for the resolution of disputes; provided, however, that a Party may, in addition or as an alternative to seeking interim relief from the ICC, seek injunctive or other provisional judicial relief in any court of competent jurisdiction if in its reasonable judgment such action is necessary to avoid irreparable harm or to preserve the status quo. The Parties agree to submit to the jurisdiction of [***], solely for the purposes of any such action. Despite such action the Parties will continue to participate in good faith in the procedures specified in this Section 16(b).

The decision of the arbitrators shall be final and binding on all Parties to the arbitration. Judgment upon any award rendered by the arbitrators may be entered by any court having jurisdiction over the Party against whom enforcement is sought. Each of the Parties hereby consents, for the benefit of the other Party, to the service of process by certified mail or registered mail or by an express delivery service providing a return receipt at its address set forth for notices herein.

While the procedures set forth above are being followed, the Parties shall continue to perform their respective obligations under this Agreement. Each Party shall bear its own costs and fees, including attorneys' fees and expenses, in connection with the arbitration, except that the arbitrators shall be empowered to assess costs and fees against any Party who the arbitrators find to have acted in bad faith or to have maintained a frivolous position in the arbitration.

17. NOTICES

All notices given under this Agreement shall be in writing and shall be delivered by first class mail or overnight courier or by facsimile transmission (receipt verified) and addressed to the Parties at their respective addresses set forth below:

SEIKAGAKU CORPORATION
Marunouchi Center Building
6-1, Marunouchi 1-chome, Chiyoda-ku
Tokyo 100-0005, Japan
Attention: [***]
Fax: [***]

BIOVENTUS LLC
4721 Emperor Blvd. Suite 100
Durham, NC 27703
Attention: [***]
Fax: [***]

With a copy to:
BIOVENTUS LLC
4721 Emperor Blvd. Suite 100

Durham, NC 27703
Attention: [***]
Fax: [***]

Either Party may change its address or its telecopy number for purposes of this Agreement by giving the other Party written notice of its new address or telecopy number. Any such notice, if given by first class mail or overnight courier, shall be deemed to have been received on the date actually received and if given by telecopy transmission shall be deemed to have been received at the time of dispatch or the next regular business day if received after 5:00 p.m. local time of the recipient.

18. WAIVER AND DELAY

No waiver by either Party of any breach or series of breaches by the other Party, and no failure, refusal or neglect of either Party to exercise any rights granted to it hereunder or to insist upon strict compliance with or performance of either Party's obligations under this Agreement shall constitute a waiver of the provisions of this Agreement with respect to any subsequent breach thereof or a waiver by either Party of its rights hereunder or otherwise at any time thereafter.

19. FORCE MAJEURE

A Party shall be excused from failure to perform its obligations under this Agreement, including without limitation Distributor's obligations to purchase a minimum purchase quantity pursuant to Section 3(c) above, if any such failure is caused by a Force Majeure and without the fault or negligence of such Party. For the purposes of this Agreement, "Force Majeure" is defined as causes beyond the reasonable control of the Party, including, without limitation, acts of God, storm, war, riot, earthquake, tsunami, fire, flood, terrorism, pandemic, nuclear accident, cyber incident, biochemical incident, explosion, governmental orders or restrictions, shortage of materials, power cut, power shortage, or strikes or other labor troubles. Upon occurrence of a Force Majeure, the Party claiming Force Majeure shall immediately notify the other Party of such Force Majeure and its effect on such Party's ability to perform its obligations hereunder and the period during which such inability is expected to continue. The duties and obligations of the Parties shall be suspended for the duration of the event; provided, however, that if such suspension shall continue in excess of [***] ([***]) days, the Parties shall attempt to arrive at a mutually acceptable compromise within the spirit and intent of this Agreement.

20. ENTIRE AGREEMENT

This Agreement (with Exhibits) contains all of the terms and conditions agreed upon by the Parties hereto with respect to the subject matter hereof. No other agreement, oral or otherwise, shall be deemed to exist or to bind either of the Parties hereto, and all prior agreements and understandings with respect to the subject matter hereof are superseded hereby. This Agreement cannot be modified or changed except by written instrument signed by both of the Parties hereto.

21. SEVERABILITY

If any provision of this Agreement is declared invalid or unenforceable by the arbitration or a court having competent jurisdiction, it is mutually agreed that the other provisions of this Agreement shall survive. The Parties shall consult and use all commercially reasonable efforts to agree upon a valid and enforceable provision which shall be a reasonable substitute for such invalid or unenforceable provision in light of the intent of this Agreement.

22. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth in this Section unless the context dictates otherwise.

"Previous Agreement" shall have the meaning set forth in the first paragraph of this Agreement.

"Affiliate", with respect to any Party, shall mean any Person controlling, controlled by, or under common control with, such Party. For these purposes, "control" shall refer to (i) the possession, directly or indirectly, of the power to direct the management or policies of a Person or to veto any material decision relating to the management or policies of a Person, in each case, whether through the ownership of voting securities, by contract or otherwise, or (ii) the ownership, directly or indirectly, of at least 50% of the voting securities of a Person.

"Annual Forecast" shall have the meaning set forth in Section 3(c) of this Agreement.

"Audit" shall have the meaning set forth in Section 4(d) of this Agreement.

"Average Selling Price per Unit" shall have the meaning set forth in Section 4(a) of this Agreement.

"Change in Control" shall have the meaning set forth in Section 15(b) of this Agreement.

"Claiming Party" shall have the meaning set forth in Section 14(c) of this Agreement.

"Company" shall have the meaning set forth in the first paragraph of this Agreement.

"Company Competitor" shall have the meaning set forth in Section 15(b) of this Agreement.

"Confidential Information" shall have the meaning set forth in Section 10(c) of this Agreement.

"Distributor" shall have the meaning set forth in the first paragraph of this Agreement of this Agreement.

"Distributor Competitor" shall have the meaning set forth in Section 15(b) of this Agreement.

"Distributor Sponsored Patent" shall have the meaning set forth in Section 11(a)(i) of this Agreement.

"Distributor Sponsored Trademark" shall have the meaning set forth in Section 12(a)(iii) of this Agreement.

"Dollars" or"$" refers to United States dollars.

"EDA" shall have the meaning set forth in Paragraph B of the recitals of this Agreement.

"Effective Date" shall have the meaning set forth in the first paragraph of this Agreement.

"Existing Agreements" shall have the meaning set forth in Paragraph B of the recitals of this Agreement.

"FDA" shall mean the United States Food and Drug Administration.

"Force Majeure" shall have the meaning set forth in Section 19 of this Agreement.

"[***]" shall mean a [***].

"HA" shall have the meaning set forth in Paragraph A of the recitals in this Agreement.

"Know-How" shall mean any and all technical data, information, materials and other know-how, developed or acquired by Company, either as of the Effective Date or at any time during the Term of this Agreement, which relates to the manufacture and use of Products or Product-Drug.

"Laws" shall have the meaning set forth in Section 5(i) of this Agreement.

"LOA Effective Date" shall mean the date of the closing of the transaction transferring SMITH & NEPHEW Inc.'s clinical therapies business, including the Product business, to Distributor the principal owners of which are SMITH & NEPHEW, INC. and/or its Affiliates and Essex Woodland Health Ventures and/or its Affiliates. For purposes of the foregoing, "Affiliates" of SMITH & NEPHEW, INC. shall mean Affiliates as such term is defined in this Section 22, excluding, however, its clause (i) with regard to "control."

"Negative Developments" shall have the meaning as set forth in Section 3(c).

"Net Sales" shall mean the gross amount invoiced by Distributor or its Affiliates for the sale of the Product to third parties in the Territory, less (i) returns of Products; (ii) sales, use, value-added, excise, or other similar taxes, which taxes are included in the gross amount invoiced by Distributor or its Affiliates for the sale of the Product to third parties in the Territory; (iii) trade discounts; and (iv) freight and insurance costs. A "sale" shall not include [***], or any transfer or disposition of the Product for pre-clinical, regulatory or governmental purposes prior to receiving marketing approval. For purposes of calculating "Net Sales," Product shall be considered "sold" upon the invoicing of such Product by Distributor or Distributor's Affiliate to a third party.

"Net Units Sold" shall have the meaning set forth in Section 4(a) of this Agreement.

"Party" and "Parties" shall have the meaning set forth in the first paragraph of this Agreement.

"Patents" shall have the meaning set forth in Section 11(a)(i) of this Agreement.

"Person" shall mean any natural person, corporation, firm, limited liability corporation, limited liability partnership, business trust, joint venture, association, organization, company, partnership or other business entity, or any government or any agency or political subdivision thereof.

"Pharmacovigilance Agreement" shall mean the Agreement on Exchange of Information on Post-Marketing Surveillance and Pharmacovigilance, entered into as of June 1, 2013, by and between Company and Distributor.

"Product" shall mean an intra-articular, injectable solution of 1 wt% of highly purified HA in a syringe for treatment of osteoarthritis of the knee and indicated for five (5) injections under the FDA approval PMA P980044 (including [***]), including SUPARTZ FX; provided, however, that the term "Product" shall not include VISCO-3.

"Product-Drug" shall mean the Product.

"Proposed Recall" shall have the meaning set forth in Section 5(h)(2) of this Agreement.

"Purchase Price" shall have the meaning set forth in Section 4(a) of this Agreement.

"Receiving Party" shall have the meaning set forth in Section 5(a) of this Agreement.

"Registration Dossier" shall mean a written regulatory submission or document describing Product Specifications and manufacturing methods as submitted by Company and approved by the applicable regulatory agency and Distributor.

"Requesting Party" shall have the meaning set forth in Section 5(a) of this Agreement.

"Sample" shall mean [***].

"Specifications" shall have the meaning set forth in Section 5(a) of this Agreement.

"Statement" shall have the meaning set forth in Section 4(b) of this Agreement.

"SUPARTZ" shall mean the products sold by Distributor under the trademark SUPARTZ FX as of the Effective Date.

"Term" shall have the meaning set forth in Section 13(a) of this Agreement.

"Territory" shall have the meaning set forth in Section 2(a) of this Agreement.

"Testing Methods" shall have the meaning set forth in Section 5(c) of this Agreement.

"Trademark" shall have the meaning set forth in Section 12(a)(i) of this Agreement.

"Unit" shall mean a syringe containing 2.5 ml solution of l.0wt% HA and blister packaged.

"VISCO-3" shall mean an intra-articular, injectable solution of 1 wt% of highly purified HA in a syringe for treatment of osteoarthritis of the knee and indicated for three (3) injections under the FDA approval PMA P980044/S027 (including [***]).

23. PUBLIC ANNOUNCEMENTS

Except as required by applicable Law or any securities exchange or the NASD, neither Party shall issue any press release or make any other public announcement concerning this Agreement or the subject matter hereof without the prior written consent of the other Party, which consent shall not be unreasonably withheld. In the event of a required press release or other public announcement, the Party making such announcement shall provide the other Party with a copy of the proposed text prior to such announcement. The Parties agree that if either Party is required to file this Agreement with any governmental agency, such Party shall delete the unrelated parts, provisions or words of this Agreement to the extent possible in order to keep the terms of this Agreement confidential.

24. MISCELLANEOUS

(a) The Parties agree that each Party is an independent contractor. Employees and agents of one Party are not employees or agents of the other, shall not hold themselves out as such, and shall not have any authority or power to bind the other Party to any contract or other obligation. Nothing in this Agreement is intended or shall be deemed to constitute a partnership, agency, employer-employee or joint venture relationship between the Parties.

(b) Except as otherwise expressly provided in this Agreement, each Party shall bear all of its costs and expenses associated with the performance of such Party's obligation under this Agreement.

(c) Captions used in this Agreement are for convenience only and shall not be deemed to affect the meaning or construction of this Agreement.

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

(e) This Agreement is neither expressly nor impliedly made for the benefit of any party other than the Parties.

(f) Company and Distributor hereby agree and acknowledge that the Pharmacovigilance Agreement shall continue to be valid and in effect for the Term (as defined herein). Notwithstanding the same, Distributor's obligation to maintain pharmacovigilance responsibilities for products sold during the Term of this Agreement shall continue for a period of [***].

25. SET-OFF

Each Party shall have a right of off-set against payment due from it to recover any amounts due from the other Party under the terms of this Agreement.

[Remainder of Page Intentionally Left Blank.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

SEIKAGAKU CORPORATION

By: /s/ Ken Mizutani
Ken Mizutani, President & CEO

BIOVENTUS LLC

By: /s/ Ken Reali
Ken Reali, CEO

[Signature Page to Amended and Restated Distribution Agreement.]

ANNEX A

(Quality Specification)

Product is a sterile aqueous viscoelastic solution designed for intra-articular injection in order to treat osteoarthritis of the knee and indicated for 5 injections.

The product is packed in sealed prefilled syringe containing 2.5 ml of Product solution.

Product Specification:

Test Items	Specification
Appearance	Colorless, clear, odorless, viscous
Identification	Carbazole reaction: red to red purple
	Hexosamine at reducing end: slight yellow-red to red
	Precipitation by CPC: white precipitate
pH	[***]
Ratio of osmotic pressure	[***]
Endotoxin	[***]
Intrinsic viscosity	[***]
Sterility Test	[***]
Antigenicity	[***]
Weight-Average Molecular Weight	[***]
Actual volume	[***]
Foreign Insoluble Matter Test for Injections	[***]
Insoluble Particulate Matter Test for Injections	[***]
Assay	[***]

Shelf Life:

42 months from the date of manufacture.

Storage

Store at a temperature of 25ºC below. Do not freeze.

Direction for Use:

As defined in the package insert.

As used above, [***].

Company shall be responsible, as the Requesting Party for the changes included in this attached ANNEX A as compared with any prior ANNEX A, to prepare and file all regulatory filings as may be required in the Territory as a result of such changes, and, insofar as such filings are required, this ANNEX A shall not be effective prior to the date such filings are made become effective and, insofar as future regulatory filings in the Territory become necessary as a result of changes to the [***] where referenced in the attached ANNEX A, Company, as the Requesting Party, shall prepare and file the same.

ANNEX B

The Parties acknowledge that the Existing Agreements do not include an ANNEX B as of the LOA Effective Date.

ANNEX C

Methodology

The Market shall be calculated by adding the sum of the following items:

(i) Products Units.

(ii) [***].

(iii) [***].

ANNEX D

(Calculation Form)

202x							
		Q1	Q2	Q3	Q4	Total	Unit Share
SUPARTZ FX	Units						
Hyalgan	SmartTRAK Revenue						
	CMS ASP						
	Units						
GenVisc850	SmartTRAK Revenue						
	Estimated ASP						
	Units						
5-injection Market	Units						

Exhibit 10.10

OPTION AND EQUITY PURCHASE AGREEMENT

by and among

BIOVENTUS LLC,

CARTIHEAL (2009) LTD.,

THE MAJOR SECURITYHOLDERS

AND

ELRON ELECTRONIC INDUSTRIES LTD.,
AS THE SECURITYHOLDER REPRESENTATIVE,

DATED AS OF

JULY 15, 2020

This document is intended solely to facilitate discussions among the parties identified herein. It is not intended to create, and will not be deemed to create, a legally binding or enforceable offer or agreement of any type or nature prior to the duly authorized and approved execution of this document by all such parties and the delivery of an executed copy hereof by all such parties to all other parties.

THIS DOCUMENT SHALL BE KEPT CONFIDENTIAL PURSUANT TO THE TERMS OF THE CONFIDENTIALITY AGREEMENT ENTERED INTO BY THE RECIPIENT HEREOF OR, IF APPLICABLE, ITS AFFILIATE, WITH RESPECT TO THE SUBJECT MATTER HEREOF.

TABLE OF CONTENTS

DEFINED TERMS

EXHIBITS

SCHEDULES

OPTION AND EQUITY PURCHASE AGREEMENT

This Option and Equity Purchase Agreement (this "Agreement"), dated as of July 15, 2020, is entered into by and among (a) Bioventus LLC, a Delaware limited liability company ("Buyer"), (b) CartiHeal (2009) Ltd., an Israeli private company registered under number 514279645 (the "Company"), (c) the Securityholders set forth on Schedule 1.01(a) hereto (the "Major Securityholders") and each other Securityholder that becomes a party hereto following the date of this Agreement pursuant to a Joinder Agreement and (c) Elron Electronic Industries Ltd., an Israeli public company, in its capacity as the Securityholder Representative. Capitalized terms used but not otherwise defined herein shall have the meanings set forth in Section 1.01.

RECITALS

WHEREAS, the Company is a medical device company that is focused on developing and commercializing proprietary implants for the aragonite based treatment of cartilage and osteochondral defects in traumatic and osteoarthritic joints;

WHEREAS, the Major Securityholders desire to enter into this Agreement in order to induce Buyer to consummate the subscription for Series G Preferred Shares of the Company at, and to effect the other transactions to occur at, the initial closing (the "Series G Closing") contemplated by that certain Series G Preferred Share Purchase Agreement entered into by and among the Company, certain of the Securityholders and Buyer, dated on or around the date hereof (the "Series G SPA");

WHEREAS, Buyer wishes to obtain from each of the Securityholders, and each Securityholder wishes to grant to Buyer, the exclusive option to acquire 100% of the Equity Interests of the Company held by each such Securityholder as of immediately prior to the Effective Time, subject to the terms hereof, as a condition precedent to Buyer's willingness to consummate the Series G Closing;

WHEREAS, the Company wishes to obtain from Buyer, and Buyer wishes to grant to the Company, the option to require Buyer to acquire 100% of the Equity Interests of the Company held by the Securityholders as of immediately prior to the Effective Time, subject to the terms hereof;

WHEREAS, the board of directors of the Company (the "Company Board") has carefully considered the terms of this Agreement and has declared this Agreement and the transactions contemplated by this Agreement, including the Call Option, the Put Option and the Equity Purchase, in each case, upon the terms and subject to the conditions set forth herein, advisable to, and in the best interests of, the Company and the Shareholders, and approved entering into this Agreement, and the Shareholders of the Company have approved this Agreement in connection with the resolutions adopted with respect to the Series G Closing;

WHEREAS, the Major Securityholders set forth on the signature pages to this Agreement constitute the holders of no less than 85% of the outstanding Ordinary Shares and Preferred Shares (other than Shares held by any Buyer Entity (as defined below)), which is sufficient to approve this Agreement and consummate the transactions set forth in this Agreement;

WHEREAS, the board of managers of Buyer has approved this Agreement and the transactions contemplated by this Agreement, including the Call Option, the Put Option and the Equity Purchase, in each case, upon the terms and subject to the terms and condition set forth herein and in accordance with the Limited Liability Company Act of the State of Delaware; and

WHEREAS, concurrently with the execution and delivery of this Agreement, and as a condition and inducement to Buyer's willingness to enter into this Agreement, Nir Altschuler is entering into a consulting agreement with Buyer in a form acceptable to the parties thereto and to become effective upon and subject to the Closing; and

WHEREAS, Buyer, the Securityholders and the Company desire to make certain representations, warranties, covenants and agreements in connection with this Agreement.

NOW, THEREFORE, in consideration of the representations, warranties, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and upon the terms and subject to the conditions set forth herein, the Parties, intending to be legally bound hereby, agree as follows:

ARTICLE I.

DEFINITIONS AND INTERPRETATIONS

Section 1.01 Definitions. As used in this Agreement:

"Action" means any action, suit, claim, litigation, arbitration, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), hearing, inquiry, audit, examination or investigation commenced, brought, conducted or heard by or before, or otherwise involving, any court or other Governmental Entity or any arbitrator or arbitration panel.

"Actual Closing Working Capital Shortfall" means (a) if Closing Working Capital is less than Target Net Working Capital by an amount with an absolute value that is greater than the Floor Amount, an amount equal to the difference between Target Net Working Capital and Closing Working Capital, (b) if Closing Working Capital is less than Target Net Working Capital by an amount with an absolute value that is less than the Floor Amount, an amount equal to zero and (c) if Closing Working Capital is equal to or greater than Target Net Working Capital, an amount equal to zero.

"Adjustment Amount" means an amount, whether positive or negative, equal to the sum of (a) (i) Estimated Closing Working Capital Shortfall *minus* (ii) Actual Closing Working Capital Shortfall (but only to the extent Estimated Closing Working Capital Shortfall *minus* Actual Closing Working Capital Shortfall results in a negative number), *plus* (b) (i) Closing Cash *minus* (ii) Estimated Closing Cash, *plus* (c) (i) Estimated Closing Indebtedness *minus* (ii) Closing Indebtedness, *plus* (d) (i) Estimated Unpaid Company Transaction Expenses *minus* (ii) Unpaid Company Transaction Expenses (in each case (b) through (d), whether a negative or positive number).

"Adjustment Escrow Fund" means an amount in cash equal to $1,000,000.

"Adverse Clinical Trial Event" means with respect to the Pivotal Clinical Trial for the Initial Device, any event occurring prior to the completion of the last subject's 24-month follow-up visit in the Pivotal Clinical Trial (as currently defined in the Investigational Plan), that results in the placement by the FDA or any other Governmental Entity of a clinical stop on the Pivotal Clinical Trial.

"Affiliate" means, with respect to any Person, any Person directly or indirectly controlling, controlled by, or under common control with, such other Person, including any general partner, managing member, or any venture capital fund now or hereafter existing that is controlled by one or more general partners or managing members of, or shares the same management company with, such Person, in each case as of the date on which, or at any time during the period for which, the determination of affiliation is being made. For purposes of this definition, the term "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, more than 50% of the issued and outstanding equity or voting rights in an entity or the right to appoint a majority of its board of directors or other equivalent body.

"Affirmative Disclosure Obligation" means with respect to any representation and warranty set forth in Article IV, any requirement in such representation and warranty that the Company or any Company Subsidiary affirmatively deliver, make available, list, describe or otherwise set forth on the Disclosure Schedules any information.

"Aggregate Closing Consideration" means the difference of (i) the Equity Purchase Consideration *minus* (ii) the Adjustment Escrow Fund *minus* (iii) the Indemnity Escrow Fund *minus* (iv) the Securityholder Expense Fund.

"Aggregate Consideration" has the meaning set forth in Section 3.03(a).

"Aggregate Exercise Price" means the aggregate amount of the exercise prices payable upon the exercise in full of (i) all In-the-Money Company Options that are outstanding as of immediately prior to the Effective Time and (ii) all In-the-Money Company Warrants that are outstanding as of immediately prior to the Effective Time.

"Agreement" has the meaning set forth in the preamble.

"Agreed Milestone Achievement Date" means (a) following Buyer's receipt of a Pre-Closing Milestone Notice, the date that is the earliest to occur of (i) the date on which the Company receives an Achievement Response Notice indicating Buyer's agreement that the Regulatory Approval Milestone has been achieved, (ii) the expiration of the Response Period with respect to such Pre-Closing Milestone Notice without Buyer's delivery to the Company of an Achievement Response Notice and (iii) the first Business Day after a determination pursuant to Section 2.04 that all of the conditions to the achievement of the Regulatory Approval Milestone were satisfied as of the date of Buyer's receipt of such Pre-Closing Milestone Notice or (b) following the Company's receipt of a Deemed Achievement Notice, the date that is the earliest to occur of (i) the date on which Buyer receives a Deemed Achievement Response Notice indicating the Company's agreement that the Regulatory Approval Milestone has been achieved, (ii) the expiration of the Deemed Achievement Response Period with respect to such Deemed Achievement Notice without

the Company's delivery to Buyer of a Deemed Achievement Response Notice and (iii) the first Business Day after a determination pursuant to Section 2.04 that all of the conditions to the achievement of the Regulatory Approval Milestone were satisfied as of the date of the Company's receipt of such Deemed Achievement Notice.

"Antitrust Laws" means the Sherman Antitrust Act of 1890, the Clayton Antitrust Act of 1914, the HSR Act, the Federal Trade Commission Act of 1914, the IEC and all other applicable Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or significant impediments or lessening of competition through merger or acquisition or the creation or strengthening of a dominant position through merger or acquisition, in each case, that are applicable to the Equity Purchase.

"Balance Sheet Date" means the date of the most recent unaudited consolidated balance sheet of the Company included in the Financial Statements.

"Bankruptcy and Equity Exception" has the meaning set forth in Section 4.02.

"Base Purchase Consideration" means an amount in cash equal to (a) $350,000,000 *multiplied by* (b) the Securityholder Ownership Percentage.

"Business Day" means any day except Saturday, Sunday or any other day on which commercial banks located in San Francisco, CA, New York, NY or Tel Aviv, Israel, are authorized or required by Law to be closed for business.

"Buyer" has the meaning set forth in the preamble.

"Buyer Entity" means Buyer (including any successor thereof) and its controlled Affiliates.

"Buyer Fundamental Change" means (a) a merger or other consolidation involving Buyer where Buyer is not the surviving or resulting entity in the transaction or (b) a sale of all or substantially all of the assets of Buyer to another Person.

"Buyer Indemnified Parties" has the meaning set forth in Section 10.02(a).

"Buyer Ownership Percentage" means the quotient, expressed as percentage and rounded to five decimal places, of (a) the aggregate number of Ordinary Shares that are issuable upon the conversion in full of all Preferred Shares issued and outstanding immediately prior to the Effective Time and held by any Buyer Entity (for the avoidance of doubt, exclusive of any liquidation preference or accrued dividends payable with respect to any such Preferred Shares) *divided by* (b) the Fully Diluted Number.

"Clinical Trial" means any clinical study intended as a pivotal study for purposes of seeking regulatory approval of the Initial Device that is conducted on sufficient numbers of human subjects to establish that the Initial Device is safe and efficacious for its intended use, to define warnings, precautions, and adverse reactions that are associated with the Initial Device in the field of use in which the Initial Device will be used. "Clinical Trial" shall include without limitation any clinical trial that would or does satisfy requirements of 21 C.F.R. § 814, and any foreign equivalent thereof.

"Closing Cash" means the aggregate amount of unrestricted cash and cash equivalents held by the Company and the Company Subsidiaries as of 12:01 am Israel time on the Closing Date, (a) net of all checks written (but not yet cashed), outbound wire transfers sent (but not yet cleared) and (b) credited for all checks received (but not yet cashed) and wire transfers received (but not yet cleared).

"Closing Indebtedness" means the aggregate amount of Indebtedness of the Company and the Company Subsidiaries as of 12:01 am Israel time on the Closing Date.

"Closing Working Capital" means Working Capital as of 12:01 am Israel time on the Closing Date. By way of illustration only, the calculation of Working Capital as of the close of business on March 31, 2020, is set forth on Schedule 1.01(b).

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

"Commercially Reasonable Efforts" means, with respect to the efforts to be expended by a Party or its Affiliate with respect to any objective, activity or decision to be undertaken under this Agreement with respect to the Initial Device, that measure of efforts and resources that is consistent with the efforts and resources that a company in the same industry as, and similarly situated to, such party normally commits to its own activities for products that are of a similar potential value, stage of research or development, life cycle and commercial potential.

"Company Divestiture" means the sale, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, to any Person other than a wholly-owned Subsidiary of Buyer, of (x) any material portion of the Company's right, title and interest in the Initial Device or (y) any material portion of the Company IP that is necessary to the development, manufacture, marketing, distribution or sale of the Initial Device. For the avoidance of doubt, any such sale, transfer, or other disposition may occur in connection with or as the result of the sale, transfer or other disposition of such assets together with other assets of Buyer, or the transfer of the capital stock or other equity interests of a Subsidiary of Buyer (including the Company or any Company Subsidiary). For purposes of this definition of Company Divestiture, all references to Buyer will be deemed to include any successor-in-interest to Buyer or any direct or indirect parent entity or holding company of Buyer or such successor-in-interest (it being understood that (i) a sale of all or substantially all assets of Buyer or (ii) a change of control of Buyer, any successor-in-interest to Buyer or any direct or indirect parent entity or holding company of Buyer or such successor-in-interest shall not constitute a Company Divestiture for purposes of this Agreement).

"Companies Law" means the Israeli Companies Law, 1999.

"Company Material Adverse Change" means any event, occurrence, fact, condition, circumstance, development or change (each an "Effect") that is, or would reasonably be expected to become, individually or in the aggregate with any other Effects, materially adverse to the business, results of operations, condition (financial or otherwise), assets or Liabilities of the Company and the Company Subsidiaries, taken as a whole; provided that the determination of whether a Company Material Adverse Change has occurred shall not include, either alone or in combination, any Effect arising out of, attributable to or relating to any of the following: (a) changes, conditions or other Effects generally effecting the Israeli economy or securities or

financial markets, the United States economy or securities or financial markets or any foreign markets or economies in any location where the Company or any Company Subsidiary has operations or sales, (b) changes in IFRS or applicable Laws (or interpretation thereof), (c) changes, conditions or other Effects that generally affect the medical device industry in which the Company or any Company Subsidiary operates, (d) acts of God, calamities, natural disaster, epidemic, outbreak or escalation of acts of terrorism or war (whether or not declared), or national or international political or social conditions, (e) the public announcement or pendency of this Agreement or any transactions contemplated herein, or the identity of Buyer, (f) the taking of any action required by the express terms of this Agreement or at Buyer's written request, or (g) any failure in and of itself (as distinguished from any Effect giving rise to or contributing to such failure) by the Company or any Company Subsidiary to meet any projections or forecasts for any period; provided, further, that the determination of whether a Company Material Adverse Change has occurred shall include any Effect referred to in clauses (a), (b), (c) or (d) to the extent that such Effect has a disproportionate adverse impact on the Company and the Company Subsidiaries, taken as a whole, compared to other participants in the industries in which the Company or any Company Subsidiary operates.

"Company IP" means all IP Rights (a) that are owned by the Company or any Company Subsidiary (whether solely or jointly with any other Person(s)) or (b) to which the Company or any Company Subsidiary has exclusive license or other rights to under any IP Contract.

"Company Option" means each unexpired and unexercised option to purchase Ordinary Shares as of immediately prior to the Effective Time.

"Company Option Plan" means the Company's 2011 Employee Stock Option Plan and the Company's 2020 Employee Stock Option Plan.

"Company Subsidiary" means, collectively, the Subsidiaries of the Company.

"Company Transaction Expenses" means, without duplication, the aggregate amount of all fees, costs and expenses incurred by or on behalf of the Company or any Company Subsidiary (but, for the avoidance of doubt, excluding any such amounts arising from actions of the Buyer following the Closing) arising from, in connection with or related to the negotiation, preparation, execution and performance of this Agreement and the transactions contemplated by this Agreement and any similar transactions (with other potential acquirers), if any, in connection with the transactions leading hereto, including (a) third-party fees, costs and expenses (including legal, accounting, broker's, investment banker's, consultant's, advisor's and finder's fees, costs and expenses and amounts required to be paid to any third party in connection with obtaining any consent, waiver or approval required to be obtained in connection with the consummation of the transactions contemplated by this Agreement) arising from, incurred in connection with or related to this Agreement or the transactions contemplated by this Agreement (whether incurred or accrued prior to or after the Closing Date and whether or not such amounts have been invoiced as of or prior to the Closing Date), together with any VAT or other Taxes payable in respect therewith, (b) all bonuses, incentive compensation, commissions, termination payments, retention or other change-in-control, separation, tax gross-up or other transaction-related payments to be paid to any Service Provider in connection with the Equity Purchase or any of the other transactions contemplated by this Agreement (whether paid before, on or following the Closing Date and

whether or not in connection with any other contingency (including any termination of service)), but expressly excluding any Option Consideration payable to holders of In-the-Money Company Options and expressly excluding any retention bonuses or any other retention payments or benefits offered by Buyer or its Subsidiaries prior to or following the Closing or such payments that are triggered by the retention offered or a termination of service initiated by Buyer or its Subsidiaries following the Closing, (c) the employer portion of any payroll, employment or similar Taxes incurred or to be incurred by Buyer or its Subsidiaries or the Company or any Company Subsidiary (whether paid before, on or following the Closing Date) arising from, incurred in connection with or related to this Agreement or the transactions contemplated by this Agreement (including, for the avoidance of doubt, any such Taxes arising from or incurred in connection with or related to (i) any of the foregoing in clause (b) or (ii) the payment of the Option Consideration to holders of In-the-Money Company Options), (d) the premium and any related fees, costs and expenses associated with the Company's obligation to obtain the Tail Insurance Coverage, (e) fifty percent (50%) of the fees and expenses of the Escrow Agent and Payment Agent and (f) all other miscellaneous out-of-pocket expenses or costs, in each case, incurred by or on behalf of the Company or any Company Subsidiary arising from, incurred in connection with or related to the transactions contemplated by this Agreement.

"Company Warrant" means each unexpired and unexercised warrant to purchase Shares as of immediately prior to the Effective Time, if any.

"Competing Transaction Proposal" means any offer, proposal or inquiry (other than any such offer, proposal or inquiry from Buyer) relating to, or any Person's indication of interest in, Competing Transaction.

"Competing Transaction" means any transaction or series of related transactions, other than the transactions contemplated by this Agreement involving (a) any issuance, grant, acquisition or Transfer of capital stock, other than as permitted by Section 7.01(b)(iii) or Section 7.02, (b) the sale, exclusive license, transfer, lease, exchange or disposition of all or any material portion of the assets of the Company or any Company Subsidiary (including for clarity the Initial Device), (c) any merger, consolidation, "option to purchase" transaction, share exchange, joint venture (or other similar partnership transaction), recapitalization, reorganization, liquidation, dissolution or other form of corporate business combination with or involving the Company or any Company Subsidiary, (d) the sale, assignment, transfer or license of all or any material portion of the IP Rights owned or controlled by the Company or any Company Subsidiary (including for clarity such IP Rights related to the Initial Device) or any other license, option or other rights with respect to the Initial Device, other than any (i) non-exclusive and non-commercial licenses granted to clinical research organizations, clinical sites, and/or clinical investigators who are conducting a clinical trial for the Initial Device or any other clinical trials on behalf of the Company or any Company Subsidiary, which licenses terminate at the conclusion of such clinical trial, (ii) non-exclusive licenses to use such IP Rights granted in connection with the commercial use of the Company's or any Company Subsidiary's products (including the Initial Device) by end-users (but which do not grant to such Persons rights to market, manufacture, sell, commercialize, or distribute such products (including the Initial Device) using such IP Rights), (iii) non-exclusive rights to manufacture the Company's or any Company Subsidiary's products (including the Initial Device) on behalf of the Company or a Company Subsidiary using such IP Rights granted to contract manufacturing organizations or similar vendors, sub-contractors and service providers pursuant to

agreements that are terminable by the Company or a Company Subsidiary for convenience (subject to notice periods no longer than 30 days) and do not grant the other party the right to separately market, distribute, commercialize or sell such products (including the Initial Device) and (iv) coral supply agreements that (A) provide for exclusive supply rights, (B) are entered into in the ordinary course of business and (C) can be terminated by the Company or a Company Subsidiary for convenience within twelve (12) months of the Closing Date.

"Confidential Company Information" means proprietary, non-public information of the Company or any Company Subsidiary provided to or in the possession of a Company Securityholder, and all tangible embodiments thereof, including without limitation (i) any such information regarding or embodying the Company's technology, intellectual property, products or product candidates (including the Initial Device), financial or other business information or objectives, and (ii) any other information concerning the Company or any Company Subsidiary or their respective businesses, but excluding for clarity the Confidential Transaction Information. Confidential Company Information shall not include information that (a) was publicly available prior to the date of this Agreement or hereafter becomes publicly available, other than as a result of any violation of any confidentiality provisions related thereto pursuant to this Agreement or otherwise on the part of any Securityholder, (b) was rightfully known by the applicable Securityholder prior to such Securityholder first receiving the same from Company or Buyer (as provable by the applicable Securityholder's contemporaneous written records), (c) the applicable Securityholder lawfully received from a third party who, to the knowledge of such Securityholder, is not subject to any legally binding obligation or duty to any party hereto with respect to the confidentiality of such information, (d) is required to be disclosed by the applicable Securityholder or any of its Affiliates pursuant to an Order, the provisions of applicable Law or any stock exchange regulations applicable to such Securityholder or any of its Affiliates; provided, that, to the extent practicable and legally permissible, such Securityholder will (x) inform and disclose to Buyer in advance of any such required disclosure, and in any event shall notify Buyer of such requirement and (y) limit such disclosure to only such Confidential Company Information required to be disclosed; provided that none of the foregoing shall prevent or limit the ability of a Securityholder or its Affiliate from timely complying with any such mandatory disclosure obligations as required by an Order, the provisions of applicable Law or any stock exchange regulations or (e) if a Securityholder or any of its Affiliates is a public company, include in its or their periodic public reports to the relevant securities authorities and stock exchanges information with respect to the Company as required by applicable Law or stock exchange regulations and in a manner consistent with past practice.

"Confidentiality Agreement" means that certain Mutual Non-Disclosure Agreement, dated as of January 23, 2020, by and between Buyer and the Company.

"Confidential Transaction Information" means proprietary, non-public information or materials with respect to, regarding or embodying the terms and provisions of this Agreement, the Disclosure Schedules, the documents and instruments contemplated hereby and thereby, the terms and conditions hereof and thereof, the negotiations hereof and thereof and the transactions contemplated hereby and thereby. Confidential Transaction Information shall not include information that (a) was publicly available prior to the date of this Agreement or hereafter becomes publicly available, other than as a result of any violation of any confidentiality provisions related thereto pursuant to this Agreement or otherwise on the part of the receiving party, (b) the receiving

party lawfully received from a third party, to the knowledge of such receiving party, who is not subject to any legally binding obligation or duty to any party hereto with respect to the confidentiality of such information or (c) is required to be disclosed by the applicable receiving party or any of its Affiliates pursuant to an Order, the provisions of applicable Law or any stock exchange regulations applicable to such receiving party or any of its Affiliates; provided, that, to the extent practicable and legally permissible, such receiving party will (x) inform and disclose to Buyer (if such receiving party is not the Buyer) or the Securityholder Representative (if such receiving party is the Buyer) in advance of any such required disclosure, and in any event shall notify such party of such requirement and (y) limit such disclosure to only such Confidential Company Information required to be disclosed; provided that none of the foregoing shall prevent or limit the ability of a receiving party or its Affiliates from timely complying with any such mandatory disclosure obligations as required by an Order, the provisions of applicable Law or any stock exchange regulations.

"Consideration Spreadsheet" has the meaning ascribed to such term in Section 7.07.

"Contracts" means, with respect to any Person, any agreement, contract, lease, sublease, purchase order, credit agreement, bond, debenture, note, mortgage, deed of trust, indenture, guarantee, permit, concession, franchise or other instrument, arrangement, commitment, license, understanding or undertaking that is or purports to be legally binding on such Person, whether written or oral, including all amendments, supplements, exhibits and schedules thereto.

"D&O Indemnified Liability" has the meaning set forth in Section 7.13.

"D&O Indemnified Parties" has the meaning set forth in Section 7.13.

"Damages" means any and all Actions, losses, costs, damages (other than (i) any punitive or similar theories of damages, except to the extent actually paid to third party pursuant to a third party Claim, or (ii) consequential or similar theories of damages except to the extent reasonably foreseeable), penalties, assessments, Liabilities and out-of-pocket expenses, including reasonable attorneys' fees, costs of investigation or settlement, other professionals' and experts' fees and court or arbitration costs.

"Data Protection Laws" means any and all applicable Laws concerning the privacy or security of Personal Data (including any applicable Laws of jurisdictions where the Personal Data was collected), and all regulations promulgated and guidance issued by Governmental Entities thereunder, including as applicable, HIPAA, Federal Trade Commission Act, the California Consumer Privacy Act of 2018, and the General Data Protection Regulation 2016/679 (the "GDPR"), the EU ePrivacy Directive 2002/58/EC (as amended and replaced from time to time), the United Kingdom Data Protection Act 2018, the Israeli Privacy Protection Law, 1981, and any other data protection laws, implementing legislation, recommendations and deliberations of the relevant privacy commissioners and data protection authorities, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, regulatory requirements, rule or other binding instrument of any country where Company or any of the Company Subsidiaries has a presence, applicable to the Processing of Personal Data.

"Deductible" has meaning set forth in Section 10.03(a).

"Designated Amount" means an amount in cash equal to $50,000,000.

"Disclosure Schedules" means the disclosure schedules delivered by the Company and set forth as Schedule 1.01(c).

"Disqualifying Interim Action" means an action that (a) would or would reasonably be expected to prevent, impede or delay (i) the ability of the Company, the Securityholders, the Securityholder Representative or Buyer to consummate the Equity Purchase or (ii) the ability of the Company or any Company Subsidiary (or Buyer or any of its Affiliates after the Closing) to develop, manufacture, market, distribute or sell (including obtaining reimbursement for) the Initial Device (other than entry into coral supply agreements in the ordinary course of business consistent with past practice that provide for exclusive supply rights), (b) would or would reasonably be expected to result in an increase to the monthly cash burn rate of the Company following the Closing in an amount in excess of 30% of the average monthly cash burn rate of the Company for the consecutive twelve (12) months prior to the date of this Agreement or (c) is taken with the bad faith intention of delaying or shifting any financial or other Liability to Buyer after the Closing. For the avoidance of doubt, any action taken with the prior written consent of Buyer shall not be a "Disqualifying Interim Action."

"Divestiture" means (a) the sale, license or other disposition or holding separate (through the establishment of a trust or otherwise) of any assets or categories of assets of Buyer or any of its Affiliates (including, following the Effective Time, the Company or any Company Subsidiary), or the holding separate of any Equity Interests of the Company or any Company Subsidiary, (b) the imposition of any limitation or restriction on the ability of Buyer or any of its Affiliates (including, following the Effective Time, the Company or any Company Subsidiary) to conduct freely their respective businesses or own any of their respective assets, (c) any limitation or regulation on the ability of Buyer or any of its Affiliates to acquire ownership of Equity Interests of the Company or any Company Subsidiary pursuant to the Equity Purchase or to exercise full rights of ownership of the Company or any Company Subsidiary or (d) the making of any payment or commercial concession to any Person as a condition to obtaining any required consent of any Person in connection with the Equity Purchase.

"Effective Time" has the meaning set forth in Section 3.01.

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

"Environmental Law" means any applicable Law or any agreement with any Governmental Entity or other Person, relating to human health and safety, the environment, natural resources, flora and fauna or Hazardous Substances.

"Equity Interests" means, with respect to any Person, and (a) shares of capital stock or voting securities of such Person, (b) securities of such Person convertible into or exchangeable for shares of capital stock or voting securities of such Person or (c) options or other rights to acquire from such Person, or other obligation of such Person to issue, any capital stock, voting securities or securities convertible into or exchangeable for capital stock or voting securities of such Person.

"Equity Purchase Consideration" means an amount in cash equal to (a) Base Purchase Consideration, *plus* (b) the Aggregate Exercise Price *minus* (c) the sum of (i) the amount of Estimated Closing Indebtedness and (ii) the amount of Estimated Unpaid Company Transaction Expenses and (iii) the Estimated Closing Working Capital Shortfall *plus* (d) the amount of Estimated Closing Cash.

"ERISA" has the meaning set forth in Section 4.08(a).

"ERISA Affiliate" means any trade or business employer (whether or not incorporated) that is treated together with the Company as a single employer under Section 414(b) or (c) of the Code, or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under of Section 414 of the Code.

"Escrow Agent" has the meaning set forth in Section 3.05(g).

"Escrow Agreement" means that certain Escrow Agreement, dated as of even date herewith, by and among the Escrow Agent, Buyer, the Company and the Securityholder Representative.

"Escrow Release Notice" means a written notice by the Company to the Escrow Agent (with a copy delivered to Buyer concurrently) indicating that (i) a Failure to Close Termination has occurred pursuant to Section 9.03(a), (ii) the Escrow Agent is authorized and directed to release the Designated Amount to the Company and to the Payment Agent (for further disbursement to the Securityholders in accordance with the provisions hereon below), (iii) the Escrow Agent's authority to release the Designated Amount in accordance with such Escrow Release Notice shall be effective at the Objection Deadline if, and only if, the Escrow Agent shall not have received an Escrow Release Objection prior to the Objection Deadline, (iv) the Escrow Agent's authority to release the Designated Amount shall be revoked automatically with no required action by the Company or the Securityholder Representative if an Escrow Release Objection is received by the Escrow Agent prior to the Objection Deadline (and thereafter the Designated Amount shall be released only (A) pursuant to and in accordance with joint instructions executed by the Buyer and the Company or (B) pursuant to and in accordance with a final written decision of a Chosen Court), and (v) a copy of the Escrow Release Notice was delivered to Buyer concurrently with the delivery of the Escrow Release Notice to the Escrow Agent.

"Escrow Release Objection" means written notice from Buyer to the Escrow Agent (with a copy delivered to the Company concurrently) objecting to the Escrow Agent's release of the Designated Amount pursuant to an Escrow Release Notice and stating in reasonable details the basis for such objection.

"Estimated Closing Working Capital Shortfall" means (a) if Estimated Closing Working Capital is less than Target Net Working Capital by an amount with an absolute value that is greater than the Floor Amount, an amount equal to the difference between Target Net Working Capital and Estimated Closing Working Capital, (b) if Estimated Closing Working Capital is less than Target Net Working Capital by an amount with an absolute value that is less than the Floor Amount, an amount equal to zero and (c) if Estimated Closing Working Capital is equal to or greater than Target Net Working Capital, an amount equal to zero.

"Excess Amount" has the meaning set forth in Section 3.04(b)(vii).

"FDA" means the United States Food and Drug Administration.

"Financial Statements" has the meaning set forth in Section 4.05(a).

"Floor Amount" means an amount equal to twenty-five percent (25%) of the absolute value of Target Net Working Capital.

"Fully Diluted Number" means, without duplication, the sum of (a) the total number of Ordinary Shares that are issued and outstanding immediately prior to the Effective Time, (b) the total number of Ordinary Shares that are issuable upon the conversion in full of all Preferred Shares issued and outstanding immediately prior to the Effective Time (for the avoidance of doubt, exclusive of any liquidation preference or accrued dividends payable with respect to any such Preferred Shares) and (c) the total number of Ordinary Shares that are issuable upon the conversion or exercise in full of (i) all In-the-Money Company Options and (ii) In-the-Money Company Warrants, each case of (i) and (ii), that are outstanding immediately prior to the Effective Time. For the avoidance of doubt, the "Fully Diluted Number" shall exclude (x) Shares subject to any Company Options that are not In-the-Money Company Options as of immediately prior to the Effective Time and (y) Shares subject to Company Warrants that are not In-the-Money Company Warrants as of immediately prior to the Effective Time.

"Fully Diluted Ordinary Number" means, without duplication, the sum of (a) the total number of Ordinary Shares that are issued and outstanding immediately prior to the Effective Time and (b) the total number of Ordinary Shares that are issuable upon the conversion or exercise in full of (i) all In-the-Money Company Options and (ii) In-the-Money Company Warrants, each case of (i) and (ii), that are outstanding immediately prior to the Effective Time. For the avoidance of doubt, the "Fully Diluted Ordinary Number" shall exclude (x) Shares subject to any Company Options that are not In-the-Money Company Options as of immediately prior to the Effective Time and (y) Shares subject to Company Warrants that are not In-the-Money Company Warrants as of immediately prior to the Effective Time.

"Fundamental Representations" means the representations and warranties of the Company contained in Section 4.01 (Organization, Good Standing and Qualification), Section 4.02 (Due Authorization), Section 4.03 (Governmental Approvals; No Conflict), Section 4.04(a) (Capital Structure), Section 4.04(b) (Capital Structure), Section 4.14 (Taxes), Section 4.16 (Intellectual Property), Section 4.17 (Regulatory and Privacy Compliance) (solely to the extent relating to compliance with the rules and regulations of the FDA and the conduct of the Pivotal Clinical Trial), Section 4.18 (Product and Clinical Trials Disclosures) and Section 4.23 (Brokers and Finders).

"GAAP" means the then current generally accepted accounting principles in the United States as established by the Financial Accounting Standards Board or other entity generally recognized as having the right to establish such principles in the United States.

"Governmental Entity" means any Israeli, United States, federal, state, local, foreign or international government or political subdivision thereof, any court, administrative body, agency or commission or other legislative, executive, judicial, governmental or quasi-governmental entity, authority or instrumentality, domestic or foreign, with competent jurisdiction, including, without limitation, the IIA. For clarity, the FDA is considered Governmental Entities.

"Hazardous Substance" means (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or man-made, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under any Environmental Law, (b) any petroleum or petroleum-derived product, radon, radioactive material, waste, asbestos in any form, lead or lead-containing material, urea formaldehyde foam insulation, medical waste, biohazards, mold and polychlorinated biphenyl and (c) any other substance that is regulated under or may be the subject of any Action by any Governmental Entity in connection with any Environmental Law.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996, as amended, and the regulations thereunder.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvement Act of 1976, as amended.

"IEC" means the Israeli Economic Competition Law, 1999.

"IFRS" means the then current International Financial Reporting Standards.

"IIA" mean the Israel Innovation Authority (formerly known as the Office of Chief Scientist), of the Ministry of the Economy and Industry.

"Initial Device" means aragonite based off-the-shelf implant for use in cartilage and osteochondral defects in traumatic and osteoarthritic joints proprietary to the Company that is the subject of the Pivotal Clinical Trial and that is currently known as Agili-C™, together with all improvements, modifications, or alterations thereto which may be implemented by or on behalf of Company during the Option Period.

"Initial Device IP" means Company IP which is related to the Initial Device.

"Indebtedness" of any Person means (a) all obligations of such Person for borrowed money, whether current or funded, secured or unsecured, contingent or otherwise, all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, and any interest, premium, fees, penalties unpaid and owing with respect to the foregoing Liabilities (including any costs and fees incurred with prepaying or redeeming any such Liabilities and any related hedging arrangements), (b) all obligations of such Person for the deferred purchase price of property or services, (c) all obligations of such Person in respect of any lease of (or other arrangement conveying the right to use) real property or personal property, or a combination thereof, which obligations are required to be classified and accounted for under IFRS as capital leases, (d) any payment obligation of such Person in respect of interest under any existing interest rate swap or hedge agreement, (e) any negative cash or overdraft balances with respect to any bank account in the name of such Person, (f) all Liabilities of others secured by any Encumbrance on any asset of such Person (whether or not the Liability secured thereby has been assumed by such Person); (g)

all Liabilities of such Person under any letter of credit, banker's acceptance or similar credit transaction, (h) all guarantees by such Person of any of the foregoing Liabilities of any other Person and (i) the balance of the Company's Liability to the IIA at the Closing Date, namely the total amount of grants received by the Company in NIS, converted to an amount in U.S. dollars, in accordance with the U.S. dollar rate published in the Wall Street Journal on the date of grant, plus the variable interest rate at the annual LIBOR interest rate for dollar deposits, as published in the Wall Street Journal on the first trading day of each year, or in accordance with an alternate rate published by the Bank of Israel *less* all amounts repaid on account of such Liability to the IIA by the Company prior to the Closing Date; but specifically excluding from clauses (a) through (i) above: (i) any Liabilities to the IIA solely to the extent payable in connection with any potential post-Closing transfer outside of Israel of technology or manufacturing rights of the Company; (ii) any Company Transaction Expenses; (iii) Liabilities repaid or terminated prior to the Closing; and (iv) intercompany Liabilities solely between the Company and any of its Subsidiaries.

"Indemnity Escrow Fund" means an amount in cash equal to $40,000,000.

"Investigational Plan" means the clinical study protocol for the Pivotal Clinical Trial, attached hereto as Exhibit A.

"IP Contract" means any of the following Contracts concerning IP Rights to which the Company or any Company Subsidiary is a party: (a) Contracts granting or obligating a Person to grant the Company or any Company Subsidiary a license, an option to license, or any other right or immunity with respect to any IP Rights owned or held by such granting Person; (b) Contracts under which the Company or any Company Subsidiary has granted or is obligated to grant a license, and option to license, or any other right or immunity under any Company IP (including by way of a sublicense under any IP Rights of an upstream licensor of the Company or any Company Subsidiary) to any other Person; (c) Contracts imposing restrictions on assertion of IP Rights (including prosecution and maintenance, enforcement, and defense rights) and covenants not to sue under IP Rights; (d) Contracts for settlement of matters with respect to IP Rights; (e) consortium, standards body and patent pool Contracts involving IP Rights; (f) Trademark Rights coexistence Contracts and (g) Contracts under which consents to use Trademark Rights are given or obtained, including in each case all amendments, supplements, exhibits and schedules thereto.

"IP Rights" means all intellectual property and industrial property rights and rights in confidential information of every kind and description throughout the world, and all applications therefor, including all (a) patents, patent applications (including provisional patent applications), invention disclosures, and all related continuations, continuations-in-part, divisionals, reissues, re-examinations, substitutions, and extensions thereof ("Patent Rights"), (b) trademarks, service marks, names, corporate names, trade names, domain names, logos, slogans, trade dress, design rights, and other similar designations of source or origin, and all applications therefor, together with the goodwill symbolized by any of the foregoing ("Trademark Rights"), (c) copyrights and all applications therefor and copyrightable subject matter ("Copyrights"), (d) trade secrets and all other confidential information, ideas, know-how, inventions, proprietary processes, formulae, models, and methodologies ("Trade Secrets"), (e) rights of publicity, privacy, and rights to personal information, and (f) moral rights and rights of attribution and integrity.

"IRS" has the meaning set forth in Section 4.08(c).

"Israeli Code" means the Israeli Income Tax Ordinance of Israel New Version, 1961, as amended, and the rules and regulations promulgated thereunder, including, any publications and clarifications issued by the ITA.

"ITA" means the Israel Tax Authority.

"IT Assets" means computers, computer software, firmware, middleware, servers, workstations, routers, hubs, switches, network equipment, data communication lines and all other computerized or information technology equipment.

"Joinder Agreement" means a joinder agreement in the form attached hereto as Exhibit B.

"Key Employee" means each of the persons set forth (and the role of such person indicated beside their name) on Schedule 1.01(d), which, in the event of any departure of any Key Employee, may be updated from time to time by the Company following the date hereof with replacement individuals who can reasonably fulfill the same functions (an "Eligible Replacement") and with the written consent of Buyer (not to be unreasonably withheld, conditioned or delayed, taking into account the relevant qualifications, experience and knowledge of the proposed replacement); provided, however, that Buyer shall be deemed to have approved an Eligible Replacement to the extent that Buyer has not objected to such Eligible Replacement in a writing delivered to the Company within ten (10) Business Days of the Company's written request for Buyer's consent with respect to such Eligible Replacement; provided further, that Buyer shall not have the right to withhold its consent with respect to any Eligible Replacement who is, at the time of the Company's proposal that such Person be a Key Employee, an existing employee of the Company so long as such proposed Eligible Replacement has adequate qualifications, experience and knowledge (or combination of any two of qualifications, experience or knowledge) to fulfill the same functions as the Key Employee being replaced by such Eligible Replacement.

"Knowledge of the Company" "Company's Knowledge" means, with respect to any matter in question relating to the Company and the Company Subsidiaries, the actual knowledge of (a) the Company's Chief Executive Officer, Chief Financial Officer, Vice President of Research and Development, and Vice President of Quality Assurance and Regulatory Affairs and (b) the Chairman of the Company Board, in each case, after reasonable inquiry, none of whom shall have any personal Liability regarding such knowledge solely by virtue of being named a knowledge party hereunder (but, for the avoidance of doubt, nothing in this definition of "Knowledge of the Company" shall limit any Person's obligations as set forth in this Agreement, including as set forth in Article X).

"Law" means any federal, state, local or foreign law, statute or ordinance, rule, regulation, directive, code, order, judgment, agency requirement, license, permit, injunction or decree enacted, issued, promulgated, enforced or entered by any Israeli, United States or foreign government or agency or by any other Governmental Entity.

"Liabilities" means, with respect to any Person, any and all debts, indebtedness (including Indebtedness of the Company with respect to Liabilities of the Company), liabilities, commitments and obligations of any kind or nature of such Person, whether fixed, contingent or absolute, matured or unmatured, liquidated or unliquidated, accrued or not accrued, asserted or not asserted, known or unknown, determined, determinable or otherwise, whenever or however arising, including those arising under any Law, principles of common law (including, whether arising out of any contract or tort based on negligence or strict liability), any award of any arbitrator or mediator of any kind, and those arising under any Contract, whether or not the same would be required by applicable accounting standards to be reflected in financial statements or disclosed in the notes thereto.

"Material Product and Trial Information" has the meaning set forth in Section 4.18(a).

"Milestone Set Off Amount" means, as of any relevant date of determination, an amount in cash equal to the aggregate Damages for which Buyer has elected to exercise the Set Off Right in accordance with Section 10.03(i) and that have not previously been applied in satisfaction of Buyer's obligation to pay the Sales Milestone Consideration.

"Notified Body" means an organization that has been designated by a member state of the European Union to assess the conformity of certain products, before being placed on the E.U. market, with the applicable essential technical requirements.

"Objection Deadline" means with respect to an Escrow Release Notice, 5:01 p.m. Israel time on the fifth (5th) Business Day following the delivery to the Escrow Agent of such Escrow Release Notice.

"Open Source Software" means any software licensed, provided, or distributed under any open-source or similar license, including any license meeting the Open Source Definition (as promulgated by the Open Source Initiative) or the Free Software Definition (as promulgated by the Free Software Foundation).

"Option Exercise Period" means the Call Option Exercise Period or the Put Option Exercise Period, as the context requires.

"Optionholders" means (a) with respect to any time before the Effective Time, collectively, the holders of record of outstanding Company Options as of such time and (b) with respect to any time from and after the Effective Time, collectively, the holders of record of outstanding Company Options as of immediately prior to the Effective Time.

"Order" means any order, writ, judgment, injunction, decree, ruling, verdict or award.

"Ordinary Shares" means the Company's Ordinary Shares, NIS 0.01 nominal value per share.

"Ordinary Per Share Consideration" means an amount in cash equal to (a) the portion of the Aggregate Consideration payable to holders of Ordinary Shares, In-the-Money Company Options and In-the-Money Company Warrants (to the extent exercisable into Ordinary Shares) divided *by* (b) the Fully Diluted Ordinary Number.

"Organizational Documents" means, with respect to any Person, as applicable, the constitution, articles, memorandum, articles or certificate of incorporation, organization or association, the bylaws, the voting agreements, the shareholders agreement, the limited partnership agreement, the partnership agreement, the limited liability company agreement, operating agreement, formation agreement or similar organizational documents of such Person. For the avoidance of doubt, the Organizational Documents of the Company shall include the Company's Amended and Restated Articles of Association, as in effect from time to time.

"Other Clinical Trials" means any clinical trial conducted by or on behalf of the Company or any Company Subsidiary, other than the Pivotal Clinical Trial.

"Party" means each of Buyer, the Company, the Securityholders and the Securityholder Representative.

"Payment Agent" has the meaning set forth in Section 3.05(a).

"Payment Agent Agreement" means an agreement to be entered into by the Payment Agent, Buyer and the Securityholder Representative, in the form attached hereto as Exhibit C.

"Permitted Encumbrances" means (a) statutory liens for current Taxes not yet due and payable or being contested in good faith by appropriate procedures for which a reserve has been established in accordance with IFRS on the Financial Statements, (b) all landlords', workmen's, repairmen's, warehousemen's and carriers' liens and other similar liens imposed by Law, (c) Encumbrances securing Indebtedness to the extent such Indebtedness is taken into account in computing Closing Indebtedness, (d) all pledges or deposits in connection with workers compensation, unemployment insurance and other social security legislation, (e) Encumbrances that will be released and discharged at or prior to the Closing and (f) Encumbrances identified on title policies or preliminary title reports or other documents or writings included in the public records.

"Permitted Transferee" shall have the meaning ascribed to such term under the Company's Articles of Association as in effect on the date hereof.

"Person" means an individual, corporation (including not-for-profit), partnership, joint venture, limited liability company, Governmental Entity, unincorporated organization, estate, trust, association or other entity or group of any kind or nature.

"Personal Data" means information that identifies or could be used to identify an individual, including: (a) Protected Health Information as defined under HIPAA; (b) Personal Data as defined under the GDPR and (c) any information pertaining to an individual that is regulated or protected by Data Protection Laws.

"PHSA" means the Public Health Service Act of 1944, as amended.

"Pivotal Clinical Trial" means CLN 0021: A Prospective Multicenter Open-label Randomized Controlled Trial of Agili-C™ vs. Surgical Standard of Care (SSOC) for the Treatment of Joint Surface Lesions of the Knee with the ClinicalTrials.gov identifier NCT03299959.

"Pivotal Clinical Trial Success" means, with respect to the Pivotal Clinical Trial, (a) success in the Primary Endpoint, as defined in the Investigational Plan and SAP, (b) success in the change from baseline to 24 months in the average overall KOOS score (Pain, Symptoms, QOL, ADL & Sports) in patients with osteoarthritis (Kellgren-Lawrence grade 2-3) secondary endpoint and (c) success in the change from baseline to 24 months in the average overall KOOS score (Pain, Symptoms, QOL, ADL & Sports) in patients with total lesion(s) size >3cm² secondary endpoint.

"Pre-Closing Milestone Notice" means a written notice, executed by the Chief Executive Officer of the Company (or any other director authorized by the Board of Directors for such purpose), notifying Buyer of the Company's achievement of the Regulatory Approval Milestone.

"Pre-Closing Tax Period" means any Tax period ending on or before the Closing Date and that portion of any Straddle Period ending on (and including) the Closing Date.

"Preferred Shares" means all series of the Company's preferred shares, NIS 0.01 nominal value per share.

"Pre-Market Approval Application" means the first pre-market approval application submitted by the Company to the FDA with respect to Regulatory Approval.

"Processing" has the same meaning given to such term in the GDPR.

"Pro Rata Share" means, with respect to any Securityholder and referenced amount, a portion of such referenced amount equal to (a) such referenced amount multiplied by (b) the amount obtained by dividing (i) the portion of the Aggregate Consideration actually paid at the relevant time to such Securityholder pursuant to this Agreement *by* (ii) the total Aggregate Consideration actually paid at the relevant time to all Securityholders, in each case as set forth on the Consideration Spreadsheet. For the avoidance of doubt, any consideration which should have been paid but not paid solely due to offset in accordance with the provisions hereof shall be deemed as if actually paid to the applicable Securityholder(s).

"Qualifying Disclosure Update" means an update that (a) is set forth on the Final Updated Disclosure Schedule, (b) reflects facts, changes or circumstances (i) first arising after the date hereof in the ordinary course of business or otherwise as a result of an action initiated by a third party other than the Company or a Company Subsidiary or the Securityholders, and (ii) not arising from a breach of any covenant contained in this Agreement, and (c) does not arise from circumstances that will or would reasonably be expected to (i) prevent, materially impede or materially delay the ability of the Company or any Company Subsidiary (or Buyer or any of its Affiliates after the Closing) to (A) consummate the Equity Purchase or (B) to develop, manufacture, market, distribute or sell (including obtaining reimbursement for) the Initial Device (excluding the Company's entry into coral supply agreements in the ordinary course of business consistent with past practice that provide for exclusive supply rights) or (ii) result in the suffering or incurrence of Damages (excluding costs incurred pursuant to ordinary course commercial, corporate or employee/labor arrangements) by the Company or any Company Subsidiary (or Buyer or any of its Affiliates following the Closing) (A) that are in excess of $1,000,000 (individually or in the aggregate with all other updates to the Disclosure Schedules) or (B) with respect to which, if the Closing were to occur, Buyer would not be entitled to indemnification under this Agreement.

"Registered IP" means all Company IP that is registered, filed, or issued under the authority of any Governmental Entity, including all Patent Rights, registered copyrights, registered Trademark Rights, registered databases, and domain names, and for clarity including all applications for any of the foregoing.

"Regulatory Approval" means Pivotal Clinical Trial Success is achieved and the FDA approves the Initial Device for marketing with label indications meaning that it is safe and effective for use consistent in all respects with Pivotal Clinical Trial Success, including, for the avoidance of doubt, the secondary endpoints included in the definition of Pivotal Clinical Trial Success.

"Regulatory Approval Milestone" means the Company's achievement of Regulatory Approval for the Initial Device.

"Regulatory Laws" means the Federal Food, Drug, and Cosmetic Act of 1938, as amended (21 U.S.C. § 301 et seq., and the rules and regulations promulgated and enforced by the FDA thereunder), PHSA, the federal Anti-kickback Statute (42 U.S.C. § 1320a-7b(b)), the civil False Claims Act (31 U.S.C. §§ 3729 et seq.), the criminal False Claims Act (42 U.S.C. § 1320a-7b(a)), all criminal laws relating to health care fraud and abuse, including but not limited to 18 U.S.C. Sections 286 and 287, and the health care fraud criminal provisions under HIPAA, the exclusion laws (42 U.S.C. § 1320a-7), the civil monetary penalties law (42 U.S.C. § 1320a-7a), HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act (42 U.S.C. §§ 17921 et seq.), the Physician Payment Sunshine Act (42 U.S.C. § 1320a-7h), Medicare (Title XVIII of the Social Security Act), Medicaid (Title XIX of the Social Security Act), the Israeli Ministry of Health Guidelines entitled "Clinical Trials and Human Subjects", 2016, as amended and the regulations promulgated pursuant to such laws, and any similar Laws of any comparable local, state, federal, or foreign Governmental Entity.

"Related Party" means any director, officer, employee, Affiliate (which for purposes of this definition of "Related Party" includes any shareholder of the Company or any Company Subsidiary that owns more than five percent (5%) of the Company's issued and outstanding share capital) or "associate" or members of any of their "immediate family" (as such terms are respectively defined in Rule 12b-2 and Rule 16a-1 of the Securities Exchange Act of 1934) of the Company or any Company Subsidiary.

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

"Review Board" means any domestic, foreign or international institutional review board, privacy board or ethics committee approving the Pivotal Clinical Trial involving the Initial Device.

"Sales" means at any date of determination, for the applicable period, the aggregate gross worldwide amount (expressed in U.S. dollars and calculated in accordance with U.S. GAAP, as applied in a manner consistent with Buyer's audited consolidated financial statements) of revenues recognized by any Buyer Entity (specifically excluding any reductions deriving from inter-company transactions between Buyer Entities) from (a) sales of the Initial Device or any component thereof (including related services) to a third party that is not a Buyer Entity (including for clarity to any such third parties who are distributors or wholesalers of the Initial Device) and (b) to the extent not already included in the foregoing, royalties or licenses of Company IP to a third party that is not a Buyer Entity (with any up-front license payment recognized over the course

of the term of the relevant license solely to the extent so required by U.S. GAAP, and without duplication of any amounts included pursuant to sub-section (a) above); provided, that with respect to sales which are not a "stand-alone" sale and are sold or provided as a "bundled sale" (a "Bundled Sale"), the term "Sales" shall mean the actual revenues recognized for such Bundled Sale multiplied by the quotient obtained by dividing (i) the price of the Initial Device or any component thereof (as set forth in Buyer's formal price list as in effect at such time) by (ii) the sum of such price of the Initial Device or any component thereof included in such Bundled Sale (as set forth in Buyer's formal price list) *plus* the price for the Buyer's product and/or a third party product or service sold by Buyer included in such Bundled Sale (as set forth in the Buyer's formal price list as in effect at such time). For purposes of this definition of Sales, all references to Buyer will be deemed to include any successor-in-interest to Buyer or any direct or indirect parent entity or holding company of Buyer or such successor-in-interest.

"Sales Milestone Consideration" means an amount in cash equal to (a) the product of (i) $150,000,000 *multiplied by* (ii) the Securityholder Ownership Percentage *minus* (b) any Milestone Set Off Amount.

"Sales Milestone" means Sales, over any consecutive twelve (12) calendar month period, in excess of $100,000,000.

"SAP" means the statistical analysis plan of the Pivotal Clinical Trial, as attached hereto as Exhibit D.

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

"Section 102 Option" means a Company Option granted subject to Section 102(b)(2) of the Israeli Code and intending to qualify under the "capital gains track" set forth therein.

"Section 102 Plan" means each of the Company's employee equity incentive plans that is intended to qualify as a capital gains route plan under Section 102(b)(2) of the Israeli Code.

"Section 102 Share" means a share issued upon exercise of a Section 102 Option.

"Section 102 Trustee" means a trustee appointed by the Company with respect to the Section 102 Plan in accordance with the provisions of Section 102(b) of the Israeli Code.

"Securityholders Disclosure Schedules" means the disclosure schedules delivered by the Company on behalf of the Securityholder and set forth as Schedule 1.01(e).

"Securityholder Expense Fund" means an amount in cash equal to $200,000.

"Securityholder Material Adverse Change" means with respect to any Securityholder, any change, event, circumstance, condition or effect that, individually or in the aggregate and following all efforts made by such Securityholder or its legal successor or assignee to correct such change, event, circumstance, condition or effect) will or would be reasonably likely to prevent such Securityholder's ability to consummate the Equity Purchase, unless the Closing can be consummated pursuant to the Bring-Along provisions under Section 7.17.

"Securityholders" means, collectively, (a) the Shareholders, (b) In-the-Money Company Optionholders and (c) In-the-Money Company Warrantholders, in each case, as of immediately prior to the Effective Time.

"Securityholder Ownership Percentage" means the difference, expressed as a percentage and rounded to five decimal places, of (a) 1.00 *minus* (b) the Buyer Ownership Percentage.

"Securityholder Representations" means the representations and warranties of the Securityholders set forth in Article V.

"Securityholder Representative" has the meaning set forth in Section 11.01.

"Service Provider" means any director, officer, individual advisor, individual consultant, individual independent contractor or employee of the Company or any Company Subsidiary.

"SSA" has the meaning set forth in Section 4.18(e).

"Shares" means shares of the Ordinary Shares and Preferred Shares.

"Shareholders" means the holders of record of any Shares as of immediately prior to the Effective Time, other than any Buyer Entity.

"Statistical Report" means with respect to the Pivotal Clinical Trial, a statistical analysis report of study results, as will be prepared by the Pivotal Clinical Trial's external bio-statistician after the last subject completes the 24-month follow-up visit, as currently defined in the Investigational Plan and SAP and as submitted to the Company on the Statistical Report Date.

"Statistical Report Date" means up to 48 hours from receiving the Statistical Report.

"Straddle Period" shall mean any taxable period beginning on or before the Closing Date and ending after the Closing Date.

"Subsidiary" means, with respect to any Person, any other Person of which at least a majority of the Equity Interests having by their terms ordinary voting power to elect a majority of the board of directors or other persons performing similar functions is directly or indirectly owned or controlled by such Person and/or by one or more of its Subsidiaries.

"Takeover Statute" has the meaning set forth in Section 4.12.

"Target Net Working Capital" means the average of Working Capital of the Company and the Company Subsidiaries, taken together, for each calendar month-end during the six months immediately preceding the Closing; provided, that solely for the purpose of calculating the Target Net Working Capital, the amount of coral inventory of the Company and/or its Subsidiaries for each calendar month end during the six months immediately preceding the Closing shall be deemed to be equal to the amount of coral inventory of the Company and/or its Subsidiaries as of the date that is 180 days prior to the Closing.

"Tax Authority" means, with respect to any Tax, the Governmental Entity or political subdivision thereof having or purporting to exercise jurisdiction with respect to such Tax.

"Taxes" (including, with correlative meaning, "Tax") means with respect to any Person, any and all applicable statutory, governmental, federal, state, local, municipal, foreign and other income, net income, alternative or add-on minimum, gross income, gross receipts, sales, use, production, ad valorem, value added, documentary, franchise, share capital, registration, profits, escheat, license, lease, service, service use, withholding, payroll, social security (or equivalent), employment, unemployment, disability, goods and services, financial transaction, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal, tangible or intangible), abandoned or unclaimed property, inventory, capital gain, capital stock, employees' income withholding, Israeli social security (*Bituach Leumi)* (or similar), national health care (*Bituach Breiyut*), social insurance, workers' compensation, real property gains, windfall profits, customs, duties, custom duty or other taxes, governmental fees, fees, imposts, contributions, rates, levies (including social security), assessments or charges of any kind whatsoever (however denominated), together with any interest, fines, inflation linkage, additions thereto or additional amounts or penalties (in each case, whether disputed or not), imposed by any Tax Authority on such Person.

"Tax Matter" has the meaning set forth in Section 7.12.

"Tax Return" means any return, declaration, report, claim for refund, information return statement, estimate, schedule, notice, notification, form, election, certificate or other document or information relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof, filed with or submitted to, or required to be filed with or submitted to any Tax Authority in connection with the determination, assessment, collection or payment of any Tax of any Person or in connection with the administration, implementation or enforcement of or compliance with any Law relating to any Tax.

"Transaction Documents" means this Agreement, the Escrow Agreement, the Payment Agent Agreement, the Joinder Agreements, the Option Acknowledgements, the Warrantholder Acknowledgements, the Share Transfer Deeds and any other document or certificate delivered by the Company, the Securityholders in their capacity as such or the Securityholder Representative pursuant hereto.

"Transfer Taxes" means any applicable transfer, documentary, real estate transfer, mortgage recording, sales, use, stamp, registration, value-added, goods and services, and other similar Taxes (including any penalties and interest) incurred in connection with the transactions contemplated by the Agreement.

"Unpaid Company Transaction Expenses" means any Company Transaction Expenses that have not been paid as of 12:01 a.m. Pacific time on the Closing Date, specifically excluding any Company Transaction Expenses payable to Credit Suisse Securities (USA) LLC ("CS") pursuant to that agreement dated January 1, 2020 (the "CS Agreement") solely to the extent due and payable as a result of the Sales Milestone Consideration or Divestiture Payments, if any, hereunder.

"Willful Breach" means a material breach that is a consequence of an act taken by the breaching party, or the failure by the breaching party to take an act it is required to take under this Agreement, in each case with actual knowledge and intention that the taking of, or the failure to take, such act would, or would reasonably be expected to, cause a breach of this Agreement.

"Working Capital" means, to the extent required to be reflected on a balance sheet in accordance with IFRS: (a) current assets of the Company and the Company Subsidiaries minus (b) current liabilities of the Company and the Company Subsidiaries, but excluding Closing Cash, Closing Indebtedness and Company Transaction Expenses. For purposes of calculating Working Capital (and as a result thereof, of the Target Net Working Capital) as described above, (i) "current liabilities" shall expressly exclude any short-term and long-term deferred revenue and all current liabilities for Taxes and all income and deferred Tax liabilities, (ii) "current liabilities" shall expressly exclude (A) any Liabilities of any kind, whether existing or potential (including without limitation in connection with any potential future transfer outside of Israel of technology or manufacturing), to the IIA, except for unpaid royalties owed to the IIA for revenues earned during the periods prior to the Closing, and (B) Liabilities between the Company and any of its Subsidiaries, (iii) "current assets" shall expressly exclude all income and deferred Tax assets and (iv) notwithstanding the foregoing and IFRS, for the purpose of calculating Working Capital (and as a result thereof, Target Net Working Capital and the Closing Working Capital), the cost of the inventory of raw corals shall be the cost of purchase by the Company or any Subsidiary of such raw corals.

Section 1.02 Interpretations.

(a) The words "hereof," "herein" and "hereunder" and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(b) The table of contents and captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. References to Articles, Sections, Exhibits and Schedules are to the Articles, Sections, Exhibits and Schedules of or to this Agreement unless otherwise specified.

(c) All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein, shall have the meaning as defined in this Agreement.

(d) Whenever the context may require, any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular, and words denoting either gender shall include both genders as the context requires and where a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning.

(e) Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation," whether or not they are in fact followed by those words or words of like import.

(f) The word “or” is used in the inclusive sense of “and/or.” The use of the words “or,” “any” and “either” shall not be exclusive.

(g) The word “will” shall be construed to have the same meaning and effect as the word “shall.”

(h) The word “party” shall, unless the context otherwise requires, be construed to mean a party to this Agreement. Any reference to a party to this Agreement or any other agreement or document contemplated hereby shall include such party’s successors and permitted assigns.

(i) Reference to “$” and “dollars” are to the currency of the United States of America and references to “NIS” is to the currency of the State of Israel.

(j) When used herein, the word “extent” and the phrase “to the extent” shall mean the degree to which a subject or other thing extends, and such word or phrase shall not simply mean “if.”

(k) A reference to any legislation or to any provision of any legislation shall include any modification, amendment, re-enactment thereof, any legislative provision substituted therefore and all rules, regulations and statutory instruments issued or related to such legislation.

(l) Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be applied in the construction or interpretation of this Agreement. No prior draft of this Agreement nor any course of performance or course of dealing shall be used in the interpretation or construction of this Agreement. No parol evidence shall be introduced in the construction or interpretation of this Agreement unless the ambiguity or uncertainty in issue is plainly discernable from a reading of this Agreement without consideration of any extrinsic evidence. Although the same or similar subject matters may be addressed in different provisions of this Agreement, the parties intend that, except as reasonably apparent on the face of this Agreement or as expressly provided in this Agreement, each such provision shall be read separately, be given independent significance and not be construed as limiting any other provision of this Agreement (whether or not more general or more specific in scope, substance or content).

(m) The parties hereto agree that any reference in a particular Section of the Disclosure Schedules, the Final Updated Disclosure Schedules or the Securityholders Disclosure Schedules shall only be deemed to be an exception to (or, as applicable, a disclosure for purposes of) (i) the representations and warranties (or covenants, as applicable) of the relevant party that are contained in the corresponding Section of this Agreement and (ii) any other representations and warranties (or covenants, as applicable) of such party that are contained in any other Section of this Agreement, but only if the relevance of that reference as an exception to (or a disclosure for purposes of) such representations and warranties would be readily apparent on the face of such disclosure. The parties further agree that, notwithstanding anything herein (but without limitation of Section 2.06(c)), the Final Updated Disclosure Schedules may include new disclosures and exceptions with respect to any representation and warranty made by the Company in Article IV.

(n) Any statement in this Agreement to the effect that any information, document or other material has been "furnished," "delivered" or "made available" to Buyer or any of its Representatives means that such information, document or other material was posted to the electronic data room hosted by or on behalf of the Company hosted by Intralinks Inc. in connection with the transactions contemplated hereby (the "VDR") no later than 12:01 a.m. North Carolina time on the date that is two (2) Business Days prior to the Closing and has been made available on a continuous basis by or on behalf of the Company for review therein by Buyer and its Representatives since such time.

ARTICLE II.

THE EQUITY PURCHASE OPTION

Section 2.01 Call Option.

(a) Grant of Call Option. In consideration for, among other consideration, the Equity Purchase Consideration and the other rights of the Securityholders under this, (including without limitation, any rights to the remaining Aggregate Consideration, if applicable), each Major Securityholder hereby grants to Buyer an irrevocable and exclusive option (the "Call Option"), exercisable only during the Call Option Exercise Period (defined below) and in accordance with Section 2.01(c), to acquire, or to cause one or more of its controlled Affiliates to acquire, all of the outstanding Equity Interests of the Company held by such Securityholder as of immediately prior to the Effective Time on the terms and subject to the conditions of this Agreement (the "Equity Purchase").

(b) Call Option Exercise Period. Subject to Section 2.01(c)(iii), the Call Option may be exercised by Buyer at any time during the period (i) beginning on the date hereof and (ii) ending on the later of (A) the date that is forty-five (45) days following the Agreed Milestone Achievement Date, (B) the expiration of the Final Review Period and (C) such other date as may be agreed in writing by Buyer, the Company and the Securityholder Representative (on behalf of the Securityholders), in each case with respect to (A) through (C), until 5:59 p.m. New York time on such date (the "Call Option Exercise Period").

(c) Exercise of Call Option; Termination of Call Option.

(i) If Buyer determines to exercise the Call Option, Buyer shall deliver to the Company written notice (the "Call Option Exercise Notice") setting forth such election during the Call Option Exercise Period. The Call Option Exercise Notice shall be executed by an authorized officer of Buyer and be deemed as an irrevocable and unconditional election of Buyer to exercise the Call Option in accordance and subject to the provisions hereof.

(ii) Following Buyer's exercise of the Call Option by delivering the Call Option Exercise Notice to the Company, the consummation of the Closing shall be subject to the satisfaction or, if and as permitted by Article VIII, the waiver of the conditions contained in Article VIII, and the Company, the Securityholders, the Securityholder Representative and Buyer shall use their respective reasonable best efforts to satisfy their respective obligations such that the conditions contained in Article VIII are satisfied as promptly as possible.

(iii) The Major Securityholder's grant of the Call Option shall be rescinded, and Buyer's right to exercise the Call Option shall terminate automatically and without any further action on the part of Buyer, the Company, any Securityholder or the Securityholder Representative, upon the earliest to occur of (A) the termination of this Agreement pursuant to Article IX and (B) the expiration of the Call Option Exercise Period without a valid exercise of the Call Option by Buyer.

(iv) Buyer's failure to deliver the Call Option Exercise Notice pursuant to Section 2.01(c)(i) will not result in any liability of Buyer or its Affiliates to the Company or the Securityholders or any of their respective Affiliates for any reason, it being understood and agreed by the Company and the Securityholders that Buyer may determine whether or not to exercise the Call Option in its sole and absolute discretion. For the avoidance of doubt, Buyer has no obligation to exercise the Call Option.

Section 2.02 Put Option.

(a) Grant of Put Option. In consideration for, among other consideration, the grant of the Call Option by the Major Securityholders pursuant to Section 2.01, Buyer hereby grants to the Company and the Securityholders an irrevocable and exclusive option, exercisable only during the Put Option Exercise Period (as defined below) and in accordance with Section 2.02(c) (the "Put Option"), to cause Buyer to effect the Equity Purchase on the terms and subject to the conditions of this Agreement.

(b) Put Option Exercise Period. Subject to Section 2.02(c)(iii), the Put Option may be exercised by the Company, following the approval of the Board of Directors of the Company by a simple majority (excluding any member appointed by Buyer, if any), at any time during the period (i) beginning on the Agreed Milestone Achievement Date and (ii) ending on the expiration of the Call Option Exercise Period unless otherwise agreed by the written agreement of Buyer, the Company and the Securityholder Representative (on behalf of the Securityholders) (the "Put Option Exercise Period"); provided, that if the Company has materially breached its obligation to provide reasonably satisfactory responses to each diligence request made by Buyer pursuant to Section 2.05 prior to the date that is sixty (60) calendar days following the Agreed Milestone Achievement Date, then, upon written notice from Buyer describing in reasonable detail the diligence requests for which reasonably satisfactory responses have not been received and sent at least five (5) days prior to such sixtieth (60th) day (the "Expiration Notice"; and such date the "Expiration Notice Deadline"), the Put Option Exercise Period shall be deemed to have expired as of 12:01 a.m. Israel time on such sixtieth (60th) day unless the Company provides Buyer with reasonably satisfactory responses to such diligence requests prior to such sixtieth (60th) day. Notwithstanding the foregoing: (i) if Buyer is entitled to deliver an Extension Request pursuant to Section 2.05 but has not done so prior to the Expiration Notice Deadline, then Buyer shall not be permitted to send an Expiration Notice hereunder, and (ii) if Buyer sent an Expiration Notice and if the Call Option has not previously been exercised, the Company shall be entitled at its discretion to exercise the Put Option prior to such sixtieth (60th) day.

(c) Exercise of Put Option; Termination of Put Option.

(i) If the Company determines to exercise the Put Option, the Company shall deliver to Buyer written notice (the "Put Option Exercise Notice") setting forth such election during the Put Option Exercise Period. The Put Option Exercise Notice shall be executed by the Chief Executive Officer of the Company (or any other director authorized by the Board of Directors for such purpose) and be deemed as an irrevocable and unconditional election of the Company to exercise the Put Option in accordance and subject to the provisions hereof.

(ii) Following the Company's exercise of the Put Option by delivering the Put Option Exercise Notice to Buyer, the consummation of the Closing shall be subject to the satisfaction or, if and as permitted by Article VIII, the waiver of the conditions contained in Article VIII, and the Company, the Securityholders, the Securityholder Representative and Buyer shall use their respective reasonable best efforts to satisfy their respective obligations such that the conditions contained in Article VIII are satisfied as promptly as possible.

(iii) Buyer's grant of the Put Option shall be rescinded, and the Company's right to exercise the Put Option shall terminate automatically and without any further action on the part of Buyer, the Company, any Securityholder or the Securityholder Representative, upon the earliest to occur of (A) the termination of this Agreement pursuant to Article IX and (B) the expiration of the Put Option Exercise Period without a valid exercise of the Put Option by the Company.

Section 2.03 Pre-Closing Milestone Covenants. Without limitation of Section 7.01, Section 7.05 and Section 7.06, during the period beginning on the date hereof and continuing until the earlier of (a) the Closing and (b) the termination of this Agreement in accordance with Article IX (the "Option Period"), except as would constitute a violation of applicable Law, as contemplated by this Agreement or as consented to by Buyer in writing, the Company shall and shall cause its controlled Affiliates to:

(i) use its Commercially Reasonable Efforts to achieve the Regulatory Approval Milestone;

(ii) not take any action, or fail to take any action, with the primary intent of avoiding the achievement of the Regulatory Approval Milestone;

(iii) provide Buyer or a Buyer-appointed representative, no later than thirty (30) days after the end of each fiscal quarter of the Company and each fiscal year of the Company, with a reasonably detailed written report of the efforts by or under the authority of the Company or any of its controlled Affiliates to achieve the Regulatory Approval Milestone and with respect to the commercialization of the Initial Device and the progress with respect thereto, which report shall list the status of the development (including clinical and manufacturing development), regulatory approval, and/or commercialization of the Initial Device; provided, however that the Company shall not be required to disclose under the reports any information with respect to which disclosure is prohibited in accordance with the provisions of any applicable Law or Order); and

(iv) make available the Chief Executive Officer or any other alternate officer with applicable supervisory authority designated for such purpose of the Company available to conduct a telephone conference with Buyer or a Buyer-appointed representative upon reasonable advance written notice from Buyer and during normal business hours for the purposes of discussing the Company's progress and/or planned activities toward achievement of the Regulatory Approval Milestone, or with respect to commercialization matters for the Initial Device and (B) respond to reasonable follow-up inquiries (which shall be reasonable in both scope and number) by Buyer or a Buyer-appointed representative regarding the information provided by or on behalf of the Company during any such telephone conference; provided, however, that Buyer shall not request any such telephone conference, and the Company shall have no obligation to participate in any such telephone conference, more than once during any calendar quarter.

Section 2.04 Achievement of the Regulatory Approval Milestone.

(a) Upon achievement of the Regulatory Approval Milestone, the Company shall promptly, and in any event within ten (10) Business Days of the achievement thereof, deliver to Buyer the Pre-Closing Milestone Notice. The Company agrees that it shall only deliver a Pre-Closing Milestone Notice if (i) the FDA has issued a label with respect to the Initial Device and (ii) the Company believes in good faith that the Regulatory Approval Milestone has been achieved.

(b) For purposes of the Call Option Exercise Period only, and in the event the Company fails to deliver a Pre-Closing Milestone Notice in accordance herewith, Buyer may notify the Company in writing of the achievement of the Regulatory Approval as evidenced by the publicly available databases of the FDA (such notice a "Deemed Achievement Notice"). Buyer agrees that it shall only deliver a Deemed Achievement Notice if (i) the FDA has issued a label with respect to the Initial Device and (ii) the Buyer believes in good faith that the Regulatory Approval Milestone has been achieved.

(c) Following its receipt of a Pre-Closing Milestone Notice, Buyer shall confirm or deny its agreement that the Regulatory Approval Milestone, as applicable, has been achieved by written notice to the Company (an "Achievement Response Notice") as promptly as practicable and in any event within five (5) Business Days following its receipt of the Pre-Closing Milestone Notice (the "Response Period"). If Buyer fails to timely deliver an Achievement Response Notice prior to the expiration of the Response Period, then the Regulatory Approval Milestone, as applicable and as set forth in the Pre-Closing Milestone Notice, shall be deemed to have been achieved. To the extent that Buyer's Achievement Response Notice asserts a dispute with respect to achievement of the Regulatory Approval Milestone, such Achievement Response Notice shall be a "Buyer Dispute Notice."

(d) Following its receipt of a Deemed Achievement Notice, the Company shall confirm or deny its agreement that the Regulatory Approval Milestone has been achieved by written notice to Buyer (a "Deemed Achievement Response Notice") as promptly as practicable and in any event within five (5) Business Days following its receipt of the Deemed Achievement Notice (the

"Deemed Achievement Response Period"). If the Company fails to timely deliver a Deemed Achievement Response Notice prior to the expiration of the Deemed Achievement Response Period, then the Regulatory Approval Milestone shall be deemed to have been achieved for all purposes of the Call Option. To the extent the Company's Deemed Achievement Response Notice asserts a dispute with respect to achievement of the Regulatory Approval Milestone, such Deemed Achievement Response Notice shall be a "Company Dispute Notice."

(e) Any dispute as to when and/or whether the Regulatory Approval Milestone has been achieved pursuant to this Section 2.04 shall be resolved in accordance with Section 11.07.

Section 2.05 Final Review Period. During the period beginning on the Agreed Milestone Achievement Date and ending on the date that is thirty (30) days after Buyer's receipt of the Final Updated Disclosure Schedules from the Company (as the same may be extended pursuant to the last sentence of this Section 2.05, the "Final Review Period"), Buyer and its Representatives may provide due diligence investigation requests to the Company (including, without limitation, accounting, legal, financial, commercial, product, intellectual property and regulatory due diligence) to facilitate its review of the Final Updated Disclosure Schedules. The Company will (and will cause its Subsidiaries and its and their respective Representatives to) respond to any such reasonable due diligence requests by providing to Buyer the requested materials and information and making reasonably available to Buyer the Company's officers, key employees and Representatives. In addition, during the Final Review Period, the Company will afford to Representatives of Buyer due diligence access (including to the offices, properties, books and records, test and trial results and other information of the Company and the Company Subsidiaries and its suppliers) during normal business hours, so that Buyer may have the opportunity to make such investigations as it desires; provided, however, that such investigation will not unreasonably disrupt the personnel and operations of the Company and the Company Subsidiaries or such suppliers. The Company will answer any such due diligence requests (including by providing to Buyer and its Representatives the applicable materials and information and making reasonably available to Buyer the Company's officers, key employees and Representatives to discuss the same) to the best of its abilities promptly following receipt of such request (and in any case within ten (10) business days following delivery of such request). If, on the date that is ten (10) calendar days prior to the expiration of the Final Review Period, the Company has not provided reasonably satisfactory responses to each diligence request made by Buyer pursuant to this Section 2.05 at least three (3) calendar days prior to such date, then, upon Buyer's written request to the Company, which shall include a description in reasonable detail of the diligence requests for which the Company has not provided reasonably satisfactory responses (the "Extension Request"), the Final Review Period shall be extended for an additional ten (10) calendar day period (during which period the Company shall provide reasonable responses to all outstanding requests).

Section 2.06 Interim Update to the Disclosure Schedules; Final Update to the Disclosure Schedules.

(a) Within twenty (20) Business Days of the Company's submission of the Pre-Market Approval Application to the FDA, the Company shall deliver to Buyer an update to the Disclosure Schedules (the "Interim Updated Disclosure Schedules"). The Interim Updated Disclosure Schedules shall only include the disclosure of facts, changes or circumstances first arising after the date hereof. Any disclosures included in the Interim Updated Disclosure Schedules shall be solely

for informational purposes only and shall not (i) limit, modify or otherwise affect any of the representations, warranties, covenants, obligations or conditions contained in this Agreement or any of the Transaction Documents or cure any breach or inaccuracy of any representation, warranty, covenant, obligation or condition made as of a date prior to, at or after the delivery of any such Interim Updated Disclosure Schedules or (ii) be deemed to amend or supplement the Disclosure Schedules or constitute an exception to any representation or warranty for any purpose. In connection with delivery of any Interim Updated Disclosure Schedules, the Company shall promptly, and in any event within fifteen (15) calendar days cause any documents or other materials disclosed or referenced in such Interim Updated Disclosure Schedules that have not been previously been provided to Buyer to be made available to Buyer.

(b) Within ten (10) Business Days of the Agreed Milestone Achievement Date, the Company shall deliver to Buyer an update to the Disclosure Schedules (the "Final Updated Disclosure Schedules"), which Final Updated Disclosure Schedules shall only include (i) the disclosure of facts, changes or circumstances first arising after the date hereof and (ii) updates to all Affirmative Disclosure Obligations. In connection with delivery of the Final Updated Disclosure Schedules, the Company shall promptly, and in any event within fifteen (15) calendar days cause any documents or other materials disclosed or referenced in the Final Updated Disclosure Schedules that have not been previously been provided to Buyer to be made available to Buyer.

(c) Except as specified below, disclosures included in the Final Updated Disclosure Schedules shall be solely for informational purposes and no amendments or modifications to the Disclosure Schedules set forth in the Final Updated Disclosure Schedules shall (i) limit, modify or otherwise affect any of the representations, warranties, covenants, obligations or conditions contained in this Agreement or any of the Transaction Documents or cure any breach or inaccuracy of any representation, warranty, covenant, obligation or condition made as of a date prior to, at or after the delivery of such Final Updated Disclosure Schedules or (ii) be deemed to amend or supplement the Disclosure Schedules or constitute an exception to any representation or warranty for any purpose, including Article VIII or Article X; provided, that with respect to the consummation of the Equity Purchase pursuant to the valid exercise of the Put Option, Qualifying Disclosure Updates (and no other updates, amendments or modifications set forth in the Final Updated Disclosure Schedules, which shall be for informational purposes) shall constitute an exception to the applicable representations or warranties and be deemed a bring down of the Disclosure Schedules for purposes of Article VIII (and for no other purpose, except that any such Qualifying Disclosure Updates, solely to the extent resulting in the increase of the burn rate or any financial liability of the Company and/or any Company Subsidiary in the ordinary course of business, shall constitute an exception to the applicable representations or warranties for purposes of Article X); provided, further, that with respect to the consummation of the Equity Purchase pursuant to the valid exercise of the Call Option, all disclosures included in the Final Updated Disclosure Schedules shall be deemed a bring down of the Disclosure Schedules for all purposes, including Article VIII and Article X. The Parties acknowledge and agree that all representations and warranties that are made as of the date of this Agreement shall also be made as of the date on which the Put Option or the Call Option, as applicable, is exercised for all purposes under this Agreement (including Affirmative Disclosure Obligations).

Buyer may provide comments to the Final Updated Disclosure Schedules and the Company shall reasonably consider such comments and promptly modify the Final Updated Disclosure Schedules to reflect such comments during the Final Review Period.

Section 2.07 Share Transfer Deeds. Each Major Securityholder has, concurrently with such Major Securityholder's execution of this Agreement, executed and delivered to the Escrow Agent (the "Share Transfer Escrow Agent") a blank and undated share transfer deed in the form attached hereto as Exhibit E (a "Share Transfer Deed") with respect to all Shares held or controlled by such Securityholder, which Share Transfer Deed may be dated and completed by the Share Transfer Escrow Agent with the name of Buyer (or its Affiliate) concurrently with the Closing and in furtherance of the Equity Purchase in accordance with the terms and conditions of this Agreement.

ARTICLE III.

PURCHASE AND SALE

Section 3.01 Closing. The consummation of the transactions contemplated by this Agreement (the "Closing") shall take place electronically by exchange of PDF copies of documents on a date and at a time to be specified by the parties, which shall be no later than the fifth Business Day after the satisfaction or waiver of the last of the conditions set forth in Article VIII to be satisfied or waived (other than those conditions that by their nature are to be satisfied at the Closing), or at such other time, date and location, or in such other manner, as the parties hereto agree in writing. The date on which the Closing actually takes place is referred to in this Agreement as the "Closing Date" and the Closing shall be deemed to have occurred as of 11:59 p.m. North Carolina time on the Closing Date (the "Effective Time").

Section 3.02 Closing Deliveries. At or prior to the Closing:

(a) the Company shall deliver, or cause to be delivered, to Buyer or its designees:

(i) the Closing Statement, in accordance with Section 3.04(a);

(ii) the Final Updated Disclosure Schedules, in accordance with Section 2.06 (including clause (d) thereof);

(iii) the Consideration Spreadsheet, in accordance with Section 7.07;

(iv) Joinder Agreements and Share Transfer Deeds, duly executed and completed by each holder of Shares who became a party hereto after the date hereof (including any such person that executes a Joinder Agreement pursuant to Section 7.02 or Section 7.17);

(v) Option Acknowledgements, in the form attached hereto as Exhibit F (each an "Option Acknowledgement"), duly executed and completed by each holder of an In-the-Money Company Option who actually agreed to execute such Option Acknowledgement;

(vi) Warrantholder Acknowledgements, in the form attached hereto as Exhibit G (each a "Warrantholder Acknowledgement"), duly executed and completed by each holder of an In-the-Money Company Warrant;

(vii) the Payoff Letters, if applicable, in accordance with Section 7.07;

(viii) evidence of releases of any Encumbrances on any Equity Interests to the extent reasonably requested by Buyer, if applicable;

(ix) a certificate, dated as of the Closing Date and signed by the chief executive officer of the Company, certifying the satisfaction of the conditions set forth in Section 8.02(a), Section 8.02(b), Section 8.02(f), Section 8.02(i), Section 8.02(j) and Section 8.02(k);

(x) written resignations of each director of the Company as of the Closing, effective as of the Effective Time (other than any director appointed by any member of Buyer Entity);

(xi) (A) a copy of the resolutions duly adopted by the Company Board authorizing the Company's execution, delivery and performance of this Agreement and the Transaction Documents of which it is a signatory and the consummation of all transactions contemplated by this Agreement and such Transaction Documents, together with a certificate that such resolutions are in full force and effect, and have not been rescinded, as of the Closing and (B) a certified copy of the Company's Amended and Restated Articles of Association in effect as of the Closing; and

(xii) joint written instructions by the Company and Buyer, duly executed by the Company, authorizing and directing the Escrow Agent to deliver to the Payment Agent (i) for the benefit of the Securityholders, an amount in cash equal to the portion of the Aggregate Closing Consideration deposited with the Escrow Agent pursuant to Section 3.05(g) and (ii) for the benefit of the Securityholder Representative, an amount in cash equal to the Securityholder Expense Fund, which amount shall be held in accordance with the provisions hereof (the "Joint Written Instructions").

(b) the Securityholder Representative shall deliver, or cause to be delivered, to the Company or its designees the Payment Agent Agreement, duly executed by the Securityholder Representative; and

(c) Buyer shall deliver, or cause to be delivered, to the Company and the Securityholder Representative:

(i) the Payment Agent Agreement, duly executed by Buyer;

(ii) a certificate, dated as of the Closing Date and signed by an authorized officer of Buyer, certifying the satisfaction of the conditions set forth in Section 8.03(a) and Section 8.03(b);

(iii) to the extent required according to applicable Law, a customary undertaking to the IIA in connection with the acquisition of the Company; and

(iv) the Joint Written Instructions, duly executed by Buyer.

Section 3.03 Purchase and Sale of Shares; Company Options; Company Warrants.

(a) Shares. At the Closing, each Shareholder shall sell, convey, transfer, assign and deliver to Buyer, and Buyer shall acquire from each Shareholder, all of such Shareholder's right, title and interest in and to all Shares held by such Shareholder as of immediately prior to the Effective Time, free and clear of all Encumbrances, other than those arising pursuant to applicable securities Laws or the Articles of Association of the Company, and in exchange therefor, each Shareholder shall have the right to receive (subject to such Shareholder's compliance with Section 3.05) (i) the applicable portion of the Aggregate Closing Consideration payable to such Shareholder as set forth in the Consideration Spreadsheet and (ii) such Shareholder's Pro Rata Share of distributions, if any, of (A) the Adjustment Escrow Fund pursuant to Section 3.04(b), (B) the Indemnity Escrow Fund pursuant to Section 10.05, (C) the Securityholder Expense Fund pursuant to Section 11.01, (D) the Sales Milestone Consideration pursuant to Section 3.06 and (E) any amounts payable as a result of any post-Closing adjustment made pursuant to Section 3.04(b) (collectively, the "Aggregate Consideration")

(b) Company Options.

(i) Immediately prior to the Effective Time, each Company Option that is outstanding as of immediately prior to the Effective Time and that has a per share exercise price that is less than the Ordinary Per Share Consideration as set forth on the Consideration Spreadsheet (each such Company Option an "In-the-Money Company Option"), whether or not then exercisable or vested, will be cancelled and, in exchange therefor, each former holder of any such cancelled In-the-Money Company Option (each an "In-the-Money Company Optionholder") will be entitled to receive, in consideration of such cancelled In-the-Money Company Option and in full settlement therefor, (i) the applicable portion of the Aggregate Closing Consideration payable to such In-the-Money Company Optionholder as set forth in the Consideration Spreadsheet, which shall be calculated as the product of (A) the aggregate number of Ordinary Shares subject to such In-the-Money Company Option immediately prior to the Effective Time *multiplied by* (B) the excess, if any, of the Ordinary Per Share Consideration over the exercise price per Ordinary Share applicable to such In-the-Money Company Option immediately prior to the Effective Time, and (ii) such In-the-Money Company Optionholder's Pro Rata Share of distributions, if any, of (A) the Adjustment Escrow Fund pursuant to Section 3.04(b), (B) the Indemnity Escrow Fund pursuant to Section 10.05, (C) the Securityholder Expense Fund pursuant to Section 11.01, (D) the Sales Milestone Consideration pursuant to Section 3.06 and (E) any amounts payable as a result of any post-Closing adjustment made pursuant to Section 3.04(b) (the "Option Consideration")

(ii) Each Company Option that is not an In-the-Money Company Option (each such Company Option an "Out-of-the-Money Company Option") shall be canceled and extinguished at the Effective Time with no consideration payable in connection with such cancellation and extinguishment and in no event shall any such Out-of-the-Money Company Option be assumed by Buyer.

(iii) The Company shall, prior to the Effective Time, take all actions, including, without limitation, obtaining appropriate resolutions of the Company Board and providing all notices and obtaining all consents, that are necessary or desirable or reasonably requested by Buyer to give effect to the treatment of Company Options contemplated by this Section 3.03(b). Buyer shall be entitled to advance review and approval of all such documents, which review and approval shall not be unreasonably delayed or withheld.

(c) Company Warrants.

(i) Immediately prior to the Effective Time, each Company Warrant that is outstanding as of immediately prior to the Effective Time and that has a per share exercise price that is less than the per share consideration payable with respect to the applicable class of shares to which the relevant Company Warrant is exercisable as set forth on the Consideration Spreadsheet (each such Company Warrant an "In-the-Money Company Warrant"), will be cancelled and, in exchange therefor, each former holder of any such cancelled In-the-Money Company Warrant (each a "In-the-Money Company Warrantholder") will be entitled to receive, in consideration of such cancelled In-the-Money Company Warrant and in full settlement therefor (subject to compliance with Section 3.05 by such In-the-Money Company Warrantholder), (i) the applicable portion of the Aggregate Closing Consideration payable to such In-the-Money Company Warrantholder as set forth in the Consideration Spreadsheet, which shall be calculated as the product of (A) the aggregate number of Ordinary Shares or Preferred Shares for which such In-the-Money Company Warrant is exercisable immediately prior to the Effective Time *multiplied by* (B) the excess, if any, of the per share consideration payable with respect to the applicable class of shares to which the relevant Company Warrant is exercisable as set forth on the Consideration Spreadsheet over the exercise price per Ordinary Share or Preferred Share applicable to such In-the-Money Company Warrant immediately prior to the Effective Time, and (ii) such In-the-Money Company Warrantholder's Pro Rata Share of distributions, if any, of (A) the Adjustment Escrow Fund pursuant to Section 3.04(b), (B) the Indemnity Escrow Fund pursuant to Section 10.05, (C) the Securityholder Expense Fund pursuant to Section 11.01, (D) the Sales Milestone Consideration pursuant to Section 3.06 and (E) any amounts payable as a result of any post-Closing adjustment made pursuant to Section 3.04(b).

(ii) Each Company Warrant that has a per share exercise price that is equal to or greater than the per share consideration payable with respect to the applicable class of shares to which the relevant Company Warrant is exercisable as set forth on the Consideration Spreadsheet (each such Company Warrant an "Out-of-the-Money Company Warrant") shall be canceled and extinguished at the Effective Time with no consideration payable in connection with such cancellation and extinguishment and in no event shall any such Out-of-the-Money Company Warrant be assumed by Buyer.

(iii) The Company shall, prior to the Effective Time, take all actions, including, without limitation, obtaining appropriate resolutions of the Company Board and providing all notices and obtaining all consents, that are necessary or desirable or reasonably requested by Buyer to give effect to the treatment of Company Warrants contemplated by this Section 3.03(c). Buyer shall be entitled to advance review and approval of all such documents, which review and approval shall not be unreasonably delayed or withheld.

Section 3.04 Calculation of Equity Purchase Consideration.

(a) Pre-Closing Estimate. No more than ten (10) Business Days and no less than five (5) Business Days prior to the Closing, the Company shall deliver to Buyer a statement (the "Closing Statement"), certified by the Chief Financial Officer or Chief Executive Officer of the Company, setting forth (i) an unaudited consolidated balance sheet of the Company and the Company Subsidiaries as of immediately prior to the Closing and (ii) the Company's good faith estimate of (A) Closing Working Capital (such estimate, "Estimated Closing Working Capital"), (B) Closing Indebtedness (such estimate, "Estimated Closing Indebtedness"), (C) Closing Cash (such estimate, "Estimated Closing Cash") and (D) Unpaid Company Transaction Expenses (such estimate, "Estimated Unpaid Company Transaction Expenses"). The Company shall deliver supporting calculations and documentation of such calculations, in detail reasonably acceptable to Buyer, concurrently with the delivery of the Closing Statement. The Closing Statement shall be in form and substance reasonably satisfactory to Buyer, and the Company shall consider in good faith any comments to the Closing Statement provided by Buyer; provided that the approval by Buyer of the Closing Statement shall not delay or prevent the consummation of the Closing (absent manifest error).

(b) Post-Closing Adjustment.

(i) As promptly as reasonably practicable, but in no event later than ninety (90) calendar days following the Closing Date, Buyer shall cause to be prepared and delivered to the Securityholder Representative a statement (the "Buyer Closing Statement") setting forth in reasonable detail Buyer's proposed calculation of the Adjustment Amount (including its proposed calculations of Closing Working Capital, Closing Indebtedness, Closing Cash and Unpaid Company Transaction Expenses), together with supporting documentation of such calculations in reasonable detail.

(ii) During the thirty (30) day period commencing upon receipt by the Securityholder Representative of the Buyer Closing Statement (the "Review Period"), Buyer shall provide the Securityholder Representative and any accountants or advisors retained by the Securityholder Representative with reasonable access to the books and records of the Company for the purposes of (A) enabling the Securityholder Representative and its accountants and advisors to calculate, and to review Buyer's calculation of, the Adjustment Amount as reflected in the Buyer Closing Statement and (B) identifying any dispute related to the calculation of the Adjustment Amount set forth in the Buyer Closing Statement.

(iii) If the Securityholder Representative disputes the Adjustment Amount set forth in the Buyer Closing Statement, then the Securityholder Representative shall deliver a written notice (an "Adjustment Dispute Notice") to Buyer and the Escrow Agent prior to the expiration of the Review Period. The Adjustment Dispute Notice shall set forth, in

reasonable detail, the principal basis for the dispute of such calculation and the Securityholder Representative's determination of the Adjustment Amount (including its proposed calculations of Closing Working Capital, Closing Indebtedness, Closing Cash and Unpaid Company Transaction Expenses and supporting documentation of such calculations).

(iv) If the Securityholder Representative does not deliver an Adjustment Dispute Notice to Buyer prior to the expiration of the Review Period, the Adjustment Amount set forth in the Buyer Closing Statement shall be deemed final and binding on Buyer, the Securityholder Representative and the Securityholders as the Adjustment Amount for all purposes of this Agreement.

(v) If the Securityholder Representative delivers an Adjustment Dispute Notice to Buyer prior to the expiration of the Review Period, then the Securityholder Representative and Buyer shall meet, confer and exchange any additional relevant information reasonably requested by the other party regarding the computation of the Adjustment Amount for a period of twenty (20) calendar days following the delivery of the Adjustment Dispute Notice to Buyer, and use reasonable best efforts to resolve by written agreement (the "Agreed Modifications") any differences as to the Adjustment Amount. In the event Buyer and the Securityholder Representative so resolve any such differences, the Adjustment Amount set forth in the Buyer Closing Statement, as adjusted by the Agreed Modifications shall be final and binding as the Adjustment Amount for all purposes of this Agreement. If the Securityholder Representative and Buyer are unable to reach agreement on the calculation of the Adjustment Amount within the twenty (20) calendar day period following the delivery of the Adjustment Dispute Notice to Buyer, then either the Securityholder Representative or Buyer may submit the objections to KPMG International Cooperative (such firm, or any successor thereto, in each case who is independent of both the Company and Buyer, being referred to herein as the "Designated Accounting Firm") after such twentieth (20th) day. In resolving any disputed item, the Designated Accounting Firm (x) shall determine Closing Working Capital, Closing Indebtedness, Closing Cash and Unpaid Company Transaction Expenses in accordance with the respective definitions thereof, (y) shall limit its review to matters still in dispute as specifically set forth in the Adjustment Dispute Notice (and only to the extent such matters are still in dispute) and (z) shall act as an expert and not as an arbitrator. The Designated Accounting Firm shall be directed by Buyer and the Securityholder Representative to resolve the unresolved objections as promptly as reasonably practicable in accordance with the terms of this Agreement, and, in any event, within thirty (30) calendar days of such referral, and, upon reaching such determination, to deliver a copy of its calculations (the "Expert Calculations") to the Securityholder Representative, Buyer and the Escrow Agent. In connection with the resolution of any such dispute by the Designated Accounting Firm, each of Buyer, the Securityholder Representative and their respective advisors and accountants shall have a reasonable opportunity to meet with the Designated Accounting Firm to provide their respective views as to any disputed issues with respect to the calculation of the Adjustment Amount. The determination of the Adjustment Amount made by the Designated Accounting Firm shall be final and binding on Buyer, the Securityholder Representative and the Securityholders for all purposes of this Agreement, absent manifest error. The Expert Calculations (A) shall reflect in detail the differences, if

any, between the calculation of the Adjustment Amount reflected in the Adjustment Dispute Notice and the calculation of the Adjustment Amount set forth in the Buyer Closing Statement and (B) with respect to any specific discrepancy or disagreement, shall be no greater than the higher amount calculated by Buyer or the Securityholder Representative, as the case may be, and no lower than the lower amount calculated by Buyer or the Securityholder Representative, as the case may be. The fees and expenses of the Designated Accounting Firm shall be borne by Buyer, on the one hand, and the Securityholder Representative, on behalf of the Securityholders, on the other hand, in inverse proportion as they may prevail on the matters resolved by the Designated Accounting Firm, which proportionate allocation shall be calculated on an aggregate basis based on the relative dollar values of the amounts in dispute and shall be determined by the Designated Accounting Firm at the time the determination is rendered on the merits of the matters submitted to the Designated Accounting Firm.

(vi) If the Adjustment Amount, as finally determined in accordance with this Section 3.04, is a negative number, then Buyer and the Securityholder Representative shall promptly, and within five (5) Business Days, issue joint written instructions to the Escrow Agent directing the Escrow Agent to disburse from the Adjustment Escrow Fund in accordance with the Escrow Agreement (A) to Buyer, the absolute value of such amount (the "Shortfall Amount"), (B) to the Payment Agent or, with respect to the Payroll Portion of such amount, Buyer (in each case, for further disbursement to the Securityholders in accordance with the Escrow Agreement and in proportion to their respective Pro Rata Shares), the remainder of the Adjustment Escrow Fund, if any; provided, that if the amount then remaining in the Adjustment Escrow Fund is insufficient to satisfy the Shortfall Amount, the excess of such Shortfall Amount over the amount then remaining in the Adjustment Escrow Fund shall be deducted from the Indemnity Escrow Fund and disbursed to Buyer in accordance with the Escrow Agreement (and Buyer and the Securityholder Representative shall promptly issue joint written instructions to the Escrow Agent directing the Escrow Agent to make such disbursement). For the avoidance of doubt, any amounts Buyer recovers from the Indemnity Escrow Fund pursuant to this Section 3.04(b)(vi) shall not reduce the amount that a Buyer Indemnified Party may recover with respect to claims made pursuant to Article X.

(vii) If the Adjustment Amount, as finally determined in accordance with this Section 3.04, is zero or a positive number (such positive number, the "Excess Amount"), then (A) Buyer shall promptly, and within five (5) Business Days, deposit with the Payment Agent (for further disbursement to the Securityholders in proportion to their respective Pro Rata Shares), the Excess Amount (less the Payroll Portion of the Excess Amount, which shall be promptly paid directly by Buyer to the applicable Securityholders), if any, and (B) Buyer and the Securityholder Representative shall promptly, and within five (5) Business Days, issue joint written instructions to the Escrow Agent directing the Escrow Agent to disburse all amounts then held in the Adjustment Escrow Fund to the Payment Agent or, with respect to the Payroll Portion of such amount, Buyer (in each case, for further disbursement to the Securityholders in accordance with the Escrow Agreement and in proportion to their respective Pro Rata Shares).

(viii) To the extent permitted under applicable Tax law, any amount paid to Securityholders pursuant to this Section 3.04(b) shall be treated as an adjustment to the Aggregate Closing Consideration for all Tax purposes.

Section 3.05 Payment Procedures.

(a) Exchange Procedures. Buyer and the Securityholder Representative shall engage ESOP Management and Trust Services Ltd. as a payment agent (the "Payment Agent") to effect the distribution of payments required to be made by Buyer hereunder to the Securityholders. No later than ten (10) Business Days prior to the Closing, Buyer or Payment Agent will deliver to the Company (to the extent not previously provided) (i) (A) a form of Joinder Agreement, (B) a form of Warrantholder Acknowledgment, (C) a form of Share Transfer Deed and (D) the other transmittal materials, in the forms attached hereto as Exhibit H, required to be completed and executed by each of the Securityholders entitled to receive at the Closing a portion of the Aggregate Closing Consideration in respect of the Shares or In-the-Money Company Warrants held by such Securityholders immediately prior to the Effective Time (such other transmittal materials, including all exhibits and attachments thereto, the "Share and Warrant Transmittal Materials"), (ii) (A) a form of Option Acknowledgment and (B) such other transmittal materials required to be completed and executed by each of the Optionholders entitled to receive at the Closing a portion of the Aggregate Closing Consideration in respect of In-the-Money Company Options held by such Securityholders immediately prior to the Effective Time (such other transmittal materials, including all exhibits and attachments thereto, the "Option Transmittal Materials" and, together with the Share and Warrant Transmittal Materials, the "Transmittal Materials"). The Company will distribute such agreements, Share Transfer Deeds and Transmittal Materials, as applicable, to the Securityholders no later than five (5) Business Days prior to the Closing Date.

(b) As promptly as reasonably practicable after the Effective Time, the Payment Agent will deliver to each Securityholder who has duly executed and completed (i) this Agreement, a Joinder Agreement, an Option Acknowledgement or a Warrantholder Acknowledgment, as applicable, and (ii) the applicable Transmittal Materials and returned such agreements and Transmittal Materials to Buyer and the Payment Agent whether prior to the Closing or thereafter, including (i) a duly executed and completed Share Transfer Deed and (ii) any share certificates representing Ordinary Shares or Preferred Shares (the "Certificates"), or affidavits regarding the loss thereof as provided below, and (iii) any certificates or instruments representing In-the-Money Company Options or In-the-Money Company Warrants ("Derivative Instruments"), a wire transfer representing the portion of the Aggregate Closing Consideration to which such Securityholder is entitled. The delivery of all wire transfers to the Payment Agent and the Escrow Agent shall be deemed for all purposes to have satisfied in full Buyer's obligation to make the payment of the Aggregate Closing Consideration to the Securityholders.

(c) Notwithstanding anything to the contrary in this Agreement, no payments shall be made hereunder to any Securityholder unless and until such Securityholder has duly completed, executed and delivered to Buyer or the Payment Agent, as applicable (i) in the case of Shareholders, a Joinder Agreement (other than with respect to holders of Shares that have executed this Agreement), Share Transfer Deed the Share and Warrant Transmittal Materials and the Certificates (with respect to certificated Shares) to which such Share and Warrant Transmittal Materials apply, (ii) in the case of In-the-Money Company Warrantholders, a Warrantholder

Acknowledgement the Share and Warrant Transmittal Materials and the Derivative Instrument to which such Share and Warrant Transmittal Materials apply and (iii) in the case of In-the-Money Company Options, an Option Acknowledgement, the Option Transmittal Materials and the Derivative Instruments (if any) to which such Option Transmittal Materials apply. If any Certificate or Derivative Instrument shall have been lost, stolen or destroyed, Buyer may, in its discretion and as a condition precedent to the issuance of any consideration, require the former holder of such lost, stolen or destroyed Certificate or Derivative Instrument to provide an appropriate affidavit including indemnity against any claim that may be made against Buyer or the Company with respect to such Certificate or Derivative Instrument in the form attached hereto as Exhibit I.

(d) Buyer and the Payment Agent shall be entitled to rely entirely on the information contained in the Consideration Spreadsheet and any Transmittal Materials delivered hereunder for purposes of satisfying Buyer's obligation to deliver the Aggregate Closing Consideration and any Sales Milestone Consideration that may become payable hereunder.

(e) After the Closing Date, the Securityholders will have no rights as holders of any Equity Interest of the Company, other than (i) the right to receive the applicable portions of the Aggregate Closing Consideration to be issued at Closing and the Sales Milestone Consideration and any amounts payable as a result of any post-Closing adjustment made pursuant to Section 3.04(b), if any, and (ii) rights under this Agreement and the Escrow Agreement.

(f) None of Buyer, the Payment Agent, the Securityholder Representative or the Company shall be liable to any Securityholder for any portion of any amount payable to such Securityholder hereunder that is delivered to an appropriate public official pursuant to any abandoned property, escheat or similar law.

(g) In order to satisfy the condition to Closing set forth in Section 8.03(d), prior to the Closing Date, Buyer will deliver (or cause to be delivered) to ESOP Management and Trust Services, Ltd. (the "Escrow Agent"), as the escrow agent under the Escrow Agreement, an amount in cash equal to the sum of (i) the Aggregate Closing Consideration (as reduced pursuant to Section 7.18(c), if applicable, and *less* the Payroll Portion of the Aggregate Closing Consideration) *plus* (ii) the Securityholder Expense Fund *plus* (iii) the Adjustment Escrow Fund *plus* (iv) the Indemnity Escrow Fund (together, the "Closing Escrow Amount"). The Adjustment Escrow Fund, the Indemnity Escrow Fund and the earnings thereon, shall be treated as owned by the Securityholders for federal income Tax purposes. The Adjustment Escrow Fund shall be used for purposes of satisfying any claims by Buyer for payment of the Shortfall Amount to Buyer pursuant to Section 3.04(b)(vi). The Indemnity Escrow Fund shall be used as partial security for the satisfaction of claims for indemnification of the Buyer Indemnified Parties pursuant to Article X. Any and all recoveries from the Adjustment Escrow Fund or the Indemnity Escrow Fund pursuant to this Agreement or the Escrow Agreement shall be made by the payment of any cash held in such applicable account.

(h) At the Effective Time, the Company and Buyer shall deliver the Joint Written Instructions to the Escrow Agent.

(i) Notwithstanding anything to the contrary in this Agreement, any payment with respect to Section 102 Shares or Section 102 Options shall be deposited (directly or through the Payment Agent) with the Section 102 Trustee to be held and released in accordance with the provisions of Section 102 of the Israel Code, the Option Tax Ruling, the Interim Option Tax Ruling or any other approval that may be issued by the ITA.

(j) Without limitation of Section 3.05(c), to the extent a Securityholder is a non-Israeli person, who was issued Company Options while serving as, and in the capacity of, a Service Provider solely of any Company Subsidiary (including CartiHeal Inc., a Delaware corporation and wholly owned subsidiary of the Company (the "U.S. Subsidiary")) as of the Closing Date, any amount payable to such Securityholder pursuant to this Agreement and in respect of Company Options held by such Securityholder immediately prior to the Effective Time (including any portion of the Aggregate Closing Consideration, the Adjustment Amount or the Sales Milestone Consideration) shall not be paid to such Securityholder via the Payment Agent and will instead be paid via the applicable Company Subsidiary's payroll system (the portion of any such payment attributable to such Company Options and payable through a Company Subsidiary's payroll system is referred to as the "Payroll Portion" of such payment). Buyer agrees that it will, or will cause the applicable Company Subsidiary to, cause to be paid via the applicable Company Subsidiary's payroll system the Payroll Portion of any amount that becomes due and payable, at such time as such amounts become due and payable, pursuant to the terms of this Agreement.

(k) Following the Closing, Buyer shall pay (or cause to be paid) to the Persons identified on the Service Provider Invoices the portion of the Unpaid Company Transaction Expenses due to such Persons as set forth on the Service Provider Invoices.

Section 3.06 Sales Milestone.

(a) Post-Closing Milestone Covenants. During the period beginning on the Closing Date and continuing until the achievement of the Sales Milestone, except as would constitute a violation of applicable Law, as contemplated by this Agreement or as consented to by the Securityholder Representative in writing (which consent shall not be unreasonably conditioned, withheld or delayed), Buyer shall and shall cause its controlled Affiliates to:

(i) use its Commercially Reasonable Efforts to achieve the Sales Milestone;

(ii) not take any action or fail to take any action, including any manipulation of the pricing of the Sales of the Initial Device in a manner which is materially different and not consistent with Buyer's pricing of any other product, with the primary intent of avoiding the achievement of the Sales Milestone;

(iii) without limiting clauses (i) and (ii) of this Section 3.06(a), (x) assume all costs and funding requirements required for ongoing regulatory processes and approvals (including without limitation the maintenance of any such approvals and compliance with post-Regulatory Approval commitments of the Pivotal Clinical Trial), manufacturing, marketing and sale operations of the Company and its Subsidiaries, and (y) not discontinue the manufacture, sales and marketing of the Initial Device (other than in connection with a Company Divestiture or due to a material safety or efficacy issue involving the Initial Device).

(iv) provide the Securityholder Representative, no later than thirty (30) days after the end of each fiscal quarter of Buyer (including for clarity purposes, each fiscal year of Buyer), with a reasonably detailed written report certified by an officer of Buyer of the efforts by or under the authority of Buyer or any of its controlled Affiliates to achieve the Sales Milestone and indicating therein Sales for the then most recently ended fiscal quarter (including a copy of Buyer's consolidated quarterly and annual financial statements for such fiscal quarter) and the progress with respect thereto; provided, however, that Buyer shall not be required to disclose any information with respect to which disclosure is prohibited in accordance with the provisions of any applicable Law or Order and Buyer shall be permitted to redact or otherwise refrain from disclosing any portion of its financial statements so long as such information disclosed (A) includes a calculation of Sales and (B) is reasonably sufficient for purposes of demonstrating how such Sales were calculated, in each case of (A) and (B), during the relevant fiscal quarter and subject to the provisions below;

(v) retain accurate records containing all material information reasonably necessary for the preparation of the financial statements and written reports required by Section 3.06(a)(iv);

(vi) make available one or more representatives Buyer and/or its controlled Affiliates with supervisory authority over Buyer's efforts to achieve the Sales Milestone to (A) conduct a telephone conference with the Securityholder Representative upon reasonable advance written notice from the Securityholder Representative and during normal business hours for the purposes of discussing Buyer's progress toward achievement of the Sales Milestone and (B) respond to reasonable follow-up inquiries by the Securityholder Representative (which shall be reasonable in both scope and number) regarding the information provided by or on behalf of Buyer during any such telephone conference; provided, however, that the Securityholder Representative shall not request any such telephone conference, and Buyer shall have no obligation to participate in any such telephone conference, more than once during any calendar quarter;

(vii) permit the Securityholder Representative (at its own expense) to engage an accounting firm to perform, on behalf of the Securityholder Representative, a reasonable verification, review or audit, as the case may be, of the operations of the Buyer Entities, the Company and their respective controlled Affiliates, in each case, to the extent reasonably necessary to verify the information included in the financial statements and written reports required by Section 3.06(a)(iv), and prepare an applicable report or opinion based on such verification, review or audit, as the case may be (each a "Report"). The Report shall be shared only with the applicable accounting firm and the Securityholder Representative and shall be treated as Confidential Transaction Information in accordance with Section 7.14. The audit right contemplated by this Section 3.06(a)(vii) may only be exercised once during any calendar year and upon no less than thirty (30) days' prior written notice and any such verification, review or audit shall be conducted in a manner so as to not unreasonably interrupt or disturb the operations of Buyer and its controlled

Affiliates. The Securityholder Representative will reasonably cooperate with Buyer with respect to scheduling any such verification, review or audit. Notwithstanding anything in this Section 3.06(a)(vii) to the contrary, (A) none of Buyer, the Company or any of their controlled Affiliates shall be required to make available, disclose or provide access to any information with respect to which disclosure is prohibited in accordance with the provisions of any applicable Law or Order, (B) Buyer, the Company and any of their controlled Affiliates shall be permitted to redact or otherwise refrain from disclosing any portion of their respective financial statements or other information so long as such information actually disclosed or made available is reasonably sufficient for purposes of verifying the information included in the financial statements and written reports required by Section 3.06(a)(iv) and (C) other than as reasonably agreed by Buyer, neither the Securityholder Representative nor any accounting firm or other Person engaged on its behalf shall have the right to communicate with any personnel of a Buyer Entity other than Buyer's Chief Financial Officer; and

(viii) to the extent that Buyer consummates a Company Divestiture, (A) pay or cause to be paid to the Securityholders, in accordance with their respective Pro Rata Shares, the lesser of (1) 50% of the cash consideration received by Buyer (if and when received by Buyer) as consideration for such Company Divestiture and (2) the Sales Milestone Consideration (such lesser amount, the "Divestiture Payment") and (B) to the extent the Divestiture Payment paid to the Securityholders at the closing of such Company Divestiture is less than the Sales Milestone Consideration, cause the Person (or group of Persons) party to such Company Divestiture (other than Buyer and any Buyer Entity) to (1) assume in writing all of Buyer's obligations set forth in this Section 3.06 (but with the Sales Milestone Consideration reduced by the amount of any Divestiture Payment(s) actually received by the Securityholders prior to achievement of the Sales Milestone) and (2) deliver to the Securityholder Representative reasonable evidence that such Person (or group of Persons) has the financial capacity to assume such obligations; provided, that, if such Person (or group of Persons) party to such Company Divestiture has not assumed in writing all of Buyer's obligations set forth in this Section 3.06, or has failed to reasonably demonstrate its financial capacity to assume such obligations, the Sales Milestone Consideration (instead of the Divestiture Payment) shall become due and payable to the Securityholders, in accordance with their respective Pro Rata Shares, as a condition to the consummation of such Company Divestiture; provided, further, for the avoidance of doubt, the aggregate amount of all Divestiture Payments and Sales Milestone Consideration payments (calculated together) payable to the Securityholders shall not exceed an amount in excess of the Sales Milestone Consideration. Prior to the distribution to the Securityholders of any Divestiture Payment, the Payment Agent shall deduct from such amounts (which deduction shall apply to the Securityholders in accordance with their respective Pro Rata Shares), in accordance with the Consideration Spreadsheet and the instructions of the Securityholder Representative, the Company Transaction Expenses payable in connection with such Divestiture Payment, if any, to CS pursuant to the CS Agreement, and shall transfer such payments directly to CS.

(b) Post-Closing Achievement of the Sales Milestone.

(i) If and only if the Sales Milestone has been achieved, then, as soon as reasonably practicable following the achievement of the Sales Milestone (but in no event later than thirty (30) days following such date), Buyer shall provide the Securityholder Representative a written notice with respect thereto and deposit with the Payment Agent (for further disbursement to the Securityholders in proportion to their respective Pro Rata Shares and as set forth in the Consideration Spreadsheet, *provided however*, that prior to such distribution to the Securityholders, the Payment Agent shall deduct from such amounts (which deduction shall apply to the Securityholders in accordance with their respective Pro Rata Shares), in accordance with the Consideration Spreadsheet and the instructions of the Securityholder Representative, the Company Transaction Expenses payable in connection with such Sales Milestone Consideration to CS pursuant to the CS Agreement, and shall transfer such payments directly to CS) an amount in cash equal to the Sales Milestone Consideration *less* the Payroll Portion of the Sales Milestone Consideration (which shall be promptly paid directly by Buyer to the applicable Securityholders) and *less* the amount, if any, that Buyer determines in good faith to be necessary to satisfy all Continuing Claims (and Buyer shall provide notice to the Securityholder Representative of any such amounts retained by Buyer in respect of Continuing Claims); provided, that Buyer shall be entitled to withhold amounts from the Sales Milestone with respect to Continuing Claims only if and to the extent that the Indemnity Escrow Fund, as of such time the Sales Milestone Consideration is payable, would be insufficient to fully satisfy such Continuing Claims, and in any event subject to the provisions of Section 10.04(e) below.

(ii) Notwithstanding anything to the contrary in this Agreement, in no event shall the Sales Milestone be achieved (or deemed to have been achieved) on more than one occasion.

(iii) Each of the Securityholders acknowledges and agrees that the right to receive any portion of the Sales Milestone Consideration shall not be represented by any form of certificate or other instrument, is not transferable (other than by operation of applicable Laws relating to descent and distribution, divorce and community property and as specifically permitted herein below), and does not constitute an equity or ownership interest in Buyer, the Company or any of their respective Affiliates, and the Securityholders shall not have any rights as a securityholder of Buyer, the Company or any of their respective Affiliates as a result of their contingent right to receive a portion of the Sales Milestone Consideration. No interest shall be payable with respect to any Sales Milestone Consideration assuming such amounts are duly and timely paid in accordance with and subject to the provisions hereof.

(iv) Any dispute as to when and/or whether the Sales Milestone has been achieved in accordance with this Section 3.06(b) (a "Section 3.06(b) Dispute") shall be resolved in accordance with Section 11.08.

Section 3.07 Tax Withholding.

(a) The Company and each of the Securityholders acknowledge and agree that Buyer, the Payment Agent, the Escrow Agent and the Section 102 Trustee (each a "Payor") and any other applicable withholding agent shall be entitled to deduct and withhold, or cause to be deducted and withheld, from any amounts otherwise payable pursuant to this Agreement such amounts as the applicable Payor shall reasonably determine is required to be deducted and withheld under applicable Law, and any deducted and withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

(b) Notwithstanding Section 3.07(a), in respect of Taxes arising under Israeli Law (other than consideration for Section 102 Shares or Section 102 Options), if Buyer and/or the Payment Agent are provided, at least five (5) Business Days prior to any payment payable pursuant to this Agreement, with an Israeli Tax Certificate with respect to any amounts payable hereunder, then the withholding (if any) of any amounts under Israeli Law regarding Taxes from the amounts payable hereunder, and the payment of the amounts or any portion thereof, shall be made in accordance with the provisions of such Israeli Tax Certificate. To the extent that amounts are so withheld, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person with respect to whom such amounts were withheld, and the Payment Agent will provide to the recipient of the payment, within thirty (30) days of the date of such withholding, its written confirmation evidencing the amount withheld from payments under this Agreement. An "Israeli Tax Certificate" shall refer to a certificate or ruling issued by the ITA in form and substance which is sufficient to enable Buyer or its advisors to conclude that no withholding (or reduced withholding) of Israeli Tax is required with respect to the payment to such Person, provided that Buyer or its advisors have been provided with an opportunity to review, comment upon such certificate or ruling prior to its approval by the ITA. Notwithstanding the foregoing, with respect to any Israeli Securityholder, the Parties hereto agree that, absent a change in applicable Law prior to the Closing, no withholding for U.S. federal income taxes shall be required on any payment of any portion of the Aggregate Consideration to the extent such Israeli Securityholder has provided the applicable Internal Revenue Service Form W-9 or the appropriate version of Form W-8 (or a successor form or such other form as may be required to establish a complete exemption from withholding under applicable Law at the Closing), in each case, validly completed and executed by such Israeli Securityholder.

(c) Notwithstanding the foregoing, any Securityholder shall be entitled to request in writing, at least five (5) Business Days before any such payment is made, that with respect to Israeli Taxes, any consideration payable or otherwise to be delivered pursuant to this Agreement on the Closing Date to such Person (in any capacity) (other than consideration payable in respect of Section 102 Shares or Section 102 Options) be retained by the Payment Agent for a period of up to one-hundred eighty (180) days from the Closing Date, unless otherwise required by the ITA (the "Withholding Drop Date"), during which time such Person may obtain an Israeli Tax Certificate. If such Person delivers an Israeli Tax Certificate to Buyer or the Payment Agent no later than five (5) Business Days prior to the Withholding Drop Date, the deduction and withholding of any Israeli Taxes shall be made in accordance with the provisions of such Israeli Tax Certificate and the balance of the payment that is not withheld shall be paid to such Person. If any Securityholder (i) does not provide Buyer or the Payment Agent with an Israeli Tax

Certificate by no later than five (5) Business Days before the Withholding Drop Date or (ii) submits a written request to Buyer or the Payment Agent to release such Securityholder's portion of the consideration payable or otherwise to be delivered pursuant to this Agreement at a specified time prior to the Withholding Drop Date and fails to submit an Israeli Tax Certificate by no later than five (5) Business Days before such specified time, then the amount to be withheld from such Securityholder's portion of the consideration otherwise payable pursuant to this Agreement shall be calculated according to the applicable withholding rate as determined by Buyer, which amount shall be increased, to the extent applicable, by the interest plus linkage differences as defined in Section 159A of the Israel Code for the time period between the fifteenth (15th) calendar day of the month following the month during which the Closing Date occurs and the time the relevant payment is made, and delivered to the ITA by the Payment Agent, who shall pay to such Securityholder the balance of the payment due to such Securityholder that is not so withheld.

(d) In the event that a Payor receives a demand from the ITA to withhold any amount out of the amount held by such Payor for distribution to a particular payee and transfer it to the ITA, such Payor (i) shall notify such payee of such matter promptly after receipt of such demand, and provide such payee with reasonable time (but in no event less than twenty-one (21) days, unless otherwise required by the ITA or any applicable Tax Law, as determined by Buyer) to attempt to delay such requirement or extend the period for complying with such requirement as evidenced by a written certificate, ruling or confirmation from the ITA, and (ii) to the extent that any such certificate, ruling or confirmation is not timely provided by such payee to Buyer, shall transfer to the ITA any amount so demanded, including any interest, indexation and fines required by the ITA in respect thereof, and such amounts shall be treated for all purposes of this Agreement as having been delivered and paid to such payee.

(e) Notwithstanding the foregoing and anything else to the contrary in this Agreement, with regard to any portion of amounts paid to the Payment Agent (if any), the Payment Agent shall act in accordance with Income Tax Circular 19/2018 (Transaction for Sale of Rights in a Corporation that includes consideration that will be transferred to the Seller at Future Dates) (the "Circular") and shall provide Buyer, prior to the Closing, with an undertaking as required under Section 6.2.4.3(c) of the Circular. For the avoidance of doubt, no withholding shall be made from any portion of the amounts deposited by Buyer with the Escrow Agent and the Payment Agent until and unless such amounts become payable to the applicable Securityholder.

(f) Any withholding made in NIS with respect to payments made hereunder in US Dollars shall be calculated based on such exchange rate and in such manner as Buyer or its advisors or the Payment Agent, as applicable, reasonably determine to be in compliance with the applicable Tax Law, and any currency conversion commissions will be borne by the applicable payee and deducted from payments to be made to such payee.

(g) Notwithstanding anything to the contrary herein, any payments made to holders of Section 102 Shares or Section 102 Options will be subject to deduction or withholding of Israeli Tax under the Israel Code on the fifteenth (15th) day of the calendar month following the month during which the Closing occurs, unless the Option Tax Ruling or the Interim Option Tax Ruling shall have been obtained before the fifteenth (15th) day of the calendar month following the month during which the Closing occurs, and in such case, Buyer or the Company, or any Person acting on their behalf shall act in accordance with the Option Tax Ruling or Interim Option Tax Ruling, as applicable.

(h) Notwithstanding anything to the contrary contained in this Agreement, with respect to any payment to a holder of Company Options who is not an Israeli resident for Israeli tax purposes and who received such Company Options in consideration for services provided entirely outside of Israel to one of the Company's non-Israeli Subsidiaries, payment shall be made without Israeli tax withholding, provided that the applicable non-Israeli resident holder of Company Options has provided Buyer with a validly executed declaration, to the satisfaction of Buyer, in the form attached hereto as Exhibit J regarding non-Israeli residence and confirmation that the Company Options were granted for work and/or services performed entirely outside of Israel, no later than five (5) Business Days before such payment is due. If such declaration is not provided five (5) Business Days prior to the day of the applicable payment, then such payment shall be subject to tax withholding as reasonably determined by Buyer or the Payment Agent, as applicable.

Section 3.08 Tax Treatment. The Parties agree (a) that for U.S. federal income tax purposes, Buyer shall be treated as acquiring the Shares and other Equity Interests of the Company subject to the Equity Purchase at the Closing and (b) to file all U.S. federal income Tax Returns consistent with such treatment.

ARTICLE IV.

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as specifically set forth in the Disclosure Schedules, the Company hereby represents and warrants to Buyer as follows, subject to the exceptions set forth in the Disclosure Schedules (subject to Section 1.02(m)), which exceptions shall be deemed to be representations and warranties as if made hereunder when read in conjunction with all of this Article IV:

Section 4.01 Organization, Good Standing and Qualification. The Company is a private company, duly incorporated and validly existing under the Laws of the State of Israel, and is not deemed a "violating company" by the Israeli Registrar of Companies and each Company Subsidiary is a legal entity duly organized, validly existing and in good standing under the Law of its respective jurisdiction of organization. The Company and each Company Subsidiary has all requisite corporate or similar power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted and is qualified to do business and is in good standing as a foreign corporation or other legal entity in each jurisdiction (to the extent that the Laws of such jurisdiction recognize the concept of good standing) where the ownership, leasing or operation of its assets or properties or conduct of its business requires such qualification, except for any such jurisdiction where the failure to be so qualified and in good standing would not constitute, individually or in the aggregate, a Company Material Adverse Change. The Company has delivered to Buyer correct and complete copies of the Company's Organizational Documents and the Organizational Documents of each Company Subsidiary, each as amended to date, and each as so delivered is in full force and effect. The Company has delivered to Buyer correct and materially complete copies of all books of account, stock record books and minute books of all meetings or actions by written consent of the boards of directors or similar governing body (and committees thereof) and shareholders of the Company and the Company Subsidiaries, in each case,

for the period beginning seven (7) years prior to Closing, and no meeting of any such board of directors or similar governing body (and committees thereof) or shareholders has been held where matters were approved, voted upon or acted upon for which minutes have not been prepared and are not contained in such minute books. Section 4.01 of the Disclosure Schedules contains a correct and complete list as of the date hereof of each jurisdiction where the Company and the Company Subsidiaries are organized and qualified to do business.

Section 4.02 Due Authorization. The Company has all requisite corporate power and authority to enter into this Agreement and the other Transaction Documents contemplated hereby of which it is a signatory and to consummate the transactions contemplated hereby, subject to receipt of the approval of Shareholders together constituting at least a majority of the Company's outstanding share capital, voting together as a single class and on an as-converted basis and a majority of the issued and outstanding Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares, Series D-1 Preferred Shares, Series D-2 Preferred Shares, Series E Preferred Shares, Series F Preferred Shares and Series G Preferred Shares (acting together as a single class on an as-converted basis), provided however, that it is hereby clarified that the consummation of the Equity Purchase is still subject to the Bring-Along Provision as stated under Section 7.17. No other corporate proceedings are necessary to authorize the Company's entry into this Agreement or the Company's consummation of the Equity Purchase or the other transactions contemplated hereby (except for the approval of the Company Board with respect to a decision to exercise the Put Option pursuant to Section 2.02(b) and implementation of the bring-along mechanism with respect to Securityholders who do not execute this Agreement or a Joinder Agreement for consummation of the Equity Purchase upon exercise of the Put Option or the Call Option). This Agreement has been duly and validly executed and delivered by the Company and, assuming this Agreement constitutes a legal, valid and binding obligation of the other Parties hereto, constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except to the extent that enforceability may be limited by the effect, if any, of any applicable bankruptcy, reorganization, insolvency, moratorium or other Laws affecting the enforcement of creditors' rights generally or any general principles of equity (the "Bankruptcy and Equity Exception").

Section 4.03 Governmental Approvals; No Conflict.

(a) No notices, reports or other filings are required to be made by the Company or any Company Subsidiary with, nor are any consents, registrations, approvals, permits or authorizations required to be obtained by the Company or any Company Subsidiary from, any Governmental Entity in connection with the execution, delivery and performance of this Agreement by the Company and the consummation of the Equity Purchase and the other transactions contemplated by this Agreement other than (i) filings as may be required under applicable Antitrust Laws (in each case, if required), (ii) filings and/or notices required to be made under any environmental, health or safety Law (including the rules and regulations of the FDA), (iii) filings with the Israeli Companies Registrar in connection with this Agreement and the transactions contemplated hereby, including the Equity Purchase, and (iv) notices required to be provided under the R&D Law, where the failure to give such notice or report, make such filing or obtain such consent, registration, approval, permit or authorization, would not reasonably be expected to have a Company Material Adverse Change.

(b) Neither the execution and delivery of this Agreement and the other Transaction Documents by the Company nor the consummation of the Equity Purchase, nor compliance by the Company with any of the terms or provisions hereof or thereof, will (i) conflict with or violate any provision of the Company's Organizational Documents or (ii) assuming that the authorizations, consents and approvals referred to in Section 4.03(a) are obtained and the filings referred to in Section 4.03(a) are made, (A) violate any applicable Law, judgment, writ or injunction of any Governmental Entity applicable to the Company or any Company Subsidiary or any of their respective properties or assets or (B) violate, conflict with, result in the loss of any benefit under, constitute a default (or an event that, with notice or lapse of time, or both, would constitute a default) under, result in the termination of or a right of termination or cancellation under, accelerate the performance required by, or result in the creation of any Encumbrance (other than a Permitted Encumbrance) upon any of the material properties or assets of, the Company or any of the Company Subsidiaries under any of the terms, conditions or provisions of any Material Contract or material permit to which the Company or any Company Subsidiary is a party or by which the Company or any of the Company Subsidiaries or any of their respective material properties or assets may be bound or affected, in each case of clause (ii)(A) and (ii)(B), except where such violation, conflict, loss of any benefit under, default (or an event that, with notice or lapse of time, or both, would constitute a default) under, termination of or a right of termination or cancellation under, acceleration of performance required by, or creation of any Encumbrance, would not reasonably be expected to be material to the Company or any Company Subsidiary, taken as a whole. Section 4.03(b) of the Disclosure Schedules sets forth a correct and complete list as of the date hereof of all Material Contracts pursuant to which consents or waivers are required in connection with the consummation of any of the transactions contemplated by this Agreement, including the Equity Purchase.

Section 4.04 Capital Structure.

(a) As of the date hereof, subject to the consummation of the First Closing under the Series G SPA, the authorized share capital of the Company consists of 16,289,700 Ordinary Shares and 13,710,300 Preferred Shares, of which 550,000 shares are designated as Preferred A Shares, 500,000 shares are designated as Preferred B Shares, 600,000 shares are designated as Preferred C Shares, 103,000 shares are designated as Preferred D-1 Shares, 3,881,300 shares are designated as Preferred D-2 Shares, 2,200,000 shares are designated as Preferred E Shares, 4,100,000 shares are designated as Preferred F Shares, 1,353,000 shares are designated as Preferred G Shares and 423,000 shares are designated as Preferred G-1 Shares. As of the date hereof, subject to the consummation of the First Closing under the Series G SPA, there are issued and outstanding 1,483,817 Ordinary Shares, 416,067 Preferred A Shares, 204,666 Preferred B Shares, 245,599 Preferred C Shares, 102,110 Preferred D-1 Shares, 3,881,107 Preferred D-2 Shares, 1,972,041 Preferred E Shares, 2,814,294 Preferred F Shares, 1,014,267 Preferred G Shares and 422,610 Preferred G-1 Shares. As of the date of this Agreement, subject to the consummation of the First Closing under the Series G SPA, there are outstanding Company Options to purchase an aggregate of 917,317 Ordinary Shares (of which Company Options to purchase an aggregate of 659,242 Ordinary Shares are exercisable). As of the date of this Agreement, no Ordinary Shares or Preferred Shares are subject to outstanding Company Warrants. Section 4.04(a) of the Disclosure Schedules contains a complete and correct list as of the date hereof of each outstanding Ordinary Share and each outstanding Preferred Share as of the close of business on the date of this Agreement, including the holder thereof. All outstanding Shares have been, and all Shares that

may be issued pursuant to the exercise of Company Options and Company Warrants, if any, will be, when issued in accordance with the respective terms thereof, duly authorized and validly issued and are, or when issued will be, fully paid and nonassessable. The Consideration Spreadsheet will be accurate and complete in all respects as of the Effective Time and will be prepared in accordance with the applicable provisions of the Company Organizational Documents. No dividends have been paid since the Company's formation, no dividends are expected to be declared or paid prior to the Closing and no dividends will be due or payable with respect to any Shares in connection with the Closing.

(b) As of the date of this Agreement, subject to the consummation of the First Closing under the Series G SPA, the Company has reserved 1,955,164 Ordinary Shares for issuance pursuant to the Company Option Plan (of which 999,354 have been exercised prior to the First Closing). There are no outstanding Ordinary Shares or Preferred Shares that remain subject to vesting or forfeiture, except as set forth in Section 4.04(b)(A) of the Disclosure Schedules. Section 4.04(b)(B) of the Disclosure Schedules contains a complete and correct list as of the date hereof of the following: (i) each outstanding Company Option, including (i) the holder thereof, (ii) the date of grant, (iii) the number of Ordinary Shares subject to such Company Option at the time of grant, (iv) the number of Ordinary Shares subject to such Company Option as of the date of this Agreement, (v) the exercise price per Ordinary Share, (vi) the vesting schedule (including the number of vested and unvested Ordinary Shares subject to such Company Option as of the date of this Agreement), (vii) the date on which such Company Option expires and (viii) any accelerated vesting provisions (including whether the vesting of such Company Option shall be subject to any acceleration in connection with the transactions contemplated by this Agreement). Except as set forth in Section 4.04(b)(B) of the Disclosure Schedule, each Company Option (A) granted to a holder subject to United States income taxation has an exercise price per Ordinary Share equal to or greater than the fair market value of an Ordinary Share on the date of such grant as determined in accordance with Section 409A of the Code, and (B) is exempt from Section 409A of the Code. The Company has the requisite authority under the terms of the Company Option Plans and any other applicable Contract to take the actions contemplated by Section 3.03(b), and the adjustment, amendment or cancellation of the terms of the Company Options described in Section 3.03(b) is and will be binding on the holders of Company Options purported to be covered thereby. All Company Options intended to qualify under the capital gains track set forth in Section 102(b)(2) of the Israeli Code have been granted in accordance with and comply in all material respects with the requirements of Section 102 and the rules and regulations promulgated and qualify for treatment under the capital gains track thereunder and applicable Laws in order to so qualify, including having been deposited with the Section 102 Trustee in a timely manner, in compliance with the provisions of Section 102 of the Israeli Code and applicable regulations and rules, as applicable. The terms of the Company Option Plans permit the treatment of Company Options as provided in this Agreement, without the consent or approval of, the holders of such securities.

(c) Section 4.04(c) of the Disclosure Schedules contains a complete and correct list as of the date hereof of the following: (i) each outstanding Company Warrant, if any, including (i) the holder thereof, (ii) the date of grant, (iii) the number of Ordinary Shares or Preferred Shares subject to such Company Warrant at the time of grant, (iv) the number of Ordinary Shares or Preferred Shares subject to such Company Warrant as of the date of this Agreement, (v) the exercise price per Ordinary Share or Preferred Share and (vi) the date on which such Company Warrant expires. The Company has made available to Buyer a true and correct copy of each Company Warrant, if any.

(d) Except as set forth in Section 4.04(a), Section 4.04(b) and Section 4.04(c) of the Disclosure Schedules, there are no outstanding Equity Interests of the Company.

(e) Except as set forth in Section 4.04(e)(A) of the Disclosure Schedules, there are (i) no rights, agreements, arrangements or commitments of any kind or character, whether written or oral, relating to the share capital of the Company or any capital stock of any Company Subsidiary to which the Company or any Company Subsidiary is a party, or by which it is bound, obligating the Company or any Company Subsidiary to repurchase, redeem or otherwise acquire any issued and outstanding share capital of the Company or capital stock of any Company Subsidiary, (ii) except for the Company Options set forth on Section 4.04(b)(B) of the Disclosure Schedules, no outstanding or authorized stock appreciation, phantom stock, profit participation, or other similar rights with respect to the Company or any Company Subsidiary and (iii) except as set forth in Section 4.04(e)(B) of the Disclosure Schedules, no voting trusts, stockholder agreements, proxies or other agreements or understandings in effect to which the Company or any Company Subsidiary is a party with respect to the governance of the Company or any Company Subsidiary or the voting or transfer of any shares of capital stock of the Company or any Company Subsidiary.

(f) Except for the Company Subsidiaries, the Company does not own or control, directly or indirectly, any interest in any other corporation, partnership, trust, joint venture, limited liability company, association, or other business entity. The Company has no Subsidiaries other than as set forth on Section 4.04(f) of the Disclosure Schedules.

(g) After giving effect to the transactions contemplated by this Agreement, assuming timely and full performance by all Parties of their respective applicable obligations hereunder which are required to be taken at or prior to the Closing, and the fulfillment, at or prior to the Closing, of all conditions to Closing, set forth in this Agreement, and subject to the terms and conditions hereof and of applicable Law, including without limitation, Section 341(a) of the Israeli Companies Law, Buyer will directly own 100% of the outstanding Equity Interests of the Company and the Company will directly own 100% of the outstanding Equity Interests of each Company Subsidiary existing at the Closing, in each case, free and clear of all Encumbrances and not subject to any preemptive or other outstanding rights, options, warrants, conversion rights, stock appreciation rights, redemption rights, repurchase rights, agreements, arrangements, calls, commitments or rights of any kind that obligate Buyer or any other Person to issue or sell any Equity Interests or Indebtedness of the Company or any Company Subsidiary (including, in each case, any voting, economic or other rights attaching thereto).

Section 4.05 Financial Statements.

(a) The Company has delivered to Buyer the Company's and the Company Subsidiaries' (i) audited consolidated balance sheets as of the last three (3) completed fiscal years and the related audited consolidated statements of income, stockholders' equity and cash flows for each of the fiscal years then ended, and (ii) the unaudited consolidated interim balance sheet as of the end of each fiscal quarter since the date of the most recent audited balance sheet included in clause (i) and the related unaudited consolidated interim statements of income, stockholders' equity and cash flows for the periods referred to therein (collectively, the "Financial Statements").

(b) The Financial Statements (i) have been prepared from the books and records of the Company and the Company Subsidiaries, (ii) complied as to form in all material respects with applicable accounting requirements with respect thereto as of their respective dates, (iii) have been prepared in accordance with IFRS applied on a consistent basis throughout the periods indicated in the Financial Statements (subject, in the case of the unaudited interim period financial statements, to the absence of notes and normal year-end audit adjustments, none of which individually or in the aggregate will be material in amount), and (iv) fairly present, in all material respects, the financial condition of the Company and the Company Subsidiaries at the dates therein indicated and the results of operations and cash flows of the Company and the Company Subsidiaries for the periods therein specified (subject, in the case of the unaudited interim period financial statements, to the absence of notes and normal year-end audit adjustments, none of which individually or in the aggregate will be material in amount).

(c) The Company and the Company Subsidiaries have established and maintain internal accounting controls designed and intended to provide reasonable assurances (i) that transactions, receipts and expenditures of the Company and the Company Subsidiaries are being executed and made only in accordance with appropriate authorizations of management and the Company Board, (ii) that transactions are recorded as necessary (A) to permit preparation of financial statements in conformity with IFRS and (B) to maintain accountability for assets, (iii) regarding prevention or timely detection of unauthorized acquisition, use or disposition of the assets of the Company and the Company Subsidiaries, (iv) that the amount recorded for assets on the books and records of the Company and the Company Subsidiaries are compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences and (v) that accounts, notes and other receivables and inventory are recorded accurately, and proper and adequate procedures are implemented to effect the collection thereof on a current and timely basis.

Section 4.06 Absence of Certain Changes. Between the Balance Sheet Date and the date of this Agreement, the business of the Company and each Company Subsidiary has been conducted in the ordinary course consistent with past practices and, except as set forth in Section 4.06 of the Disclosure Schedules, there has not been:

(a) any event, occurrence, development or state of circumstances or facts that constitute a Company Material Adverse Change;

(b) any destruction, material damage or other casualty loss (whether or not covered by insurance) of any material asset of the Company or any Company Subsidiary;

(c) any amendment of the Organizational Documents of the Company or any Company Subsidiary (whether by merger, consolidation or otherwise);

(d) any splitting, combination or reclassification of the Company's share capital or the capital stock of any Company Subsidiary or declaration, setting aside or payment of any dividend or other distribution (whether in cash, stock or property or any combination thereof) in respect of any Equity Interests of the Company or any Company Subsidiary, or redemption, repurchase or other acquisition by the Company or any Company Subsidiary, as applicable, or offer to redeem, repurchase, or otherwise acquire by the Company or any Company Subsidiary, as applicable, any Equity Interests of the Company or any Company Subsidiary;

(e) any (i) issuance, delivery or sale, or authorization of the issuance, delivery or sale of, any Equity Interests of the Company or any Company Subsidiary, other than the issuance of any Ordinary Shares upon the exercise of Company Options that were outstanding on the Balance Sheet Date in accordance with the terms of those Company Options on the Balance Sheet Date or (ii) amendment of any term of any Equity Interest of the Company or any Company Subsidiary (in each case, whether by merger, consolidation or otherwise);

(f) any incurrence of any capital expenditures or any obligations or liabilities in respect thereof by the Company or any Company Subsidiary in excess of $50,000 individually or $100,000 in the aggregate, other than in the ordinary course of business consistent with past practice or in accordance with applicable budget of the Company or Company Subsidiary, as approved by the Company Board or the board of directors of the applicable Company Subsidiary;

(g) any acquisition (whether by merger, consolidation, acquisition of stock or assets or otherwise), directly or indirectly, by the Company or any Company Subsidiary of all or substantially all of the assets, securities, properties, or interests of any business;

(h) any sale, lease or other transfer, or creation or incurrence of any Encumbrance (other than Permitted Encumbrances) on, any assets, securities, properties, interests or businesses of the Company or any Company Subsidiary, other in the ordinary course of business consistent with past practice;

(i) any (i) making by the Company or any Company Subsidiary of any material loans, advances or capital contributions to, or investments in, any other Person, except for advances to Service Providers for travel and business expenses in the ordinary course of business consistent with past practice, or (ii) application for or receipt of a Governmental Grant;

(j) any creation, incurrence or assumption by the Company or any Company Subsidiary of any material Indebtedness, other than in the ordinary course of business consistent with past practice;

(k) any (i) entry into any Contract that limits or otherwise restricts in any material respect the Company or any Company Subsidiary or any of their Affiliates or any successor thereto or that would reasonably be expected to, after the Effective Time, limit or restrict in any material respect the Company or any Company Subsidiary, Buyer or any of their respective Affiliates, from engaging or competing in any line of business (including any grant of exclusivity with respect to IP Rights or otherwise), in any location or with any Person, (ii) entry into, amendment or modification in any material respect or termination of any Material Contract or waiver, release or assignment of any material rights, claims or benefits of the Company or any Company Subsidiary under any Material Contract;

(l) any (i) material increase of, or commitment to materially increase, any form of compensation or benefits payable to any Key Employee or senior executive, other than in the ordinary course of business consistent with past practice or in accordance with the applicable budget of the Company or Company Subsidiary, as approved by the Company Board or the board of directors of the applicable Company Subsidiary, (ii) hiring or termination (other than terminations for cause) of any Key Employee or senior executive, (iii) adoption, entering into, material modification or termination of any Company Benefit Plan (other than (A) adoptions, renewals, modifications or terminations of health and welfare plans in the ordinary course of business consistent with past practice, (B) entrance into at-will offer of employment letters with new employees in the United States or Israel in the ordinary course of business consistent with past practice on substantially the forms provided to Buyer that do not provide for severance, retention or change in control payments of benefits, or (C) entrance into offer of employment letters or employment agreements in the ordinary course of business consistent with past practice on substantially the same forms provided to Buyer with new employees outside of the United States or Israel that do not provide for severance, retention or change in control payments or benefits, (iv) acceleration of the vesting, funding or payment of any compensation or benefits to any Service Provider (whether or not under any Company Benefit Plan) or (v) grant of any material or non-routine bonus, commission or other incentive compensation to any Service Provider (other than grants in the ordinary course of business consistent with past practice);

(m) any change in the methods of accounting or accounting practices of the Company or any Company Subsidiary, except as required by changes in IFRS and as agreed to by its independent public accountants;

(n) any settlement, or offer or proposal to settle, (i) any material Action or claim involving or against the Company or any Company Subsidiary, (ii) any stockholder litigation or dispute against the Company or any Company Subsidiary or any of its officers or directors or (iii) any Action that relates to the transactions contemplated hereby;

(o) any (i) Tax election made, revoked or changed, (ii) claim, notice, audit report or assessment in respect of Taxes settled or compromised (or agreement with respect thereto), (iii) any Tax Return filed or amended, (iv) entry into any Tax allocation agreement, Tax sharing agreement, advance pricing agreement, cost sharing agreement, pre-filing agreement, Tax indemnity agreement or closing agreement relating to any Tax, (v) Tax petition, Tax complaint or administrative Tax appeal filed, (vi) right to claim a Tax refund surrendered or foregone, (vii) extension or waiver of the statute of limitations period applicable to any Tax claim or assessment consented to, (viii) any Tax ruling obtained, applied for or negotiated by the Company and/or on behalf of the holders of the Company's Equity Interests by the Company or (ix) any Tax accounting period or method changed; or

(p) any agreement, other than this Agreement, or commitment to take any of the actions referred to in clauses (a) through (o).

Section 4.07 Litigation and Liabilities.

(a) Except as set forth in Section 4.07 of the Disclosure Schedules, there is no pending or past Action and, to the Knowledge of the Company, no Person has threatened in writing to commence any Action, against the Company or any Company Subsidiary, any of the assets owned or used by the Company or any Company Subsidiary or any Person for which the Company or any

Company Subsidiary has assumed or retained such Person's liability, either contractually or by operation of law, nor, to the Knowledge of the Company, is there any reasonable basis for such Action. Neither the Company nor any Company Subsidiary is subject to any outstanding Order of any Governmental Entity or Review Board which is adverse to the Company or such Company Subsidiary.

(b) Neither the Company nor any Company Subsidiary has any Liabilities of any nature, whether accrued, absolute, contingent, matured, unmatured or otherwise (whether or not required to be reflected in financial statements prepared in accordance with IFRS, and whether due or to become due), other than Liabilities:

(i) reflected, disclosed or reserved against in the Financial Statements (including the notes thereto);

(ii) incurred in the ordinary course of business since the Balance Sheet Date (none of which results from, arises out of, relates to, is in the nature of, or was caused by, any breach of contract, breach of warranty, tort, infringement or violation of Law) or in accordance with the applicable budget of the Company or applicable Company Subsidiary, as approved by the Company Board or the board of directors of the applicable Company Subsidiary;

(iii) arising under this Agreement or in connection herewith;

(iv) arising under any executory Contract that has been made available to Buyer, excluding any Liability as a result of a breach of any such Contract;

(v) included in Closing Working Capital, Closing Indebtedness or Unpaid Company Transaction Expenses; or

(vi) set forth on Section 4.07(b) of the Disclosure Schedules.

Section 4.08 Employee Benefits.

(a) Section 4.08(a) of the Disclosure Schedules sets forth a true and correct list as of the date hereof of each plan, program, policy, practice, contract, agreement or other arrangement providing for employment, compensation, retirement, pension, deferred compensation, severance, separation, change of control, relocation, repatriation, expatriation, visas, work permits, termination pay, redundancy pay, performance awards, bonus, incentive, stock option, stock purchase, stock bonus, restricted stock, phantom stock, stock appreciation right, supplemental retirement, profit sharing, fringe benefits, cafeteria benefits, medical benefits, life insurance, pay and benefits relating to maternity, paternity or adoption leave, disability benefits, accident benefits, salary continuation, accrued leave, vacation, sabbatical, sick pay or sick leave whether written or unwritten, including each "voluntary employees' beneficiary association," under Section 501(c)(9) of the Code ("VEBA") and each "employee benefit plan" within the meaning of Section 3(3) the Employee Retirement Income Security Act of 1974, as amended, and regulations thereunder ("ERISA"), in each case, for active or former employees, directors or consultants, which is sponsored, maintained, contributed to, or required to be contributed to by the Company, or with respect to which any material Liability is borne by the Company as a result of an ERISA Affiliate, excluding any workers' compensation, unemployment compensation and other government programs (collectively, and including the Company Option Plan, the "Company Benefit Plans").

(b) Subject to Section 4.08(b) of the Disclosure Schedules, neither the Company nor, to the Knowledge of the Company, any other Person or entity, has made any commitment to modify, change or terminate any Company Benefit Plan, other than with respect to a modification, change or termination required by ERISA or the Code or applicable Law, or as necessary to implement the terms of this Agreement, and there has been no amendment to, or written interpretation or announcement by the Company regarding any Company Benefit Plan that would materially increase the expense of maintaining such Company Benefit Plan above the level of expense incurred with respect to that plan for the fiscal year ended December 31, 2019.

(c) With respect to each Company Benefit Plan, the Company has delivered to Buyer correct and complete copies of, in each case if and to the extent applicable to the Company or any Company Subsidiary, (i) each Company Benefit Plan (or, if not written, a written summary of its terms), including all plan documents, trust agreements, group annuity contracts, insurance policies or contracts, summary plan descriptions, together with any summary of modifications, or other funding vehicles and all amendments and supplements thereto, (ii) the most recent annual actuarial valuation (including relevant actuarial assumptions), if any, the most recent statement of plan assets and liabilities (or arrangements made with respect to such plans), and the most recent annual report (Form 5500 or 990 series and all schedules attached thereto) filed with the Internal Revenue Service (the "IRS") with respect to such Company Benefit Plan, (iii) the most recent determination or opinion letter, if any, issued by the IRS with respect to any Company Benefit Plan and related trust intended to be qualified under Section 401(a) of the Code and any pending request for such a determination letter, (iv) the most recent nondiscrimination tests performed under the Code (including 401(k) and 401(m) tests) for each Company Benefit Plan, (v) the Company's standard forms and related notices under the Consolidated Omnibus Budget Reconciliation Action of 1985, as amended, and the regulations (including proposed regulations) thereunder ("COBRA") and (vi) all material filings made by the Company with any Governmental Entity in the past two (2) years, including any filings under the IRS' Employee Plans Compliance Resolution System Program or any of its predecessors or the Department of Labor Delinquent Filer Program.

(d) With respect to each Company Benefit Plan, no event has occurred and, to the Knowledge of the Company, there exists no condition or set of circumstances, that the Company would reasonably expect to subject it to any material Liability (other than for Liabilities with respect to routine benefit claims) under the terms of, or with respect to, such Company Benefit Plans, ERISA, the Code or any other applicable Law. Except as would not reasonably be expected to result in any material Liability to the Company, (i) the Company has performed all material obligations required to be performed by it under each Company Benefit Plan and the Company is not in material default under or in material violation of any such Company Benefit Plan, (ii) each Company Benefit Plan (including any related trust) has been established and maintained in all material respects in accordance with its terms and in material compliance with all applicable Law, including, ERISA and the Code, (iii) each Company Benefit Plan that is intended to be qualified under Section 401(a) of the Code has obtained a favorable determination letter (or opinion letter, if applicable) as to its qualified status under the Code, including all currently effective amendments to the Code, and the corresponding related exemption of its trust from U.S. federal income taxation

under Section 501(a) of the Code is so exempt, and to the Knowledge of the Company, nothing has occurred that would be reasonably expected to result in the loss of such qualification or exemption, except for such events than can be remedied without material Liability to the Company, (iv) none of the Company, any Company Benefit Plan and, to the Knowledge of the Company, any trustee, administrator or other third-party fiduciary and/or party-in-interest thereof, has engaged in any breach of fiduciary responsibility or any "prohibited transaction" (as such term is defined in Section 406 of ERISA or Section 4975 of the Code) to which Section 406 of ERISA or Section 4975 of the Code applies and that could subject the Company, any ERISA Affiliate or any Company Benefit Plan or trustee, administrator or other third-party fiduciary and/or party-in-interest thereof to the tax or penalty on prohibited transactions imposed by Section 4975 of the Code, (v) each Company Benefit Plan (other than a Section 102 Plan) can be amended or terminated after the Closing Date in accordance with its terms, without any material Liability other than routine administrative fees incurred in connection with such amendment or termination and (vi) in the past two (2) years, no Action has been brought, or to the Knowledge of the Company is threatened, against or with respect to any such Company Benefit Plan, any fiduciaries thereof with respect to their duties to the Company Benefit Plans or the assets of any of the trusts under any of the Company Benefit Plans, including any audit or inquiry by the IRS, the United States Department of Labor, the United States Pension Benefit Guaranty Corporation, or the United States Department of Health and Human Services. None of the assets of the Company or any ERISA Affiliate is, or may reasonably be expected to become, the subject of any Encumbrance arising under Section 302 of ERISA or Section 412(n) of the Code. All material Tax, annual reporting and other governmental filings required by ERISA and the Code have been timely filed with the appropriate Governmental Entity and all material notices and disclosures required under applicable Law have been timely provided to participants. All contributions and payments to such Company Benefit Plan are deductible under Code Sections 162 or 404. No assets of any Company Benefit Plan are subject to a material amount of Tax as unrelated business taxable income under Section 511 of the Code.

(e) Neither the Company nor any of its ERISA Affiliates sponsors, maintains, contributes to or has an obligation to contribute to, or has, for the past six (6) years, sponsored, maintained, contributed to or had an obligation to contribute to, any (A) "employee pension benefit plan" (as defined in Section 3(2) of ERISA) that is subject to Title IV of ERISA or Section 412 of the Code or (B) "multiemployer plan" as defined in Section 3(37) of ERISA.

(f) Except as would not reasonably be expected to result in any material Liability to the Company (i) neither the Company nor any ERISA Affiliate is subject to any Liability or penalty under Sections 4976 through 4980 of the Code or Title I of ERISA with respect to any Company Benefit Plan, and (ii) all required contributions in respect of any Company Benefit Plan have been timely made or properly accrued on the Company's financial statements.

(g) Except as required by applicable Law, no Company Benefit Plan provides any of the following retiree or post-employment benefits to any person: medical, disability or life insurance benefits and/or other welfare benefits and the Company does not have any obligation to provide such benefits.

(h) The Company and each ERISA Affiliate are in substantial compliance with (i) the requirements of the applicable health care continuation and notice provisions of COBRA, and any similar state Law governing health care coverage extension or continuation and (ii) the applicable requirements of HIPAA.

(i) There are no loans by the Company outstanding on the hereof, nor have there ever been any loans, to any of its officers, employees, contractors or directors (other than loans under any Company Benefit Plan intended to qualify under Section 401(k) of the Code and routine travel advances made in the ordinary course of business). Except as otherwise provided on Section 4.08(i) of the Disclosure Schedules, (i) no employees of the Company are party to an offer letter or employment agreement with the Company, that contains a notice period that is longer than sixty (60) days, and (ii) no employees of the Company will be owed any severance or other payments or benefits upon termination or upon a change in control of the Company.

(j) Neither the Company nor any ERISA Affiliate has ever maintained, established, sponsored, participated in or contributed to any self-insured plan that is governed by ERISA and that provides benefits to employees (including any such plan pursuant to which a stop-loss policy or contract applies).

(k) With respect to each plan of the Company that is a "nonqualified deferred compensation plan" (as defined for purposes of Section 409A(d)(1) of the Code), (i) such plan has been operated since January 1, 2017 in good faith compliance with Section 409A of the Code and all applicable IRS guidance promulgated thereunder to the extent such plan is subject to Section 409A of the Code and so as to avoid any Tax, interest or penalty thereunder and (ii) the document or documents that evidence each such plan have complied with the provisions of Section 409A of the Code and the final regulations under Section 409A of the Code in all material respects since January 1, 2017. No payments on account of the transactions contemplated by this Agreement would cause any plan failure pursuant to Section 409A(a)(1) of the Code.

(l) Except as set forth in Section 4.08(l) of the Disclosure Schedules, neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated by this Agreement will (either alone or in conjunction with any other event, such as termination of employment), (i) result in any material severance payment becoming due to any employee of the Company or its Affiliates from the Company or its Affiliates under any Company Benefit Plan, (ii) materially increase any benefits otherwise payable under any Company Benefit Plan, (iii) result in any acceleration of the time of payment or vesting of any benefits under any Company Benefit Plan, (iv) result in any obligation to fund future benefits under any Company Benefit Plan, (v) result in the imposition of any restrictions with respect to the amendment or termination of any of the Company Benefit Plans or (vi) result in the payment of any amount that would, individually or in combination with any other such payment, constitute an "excess parachute payment" as defined in Section 280G(b)(1) of the Code. The Company does not have any obligation to provide any "gross-up" payment to or otherwise indemnify any Person for any Tax under Section 409A of the Code.

Section 4.09 Compliance with Law; Permits.

(a) Subject to Section 4.09(a) of the Disclosure Schedules, the Company and each Company Subsidiary is, and has been since January 1, 2015, in compliance in all material respects with applicable Laws except where such non-compliance would not reasonably be expected to result in material liability to the Company and/or the Company Subsidiaries, taken as a whole. Since January 1, 2015, neither the Company nor any Company Subsidiary has received any written notice from any Governmental Entity to the effect that the Company or any Company Subsidiary is not in compliance with any applicable Law, except for notifications from Governmental Entities received by them in the ordinary course of business that are not material to the Company or the Company Subsidiaries, taken as a whole. No event has occurred, and no condition exists, that would reasonably be expected to (with or without notice or lapse of time) constitute or result in a material violation of any applicable Law by the Company or any Company Subsidiary and result in material liability to the Company or any Company Subsidiary, taken as a whole.

(b) Subject to Section 4.09(b) of the Disclosure Schedules, the Company and each Company Subsidiary is, and has at all times since January 1, 2015, been, in compliance in all material respects with applicable Israeli, United States and foreign export control and trade and economic sanctions Laws and regulations, including, as and to the extent applicable: (i) the Israeli Control of Products and Services Declaration (Engagement of Encryption), 1974, as amended; the Israeli Control of Products and Services Order (Export of Warfare Equipment and Defense Information) 1991, as amended; the Israeli Defense Export Control Law, 2007; the Israeli Order Governing the control of Commodities and Services (Engagement in Encryption Items), 1974; the Israeli Order of Import and Export (Supervision of Export of Dual Use Goods, Services and Technologies), 2006; the Israeli Trading with the Enemy Ordinance, 1939, and any regulations promulgated under any of the foregoing and other Israeli Laws regulating the development, commercialization or export of technology; (ii) the Export Administration Act, the Export Control Reform Act and implementing Export Administration Regulations; the Arms Export Control Act and implementing International Traffic in Arms Regulations; the various economic sanctions programs administered by the Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury; (iii) the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Lacey Act, the Endangered Species Act, and the implementing regulations of the U.S. Fish and Wildlife Service and the National Marine Sanctuaries Service, pertaining to the import and export of wildlife, and (iv) any applicable Laws of jurisdictions applicable to its business activities (collectively, "Trade Controls Laws"). Without limiting the foregoing:

(i) there are no pending or, to the Knowledge of the Company, threatened claims or investigations of potential violations against the Company or any Company Subsidiary with respect to Trade Controls Laws, Export Approvals (as defined below), any the Company's or any Company Subsidiary's export activity, or Trade Controls Laws-related licenses or other approvals;

(ii) to the Knowledge of the Company, there are no actions, conditions or circumstances pertaining to the Company's or any Company Subsidiary's business activities that may give rise to any future Trade Controls Laws-related claims; and

(iii) neither the Company nor any Company Subsidiary, nor any of their respective directors, officers, employees, or, to the Knowledge of the Company, their agents, is (1) located, organized, or resident in a country or territory that is or may, from time to time be, the target of a comprehensive trade embargo by the U.S. government (presently, Cuba, Iran, North Korea, Syria, or the Crimea region of Ukraine (each a "Sanctioned Country")), or (2) a Person with whom dealings are prohibited under Trade Controls Laws, including Persons designated on a government prohibited parties list such as OFAC's Specially Designated Nationals ("SDN") and Blocked Persons List or the U.S. Department of State's Nonproliferation Sanctions List.

(c) Section 4.09(c) of the Disclosure Schedules contains a true, correct and complete list as of the date hereof of all Export Approvals. The Company and each Company Subsidiary has obtained all export and import licenses, required for the export, reexport, and import of products, services, software, and technologies, and releases of technologies and software to foreign nationals located in the United States and abroad ("Export Approvals"), and is in material compliance with the terms and conditions of those Export Approvals as well as any applicable license exceptions and other permits, notices, waivers, orders, registrations, declarations and regulatory filing requirements with respect to Trade Controls Laws.

(d) Each of the products and services marketed, licensed, sold, performed, distributed or otherwise made available by the Company or any Company Subsidiary since January 1, 2015, has been at all times up to and including the sale, license, distribution or other provision thereof, marketed, licensed, sold, performed or otherwise made available in material compliance with all applicable Laws.

(e) Since January 1, 2015, neither the Company nor any Company Subsidiary, nor any of their respective directors, managers, officers, employees or, to the Company's Knowledge, distributors, resellers, consultants, agents or other third parties acting on behalf of the Company or on behalf of any Company Subsidiary, has offered, paid, provided, attempted to provide, or authorized the provision of anything of value (including payments, meals, entertainment, travel expenses or accommodations, or gifts), directly or indirectly, to any Person, including a "foreign official," as defined by the U.S. Foreign Corrupt Practices Act of 1977, as amended ("FCPA"), which includes employees or officials working for state-owned or state-controlled entities, a foreign political party or candidate, any individual employed by or working on behalf of a public international organization in a manner or to an extent which is prohibited under the FCPA, Title 5 of the Israeli Penalty Law (Bribery Transactions), the Israeli Prohibition on Money Laundering Law, 2000, the U.K. Bribery Act 2010 ("UKBA") or any applicable local, domestic, or international anticorruption laws (collectively, "Anti-Corruption Laws"). At no time since January 1, 2015, has the Company been aware of any actions by the Company and each Company Subsidiary, and their respective directors, officers and employees, of the Company or on behalf of any Company Subsidiary, which have been taken not in compliance with the Anti-Corruption Laws. Since January 1, 2015, neither the Company nor any Company Subsidiary, nor any of their respective directors, managers, officers, employees or, to the Company's Knowledge, agents acting on behalf of the Company or on behalf of any Company Subsidiary, has used any corporate funds to maintain any off-the-books funds or engage in any off-the-books transactions nor, to the Company's Knowledge, has any of the before stated parties falsified any documents of the Company or any Company Subsidiary. Since January 1, 2015, neither the Company nor any Company Subsidiary has knowingly made any provisions to any Person (including foreign government officials) that would constitute an improper rebate, commercial bribe, influence payment, extortion, kickback, or other improper payment in violation of the FCPA, UKBA or any other applicable Anti-Corruption Laws. Since January 1, 2015, neither the Company nor any Company Subsidiary, nor any of their respective directors, managers, officers, employees, or to the Knowledge of the Company, distributors, resellers, consultants, agents or other third parties

acting on behalf of the Company or on behalf of any Company subsidiary, has been the subject of any actual, suspected, or threatened allegations, investigations (internal or government), litigation, whistleblower reports, or other issues in any way related to the Anti-Corruption Laws. Since January 1, 2015, neither the Company nor any Company Subsidiary has conducted any internal or government-initiated investigation, or made a voluntary, directed, or involuntary disclosure to any governmental body or similar agency with respect to any alleged act or omission arising under or relating to any noncompliance with any applicable Anti-Corruption law, including the FCPA, UKBA, Title 5 of the Israeli Penalty Law (Bribery Transactions) and the Israeli Prohibition on Money Laundering Law, 2000.

(f) Subject to Section 4.09(f) of the Disclosure Schedules, the Company and the Company Subsidiaries have all licenses, permits, certificates, approvals, registrations, franchises, variances, exemptions, orders and other governmental authorizations, consents, approvals and clearances of, and have submitted all required notices to, all Governmental Entities necessary for the Company or any Company Subsidiary to own, lease and operate its properties or other assets and to carry on its respective business as presently conducted, including any permits required by Environmental Law with respect to the development, manufacture, distribution, use, generation, treatment, storage, transport, handling or recycling of the Initial Device or any component thereof (the "Company Permits"), except where the absence of such Company Permits would not reasonably be expected to be material to the Company and the Company Subsidiaries taken as a whole, and all such Company Permits are valid, and in full force and effect. All representations made by the Company or any Company Subsidiary in connection with any Company Permits were true and correct in all material respects at the time such representations and warranties were made, and any necessary or required updates, changes, corrections or modifications to such representations have been submitted to the applicable Governmental Entities. The Company and the Company Subsidiaries have fulfilled and performed in all material respects their respective obligations under each Company Permit, and no event has occurred that constitutes or, after notice or lapse of time or both, would constitute a material breach or default under any Company permit or that permits or, after notice or lapse of time or both, would permit revocation or termination of any Company Permit, or that might adversely affect in any material respect the rights of the Company or any Company Subsidiary under any Company Permit.

Section 4.10 Contracts.

(a) Section 4.10 of the Disclosure Schedules lists, as of the date hereof of each of the following types of Contracts to which the Company and/or any Company Subsidiary is a party or by which its respective assets or properties is subject to or by which it is otherwise bound (such Contracts being the "Material Contracts"):

(i) any Contract that requires (A) annual payments by the Company or any Company Subsidiary of $100,000 or more or (B) aggregate payments by the Company or any Subsidiary of $250,000 or more (provided that the Company shall not be required to list on Section 4.10 of the Disclosure Schedules any such Contracts with Service Providers made in the ordinary course of business which contain periodical payments of salaries, fees and similar consideration (a copy of each such Contract, or the form of such Contract, which has been provided to Buyer), but such Contracts shall be "Material Contracts" notwithstanding that they are not included on Section 4.10 of the Disclosure Schedules);

(ii) any Contract that requires or is reasonably expected to result in (A) annual payments to the Company or any Company Subsidiary of $100,000 or more or (B) aggregate payments to the Company or any Company Subsidiary of $250,000 or more;

(iii) each of the Contracts required to be listed on Section 4.16(b)(i), Section 4.16(b)(iv) or Section 4.16(b)(v) of the Disclosure Schedules;

(iv) any Contract consisting of a settlement or similar agreement in relation to any past Action required to be disclosed pursuant to Section 4.07(a).

(v) any Contract that, pursuant to its terms, imposes any restriction on the Company's or any Company Subsidiary's right or ability, or, after the Effective Time, the right or ability of Buyer or any of its Affiliates, (A) to compete in any line of business or with any Person or in any area or which would so limit the freedom of Buyer, the Company, any Company Subsidiary or any of their respective Affiliates after the Closing Date (including any Contract granting exclusive rights or rights of first refusal or negotiation to license, market, advertise, sell, offer to sell, distribute, deliver or otherwise make available the Initial Device or any IP Rights or other asset of the Company or any Company Subsidiary), (B) to acquire any product, service, IP Right or other asset from any other Person, to sell any product, service, IP Right or other asset to or perform any services for any other Person, or to transact business or deal in any other manner with any other Person, or (C) to develop or distribute any IP Right;

(vi) any Contract pursuant to which the Company, any Company Subsidiary or any other party thereto has continuing obligations, rights or interests relating to the research, development, the Pivotal Clinical Trial, Other Clinical Trials, distribution, supply, service, material transfer, manufacture, marketing, commercialization, co-promotion of, or collaboration with respect to, the Initial Device;

(vii) any Contract that limits the Company's exclusive right to develop, manufacture, assemble, distribute, market or sell the Initial Device;

(viii) any Contract providing for "most favored customer" terms that limit the Company's or any Company Subsidiary's right to determine pricing for the Initial Device in its discretion;

(ix) any Contract that contains material minimum payment obligations or performance guarantees (other than in favor of the Company or any Company Subsidiary and other than any Company Benefit Plan, offer letters, employment agreements, individual consulting agreements, individual contracting agreements, Contracts with staffing agencies and similar Persons who supply Service Providers to the Company or any Company Subsidiary and all other similar Contracts with Service Providers);

(x) any lease, rental or occupancy agreements, installment and conditional sale agreements, and other Contracts affecting the ownership of, leasing of, title to, use of, or any leasehold interest in property (whether real or personal property and including the Real Property Leases) in each case providing for individual annual payments in excess of $50,000;

(xi) any Contract with any Governmental Entity (including any subcontract with a prime contractor or other subcontractor who is a party to any such Contract with any Governmental Entity);

(xii) any partnership, joint venture or similar Contract, in each case providing for the sharing of revenues, profits, losses, costs or Liabilities or for joint research, development, marketing, commercialization or distribution;

(xiii) any Contract relating to the acquisition or disposition of any business (whether by merger, sale of stock, sale of assets or otherwise) that (A) was entered into in the last three (3) years or (B) pursuant to which the Company or any Company Subsidiary has any current or future rights or obligations;

(xiv) any Contract relating to the acquisition or disposition of a material portion of the assets of, or any Equity Interest in, any business (whether by merger, sale of stock, sale of assets or otherwise) that (A) was entered into since January 1, 2017, or (B) pursuant to which the Company or any Company Subsidiary has any current or future rights or obligations;

(xv) any Contract relating to the sale of any assets of the Company or any Company Subsidiary since January 1, 2017, in each case for consideration in excess of $50,000 (other than sales or dispositions of assets in the ordinary course of business consistent with past practice);

(xvi) any Contract evidencing any Indebtedness having a principal amount in excess of $50,000 (whether incurred, assumed, guaranteed or secured by any asset and including any agreements or commitments for future loans, credit or financing) or creating any material Encumbrance (other than Permitted Encumbrances and excluding Real Property Leases) with respect to any asset of the Company or any Company Subsidiary;

(xvii) any Contract relating to the acquisition, issuance or transfer of any Equity Interests of the Company or any Company Subsidiary (excluding award agreements for Company Options and exercise agreements on the Company's standard forms) with unperformed or continuing obligations by any party thereto;

(xviii) each Contract relating to the voting of Shares or any Equity Interests of the Company or any Company Subsidiary;

(xix) any Contract under which (A) any Person has directly or indirectly guaranteed any Liabilities of the Company or any Company Subsidiary or (B) the Company or any Company Subsidiary has directly or indirectly guaranteed any Liabilities of any other Person (in each case other than endorsements for the purposes of collection in the ordinary course of business);

(xx) to the extent not disclosed pursuant to any other provision of this Section 4.10(a), any Contract which contains any provisions requiring the Company or any Company Subsidiary to indemnify any other party (excluding indemnities contained in Contracts for the purchase, sale or license of products or services in the ordinary course of business consistent with past practice (including Contracts with Service Providers));

(xxi) any Contract between the Company or any Company Subsidiary, on the one hand, and any Related Party, on the other hand (other than offer letters, employment agreements, individual consulting agreements, individual contracting or service agreements, option agreements, indemnification agreements, employment-related restrictive covenant agreements, agreements for the purchase of Equity Interests of the Company which have been consummated prior to the date hereof and made available to Buyer, and employment-related intellectual property assignment agreements entered into in the ordinary course of business consistent with past practice);

(xxii) any Contract with any current or former Service Provider pursuant to which the Company or any Company Subsidiary has any current or future rights or obligations and that (A) provide for the payment of any cash or other compensation or benefits upon or in connection with the consummation of the transactions contemplated by this Agreement, (B) provides for severance, termination or notice payments or benefits upon a termination of the applicable Service Provider's employment or other service with the Company or any Company Subsidiary (other than statutory notice or termination payments) or (C) cannot be terminated by the Company or applicable Company Subsidiary at-will, at any time and for any reason, without liability on the part of the Company or such Company Subsidiary (except for liability arising pursuant to the terms of the relevant Contract solely with respect to services performed thereunder prior to such termination) on thirty (30) days' notice or less;

(xxiii) any collective bargaining agreement or other similar Contract with any labor union, works council or similar association;

(xxiv) any Contract between the Company and any Company Subsidiary or between two or more Company Subsidiaries;

(xxv) any Contract relating to the settlement of any Action for consideration in excess of $50,000 (other than any such Contracts entered into with former employees of the Company or any Company Subsidiary other than officers or directors in the ordinary course of business consistent with past practice in connection with the termination of such former employee's employment with the Company or a Company Subsidiary and pursuant to which neither the Company nor any Company Subsidiary has any continuing payment or other material obligations thereunder); and

(xxvi) any other Contract, whether or not entered into in the ordinary course of business, that is material to the Company and the Company Subsidiaries, taken as a whole, or to the conduct of their respective businesses, taken as a whole, or the termination of which would, individually or in the aggregate, constitute a Company Material Adverse Change.

(b) (i) Each Material Contract is a valid and binding agreement of the Company or the Company Subsidiary party thereto, and, assuming the due authorization, execution and delivery by the other parties thereto, is in full force and effect, subject to the Bankruptcy and Equity Exception, (ii) the Company and each Company Subsidiary has performed, in all material respects, all obligations required to be performed by it, as they become due, under each of the Material Contracts to which it is a party, (iii) neither the Company nor any Company Subsidiary is, and, to the Knowledge of the Company, no other party is, in default or breach in any material respect under the terms of any Material Contract, and, to the Knowledge of the Company, no event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time) will, or would reasonably be expected to, in and of itself (A) result in a violation or breach of any of the provisions of any Material Contract in any material respect, (B) give any Person the right to declare a default or exercise any remedy under any Material Contract, (C) other than as set forth in Section 4.10(b) of the Disclosure Schedules, give any Person the right to accelerate the maturity or performance of any grant or rights or other obligation under a Material Contract or (D) give any Person the right to cancel, terminate or modify any Material Contract (other than Material Contracts that may be canceled or terminated for convenience) and (iv) the Company has not received, and, to the Knowledge of the Company, no Company Subsidiary has received, from any Person party to a Material Contract (A) any written notice or other communication regarding violation or breach of, or default under, or the cancellation or termination of any Material Contract or (B) any intent of such Person to terminate, not renew or materially modify or amend such Material Contract or otherwise materially reduce its business relationship with the Company or Company Subsidiary.

(c) The Company has delivered to Buyer accurate and complete copies of all written Material Contracts, including all amendments thereto. Section 4.10(c) of the Disclosure Schedule provides an accurate summarized description as of the date hereof of the material terms of each Material Contract that is not in written form.

Section 4.11 Properties.

(a) Neither the Company nor any Company Subsidiary owns or has ever owned any real property. Except as set forth in Section 4.11(a) of the Disclosure Schedules, neither the Company nor any Company Subsidiary is obligated under or a party to any option, right of first refusal or other contractual right to purchase, acquire, sell, assign or dispose of any real property or any portion thereof or interest therein. The Company or a Company Subsidiary has a good and valid leasehold, license or other similarly applicable interest in each parcel of real property leased, subleased, licensed or otherwise used or occupied by the Company or any Company Subsidiary (the "Leased Real Property").

(b) Section 4.11(b) of the Disclosure Schedules lists each Contract relating to the Leased Real Property, including the street address of the Leased Real Property and the name of the third party lessor thereof, to which the Company or any Subsidiary is party (each, a "Real Property Lease").

(c) The Company's and the Company Subsidiaries' interest in any of the Leased Real Property is not subject to any Encumbrance, except for Permitted Encumbrances. Neither the Company nor any Company Subsidiary has received any written notice of (i) a material violation of any Real Property Lease, (ii) a material violation of any ordinance, regulation or building, zoning or other similar law with respect to the Leased Real Property, (iii) any expiration of,

pending expiration of, changes to, or pending changes to any material entitlement relating to the Leased Real Property and, to the Knowledge of the Company, there is no condemnation, special assessment or the like pending or threatened with respect to any of the Leased Real Property. The Company and each Company Subsidiary has the right to use and occupy the Leased Real Property for the full term of the Real Property Lease relating thereto.

Section 4.12 Takeover Statutes. No "fair price," "moratorium," "control share acquisition" or other similar anti-takeover statute or regulation (each, a "Takeover Statute") or any anti-takeover provision in the Company's or any Company Subsidiary's Organizational Documents, if any, is applicable to the Company, the Shares, the grant or exercise of the Call Option or the Put Option pursuant to this Agreement, the Equity Purchase or the other transactions contemplated by this Agreement.

Section 4.13 Environmental Matters. Subject to Section 4.13 of the Disclosure Schedules, the Company and each Company Subsidiary has materially complied at all times with all Environmental Laws. To the Knowledge of the Company, no property currently or formerly operated or used by the Company or any Company Subsidiary (including soils, groundwater, surface water, buildings or structures) is contaminated with any Hazardous Substance in a manner or under circumstances that could reasonably be expected to result in any claims against the Company or any Company Subsidiary or material Liability of the Company or any Company Subsidiary relating to any Environmental Law. Neither the Company nor any Company Subsidiary is subject to any Liability for any Hazardous Substance disposal or contamination on any third-party property. Neither the Company nor any Company Subsidiary has received any notice, demand, letter, claim or request for information alleging that the Company or such Company Subsidiary may be in violation of, or subject to Liability under, any Environmental Law. Except as set forth in Section 4.13 of the Disclosure Schedules, neither the Company nor any Company Subsidiary is subject to any Order of any Governmental Entity or any indemnity or other agreement with any third party concerning obligation or Liability relating to any Environmental Law (excluding indemnification agreements entered into in the ordinary course of business and for which there has been no claim and there is not currently to the Company's Knowledge any basis for any claim, in each case, relating to any Environmental Law). The Company has delivered to Buyer correct and complete copies of all environmental reports, studies, assessments, sampling data and any other material environmental information in its possession or control relating to the Company or any Company Subsidiary or their respective current and former properties or operations.

Section 4.14 Taxes.

(a) The Company and the Company Subsidiaries (i) have properly completed and timely filed (taking into account any extension of time within which to file) with the appropriate Tax Authorities all Tax Returns required to be filed by any of them and all such Tax Returns are true, complete and accurate in all material respects, and (ii) have timely paid all Taxes that are due and owing (whether or not shown as due or required to be shown as due on any Tax Returns), and have no liability for Taxes in excess of the amounts so paid.

(b) The Company and each of the Company Subsidiaries have withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, shareholder of the Company (or any of the Company Subsidiaries) or other Person. The Company and each Company Subsidiary is in compliance with, and its records contain all information and documents necessary to comply with, all applicable information reporting and withholding requirements under all applicable Tax laws and the Company and each Company Subsidiary has maintained, and still maintains, all required records with respect thereto.

(c) There are (i) no pending or to the Knowledge of the Company threatened audits, assessments or other actions for or relating to any liability in respect of Taxes of the Company or any of the Company Subsidiaries, (ii) no deficiencies for Taxes with respect to the Company or any of the Company Subsidiaries that have been claimed, proposed or assessed by any Tax Authority, (iii) no matters under discussion with any Tax Authority with respect to Taxes that are likely to result in an additional liability for Taxes with respect to the Company or any of the Company Subsidiaries, outside of the ordinary course of business or otherwise inconsistent with past custom and practice, and (iv) no issues relating to Taxes of the Company or any of the Company Subsidiaries that have been raised by the relevant Tax Authority in any completed audit or examination that would reasonably be expected to result in a material amount of Taxes in a later taxable period.

(d) Neither the Company nor any Company Subsidiary (nor any predecessor of the Company or any Company Subsidiary) has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency, nor has any request been made in writing for any such extension or waiver, and neither the Company nor any of the Company Subsidiaries is currently the beneficiary of any extension of time within which to file any Tax Return.

(e) Neither the Company nor any of the Company Subsidiaries has ever been a member of a consolidated, combined, unitary or affiliated group for any Tax purposes (other than a group the common parent of which is the Company). Neither the Company nor any of the Company Subsidiaries has any liability for the Taxes of any Person (other than Taxes of the Company or the Company Subsidiaries) (i) under any applicable Tax Law, (ii) as a transferee or successor, or (iii) by Contract or otherwise.

(f) Neither the Company nor any of the Company Subsidiaries is a party to or bound by any Tax indemnity agreement, Tax sharing agreement or Tax allocation agreement or similar Contract, arrangement or practice with respect to Taxes (including advance pricing agreements, closing agreements or other agreement relating to Taxes with any Tax Authority) that will be binding with respect to any period following the Closing.

(g) Neither the Company nor any of the Company Subsidiaries is a partner for Tax purposes with respect to any joint venture, partnership, or other arrangement or Contract which is treated as a partnership for Tax purposes. No U.S. federal income tax entity classification election pursuant to Treasury Regulations Section 301.7701-3 has been filed with respect to the Company or any of the Company Subsidiaries.

(h) Neither the Company nor any of the Company Subsidiaries has engaged in a “reportable transaction,” as such term is defined in Treasury Regulations Section 1.6011-4(b)(1).

(i) Neither the Company nor any of the Company Subsidiaries will be required to include any item of income in, or exclude any item of deduction from, taxable income for any period (or any portion thereof) ending after the Closing Date as a result of any (i) installment sale or other transaction on or prior to the Closing Date, (ii) accounting method change or agreement with any Tax Authority filed or made on or prior to the Closing Date or (iii) prepaid amount received on or prior to the Closing.

(j) There are no Encumbrances for Taxes upon the assets of the Company or any Company Subsidiary (other than Permitted Encumbrances). There is no basis for the assertion of any claim relating or attributable to Taxes which, if adversely determined, would result in any Encumbrances for Taxes on the assets of the Company or any of the Company Subsidiaries.

(k) In the past two (2) years, neither the Company, any of the Company Subsidiaries nor any of their respective predecessors by merger or consolidation was a "distributing corporation" or a "controlled corporation" (each as defined in Section 355 of the Code) in a transaction intended to qualify under Section 355 of the Code.

(l) Neither the Company nor any of the Company Subsidiaries has made any change in accounting method (except as required by a change in Law) or received a ruling from, or signed an agreement with, any Tax authority that would reasonably be expected to have a material impact on its Taxes following the Closing.

(m) The Company and each Company Subsidiary is, and has always been, a resident for Tax purposes solely in its jurisdiction of organization for Tax purposes and has not been subject to Tax in any jurisdiction other than its jurisdiction of organization. No claim has ever been made by a Tax Authority in a jurisdiction where the Company or any Company Subsidiary does not file a Tax Return that such entity is or may be subject to taxation by that jurisdiction in respect of Taxes that would be covered by or the subject of such Tax Return. Neither the Company nor any Company Subsidiary has or has had a branch, agency or "permanent establishment" in a jurisdiction other than its jurisdiction of organization.

(n) The Company Option Plan and any similar plan maintained by the Company or any Company Subsidiary and that is intended to qualify as a capital gains route plan under Section 102 of the Israeli Code (a "102 Plan"), or that is otherwise required to be approved by the ITA, has received a favorable determination or approval letter from, or is otherwise approved by, or deemed approved by passage of time without objection by, the ITA. All Company Options and Shares that are subject to Tax under Section 102 of the Israeli Code and which were issued under any 102 Plan have been granted and issued, as applicable, to Employees in accordance with the definition of "an Employee" in Section 102(a) of the Israeli Code and in compliance with the applicable requirements of Section 102 of the Israeli Code (including the relevant sub-section of Section 102) and the written requirements and guidance of the ITA, including the filing of the necessary documents with the ITA, the receipt of the required written consents from the holders of such Shares and Company Options, the appointment of an authorized trustee to hold the Company Options and Shares, and the due deposit of such Company Options and Shares with such trustee pursuant to the terms of Section 102 of the Israeli Code and applicable regulations and rules, and the guidance published by the ITA on July 24, 2012 and clarification dated November 6, 2012, as applicable.

(o) Except as set forth in Section 4.14(o) of the Disclosure Schedule, the Company and each of the Company Subsidiaries is in material compliance with all applicable transfer pricing laws and regulations, including the execution and maintenance of contemporaneous documentation substantiating the transfer pricing practices and methodology of the Company. The prices for any property or services (or for the use of any property) provided by or to the Company or any Company Subsidiary are arm's length for purposes of all applicable transfer pricing Laws, including Treasury Regulations promulgated under Section 482 of the Code and Section 85A of the Israeli Code and regulations thereunder, and all related documentation required by such Laws has been timely prepared or obtained and, if necessary, retained. No Tax Authority has proposed, asserted or otherwise discussed with the Company or any of the Company Subsidiaries the possibility of a transfer pricing adjustment or failure to comply with any transfer pricing requirements. The Company does not have any reason to expect that a transfer pricing adjustment will be proposed, asserted or raised by any Tax Authority with respect to the Company or any of the Company Subsidiaries either before or after the Closing Date (i) with respect to any transactions that occurred prior to the Closing Date or (ii) as a result of any transfer pricing documentation being provided to any Tax Authority by the Company or any of the Company Subsidiaries prior to Closing Date.

(p) The Company has delivered or made available to Buyer complete and accurate copies of all Tax Returns of the Company and each of the Company Subsidiaries (and any predecessor of the Company and the Company Subsidiaries) for all taxable years remaining open under the applicable statute of limitations, including, promptly upon their availability, for the most recent taxable year, and complete and accurate copies of all audit or examination reports and statements of deficiencies assessed against or agreed to by the Company or any of the Company Subsidiaries (or any predecessors of the Company or the Company Subsidiaries) since the formation of the Company or such Company Subsidiary. Except as set forth in Section 4.14(p) of the Disclosure Schedules, no power of attorney with respect to any Taxes of the Company or any of the Company Subsidiaries has been executed or filed with any Tax Authority.

(q) The unpaid Taxes of the Company and the Company Subsidiaries did not, as of the Balance Sheet Date, exceed the reserve for Tax liability (excluding any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of the Financial Statements (rather than in any notes thereto). Since the Balance Sheet Date, neither the Company nor any of the Company Subsidiaries have incurred any liability for Taxes outside the ordinary course of business or otherwise inconsistent with past custom and practice.

(r) Except as set forth in Section 4.14(r) of the Disclosure Schedules, neither the Company nor any of the Company Subsidiaries has requested or is the subject of or bound by any private letter ruling, technical advice memorandum, closing agreement or similar ruling, memorandum or agreement with any Tax Authority with respect to any Taxes, nor is any such request outstanding.

(s) The Company is duly registered for the purposes of Israeli value added tax and has complied in all material respects with all requirements concerning value added Taxes ("VAT"). The Company (i) has not made any exempt transactions (as defined in the Israel Value Added Tax law of 1975) and there are no circumstances by reason of which there might not be an entitlement to full credit of all VAT chargeable or paid on inputs, supplies, and other transactions and imports

made by it, (ii) has collected and timely remitted to the relevant Tax Authority all output VAT which it is required to collect and remit under any applicable Law and (iii) has not received a refund for input VAT to which it is not entitled under any applicable Law. No Company Subsidiary has ever been, and no Company Subsidiary currently is, required to effect Israeli VAT registration.

(t) Neither the Company nor any Company Subsidiary is subject to any restrictions or limitations pursuant to Part E2 of the Israeli Code or pursuant to any Tax ruling made with reference to the provisions of Part E2.

(u) The Company does not and has never participated or engaged in any transaction listed in Section 131(g) of the Israeli Code and the Israeli Income Tax Regulations (Reportable Tax Planning), 5767-2006 promulgated thereunder nor is it subject to reporting obligations under Sections 131D or 131E of the Israeli Code or similar provisions under the Israel Value Added Tax law of 1975.

(v) The Company is not and has never been a real property corporation (*Igud Mekarke'in*) within the meaning of this term under Section 1 of the Israeli Land Taxation Law (Appreciation and Acquisition), 5723-1963.

(w) Section 4.14(w) of the Company Disclosure Schedule sets forth a true, correct and complete list of any Tax exemption, Tax holiday or other Tax-sharing arrangement or order that the Company or any Company Subsidiary has in any jurisdiction, including the nature, amount and expiration date of such Tax exemption, Tax holiday or other Tax-sharing arrangement, as applicable. The Company and each Company Subsidiary is in compliance with all terms and conditions required to maintain such Tax exemption, Tax holiday or other Tax-sharing arrangement or order of any relevant Governmental Entity and, to the Knowledge of the Company, the consummation of the transactions contemplated hereby will not have any adverse effect on the continuing validity and effectiveness of any such Tax exemption, Tax holiday or other Tax-sharing arrangement or order. Neither the Company nor any Company Subsidiary has ever made an election to be treated or claimed any benefits as a "Beneficial Enterprise" (*Mifaal Mutay*) or otherwise take any position of being a "Preferred Enterprise" (*Mifaal Muadaf*) or "Preferred Technological Enterprise" or otherwise under the Law for Encouragement of Capital Investments, 1959. Neither the Company nor any Company Subsidiary has taken any position, or represented to any person, that it meets the requirements under the so called "The Angels Law" pursuant to Section 20 of the 2011-2012 Economic Policy Law (Legislation Amendments), 2011 and any amendments thereto.

(x) The Company has made available to Buyer all documentation relating to any applicable Tax incentives applicable to the Company or any Company Subsidiary. The Company and the Company Subsidiaries are in compliance with all the requirements of all such Tax incentives and none of the incentives will be jeopardized by the consummation, in and of itself, of the transactions contemplated by this Agreement.

(y) Neither the Company nor any Company Subsidiary owns any interest in any controlled foreign corporation pursuant to Section 75B of the Israeli Code, or other entity the income of which is required to be included in the income of the Company.

(z) The Company has in its possession official government receipts for any Taxes paid by it to any Tax Authorities for which receipts have been provided or are customarily provided.

(aa) No individual classified by the Company or any Company Subsidiary as a non-employee (such as, an independent contractor, leased employee or consultant) was or will be considered as an employee of the Company or any Subsidiary by an applicable Tax Authority.

Section 4.15 Labor Matters.

(a) Section 4.15(a) of the Disclosure Schedules sets forth a true and complete list, as of the date hereof of the following with respect to each employee of the Company and each Company Subsidiary (other than any such information for which disclosure is prohibited by applicable Law and then only to the extent so prohibited): (i) name and employee identification number assigned by the Company or such Company Subsidiary, (ii) the geographic location at which such employee is based and primarily performs his or her duties or services, (iii) the entity employing such employee, (iv) title/position and whether such employee is full-time or part-time, (v) annual base, solely with respect to U.S. based employees, monthly salary semi-monthly salary or hourly wage rate, with respect to all other employees, (vi) incentive or bonus target for the current calendar year, (vii) the number vacation days to which each such employee is entitled and accrued and unpaid vacation days for such employee, (viii) date of hire, (ix) an indication as to whether such employee is on leave of absence and (x) the Company's classification of such employee as exempt or non-exempt with respect to the Fair Labor Standards Act and any applicable state, local or foreign wage and hour laws. Other than as set forth in Section 4.15(a) of the Company Disclosure Schedule all employees and, to the Knowledge of the Company, all consultants or other Service Providers of the Company and the Company Subsidiaries are lawfully entitled to work or provide services, as applicable, for the Company or the applicable Company Subsidiary of the Company without restriction or any visa, permit or required consent.

(b) The Company has delivered to Buyer correct and complete copies of all (i) Contracts for Key Employees, the Company's standard Contract(s) for all other employees (and copies of any Contracts that differ in any material respect from the standard Contract(s)), copies of all Contracts with consultants, employee handbooks, policies that apply to any employees or consultants of the Company and (ii) Contracts with any trade union, employee representative or body of employees or their Representatives (whether binding or not) and details of any such unwritten Contracts that may materially affect any employees or consultants of the Company.

(c) The Company is not a party to or bound by any collective bargaining agreement, works council or similar labor arrangement. There are no extension orders (*Tzavei Harchava*) that any of the Company or any Company Subsidiary is subject to, and/or that any of their employees benefits from, other than such extension orders as apply generally to all employees in Israel.

(d) None of the employees of the Company is represented by a labor union, works council or similar body, and, to the Knowledge of the Company, no petition has been filed, nor has any proceeding been instituted by any employee or group of employees with any labor relations board or commission seeking recognition of a collective bargaining representative. The Company does not pay fees, dues or any other payment to any employer organization, nor has there been any demand from an employer organization to do so.

(e) To the Knowledge of the Company, (i) there is no organizational effort currently being made or threatened by or on behalf of any labor organization, trade union, works council or similar body to organize any employees of the Company and (ii) no demand for recognition of any employees of the Company has been made by or on behalf of any labor organization, trade union or works council or similar body, nor has there been within the past five (5) years.

(f) There is no pending or, to the Knowledge of the Company, threatened employee strike, work stoppage, slowdown, picketing, material labor dispute or negotiation regarding a claim with respect to any employees of the Company, nor has there been in the previous five (5) years.

(g) Except as otherwise set forth on Section 4.15(g) of the Disclosure Schedules, the Company has paid or made provision for payment of all salaries, wages, statutory payments to employees and vacation pay accrued through the date hereof and, upon the Closing, through the Closing Date, and is in compliance in all material respects with all obligations and duties it is required to perform whether arising under Contract or applicable Law or all Law respecting employment and employment practices, terms and conditions of employment, collective bargaining, information and consultation obligations, transfers of undertaking, immigration, wages, hours and benefits, non-discrimination in employment, part-time workers, contingent workers, fixed-term workers, whistleblowing, equal pay, equality of terms, termination of employment, disciplinary and grievance procedures, workers compensation, statutory payments to employees (all except for non-compliance that has not constituted, or would not constitute, individually or in the aggregate, a Company Material Adverse Change). The Company has not obtained relief pursuant to Sections 2301 or 2302 of the Coronavirus Aid, Relief, and Economic Security Act or any similar applicable national, federal, state, local or foreign Law.

(h) There is no Action pending or, to the Knowledge of the Company, threatened before any Governmental Entity alleging unlawful discrimination in employment practices or any unfair labor practice by the Company nor, to the Knowledge of the Company, is there a basis for any such claim.

(i) To the Knowledge of the Company, each employee of the Company and any Company Subsidiary who is located in the United States and is not a United States citizen has all necessary approvals, authorizations and papers necessary to work in the United States in accordance with applicable Law. Neither the Company nor any Company Subsidiary has ever had any temporary or manpower-company employees who were not treated and accounted for in all respects as applicable Law requires with respect to temporary employees and manpower-company employees, as applicable.

(j) Neither the Company or the Company's Subsidiaries have incurred any liability or obligation which remains unsatisfied under the Worker Adjustment and Retraining Notification Act or any similar state, local or foreign Laws.

(k) [Reserved].

(l) Except as set forth in Section 4.15(l) of the Disclosure Schedules, all current and past Services Providers are and were correctly classified under all applicable Laws as either "independent contractors" (or comparable status in any jurisdiction) or "employees" as the case may be and neither the Company or any of its Subsidiaries have received any written notice from any Governmental Entity disputing such classification. All individuals who are or were classified as "employees" in the United States of the Company or any of its Subsidiaries are or were correctly classified under all Applicable Laws by the Company or such Subsidiary, as exempt or non-exempt, as the case may be. All current or former employees of the Company or any of its Subsidiaries whose employment agreements state or stated that they are not subject to the Hours of Work and Rest Law, 1951, and accordingly are or were ineligible for overtime payments, are or were correctly classified as such.

(m) Without derogating from the foregoing in this Section 4.15, the Company and each applicable Company Subsidiary that engages Israeli employees ("Israeli Employees"), have at all times complied in all material respects with the applicable Israeli Prior Notice to the Employee Law, 2002, the Israeli Notice to Employee and Job Candidate (Terms of Employment and Candidate Screening and Selection) Law, 2002, the Israeli Prevention of Sexual Harassment Law, 1998, the Israeli Hours of Work and Rest Law, 1951, the Israeli Annual Leave Law, 1951, the Israeli Salary Protection Law, 1958, the Israeli Employment by Human Resource Contractors Law, 1996, and the Israeli Law for Increased Enforcement of Labor Laws, 2011 and all extension orders applicable to the Company and/or any Company Subsidiary. Except as set forth is Section 4.15(m)(i) of the Disclosure Schedules, the employment of each Israeli Employee is terminable by the employer upon no more than thirty (30) days' prior written notice under the termination notice provisions included in the applicable employment Contract(s) with such employee and applicable Law. Except as set forth is Section 4.15(m)(ii) of the Disclosure Schedule, all obligations of the employer to provide statutory severance pay to all Israeli Employees are in accordance with Section 14 of the Israeli Severance Pay Law (5723-1963) (the "Severance Pay Law") and are fully funded or are accrued on the Financial Statements, all Israeli Employees have been subject to the provisions of Section 14 of the Severance Pay Law with respect to their entire salary, as defined under the Severance Pay Law from the date of commencement of their employment, and the Company has been in full compliance with the technical and substantive requirements for a Section 14 Arrangement with respect to severance pay. Except as set forth is Section 4.15(m)(iii) of the Disclosure Schedule, no Israeli Employee's employment requires any special license, permit or other authorization by any Governmental Entity. Except as set forth in Section 4.15(m)(iv) of the disclosure Schedules, there are no unwritten policies, practices or customs of the Company or any Company Subsidiary that entitle any Israeli Employee to benefits in addition to what such Israeli Employee is entitled to by applicable Law or under the terms of such Israeli Employee's employment Contract (including unwritten customs or practices concerning bonuses or the payment of statutory severance pay when it is not required under applicable Law). Except as set forth is Section 4.15(m)(v) of the Disclosure Schedule, all amounts that are legally or contractually required either (i) to be deducted from Israeli Employees' salaries or transferred to such Israeli Employees' pension or provident, life insurance, incapacity insurance, advance study fund (*Keren Hishtalmut*) or other similar funds or (ii) withheld from Israeli Employees' salaries and benefits and paid to any Israeli Governmental Entity as required by applicable Israeli tax Law, have, in each case, been duly deducted, transferred, withheld and paid, and neither the Company nor any Company Subsidiary has any outstanding obligation to make any such deduction, transfer, withholding or payment (except for deduction, transfer, withholding and payments to be made in the ordinary course after the date of this Agreement, or the Closing, as applicable).

(n) Except as set forth is Section 4.15(n) of the Disclosure Schedule, no employee of the Company or any Company Subsidiary has (i) given the Company or the applicable Company Subsidiary notice of his or her intention to go on a leave of absence, (ii) terminated or has advised the Company or any Company Subsidiary of his or her intention to terminate such employee's employment with the Company or any Company Subsidiary for any reason and neither the Company nor any Company Subsidiary has any plans or intentions as of the date hereof to terminate any such employee, except as specified under this Agreement or the Transaction Documents.

(o) Other than as required pursuant to applicable Law or the employment agreement with the relevant employee, the Company has not incurred any outstanding material Liability in connection with any termination of employment of any current or former employee (including redundancy payments) or for failure to comply with any order for the reinstatement or re-engagement of any former employee.

Section 4.16 Intellectual Property.

(a) Company IP and IP Rights.

(i) Section 4.16(a)(i) of the Disclosure Schedules sets forth a correct and complete list as of the date hereof of all Registered IP, including the Patent Rights therein, in each case, indicating for each item of Registered IP whether such Registered IP is owned by, or exclusively licensed to, the Company or a Company Subsidiary (as applicable), the name of the licensor (if such Registered IP is exclusively licensed to the Company or a Company Subsidiary), the name of the applicable owner (if such Registered IP is owned by the Company or a Company Subsidiary), the names of any joint owner(s) of such Registered IP apart from the Company or a Company Subsidiary (or the licensor with respect thereto, as applicable), the filing or application, and if applicable, registration, publication, and/or issuance number, as well as the date(s) thereof, and the name of the jurisdiction in which such filing or application was made.

(ii) Except as otherwise set forth on Section 4.16(a)(ii) of the Disclosure Schedule, the Company or a Company Subsidiary, as applicable, solely owns or has a valid and enforceable exclusive license to (as applicable) all Company IP, free and clear of all Encumbrances other than Permitted Encumbrances.

(iii) Each issued patent within the Company IP is, and each pending patent application within the Company IP, were such pending application to issue, would be, in each case, to the Company's Knowledge, valid, enforceable and subsisting, and is not subject to any Order of any Governmental Entity or any settlement or other agreement or Contract adversely affecting the Company's and any Company Subsidiary's use thereof or its rights thereto, including its or their ability to transfer, license, prosecute, maintain, enforce, or defend such Patent Rights. Except as otherwise set forth on Section 4.16(a)(iii) of the Disclosure Schedule, the pending trademark and patent applications within the Company IP have been diligently prosecuted. Neither the Company nor any Company Subsidiary has received any written claims or notices challenging (A) the validity or enforceability of any issued patents included in the Company IP or (B) the Company's ownership thereof or exclusive license rights thereto, and there are no outstanding inventorship disputes with respect to the Patent Rights included in the Company IP.

(iv) All assignments of Company IP owned by the Company or any Company Subsidiary to the Company or any Company Subsidiary, as applicable, have been properly and validly executed and, to the extent required under Law with respect to Registered IP (and in any event with respect to Patent Rights within the Registered IP), recorded in compliance with applicable Laws and with the relevant Governmental Authorities.

(v) All registration, renewal, maintenance and other payments that are or have become due with respect to Registered IP have been timely paid by or on behalf of the Company, a Company Subsidiary, or, to the Knowledge of the Company, by the upstream licensor of such Registered IP with respect to such Registered IP that is exclusively licensed to the Company or a Company Subsidiary and for which the upstream licensor controls the prosecution and maintenance of.

(vi) The Company and each Company Subsidiary, and to the knowledge of the Company, all upstream licensors of the Company or each Company Subsidiary, as applicable, have complied in all material respects with their duty of candor and disclosure to the United States Patent and Trademark Office and any relevant foreign patent office with respect to all Patent Rights that are included in the Company IP.

(b) IP Contracts.

(i) Section 4.16(b)(i) of the Disclosure Schedules sets forth a correct and complete list as of the date hereof of all of the following IP Contracts to which the Company or any Company Subsidiary is a party or otherwise bound, along with the effective dates thereof and other identifying information:

(A) IP Contracts relating to the research, development, manufacturing, commercialization, use, or other exploitation of the Initial Device, and all IP Rights therein;

(B) IP Contracts pursuant to which the Company or any Company Subsidiary is granted or obtains any license or other right (including an option to license or otherwise exploit) to exploit any IP Rights, other than (1) IP Contracts, the primary purpose of which is to facilitate the exchange of confidential information between the parties thereto, (2) IP Contracts granting rights to the Company or a Company Subsidiary to use non-customized software, and (3) IP Contracts in which the license of IP Rights to the Company or a Company Subsidiary is on a non-exclusive and royalty-free basis and is for the primary purpose of enabling to the exploitation of equipment, reagents or other materials provided to the Company or a Company Subsidiary; and

(C) IP Contracts pursuant to which the Company or any Company Subsidiary is restricted in its right to use or register any, or permits or agrees to permit any other Person to use any, IP Rights owned or controlled by the Company or a Company Subsidiary, including any license agreements, coexistence

agreements, and covenants not to sue with respect to such IP Rights, other than (1) IP Contracts, the primary purpose of which is to facilitate the exchange of confidential information between the parties thereto and (2) IP Contracts providing for the non-exclusive license of Company IP to suppliers or service providers for the sole purpose of enabling such supplier or service providers to provide services for the Company's or a Company Subsidiary's benefit (the IP Contracts described in subsections (A) through (C) herein are collectively referred to as the "Relevant IP Contracts").

A correct and complete copy of each such Relevant IP Contract, together with all amendments, supplements, exhibits and schedules thereto, has been delivered to Buyer.

(ii) Each Relevant IP Contract is in full force and effect and neither the Company nor any Company Subsidiary is in violation of or in default under any such Relevant IP Contract or has provided or received any written, or, to the Company's Knowledge, any non-written, notice of any violation, default or intention to terminate, any such contract) and is not subject to any outstanding Order of any Governmental Entity or any settlement or Contract adversely affecting the Company's or any Company Subsidiary's rights thereto.

(iii) The consummation of the Equity Purchase and the other transactions contemplated by this Agreement will not create or result in (A) any breach or violation of any Relevant IP Contract, (B) except as otherwise set forth on Section 4.16(b)(iii)(B) of the Disclosure Schedules, any modification, termination or acceleration of any right or obligation under any Relevant IP Contract or (C) any Encumbrance on, any Company IP.

(iv) Section 4.16(b)(iv) of the Disclosure Schedules sets forth a correct and complete list as of the date hereof of all IP Contracts (along with the effective dates thereof and other identifying information) under which the Company or any Company Subsidiary has agreed to indemnify, defend, or hold harmless any Person against any infringement, violation or misappropriation by the Company or any Company Subsidiary of the IP Rights of a third party.

(v) Section 4.16(b)(v) of the Disclosure Schedules sets forth a correct and complete list as of the date hereof of all IP Contracts (along with the effective dates thereof and other identifying information) under which the Company or any Company Subsidiary has agreed to make payments by way of royalties, reimbursement, milestones, maintenance payments, advance payments, profit sharing payments, commissions or other fees or consideration of any kind to any Person in respect of any IP Right or the use or exploitation thereof.

(c) Intellectual Property Use Rights

(i) The Company and the Company Subsidiaries have sufficient rights to practice all IP Rights used in or, to the Company's Knowledge, necessary for their business as presently conducted and as presently contemplated to be conducted, including for clarity with respect to the research, development, manufacture, commercialization, and other

exploitation of the Initial Device as presently conducted and as presently contemplated to be conducted, and the consummation of the Equity Purchase any other transactions contemplated by this Agreement shall not adversely affect the Company's or any Company Subsidiary's rights to practice such IP Rights.

(ii) The research, discovery, development, manufacturing, commercialization, and other activities of the Company and the Company Subsidiaries as presently conducted and as presently contemplated to be conducted, including for clarity with respect to the Initial Device, do not and have not infringed, misappropriated or otherwise violated the IP Rights of any third party; provided, that the foregoing representation shall be made to the Knowledge of the Company with respect to Patent Rights of any third party in connection with activities unrelated to the Initial Device as presently contemplated to be conducted by the Company and the Company Subsidiaries. To the Knowledge of the Company, the products and services manufactured, developed, used, marketed, sold or licensed by the Company and the Company Subsidiaries, including the Initial Device, in the current business of the Company and the Company Subsidiaries, do not constitute unfair competition or trade practices under the Law of any relevant jurisdiction. All IP Rights owned or controlled by the Company or a Company Subsidiary shall continue be available for use and exploitation by the Company and the Company Subsidiaries immediately after the Closing on the same terms and conditions as each such IP Rights were available to the Company and the Company Subsidiaries immediately prior to the Closing.

(iii) Other than patent office examinations of patent applications in the ordinary course of business, there is no Action or other written complaint, claim, or notice pending, asserted or, to the Knowledge of the Company, threatened against the Company or any Company Subsidiary by any other Person (A) concerning the ownership, inventorship, scope, validity, registerability or enforceability of, or any right of the Company or any Company Subsidiary in, any Company IP, including those relating to the Initial Device or (B) that alleges any infringement, contributory infringement, inducement to infringe, misappropriation, violation or unlawful use by the Company or a Company Subsidiary of the IP Rights of any other Person, or offers the Company or a Company Subsidiary a license to use the same.

(iv) None of the Company IP is subject to any settlement or similar agreement with any Governmental Entity.

(v) No rights have been granted by the Company to any other Person (or have been retained by such Person), other than to legal representatives under customary powers of attorney, to control the prosecution or registration of any Company IP or to commence, defend, or otherwise control any claim with respect to any Company IP.

(d) To the Knowledge of the Company, no third party is misappropriating, infringing, diluting, using without authorization, or violating or has misappropriated, infringed, diluted, used without authorization, or violated any IP Rights of the Company or any Company Subsidiary, and no claims for any of the foregoing have been brought or threatened against any third party by the Company or any Company Subsidiary.

(e) Confidentiality.

(i) The Company and the Company Subsidiaries have taken all reasonable measures to protect the confidentiality of all Trade Secrets that are within the Company IP, including by entering into Contracts with all employees, licensees, consultants and other third parties that obtain or may obtain access to such Trade Secrets to keep such Trade Secrets confidential, which measures are customary in the industry in which Company and the Company Subsidiaries operate, for companies similarly situated.

(ii) To the Knowledge of the Company, the Trade Secrets owned by the Company or the Company Subsidiaries and the Trade Secrets exclusively licensed to the Company or the Company Subsidiaries, in each case that are within the Company IP, have not been used by, disclosed to or discovered by any Person except pursuant to valid and appropriate non-disclosure and/or license agreements that have not been breached.

(f) Company Employees, Consultants and Agents. Each current and former employee and other consultant or agent of the Company or any Company Subsidiary that was, is, or would reasonably be expected to be involved in the possible invention of IP Rights on behalf of the Company or a Company Subsidiary ("Relevant Individual") has executed a valid and enforceable proprietary information and inventions agreement, presently assigning all right, title and interest to the Company in any IP Rights created by such Relevant Individual and agreeing not to disclose or make any improper use of any confidential information or Intellectual Property of the Company, each of which has been made available to Buyer, and no such Relevant Individual has excluded works or inventions from his or her assignment of inventions pursuant to such Relevant Individual's proprietary information and inventions agreement. Except as set forth in Section 4.16(f)(A) of the Disclosure Schedules, each such Relevant Individual conceived of, created, developed or improved IP rights on behalf of the Company only while such Relevant Individual was an employee, consultant, or agent of the Company and subject to a proprietary information and inventions agreement as described above and to the Knowledge of the Company, none of such Relevant Individuals is in violation of such proprietary information and inventions agreement. To the Knowledge of the Company, no current or former Relevant Individual (i) misappropriated, infringed or otherwise violated the IP Rights of, or (ii) breached any agreement with, any Person that had previously employed or engaged such Relevant Individual. Except as set forth in Section 4.16(f)(B) of the Disclosure Schedules, each Relevant Individual has irrevocably and expressly waived any and all right to compensation and royalties in connection with service inventions under Section 134 of the Israeli Patent Law 1967 with respect thereto.

(g) IT Assets.

(i) The Company's and each Company Subsidiary's material IT Assets are designed, implemented, operated and maintained in accordance in all material respects with customary industry standards and practices for similarly situated entities operating businesses similar to the business of the Company and the Company Subsidiaries, including with the respect to redundancy, reliability, scalability and security. Without limiting the foregoing, the Company and each Company Subsidiary (A) have taken commercially reasonable steps and implemented commercially reasonable procedures to ensure that its IT Assets are free from Malicious Code, (B) subject to Section 4.16(g)(i) of

the Disclosure Schedules, have in effect industry standard disaster recovery plans, procedures and facilities for its business, and (C) have taken all reasonable steps to safeguard the security and the integrity of its IT Assets. There have been no unauthorized intrusions or breaches of security with respect to the IT Assets of the Company and the Company Subsidiaries.

(ii) The IT Assets of the Company and the Company Subsidiaries do not contain any "back door," "drop dead device," "time bomb," "Trojan horse," "virus," "worm," "spyware" or "adware" (as such terms are commonly understood in the software industry) or any other code designed or intended to have, or capable of performing or facilitating, any of the following functions: (A) disrupting, disabling, harming, or otherwise impeding in any manner the operation of, or providing unauthorized access to, a computer system or network or other device on which such code is stored or installed; or (B) compromising the privacy or data security of a user or damaging or destroying any data or file without the user's consent (collectively, "Malicious Code"). The Company and each Company Subsidiary implements industry standard measures, for similarly situated entities operating businesses similar to the business of the Company and the Company Subsidiaries, designed to prevent the introduction of Malicious Code into the IT Assets of the Company and the Company Subsidiaries, including firewall protections and regular virus scans.

(iii) All IT Assets of the Company and the Company Subsidiaries, including software applications and operating systems, that are licensed from third Persons are licensed pursuant to valid and enforceable license agreements, and neither the Company nor any Company Subsidiary is in breach of any such license agreement in any material respect.

(h) Section 4.16(h) of the Company Disclosure Schedule sets forth an accurate and complete list of all Open Source Software that is included, incorporated or embedded in, linked to, combined with or otherwise used in or with the Initial Device, which list specifies (i) the Contract under which each such item of Open Source Software has been licensed to the Company or the applicable Company Subsidiary, (ii) whether such item of Open Source Software has been modified by the Company or any Company Subsidiary and (iii) whether such item of Open Source Software is or was distributed by the Company or any Company Subsidiary. Neither the Company nor any Company Subsidiary has incorporated Open Source Software into, or combined, linked or distributed any Open Source Software with, the Initial Device or other Company IP in any manner that creates, or purports to create, obligations for the Company or any Company Subsidiary (or upon or after the Closing, Buyer or any of its Affiliates), with respect to any part of the Initial Device that is not or does not include Open Source Software owned by a third party or grants, or purports to grant, to any third party, any licenses, rights or immunities under or to the Initial Device. Any written Open Source Software policies of the Company and the Company Subsidiaries, if any, are listed in Section 4.16(h) of the Disclosure Schedules, and complete and accurate copies thereof have been made available to Buyer. The Company and each Company Subsidiary has complied in all material respects with and is currently in compliance in all material respects with, all licenses for all such Open Source Software listed is Section 4.16(h) of the Company Disclosure Schedule, if any.

(i) Industry Organizations and Consortia. Neither the Company nor any Company Subsidiary has made any contribution or disclosure to or participated in any standards-setting organization, industry body, consortium, or other multi-party special interest group (herein, a "SIG"). Further, neither the Company nor any Company Subsidiary is bound by nor has agreed to be bound by, any Contract which purports to license or potentially license any Company IP as a result of any contribution or disclosure to or participation in any SIG.

(j) Governmental Grants and Institutional Affiliations.

(i) Except as set forth in Section 4.16(j)(i) of the Disclosure Schedules, neither the Company nor any Company Subsidiary has obtained any grant, loan or other assistance from any Israeli, United States, or other federal, state or local Governmental Entity (a "Governmental Grant").

(ii) The Company has made available to Buyer correct copies of all letters of approval, certificates of completion, supplements or amendments thereto for any Governmental Grants granted to the Company or any Company Subsidiary, including the most recent and updated status of account report from the Israel Innovation Authority (titled the "Keren Tmura Status of Account").

(iii) Section 4.16(j)(iii) of the Disclosure Schedules sets forth: (A) all material undertakings given in connection with any Governmental Grant made to the Company or any Company Subsidiary; (B) the aggregate amount of each payment or transfer made on account of any such Governmental Grant; and (C) the aggregate outstanding obligations of the Company or a Company Subsidiary under each such Governmental Grant with respect to royalties or other payments. The Company and each Company Subsidiary is in compliance, in all material respects, with the terms and conditions of any Governmental Grant made to the Company or any such Company Subsidiary and has duly fulfilled all the undertakings relating thereto and to the Company's Knowledge, no event has occurred or circumstances exist that would reasonably be expected to result in the revocation or modification of any such Governmental Grant.

(iv) Neither the Initial Device nor any of the Company IP uses or incorporates any intellectual property that was developed using funding provided by the European Commission, nor does the European Commission, any other Governmental Entity or any academic institution have any ownership interest in or right to restrict the sale, licensing, distribution or transfer of any Company IP or the Initial Device, except as set forth in Section 4.16(j)(iv) of the Disclosure Schedules. Except as set forth in Section 4.16(j)(iv) of the Disclosure Schedules, all Company IP is freely transferable, conveyable and/or assignable by the Company to any entity located in any jurisdiction in the world without any restriction, constraint, control, supervision or limitation that could be imposed by the any Governmental Entity or any academic institution, except pursuant to Trade Controls Laws.

(v) To the Knowledge of the Company, other than as set forth in Section 4.16(j)(v) of the Disclosure Schedules, no current or former Service Provider of the Company or any Company Subsidiary who was involved in, or who contributed to, the authorship, conception, creation, design, or development of any of any Company IP or the Initial Device developed or under development by the Company or any Company Subsidiary, has performed services for or was an employee, consultant, contractor or student of any university, college, other academic institution, Governmental Entity, granting agency, research center or similar research funding authority, or other non-governmental funding agency while such employee, officer, director, consultant, or contractor was also performing services for Company or any Company Subsidiary, or during the time period in which such Service Provider authored, conceived, invented, created, designed or developed any of such Company IP or the Initial Device, or during the time period in which such Service Provider was still subject to the regulations and guidelines of such university, college, other academic institution, Governmental Entity, granting agency, research center or similar research funding authority, or other non-governmental funding agency. No facilities, equipment, materials, funding or other resources of any university, college, other academic institution, or research center or funding from any Governmental Entity or granting agency or similar research funding authority, or other non-governmental funding agency was used in the creation or development of any of Company IP or the Initial Device developed or under development by the Company or any Company Subsidiary, and no consultations took place with nor was any input received from any faculty member, employee, contractor or student of any university, college, other academic institution, or research center, with respect to the creation or development of any of the foregoing.

Section 4.17 Regulatory and Privacy Compliance.

(a) Subject to Section 4.17 of the Disclosure Schedules, the Company and each Company Subsidiary is, and has at all times since January 1, 2015, been, in compliance with all Regulatory Laws in all material respects. Since January 1, 2015, neither the Company nor any Company Subsidiary has received any written notice from any Governmental Entity of any non-compliance in any material respect or material liability under any Regulatory Law. Subject to Section 4.17 of the Disclosure Schedules, the Initial Device is being developed, manufactured, labeled, stored, tested and distributed by the Company and the Company Subsidiaries in material compliance with all applicable requirements under all applicable Laws, including all Regulatory Laws, including those Laws governing pre-clinical studies, clinical trials and manufacturing of an investigational device. Neither the Company nor any of the Company Subsidiaries, nor any partner or third-party providing services on behalf of the Company or any of the Company Subsidiaries, has received any FDA Form 483 or other Governmental Entity notice of inspectional observations, “warning letters” or “untitled letters,” or other communications that assert a lack of compliance with any applicable Regulatory Laws in connection with the Initial Device or the Company’s or the Company Subsidiaries’ business, or any written notice of any pending or threatened civil, criminal, administrative or regulatory Action, search warrant, subpoena (other than those related to actions against third parties), and to the Company’s Knowledge, there is not pending any allegation that any operation or activity of the Company or any of the Company Subsidiaries, or on behalf of the Company and the Company Subsidiaries, relating to the Company’s or any Company Subsidiary’s business or the Initial Device is in violation of any Regulatory Laws.

(b) All manufacturing operations conducted with respect to the Initial Device have been and are being conducted in material compliance with all applicable Regulatory Laws, including applicable provisions of FDA's current Good Manufacturing Practice regulations at 21 C.F.R. Parts 820, and, to the extent applicable, the respective counterparts thereof promulgated by Governmental Entities in countries outside of the United States.

(c) With respect to all Personal Data Processed by the Company or any Company Subsidiary, including any information or data collected during any clinical trials conducted with respect to the Initial Device or during the development, pre-clinical and clinical testing, manufacture, storage, testing, distribution, supply and administration of the Initial Device, such Personal Data has been, and is being, Processed in material compliance with: (i) the requirements of all applicable Data Protection Laws; and (ii) all contractual obligations to which the Company or any Company Subsidiary is bound relating to the Processing of Personal Data; and (iii) the internal privacy and data protection policies of the Company and the Company Subsidiaries, in each case to the extent applicable and relating to any Personal Data Processed by the Company and each Company Subsidiary or by third parties having access to the records of the Company and each Company Subsidiary that contain any Personal Data ((i) through (iii), collectively, the "Data Protection Requirements"). The Company has adopted and published privacy notices and policies that accurately describe the privacy practices of the Company or any Company Subsidiary (as applicable), to any website, mobile application or other electronic platform and complied with those notices and policies, and no such notices or disclosures have been inaccurate, misleading or deceptive (collectively, with each of the Company and each of Company Subsidiary's internal privacy policies, the "Privacy Policies").

(d) Neither the Company nor any Company Subsidiary sells, rents or otherwise makes available to any Person any Personal Data, except in a manner that complies in all material respects with the applicable Data Protection Requirements and Privacy Policies.

(e) Neither the Company nor any Company Subsidiary has received any: (i) written notice or written complaint alleging material non-compliance with any applicable Data Protection Requirements; (ii) written claim for compensation for loss or unauthorized Processing of Personal Data; or (iii) written notification of an application for rectification, erasure or destruction of Personal Data which application is still outstanding. The Company and the Company Subsidiaries have obtained all necessary consents and authorizations necessary to Process any such information or data in the manner currently Processed in material compliance with applicable Data Protection Requirements, and the Company and the Company Subsidiaries are in material compliance with the terms of such consents and authorizations. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated herein and therein comply with all applicable Data Protection Requirements and the Privacy Policies, as in effect at the date hereof.

(f) The Company and each Company Subsidiary have commercially reasonable physical, technical, organizational and administrative security measures and policies in place to protect all Personal Data Processed by it or on its behalf from and against unauthorized access, use and/or disclosure. The Company and each Company Subsidiary have implemented reasonable backup and disaster recovery technology consistent with reasonable industry practices for similarly situated entities operating businesses similar to the business of the Company and the Company Subsidiaries.

(g) Other than as set forth in Section 4.17(g) of the Disclosure Schedules, neither the Company nor any Company Subsidiary has experienced any incidences in which Personal Data was or may have been stolen or improperly accessed, including any breach of security or other loss, unauthorized access, use or disclosure of Personal Data (each a "Security Incident") in the possession, custody or control of the Company or any Company Subsidiary. To the Knowledge of the Company, no subcontractor of the Company or any Company Subsidiary has experienced any Security Incident or made or has been required to make any disclosure, notification or take any other action under any applicable Data Protection Requirements in connection with any Security Incident with respect to any Personal Data provided by it to the Company or any Company Subsidiary. The Company and each Company Subsidiary have made all notifications to customers or individuals required to be made by the Company and each Company Subsidiary under applicable Data Protection Requirements arising out of or relating to any event of unauthorized access to or disclosure or acquisition of any Personal Data by any Person of which the Company or any Company Subsidiary have knowledge.

(h) All databases owned, controlled, held or used by the Company and the Company Subsidiaries, if any, and required to be registered under applicable laws have been properly registered, and the data therein has been used by the Company and the Company Subsidiaries solely as permitted pursuant to such registrations.

Section 4.18 Product and Clinical Trial Disclosures.

(a) The Company has made available to Buyer correct and complete copies of (i) all material filings with the FDA, (ii) materials and correspondence, requested by Buyer, with a Notified Body, the Israeli Ministry of Health, equivalent Governmental Entity or with any Review Board relating to the Initial Device in its possession or control (collectively, the "Material Product and Trial Information"). All information, claims, reports, statistics, and other data and conclusions, if any submitted in connection with each regulatory filing were true, complete and correct in all material respects as of the date of submission and no updates, changes, corrections, supplements, amendments or modifications necessary to such filing have failed to be submitted to the FDA, Notified Body, the Israeli Ministry of Health or other applicable Governmental Entity since such date.

(b) The Company and each Company Subsidiary has filed, maintain or furnished all material applications, reports, documents, claims, authorizations, amendments, modifications, notices, declarations, listings, registrations, reports, and other information required to be filed, maintained or furnished to a Governmental Entity in connection with the Initial Device. All such applications, reports, documents, claims, authorizations, amendments, modifications, notices, declarations, listings, registrations, reports and other information were in material compliance with applicable Regulatory Laws when filed, maintained or furnished and were complete and accurate in all material respects on the date filed (or were corrected in or supplemented by a subsequent filing) and no material deficiencies have been asserted by any applicable Governmental Entity with respect to any such applications, reports, documents, claims, authorizations, amendments, modifications, notices, declarations, listings, registrations, reports and other information, nor to the Company's Knowledge do any facts or circumstances exist that would be reasonably likely to cause any Governmental Entity to take action to materially limit, suspect, materially modify, or revoke any material authorizations. Any updates, changes, corrections or modifications to such documents required under applicable Regulatory Law, which are required to be submitted by such applicable Regulatory Law, have been submitted in a timely and complete manner.

(c) The Pivotal Clinical Trial has at all times been and is being conducted in material compliance with applicable research protocols, institutional review board requirements, and all applicable Regulatory Laws, including Good Laboratory Practice, Good Clinical Practice, and all requirements relating to the protection of human subjects contained in 21 C.F.R. Parts 50, 56 and 58, and all applicable requirements contained in 21 C.F.R. Part 812. The Company is in material compliance with all applicable provisions of Title VIII of the Food and Drug Administration Amendments Act of 2007, including requirements for the registration of the Pivotal Clinical Trial on the federal clinical trials databank. Neither the Company nor any Company Subsidiary nor, to the Company's Knowledge, any representative of the Company or any Company Subsidiary or any of the licensees or assignees of Company IP, has received any written notice that the FDA, Notified Body, the Israeli Ministry of Health, any other Governmental Entity or any Review Board has initiated, or threatened to initiate any Action to (i) suspend the Pivotal Clinical Trial, (ii) suspend or terminate any investigational device exemption ("IDE") related to Initial Device, as applicable, or (iii) recall, suspend or otherwise restrict in any material respect the manufacture of the Initial Device.

(d) Neither the Company nor any Company Subsidiary has committed any act, made any statement or failed to make any statement that resulted in the FDA invoking its policy with respect to "Fraud, Untrue Statements of Material Facts, Bribery and Illegal Gratuities" set forth in 56 Fed. Reg. 46191 (September 10, 1991) and any amendments thereto or any other Governmental Entity or Review Board to invoke a similar policy under any applicable federal, state, local, foreign or international regulatory requirements. Additionally, neither the Company nor any Company Subsidiary, nor any officer, director, Key Employee or, to the Company's Knowledge, agent of the Company or any Company Subsidiary has been convicted of any crime or engaged in any conduct that has resulted in debarment under applicable Law, including 21 U.S.C. Section 335a or any other Regulatory Law, or listing in any exclusion list or program similar to the exclusion list and program maintained by the United States Office of Inspector General under 42 C.F.R. Part 1003.102.

(e) None of the Company, any Company Subsidiary, nor to the Company's Knowledge, the officers, directors, managing employees, and Key Employees of the Company or any Company Subsidiary: (i) have engaged in any activities that are prohibited under, or are cause for civil penalties or mandatory or permissive exclusion from, any Federal Health Care Program (as defined in Section 1128B(f) of the United States Federal Social Security Act (together with all regulations promulgated thereunder, "SSA")) under Sections 1128, 1128A, 1128B or 1877 of SSA or any other Regulatory Law, including knowingly and willfully offering, paying, soliciting or receiving any remuneration (including any kickback, bribe, or rebate), directly or indirectly, overtly or covertly, in cash or in kind in return for, or to induce, the purchase, lease, or order, or the arranging for or recommending of the purchase, lease or order, of any item or service for which payment may be made in whole or in part under any such program, (ii) have had a civil monetary penalty assessed against them under Section 1128A of SSA, (iii) have been excluded from participation under any Federal Health Care Program or (iv) have been convicted (as defined in 42 C.F.R. §1001.2) of any of the categories of offenses described in Section 1128(a) or 1128(b)(1), (b)(2) or (b)(3) of SSA or any other Regulatory Law.

Section 4.19 Insurance. Section 4.19 of the Disclosure Schedules sets forth as of the date hereof each material insurance policy under which the Company or any Company Subsidiary is an insured or otherwise the principal beneficiary of coverage. The Company has delivered to Buyer correct and complete copies of all such policies. Neither the Company nor any Company Subsidiary is in material breach or default (including any such breach or default with respect to the payment of premiums or the giving of notice under any such policy), and to the Knowledge of the Company, no event has occurred that, with notice or lapse of time, would constitute such breach or default, or permit termination or modification, under the policy. Neither the Company nor any Company Subsidiary has received any notice of cancellation or termination from any of its insurance carriers that any insurance coverage listed in Section 4.19 of the Disclosure Schedules. Neither the Company nor any Company Subsidiary has no self-insured or co-insurance programs. There is no claim pending as of the date hereof under any of the Company's or any Company Subsidiaries' insurance policies or fidelity bonds as to which coverage has been questioned, denied or disputed, in whole or in part, by the underwriters of such policies or bonds.

Section 4.20 Related-Party Transactions. Except as set forth in Section 4.20 of the Disclosure Schedules, no Related Party (a) has any direct or, to the Knowledge of the Company, indirect interest in any asset used in or otherwise relating to the business of the Company and the Company Subsidiaries, (b) has entered into any Contract, transaction or business dealing involving the Company or the Company Subsidiaries, (c) is competing with the Company or any Company Subsidiary, (d) to the Knowledge of the Company, has any claim or right against the Company or any Company Subsidiary (other than rights to receive compensation for services performed as an officer, director or employee of the Company or any Company Subsidiary and other than rights to reimbursement for travel and other business expenses incurred in the ordinary course), (e) owes any money to the Company or any Company Subsidiary or is owed any money from the Company or any Company Subsidiary (other than amounts owed for compensation or reimbursement pursuant to clause (d) above) or (f) provides services to the Company or any Company Subsidiary (other than services performed as a director, officer or employee of the Company or any Company Subsidiary) or receives services provided by the Company or any Company Subsidiary.

Section 4.21 Product Warranty; Product Liability.

(a) In the last three (3) years, each product manufactured, sold or commercially delivered by the Company or any Company Subsidiary in conducting their respective business, including pursuant to any manufacturing arrangement, has been in conformity, in all material respects, with all product specifications, all express and implied warranties and all applicable Law. Neither the Company nor any Company Subsidiary has any material Liability for replacement or refund of any units of Initial Device or other damages in connection therewith.

(b) Except as set forth in Section 4.21(b) of the Disclosure Schedules, neither the Company nor any Company Subsidiary has any Liability arising out of any injury to individuals or property as a result of the ownership, possession or use of any product designed, developed, manufactured, maintained, delivered, sold or installed, or services rendered by or on behalf of the Company or any Company Subsidiary. Neither the Company nor any Company Subsidiary has committed any act or failed to commit any act, that would result in, and there has been no occurrence that would give rise to or form the basis of, any material product Liability or material Liability for breach of warranty (whether covered by insurance or not) on the part of the Company or any Company Subsidiary with respect to any such product or service.

Section 4.22 Manufacturing and Marketing Rights. Except as set forth in Section 4.22 of the Disclosure Schedules, neither the Company nor any Company Subsidiary has granted rights to manufacture, produce, assemble, license, market, or sell the Initial Device to any other Person and neither the Company nor any Company Subsidiary is bound by any Contract that affects the Company's, or any Company Subsidiaries', exclusive right to develop, manufacture, assemble, distribute, market or sell the Initial Device.

Section 4.23 Brokers and Finders. Except as set forth in Section 4.23 of the Disclosure Schedules, none of the Company, any Company Subsidiary and any of their respective officers, directors or employees has employed any broker or finder or incurred any Liability for any brokerage fees, commissions or finders' fees in connection with the Equity Purchase or the other transactions contemplated by this Agreement.

Section 4.24 Full Disclosure. No representation or warranty made by the Company in this Agreement and no statement contained in the Disclosure Schedules (including the Interim Updated Disclosure Schedules and the Final Updated Disclosure Schedules) or any certificate or other document furnished or to be furnished to Buyer pursuant to this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading, provided however that any projections or assumptions or any forward looking statements contained in this Agreement, the Disclosure Schedules (including the Final Updated Disclosure Schedules) or any certificate or other document furnished or to be furnished to Buyer pursuant to this Agreement, shall not be deemed as "facts" hereunder or thereunder, and further provided that the term "facts" excludes any generally available information in connection with the industry or field in which the Company operates.

ARTICLE V.

REPRESENTATIONS AND WARRANTIES OF THE SECURITYHOLDERS

Each Securityholder, on a several and not joint basis, hereby represents and warrants to Buyer as to itself (but not as to any other Securityholder) as follows, subject to the exceptions set forth on the Securityholders Disclosure Schedules (subject to Section 1.02(m)), which exceptions shall be deemed to be representations and warranties as if made hereunder, when read in conjunction with all of this Article V:

Section 5.01 Organization and Good Standing. If such Securityholder is an entity, it is a legal entity duly organized, validly existing and in good standing under applicable Law of the jurisdiction of its formation and has all requisite company power and authority to own, lease and operate properties and carry on its business.

Section 5.02 Due Authorization. Such Securityholder has all requisite power and authority to enter into this Agreement and the other Transaction Documents contemplated hereby of which it is a signatory and to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by such Securityholder and, assuming this Agreement constitutes a legal, valid and binding obligation of the other Parties hereto, constitutes a legal, valid and binding obligation of such Securityholder, enforceable against such Securityholder in accordance with its terms, subject to the Bankruptcy and Equity Exception. Except as set forth in Section 5.02 of the Securityholders Disclosure Schedules, such Securityholder is not a party to any Contract that restricts the Securityholder Representative's authority to take any actions or exercise any authority or power as required, permitted or contemplated hereunder, and the Securityholder Representative is not so restricted from taking such actions with respect to such Securityholder.

Section 5.03 No Conflict; Noncontravention; Government Approvals. Neither the execution and delivery of this Agreement or the other Transaction Documents to which such Securityholder is a party, nor the consummation of the Equity Purchase, nor compliance by such Securityholder with any of the terms or provisions hereof or thereof, will (a) if such Securityholder is an entity, conflict with or violate any provision of the Organizational Documents of such Securityholder or (b) assuming that the consents and approvals referred to in Section 4.03 are obtained and the filings referred to in Section 4.03 are made, (i) violate any applicable Law, judgment, writ or injunction of any Governmental Entity applicable to such Securityholder, (ii) violate, conflict with, result in the loss of any benefit under, constitute a default (or an event that, with notice or lapse of time, or both, would constitute a default) under, result in the termination of or a right of termination or cancellation under, accelerate the performance required by, or result in the creation of any Encumbrance (other than a Permitted Encumbrance) upon any of the material properties or assets of such Securityholder under any of the terms, conditions or provisions of any Contract to which such Securityholder is a party, or by which it or any of its properties or assets may be bound or affected except in the case of clauses (b)(i) and (b)(ii), for such violations, conflicts, losses, defaults, terminations, cancellations, acceleration or Encumbrances as, individually or in the aggregate, would not reasonably be expected to prevent or materially delay or materially impair the ability of such Securityholder to consummate the Equity Purchase, or (c) except as set forth in Section 5.03 of the Securityholders Disclosure Schedules, require any authorization, consent, approval, execution or other action by or notice to any Governmental Entity under, any organizational document, indenture, lease, loan agreement or other agreement or instrument to which such Securityholder, its properties or assets are bound, or any statute, regulation, rule, judgment, Order, decree or other applicable Law to which such Securityholder, its properties or assets are subject, except for filings required under, and compliance with other applicable requirements of applicable Antitrust Laws (in each case, if required).

Section 5.04 Title. Such Securityholder holds of record and owns (a) to the extent such Securityholder is party to this Agreement as of the date hereof, the Equity Interests of the Company set forth opposite such Securityholder's name on Schedule 1.01(e) attached hereto or (b) to the extent such Securityholder became party to this Agreement after the date hereof by execution of a Joinder Agreement, the Equity Interests of the Company set forth on Exhibit A of such Joinder Agreement (such Equity Interests, the "Owned Equity Interests"). Such Securityholder holds the Owned Equity Interests of record, beneficially and with good and valid title free and clear of any and all Encumbrances (other than restrictions imposed by securities laws applicable to unregistered securities generally and Permitted Encumbrances). Other than the Owned Equity Interests, such Securityholder does not own any other Equity Interest of the Company. Other than this Agreement and the Transaction Documents and except as set forth in Section 5.04 of the Securityholders

Disclosure Schedules, (i) such Securityholder is not a party to any voting trusts, shareholder agreements, proxies or other agreements or understandings in effect with respect to the acquisition, disposition, voting or transfer of any Owned Equity Interests, and (ii) such Securityholder is not bound by any Contract restricting its right to dispose of or Transfer the Owned Equity Interests, in accordance with the terms of this Agreement. Such Securityholder is not the subject of a bankruptcy, reorganization or similar proceeding which proceeding would reasonably be expected to adversely affect such Securityholder's ownership of such Owned Equity Interests.

Section 5.05 Solvency. Such Securityholder is not bankrupt or insolvent and has not proposed a voluntary arrangement or made or proposed any arrangement or composition with such Securityholder's creditors or any class of such creditors, and no petition in respect of any such arrangement or composition has been presented to such Securityholder. The consummation of the Equity Purchase, insofar as such is related to such Securityholder, and the other transactions contemplated by this Agreement shall not constitute a fraudulent transfer by such Securityholder under applicable bankruptcy and other similar laws relating to bankruptcy and insolvency of such Securityholder.

Section 5.06 Acknowledgement. Such Securityholder acknowledges that such Securityholder has received a copy of this Agreement and familiarized himself, herself or itself with the terms and conditions contained herein, including, without limitation, Article III, Article IV, Article X and Section 11.01 herein.

Section 5.07 Brokers. Neither such Securityholder nor any of its Affiliates (excluding the Company and any of its Subsidiaries) has any liability or obligation to pay fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement and the other Transaction Documents to which such Securityholder is party.

Section 5.08 Litigation and Proceedings. There is no pending or, to the knowledge of such Securityholder, threatened Action involving such Securityholder, nor is there any Order by or before any Governmental Entity imposed (or threatened in writing to be imposed) upon such Securityholder, that challenges, or that may have the effect of preventing, materially delaying, making illegal or otherwise materially interfering with, the Equity Purchase, insofar as such is related to such Securityholder.

Section 5.09 Tax Withholding Information. Any and all information that has been or will be made available to Buyer by or on behalf of such Securityholder for purposes of enabling Buyer to determine the amount to be deducted and withheld from the consideration payable to such Securityholder pursuant to this Agreement under applicable Law is or will be when provided true, correct and complete.

ARTICLE VI.

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to the Company and to the Securityholders as follows:

Section 6.01 Organization, Good Standing and Qualification. Buyer is a legal entity duly organized, validly existing and in good standing under the Law of its jurisdiction of organization, has all requisite corporate or similar power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted and is qualified to do business and is in good standing as a foreign corporation in each jurisdiction where the ownership, leasing or operation of its assets or properties or conduct of its business requires such qualification, except for any such jurisdiction where the failure to be so qualified and in good standing would not, individually or in the aggregate, prevent or materially impair the ability of Buyer to consummate the transactions contemplated by this Agreement.

Section 6.02 Due Authorization. Buyer has all requisite company power and authority to enter into this Agreement and the other Transaction Documents contemplated hereby and to consummate the transactions contemplated hereby. No other company proceedings are necessary to authorize Buyer's entry into this Agreement or Buyer's consummation of the Equity Purchase or the other transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Buyer and, assuming this Agreement constitutes a legal, valid and binding obligation of the other Parties hereto, constitutes a legal, valid and binding obligation Buyer, enforceable against Buyer in accordance with its terms subject to the Bankruptcy and Equity Exception.

Section 6.03 No Conflicts; Consents.

(a) No notices, reports or other filings are required to be made by Buyer with, nor are any consents, registrations, approvals, permits or authorizations required to be obtained by Buyer from, any Governmental Entity in connection with the execution, delivery and performance of this Agreement by Buyer and the consummation of the Equity Purchase and the other transactions contemplated by this Agreement other than (i) filings as may be required under applicable Antitrust Laws (in each case, if required), and (ii) where the failure to give such notice or report, make such filing or obtain such consent, registration, approval, permit or authorization, would not reasonably be expected to materially and adversely affect Buyer's ability to consummate the transactions contemplated by this Agreement.

(b) Neither the execution and delivery of this Agreement or the other Transaction Documents to which Buyer is a party, nor the consummation by Buyer of the Equity Purchase, nor compliance by Buyer with any of the terms or provisions hereof or thereof, will (a) conflict with or violate any provision of the Organizational Documents of Buyer or (b) assuming that the consents and approvals referred to in Section 6.03(a) are obtained and the filings referred to in Section 6.03(a) are made, (i) violate any applicable Law, judgment, writ or injunction of any Governmental Entity applicable to Buyer or any of its Subsidiaries or any of their respective properties or assets, or (ii) violate, conflict with, result in the loss of any benefit under, constitute

a default (or an event that, with notice or lapse of time, or both, would constitute a default) under, result in the termination of or a right of termination or cancellation under, accelerate the performance required by, or result in the creation of any Encumbrance (other than a Permitted Encumbrance) upon any of the material properties or assets of, Buyer or any of its Subsidiaries under any of the terms, conditions or provisions of any material Contract to which Buyer or any of its Subsidiaries is a party, or by which Buyer or any of its Subsidiaries or any of their respective properties or assets may be bound or affected except, in the case of clauses (b)(i) and (b)(ii), for such violations, conflicts, losses, defaults, terminations, cancellations, acceleration or Encumbrances as, individually or in the aggregate, would not reasonably be expected to prevent or materially delay or materially impair the ability of Buyer to consummate the Equity Purchase.

Section 6.04 Brokers and Finders. Neither Buyer nor any of its Affiliates has any liability or obligation to pay fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement and the other Transaction Documents to which Buyer is party.

Section 6.05 Sufficiency of Funds. At the Closing, Buyer will have cash on hand or other sources of immediately available funds to enable it to make payment of the Aggregate Closing Consideration and any other payments required by this Agreement and to consummate the transactions contemplated by this Agreement and the other Transaction Documents.

Section 6.06 Independent Investigation. Buyer has conducted its own independent investigation, review and analysis of the business, results of operations, prospects, condition (financial or otherwise) or assets of the Company, and acknowledges that it has been provided adequate access to the personnel, properties, assets, premises, books and records, and other documents and data of the Securityholders and the Company for such purpose. Buyer acknowledges and agrees that: (a) in making its decision to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer has relied solely upon its own investigation and the express representations and warranties of the Company and the Securityholders set forth in Article IV and Article V of this Agreement (including the related portions of the Disclosure Schedules and the Securityholders Disclosure Schedules); and (b) none of the Securityholders, the Company or any other Person has made any representation or warranty as to the Securityholders, the Company or this Agreement (including any Transaction Documents), except as expressly set forth in Article IV and Article V of this Agreement (including the related portions of the Disclosure Schedules as may be updated by the Final Updated Disclosure Schedules). Nothing contained in this Agreement (including but not limited to, in this Section 6.06) is intended to (i) negate or alter the indemnification obligations of any party under this Agreement or (ii) preclude any remedy for fraud or constitute an admission by any party that any element of a claim for a fraud cannot be established.

ARTICLE VII.

COVENANTS

Section 7.01 Interim Operations.

(a) During the Option Period, except as otherwise expressly required by this Agreement or as required by applicable Law, the Company will (and will cause each Company Subsidiary to), and the Major Securityholders shall use their voting power to cause the Company to, (i) conduct its respective business in the ordinary course consistent with past practice, (ii) not take any Disqualifying Interim Action and (iii) use their (i.e., the Company's or the Company Subsidiary's) respective commercially reasonable efforts to (A) preserve intact their business organizations and maintain existing relations and goodwill, including with respect to Governmental Entities, Review Boards, collaboration partners, customers, manufacturers, suppliers, fill/finish providers, distributors, creditors, lessors, clinical trial investigators or managers of its clinical trials, clinical research organizations, employees, consultants, agents, independent contractors and business associates, (B) keep available the services of the Service Providers required from time to time, (C) protect and preserve in all material aspects the scope, breadth and value of its assets (including for clarity the Company IP and the Initial Device) and (D) keep in full force and effect insurance comparable in amount and scope of coverage to that maintained by it as of the date hereof. Nothing contained herein shall prevent the Company from consummating a Permitted Equity Round.

(b) Without limiting the generality of Section 7.01(a) and in furtherance thereof, during the period beginning on the Agreed Milestone Achievement Date and ending on the earlier to occur of (1) the Closing, (2) the termination of this Agreement pursuant to Article IX and (3) the expiration of both the Call Option Exercise Period and the Put Option Exercise Period without a valid exercise of the Call Option or the Put Option, except (x) as otherwise expressly required by this Agreement or required by Law, (y) with Buyer's prior written consent (not to be unreasonably withheld conditioned or delayed) or (z) as set forth in Section 7.01(b) of the Disclosure Schedules, the Company will not (and will not permit any Company Subsidiary to), and the Major Securityholders will use their voting power to cause the Company not to:

(i) amend the Organizational Documents of the Company or any Company Subsidiary (whether by merger, consolidation or otherwise) (other than any such amendment made pursuant to the Series G SPA);

(ii) declare, set aside or pay any dividend or other distribution (whether in cash, stock or property or any combination thereof) in respect of any Equity Interests of the Company or any Company Subsidiary, or redeem, repurchase or otherwise acquire or offer to redeem, repurchase, or otherwise acquire any Equity Interests of the Company or any Company Subsidiary (except in connection with any withholding to satisfy the exercise price with respect to any Company Options);

(iii) (A) issue, Transfer, deliver, sell, pledge or otherwise encumber or authorize the issuance, Transfer, delivery, sale or pledge of, any Shares, Company Options, or other Equity Interests of the Company or any Company Subsidiary other than (x) the issuance of Shares upon the valid exercise of Company Options and (y) awards of Company Options granted in the ordinary course of business in connection with new hires, promotions and the Company's annual grant cycle, , or (B) amend any term of any Equity Interests of the Company or any Company Subsidiary (whether by merger, consolidation or otherwise) including an amendment to any Company Option to provide for acceleration of vesting as a result of the transactions contemplated by this Agreement or a termination of employment or service related to the consummation of the transactions contemplated by this Agreement;

(iv) make any payments to any Related Person (other than payments made pursuant to offer letters, employment agreements, separation agreements, individual consulting agreements, individual contracting agreements and option agreements entered into in the ordinary course of business consistent with past practice);

(v) make any capital expenditures or incur any Liabilities in respect thereof, except for any budgeted capital expenditures and other unbudgeted capital expenditures not to exceed $100,000 individually or $200,000 in the aggregate;

(vi) (A) create, incur, assume, suffer to exist or otherwise be liable with respect to any Indebtedness in an aggregate amount in excess of $200,000 or (B) make any loans, advances or capital contributions to, or investments in, any other Person except for advances to any Service Provider for travel and business expenses in the ordinary course of business consistent with past practice;

(vii) enter into a lease or sublease of real property (whether as a lessor, sublessor, lessee or sublessee) or modify, amend, terminate or fail to exercise any right to renew lease or sublease of real property, including the Real Property Leases;

(viii) sell, license, abandon, mortgage or otherwise encumber or subject to any Encumbrance (other than a Permitted Encumbrance), or otherwise dispose of any properties or assets (including without limitation, Company IP) which are material, individually or in the aggregate, to the Company or any Company Subsidiaries or their respective businesses, except for sales of the Initial Device in approved regulatory jurisdictions and non-exclusive licenses, in each case, made or granted in the ordinary course of business;

(ix) acquire by merger or consolidation with, or merge, amalgamate or consolidate with, or purchase all or substantially all of the assets of, any corporation, partnership, association, joint venture or other business organization or division thereof;

(x) transfer, lease, license, guarantee, sell, mortgage, pledge, dispose of, encumber, abandon, assign or waive any rights with respect to Company IP, other than by way of granting non-exclusive licenses in the ordinary course of business consistent with past practice that do not diminish the value of such Company IP;

(xi) (A) fail to diligently prosecute (or fail to use commercially reasonable efforts to cause any relevant upstream licensors (if any) to prosecute) the patent applications within the Company IP; (B) fail to maintain, or allow to lapse, or abandon (including by failure to pay the required fees in any jurisdiction) any Registered IP (or fail

to use commercially reasonable efforts to cause any relevant upstream licensors (if any) to do the same) other than strategic abandonments in the ordinary course of business consistent with past practice regarding Registered IP that is not material to the conduct of the business of the Company or any Company Subsidiary or (C) intentionally disclose or otherwise make available or accessible any Trade Secrets included in the Company IP, other than in the ordinary course of business consistent with past practice or to a Person who is subject to a written agreement to maintain the confidentiality of such information;

(xii) enter into any Contract pursuant to which the Company or any Company Subsidiary grants any Person any right or license to market, advertise, sell, resell, offer to sell, distribute, deliver or otherwise make available to third parties the Initial Device;

(xiii) enter into any Contract of a type required to be listed on sub-section (i), (iii) (other than contracts required to be disclosed pursuant to Section 4.16(b)(i)(A) that are entered into in the ordinary course of business consistent with past practice), (iv), (v), (vi), (vii), (viii), (ix), (xi), (xii), (xiii), (xiv), (xv), (xvi), (xvii), (xviii), (xix), (xxii) or (xxv) of Section 4.10(a) of the Disclosure Schedules;

(xiv) other than in the ordinary course of business consistent with past practice, (A) delay or otherwise extend the time for payment of any Liabilities (including accounts payable) by more than thirty calendar (30) days beyond their respective due dates or (B) accelerate the collection of any debts (including accounts receivable) sooner than their respective due dates, other than in instances where the Company as a legitimate reason to believe that the Company would not be able to collect such debts had the Company not accelerated the collection of such debt due to reasons outside of the Company's control;

(xv) modify, amend or terminate any Material Contract or waive, release or assign any rights or claims thereunder, which if so entered into, modified, amended, terminated, waived, released or assigned would be reasonably likely to (A) adversely affect the Company or any Company Subsidiary (or, following the Closing, Buyer or any Affiliates of Buyer) in any material respect, (B) impair the ability of the Company, Buyer, any Securityholder or the Securityholder Representative to perform their respective obligations under this Agreement in any material respect or (C) prevent or materially delay or impair the consummation of the transactions contemplated by this Agreement;

(xvi) enter into any Contract if the performance of the transactions contemplated by this Agreement would, or would reasonably be expected to, conflict with, result in any violation or breach of, or default (with or without notice of lapse of time or both) under, or give rise to a right of, or result in, termination, cancellation or acceleration of any material obligation or to a loss of a material benefit under, or result in the creation of any Encumbrance (other than a Permitted Encumbrance) in or upon any of the properties or assets of the Company or any of the Company Subsidiaries or the Securityholders under, or give rise to any increased, additional or accelerated rights, payments or entitlements under, any provision of such Contract;

(xvii) enter into any Contract that would or would reasonably be expected to prevent or materially impede, interfere with or delay (A) the consummation of the transactions contemplated by this Agreement or (B) the ability of Buyer and its Affiliates (including, following the Closing, the Company) to develop, manufacture, market, distribute or sell the Initial Device after the Closing;

(xviii) (A) enter into any partnership, joint venture, collaboration (whether clinical or otherwise), joint development, strategic alliance or other similar arrangement with one or more Persons, or (B) enter into any line of business other than the current lines of business of the Company and the Company Subsidiaries as of the date of this Agreement;

(xix) employ or enter into any Contract with any investment banker, broker, finder, or advisor in connection with the transactions contemplated by this Agreement;

(xx) enter into or become a party to any transaction or Contract with any Related Party (other than ordinary course Contracts relating to employee compensation and benefits on terms that are consistent with past practice or the provision of management bonus performance-based rewards granted in the ordinary course of business, consistent with past practice and approved by the Company Board);

(xxi) waive any benefits of, agree to modify in any respect, fail to enforce or consent to any matter with respect to which consent is required under any standstill or similar agreement containing provisions prohibiting a third party from purchasing Equity Interests or assets of, or otherwise seeking to influence or exercise control over, the Company or any Company Subsidiary;

(xxii) other than as required by a Company Benefit Plan in existence on the date hereof: (A) adopt, enter into, materially modify or terminate, or commit to adopt, enter into, materially modify or terminate, any Company Benefit Plan (other than entry into offer letters, employment agreements, separation agreements and independent contractor and consulting agreements with Service Providers in the ordinary course of business consistent with past practice), (B) accelerate, or commit to accelerate, the vesting or payment of any compensation or benefits to any Service Provider, (C) make any grant or increase, or commit to make any grant or increase, in any form of compensation or benefits payable to any Service Provider, other than (1) any increases made in the ordinary course of business consistent with past practice, including in connection with the Company's annual compensation review and adjustment practice or (2) any grants of Company Options, or commitments to make such grants to new hires, in all cases, consistent with Section 7.01(b)(iii) or (D) adopt any bonus, severance, compensation or similar plan or arrangement that becomes triggered upon a "change of control" or similar event;

(xxiii) enter into any collective bargaining agreement;

(xxiv) implement any reduction in force, mass layoff or collective redundancy process, furlough or reduction in working schedule of any employees;

(xxv) change the Company's or any Company Subsidiary's methods of accounting or accounting practices, except as required by concurrent changes in IFRS as agreed to by the Company's or such Company Subsidiary's independent public accountants;

(xxvi) (A) make or change any Tax election, (B) settle or compromise any claim, notice, audit report or assessment in respect of Taxes, (C) enter into any Tax allocation agreement, Tax sharing agreement, Tax indemnity agreement, pre-filing agreement, advance pricing agreement, cost sharing agreement or closing agreement relating to any Tax, (D) surrender or forfeit any right to claim a Tax refund, (E) consent to any extension or waiver of the statute of limitations period applicable to any Tax claim or assessment or (F) apply for, negotiate or conclude any Tax ruling on behalf of the Company, any Company Subsidiary or any Securityholder, in each case, if such action could reasonably be expected to materially adversely affect the Company, any Company Subsidiary or the Buyer after the Closing;

(xxvii) commence, settle, or offer or propose to settle (A) any Action involving or against the Company or any Company Subsidiary or (B) any securityholder litigation or dispute against the Company or any Company Subsidiary or any of their respective officers or directors, in each case, other than monetary settlements not in excess of $50,000 individually and $100,000 in the aggregate and provided that no such settlement imposes any continuing or future restrictions or obligations (other than customary confidentiality obligations) on the Company, any Company Subsidiary or any of their respective Affiliates (including, after the Closing, Buyer and its Affiliates);

(xxviii) commence, settle or offer or propose to settle any Action that relates to the transactions contemplated hereby;

(xxix) form or acquire any Subsidiary or acquire any Equity Interest or other interest in any other Person;

(xxx) commence, participate in or agree to commence or participate in any bankruptcy, voluntary liquidation, dissolution, winding up, examinership, insolvency or similar proceeding in respect of the Company or any Company Subsidiary;

(xxxi) adopt a plan of complete or partial liquidation, dissolution, consolidation, restructuring, recapitalization, reclassification of shares, stock split, reverse stock split or reorganization in any form of transaction;

(xxxii) enter into any Contract prohibiting or requiring consent for a “change of control” or similar event with respect to the Company or any Company Subsidiary, or having the effect of providing that the consummation of the Equity Purchase or compliance by the Company with the provisions hereof or the execution, delivery, performance or effectiveness of this Agreement will conflict with, result in a violation or breach of, or constitute a default under (with or without notice or lapse of time, or both), such Contract or give rise to any increased, guaranteed, accelerated or additional rights or entitlements of any person other than the Company or any Company Subsidiary; or

(xxxiii) agree, resolve or commit to do any of the foregoing.

(c) Notwithstanding anything to the contrary in this Section 7.01, Buyer and the Company acknowledge and agree that (i) nothing in this Agreement shall give Buyer, directly or indirectly, the right to control or direct the Company’s operations for purposes of applicable Antitrust Laws and (ii) no consent of Buyer will be required with respect to any matter set forth in this Agreement to the extent the requirement of such consent would violate any applicable Antitrust Law.

Section 7.02 Transfer Restrictions; Issuance Restrictions.

(a) Each Major Securityholder hereby agrees that during the Option Period, and except as contemplated hereby, such Securityholder shall not (i) sell, transfer, pledge or assign (other than to the Company), or encumber (other than in favor of the Company), or otherwise dispose of, or enter into any Contract, option or other arrangement or understanding with respect to the sale, transfer, pledge, encumbrance, assignment or other disposition of, or limitation on the voting rights of, any right, title and interest in and to (each such action, a "Transfer"), (ii) take any action that would cause any representation or warranty of such Securityholder contained in Article V to become untrue or incorrect or have the effect of preventing or disabling such Securityholder from performing its obligations under this Agreement, or (iii) commit or agree to take any of the foregoing actions. The Company undertakes not to register any Transfer of Equity Interests not permitted hereby, and any such Transfers shall be null and void. Each Securityholder agrees that any such prohibited Transfer may and should be enjoined. If any involuntary Transfer of any of the Equity Interests covered hereby shall occur (including a sale by a Securityholder's trustee in bankruptcy, or a sale to a purchaser at any creditor's or court sale), the transferee (which term, as used herein, shall include any and all transferees and subsequent transferees of the initial transferee) shall take and hold such Equity Interests subject to all of the restrictions, liabilities and rights under this Agreement, which shall continue in full force and effect.

(b) Notwithstanding any provision of this Agreement to the contrary, during the Option Period, each Securityholder hereby agrees not to Transfer any of such Securityholder's Equity Interests within the ten (10) Business Day period prior to the Closing Date. Notwithstanding anything to the contrary herein, nothing in this Agreement or in any Transaction Document shall restrict or limit any of the Securityholders from exercising or converting any Company Options or Company Warrants held by them on or prior to the Closing Date. Each Securityholder shall provide Buyer (with a copy to the Company) with at least ten (10) Business Days' prior written notice of any Transfer of such Securityholder's Equity Interests in accordance with Section 7.02(c) below, which notice shall identify the proposed transferee of such Securities and the number of Securities proposed to be Transferred.

(c) During the Option Period, the restrictions on Transfer set forth in Section 7.02(a) and Section 7.02(b) above shall not be applicable to (i) a Transfer by a Securityholder of less than 50% of the Equity Interests of the Company held by such Securityholder immediately following the Series G Closing or (ii) a Transfer (whether by gift, by operation of law or otherwise) of Equity Interests by any Securityholder to a Permitted Transferee; provided, that in the event of any such Transfer or Transfers, the transferee(s) shall (and the Company and such transferring Securityholder shall cause such transferee(s) to), as a condition precedent to the Transfer of such Securities to it or them, as the case may be, promptly execute and deliver to Buyer a Joinder Agreement and Share Transfer Deed; provided, further, that, in the event that a Securityholder qualifies as an Accredited Investor as defined in Regulation D under the Securities Act or is a qualified investor qualifying under one of the exempt categories listed in the first addendum of the Israel Securities Law—1968, such Securityholder shall not be permitted to Transfer any Equity

Interests to any person who is not similarly an Accredited Investor or qualified investor, as the case may be; provided, further, that no Securityholder (and none of its transferee(s)) may Transfer the Equity Interests originally held by such Securityholder in a transaction or a series of transactions to more than one transferee if as a result of such Transfer the Company will have thirty five (35) or more Israel resident shareholders who are not qualified investors qualifying under one of the exempt categories listed in the first addendum of the Israeli Securities Law – 1968. Each Securityholder shall provide Buyer (with a copy to the Company) with at least ten (10) Business Days' prior written notice of any Transfer of any Equity Interests, which notice shall identify the proposed transferee(s) of such Equity Interests and the number of Equity Interests proposed to be Transferred. For the avoidance of doubt, no Transfer of any Equity Interest shall be permitted unless (and then only to the extent) permitted by the Company's Organizational Documents and this Agreement.

(d) During the Option Period, the restrictions on the issuance or grant of capital stock set forth in this Agreement shall not apply to the Company's issuance of capital stock or other equity interests of the Company to the extent that: (i) the proceeds of such issuance shall be used for the same purposes specified under the Series G SPA; (ii) such issuance is consummated after the Company's request for Buyer to provide the Company with the Additional Investment Amount under the Series G SPA; and (iii) Buyer was provided with pre-emption rights in connection with such issuance in accordance with the Organizational Documents of the Company (a "Permitted Equity Round"); provided, that in the event of any such Permitted Equity Round, each participant in such Permitted Equity Round shall (and the Company shall cause such equity holder to, as a condition precedent to the issuance of equity interests in the Company) promptly execute and deliver to Buyer a Joinder Agreement and Share Transfer Deed (or a revised Joinder Agreement and Share Transfer Deed to the extent such participant is an existing Securityholder prior to such Permitted Equity Round); provided, further, that no such Permitted Equity Round shall result in the Company having thirty five (35) or more Israel resident shareholders who are not qualified investors qualifying under one of the exempt categories listed in the first addendum of the Israeli Securities Law – 1968. For the avoidance of doubt, no such Permitted Equity Round shall be permitted unless (and then only to the extent) consummated in accordance with the Company's Organizational Documents, this Agreement and applicable securities laws.

Section 7.03 [RESERVED].

Section 7.04 Intellectual Property Matters. Prior to the Closing Date, the Company shall, and shall cause its controlled Affiliates to, in good faith and with reasonable care and diligence and at its own expense, make all filings and payments and take all actions, in each case having a Due Date within two (2) months after the Closing Date and associated with maintaining the enforceability, and further prosecution (as applicable) of any Initial Device IP for which the Company or any Company Subsidiary controls prosecution or maintenance, and shall use commercially reasonable efforts to cause any upstream licensors (if any) to do the same (other than with respect to strategic abandonments of Initial Device IP). For purposes of this Section 7.04, "Due Date" shall mean the latest date on which a payment can be made or an action taken without incurring a penalty, surcharge or other additional payment.

Section 7.05 Notice of Certain Events. In addition to the Company's obligations pursuant to Section 2.03, during the Option Period, (a) the Company (with respect to itself) and each Securityholder (with respect to his, her or itself) shall promptly advise Buyer in writing, as promptly as reasonably practicable upon becoming aware of: (i) any event, fact, change, circumstance, occurrence, non-occurrence or condition that has caused or is reasonably likely to cause any representation or warranty in this Agreement made by such Person to be untrue or inaccurate in any material respect at any time after the date hereof and prior to the Closing (specifically excluding matters that will be Qualifying Disclosure Updates); (ii) any material breach of any agreement, covenant or obligation given, made or to be performed by the Company or any such Securityholder in this Agreement; provided that the Company and each such Securityholder shall use its commercially reasonable efforts to cure such breach as promptly as practicable; (iii) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement (to the extent such consent is not already disclosed hereunder); (iv) any notice or other communication from any Governmental Entity in connection with the transactions contemplated by this Agreement; (v) any Actions commenced or, to the Knowledge of the Company or such Securityholder, threatened against, relating to or involving or otherwise affecting (A) the business of the Company or any Company Subsidiary or (B) such Securityholder in its capacity as the holder of Equity Interests in the Company or otherwise with respect to the Equity Interests in the Company held by such Securityholder, in each case, that, if pending on the date hereof, would have been required to have been disclosed pursuant to Section 4.07 or Section 5.08 or that relates to the consummation of the transactions contemplated by this Agreement or (vi) any event, fact, change, circumstance, occurrence, non-occurrence or condition that has caused or is reasonably likely to cause an Adverse Clinical Trial Event, (b) promptly following the Company's submission of the Pre-Market Approval Application to the FDA, the Company shall provide a copy of such Pre-Market Approval Application to Buyer and shall provide Buyer with reasonably regular updates, upon Buyer's written request (which shall be limited to once per month) concerning the progress of the Company's regulatory filings and strategy for obtaining Regulatory Approval to market and sell the Initial Device in the United States, (c) promptly upon receipt of the Statistical Report, the Company shall provide a copy of the Statistical Report to Buyer, and (d) each Party shall promptly advise the other Parties of the occurrence of any event, fact or condition that has come to such Party's attention and that would reasonably be expected to make the satisfaction of one or more of the conditions in Section 8.01, Section 8.02 or Section 8.03 impossible or unlikely (including any such event, fact or condition that has resulted in or is reasonably likely to result in a Company Material Adverse Change or a Securityholder Material Adverse Change); provided that neither the delivery of any notice pursuant to this Section 7.05 nor any disclosures provided thereby shall be deemed to amend or supplement the Disclosure Schedules or limit or otherwise affect any of the rights, remedies or obligations of the Parties hereunder other than to the extent set forth in the Final Updated Disclosure Schedules and then in accordance with and to the extent provided by Section 2.06(c).

Section 7.06 Full Access. At all times until the expiration of the Option Period, the Company will afford to Buyer and its authorized representatives, upon reasonable notice, full access during normal business hours to all properties, facilities, books, records, contracts and documents of the Company and the Company Subsidiaries, at Buyer's cost, as Buyer and such authorized representatives may reasonably request, and a complete opportunity to make such investigations as Buyer and such authorized representatives reasonably request, and the Company will furnish or cause to be furnished to Buyer and its authorized representatives all such information with respect to the affairs and businesses of the Company as they may reasonably

request. All information obtained by Buyer pursuant to this Section 7.06 shall be kept confidential in accordance with the Confidentiality Agreement. No investigation pursuant to this Section 7.06 shall affect any representation or warranty in this Agreement or the Transaction Documents of any party hereto or thereto or any condition to the obligations of the parties hereto or thereto.

Section 7.07 Consideration Spreadsheet; Payoff Letters.

(a) No more than ten (10) Business Days and no less than five (5) Business Days prior to the Closing, the Company shall deliver to Buyer a spreadsheet (the "Consideration Spreadsheet"), prepared in accordance with the applicable provisions of the Organizational Documents of the Company and certified by the Chief Financial Officer of the Company and acknowledged as true, correct and complete by the Securityholder Representative. The Consideration Spreadsheet will be in the form attached hereto as Exhibit K (which is attached for illustrative purposes only) and shall set forth, in reasonable detail and as of immediately prior to the Closing: (i) the Company's calculations of the Fully Diluted Number, the Fully Diluted Ordinary Number, the Securityholder Ownership Percentage, the Aggregate Consideration, the Aggregate Closing Consideration and the Ordinary Per Share Consideration; and (ii) the following information for each Securityholder:

(A) the name, address or email address of such Securityholder;

(B) the number and type of Equity Interest held by such Securityholder;

(C) the number of Shares subject to, and the exercise price per share in effect for, each In-the-Money Company Option held by such Securityholder;

(D) the number and class or series of Shares subject to, and the exercise price per share in effect for, each In-the-Money Company Warrant held by such Securityholder;

(E) a calculation of the portion of the Aggregate Closing Consideration payable to such Securityholder pursuant to Section 3.03(a), Section 3.03(b) and Section 3.03(c), as applicable;

(F) a calculation of the portion of Sales Milestone Consideration payable to such Securityholder pursuant to Section 2.04, assuming that the Sales Milestone Consideration becomes payable to the Securityholders pursuant to Section 2.04; and

(G) such Securityholder's Pro Rata Share following each of, and assuming the full payment of each of, the Aggregate Closing Consideration and the Sales Milestone Consideration.

(b) All amounts and allocations set forth in the Consideration Spreadsheet shall be conclusive and binding upon the Company, the Securityholder Representative and the Securityholders and neither Buyer nor the Payment Agent shall have any obligation to verify the accuracy of the Consideration Spreadsheet. In the event of any inconsistency between the Consideration Spreadsheet and any provision of the Company Organizational Documents or any

other document, the Consideration Spreadsheet shall control in all respects. Notwithstanding anything to the contrary in this Agreement, the Company, Buyer, and the Securityholders acknowledge and agree that Buyer and each of its Affiliates and the Payment Agent shall be entitled to rely on the Consideration Spreadsheet as setting forth a true, correct and complete listing of all items set forth therein, and none of Buyer nor any of its Affiliates or the Payment Agent shall have any Liability or obligation to any Person, including the Securityholders or the Securityholder Representative, for any Liabilities arising from or relating to errors, omissions or inaccuracies in calculating the portion of the Aggregate Closing Consideration, Sales Milestone Consideration or other amounts to be received by the Securityholders pursuant to this Agreement or any other errors, omissions or inaccuracy in the Consideration Spreadsheet.

(c) The Company shall obtain and deliver to Buyer, no later than three (3) Business Days prior to the Closing Date, accurate and complete copies of: (i) with respect to any Indebtedness (A) for borrowed money of the Company or any Company Subsidiary, (B) that is guaranteed by the Company or any Company Subsidiary or (C) that is secured by a Encumbrance on any asset or property of the Company or any Company Subsidiary, if any (any such Indebtedness, "Covered Indebtedness"), a customary payoff letter dated no more than five (5) Business Days prior to the Closing Date from the lender of such item of Indebtedness in which the lender shall agree that upon payment of the amount payable to such lender specified therein (such amount to include any prepayment penalty, premium or similar minimum return amount payable to such lender as a result of the consummation of the transactions contemplated by this Agreement) (1) all outstanding obligations of the Company or such Company Subsidiary arising under or related to the applicable Indebtedness shall be repaid, discharged and extinguished in full, (2) all Encumbrances related thereto shall be released, (3) the lender shall take all actions reasonably requested by Buyer to evidence and record such discharge and release as promptly as practicable and (4) to the extent applicable given the nature of such Indebtedness, the lender shall return to the Company all instruments evidencing the applicable Indebtedness (including all notes), if any, and all collateral securing the applicable Indebtedness (each, a "Payoff Letter"), together with any collateral releases, collateral access agreement terminations, mortgage releases, intellectual property releases, physical collateral deliveries and other related termination and/or release items in connection therewith (in each case, as applicable) and (ii) an invoice from each advisor or other service provider to the Company or any Company Subsidiary, dated no more than five (5) Business Days prior to the Closing Date, with respect to all Company Transaction Expenses estimated to be due and payable to such advisor or other service provider, as the case may be, as of the Closing Date (the "Service Provider Invoices").

Section 7.08 No Solicitation.

(a) During the Option Period, neither the Company nor any of the Securityholders shall, and each of them shall cause their respective controlled Affiliates and its or their representatives not to, directly or indirectly, take any action to (i) solicit, initiate, support, seek, induce, entertain, encourage or facilitate (including by way of providing information for such purpose), or take any action to solicit, initiate, support, seek, induce, entertain, encourage or facilitate, any inquiries, announcements or communications relating to, or the making of any submission, proposal or offer that constitutes or is intended to result in a Competing Transaction Proposal, (ii) enter into, participate in, maintain or continue any discussions or negotiations relating to, or provide any non-public information or data to any Person relating to, any Competing

Transaction Proposal (except to provide notice of the existence and substance of these provisions), (iii) furnish to any Person other than Buyer and its representatives any information intended to be used by such Person for the purposes of formulating any inquiry, expression of interest, proposal or offer relating to a Competing Transaction Proposal or take any other action with the intent of soliciting, seeking, inducing, entertaining, encouraging or facilitating any inquiry, expression of interest, proposal or offer that constitutes or is intended to result in a Competing Transaction, (iv) accept a Competing Transaction Proposal or enter into any letter of intent, memorandum of understanding, Contract, agreement, document, commitment, arrangement or understanding, whether written or oral, legally binding or not, concerning a Competing Transaction Proposal, (v) submit any Competing Transaction Proposal to a vote of the Shareholders, (vi) otherwise facilitate or induce any effort or attempt to make a Competing Transaction Proposal or (vii) resolve, propose or agree to do any of the foregoing.

(b) The Company and each of the Securityholders shall, and each of them shall cause their respective controlled Affiliates and representatives to, (i) immediately cease and cause to be terminated any existing activities, discussions or negotiations with any Persons conducted prior to the date hereof with respect to any Competing Transaction Proposal and (ii) immediately revoke or withdraw access of any Person (other than Buyer and its representatives) to any data room (virtual or otherwise) containing any non-public information with respect to the Company or any Company Subsidiary in connection with a Competing Transaction Proposal and request from each Person (other than Buyer and its Representatives) the prompt return or destruction of all non-public information with respect to the Company or any Company Subsidiary previously furnished to such Person in connection with a Competing Transaction Proposal; provided that if a non-disclosure or similar agreement has been executed with such Person prior to the date hereof with respect to such non-public information, then such request shall be made in accordance with such non-disclosure or similar agreement.

(c) During the Option Period, the Company shall promptly (and in any event within forty-eight (48) hours from the receipt thereof) provide Buyer with: (i) an oral and a written description of any expression of interest, inquiry, proposal or offer relating to a Competing Transaction Proposal, or any request for information that the Company reasonably believes is intended to be, lead to, or be used for the purposes of formulating any inquiry, proposal or offer regarding a possible Competing Transaction Proposal, that is received by the Company or any Company Subsidiary or any Representative of the Company or any Company Subsidiary from any Person (other than Buyer), including in such description the identity of the Person from which such expression of interest, inquiry, proposal, offer or request for information was received (the "Other Interested Party") and (ii) a copy of each written communication and a complete summary of each other communication transmitted on behalf of the Other Interested Party or any of the Other Interested Party's Representatives to the Company or any Company Subsidiary or any Representatives of the Company or any Company Subsidiary or transmitted on behalf of the Company or any Company Subsidiary or any Representatives thereof to the Other Interested Party or any of the Other Interested Party's Representatives, in each case as relating to a Competing Transaction Proposal; provided, that if the Company is prohibited from making any such disclosure pursuant to a non-disclosure agreement entered into prior to the date of this Agreement, the Company shall be entitled to withhold the name of such Other Interest Party, shall provide a general description of the nature of the Competing Transaction Proposal and shall provide such other information required hereby only to the extent not prohibited by the terms of such non-

disclosure agreement. Thereafter, during the Option Period, the Company shall keep Buyer reasonably informed, on a reasonably prompt basis, of the status and terms of any such expression of interest, inquiry, proposal, offer or request for information (including any amendments thereto) and the status of any such discussions or negotiations.

Section 7.09 Further Action; Efforts.

(a) Cooperation. During the period (i) beginning on the Agreed Milestone Achievement Date and (ii) ending on the earlier of (A) the Closing and (B) the valid termination of this Agreement pursuant to Article IX, Buyer, the Company and the Securityholders shall cooperate with each other and use (and the Company shall cause the Company Subsidiaries to use) their respective commercially reasonable efforts to take or cause to be taken all actions, and do or cause to be done all things, reasonably necessary, proper or advisable on its part under this Agreement and applicable Law to consummate the transactions contemplated by this Agreement, including (x) with respect to the Company and the Securityholders, using their respective commercially reasonable efforts to cause the conditions set forth in Section 8.01 and Section 8.02 to be satisfied in a timely manner and (y) with respect to Buyer, using its commercially reasonable efforts cause the conditions set forth in Section 8.01 and Section 8.03 to be satisfied in a timely manner.

(b) In furtherance and not in limitation of Section 7.09(a) or Section 7.10, as promptly as practicable following the Agreed Milestone Achievement Date, Buyer and the Company shall (and the Securityholders shall use their voting power to cause the Company to) (i) make all filings and give all notices that are or may be required to be made and given by such party in connection with the Equity Purchase and the other transactions contemplated by this Agreement and (ii) use their respective reasonable best efforts to obtain all Consents which are or may be required to be obtained (pursuant to any applicable Law, Contract, or otherwise) by such party in connection with the Equity Purchase and the other transactions contemplated by this Agreement. Each of Buyer and the Company shall, upon request of the other party and to the extent permitted by applicable Law or applicable Contract, promptly deliver to such other party a copy of each such filing made, each such notice given and each such Consent obtained by it.

Section 7.10 Antitrust Filings.

(a) Without limiting the generality of Section 7.09(a) and Section 7.09(b) during the period (i) beginning on the Agreed Milestone Achievement Date and (ii) assuming either the Call Option Exercise Notice or the Put Option Exercise Notice has been provided, ending on the earlier of (A) the Closing and (B) the valid termination of this Agreement pursuant to Article IX, each of Buyer and the Company shall (and the Securityholders shall use their voting power to cause the Company to) promptly file any notification filings, forms and submissions with any Governmental Entity that are required by any applicable Antitrust Laws in connection with the Equity Purchase (collectively, the "Antitrust Filings"). Each of Buyer and the Company shall (and the Securityholders shall use their voting power to cause the Company to): (w) cooperate and coordinate (and cause its respective Affiliates to cooperate and coordinate, if applicable) with the other in the making of the Antitrust Filings as soon as practicable, and in any event within ten (10) Business Days, following delivery of the Call Option Exercise Notice or the Put Option Exercise Notice, as applicable; (x) use its respective reasonable best efforts to supply the other (or cause the

other to be supplied) with any information that may be required in order to make the Antitrust Filings; (y) use its respective reasonable best efforts to supply (or cause the other to be supplied) any additional information that reasonably may be required or requested by the Governmental Entities of any other applicable jurisdiction in which any such Antitrust Filing is made and (z) use its respective reasonable best efforts to take all action necessary to (1) cause the expiration or termination of the applicable waiting periods pursuant to the Antitrust Laws applicable to the Equity Purchase and (2) obtain any required consents pursuant to any Antitrust Laws applicable to the Equity Purchase, in each case as soon as practicable following the Agreed Milestone Achievement Date and assuming either the Call Option Exercise Notice or the Put Option Exercise Notice was provided.

(b) Each of the Company, on the one hand, and Buyer, on the other hand, will (and each of them will cause its respective Affiliates to, if applicable) promptly inform the other of any communication from any Governmental Entity regarding the Equity Purchase in connection with the Antitrust Filings. If Buyer, the Company or any of their respective Affiliates receives a request for additional information or documentary material from any Governmental Entity with respect to the Equity Purchase pursuant to the Antitrust Laws applicable to the Equity Purchase, then such party will use reasonable best efforts to make (or cause to be made), as soon as reasonably practicable and after consultation with the other party, an appropriate response in compliance with such request.

(c) In furtherance and not in limitation of the foregoing, Buyer and the Company will (and will cause their respective Affiliates to), subject to any restrictions under applicable Law, (i) promptly notify the other party, or its outside antitrust counsel, of (and, if in writing, furnish them with copies of (or, in the case of oral communications, advise them of the contents of)) any material communication received by such Person from a Governmental Entity in connection with the Equity Purchase and permit the other party to review and discuss in advance (and to consider in good faith any comments made by the other party in relation to) any proposed draft notifications, formal notifications, filings, submissions or other written communications (and any analyses, memoranda, white papers, presentations, correspondence or other documents submitted therewith) made in connection with the Equity Purchase to a Governmental Entity, (ii) keep the other party reasonably informed with respect to the status of any such submissions and filings to any Governmental Entity in connection with the Equity Purchase and any material developments, meetings or discussions with any Governmental Entity in respect thereof, including with respect to: (A) the receipt of any non-action, action, clearance, consent, approval or waiver; (B) the expiration of any waiting period; (C) the commencement or proposed or threatened commencement of any investigation, litigation or administrative or judicial action or proceeding under applicable Law; and (D) the nature and status of any objections raised or proposed or threatened to be raised by any Governmental Entity with respect to the Equity Purchase and related to Antitrust Laws and (iii) (A) provide (1) notice to the other party of any material meeting or substantive conversation with the DOJ, the FTC, or any other Governmental Entity reviewing, or asserting jurisdiction to review, the Equity Purchase under any applicable Antitrust Laws where such meeting or conversation is substantially related to the Equity Purchase and (2) the other party the opportunity to attend or participate in such meeting or conversation unless prohibited by such Governmental Entity, and (B) in the event of a material meeting or substantive conversation with a Governmental Entity other than the DOJ, the FTC, or other Governmental Entity reviewing, or asserting jurisdiction to review, the Equity Purchase under any applicable Antitrust Laws where such meeting or

conversation is substantially related to the Equity Purchase, then provide (1) notice to the other party of such meeting or conversation and (2) the opportunity to attend or participate in such meeting or conversation if mutually agreed to in good faith by Buyer and the Company and not otherwise prohibited by such Governmental Entity. However, each of Buyer and the Company may designate any non-public information provided to any Governmental Entity as restricted to "outside counsel" only and any such information will not be shared with the representatives of the other party without approval of the party providing the non-public information. Each of Buyer and the Company may redact any valuation and related information before sharing any information provided to any Governmental Entity with another party on an "outside counsel" only basis.

(d) Notwithstanding anything to the contrary in this Section 7.10, in connection with the clearance of the Equity Purchase pursuant to applicable Antitrust Law, (i) neither Buyer, the Company nor any of their respective Affiliates, nor any Securityholder shall be required to (A) litigate or contest any administrative or judicial action or any order, whether temporary, preliminary or permanent brought by or before any Governmental Entity or (B) make proposals, execute or carry out agreements or submit to orders providing for or otherwise undertake a Divestiture and (ii) the Company may not (and the Securityholders will use their voting power to cause the Company not to) make proposals, execute or carry out agreements or submit to orders providing for or otherwise undertake a Divestiture without the prior written consent of Buyer.

Section 7.11 Waiver of Right of First Refusal. Each Securityholder hereby irrevocably waives any right of first refusal, or any similar right, it has, or may have, with respect to any of the transactions contemplated in this Agreement.

Section 7.12 Tax Matters. For purposes of this Section 7.12, references to "the Company" are deemed to be references to "the Company and any Company Subsidiary."

(a) The Company shall prepare and file (or cause to be prepared and filed) all Tax Returns in respect of the Company that are required to be filed (taking into account any permissible extension) on or before the Closing Date, and shall pay, or cause to be paid, all Taxes of the Company due on or before the Closing Date. Such Tax Returns shall be prepared by treating items thereon in a manner consistent with the past practices of the Company with respect to such items, except as required by applicable Law. With respect to any such Tax Return due (taking into account all permissible extensions) prior to the earlier of (i) the Agreed Milestone Achievement Date or (ii) the valid termination of this Agreement pursuant to Article IX, the Company shall submit a copy of such Tax Return to Buyer no later than five (5) Business Days prior to filing such Tax Return and shall consider in good faith any comments received from Buyer not less than five (5) Business Days prior to the due date (including extensions) for filing such Tax Return. With respect to any such Tax Return due (taking into account all permissible extensions) on or after the Agreed Milestone Achievement Date, and ending on the earlier of (A) the Closing Date and (B) the valid termination of this Agreement pursuant to Article IX, no later than ten (10) Business Days prior to filing such Tax Return, the Company shall submit a copy of such Tax Return to Buyer for Buyer's review and approval, which approval shall not be unreasonably withheld, delayed or conditioned.

(b) The Company shall prepare and timely file, or shall cause to be prepared and timely filed, all Tax Returns in respect of the Company that relate to taxable periods beginning on or before the Closing Date but that are required to be filed after the Closing Date. Such Tax Returns shall be prepared by treating items thereon in a manner consistent with the past practices of the Company with respect to such items, except as required by applicable Law. No later than ten (10) Business Days prior to the filing of any such Tax Return, Buyer shall cause the Company to submit a draft of such Tax Return to the Securityholder Representative, together with a proposed allocation of the Taxes with respect to the period to which such Tax Return relates for which the Securityholders are responsible in Buyer's estimation, for the Securityholder Representative's review and approval, which approval shall not be unreasonably withheld, delayed or conditioned. The Securityholder Representative shall have the right to provide written notice to Buyer of its disagreement with any items in such draft of Tax Return, within five (5) Business Days of its receipt of such draft of Tax Return (the "Dispute Notice"), and if the Securityholder Representative fails to provide such Dispute Notice, such draft of Tax Return shall become final and binding upon the parties upon the expiration of such period. If the Securityholder Representative timely delivers to Buyer a Dispute Notice with respect to a Tax Return, the Securityholder Representative and Buyer agree to consult with each other and to negotiate in good faith the issues raised in the Dispute Notice as promptly as possible, which good faith negotiations shall include each side exchanging in writing their positions concerning the matter or matters in dispute and meeting to discuss their respective positions. In the event the parties are unable to resolve any dispute within ten (10) Business Days following the delivery of the Dispute Notice, the Securityholder Representative and Buyer shall jointly request the Designated Accounting Firm to promptly resolve any issue in dispute; provided that the Company may file when due (including extensions) a Tax Return that is subject to an unresolved Dispute Notice. The Securityholder Representative and Buyer shall use their respective commercially reasonable efforts to cause the Designated Accounting Firm to promptly make a determination with respect to all disputed issues. Buyer shall cause the Company to file such Tax Return on or prior to the due date (including permitted extensions) therefor or to promptly amend such Tax Return (if filed before receipt of the Designated Accounting Firm's determination) in a manner consistent with the determination of the Designated Accounting Firm. The determination of the Designated Accounting Firm shall be binding on all parties; provided that any such determination shall be limited to the resolution of issues described in the Dispute Notice that remain in dispute. The fees and disbursements of the Designated Accounting Firm and the costs of filing any amended Tax Returns shall be borne equally by the Company, on the one hand, and the Securityholders, on the other hand.

(c) The Securityholders shall, severally and not jointly and subject to the terms of Article X below, and in accordance with the provisions of clause (d) below, indemnify the Company for the Securityholders' allocable amount of Taxes due (determined in accordance with Section 7.12(d)) which are in excess of the amount of such Taxes that were specifically reflected as a liability in the determination of the Aggregate Closing Consideration and paid as of Closing or in the determination of the Adjustment Amount pursuant to Section 3.04(b), including Transfer Taxes incurred in connection with this Agreement and not referred to in Section 7.12(e) below.

(d) With respect to Taxes of the Company relating to taxable periods ending on or before the Closing Date, the Securityholders shall be allocated the entire amount of such Taxes. With respect to Taxes of the Company relating to a Straddle Period, the Securityholders shall be allocated the amount of such Taxes attributable to the portion of the Straddle Period that is deemed to end on the close of business on the Closing Date, calculated as follows: (i) with respect to property or ad valorem Taxes, the amount allocable to the portion of the Straddle Period ending

on the Closing Date shall equal the amount of such property or ad valorem Taxes for such entire Straddle Period multiplied by a fraction, the numerator of which is the number of calendar days of such Straddle Period in the Pre-Closing Tax Period and the denominator of which is the number of calendar days in the Straddle Period; and (ii) with respect to all other Taxes, the amount allocable to the portion of the Straddle Period ending on the Closing Date shall be determined based on an actual closing of the books used to calculate such Taxes as if such tax period ended as of the close of business on the Closing Date (and for such purpose, the tax period of any partnership or other pass-through entity in which the Company or any of the Subsidiaries holds a beneficial interest shall be deemed to terminate at such time). In the case of clause (ii) of the preceding sentence, exemptions, allowances or deductions that are calculated on an annual basis (including depreciation and amortization deductions computed as if the Closing Date was the last day of the Straddle Period) shall be allocated between the portion of the Straddle Period ending on the Closing Date and the portion of the Straddle Period thereafter in proportion to the number of days in each such portion.

(e) All Transfer Taxes incurred in connection with this Agreement by any specific Securityholder shall be paid by such Securityholder when due, and each such Securityholder, shall, at its own expense, timely prepare and file all necessary Tax Returns and other documentation with respect to all such Transfer Taxes.

(f) All Tax sharing agreements or similar agreements between the Company, on the one hand, and any of the Securityholders or their Affiliates, on the other hand, shall be terminated prior to the Closing Date, and, after the Closing Date, the Company shall not be bound thereby or have any liability thereunder.

(g) Buyer and the Securityholder Representative agree to furnish or cause to be furnished to the other, upon request, as promptly as practicable, such information and assistance relating to Taxes for any Pre-Closing Tax Period or Straddle Period, including, without limitation, access to books and records, as is reasonably necessary for the filing of all Tax Returns by Buyer or the Securityholder Representative, the making of any election relating to Taxes, the preparation for any audit by any Tax Authority and the prosecution or defense of any claim, suit or proceeding relating to any Tax. Buyer shall retain all books and records with respect to Taxes for a period of at least seven (7) years following the Closing Date.

(h) Following the Closing, Buyer, the Company and the Company Subsidiaries, on the one hand, and the Securityholders and the Securityholder Representative, on the other hand, shall promptly notify each other upon receipt by such Party of written notice of any inquiries, claims, assessments, audits or similar events with respect to Taxes of the Company relating to a Pre-Closing Tax Period (any such inquiry, claim, assessment, audit or similar event, a "Tax Matter"). Any failure to so notify the other Party of any Tax Matter shall not relieve such other Party of any liability with respect to such Tax Matters except to the extent such party was actually and materially prejudiced as a result thereof. Buyer shall have sole control of the conduct of all Tax Matters relating to the Company and its Subsidiaries, including any settlement or compromise thereof, provided, however, that (i) Buyer shall keep the Securityholder Representative reasonably informed of the progress of any such Tax Matter and shall not effect any such settlement or compromise with respect to which the Securityholders are liable, or which would be reasonably expected to give rise to a claim for indemnification under Article X, without obtaining the

Securityholder Representative's prior written consent thereto, which shall not be unreasonably conditioned, withheld or delayed and (ii) the Company shall, and Buyer shall cause the Company to, (A) provide to the Securityholder Representative copies of any material correspondence received from any such Tax Authority related to such Tax Matters, and (B) provide the Securityholder Representative with the opportunity to attend conferences, hearings and other meetings with or involving such Tax Authority, and to review and provide comments with respect to written responses provided to such Tax Authority with respect to such Tax Matters. Further, Buyer shall consult with the Securityholder Representative before taking any significant action in connection with a Tax Matters and Buyer shall give good faith consideration to the impact of the taking of any significant action in connection with such Tax Matter on the indemnification obligations of the Securityholders hereunder. Any disputes related to a Tax Matter, arising between the Buyer and/or the Company on the one hand, and the Securityholders Representative on the other hand, shall be resolved in accordance with the procedures set forth in Section 7.12(b), *mutatis mutandis*.

(i) Without the prior consent of the Securityholder Representative, which consent shall not be unreasonably withheld, conditioned or delayed, except as otherwise provided in this Agreement or required by applicable Law, Buyer shall not, and shall not permit the Company to, (i) take any action on the Closing Date or after the Closing that is outside the ordinary course of business and would reasonably be expected to increase the Securityholders' Liabilities or indemnification obligation for Taxes, and (ii) with respect to any period ending on or prior to the Closing Date, make any Tax election or effect any change in Tax accounting method affecting any such period with respect to any Pre-Closing Tax Period, file any amended Tax Return, extend the period of limitations for assessment of any Tax, make any Tax election or effect any change in Tax accounting method.

Section 7.13 Indemnification of Directors and Officers; D&O Insurance.

(a) For a period of seven (7) years from and after the Effective Time, Buyer agrees that it will indemnify and hold harmless each present and former director and officer of the Company or any Company Subsidiary (in each case, when acting in such capacity), determined as of the Effective Time and their respective successors and heirs (the "D&O Indemnified Parties"), against any D&O Indemnified Liability, to the fullest extent that the Company or any Company Subsidiary would have been permitted under applicable Law and the Company Organizational Documents or the Organizational Documents of any Company Subsidiary, in each case in effect immediately prior to the Closing Date, to indemnify such Person. "D&O Indemnified Liability" means, with respect to any Person, any Damages, whether asserted or claimed prior to, at or after the Closing, including all Damages based on, arising out of or pertaining to, this Agreement or the transactions contemplated by this Agreement, based on or arising out of the fact that such Person is or was a director or officer of the Company or any Company Subsidiary or by reason of any act or omission by such Person in any such capacity, but, in no event, pertaining to any act or omission following the Closing.

(b) Prior to the Effective Time, the Company shall purchase tail insurance coverage under the Company's current existing directors' and officers' liability policy in effect as of the date of this Agreement (the "Tail Insurance Coverage") for the D&O Indemnified Parties, which (i) shall provide the D&O Indemnified Parties with coverage for seven (7) years following the

Closing Date and (ii) contain coverage under terms at least comparable to those of the Company's directors' and officers' liability policy in effect as of the date of this Agreement. Following the Closing, and for a period of seven (7) years thereafter, Buyer shall and shall cause the Company and its successors and assigns not cancel, reduce or adversely modify the terms of the Tail Insurance Coverage and will continue to honor the obligations thereunder in accordance with its terms, to the extent permitted by applicable Law. For the avoidance of doubt, the cost of obtaining the Tail Insurance Coverage will be treated as a Company Transaction Expense for all purposes of this Agreement.

(c) The provisions of this Section 7.13 are intended to be for the benefit of, and shall be enforceable by, each of the D&O Indemnified Parties.

Section 7.14 Confidentiality; Public Announcements.

(a) In further consideration for the payment of the Aggregate Closing Consideration, and in order to protect the value of the Equity Interests purchased by Buyer pursuant hereto (including the goodwill inherent in the Company as of the Closing), as of the Closing, each Securityholder agrees on behalf of itself and its respective controlled Affiliates (to the extent they have received Confidential Company Information) that:

(i) such Securityholder has received, had access to and, to the extent applicable, contributed to Confidential Company Information;

(ii) unless such Securityholder first secures the written consent of an authorized representative of Buyer, such Securityholder shall not use for himself, herself, itself or anyone else, and shall not disclose to others, any Confidential Company Information; and

(iii) such Securityholder shall use reasonable care to safeguard Confidential Company Information and to protect it against disclosure, misuse, espionage, loss and theft;

(b) The Buyer, Company the Securityholder Representative and each Securityholder agree that the Securityholder Representative, each Securityholder, the Company and Buyer will (i) treat and hold all Confidential Transaction Information as confidential and (ii) refrain from disclosing any Confidential Transaction Information to any Person that is not a party hereto (other than to the extent required by an applicable Order, the provisions of applicable Law, or any applicable stock exchange regulations, the performance of such party's obligations pursuant to this Agreement or for financial reporting purposes and except that any party hereto may disclose such Confidential Transaction Information to (A) its respective employees, accountants, advisors and other representatives as necessary in connection with the ordinary conduct of its respective businesses and (B) its Affiliates and shareholders, in each case of (A) and (B) so long as such Persons agrees to or are bound by contract to keep the Confidential Transaction Information confidential).

(c) Buyer acknowledges and agrees that, prior to the Closing, any and all Confidential Company Information, as well as any and all information disclosed to or obtained by Buyer or any of its Affiliates pursuant to the provisions of this Agreement, including without limitation, Section 2.03 and Section 7.06, shall constitute "Confidential Information" of the Company under and within the meaning of the Confidentiality Agreement; provided, however, that nothing herein shall in any manner derogate from Buyer's confidentiality undertakings under the Company's investor rights agreement in effect from time to time.

(d) Nothing in this Agreement or in the Confidentiality Agreement shall be interpreted or construed to limit, or interfere in any way with, the right of Buyer, the Company or the Securityholder Representative to use or disclose any information, including any confidential information, in a dispute with any of the other parties hereto in connection with this Agreement, including, without limitation, in connection with any claim in accordance with Section 11.07 below, or in connection with handling any dispute concerning the obtainment of the Regulatory Approval Milestone and/or the Sales Milestone, in accordance with the provisions hereof, to the extent required.

(e) From the date hereof through the Closing Date, except as required pursuant to an applicable Order, the provisions of applicable Law or any applicable stock exchange regulations, no public release or announcement concerning the transactions contemplated hereby shall be issued or made by or on behalf of any party without the prior written consent of Buyer, the Company and the Securityholder Representative (in each case, not to be unreasonably withheld, conditioned or delayed). Except as required pursuant to an applicable Order, the provisions of applicable Law or any applicable stock exchange regulations, no press release or public announcement related to this Agreement or the transactions contemplated hereby shall be issued or made on or after the Closing Date without the joint approval of Buyer and the Securityholder Representative (in each case, not to be unreasonably withheld, conditioned or delayed). Notwithstanding anything herein or in the Confidentiality Agreement, the Parties agree that (i) following the execution of this Agreement, Buyer and the Company will issue a joint press release in the form attached hereto as Exhibit L, (ii) following the execution of this Agreement, the Securityholder Representative will issue a press release in the form attached hereto as Exhibit M, (iii) a press release will be issued on the Closing Date in a form mutually agreed upon by Buyer and the Securityholder Representative and (iv) following the Closing Date, each of the Parties and their Affiliates may, without the prior consent of the other Parties, issue press releases or make public announcements concerning the subject matter of this Agreement or the transactions contemplated hereby that are consistent with previous press releases or public announcements made by any of the Parties in compliance with this Section 7.14.

Section 7.15 Takeover Statute. If any Takeover Statute is or may become applicable to the Equity Purchase or the other transactions contemplated by this Agreement, the Company and the Company Board shall grant such approvals and take such actions as are reasonably necessary so that such transactions may be consummated as promptly as practicable on the terms contemplated by this Agreement and otherwise reasonably act to eliminate or minimize the effects of such statute or regulation on such transactions.

Section 7.16 Options.

(a) *Unvested Company Options*. The Company shall take all necessary and appropriate action so that all Company Options that are not vested as of immediately prior to the Closing and do not vest in connection with or as a result of the Closing or the transactions contemplated hereby, shall be cancelled as of the Closing and no consideration shall be payable with respect to such canceled Company Options, and each holder of any such Company Option shall cease to have any rights with respect thereto.

(b) *Vested Company Options*. Any amount payable hereunder to each holder of a vested Company Option which is a Section 102 Option on account thereof shall be paid, in accordance with the Option Tax Ruling and the Interim Option Tax Ruling, if obtained, to the Section 102 Trustee and held in trust by the Section 102 Trustee pursuant to the applicable provisions of Section 102 of the Israel Code and the regulations promulgated thereunder and the Option Tax Ruling and Interim Option Tax Ruling, if obtained. Such amounts shall be released by the Section 102 Trustee, in accordance with the terms and conditions of Section 102 of the Israeli Code, the Option Tax Ruling and the Interim Option Tax Ruling, if obtained, and the trust documents governing the trust held by the Section 102 Trustee.

(c) *Option Tax Ruling*. Prior to Closing and as soon as reasonably practicable (if not earlier filed) but in any event no later than seven (7) Business Days following delivery by Buyer of a Call Option Exercise Notice or by the Company of a Put Option Exercise Notice, the Company shall instruct its Israeli counsel, advisors and/or accountants, in full coordination with Buyer and its counsel, advisors and/or accountants, to prepare, and Buyer and its counsel, advisors and/or accountants shall have had an opportunity to review, comment upon and approve, which review shall be performed and completed within three (3) Business Days of receipt of a complete draft (including a full set of attachments that includes the options database), and the Company shall file with the ITA no later than two (2) Business Days after receipt of such reviewed draft, an application for a ruling (the "Option Tax Ruling") in a form reasonably acceptable to Buyer (whose approval shall not be unreasonably delayed, conditioned or withheld), confirming that, *inter alia*, (a) the deposit with the Section 102 Trustee of the consideration payable pursuant to Section 3.03(b)(i) for the Section 102 Options and Section 3.03(a) for any Section 102 Shares will not result in a requirement for an immediate Israeli Tax payment or affect the Tax treatment of such Section 102 Options and Section 102 Shares and that the Israeli taxation will be deferred until completion of statutory holding period set out in Section 102 of the Israeli Code, and actual release of such consideration to its respective recipient in accordance herewith, as applicable, and remain subject to the provisions of Section 102 of the Israeli Code and deemed to be income subject to the "capital gains route" thereunder, (b) Buyer and anyone acting on its behalf (including the Escrow Agent) shall not be required to withhold Israeli Tax in relation to any consideration payable to Israeli employees and Israeli consultants of the Company in relation to their Section 102 Options and Section 102 Shares where such consideration is transferred to the Payment Agent and/or the Section 102 Trustee and/or the Company, and (c) Buyer will not be required to withhold Israeli Tax in relation to any amounts paid to the Payment Agent, the Escrow Agent or the Section 102 Trustee. To the extent that prior to the Closing an interim Option Tax Ruling shall have been obtained pursuant to an application which Buyer had an opportunity to review and comment on and approve (an "Interim Option Tax Ruling"), then the references herein to the Option Tax Ruling shall be deemed to refer to such Interim Option Tax Ruling, *mutatis mutandis*, until such time that a final definitive Option Tax Ruling is obtained. Each of Buyer and the Company shall coordinate all activities and reasonably cooperate with each other with respect to Company's preparation and filing of such application and in the preparation of any written or oral submissions that may be necessary, proper or advisable to obtain the Option Tax Ruling, or any interim ruling as customarily granted by the ITA. The Company and Buyer shall, and shall instruct their respective representatives and advisors to, reasonably cooperate with each other and with their respective

Israeli counsel, representatives and advisors with respect to the preparation and filing of such applications and in the preparation of any written or oral submissions that may be necessary, proper or advisable to obtain the Option Tax Ruling. Subject to the terms and conditions hereof, the parties shall use reasonable efforts to promptly take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper or advisable under applicable Laws to obtain the Option Tax Ruling, as promptly as practicable. For the avoidance of doubt, the Company, its representatives and advisors shall not make any application to, nor conduct any negotiation with, the ITA with respect to any matter relating to the subject matter of the Option Tax Ruling without prior notice to and coordination with Buyer. Notwithstanding any coordination with Buyer, the final text of the Option Tax Ruling shall in all circumstances be subject to the prior written confirmation of Buyer or its Israeli counsel, not to be unreasonably withheld, conditioned or delayed.

(d) *Option Holder Release*. The Company shall use its commercially reasonable efforts to ensure that each of the holders of Company Options executes an Option Acknowledgment, and the execution thereof will be a condition for payment of any consideration for the Company Options.

Section 7.17 Post-Signing Securityholders, Section 341 of the Israeli Companies Law; Bring-Along

(a) Promptly after the date hereof and throughout the Option Period, the Company shall use commercially reasonable efforts to obtain from all holders of Shares who are not original parties hereto (specifically excluding any Person who holds Company Options or shares issued as a result thereof), a Joinder Agreement under which each such Person becomes bound by and subject to the provisions of this Agreement as a Securityholder and an executed Share Transfer Deed (which will be deposited with the Share Transfer Escrow Agent).

(b) Section 341 of the Israeli Companies Law; Bring-Along.

(i) This Agreement shall be deemed, for the purposes of Section 341(a) of the Israeli Companies Law and the bring-along provision set forth in Article 44.9 of the Company Organizational Documents as in effect on the date hereof (the "Bring-Along Provision"), to constitute (A) an offer by Buyer to purchase of all of the Shares which is conditioned upon the sale of the Company's entire share capital and (B) an acceptance of such offer by all Securityholders who have duly executed this Agreement initially or by signing a Joinder Agreement.

(ii) By executing this Agreement, the Securityholders who collectively hold (A) a majority of the issued and outstanding Shares and (B) a majority of the issued and outstanding Series A Preferred Shares, Series B Preferred Shares, Series C Preferred Shares, Series D-1 Preferred Shares, Series D-2 Preferred Shares, Series E Preferred Shares, Series F Preferred Shares and Series G Preferred Shares (acting together as a single class on an as-converted basis) (other than any Shares held by a Buyer Entity), on an as converted basis, shall be deemed to have accepted an offer by Buyer to purchase their Shares in accordance with the terms set forth in this Agreement, in accordance with Section 341 of the Israeli Companies Law and the Bring-Along Provision.

(iii) Promptly and in any event within four (4) Business Days of the date of the delivery of the Call Option Exercise Notice or the Put Option Exercise Notice, as applicable, in accordance with the terms hereof, Buyer will, in accordance with Section 341(a) of the Israeli Companies Law and the Bring-Along Provision, provide a written notice in the form attached hereto as Exhibit N (the "Bring-Along Notice") and a Joinder Agreement to each holder of Shares that has not duly executed and delivered this Agreement or signed a Joinder Agreement, setting forth the information required by Section 341(a) of the Israeli Companies Law and the Bring-Along Provision and stating Buyer's requirement to purchase such Person's Shares under the terms and conditions of this Agreement. The Company shall assist Buyer to dispatch the Bring-Along Notice to each such Shareholder. Buyer and the Company shall fully coordinate any correspondence to which each may be a party which concerns the Bring-Along Notice. Buyer and the Company shall take such other actions as may be necessary in order to ensure the transfer at Closing of all of the outstanding Shares pursuant to Section 341 of the Israeli Companies Law, the Bring-Along Provision and under the terms and conditions of this Agreement, including in making all reasonable filings and taking such other reasonable action which is necessary to effect the Transactions with respect to all the Company Shares in compliance with Section 341 of the Israeli Companies Law and the Bring-Along Provision. After satisfactory completion of the necessary procedures under Section 341 of the Israeli Companies Law and the Bring-Along Provision, including without limitation, the lapse of the 30-day period required under Law to pass from the delivery date of the Bring-Along Notices (the "Bring Along Waiting Period"), and provided that the conditions to Closing set forth in Article VIII hereto have been fulfilled, at the Closing the Company shall register Buyer as owner of all outstanding Shares.

(iv) All holders of Shares that execute this Agreement or a Joinder Agreement or Option Acknowledgement after the date hereof and prior to Closing shall be deemed Securityholders by virtue thereof, and, to the extent permitted under Section 341 and the Bring-Along Provision, all holders of Shares who do not execute this Agreement or a Joinder Agreement shall nonetheless be deemed Securityholders by virtue of Section 341 of the Israeli Companies Law and the Bring-Along Provision.

(v) In furtherance of each Securityholder's agreement, the Securityholder Representative as such Securityholder's proxy and attorney-in-fact (with full power of substitution), for and in the name, place and stead of such Securityholder, to vote all Shares owned by such Securityholder at any meeting of the Shareholders or any adjournment or postponement thereof, however called, or to execute one or more written consents in respect of such Securityholder's Shares in favor of approval of this Agreement, the transactions contemplated hereby and any other actions and proposals required, or submitted for approval at any meeting of Shareholders, in furtherance thereof (provided that the Securityholder Representative shall have full disclosure whether to use such proxy and authority or not).

(vi) The proxy granted in the previous subsection shall be valid until, and automatically terminate upon, the termination of this Agreement. in accordance with the terms hereof. Each Securityholder affirms that the foregoing proxy, when given, is (A) given in connection with the execution of this Agreement to secure the performance of

such Securityholder's duties hereunder and (B) coupled with an interest and may not be revoked except as otherwise provided in this Agreement. All authority herein conferred shall survive the death or incapacity of any Securityholder that is an individual and shall be binding upon the heirs, estate, administrators, personal representatives, successors and assigns of such Securityholder.

(vii) Notwithstanding the foregoing proxy, each Securityholder may vote its own Shares, provided done strictly in accordance herewith, at any meeting of Company shareholders (or any adjournment or postponement thereof), by proxy or otherwise.

(viii) The Company shall, and each Securityholder shall use its reasonable best commercial efforts to, defend (or cooperate with the Company in the defense of) any actions brought by or on behalf of a holder of Shares that seeks to restrain, enjoin or prohibit the Equity Purchase (a "341 Legal Proceeding"), and shall, to the extent permitted by Law, use its reasonable best commercial efforts to enforce (or cooperate with the Company in the enforcement of) any such Company shareholder's obligations (to the extent that they are not in compliance therewith) under the Bring-Along Provision and, to the extent applicable, Section 341 of the Israeli Companies Law, which shall include, with respect to the Company, the commencement by the Company of an Action, to the extent applicable, or bringing of a counterclaim against such holder of Shares as may be reasonably necessary or desirable in order to ensure due compliance by such Person with its obligations.

(ix) Subject to the terms of this Agreement, following the execution of this Agreement and throughout the Option Period, if the Company shall issue any Shares (to any Person other than a Buyer Entity, which, for the avoidance of doubt, shall be subject to the Company's compliance with Section 7.01, but except for any Person exercising Company Options into Shares in accordance with and subject to the provisions of the Company Option Plan), then the Company shall promptly: (A) inform Buyer of such an issuance and (B) as a condition to such issuance, obtain from such recipient of Shares, a signed Joinder Agreement and Share Transfer Deed.

(x) For purposes of this Agreement, the term "Securityholder" shall include all holders of Shares, whether or not they formally become parties hereto through execution of this Agreement or a Joinder Agreement, and each such holder of Shares shall be deemed to be subject to the terms and conditions of this Agreement, except to the extent that doing so would be inconsistent with the provisions of Section 341 of the Israeli Companies Law or the Bring-Along Provision.

Section 7.18 Designated Amount.

(a) No later than 30 calendar days following Buyer's receipt of the Statistical Report pursuant to Section 7.05(c), Buyer shall deposit with the Escrow Agent the Designated Amount.

(b) The Parties agree that, (i) in the event of a Failure to Close Termination or a Qualifying Disputed Regulatory Approval Termination, the Designated Amount will become payable to the Company and the Securityholders in accordance with Section 9.03(a) and Section 9.03(c) and the provisions of the Company's Organizational Documents, respectively, and (ii) in

the event that this Agreement is terminated for any other reason, the Designated Amount shall be immediately due and payable to Buyer, and Buyer and the Company shall, within two (2) Business Days of any such termination, execute and deliver joint written instructions to the Escrow Agent instructing the Escrow Agent to deliver the entirety of the Designated Amount to Buyer.

(c) The Parties agree that at or prior to the Closing on the Closing Date, Buyer shall be permitted to instruct the Escrow Agent to deposit the entirety of the Designated Amount with the Payment Agent (and, for the avoidance of doubt, the Designated Amount shall be treated as a portion of the Aggregate Closing Consideration).

Section 7.19 Financial Information. Following the Closing Date, Buyer hereby confirms and undertakes that Buyer and the Company shall reasonably cooperate with the Securityholder Representative and E&Y Israel, being the independent auditors retained by the Company prior to the Closing Date (the "Independent Auditors"), so that the Securityholder Representative may prepare financial statements of the Company for the periods ending as of or before the Closing Date (the "Pre-Close Financial Statements"). The Company shall make available to the Securityholder Representative and the Independent Auditors books, records and work papers and personnel reasonably necessary for the preparation and audit of the Pre-Close Financial Statements.

Section 7.20 Employee Matters. During the period beginning on the date the Call Option or the Put Option is validly exercised in accordance with this Agreement, the Company shall provide Buyer with reasonable access to the Company's employees and will use commercially reasonable effort to assist Buyer with its efforts to enter into appropriate retention or offer paperwork with each such employee prior to the Closing Date. Buyer's communications with employees pursuant to this Section 7.20 will be made in consultation and coordination with the Company. Buyer will not knowingly and intentionally seek to discourage any employee of the Company from continuing employment with the Company and, without limiting Section 8.02(j), the execution of retention or offer paperwork will not be a condition to the Closing of the Equity Purchase.

Section 7.21 Buyer Financial Representations.

(a) No later than thirty (30) calendar days following Buyer's receipt of the Statistical Report pursuant to Section 7.05(c), Buyer shall deliver to the Company a certificate, executed by an authorized officer of Buyer, certifying that the representation and warranty of Buyer contained in Section 6.05 remains true and correct in all respects.

(b) Within two (2) Business Days of the date of Buyer's receipt of the Pre-Market Approval Application from the Company pursuant to Section 7.05(b), Buyer shall deliver to the Company a certificate, executed by an authorized officer of Buyer, certifying that the representation and warranty of Buyer contained in Section 6.05 remains true and correct in all respects.

(c) No later than ninety (90) calendar days following Buyer's receipt of the Pre-Market Approval Application from the Company pursuant to Section 7.05(b), Buyer shall deliver to the Company (i) a certificate, executed by an authorized officer of Buyer, certifying that the representation and warranty of Buyer contained in Section 6.05 remains true and correct in all respects and (ii) a written summary of Buyer's intended sources of financing and Buyer's progress towards obtaining such financing.

(d) Each of the foregoing certificates and summaries shall be deemed as representations of Buyer made hereunder.

(e) Following the Company's Pivotal Clinical Trial Success and continuing until the earlier of the Closing and the valid termination of this Agreement pursuant to Article IX, Buyer shall make available its Chief Financial Officer to conduct a telephone conference with the Chief Financial Officer of the Securityholder Representative upon reasonable advance written notice from the Securityholder Representative and during normal business hours for the purposes of discussing Buyer's intended sources of financing and Buyer's progress towards obtaining such financing; provided, however, that the Securityholder Representative shall not request any such telephone conference, and Buyer shall have no obligation to participate in any such telephone conference, more than once during any calendar quarter.

(f) Other than with the prior written consent of the Securityholder Representative (not to be unreasonably withheld, conditioned or delayed), Buyer shall not make a Section 338(g) election (within the meaning of the Internal Revenue Code of 1986, as amended) if doing so would reasonably be expected to adversely affect the Securityholders, in which case, Buyer shall agree to indemnify the Securityholders for any tax liability incurred by the Securityholders as a result of the making of such Section 338(g) election by Buyer.

ARTICLE VIII.

CONDITIONS TO CLOSING

Section 8.01 Conditions to Obligations of Buyer and the Securityholders. The respective obligations of Buyer and the Securityholders to effect the Equity Purchase and the other transactions contemplated by this Agreement to be effected at the Closing shall be subject to the satisfaction (or waiver in writing by Buyer and the Securityholder Representative to the extent permitted by applicable Law), at or prior to the Closing, of each of the following conditions:

(a) Valid Exercise of Option. Either (i) Buyer shall have validly exercised the Call Option and delivered the Call Option Exercise Notice in accordance with Section 2.01(c)(i) or (ii) the Company shall have validly exercise the Put Option and delivered the Put Option Exercise Notice in accordance with Section 2.02(c)(i).

(b) Antitrust Approvals. Any requirements, filings, approvals or waiting periods under any applicable Antitrust Laws required for the consummation of the Equity Purchase shall have been satisfied, made, obtained or expired or terminated.

(c) No Injunction; No Legal Impediment. No temporary restraining order, preliminary or permanent injunction or other Order issued by any Governmental Entity of competent jurisdiction shall be in effect which restrains, enjoins or otherwise prohibits the consummation of the Equity Purchase on the terms contemplated herein, and no applicable Law shall have been enacted or be deemed applicable to the Equity Purchase or any of the other transactions contemplated hereby that makes illegal, or restrains, enjoins or otherwise prohibits, the consummation of the Equity Purchase or any of the other transactions contemplated hereby.

(d) The Company shall have obtained the Option Tax Ruling or the Interim Option Tax Ruling; provided, however, that in the absence of such ruling, the condition set forth in this Section 8.01(d) shall be satisfied upon the earlier of (i) forty-five (45) days from the filing with the ITA of an application to obtain either such ruling and (ii) seventy-five (75) days from the valid exercise of the Call Option or the Put Option, as applicable.

(e) Bring Along. The Bring Along Waiting Period shall have elapsed and no 341 Legal Proceeding shall be pending.

Section 8.02 Conditions to Obligations of Buyer. The obligations of Buyer to effect the Equity Purchase and the other transactions contemplated by this Agreement to be effected at the Closing shall be subject to the satisfaction (or waiver in writing by Buyer to the extent permitted by applicable Law), at or prior to the Closing, of each of the following conditions:

(a) Representations and Warranties of the Company. Each of (i) the Fundamental Representations shall be true and correct in all respects as of the date of this Agreement and as of the Closing Date as if made as of the Closing Date (except for Fundamental Representations that speak as of a particular date, which shall be true and correct in all respects as of such date) and (ii) the other representations and warranties made by the Company in this Agreement shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date as if made as of the Closing Date (except for representations and warranties that speak as of a particular date, which shall be true and correct in all material respects as of such date), in the case of this clause (ii), without giving effect to any Company Material Adverse Change or other materiality qualifications, or any similar qualifications, contained or incorporated directly or indirectly in such representations and warranties.

(b) Covenants of the Company. The Company shall have performed, and be in compliance with, in all material respects, all agreements, covenants and obligations required to be performed by it under this Agreement at or prior to the Closing.

(c) Representations and Warranties of the Securityholders. Each of the Securityholder Representations shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date as if made as of the Closing Date (except for representations and warranties that speak as of a particular date, which shall be true and correct in all material respects as of such date), in each case, without giving effect to any Securityholder Material Adverse Change or other materiality qualifications, or any similar qualifications, contained or incorporated directly or indirectly in such representations or warranties.

(d) Covenants of the Securityholders. Each of the Securityholders shall have performed, and be in compliance with, in all material respects, all agreements, covenants and obligations required to be performed by it under this Agreement at or prior to the Closing.

(e) Final Review Period. The Final Review Period shall have expired pursuant to Section 2.06.

(f) No Company Material Adverse Change. Since the date of the exercise of the Call Option or the Put Option, as applicable, there shall not have occurred any changes, events, circumstances, occurrences, effects, state of facts or developments which constitute a Company Material Adverse Change.

(g) No Securityholder Material Adverse Change. Since the date of the exercise of the Call Option or the Put Option, as applicable, there shall not have occurred any changes, events, circumstances, occurrences, effects, state of facts or developments which constitute a Securityholder Material Adverse Change.

(h) Closing Deliverables. Buyer shall have received each of the agreements and documents set forth in Section 3.02(a) and Section 3.02(b) and each agreement delivered pursuant thereto shall be in full force and effect.

(i) Litigation. There shall not be pending or threatened by or before any Governmental Entity any Action that (i) seeks to prevent the consummation of the Equity Purchase or any of the other transactions contemplated hereby on the terms, and conferring upon Buyer all of their respective rights and benefits, contemplated herein or (ii) seeks the award of Damages (in an amount material to the Company and the Company Subsidiaries) payable by, or any other remedy against, Buyer or the Company if the Equity Purchase is consummated.

(j) Employees. As of immediately prior to the Closing, (i) each of the Key Employees and (ii) at least 70% of the employees of the Company and the Company Subsidiaries other than the Key Employees shall remain employed by the Company or a Company Subsidiary and no such individual who remains employed by the Company or any Company Subsidiary as of immediately prior to the Effective Time shall have expressed any overt intention to terminate employment with the Company or any such Company Subsidiary immediately following the Closing or to rescind or repudiate his or her Employment Agreement or Consulting Agreement, as applicable.

(k) Related Party Transactions. All Contracts between the Company or any Company Subsidiary, on the one hand, and any Related Party, on the other hand, (excluding ordinary course Contracts relating to employee/consultancy retention, compensation and benefits that have been made available to Buyer, Contracts solely between the Company and a Company Subsidiary and made available to Buyer, and the Contracts set forth on Schedule 8.02(k)) shall have been terminated.

(l) Joinders; Share Transfer Deeds. The holders of no less than 90% of all outstanding Ordinary Shares and Preferred Shares of the Company (excluding for such calculation any shares held by Buyer, its Affiliates and/or any of its Permitted Transferees) shall have executed (i) either this Agreement on the date hereof or a Joinder Agreement following after the date hereof and (ii) a Share Transfer Deed.

Section 8.03 Conditions to Obligations of the Company and the Securityholders. The obligations of the Company and the Securityholders to effect the Equity Purchase and the other transactions contemplated by this Agreement to be effected at the Closing shall be subject to the satisfaction (or waiver in writing by the Company and the Securityholder Representative to the extent permitted by applicable Law), at or prior to the Closing, of each of the following conditions:

(a) Representations and Warranties. Each of the representations and warranties made by Buyer in this Agreement shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date (except for representations and warranties that speak as of a particular date, which shall be true and correct in all material respects as of such date) without giving effect to any materiality qualifications contained in such representations and warranties.

(b) Covenants. Buyer shall have performed, and be in compliance with, in all material respects, all agreements, covenants and obligations required to be performed by it under this Agreement at or prior to the Closing.

(c) Closing Deliverables. Buyer shall have delivered, or caused to be delivered, to the Company the items set forth in Section 3.02(c).

(d) Closing Escrow Amounts. The Closing Escrow Amounts shall have been received by the Escrow Agent, as confirmed in writing by the Escrow Agent to the Company and to the Securityholder Representative.

Section 8.04 Frustration of Closing Conditions. None of (i) the Company or any of the Securityholders, with respect to Section 8.01 and Section 8.03, as applicable or (ii) Buyer, with respect to Section 8.01 and Section 8.02, as applicable, may rely on the failure of any such condition, as the case may be, to be satisfied, if such failure was solely and directly caused by or resulted from, such party's failure to comply with any provision of this Agreement.

ARTICLE IX.

TERMINATION

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

(a) by the written consent of Buyer, the Company and the Securityholder Representative;

(b) automatically, without further action by the Company, Buyer, the Securityholder Representative, if (i) the Call Option shall not have been exercised prior to the expiration of the Call Option Period and (ii) the Put Option shall not have been exercised prior to the expiration of the Put Option Exercise Period;

(c) by either the Company or Buyer, upon written notice to the other party (and, in case of Buyer, with a copy to the Securityholder Representative):

(i) if the Equity Purchase shall not have been consummated within ninety (90) days of the Company's exercise of the Put Option or Buyer's exercise of the Call Option, as applicable (the "Outside Date"); provided, however, that the right to terminate this Agreement under this Section 9.01(c)(i) shall not be available to a party whose failure to perform in all material respects any of its obligations under this Agreement has been the cause of, or resulted in, the failure of the Equity Purchase to be consummated on or prior to the Outside Date;

(ii) if there shall be in effect a final non-appealable Order issued by any Governmental Entity of competent jurisdiction which restrains, enjoins or otherwise prohibits the consummation of the Equity Purchase on the terms contemplated herein;

(iii) if the Regulatory Approval Milestone has not been achieved (as finally determined pursuant to Section 2.04) on or prior to the date that is twenty-four (24) months from the date of the Company's initial submission to the FDA of the Pre-Market Approval Application; or

(iv) if a Governmental Entity of competent jurisdiction shall have enacted any applicable Law that makes illegal or otherwise prohibits, the consummation of the Equity Purchase contemplated hereby;

(d) by Buyer upon written notice to the Company (with a copy to the Securityholder Representative) upon the occurrence of an Adverse Clinical Trial Event; provided, that Buyer's right to terminate this Agreement under this Section 9.01(d) shall not be available with respect to any particular Adverse Clinical Trial Event following the date that is ninety (90) days after Buyer's receipt of written notice of the actual occurrence of such Adverse Clinical Trial Event pursuant to Section 7.05(a)(vi) together with reasonable detail with respect to the events and circumstances related thereto;

(e) automatically, without further action by the Company, Buyer, the Securityholder Representative, the Securityholders or any other Person if the results of the Pivotal Clinical Trial do not constitute a Pivotal Clinical Trial Success based on the Statistical Report;

(f) by Buyer upon written notice to the Company (with a copy to the Securityholder Representative) upon the occurrence of a Company Material Adverse Change or a Securityholder Material Adverse Change; provided, that Buyer's right to terminate this Agreement under this Section 9.01(f) shall not be available with respect to any particular Company Material Adverse Change or a Securityholder Material Adverse Change following the date that is ninety (90) days after Buyer's receipt of written notice of the actual occurrence of such Company Material Adverse Change or a Securityholder Material Adverse Change pursuant to Section 7.05(d) together with reasonable detail with respect to the events and circumstances related thereto;

(g) by Buyer, upon written notice to the Company and the Securityholder Representative, at any time prior to the date that is thirty (30) calendar days following Buyer's receipt of the Statistical Report pursuant to Section 7.05(c);

(h) by (i) the Company, to the extent a Buyer Dispute Notice has been received by the Company pursuant to Section 2.04(c) or (ii) Buyer, to the extent a Company Dispute Notice has been received by Buyer pursuant to Section 2.04(d), in each case, upon written notice to the Securityholder Representative and the disputing party (Buyer or the Company, as applicable) and if following the date that is ninety (90) days after receipt by such party of such Buyer Dispute Notice or Company Dispute Notice, as applicable, (A) the applicable dispute with respect to achievement of the Regulatory Approval Milestone has not been fully resolved in accordance with Section 11.07 or (B) a Chosen Court has determined in a final decision that the Regulatory Approval Milestone was not achieved as of the date of such Pre-Closing Milestone Notice or Deemed Achievement Notice;

(i) by Buyer, upon written notice to the Company and the Securityholder Representative and so long as Buyer is not then in material breach of its obligations of this Agreement such that the conditions set forth in Section 8.01 or Section 8.03 would not be satisfied, if (i) any representation or warranty of the Company or any Securityholder contained in this Agreement shall be inaccurate such that the conditions set forth in Section 8.02(a) and Section 8.02(c) would not be satisfied or (ii) any of the covenants or obligations of the Company or the Securityholders contained in this Agreement (including without limitation, the covenants under Section 7.09, and the undertaking to consummate the Equity Purchase in accordance with and subject to the provisions hereof) shall have been breached in any material respect such that the conditions set forth in Section 8.02(b) or Section 8.02(d) would not be satisfied;

(j) by the Company, upon written notice to Buyer and so long as the Company is not then in material breach of its obligations of this Agreement such that the conditions set forth in Section 8.01 or Section 8.02 would not be satisfied, if (i) any representation or warranty of Buyer contained in this Agreement shall be inaccurate such that the condition set forth in Section 8.03(a) would not be satisfied or (ii) any of the covenants or obligations of Buyer contained in this Agreement (including without limitation, the covenants under Section 7.09, and the undertaking to consummate the Equity Purchase in accordance with and subject to the provisions hereof) shall have been breached in any material respect such that the condition set forth in Section 8.03(b) would not be satisfied;

(k) by the Company, upon written notice to Buyer, in the event Buyer has failed to provide the Company with the Additional Investment Amount within five (5) Business Day of its obligation to so provide such amount in accordance with the provisions of the Series G SPA; and

(l) by the Company, upon ten (10) Business Days' written notice to Buyer, in the event Buyer has failed to timely deposit the Designated Amount with the Escrow Agent in accordance with to Section 7.18(a); provided, that such right shall not be available to the Company if Buyer cures such failure by depositing the Designated Amount with the Escrow Agent prior to such tenth (10th) Business Day.

The party desiring to terminate this Agreement pursuant to this Section 9.01 (other than pursuant to Section 9.01(a)) shall give a notice of such termination to the other party setting forth a brief description of the basis on which, and the provision of this Section 9.01 pursuant to which, such party is terminating this Agreement.

Section 9.02 Effect of Termination. In the event of the termination of this Agreement in accordance with this Article IX, this Agreement shall forthwith become void and, subject to the remainder of this sentence and without limitation of Section 9.03, there shall be no Liability on the part of any Party; provided that Section 7.14 (Confidentiality; Public Announcements), this Article IX (Termination) and Article XI (Miscellaneous) shall survive such termination and there shall be no liability on the part of Buyer, the Company, the Securityholders, the Securityholder Representative or any of their respective managers, directors, officers or Affiliates, except that termination of this Agreement shall not relieve any party to this Agreement from liability for a material breach of this Agreement prior to the termination of this Agreement.

Section 9.03 Termination Fee; Equity Interest Forfeiture.

(a) If, but only if, this Agreement is validly terminated by the Company pursuant to Section 9.01(c)(i) or Section 9.01(j) due to Buyer's breach of its obligation to effectuate the Closing in accordance with this Agreement, in each case, following the Company's exercise of the Put Option or following Buyer's exercise of the Call Option, and at the time of such termination, (i) all conditions set forth in Section 8.01 and Section 8.02 shall be satisfied or shall have been waived (other than (x) any such conditions that by their nature are to be satisfied by actions to be taken at the Closing (and, in the case of those conditions that by their nature are to be satisfied by actions to be taken at the Closing, such conditions are capable of being satisfied if the Closing were to occur at the time of such termination), and (y) such conditions which remain unsatisfied solely as a result of Buyer's breach of any covenant or obligation contained in this Agreement), (ii) the Company is not in material breach of this Agreement and (iii) the Company stood ready, willing and able to consummate the Closing (any such termination a "Failure to Close Termination"), then the Designated Amount shall be due and payable to the Company ($20,000,000 of the Designated Amount) and the Securityholders ($30,000,000 of the Designated Amount, allocated between the Securityholders in accordance with the provisions of the Articles of Association of the Company) (the "Designated Amount Allocation"), and the Company shall, during the period which shall expire within five (5) Business Days of the Outside Date following such Failure to Close Termination, provide the Escrow Release Notice to the Escrow Agent, and Buyer shall thereafter have the right to submit an Escrow Objection Notice during the five (5) Business Days following delivery to Buyer of a concurrent copy of the Escrow Release Notice (provided that if Buyer shall not timely submit the Escrow Objection Notice, the Escrow Agent shall act in accordance with the Company's Escrow Release Notice and release the Designated Amount in accordance with the Designated Amount Allocation). In addition to the foregoing, following a Failure to Close Termination, the Company shall have the right, subject to a written notice to Buyer, to call for the surrender and Transfer to the Company of all Shares then held by Buyer and, for the avoidance of doubt, Buyer shall not be entitled to any consideration in connection with such surrender of Shares (such surrender and Transfer, together with the payment of the Designated Amount, the "Failure to Close Remedy"). To the extent the Buyer timely delivers an Escrow Release Objection, (A) the Designated Amount shall not be released by the Escrow Agent and shall remain held in escrow pursuant to the terms of this Agreement and the Escrow Agreement, (B) Buyer's Shares shall be, at the Company's discretion, Transferred and held in escrow by the Escrow Agent, and such Shares shall be "Escrowed Shares," in each case, until the dispute pursuant to the Escrow Release Objection is fully and finally resolved and (C) the Company and the Securityholders, as applicable, shall be entitled to the Failure to Close Remedy if such dispute is so resolved in the Company's favor but shall not be precluded from seeking to enforce any additional remedy against Buyer (including Damages in excess of the Failure to Close Remedy). It is understood and agreed that so long as any of Buyer's Shares are Escrowed Shares, the Company Board may request, in accordance with the provisions of the Escrow Agreement, that the Escrow Agent vote such Shares in favor of a Deemed Liquidation Event (as defined in the Company's Amended and Restated Articles of Association) in connection with the execution and consummation of a Deemed Liquidation Event so long as (x) such Deemed Liquidation Event is

otherwise approved by the corporate organs of the Company and the other shareholders of the Company required in order to affect such transaction have executed the same instruments, agreements or documents, (y) other than as set forth in clause (2) below, the Escrowed Shares are subject to treatment in such Deemed Liquidation Event that is no less favorable than the treatment afforded any other Shares in such Deemed Liquidation Event (specifically excluding different liquidation preference rights with respect to shares of more senior classes of shares to be issued following the date of this Agreement, if any) and (z) the proceeds of such Deemed Liquidation Event are allocated and distributed in accordance with Section 18.1 of the Company's Amended and Restated Articles of Association. In addition, for as long as the dispute regarding the Failure to Close Remedy is not resolved, (1) the consideration payable with respect to such Buyer's Shares in the Company in a Deemed Liquidation Event will, upon consummation of such Deemed Liquidation Event, be held in escrow until such time as the dispute is fully and finally resolved and (2) Buyer shall not object or otherwise take any action with the intent of interfering with the consummation of such Deemed Liquidation Event. Following the final resolution of said dispute pursuant to a final decision of a Chosen Court, the consideration payable with respect to such Shares in a Deemed Liquidation Event will be released (I) to the Company or its Securityholders if such dispute is so resolved in the Company's favor, or (II) to Buyer if such dispute is so resolved in Buyer's favor (and the Company and Buyer will take all actions necessary to cause such consideration to be released from escrow to the applicable party in accordance herewith). Without derogating from the foregoing, and always subject to the foregoing clause (1), so long as a dispute pursuant to the Escrow Release Objection has not been fully and finally resolved, to the extent that the proposed acquirer in the applicable Deemed Liquidation Event requires that Buyer shall execute the applicable transaction documents (in the same form proposed to be executed by the other shareholders of the Company) in such Deemed Liquidation Event and Buyer refuses, the Company Board shall have the discretion to call for the surrender and Transfer to the Company of all Escrowed Shares (or for the avoidance of doubt, all of Buyer's Shares in the Company, even if such shares were not deposited in escrow as aforesaid) immediately prior and subject to the consummation of such Deemed Liquidation Event (for no consideration other than Buyer's entitlement to the consideration for such shares in the Deemed Liquidation Event, to the extent so resolved by the final resolution of said dispute pursuant to a final decision of a Chosen Court); provided, that none of the foregoing shall require Buyer to enter into or be bound by any non-competition or similar agreement containing covenants restricting Buyer's or its Affiliates' ability to freely compete with any Person and in no event shall Buyer be required to execute any such agreement.

(b) If, but only if, this Agreement is validly terminated by Buyer pursuant to Section 9.01(g) (such termination a "Termination for Convenience"), then, concurrent with such termination, Buyer shall pay to the Company a one-time cash payment equal to $30,000,000 (the "Termination for Convenience Fee").

(c) If, but only if, (i) this Agreement is validly terminated by the Company pursuant to clause (A) of Section 9.01(h) following the Company's receipt of a Buyer Dispute Notice and (ii) thereafter, to the extent the Company has chosen to continue the dispute in order to obtain the Disputed Regulatory Approval Remedy, the dispute set forth in the Buyer Dispute Notice is resolved, in a final decision of a Chosen Court, in favor of the Company, such termination shall be considered a "Qualifying Disputed Regulatory Approval Termination," the Designated Amount shall be due and payable to the Company and the Payment Agent (for further disbursement to the

Securityholders) in accordance with the Designated Amount Allocation, and the Company shall be permitted to execute and deliver, with a copy delivered concurrently to Buyer, written instructions to the Escrow Agent (accompanied by the applicable decision of the Chosen Court) instructing the Escrow Agent to deliver the entirety of the Designated Amount to the Company and the Payment Agent (for further disbursement to the Securityholders) in accordance with the Designated Amount Allocation in accordance with this Section 9.03(c) (the "Disputed Regulatory Approval Remedy").

(d) If, but only if, this Agreement is validly terminated by the Company pursuant to Section 9.01(l) (such termination a "Failure to Fund Termination"), then, within five (5) Business Days of such termination, the Company shall be entitled to elect (in its sole discretion), and shall deliver a written notice to Buyer indicating its election, that Buyer either (i) pay to the Company a one-time cash payment equal to $30,000,000 or (ii) call for the surrender and Transfer of all Shares then held by Buyer and, for the avoidance of doubt, Buyer shall not be entitled to any consideration in connection with such forfeiture (such cash payment or surrender and Transfer , as so elected by the Company, the "Failure to Fund Remedy"). Buyer shall satisfy its obligations with respect to the applicable Failure to Fund Remedy, to the extent the Company chose the cash payment referred to in the foregoing clause (i), within ten (10) Business Days of Buyer's receipt of the Company's written election of such remedy. For the avoidance of doubt, in no event shall a Failure to Fund Remedy include both payment of the one-time $30,000,000 fee and the surrender and Transfer of Buyer's Shares.

(e) Notwithstanding anything to the contrary set forth in this Agreement, in the event of a Failure to Close Termination, a Termination for Convenience, a Qualifying Disputed Regulatory Approval Termination or a Failure to Fund Termination, the Failure to Close Remedy, Termination for Convenience Fee, Disputed Regulatory Approval Remedy or Failure to Fund Remedy (subject to Section 9.03(a) in the event an Escrow Release Objection is timely delivered by Buyer), as applicable, will be deemed as an agreed upon remedy for the Damages caused to the Company and the Securityholders (on account of the amount of such remedy to be received by the Securityholders and/or the benefit otherwise realized by the Securityholders in connection with such remedy) in connection with the applicable failure by Buyer, whether measured in costs, expenses, loss of opportunities, or otherwise (without any need for the Company or the Securityholders to demonstrate Damages), and the sole and exclusive remedy of the Company and the Securityholders and each of their respective Affiliates and Representatives against (i) Buyer, its Subsidiaries and each of their respective Affiliates and (ii) the former, current and future holders of any equity, controlling persons, directors, officers, employees, agents, attorneys, Affiliates, members, managers, general or limited partners, stockholders and assignees of each of Buyer, its Subsidiaries and each of their respective Affiliates (clauses (i) and (ii) collectively, the "Buyer Related Parties") for any loss or Damages based upon, arising out of or relating to this Agreement or the negotiation, execution or performance hereof or the transactions contemplated hereby. Notwithstanding anything to the contrary set forth in this Agreement, following the full satisfaction of the Failure to Close Remedy, Termination for Convenience Fee, Disputed Regulatory Approval Remedy or Failure to Fund Remedy, none of the Buyer Related Parties will have any further Liability or obligation, monetary or otherwise (and other than as set forth in Section 7.14), to the Company or any Securityholder relating to or arising out of this Agreement or the transactions contemplated hereby and none of the Company, any Securityholder or any of their respective Affiliates or Representatives shall seek to obtain any recovery, judgment or Damages of any kind, at law or in equity or otherwise, including consequential, indirect or punitive damages, against any of the Buyer Related Parties.

ARTICLE X.

INDEMNIFICATION

Section 10.01 Survival.

(a) If the Equity Purchase is consummated, (i) the representations and warranties contained herein shall survive until 5:00 p.m. North Carolina time on the date that is twenty-four (24) months following the Closing Date (the date and time of expiration, the "Survival Date"); provided that (A) the Fundamental Representations (other than the representations and warranties contained in Section 4.14 (Taxes)) and the Securityholder Representations shall survive the Closing until 5:00 p.m. Israel time on the date that is forty-eight (48) months following the Closing Date (the "Fundamental Survival Date") and (B) the representations and warranties contained in Section 4.08(k) and Section 4.14 (the "Tax Representations") shall survive the Closing until the date that is ninety (90) days following the expiration of the applicable statute of limitations (taking into account all waivers or extensions thereof) (the "Tax Survival Date"); provided, further, that if a claim or notice with respect to recovery under the indemnification provisions hereof is given in accordance with the terms hereof (x) with respect to any representation or warranty prior to the Survival Date, (y) with respect to any Fundamental Representation or Securityholder Representation, prior to the Fundamental Survival Date or (z) with respect to the Tax Representations, prior to the Tax Survival Date, in each case, the claim shall continue indefinitely until such claim is finally resolved pursuant to the terms of this Article X and (ii) unless otherwise provided herein, all covenants and agreements herein to be performed after the Closing will survive until such covenant or agreement is fully performed or until the termination or expiration of such covenant or agreement in accordance with the terms hereof, the earlier thereof.

(b) Notwithstanding anything to the contrary set forth in Section 10.01(a), in the event of fraud or Willful Breach by the Company of any representation or warranty made by the Company in this Agreement or in any Schedule, statement or certificate delivered by or on behalf of the Company pursuant to this Agreement, such representation or warranty, solely as to such claim for fraud or Willful Breach hereunder, shall survive by the Closing until thirty (30) days after the date on which all statutes of limitation applicable to such claims (as the same may be extended or waived) shall have expired.

(c) The Company and each of the Securityholders agree that the Buyer Indemnified Parties' rights to indemnification, compensation and reimbursement contained in this Article X relating to the representations, warranties, covenants and obligations of the Company or the Securityholders are part of the basis of the bargain contemplated by this Agreement. The Company and each of the Securityholders further agrees that the representations, warranties, covenants and obligations of the Company or the Securityholders, and the rights and remedies that may be exercised by the Buyer Indemnified Parties with respect thereto, shall not be waived, limited or otherwise affected by or as a result of (and the Buyer Indemnified Parties shall be deemed to have relied upon such representations and warranties (including the Disclosure Schedules), covenants or obligations notwithstanding) any information furnished to or any knowledge on the part of any

of the Buyer Indemnified Parties or any of their Representatives (regardless of whether obtained through any investigation by any Buyer Indemnified Party or any Representative of any Buyer Indemnified Party or through disclosure by the Company, any Securityholder or any other Person, and regardless of whether such knowledge was obtained before or after the execution and delivery of this Agreement) or by reason of the fact that a Buyer Indemnified Party or any of its Representatives knew or should have known that any representation or warranty is or might be inaccurate or untrue.

Section 10.02 Indemnification.

(a) Indemnification for Company Matters. From and after the Closing, by virtue of the Equity Purchase and subject to the terms, conditions and limitations of this Article X, the Securityholders shall, severally (in accordance with each Securityholder's applicable Pro Rata Share upon the date of notice of each applicable claim), but not jointly, indemnify and hold harmless Buyer and its directors, officers, employees, Affiliates, agents, successors and assigns (collectively, the "Buyer Indemnified Parties") from and against any and all Damages related to or arising out of or in connection with:

(i) Any breach of, or inaccuracy in, any of the representations or warranties made by the Company in Article IV of this Agreement or in any Schedule or certificate (other than the Consideration Spreadsheet) delivered by or on behalf of the Company pursuant to this Agreement, in each case, as of the date hereof or as of the Closing Date (except in the case of representations and warranties that by their terms speak as of a specific date, which representations and warranties shall be true and correct as of such date) and assuming that all qualifications contained in this Agreement and each such Schedule or certificate as to materiality, including each qualifying reference to the defined term "Company Material Adverse Change" the words "material" and "materially" and all similar phrases and words (excluding the defined term "Material Contract"), were deleted therefrom;

(ii) any breach of or failure to perform on or prior to the Closing any covenant, or agreement made by the Company herein that are required to be performed on or prior to the Closing;

(iii) any Closing Indebtedness or Unpaid Company Transaction Expenses, to the extent not accounted for in the determination of the Aggregate Closing Consideration and paid as of Closing or in the determination of the Adjustment Amount pursuant to Section 3.04(b);

(iv) any fraud on the part of the Company;

(v) any claims by or on behalf of any holder or former holder of Equity Interests of the Company or rights to acquire Equity Interests of the Company (including any claims arising out of or in connection with the Equity Purchase or any of the other transactions contemplated hereby, any claims alleging violations of fiduciary duty by any current or former member of the Company Board or any of the current or former officers of the Company) solely in respect to (A) such Person's ownership or purported ownership of any Equity Interests of the Company or rights to acquire Equity Interests of the Company or (B) solely in respect to the period prior to the Closing, a breach of fiduciary duties with respect to this Agreement, or the transactions contemplated hereby, by either any current or retired member of the Company Board;

(vi) any (A) Taxes of the Company or any of the Company Subsidiaries with respect to any Pre-Closing Tax Period; (B) Taxes of any Securityholder (including capital gains Taxes arising as a result of the transactions contemplated by this Agreement) or any of their Affiliates (excluding the Company and the Company Subsidiaries) for any taxable period for which Buyer, its Affiliates, the Company or any Company Subsidiary is held liable; (C) Taxes for which the Company or any of the Company Subsidiaries (or any predecessor of the foregoing) is held liable by reason of such entity being included in any consolidated, affiliated, combined or unitary group or by reason of being a transferee or successor, in each case, at any time on or before the Closing Date; (D) Taxes imposed on or payable by third parties with respect to which the Company or any of the Company Subsidiaries has an obligation to indemnify such third party pursuant to a transaction consummated on or prior to the Closing; and (E) any withholding Taxes imposed with respect to payments made pursuant to this Agreement or the Equity Interests acquired by Buyer at the Closing (in each case, to the extent not fully withheld by the Payment Agent, 102 Trustee and/or the Escrow Agent upon actual payment to the Securityholder or to the extent not previously withheld in whole or in part by the Company or otherwise not fully or partly paid) for which for which Buyer, its Affiliates, the Company or any Company Subsidiary is held liable; provided, however, that the Securityholders shall have no liability under this Section 10.02(a)(vi) for any Taxes to the extent such Taxes were specifically reflected as a liability in the in the determination of the Aggregate Closing Consideration and paid as of Closing or in the determination of the Adjustment Amount pursuant to Section 3.04(b);

(vii) any inaccuracy in the Consideration Spreadsheet or the failure of the allocation of the Equity Purchase Consideration or Sales Milestone Consideration, in each case, as set forth in the Consideration Spreadsheet to be consistent in all respects with this Agreement and the Organizational Documents of the Company;

(viii) any 341 Legal Proceeding; and

(ix) any amount paid to any service provider as reimbursement and/or as a gross up for Taxes incurred by such service provider with respect to any matter set forth on or required to be set forth on Section 4.04(b)(B) of the Company Disclosure Schedules (clauses (i) through (viii) of this Section 10.02(a) together, the "Company Indemnifiable Matters" and each individually a "Company Indemnifiable Matter"").

(b) Indemnification for Securityholder Matters. From and after the Closing, by virtue of the Equity Purchase and subject to the terms, conditions and limitations of this Article X, each Securityholder shall, severally, but not jointly, with respect to only such Securityholder's representations and warranties in Article V, indemnify and hold harmless the Buyer Indemnified Parties from and against any and all Damages related to or arising out of or in connection with:

(i) Any breach of, or inaccuracy in, any of the representations or warranties made by such Securityholder in Article V of this Agreement or in any Transaction Document delivered by or to which such Securityholder is a party, in each case, as of the date hereof or as of the Closing Date (except in the case of representations and warranties that by their terms speak as of a specific date, which representations and warranties shall be true and correct as of such date) and assuming that all qualifications contained in this Agreement as to materiality, including each qualifying reference to the defined term "Securityholder Material Adverse Change," the words "material" and "materially" and all similar phrases and words, were deleted therefrom;

(ii) any breach of or failure to perform on or prior to the Closing any covenant, or agreement made by such Securityholder herein that are required to be performed on or prior to the Closing; and

(iii) any fraud on the part of such Securityholder or any other fraud or Willful Breach with respect to which such Securityholder had actual knowledge or willingly participated in the commission thereof (clauses (i) through (iii) of this Section 10.02(b) together, the "Securityholder Indemnifiable Matters" and each individually a "Securityholder Indemnifiable Matter").

Section 10.03 Limitations on Liability and Indemnification.

(a) In seeking indemnification for Damages pursuant to Section 10.02(a)(i) of this Agreement, no Buyer Indemnified Party shall make any claim for Damages unless and until the aggregate amount of all such Damages incurred or suffered by the Buyer Indemnified Parties exceeds $500,000 of the Equity Purchase Consideration (the "Deductible"), at which point the Buyer Indemnified Parties may make claims for all Damages in excess of the Deductible; provided that the foregoing limitations set forth in this Section 10.03(a) shall not apply to claims for indemnification pursuant to Section 10.02(a)(i) of this Agreement, in each case, to the extent such claim arises from or is a result of or connected with, any breach of, or inaccuracy in, any Fundamental Representation or the Tax Representation or any fraud by the Company or any of its representatives.

(b) Recovery by a Buyer Indemnified Party for Damages pursuant to Section 10.02(a)(i) shall be satisfied solely from the Indemnity Escrow Fund; provided, however, that the foregoing limitation shall not apply to (i) indemnification for breaches of, or inaccuracies in, the Fundamental Representations or the Tax Representation or (ii) fraud, for which such Buyer Indemnified Party shall have all other rights and remedies available to it to recover any remaining amount directly from the Securityholders; provided, further, that with respect to such matters addressed in clauses (i) and (ii) of this Section 10.03(b), or any other matters specificed under Section 10.02(a), recovery of Damages by a Buyer Indemnified Party from a Securityholder shall be satisfied first from the Pro Rata Share of such Securityholder in the Indemnity Escrow Fund prior to making any direct claim against such Securityholder but such amounts recovered from the Indemnity Escrow Fund will not reduce the amount that the Buyer Indemnified Parties may recover

from such Securityholder with respect to Damages pursuant to Section 10.02(a)(i) which would otherwise be limited to such Securityholder's Pro Rata Share of the Indemnity Escrow Fund. With respect to any claims for indemnification made in respect of an individual Securityholder pursuant to Section 10.02(b), a Buyer Indemnified Party shall first recover Damages from such individual Securityholder's Pro Rata Share of the Indemnity Escrow Fund and thereafter shall recover any remaining amount directly from such individual Securityholder; provided, that any amount recovered from the Indemnity Escrow Fund with respect to claims for indemnification made in respect of an individual Securityholder pursuant to Section 10.02(b) will not reduce the amount that the Buyer Indemnified Parties may recover with respect to Damages pursuant to Section 10.02(a)(i).

(c) Notwithstanding anything to the contrary contained herein (including the provisions of clause (j) below), in no event shall the aggregate liability of a Securityholder for indemnification in accordance with this Article X exceed the aggregate Equity Purchase Consideration actually received by such Securityholder hereunder (including such Securityholder's Pro Rata Share of the Adjustment Escrow Fund and the Indemnity Escrow Fund); provided, however, that the limitations set forth in this Section 10.03(c) shall not apply with respect to a Securityholder in the case of such Securityholder's own fraud or Willful Breach (or any other fraud or Willful Breach with respect to which such Securityholder had actual knowledge or willingly participated in the commission of such fraud or Willful Breach), in which event such Securityholder shall be liable to the Buyer Indemnified Parties for the full amount of Damages resulting from, arising out of or related to such fraud or Willful Breach.

(d) The Buyer Indemnified Parties shall not be entitled to recover any Damages relating to any Company Indemnifiable Matter or Securityholder Indemnifiable Matter arising pursuant to one provision of this Agreement to the extent that the Buyer Indemnified Parties have already recovered the same Damages with respect to such Company Indemnifiable Matter or Securityholder Indemnifiable Matter pursuant to any other provision of this Agreement. Furthermore, the Buyer Indemnified Parties shall not be entitled to recover any Damages relating to any Company Indemnifiable Matter or Securityholder Indemnifiable Matter arising pursuant to this Agreement to the extent that the Buyer Indemnified Parties have already recovered the same Damages with respect to such Company Indemnifiable Matter or Securityholder Indemnifiable Matter pursuant to any other agreement, document, certificate or otherwise, including the Series G SPA.

(e) The Buyer Indemnified Parties shall not be entitled to recover any Damages to the extent that the Damages comprising a claim (or part thereof) with respect to such matter have been included in the calculation of the Closing Working Capital or otherwise already reduced from the Equity Purchase Consideration at the Closing in accordance with the provisions hereof.

(f) Costs and expenses (including attorneys' fees, costs and other expenses incurred in investigating, preparing or defending any applicable claim or Action) shall constitute Damages for which a Buyer Indemnified Party is entitled to indemnification if and solely to the extent that such underlying claim or Action gives rise to Damages for which such Buyer Indemnified Party is entitled to indemnification pursuant to Section 10.02 (without taking into account such costs and expenses).

(g) The amount of Damages payable by any Securityholder under this Article X shall be reduced by (i) any insurance proceeds received from an insurance carrier by any Buyer Indemnified Party with respect thereto (net of costs of enforcement, exclusions, deductibles and retro-premium adjustments actually incurred and reasonable future increased expenses and premiums, in each case, as a result of having made a claim upon insurance coverages) and (ii) indemnity or contribution amounts received from third parties (net of any applicable costs of recovery or collection thereof) (each of the foregoing (i) and (ii) a "Recovery").

(h) If a Buyer Indemnified Party or any of its Subsidiaries receives any Recovery for Damages for which such Buyer Indemnified Party received an indemnity payment, such Buyer Indemnified Party shall promptly pay the applicable Securityholders an amount equal to the amount of such Recovery (to the extent such Recovery is duplicative of the indemnity payment actually received hereunder), less all reasonable, documented, out-of-pocket costs and expenses incurred by such Buyer Indemnified Party in connection with such Recovery, but in no event shall any such payment exceed the amount of such indemnity payment received by such Buyer Indemnified Party or any of its Subsidiaries.

(i) Notwithstanding anything in this Agreement to the contrary (but, for the avoidance of doubt, without limitation of Buyer's rights pursuant to Section 3.06(b)(i) with respect to Continuing Claims) following such time as the Buyer Indemnified Parties are entitled to indemnification for aggregate Damages in excess of the Indemnity Escrow Fund, Buyer may, but shall not be obligated to, set off against any Sales Milestone Consideration that becomes payable pursuant to this Agreement following the final resolution (pursuant to this pursuant to this Article X or otherwise upon the mutual written Agreement of Buyer and the Securityholder Representative) that any Buyer Indemnified Party is entitled to such Damages made in accordance with the provision hereof any such amounts to which the Buyer Indemnified Parties are entitled to indemnification pursuant to this Article X, applying such amounts in satisfaction, to the extent of such amount, of such owed amounts. Buyer's set off right under this Section 10.03(i) is referred to as the "Set Off Right").

(j) Absent fraud or Willful Breach, the indemnification provisions contained in this Article X are the sole and exclusive remedy following the Closing as to all Damages (and any other damages, claims or causes of action of any kind or nature) any Buyer Indemnified Party may incur arising from or relating to this Agreement (it being understood that nothing in this Section 10.03(j) or elsewhere in this Agreement shall affect the parties' rights to specific performance or other equitable remedies with respect to the covenants referred to in this Agreement or to be performed after the Closing or any rights or remedies arising out of claims Buyer may have under any Transaction Document including the Transmittal Materials delivered pursuant to Section 3.05). Notwithstanding anything to the contrary set forth in this Agreement, Buyer may recover from the Indemnity Escrow Fund any Damages which are suffered or incurred by any of the Buyer Indemnified Parties or to which any of the Buyer Indemnified Parties may otherwise become subject (regardless of whether or not such Damages relate to any third-party claim) and which arise from or as a result of, or are connected with any fraud or Willful Breach by the Company or any of its Representatives (regardless of whether such actions have been authorized).

(k) Notwithstanding anything to the contrary contained herein, prior to the exercise of the Put Option or the Call Option: (i) in no event shall a Securityholder be liable for any breach of this Agreement by the Company or any other Securityholder; (ii) in no event shall the Company's aggregate liability hereunder exceed, when aggregated with any indemnification sought from the Company under the Series G SPA, the maximal amount of indemnification payable by the Company pursuant to the Series G SPA; and (iii) in no event shall the aggregate liability hereunder of any Securityholder for any breach of its own representations, warranties and/or covenants exceed such Securityholder's Pro Rata Share (as calculated with respect to the Aggregate Closing Consideration hereunder) of the investment amounts actually disbursed to the Company pursuant to the Series G SPA.

Section 10.04 Claims and Procedures.

(a) If Buyer determines in good faith that any Buyer Indemnified Party has a bona fide claim for indemnification pursuant to this Article X, Buyer may deliver to the Securityholder Representative a certificate signed by any officer of Buyer (any certificate delivered in accordance with the provisions of this Section 10.04(a) an "Officer's Claim Certificate"):

(i) stating that a Buyer Indemnified Party has a claim for indemnification pursuant to this Article X;

(ii) to the extent reasonably practicable, containing a good faith non-binding, preliminary estimate of the amount to which such Buyer Indemnified Party claims to be entitled to receive, which shall be the amount of Damages such Buyer Indemnified Party claims to have so incurred or suffered or could reasonably be expected to incur or suffer, and the method of computation of the amount of such claim; and

(iii) specifying in reasonable detail (based upon the information then possessed by Buyer following reasonable inquiry) the material facts known to the Buyer Indemnified Party giving rise to such claim. Buyer shall also provide such other information then possessed by Buyer with respect to such claim for indemnification as the Securityholder Representative may reasonably request.

No delay in providing such Officer's Claim Certificate shall affect a Buyer Indemnified Party's rights hereunder, unless (and then only to the extent that) the Securityholders are actually and materially prejudiced thereby.

(b) At the time of delivery of any Officer's Claim Certificate to the Securityholder Representative, a duplicate copy of such Officer's Claim Certificate shall be delivered to the Escrow Agent by or on behalf of Buyer (on behalf of itself or any other Buyer Indemnified Party).

(c) If the Securityholder Representative in good faith objects to any claim made by Buyer in any Officer's Claim Certificate, then the Securityholder Representative shall deliver a written notice (a "Claim Dispute Notice") to Buyer during the thirty (30)-day period commencing upon receipt by the Securityholder Representative of the Officer's Claim Certificate. The Claim Dispute Notice shall set forth in reasonable detail the principal basis for the dispute of any claim made by Buyer in the Officer's Claim Certificate. If the Securityholder Representative does not deliver a Claim Dispute Notice to Buyer prior to the expiration of such thirty (30)-day period, then (i) each claim for indemnification set forth in such Officer's Claim Certificate shall be deemed to have been conclusively determined in Buyer's favor for purposes of this Article X on the terms set forth in the Officer's Claim Certificate and (ii) if cash remains in the Indemnity Escrow Fund, then Buyer shall direct the Escrow Agent to deliver cash from the Indemnity Escrow Fund to Buyer in accordance with this Section 10.04.

(d) If the Securityholder Representative delivers a Claim Dispute Notice, then Buyer and the Securityholder Representative shall attempt in good faith to resolve any such objections raised by the Securityholder Representative in such Claim Dispute Notice. If Buyer and the Securityholder Representative agree to a resolution of such objection (subject, inter alia, to Section 11.01(b)(ii)), then a memorandum setting forth the matters conclusively determined by Buyer and the Securityholder Representative shall be prepared and signed by both parties and, if cash remains in the Indemnity Escrow Fund, promptly delivered to the Escrow Agent directing the Escrow Agent to distribute cash from the Indemnity Escrow Fund in accordance with the terms of such memorandum.

(e) If no such resolution can be reached during the forty-five (45)-day period following Buyer's receipt of a given Claim Dispute Notice, then upon the expiration of such forty-five (45)-day period, either Buyer or the Securityholder Representative may bring suit to resolve the objection in accordance with Section 11.07; provided, however, that, to the extent any amount remains in the Indemnity Escrow Fund or any portion of the Sales Milestone Consideration has been withheld pursuant to Section 3.06(b)(i), unless Buyer initiates an Action with respect to the claim in such Officer's Claim Certificate (whether a third party Claim or otherwise) within one hundred twenty (120) days following Buyer's receipt of such Claim Dispute Notice, such claim shall be deemed to have been conclusively determined in the Securityholder Representative's favor for purposes of this Article X on the terms set forth in the Claim Dispute Notice. The decision of the trial court as to the validity and amount of any claim in such Officer's Claim Certificate shall be nonappealable, binding and conclusive upon Buyer, the Securityholder Representative and the Securityholders, and Buyer and the Securityholder Representative shall promptly direct the Escrow Agent to act in accordance with such decision and distribute cash from the Indemnity Escrow Fund in accordance therewith. Judgment upon any award rendered by the trial court may be entered in any court having jurisdiction.

(f) Notwithstanding anything to the contrary in this Section 10.04, in the event that a Buyer Indemnified Party brings a claim for indemnification under Section 10.02(b) and such claim relates to the breach of a representation or warranty or covenants by one Securityholder (a "Solo Securityholder Claim"), then, solely for purposes of this Article X, (i) only the Securityholder that is subject to such Solo Securityholder Claim (the "Solo Securityholder") shall be required to provide indemnification pursuant this Article X, and (ii) the Solo Securityholder shall serve the role of Securityholder Representative for purposes of the Solo Securityholder Claim under this Article X, *mutatis mutandis* (all of the foregoing, without derogating from any other provision of this Article X which shall apply *mutatis mutandis*), provided that the Securityholder Representative shall be provided with a copy of any notices, certificates, memoranda or other documents or instruments delivered or exchanged between Buyer and the Solo Securityholder under or in connection with this Article X. For the avoidance of doubt and notwithstanding anything else herein to the contrary, no Securityholder shall be liable for any breach of this Agreement by any other Securityholder.

Section 10.05 Indemnity Escrow Release Procedures.

(a) Neither the Indemnity Escrow Fund nor any beneficial interest therein may be pledged, subjected to any Encumbrance, sold, assigned or transferred by any Securityholder, or be taken or reached by any legal or equitable process in satisfaction of any debt or other Liability of any Securityholder, in each case prior to the distribution of the Indemnity Escrow Fund to any Securityholder in accordance with this Section 10.05.

(b) Buyer shall be entitled to permanently retain from the Indemnity Escrow Fund in respect of finally determined Damages for which the Buyer Indemnified Parties are entitled to recover pursuant to this Article X, an amount in cash equal to the aggregate amount of such Damages (less any amount of such Damages with respect to which Buyer has exercised the Set Off Right).

(c) Promptly after the Survival Date, Buyer will notify the Securityholder Representative in writing of the amount, if any, that Buyer determines in good faith to be necessary to satisfy all claims for indemnification, compensation or reimbursement that have been asserted, but not resolved on or prior to 11:59 p.m. Israel time on the Survival Date (each such claim a "Continuing Claim" and such amount, the "Retained Escrow Amount"). Subject to Section 10.05(e), within five (5) Business Days following the Survival Date, Buyer and the Securityholder Representative shall execute and deliver joint written instructions to the Escrow Agent instructing the Escrow Agent to release from the Indemnity Escrow Fund to the Payment Agent for distribution to the Securityholders an amount in the aggregate equal to (i) the amount held in the Indemnity Escrow Fund as of the Survival Date (as reduced from time to time pursuant to the terms of this Agreement) *minus* (ii) the Retained Escrow Amount, with each Securityholder to receive a portion thereof equal to the product obtained by multiplying (A) the amount to be so released by (B) such Securityholder's Pro Rata Share (which may be reduced on account of Solo Securityholder Claims that are satisfied from the Indemnity Escrow Fund pursuant to Section 10.04(f) as shall be directed by the Securityholder Representative).

(d) Following the Survival Date, after resolution and payment of a Continuing Claim, (i) Buyer and the Securityholder Representative shall, subject to Section 10.05(e), execute and deliver joint written instructions to the Escrow Agent instructing the Escrow Agent to release from the Indemnity Escrow Fund to the Payment Agent for distribution to the Securityholders an amount in the aggregate equal to (x) the amount held in the Indemnity Escrow Fund as of the date of such resolution and payment *minus* (y) the amounts that Buyer determines in good faith to be necessary to satisfy any other Continuing Claims (which amounts will continue to be held in the Indemnity Escrow Fund) and (ii) cause any portion of the Sales Milestone Consideration withheld pursuant to Section 3.06(b)(i) to be paid to the Securityholders, in each case, with each Securityholder to receive a portion thereof equal to the product obtained by multiplying (A) the amount to be so released by (B) such Securityholder's Pro Rata Share (which may be reduced on account of Solo Securityholder Claims that are satisfied from the Indemnity Escrow Fund pursuant to Section 10.04(f) as shall be directed by the Securityholder Representative).

(e) With respect to any amount to be released from the Indemnity Escrow Fund to the Payment Agent for distribution to the Securityholders pursuant to this Section 10.05 or the Escrow Agreement:

(i) if any Securityholder is required to but has not executed and delivered Transmittal Materials, Certificates or Derivative Instruments, in each case in accordance with Section 3.05, prior to the delivery to the Escrow Agent of the applicable joint written instructions, then any amount that would otherwise be released to such Securityholder shall be held by the Payment Agent, without interest, until such holder satisfies all of such Securityholder's applicable obligations pursuant to Section 3.05;

(ii) amounts to be released from the Indemnity Escrow Fund to be distributed to each Securityholder shall be deemed to be the product of (A) the aggregate amount to be released from the Indemnity Escrow Fund to the Securityholders *multiplied by* (B) each Securityholder's Pro Rata Share (subject to the provisions of Section 10.05(c) and Section 10.05(d));

(iii) each distribution to be made from the Indemnity Escrow Fund to a particular Securityholder shall be effected in accordance with the payment delivery instructions set forth in such Securityholder's Transmittal Materials; and

(iv) all written instructions to be delivered to the Escrow Agent with respect to any distribution from the Indemnity Escrow Fund shall be consistent with this Section 10.05 and the Escrow Agreement.

Section 10.06 Defense of Third-Party Claims. Except as otherwise provided in Section 7.12, in the event of the assertion of any claim or the commencement by any Person of any Action against a Buyer Indemnified Party with respect to which any of the Securityholders may become obligated to hold harmless, indemnify, compensate or reimburse any Buyer Indemnified Party pursuant to this Article X (each, a "Claim"), Buyer will, promptly after receipt of notice of any such Claim, notify the Securityholder Representative of the commencement thereof; provided, however, that any failure on the part of Buyer to so notify the Securityholder Representative shall not limit any of the obligations of the Securityholders under this Article X (except to the extent such failure actually and materially prejudices the defense of such Claim or otherwise actually and materially prejudices the Securityholders). Buyer shall have the right, at its election, to proceed with, and to control, the defense of such Claim on its own; provided, that the Securityholder Representative shall be entitled to participate in (but not control the conduct of) the defense of such Claim and to employ counsel of its choice for such purpose, in a manner that would not result in the loss of any attorney-client privilege, attorney work product privilege or any other legal privilege; provided further, that the fees and expenses of such separate counsel shall be borne by the Securityholders. Notwithstanding the foregoing, if Buyer shall have determined in good faith, and upon advice of counsel, that an actual conflict of interest makes representation of the indemnifying Securityholders and the Buyer Indemnified Party by the same counsel inappropriate (if such mutual representation is applicable), then the Securityholder Representative shall, upon notice from Buyer, engage separate counsel (and, for the avoidance of doubt, the fees and expenses of such separate counsel shall be borne by the Securityholders). If Buyer so proceeds with the defense of such Claim, the Securityholder Representative shall, and shall use reasonable best

efforts to cause each Securityholder to, make available to Buyer any documents and materials in such Person's possession or control that may be reasonably necessary to the defense of such Claim. If Buyer does not assume the defense of such Claim, the Securityholder Representative shall have the right to assume, defend and control such claim and Buyer shall, and shall use reasonable best efforts to cause each Buyer Indemnified Party to, make available to the Securityholder Representative any documents and materials in Buyer's possession or control that may be reasonably necessary to the defense of such Claim. The Party assuming the defense of such Claim shall provide the other Party with updates and information regarding the proceedings, and will give the other Party written notice of its intention to settle any such Claim at least ten (10) days prior to the settlement of any such Claim. The Party assuming the defense of any such Claim will not settle any Claim without the consent of the other Party (which shall not be unreasonably withheld, conditioned or delayed); provided, for the avoidance of doubt, that in the event that a Party has consented to any such settlement (such consent not to be unreasonably withheld, conditioned or delayed), such Party (and the Securityholders to the extent such consenting Party is the Securityholder Representative) shall have no power or authority to object to such Claim and the payment of Damages in respect thereof; provided, further, that the Securityholder Representative (if the Party assuming the defense of any such Claim) shall be entitled to settle such Claim without the consent of Buyer, and otherwise shall have the right to request Buyer to settle such Claim, to the extent that (a) such settlement is on exclusively monetary terms which are entirely recovered from the amounts then remaining in the Indemnity Escrow Fund or from offset of the Sales Milestone Consideration which is then due and payable to the Securityholders and not, for the avoidance of doubt, being withheld pursuant to Section 3.06(b)(i) on account of any Continuing Claims unrelated to such settled Claim, (b) the terms of such settlement do not involve any finding or admission of any violation of Law or admission of wrongdoing, and (c) the terms of such settlement provide for a full and unconditional release of Buyer and its Affiliates (including the Company) from all liability with respect to such Claim.

Section 10.07 Characterization of Indemnification Payments. To the extent permitted under applicable Tax law, any amount paid pursuant to this Article X shall be treated as an adjustment to the Aggregate Consideration for all Tax purposes.

ARTICLE XI.

MISCELLANEOUS

Section 11.01 Appointment of Securityholder Representative.

(a) Each of the Securityholders, by virtue of the execution of this Agreement or a Joinder Agreement irrevocably designates and appoints, as of the date hereof, Elron Electronic Industries Ltd., an Israeli public company, as, and Elron Electronic Industries Ltd. hereby irrevocably accepts the designation as and agrees to be, the representative of the Securityholders as described in this Section 11.01 and elsewhere in this Agreement (in such capacity, the "Securityholder Representative").

(b) Powers of the Securityholder Representative. The Securityholder Representative is designated as the attorney-in-fact and agent for and on behalf of the Securityholders (in their capacity as such), to act on behalf of the Securityholders in any Action involving this Agreement, to do or refrain from doing all such further acts and things, and to execute all such documents as the Securityholder Representative shall deem necessary or appropriate in connection with the transactions contemplated by this Agreement, including the power:

(i) to act for the Securityholders with respect to the post-Closing adjustments contemplated by Section 3.04;

(ii) to act for the Securityholders with regard to matters pertaining to indemnification referred to in this Agreement, including the power to compromise or settle any indemnity claim on behalf of the Securityholders and to transact matters of litigation or other Actions;

(iii) to direct (A) the Payment Agent to disburse any portion of the amount paid to the Payment Agent and (B) the Escrow Agent to disburse any portion of the Indemnity Escrow Fund, in each case of (A) and (B), that is payable to Buyer, any Buyer Indemnified Party or the Securityholders in accordance with this Agreement, the Consideration Spreadsheet and the Transaction Documents;

(iv) to execute and deliver all amendments, waivers, ancillary agreements, stock powers, certificates and documents that the Securityholder Representative deems necessary or appropriate in connection with the consummation of the transactions contemplated by this Agreement;

(v) to execute and deliver all amendments and waivers to this Agreement that the Securityholder Representative deems necessary or appropriate, whether prior to, at or after the Closing;

(vi) to receive funds for the payment of expenses of the Securityholders and apply such funds in payment for such expenses;

(vii) to do or refrain from doing any further act or deed on behalf of the Securityholders that the Securityholder Representative deems necessary or appropriate in its sole discretion relating to the subject matter of this Agreement as fully and completely as the Securityholders could do if personally present, including to give or receive any notice or instruction permitted or required under, and pursuant to any limitations in, this Agreement, the Escrow Agreement, or any other agreement, document or instrument entered into or executed in connection herewith, to be given or received by any Securityholder, and each of them (other than notice for service of process relating to any Action before a court or other tribunal of competent jurisdiction, which notice must be given to each Securityholder individually, as applicable), and to take any and all action for and on behalf of Securityholder, and each of them, under and pursuant to this Agreement, the Escrow Agreement or any other such agreement, document or instrument; and

(viii) to grant, provide, negotiate and sign all waivers, consents, instructions and authorizations and to take all other actions called for under or contemplated by or that may otherwise be deemed by the Securityholder Representative, in its sole and absolute discretion, to be necessary or appropriate in connection with any terms and conditions of this Agreement or the Escrow Agreement providing rights or benefits to the Buyer Indemnified Parties (other than the payment of the Aggregate Consideration in accordance with the terms hereof and in the manner provided herein);

(ix) to consult with legal counsel, independent public accountants and other experts selected by it, solely at the cost and expense of the Securityholders; and

(x) to receive service of process in connection with any claims under this Agreement.

Notwithstanding the foregoing or anything to the contrary set forth herein or in any other Transaction Document, nothing herein or in any other Transaction Document shall authorize or empower the Securityholder Representative to (A) instruct the Payment Agent or the Escrow Agent in any manner whatsoever other than by a joint written instruction executed by the Securityholder Representative and Buyer or (B) exercise any authority conferred by this Section 11.01 (1) in a manner that improperly discriminates between or among the Securityholders, or (2) as to the handling and settlement of any indemnification claim, insofar as such indemnification claim relates solely and exclusively to a Solo Securityholder which shall be handled in accordance with the provisions of Section 10.04(f). Without implying that other actions would constitute an improper discrimination, each of the Securityholders agrees that discrimination between or among Securityholders solely on the basis of the respective number of Shares, Company Warrants and/or Company Options or their respective Pro Rata Share, or a reduction of any such Securityholder's Pro Rata Share of the Indemnity Escrow Fund based on the resolution of claims against a Solo Securityholder, shall not be deemed to be improper.

(c) Reimbursement and Liability of Securityholder Representative.

(i) The Securityholder Representative will incur no liability to the Securityholders with respect to any action taken or suffered by the Securityholder Representative in reliance upon any notice, direction, instruction, consent, statement or other document believed by the Securityholder Representative to be genuine and to have been signed by the proper person (and the Securityholder Representative shall have no responsibility to determine the authenticity thereof), nor for any action or inaction, except its own gross negligence or willful misconduct. The Securityholder Representative shall have no responsibility or liability for any loss of principal of the Securityholder Expense Fund other than as a result of its gross negligence or willful misconduct.

(ii) The Securityholders shall be bound by all actions taken and documents executed by the Securityholder Representative in connection with the exercise of its powers and authority as the Securityholder Representative, and Buyer and any other Person may conclusively and absolutely rely, without inquiry, upon any action of the Securityholder Representative in all matters referred to herein.

(iii) The Securityholder Representative shall act for the Securityholders on all of the matters set forth in this Agreement in the manner the Securityholder Representative believes to be in the best interest of the Securityholders and consistent with the obligations under this Agreement, but the Securityholder Representative shall not be responsible to the Securityholders for any Damages the Securityholders may suffer by the performance of its duties under this Agreement, other than Damages arising from willful violation of the law or gross negligence in the performance of the duties of the Securityholder Representative under this Agreement.

(iv) The Securityholders will indemnify, defend and hold harmless the Securityholder Representative from and against any and all losses, Liabilities, damages, claims, penalties, fines, forfeitures, actions, fees, costs and expenses (including the reasonable, documented out-of-pocket fees and expenses of counsel and experts and their staffs and relating to document location, duplication and shipment) (collectively, "Representative Losses") arising out of or in connection with the Securityholder Representative's execution and performance of this Agreement and any agreements ancillary hereto, in each case as such Representative Loss is suffered or incurred; provided that in the event that any such Representative Loss is finally adjudicated to have been directly caused by the fraud, gross negligence or willful misconduct of the Securityholder Representative, the Securityholder Representative will reimburse the Securityholders the amount of such indemnified Representative Loss to the extent attributable to such fraud, gross negligence or willful misconduct.

(d) If not paid directly to the Securityholder Representative by the Securityholders, any such Representative Losses may be recovered by the Securityholder Representative from (i) the funds in the Securityholder Expense Fund at such time as remaining amounts would otherwise be distributable to the Securityholders, and (ii) to the extent that the Securityholder Expense Fund has been exhausted in full, any portion of the Adjustment Escrow Fund, the Indemnity Escrow Fund or any portion of the Aggregate Consideration payable to Securityholders following the Closing, in each case, actually payable to the Securityholders (in each case, solely to the extent and at such times as any such amounts are actually payable to the Securityholders in accordance with Section 3.04(b), Section 3.06 or Section 10.05(e), as applicable), in each case, with respect to each Securityholder on a several and not joint basis and in accordance with each Securityholder's Pro Rata Share of such Representative Losses; provided, that while this section allows the Securityholder Representative to be paid from the aforementioned sources of funds, this does not relieve the Securityholders from their obligation to promptly pay such Representative Losses as they are suffered or incurred, nor does it prevent the Securityholder Representative from seeking any remedies available to it at law or otherwise. In no event will the Securityholder Representative be required to advance its own funds on behalf of the Securityholders or otherwise. Notwithstanding anything in this Agreement to the contrary, any restrictions or limitations on liability or indemnification obligations of, or provisions limiting the recourse against non-parties otherwise applicable to, the Securityholders set forth elsewhere in this Agreement are not intended to be applicable to the indemnities provided to the Securityholder Representative under this Section 11.01(d). The foregoing indemnities will survive the Closing or the resignation or removal of the Securityholder Representative or the termination of this Agreement.

(e) The Securityholder Representative shall not be liable to the Company or its Affiliates or Buyer or any Buyer Entity, in its capacity as the Securityholder Representative, for any liability of a Securityholder or otherwise. The Securityholder Representative shall be relieved of any liability hereunder, in all questions arising in respect of any matter under this Agreement and/or any other Transaction Agreements. Except as expressly provided herein, the Securityholder Representative will not be required to take any action involving any expense unless the payment of such expense is made or provided for in a manner satisfactory to the Securityholder Representative.

(f) The Securityholder Representative shall use the Securityholder Expense Fund to pay any expenses incurred by the Securityholder Representative in fulfilling its obligations hereunder and shall distribute any remaining balance of the Securityholder Expense Fund to the Payment Agent upon completion by the Securityholder Representative of its duties hereunder. Any such distributions from the Securityholder Expense Fund shall be paid to the Securityholders, with equal priority and pro rata based on each such Securityholder's Pro Rata Share of the Securityholder Expense Fund, up to the total amount such Securityholder originally deposited in the Securityholder Expense Fund.

(g) No resignation of the Securityholder Representative shall become effective unless at least thirty (30) days' prior written notice of the replacement or resignation of such Securityholder Representative (in its discretion) shall have been provided to each Securityholder, Buyer, the Payment Agent and the Escrow Agent. Buyer and its Affiliates (including, after the Closing, the Company), the Payment Agent and the Escrow Agent shall be entitled to rely at any time after receipt of any such notice on the most recent notice so received. The Securityholders holding at least a majority of the interest in the Indemnity Escrow Fund at any time may remove the Securityholder Representative by a written instrument delivered to the Securityholder Representative, Buyer, the Company, the Payment Agent and the Escrow Agent and, in such event and also if the Securityholder Representative shall have resigned, its successor who shall serve and exercise the powers of the Securityholder Representative hereunder shall be appointed by a written instrument signed by Securityholders holding at least a majority of the interest in the Indemnity Escrow Fund at such time and delivered to Buyer, the Payment Agent and the Escrow Agent.

(h) Notices. Except to the extent that this Agreement requires that a notice be made to a Securityholder (and specifically with respect to a Solo Securityholder), any notice given by Buyer to the Securityholder Representative will constitute notice to each and all of the Securityholders at the time notice is given to the Securityholder Representative. Any action taken by, or notice or instruction received from, the Securityholder Representative will be deemed to be action by, or notice or instruction from, each and all of the Securityholders. Except as otherwise contained herein (and specifically with respect to a Solo Securityholder), Buyer and the Company may, and the Escrow Agent and the Payment Agent will, disregard any notice or instruction received from any one or more individual Securityholders.

Section 11.02 Expenses. Except as otherwise expressly provided herein, all costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated by this Agreement shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred.

Section 11.03 Notices. All notices, requests and other communications required or permitted under, or otherwise made in connection with, this Agreement, shall be in writing and shall be deemed to have been duly given (a) when delivered in person, (b) when transmitted by electronic mail (in which case effectiveness shall be the earlier of (i) upon confirmation of receipt (excluding out-of-office or other similar automated replies) or (ii) in the event that confirmation

of receipt is not delivered, if such electronic mail is sent prior to 5:00 p.m. Israel time on a Business Day, on such Business Day, and if such electronic mail is sent on or after 5:00 p.m. Israel time on a Business Day or sent not on a Business Day, the next Business Day), (c) upon receipt after dispatch by registered or certified mail, postage prepaid or (d) on the next Business Day if transmitted by national overnight courier (with confirmation of delivery), in each case, addressed as follows:

If to the Company:	CartiHeal (2009) Ltd. 17 Atir Yeda St. Kfar Saba 4464313, Israel Attention: Email: with a copy (which shall not constitute notice) to: Shibolet & Co., Law Firm 4 Berkowitz St., Tel-Aviv 6423806, Israel Attention: Email:
If to the Securityholders:	to the Securityholder Representative
If to the Securityholder Representative:	Elron Electronic Industries Ltd. ToHa Tower, 114 Yigal Alon St., 27th floor, Tel-Aviv 6744320, Israel Attention: Email: with a copy (which shall not constitute notice) to: Weinberg&Co. Law Office 9 Jabotinsky 31st Floor Hachsharat Hayishuv Tower Bnei Brak, 5126417, Israel Attention: Email:

If to Buyer:

Bioventus LLC
4721 Emperor Boulevard, Ste. 100
Durham, North Carolina 27703
Attention:
Email:

with a copy (which shall not constitute notice) to:

Latham & Watkins LLP
650 Town Center Drive, 20th Floor
Costa Mesa, California 92626
Facsimile: (714) 540-1235
Attention:
Email:

and with a copy (which shall not constitute notice) to:

Yigal Arnon & Co.
22 Rivlin Street
Jerusalem 9424018, Israel
Attention:
Email:

Section 11.04 Entire Agreement; Severability; Amendments and Waivers.

This Agreement, the Transaction Documents and the Confidentiality Agreement (with respect to Buyer and the Company only) constitute the entire agreement between the Parties with respect to the subject matter of this Agreement and supersede all prior agreements and understandings, both oral and written, between the Parties with respect to the subject matter of this Agreement.

(a) If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other Governmental Entity to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such a determination, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

(b) Subject to applicable Law, any provision of this Agreement may be amended, supplemented or modified by written instrument making specific reference to this Agreement and signed by the Company, Buyer and the Securityholder Representative, and any provision hereof may be waived by the Party against whom the waiver is to be effective. For purposes of this Section 11.04(b), the Securityholders agree that any amendment of this Agreement, and any waiver of any provision hereof, as to which the Securityholder Representative has given its written consent shall be binding upon and effective against the Securityholders whether or not they have signed such amendment, supplement or modification or any document with respect to such waiver.

(c) No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by applicable Law.

Section 11.05 Successors and Assigns.

(a) This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns. None of the Parties may assign this Agreement or its rights, interests or obligations hereunder (whether by operation of law or otherwise) without the prior written consent of Buyer and Securityholder Representative, and any purported assignment without such prior written consent shall be null and void *ab initio*; provided that, prior to the Closing, Buyer may, without the prior written consent of the Securityholder Representative, assign all or any portion of its rights and obligations under this Agreement to one or more of Buyer's direct or indirect wholly owned Subsidiaries (who, upon such assignment, shall be entitled to such rights and liable for such obligations). No assignment shall relieve the assigning Party of any of its obligations hereunder.

(b) To the extent Buyer consummates Buyer Fundamental Change, (i) cause written notice of such transaction to be provided to (x) the Company (if such transaction is consummated prior to the Closing) or (y) the Securityholder Representative (if such transaction is consummated following the Closing), in each case at least five (5) calendar days prior to the closing of such transaction and (ii) cause the successor-in-interest of Buyer in such transaction to assume in writing all of Buyer's obligations set forth in this Agreement (and for the avoidance of doubt, following any such Buyer Fundamental Change, any references to Buyer's financial statements shall be deemed a reference to the new successor entity's financial statements, and any reference to a Buyer Entity shall be deemed to refer to any controlled Affiliate of such new successor entity).

Section 11.06 No Third-Party Beneficiaries. Except to the extent set forth in Section 7.13, and for Securityholders nothing in this Agreement or the other Transaction Documents, express or implied, is intended to confer upon any Person other than Buyer, the Company, the Securityholder Representative, the Major Securityholders and the Buyer Indemnified Parties and their respective successors, legal representatives and permitted assigns, any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement.

Section 11.07 Governing Law; Jurisdiction; Waiver of Jury Trial.

(a) THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF DELAWARE WITHOUT REGARD TO THE LAW THEREOF THAT MIGHT OTHERWISE GOVERN UNDER APPLICABLE PRINCIPLES OF CONFLICTS OF LAW; PROVIDED, THAT MATTERS INVOLVING THE CORPORATE MATTERS OF THE COMPANY, INCLUDING WITHOUT LIMITATION, TRANSFER OF SHARES AND THE BRING-ALONG MECHANISM, SHALL BE

GOVERNED BY THE LAWS THE STATE OF ISRAEL APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY IN OF THE STATE OF ISRAEL. Each Party, for itself and its successors and assigns, irrevocably agrees that it shall bring any Action in respect of any claim arising out of or related to this Agreement or the transactions contemplated by this Agreement, only in the Delaware Court of Chancery of the State of Delaware (or in the event, but only in the event, that such court does not have subject matter jurisdiction over such Action, in the United States District Court for the District of Delaware) (the "Chosen Courts"); provided, that with respect to Section 341 Legal Proceedings, "Chosen Courts" shall mean a court of competent jurisdiction in Tel Aviv, Israel.

(b) PARTIES HERETO AGREE THAT ANY ACTION SEEKING TO ENFORCE ANY PROVISION OF, OR BASED ON ANY MATTER ARISING OUT OF OR IN CONNECTION WITH, THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE BROUGHT IN ANY FEDERAL COURT LOCATED IN THE STATE OF DELAWARE OR ANY DELAWARE STATE COURT, AND EACH OF THE PARTIES HEREBY IRREVOCABLY CONSENTS TO THE JURISDICTION OF SUCH COURTS (AND OF THE APPROPRIATE APPELLATE COURTS THEREFROM) IN ANY SUCH ACTION AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH ACTION IN ANY SUCH COURT OR THAT ANY SUCH ACTION BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. PROCESS IN ANY SUCH ACTION MAY BE SERVED ON ANY PARTY ANYWHERE IN THE WORLD, WHETHER WITHIN OR WITHOUT THE JURISDICTION OF ANY SUCH COURT. WITHOUT LIMITING THE FOREGOING, EACH PARTY AGREES THAT SERVICE OF PROCESS ON SUCH PARTY AS PROVIDED IN SECTION 11.03 SHALL BE DEEMED EFFECTIVE SERVICE OF PROCESS ON SUCH PARTY.

(c) TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW THAT CANNOT BE WAIVED, EACH PARTY HEREBY WAIVES AND COVENANTS THAT IT WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE) ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE TRANSACTION DOCUMENTS OR THE SUBJECT MATTER HEREOF OR THEREOF OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF AN ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY AND (D) SUCH PARTY HAS BEEN INFORMED BY THE OTHER PARTIES THAT THIS SECTION 11.07(b) CONSTITUTES A MATERIAL INDUCEMENT UPON WHICH THEY ARE RELYING AND WILL RELY IN ENTERING INTO THIS AGREEMENT. ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 11.07(b) WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF EACH SUCH PARTY TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

(d) Each of Buyer, the Company and the Securityholder Representative acknowledge and agree that inherent in all contracts governed by the law of the State of Delaware is an implied covenant of good faith and fair dealing.

Section 11.08 Arbitration. Notwithstanding any other provision herein to the contrary, the parties hereto understand and agree that all Section 3.06(b) Disputes shall be resolved by final, binding, nonjudicial arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce pursuant to the following procedures:

(a) The Company (if the Section 3.06(b) Dispute is prior to the Closing), the Securityholder Representative (if the Section 3.06(b) Dispute is after the Closing) or Buyer may send another party or parties written notice identifying the Section 3.06(b) Dispute at issue and invoking the procedures of this Section 11.08 thereby demanding confidential arbitration conducted by three independent arbitrators, one selected by the Company (if the Section 3.06(b) Dispute is prior to the Closing) or the Securityholder Representative (if the Section 3.06(b) Dispute is after the Closing), one selected by Buyer, and the third (who must be independent of the parties hereto) selected jointly by the two arbitrators previously so selected. All arbitrators must be appointed in accordance with the Rules of Arbitration of the International Chamber of Commerce. The arbitrators shall set a limited time period and establish procedures designed to reduce the cost and time for discovery of information relating to any Section 3.06(b) Dispute and allow a decision to be reached within thirty (30) calendar days while also allowing the parties an opportunity, adequate as determined in the sole judgment of the arbitrators, to discover relevant information from the opposing parties about the subject matter of the Section 3.06(b) Dispute. The arbitrators shall rule upon motions to compel, limit or allow discovery as they shall deem appropriate given the nature and extent of the disputed claim. The arbitrators shall also have the authority to impose sanctions, including attorneys' fees and other costs incurred by the parties, to the same extent as a court of law or equity, if the arbitrators determine that discovery was sought without substantial justification or that discovery was refused or objected to by a party without substantial justification. The decision of a majority of the three arbitrators shall be binding and conclusive upon the parties to this Agreement, and, notwithstanding anything to the contrary in this Agreement. Such decision shall be written and shall be supported by written findings of fact and conclusions of law regarding the Section 3.06(b) Dispute, which shall set forth the award, judgment, decree or order of the arbitrators.

(b) Judgment upon any award, judgment, decree or order rendered by the arbitrators may be entered in any court having competent jurisdiction. Any such arbitration shall be held in New York, New York under the Rules of Arbitration of the International Chamber of Commerce then currently in effect and the language of arbitration shall be English. The non-prevailing party to any arbitration under this Section 11.08 shall pay its own expenses, the fees of each arbitrator, the administrative costs of the arbitration and the expenses, including reasonable attorneys' fees and costs, incurred by the other party to the arbitration. The parties shall maintain the confidential nature of the arbitration proceeding and any award, judgment, decree or order rendered by the arbitrators, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award, judgment, decree or order rendered by the arbitrators or its enforcement, or unless otherwise required by Law or judicial decision.

Section 11.09 Remedies Cumulative; Specific Performance. Subject to Section 9.03 and Section 10.03(g), the rights and remedies of the Parties hereto shall be cumulative and not exclusive of any rights or remedies provided by applicable Law. The Parties hereto agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement or to enforce specifically the performance of the terms and provisions of this Agreement in addition to any other remedy to which they are entitled to at law or in equity, in each case without the requirement of posting any bond or other type of security.

Section 11.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Section 11.11 Consent to Representation. If the Securityholder Representative so desires, acting on behalf of the Securityholders and without the need for any consent or waiver by the Company, Buyer or any other Person, Shibolet & Co. ("Shibolet") and White & Case LLP ("W&C") shall be permitted to represent the Securityholders (or any of them) after the Closing in connection with any matter, including any matter related to the transactions contemplated hereby, any Transaction Documents or any disagreement or dispute relating thereto. Without limiting the generality of the foregoing, after the Closing, Shibolet and W&C shall be permitted to represent the Securityholders, any of their agents and Affiliates, or any one or more of them, in connection with any negotiation, transaction or dispute (including any litigation, arbitration or other adversary proceeding) with Buyer, the Company, or any of their agents or Affiliates under or relating to this Agreement, any transaction contemplated hereby, and any related matter, such as claims or disputes arising under any Transaction Documents, including with respect to any indemnification claims hereunder or any claims arising out of alleged fraud or other similar matters. Any representation of the Company or any of its Affiliates after the Closing shall not affect the foregoing provisions hereof.

Section 11.12 Privilege. After the Effective Time, Buyer shall not, and shall cause each of its Affiliates (including the Company) not to, use any legal advice provided by Shibolet or W&C to the Company, the Securityholder Representative or any Securityholder, relating to the transactions contemplated hereby ("Company Transactions Legal Advice") in connection with any indemnification claim dispute hereunder or any other legal proceeding or potential legal proceeding against, with or involving Buyer, the Company or any of their Affiliates or agents. After the Effective Time, the Securityholder Representative shall be permitted to access and use Company Transactions Legal Advice in connection with any indemnification claim dispute hereunder or any other legal proceeding or potential legal proceeding against, with or involving Buyer, the Company or any of their Affiliates or agents; and Shibolet, W&C, the Securityholder Representative and any Securityholder may make any such Company Transactions Legal Advice available to Shibolet, W&C or the Securityholder Representative, as the case may be. For the avoidance of doubt, Buyer, the Company and any of their Affiliates and agents may access and use for any purpose facts, data and any other information contained in any communications between Shibolet and/or W&C, on the one hand, and the Company, the Securityholder

Representative and/or any Securityholder, on the other hand, to the extent such communications belong to the Company even if such communication also contains Company Transactions Legal Advice, including as evidence in any indemnification claim dispute or any other legal proceeding or potential legal proceeding involving the Securityholder Representative or any Securityholder, but for the avoidance of doubt, excluding the Company Transactions Legal Advice contained in such communications. For the avoidance of doubt, nothing in this Section 11.12 or in this Agreement shall be deemed to be a waiver of any applicable privileges or protections that can or may be asserted to prevent disclosure of any client communications to any third party.

[*Signature pages follow*]

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

BUYER

BIOVENTUS LLC

By: /s/ Ken Reali

Name: Ken Reali

Title: Chief Executive Officer

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

COMPANY

CARTIHEAL (2009) LTD.

By: /s/ Nit Altschuler

Name: 11/7/2020

Title: CEO

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

SECURITYHOLDER REPRESENTATIVE

ELRON ELECTRONIC INDUSTRIES LTD.

By: Elron Electronic Industries Ltd.

Name: Niv Levy; Yaron Elad

Title: CFO; CEO

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

SECURITYHOLDERS

ACCESS MEDICAL VENTURES LLC

By: /s/ Michael Tal
Name: Michael Tal
Title: Founder

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

SECURITYHOLDERS

U.M. ACCELMED MEDICAL PARTNERS L/P

By: /s/ Uri Geiger
Name: Uri Geiger
Title: Managing Partner

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

SECURITYHOLDERS

PERTEC MANAGEMENT LTD.

By: /s/ Marc R. Frood
Name: Marc R Frood
Title: Auhtorised Signatory

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

SECURITYHOLDERS

JOHNSON & JOHNSON INNOVATION-JJDC, INC.

By: /s/ Zeev Zehavi
Name: Zeev Zehavi
Title: Vice President

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

SECURITYHOLDERS

INCENTIVE II MANAGEMENT LTD.

By: /s/ Boaz Lifschitz Eyal Lifschitz
Name: Boaz Lifschitz Eyal Lifschitz
Title: Managing General Partner

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

SECURITYHOLDERS

PEREGRINE VENTURES MANAGEMENT LTD

By: /s/ Boaz Lifschitz Eyal Lifschitz
Name: Boaz Lifschitz Eyal Lifschitz
Title: Managing General Partner

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

SECURITYHOLDERS

ELRON ELECTRONIC INDUSTRIES LTD.

By: /s/ Niv Levy; Yaron Elad
Name: Niv Levy; Yaron Elad
Title: CFO; CEO

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

SECURITYHOLDERS

AMOON 2 FUND LIMITED PARTNERSHIP

By: /s/ Yair C. Schindel
Name: Yair C. Schindel
Title: Managing Partner

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

SECURITYHOLDERS

B.G. NEGEV TECHNOLOGIES LTD.

By: /s/ Josh Peleg
Name: Josh Peleg
Title: CEO

Exhibit 10.11

Execution Version

Published CUSIP Number: 09073RAH6
Revolving Credit CUSIP Number: 09073RAJ2
Term Loan CUSIP Number: 09073RAK9

$250,000,000

CREDIT AND GUARANTY AGREEMENT

dated as of December 6, 2019

among

Bioventus LLC,
as Borrower,

Certain Subsidiaries of the Borrower
From Time to Time Party Hereto,
as Guarantors,

The Lenders From Time to Time Party Hereto

Wells Fargo Bank, National Association,
as Administrative Agent and Collateral Agent

Wells Fargo Securities, LLC,
JPMorgan Chase Bank, N.A.,
and SunTrust Robinson Humphrey, Inc.,
as Joint Lead Arrangers and Joint Bookrunners

JPMorgan Chase Bank, N.A.
and SunTrust Bank,
as Syndication Agents

BBVA USA,
as Documentation Agent

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APPENDICES

SCHEDULES

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CREDIT AND GUARANTY AGREEMENT

This **CREDIT AND GUARANTY AGREEMENT**, dated as of December 6, 2019, is entered into by and among **Bioventus LLC**, a Delaware limited liability company ("**Borrower**"), certain Subsidiaries of the Borrower from time to time party hereto, as Guarantor Subsidiaries, the Lenders from time to time party hereto and Wells Fargo Bank, National Association, as administrative agent (together with its permitted successors in such capacity, the "**Administrative Agent**") and as collateral agent (together with its permitted successors in such capacity, the "**Collateral Agent**").

RECITALS:

WHEREAS, capitalized terms used in these recitals will have the respective meanings set forth for such terms in Section 1.1;

WHEREAS, the Lenders have agreed to extend certain senior secured credit facilities to the Borrower, in an aggregate principal amount of $250,000,000, consisting of (a) $200,000,000 in aggregate principal amount of Initial Term Loans, the proceeds of which will be used, in part, to finance the repayment of all amounts outstanding under the Existing Credit Agreement and for working capital needs and general corporate purposes of the Borrower and its Subsidiaries and (b) $50,000,000 in aggregate principal amount of Revolving Credit Commitments, which will be used for working capital needs and general corporate purposes, including Permitted Acquisitions;

WHEREAS, the Borrower has agreed to secure all of its Obligations by granting to the Collateral Agent, for the benefit of the Secured Parties, a Lien on substantially all of its assets subject to certain exceptions set forth herein; and

WHEREAS, the Guarantors have agreed to guarantee the obligations of the Borrower hereunder and to secure their respective Obligations by granting to the Collateral Agent, for the benefit of the Secured Parties, a Lien on all of their respective assets subject to certain exceptions as set forth herein;

NOW, **THEREFORE**, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions. The following terms used herein, including in the preamble, recitals, exhibits and schedules hereto, will have the following meanings:

"**Additional Lender**" means, at any time, any bank, other financial institution or institutional investor that, in any case, is not an existing Lender and that agrees to provide any portion of any (a) Incremental Loan in accordance with Section 2.24 or (b) Credit Agreement Refinancing Indebtedness pursuant to a Refinancing Amendment in accordance with Section 2.26; *provided* that each Additional Lender with respect to any Incremental Revolving Facility (other than any Person that is a Lender, an Affiliate of a Lender or an Approved Fund of a Lender at such time) will be subject to the approval of the Administrative Agent, each Issuing Bank and/or each Swing Line Lender (such approval not to be unreasonably withheld,

conditioned or delayed), in each case to the extent any such consent would be required from the Administrative Agent, each Issuing Bank and/or each Swing Line Lender under Section 10.6(c), respectively, for an assignment of Loans to such Additional Lender.

"**Administrative Agent**" as defined in the preamble hereto.

"**Adverse Proceeding**" means any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of the Borrower or any of its Subsidiaries) at law or in equity, or before or by any Governmental Authority, domestic or foreign (including any Environmental Claims), whether pending or, to the knowledge of any Executive Officer of the Borrower, threatened against or affecting the Borrower or any Subsidiary or any property of the Borrower or any Subsidiary.

"**Affected Lender**" as defined in Section 2.18(b).

"**Affected Loans**" as defined in Section 2.18(b).

"**Affiliate**" means, as applied to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise. For the avoidance of doubt, none of the Agents or their respective lender affiliates shall be deemed to be an Affiliate of the Borrower or of any Subsidiary or Unrestricted Subsidiary.

"**Agents**" means, collectively, the Administrative Agent, the Collateral Agent, the Lead Arrangers, the Syndication Agents and the Documentation Agent.

"**Aggregate Amounts Due**" as defined in Section 2.17.

"**Aggregate Payments**" as defined in Section 7.2.

"**Agreed Currency**" means (a) Dollars, (b) the Euro, (c) Sterling and (d) any other Eligible Currency which the Borrower requests any Issuing Bank (and the applicable Issuing Bank agrees) to include as an Agreed Currency hereunder.

"**Agreement**" means this Credit and Guaranty Agreement, dated as of the Closing Date.

"**All-In Yield**" means, as to any Indebtedness or Loans of any Class, the yield thereof, whether in the form of interest rate, margin, original issue discount, upfront fees, a Eurodollar Base Rate floor to the extent greater than 0.00% per annum for the Initial Term Loans and Revolving Loans (with such increased amount being equated to interest margins for purposes of determining any increase to the Applicable Margin); *provided* that (i) original issue discount and upfront fees will be equated to interest rate assuming a 4-year life to maturity (or, if less, the stated life to maturity at the time of its incurrence of the applicable Indebtedness); (ii) that "All-In Yield" will not include arrangement fees, structuring fees, underwriting fees, commitment fees, ticking fees or any other similar fees payable to the Lead Arrangers in

connection with the Initial Revolving Commitments and Initial Term Loans or to one or more arrangers or lenders (or their respective affiliates) in connection with respect to any other applicable Indebtedness or commitments in respect thereof (regardless of how such fees are computed); and (iii) if a Eurodollar Base Rate floor for the applicable Indebtedness or commitments in respect thereof being incurred is greater than the Eurodollar Base Rate floor for the Initial Term Loans or the Revolving Loans, as applicable, the difference between such floor for such applicable new Indebtedness or commitments and the Initial Term Loans or the Revolving Loans, as applicable, will be equated to an increase in the Applicable Margin, and in such case the interest rate floor (expressed in the definition of Eurodollar Rate or Base Rate), but not the Applicable Margin, as applicable to the Initial Term Loans or the Revolving Loans, as applicable, will be increased to the extent of such differential between interest rate floors.

"**Anti-Corruption Laws**" means Laws relating to anti-bribery or anti-corruption (governmental or commercial) which apply to the Credit Parties, their Subsidiaries or their Unrestricted Subsidiaries, including Laws that prohibit the corrupt payment, offer, promise, or authorization of the payment or transfer of anything of value (including gifts or entertainment), directly or indirectly, to any Government Official, any foreign government employee or commercial entity in order to obtain an improper business advantage; including the FCPA, the United Kingdom Bribery Act of 2010, and all national and international Laws enacted to implement the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions.

"**Anti-Terrorism Laws**" means any of the Laws relating to terrorism, economic sanctions or money laundering, including, but not limited to, (i) Executive Order No. 13224, (ii) the PATRIOT Act, (iii) the Laws comprising or implementing the Bank Secrecy Act, and (iv) the economic and financial sanctions or trade embargoes enacted, imposed, administered and enforced from time to time by (a) the U.S. government, including those administered by OFAC, the U.S. Department of State or the U.S. Department of Commerce, (b) the European Union or any of its member states, or (c) Her Majesty's Treasury of the United Kingdom.

"**Applicable Margin**" means with respect to the Initial Term Loans and the Revolving Loans, (i) from the Closing Date until the first Business Day that immediately follows the date on which a Compliance Certificate is delivered pursuant to Section 5.1(e) for the Fiscal Quarter ending March 31, 2020, a percentage per annum equal to 2.25% for Eurodollar Rate Loans and 1.25% for Base Rate Loans and (ii) thereafter, the applicable percentage per annum set forth below, as determined by reference to the Total Net Leverage Ratio, as set forth in the then most recent Compliance Certificate received by the Administrative Agent pursuant to Section 5.1(e):

APPLICABLE MARGIN

Pricing Level	Total Net Leverage Ratio	Eurodollar Rate Loans	Base Rate Loans
I	> 2.50:1.00	2.50%	1.50%
II	> 1.50:1.00 and < 2.50:1.00	2.25%	1.25%
III	> 1.25:1.00 and < 1.50:1.00	1.75%	0.75%
IV	> 0.75:1.00 and < 1.25:1.00	1.50%	0.50%
V	< 0.75:1.00	1.25%	0.25%

Any increase or decrease in the Applicable Margin resulting from a change in the Total Net Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 5.1(e); provided, however, that "**Pricing Level II**" shall apply without regard to the Total Net Leverage Ratio (x) at any time after the date on which any annual or quarterly financial statement was required to have been delivered pursuant to Section 5.1(a) or Section 5.1(b) but was not delivered (or the Compliance Certificate related to such financial statements was required to have been delivered pursuant to Section 5.1(e) but was not delivered), commencing with the first Business Day immediately following such date and continuing until the first Business Day immediately following the date on which such financial statements (or, if later, the Compliance Certificate related to such financial statements) are delivered, or (y) at all times if an Event of Default shall have occurred and be continuing.

"**Application**" means an application, in such form as the applicable Issuing Bank may specify from time to time, requesting such Issuing Bank to open a Letter of Credit.

"**Approved Electronic Communications**" means any notice, demand, communication, information, document or other material that any Credit Party provides to the Administrative Agent pursuant to any Credit Document or the transactions contemplated therein which is distributed to the Administrative Agent or to the Lenders by means of electronic communications pursuant to Section 10.1(d).

"**Approved Fund**" means (a) any investment company, fund, securitization vehicle, trust or conduit that is engaged in making, purchasing, holding or investing in commercial loans and similar extensions of credit in the ordinary course of its business and (b) any Person (other than a Natural Person) which temporarily warehouses loans for any Lender or any entity described in the preceding clause (a) and that in the case of each of the preceding clauses (a) and (b) is administered or managed by (i) a Lender, (ii) an Affiliate of a Lender or (iii) an entity or an Affiliate of an entity that administers or manages a Lender.

"**Asset Sale**" means a sale, lease or sub-lease (as lessor or sublessor), sale and leaseback, assignment, conveyance, exclusive license (as licensor or sublicensor), transfer or other disposition to, or any exchange of property with (each, a "**disposition**"), any Person in one transaction or a series of related transactions, of all or any part of the Borrower's or any Subsidiary's assets or properties of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, leased or licensed, including the Capital Stock of any Subsidiary, other than:

(a) dispositions of inventory or goods held for sale or other immaterial assets, in each case, in the ordinary course of business;

(b) dispositions of used, worn-out, obsolete, used or surplus property (other than current assets), in each case in the ordinary course of business, and property (other than current assets) no longer used or useful in the Businesses;

(c) dispositions of assets that are made subject to a Finance Lease or Purchase Money Indebtedness within 365 days after the acquisition, construction, lease or improvement of the asset financed;

(d) dispositions of property that constitutes a Casualty Event;

(e) dispositions of cash or Cash Equivalents (or Investments that were cash or Cash Equivalents when made) in the ordinary course of business;

(f) dispositions of equipment or Real Estate Assets to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the net cash proceeds of such disposition are applied within 365 days of the receipt thereof to the purchase price of replacement property;

(g) dispositions or discounts by the Borrower or any Subsidiary of accounts, receivables or notes receivable arising in the ordinary course of business or in connection with the collection or compromise thereof, including supplier financing arrangements without recourse to the Borrower or any Subsidiary that accelerate collection of receivables from clients or customers;

(h) (i) non-exclusive licenses or sub-licenses of Intellectual Property in the ordinary course of business and (ii) the abandonment or other disposition of Intellectual Property that is, in the reasonable good faith judgment of the Borrower, no longer economically practicable to maintain or useful in the conduct of the business of the Credit Parties taken as a whole;

(i) leases, subleases, licenses or sub-licenses of real property or personal property (other than Intellectual Property) in the ordinary course of business;

(j) dispositions of any business, asset or property between or among the Borrower and the Subsidiaries; *provided* that any such disposition outside the ordinary course of business (A) by any Non-Credit Party to the Borrower or to a Guarantor Subsidiary (other than to the extent permitted pursuant to Section 6.8) or (B) by the Borrower or a Guarantor Subsidiary to any Non-Credit Party, in either case is on terms that are, taken as a whole, at least as favorable to the Borrower or such Guarantor Subsidiary, as the case may be, as the terms of an arm's length disposition of such business, asset or property, taken as a whole between unaffiliated Persons;

(k) dispositions of other assets for aggregate consideration not to exceed $1,000,000 in the case of any single transaction or series of related transactions;

(l) dispositions of non-core assets acquired in a Permitted Acquisition or other Investment permitted under Section 6.6 disposed of within eighteen (18) months following the consummation of such Permitted Acquisition or other Investment and in the aggregate amount not to exceed 25% of the cash purchase consideration paid in respect of such Permitted Acquisition or other Investment;

(m) dispositions of real property and related assets in connection with relocation of Executive Officers or employees of the Borrower and the Subsidiaries;

(n) unwinding of Rate Contracts;

(o) issuance or sale of Capital Stock of an Unrestricted Subsidiary, sale of Indebtedness of an Unrestricted Subsidiary owing to any Credit Party or any of their Subsidiaries, or sale of other securities of an Unrestricted Subsidiary;

(p) to the extent constituting dispositions, Liens permitted by Section 6.2, Restricted Junior Payments permitted by Section 6.4 and Investments permitted by Section 6.6; and

(q) dispositions of Investments in Joint Ventures to the extent required by, or made pursuant to customary buy/sell arrangements between, the Joint Venture parties set forth in joint venture arrangements and similar binding arrangements.

"**Assignment Agreement**" means an Assignment and Assumption Agreement substantially in the form of Exhibit E, with such amendments or modifications as may be approved by the Administrative Agent and the Borrower.

"**Assignment Effective Date**" as defined in Section 10.6(b).

"**Authorized Officer**" means, as applied to any Person, any individual holding the position of chairman of the board (if an officer), chief executive officer, chief operating officer, chief financial officer, president, vice president, treasurer, secretary and any other officer having substantially the same authority and responsibility as any of the foregoing.

"**Available Amount**" means, as at any date of determination, an amount equal to:

(a) the sum (and, in the case of clauses (ii) through (viii) below, received or retained, as applicable, after the Closing Date and prior to such date of determination), without duplication, of:

(i) $5,000,000;

(ii) 50% of cumulative Consolidated Net Income of the Borrower and the Subsidiaries, which will accumulate on a quarterly basis commencing with the Fiscal Quarter in which the Closing Date occurs; *provided* that such amount will not be less than zero for any quarterly period;

(iii) the aggregate amount of capital contributions to the capital of the Borrower made in cash or Cash Equivalents (other than with respect to Disqualified Capital Stock or pursuant to a Specified Equity Contribution or to the extent such proceeds have been previously utilized in accordance with the terms of this Agreement, including to incur Contribution Indebtedness pursuant to Section 6.1(j));

(iv) the net cash proceeds received by the Borrower after the Closing Date (and prior to such date of determination) from issuances or sales of its Capital Stock (that is not Disqualified Capital Stock) or of a Parent's Capital Stock, other than with respect to Specified Equity Contributions or to the extent such proceeds have been previously utilized in accordance with the terms of this Agreement including to incur Contribution Indebtedness pursuant to Section 6.1(j));

(v) the amount of any Waivable Mandatory Prepayment retained by the Borrower (and not otherwise utilized) in accordance with the terms of this Agreement;

(vi) (x) the aggregate amount of all cash dividends and other cash distributions received by the Borrower or any Subsidiary from any Joint Ventures or Unrestricted Subsidiaries during the period from and including the Business Day immediately following the Closing Date through and including the date of determination in respect of Investments in such Unrestricted Subsidiary or Joint Venture made by the Borrower or any Subsidiary made in reliance on the Available Amount and (y) the net cash proceeds received by the Borrower or any Subsidiary in connection with the sale, transfer or other disposition of its ownership interest in any Joint Ventures or Unrestricted Subsidiaries during the period from and including the Business Day immediately following the Closing Date through and including the date of determination in respect of Investments in such Unrestricted Subsidiary or Joint Venture, in each case, to the extent that the original Investments in such Unrestricted Subsidiary or Joint Venture were made in reliance on the Available Amount;

(vii) the Investments of the Borrower or any Subsidiary made in reliance on the Available Amount in any Unrestricted Subsidiary that has been re-designated as a Subsidiary or that has been merged or consolidated with or into the Borrower or any Subsidiary (up to the lesser of (A) the fair market value (as determined in good faith by the Borrower) of the Investments of the Borrower or any Subsidiary in such Unrestricted Subsidiary at the time of such re-designation or merger or consolidation and (B) the fair market value (as determined in good faith by the Borrower) of the original Investments by the Borrower or any Subsidiary in such Unrestricted Subsidiary); and

(viii) the returns (including repayments of principal and payments of interest), profits, distributions and similar amounts received in cash or Cash Equivalents by the Borrower or any Subsidiary on Investments made by the Borrower or any Subsidiary in reliance on the Available Amount;

minus

(b) the sum, without duplication, of:

(i) the aggregate amount of Restricted Junior Payments made after the Closing Date (and prior to such date of determination) pursuant to Section 6.4(l); and

(ii) the aggregate amount of Investments made after the Closing Date (and prior to such date of determination) pursuant to Section 6.6(l), with each such Investment measured as of the date made and without giving effect to subsequent changes in value.

"**Available Foreign Currencies**" means the Agreed Currencies other than Dollars.

"**Bail-In Action**" means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

"**Bail-In Legislation**" means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"**Bank Product Agreement**" means any agreement evidencing Bank Product Obligations.

"**Bank Product Obligations**" means all obligations of every nature of the Borrower or any Subsidiary from time to time owed to any Bank Product Provider in connection with any Bank Product, whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to the Borrower or such Subsidiary, would have accrued on any Bank Product Obligation, whether or not a claim is allowed against the Borrower or such Subsidiary for such interest in the related bankruptcy proceeding), reimbursement, fees, expenses, indemnification or otherwise.

"**Bank Product Provider**" means a Lender or Agent or any Affiliate of a Lender or Agent that in each case that provides Bank Products to the Borrower or any Subsidiary (or a Person who was a Lender or an Affiliate of a Lender at the time of execution and delivery of a Bank Product Agreement), whether or not such Person subsequently ceases to be a Lender, an Agent or an Affiliate of a Lender or Agent, in any case, that has executed and delivered to the Administrative Agent a letter agreement in form and substance reasonably acceptable to the Administrative Agent pursuant to which such Lender, Agent or Affiliate of such Lender or Agent appoints the Administrative Agent and the Collateral Agent as agents under the applicable Credit Documents.

"**Bank Products**" means all facilities or services related to (a) cash management and related services, including automated clearinghouse of funds, treasury, depository, overdraft, electronic funds transfer, cash pooling, controlled disbursements and other cash management arrangements, (b) commercial credit card and merchant card services, credit or debit cards, stored value cards and purchase cards and the processing of related sales or receipts and (c) E-payables and comparable services.

"**Bankruptcy Code**" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute.

"**Base Rate**" means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus 1/2 of 1.00%, and (c) the sum of (i) the Eurodollar Rate for a one-month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day), ***plus*** (ii) 1.00%. Any change in the Base Rate due to a change in the Prime Rate, the NYFRB Rate or the Eurodollar Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the Eurodollar Rate, respectively.

"**Base Rate Loan**" means a Loan bearing interest at a rate determined by reference to the Base Rate.

"**Benchmark Replacement**" means the sum of: (a) the alternate benchmark rate (which may include Term SOFR) that has been selected by the Administrative Agent and the Borrower giving due consideration to (i) any selection or recommendation of a replacement rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a rate of interest as a replacement to the Eurodollar Rate for U.S. dollar-denominated syndicated credit facilities and (b) the Benchmark Replacement Adjustment; provided that, if the Benchmark Replacement as so determined would be less than zero, the Benchmark Replacement will be deemed to be zero for the purposes of this Agreement.

"**Benchmark Replacement Adjustment**" means, with respect to any replacement of the Eurodollar Rate with an Unadjusted Benchmark Replacement for each applicable Interest Period, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the Eurodollar Rate with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the Eurodollar Rate with the applicable Unadjusted Benchmark Replacement for U.S. dollar- denominated syndicated credit facilities at such time.

"**Benchmark Replacement Conforming Changes**" means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "**Base Rate**," the definition of "**Interest Period**," timing and frequency of determining rates and making payments of interest and other administrative matters) that the Administrative Agent (in consultation with the Borrower) decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of the Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement).

"**Benchmark Replacement Date**" means the earlier to occur of the following events with respect to the Eurodollar Rate:

(a) in the case of clause (a) or (b) of the definition of "Benchmark Transition Event," the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of the Eurodollar Rate permanently or indefinitely ceases to provide the Eurodollar Rate; or

(b) in the case of clause (c) of the definition of "Benchmark Transition Event," the date of the public statement or publication of information referenced therein.

"**Benchmark Transition Event**" means the occurrence of one or more of the following events with respect to the Eurodollar Rate:

(a) a public statement or publication of information by or on behalf of the administrator of the Eurodollar Rate announcing that such administrator has ceased or will cease to provide the Eurodollar Rate, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Eurodollar Rate;

(b) a public statement or publication of information by the regulatory supervisor for the administrator of the Eurodollar Rate, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for the Eurodollar Rate, a resolution authority with jurisdiction over the administrator for the Eurodollar Rate or a court or an entity with similar insolvency or resolution authority over the administrator for the Eurodollar Rate, which states that the administrator of the Eurodollar Rate has ceased or will cease to provide the Eurodollar Rate permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Eurodollar Rate; or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of the Eurodollar Rate announcing that the Eurodollar Rate is no longer representative.

"**Benchmark Transition Start Date**" means (a) in the case of a Benchmark Transition Event, the earlier of (i) the applicable Benchmark Replacement Date and (ii) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication) and (b) in the case of an Early Opt-in Election, the date specified by the Administrative Agent or the Required Lenders, as applicable, by notice to the Borrower, the Administrative Agent (in the case of such notice by the Required Lenders) and the Lenders.

"**Benchmark Unavailability Period**" means, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to the Eurodollar Rate and solely to the extent that the Eurodollar Rate has not been replaced with a Benchmark Replacement, the period (x) beginning at the time that such Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the Eurodollar Rate for all purposes hereunder in accordance with Section 2.18(e) and (y) ending at the time that a Benchmark Replacement has replaced the Eurodollar Rate for all purposes hereunder pursuant to Section 2.18(e).

"**Beneficial Ownership Certification**" means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

"**Beneficial Ownership Regulation**" means 31 CFR § 1010.230.

"**Benefit Plan**" means any of (a) an "employee benefit plan" (as defined in ERISA) that is subject to Title I of ERISA, (b) a "plan" as defined in and subject to Section 4975 of the Internal Revenue Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Internal Revenue Code) the assets of any such "employee benefit plan" or "plan".

"**BHC Act Affiliate**" of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

"**Blocked Person**" means any Person: (a) listed in the annex to, or otherwise the target of sanctions imposed by, Executive Order No. 13224; (b) listed in any sanctions-related list of designated Persons maintained by the United States (including, but not limited to, OFAC Lists), the United Nations Security Council, the European Union or any of its member states, or Her Majesty's Treasury of the United Kingdom or any other relevant sanctions authority; (c) fifty percent (50%) or more, individually or in the aggregate, owned or controlled by any Person described in paragraphs (a) or (b) hereof; (d) with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law; or (e) that is the government of a Sanctioned Country.

"**Board of Directors**" means, with respect to any Person, (a) in the case of any corporation, the board of directors of such Person, (b) in the case of any other limited liability company, the members, manager or the board of managers of such Person (which, in the case of the Borrower as constituted on the date of this Agreement, shall mean the Borrower's Board of Managers), (c) in the case of any partnership, the members, board of directors or board of managers of the general partner of such person and (d) in any other case, the functional equivalent of the foregoing.

"**Board of Governors**" means the Board of Governors of the United States Federal Reserve System, or any successor thereto.

"**Borrower**" as defined in the preamble hereto.

"**Borrower LLC Agreement**" means that certain Amended and Restated Limited Liability Company Agreement, dated as of May 4, 2012, among Smith & Nephew, Inc., Beluga I, Inc., Beluga II, Inc., Beluga III, Inc., Beluga IV, Inc., Beluga V, Inc., Beluga VI, Inc., Beluga VII, Inc., Beluga VII-A, Inc., Beluga VIII, Inc., and Bioventus LLC, as amended by (i) that certain First Amendment to Bioventus LLC Amended and Restated Limited Liability Company Agreement, dated as of May 21, 2015, (ii) that certain Second Amendment to Bioventus LLC Amended and Restated Limited Liability Company Agreement, dated as of November 23, 2015 and (iii) that certain Third Amendment to Bioventus LLC Amended and Restated Limited Liability Company, dated as of December 8, 2017.

"**Businesses**" means, at any time, a collective reference to the businesses engaged in or proposed to be engaged in by the Borrower and the Subsidiaries on the Closing Date, after giving effect to the Transactions, and other similar, ancillary, incidental, complementary or related, or reasonable or logical extensions of such businesses.

"**Business Day**" means (a) any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in such state are authorized or required by law or other governmental action to close and (b) with respect to all notices, determinations, fundings and payments in connection with the Eurodollar Rate or any Eurodollar Rate Loans, the term "**Business Day**" means any day which is a Business Day described in clause (a) and which is also a day for trading by and between banks in Dollar deposits in the London interbank market.

"**Calendar Quarter**" means, for any calendar year, the successive first, second, third or fourth period of three consecutive calendar months in such year.

"**Calculation Date**" means (a) the last Business Day of each month, (b) the date of issuance, amendment, renewal or extension of any Foreign Currency Letter of Credit, and (c) any other date selected by the Administrative Agent in its reasonable discretion.

"**Cap**" means, with respect to any provision of this Agreement as of any date of determination, any limitation based on a fixed Dollar amount or percentage of TTM Consolidated Adjusted EBITDA (or if both apply to such provision, whichever is higher determined as of such date); *provided* that, for the avoidance of doubt, Cap shall not include any limitation based on a ratio.

"**Capital Stock**" means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation), including partnership interests and membership interests, and any and all warrants, rights or options to purchase or other arrangements or rights to acquire any of the foregoing; *provided* that no Indebtedness of the Borrower will constitute Capital Stock by virtue of being convertible or exchangeable into Capital Stock prior to such conversion or exchange and; *provided further*, in the case of the Borrower, Capital Stock shall include units under the Borrower's profits interest plans, phantom profits interest plans and equity participation rights plans.

"**Captive Insurance Subsidiary**" means any Subsidiary that is subject to regulation as an insurance company (or any Subsidiary thereof).

"**Cash Equivalents**" means, as at any date of determination:

(a) Dollars, Euros and Sterling (and, to the extent reasonably necessary to reimburse any Foreign Currency Letter of Credit, the applicable Available Foreign Currency);

(b) local currencies held by the Borrower or any Subsidiary from time to time in the ordinary course of business or consistent with past practice and not for speculation that is a national currency of any participating member state of the European Union;

(c) marketable securities (i) issued or directly and unconditionally guaranteed or insured as to interest and principal by the United States Government or (ii) issued by any agency or instrumentality of the United States the obligations of which are backed by the full faith and credit of the United States, in each case maturing within one year after such date;

(d) marketable direct obligations issued by any state, commonwealth or territory of the United States of America or any political subdivision of any such state, commonwealth or territory or any public instrumentality thereof, in each case maturing within one year after such date and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's;

(e) commercial paper maturing no more than one year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency);

(f) certificates of deposit, time deposits or bankers' acceptances maturing within one year after such date and issued or accepted (x) by any Lender or (y) by any commercial bank organized under the laws of the United States of America or any state thereof or the District of Columbia that (i) is at least "adequately capitalized" (as defined in the regulations of its primary Federal banking regulator) and (ii) has Tier 1 capital (as defined in such regulations) of not less than $100,000,000;

(g) marketable short-term money market and similar highly liquid funds having a rating of at least P-1 or A-1 from either Moody's or S&P, respectively (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency);

(h) (i) repurchase obligations of any Lender or of any commercial bank satisfying the requirements of clause (f) of this definition, having a term of not more than 30 days, with respect to securities issued or fully guaranteed or insured by the United States government and (ii) securities with maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any Lender or any commercial bank satisfying the requirements of clause (b) of this definition;

(i) investment funds investing substantially all of their assets in securities of the types described in clauses (a) through (h) above; and

(j) money market funds that (i) comply with the criteria set forth in SEC Rule 2a-7 under the Investment Company Act of 1940, as amended, (ii) are rated AAA by S&P and Aaa by Moody's and (iii) have portfolio assets of at least $5,000,000,000.

In the case of Investments by any Foreign Subsidiary or Investments made in a jurisdiction outside the United States of America, Cash Equivalents shall also include (i) investments of the type and maturity described in clauses (a) through (h) above of foreign obligors, which Investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (ii) other short-term investments in accordance with normal investment practices for cash management in investments analogous to the foregoing investments in clauses (a) through (h) and in this paragraph.

"**Casualty Event**" means any event that gives rise to the receipt by the Borrower or any Subsidiary of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or real property.

"**CFC**" means a "controlled foreign corporation" within the meaning of Section 957 of the Internal Revenue Code.

"**Change of Control**" means the occurrence of any of the following: (a) at any time prior to consummation of a Qualifying IPO, Permitted Holders will cease to beneficially own and control, directly or indirectly, on a fully-diluted basis more than 50% of the voting power in the Borrower (other than during the short term pendency of any Permitted Reorganization or Permitted IPO Reorganization to the extent such interim failure to own and control is reasonably necessary or advisable to effectuate such transaction and so long as such interim failure to own and control is cured by the close of business on the date of the consummation of such Permitted Reorganization or Permitted IPO Reorganization), or (b) at any time after consummation of a Qualifying IPO, any Person or "group" (but excluding any employee benefit plan of such person and its subsidiaries and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) other than the Permitted Holders will have acquired beneficial ownership of 35% or more on a fully diluted basis of the voting power in the Borrower and the percentage of aggregate voting interests so held is greater than the percentage of aggregate voting power held, directly or indirectly, in the aggregate by the Permitted Holders; unless, in the case of clause (b) above, the Permitted Holders have, at such time, the right or the ability by voting power, contract or otherwise to elect or designate for election at least a majority of the Board of Directors of the Borrower. For purposes of this Agreement, "group" and beneficial ownership will have the meanings given in Rules 13d-3 and 13d-5 under the Exchange Act, or any successor provision.

"**Class**" means (a) with respect to the Lenders, each of the following classes of the Lenders: (i) the Lenders having Term Loan Exposure arising from the Initial Term Loans, (ii) the Lenders having Term Loan Exposure arising from any separately identifiable tranche of Incremental Term Loans, (iii) the Lenders having Term Loan Exposure arising from any separately identifiable tranche of Refinancing Term Loans, (iv) the Lenders having Term Loan Exposure arising from any separately identifiable tranche of Extended Term Loans and (v) the Lenders having Revolving Credit Exposure (including the Swing Line Lenders), and (b) with respect to Loans, each of the following classes of Loans: (i) Initial Term Loans, (ii) any separately identifiable tranche of Incremental Term Loans, (iii) any separately identifiable tranche of Refinancing Term Loans, (iv) any separately identifiable tranche of Extended Term Loans and (v) Revolving Loans (including Swing Line Loans).

"**Closing Date**" means December 6, 2019.

"**Closing Date Certificate**" means a Closing Date Certificate substantially in the form of Exhibit G.

"**Collateral**" means, collectively, all of the real, personal and mixed property (including Capital Stock) in which Liens are granted or purported to be granted pursuant to the Collateral Documents as collateral security for the Obligations; *provided* that Collateral shall not include any Excluded Assets or any other property or assets specifically excluded from the scope of any grant clause under any other Collateral Document unless (as to any Credit Party) such Credit Party hereafter agrees in writing that any such Excluded Asset, asset or property shall constitute Collateral hereunder.

"**Collateral Agent**" as defined in the preamble hereto.

"**Collateral Documents**" means the Pledge and Security Agreement, the Mortgages (if any) and all other instruments, documents and agreements delivered by any Credit Party pursuant to this Agreement or any of the other Credit Documents in order to grant to the Collateral Agent, for the benefit of the Secured Parties, a Lien on any real, personal or mixed property of that Credit Party as security for the Obligations.

"**Commitment**" means any Revolving Credit Commitment, any Initial Term Loan Commitment and any Incremental Term Loan Commitment.

"**Commodity Exchange Act**" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, any successor statute and any regulations promulgated thereunder from time to time.

"**Compliance Certificate**" means a Compliance Certificate of the Borrower substantially in the form of Exhibit C.

"**Consolidated Adjusted EBITDA**" means, for any Test Period, an amount determined for the Borrower and the Subsidiaries on a consolidated basis and without duplication equal to:

(a) Consolidated Net Income for such period, *plus*

(b) the sum of, in each case (other than subclauses (x) and (xxi) below) to the extent deducted (and not added back or excluded) in the calculation of Consolidated Net Income, but without duplication:

(i) Consolidated Interest Expense of such Person for such Test Period;

(ii) consolidated tax expense of such Person for such Test Period based on income, profits or capital, including state, franchise, capital and similar taxes and withholding taxes paid or accrued during such period;

(iii) amounts attributable to depreciation and amortization expense of such Person for such Test Period (including amortization of customer contracts, non-compete agreements or other intangible assets);

(iv) non-cash charges or expenses reducing Consolidated Net Income for such Test Period *(provided*, in connection with any non-cash charge or expense that is an accrual of a reserve for a cash expenditure or payment required to be made, or anticipated to be made, in a future period, (1) the Borrower may determine not to add back such non-cash charge or expense in the current Test Period and (2) to the extent the Borrower decides to add back such non-cash charge or expense, the cash payment in respect thereof in such future period will be subtracted from Consolidated Adjusted EBITDA to such extent);

(v) non-recurring costs, fees and expenses associated with the Transactions;

(vi) fees, charges and expenses arising in connection with the consummation or proposed consummation of any transaction that is or would be a Permitted Acquisition, permitted Investment, disposition, incurrence or repayment of Indebtedness (including a refinancing, amendment or other modification thereof) and/or equity offering (including any Qualifying IPO), in each case whether or not consummated and any amendment or modification to the terms of any such transactions (including such costs, fees, charges and expenses reimbursed or actually paid by a Person that is not the Borrower or a Subsidiary or covered by indemnification or reimbursement provisions);

(vii) restructuring, integration or similar charges, expenses or reserves, whether or not classified as restructuring charges or expenses under GAAP (including restructuring costs related to acquisitions and closure or consolidation of branches, facilities or locations, any lease termination settlements (or remaining rental expense until the end of the applicable lease term), and any expense related to any reconstruction, recommissioning or reconfiguration of fixed assets for alternate use);

(viii) any net loss from disposed or discontinued operations;

(ix) extraordinary, unusual or non-recurring costs, fees, charges and other expenses (including with respect to the OIG Matter), including severance costs and expenses (including such fees, charges and expenses incurred by the Borrower or any Subsidiary that are reimbursed or actually paid by a Person that is not the Borrower or a Subsidiary or covered by indemnification or reimbursement provisions);

(x) expenses, losses (including lost revenues) or charges (other than any expense, loss or charge added-back under another clause in this definition) incurred during such period in connection with Casualty Events to the extent that such any such amount is covered by business interruption or other insurance and which either has been reimbursed or as to which the Borrower has made a determination that there exists reasonable evidence that such amount will be reimbursed by the insurer and only to the extent that such amount is (a) not denied by the applicable insurance carrier in writing and (b) in fact reimbursed within 180 days of the date of such determination (with a deduction for any amount so added back to the extent not so reimbursed within 180 days);

(xi) expenses, charges and losses due to the effects of purchase accounting, as set forth in the Statement of Financial Accounting Standards 141(R), Business Combinations;

(xii) the amount of any expenses paid on behalf of any member of the Board of Directors or reimbursable to such member of the Board of Directors and any management, monitoring, consultant or advisory fees (including termination fees), closing fees and related indemnities and expenses paid or accrued to the Sponsor and their Affiliates;

(xiii) costs or expenses incurred by the Borrower or any Subsidiary pursuant to a management equity plan, profits interest or stock option plan or any other management or employee benefit plan or arrangement or any stock subscription or shareholder plan;

(xiv) expenses, charges and losses in the form of earn-out obligations and contingent consideration obligations (including to the extent accounted for as performance and retention bonuses, compensation or otherwise) and adjustments thereof and purchase price adjustments, in each case paid in connection with Permitted Acquisitions or other permitted Investments or acquisitions, including those investments entered into prior the Closing Date;

(xv) any minority interest expense;

(xvi) the amount of costs relating to opening facilities, signing, retention and completion bonuses, relocation expenses, severance costs, recruiting expenses, costs, expenses and losses incurred in connection with any strategic or new initiatives, transition costs, and other business optimization expenses (including costs and expenses relating to business optimization programs), and new systems design and implementation costs;

(xvii) [reserved];

(xviii) [reserved];

(xix) expenses in the form of bonuses paid to employees in connection with Permitted Acquisitions or other Investments permitted under Section 6.6;

(xx) any Public Company Costs;

(xxi) the amount of "run-rate" cost savings, operating expense reductions and cost synergies projected by the Borrower in good faith to result from (A) actions taken and (B) actions committed to be taken or expected to be taken no later than eighteen (18) months after any acquisition, disposition or operational change, in each case, which cost savings, operating expense reductions and cost synergies will be determined by the Borrower in good faith and calculated on a Pro Forma Basis as though such cost savings, operating expense reductions and cost synergies had been realized on the first day of the Test Period for which Consolidated Adjusted EBITDA is being determined; and

(xxii) costs, expenses, charges and losses in connection with research and development related to distribution and commercialization rights; *minus*

(c) the sum of, in each case to the extent included in the calculation of Consolidated Net Income, but without duplication:

(i) extraordinary, unusual or non-recurring cash gains of such Person for such Test Period increasing Consolidated Net Income; and

(ii) all non-cash items of such Person for such Test Period increasing Consolidated Net Income, including gains on cancellation of debt purchased at less than par (in each case of or by the Borrower and its Subsidiaries for such period), other than the accrual of revenue in the ordinary course and excluding any such items which represent the reversal in such Test Period of any accrual of, or cash reserve for, anticipated cash charges in any prior period to the extent such amount was deducted in determining Consolidated Adjusted EBITDA for such prior period;

provided that the amounts included in Consolidated Adjusted EBITDA for any Test Period pursuant to subclauses (vii), (ix) (other than any payment in connection with the OIG Matter), (xvi), (xxi), (xxii) and (viii) (solely with respect to cash expenses incurred by discontinued operations at the time of close and on an ongoing basis) of clause (b) above will not in the aggregate exceed 20% of Consolidated Adjusted EBITDA for such Test Period (prior to giving effect to amounts added-back pursuant to such subclauses); *provided further* that any determination of whether any item is extraordinary, unusual or non-recurring shall be made by the Borrower in its reasonable judgment in consultation with the Administrative Agent.

"**Consolidated Interest Expense**" means, with respect to any Person for any Test Period, the total consolidated interest expense of such Person and its Subsidiaries for such Test Period determined on a consolidated basis in accordance with GAAP, *plus*, without duplication (and solely to the extent such items were deducted in the calculation of Consolidated Net Income):

(a) imputed interest on Finance Leases of such Person and its Subsidiaries for such Test Period;

(b) commissions, discounts and other fees, charges and expenses owed by such Person and its Subsidiaries with respect to letters of credit securing financial obligations, bankers' acceptance financing and receivables financings for such Test Period;

(c) amortization of debt issuance costs, debt discount, or premium and other debt or equity financing fees and expenses incurred by such Person and its Subsidiaries for such Test Period including net costs under Rate Contracts or other derivative instruments entered into for the purpose of hedging interest rate risk and any commitment fees payable thereunder;

(d) cash contributions to any employee stock ownership plan or similar trust made by such Person and its Subsidiaries to the extent such contributions are used by such plan or trust to pay interest or fees to any Person (other than such Person or a wholly-owned Subsidiary) in connection with Indebtedness incurred by such plan or trust for such Test Period;

(e) all interest paid or payable with respect to discontinued operations of such Person and its Subsidiaries for such Test Period;

(f) the interest portion of any deferred payment obligations of such Person and its Subsidiaries for such Test Period; and

(g) all interest on any Indebtedness of such Person and its Subsidiaries that is (i) Indebtedness of others secured by any Lien on property owned or acquired by such Person or its

Subsidiaries, whether or not the obligations secured thereby have been assumed, but limited to the fair market value of such property or (ii) contingent obligations of such Person or its Subsidiaries in respect of Indebtedness;

provided that Consolidated Interest Expense shall be calculated after giving effect to Rate Contracts related to interest rates (including associated costs), but excluding unrealized gains and losses with respect to such Rate Contracts; *provided further*, that when determining Consolidated Interest Expense in respect of any Test Period ending prior to the first anniversary of the Closing Date, Consolidated Interest Expense will be calculated by multiplying the aggregate Consolidated Interest Expense accrued since the Closing Date by 365 and then dividing such product by the number of days from and including the Closing Date to and including the last day of such Test Period. For purposes of this definition, interest on Finance Leases will be deemed to accrue at the interest rate reasonably determined by an Authorized Officer of the Borrower to be the rate of interest implicit in such Capitalized Lease Obligations in accordance with GAAP as in effect on the Closing Date.

"**Consolidated Net Income**" means, for any Test Period:

(a) the net income (or loss) of the Borrower and the Subsidiaries on a consolidated basis for such Test Period taken as a single accounting period determined in conformity with GAAP, *plus*

(b) the income (or loss) of any Joint Venture or Unrestricted Subsidiary of the Borrower or any Subsidiary, solely, in the case of any income, to the extent of the amount of dividends or other distributions actually paid to the Borrower or any Subsidiary by such Joint Venture or Unrestricted Subsidiary during such Test Period, *minus*

(c) to the extent included in clause (a) above, an amount equal to the sum of (without duplication):

(i) with respect to any Person that is not a wholly-owned Subsidiary of the Borrower but whose net income is consolidated in whole or in part with the net income of the Borrower, the income (or loss) of such Person solely to the extent attributable to that portion of the Capital Stock in such Person that is not owned, directly or indirectly, by the Borrower during such Test Period; *provided*, the Borrower's equity in the net income in such Person will be included in Consolidated Net Income up to the amount of dividends, distributions or other payments in respect of such equity that are paid in cash (or to the extent converted into cash) by such Person to the Borrower or any of its Subsidiaries (and the Borrower's equity in the net loss of such Person shall be included to the extent of the aggregate Investment of the Borrower or any of its Subsidiaries in such Person);

(ii) with respect to any Person that is not a wholly-owned Subsidiary of the Borrower but whose net income is consolidated in whole or in part with the net income of the Borrower, the income of such Person solely to the extent that the declaration or payment of dividends or similar distributions by such Person of that income is not permitted by operation of the terms of its

Organizational Documents or any agreement, instrument or requirement of Law applicable to such Person during such Test Period; *provided* that Consolidated Net Income shall be increased by the amount of dividends or distributions or other payments that are actually paid by such Person to the Borrower or any of its Subsidiaries in respect of such Test Period;

(iii) the income (or loss) of any Person accrued prior to the date (x) such Person becomes a Subsidiary of the Borrower or is merged into or consolidated with the Borrower or any Subsidiary or (y) such Person's assets are acquired by the Borrower or any Subsidiary;

(iv) any after-tax gains or losses attributable dispositions of property;

(v) earnings (or losses), including any non-cash impairment charge, resulting from any reappraisal, revaluation or write-up (or write-down) of assets during such Test Period;

(vi) (A) unrealized gains and losses with respect to Rate Contracts for such Test Period and the application of Accounting Standards Codification 815 (Derivatives and Hedging), as such Topic may be amended, updated or supplemented from time to time, and (B) any after-tax effect of income (or losses) for such Test Period that result from the early extinguishment of (x) Indebtedness, (y) obligations under any Rate Contracts or (z) other derivative instruments;

(vii) gains and losses due solely to fluctuations in currency values and the related tax effects determined in accordance with GAAP for such Test Period (including currency translation gains or losses related to currency remeasurements of Indebtedness (including any net gain (or loss) resulting from Rate Contracts for currency exchange risk)); and

(viii) the effects of adjustments (including the effects of such adjustments pushed down to such Person and its Subsidiaries) in the inventory, property and equipment, software, goodwill, other intangible assets, in-process research and development, deferred revenue, debt and unfavorable or favorable lease line items in such Person's consolidated financial statements pursuant to GAAP for such Test Period resulting from the application of purchase accounting in relation to the Transactions or any acquisition consummated prior to the Closing Date and any Permitted Acquisition or other Investment or the amortization or write-off of any amounts thereof, net of taxes, for such Test Period.

"**Consolidated Total Debt**" means, as at any date of determination, the aggregate stated balance sheet amount of all Indebtedness of the Borrower and the Subsidiaries referred to in the following clauses of the definition of "Indebtedness": clauses (a), (b), (c) (but only with respect to any notes payable), (e) (but only to the extent that such indebtedness is recourse debt), (f) (but only to the extent that any letter of credit has been drawn and not reimbursed (provided that any unreimbursed amount under commercial letters of credit shall not be counted as Consolidated

Total Debt until three Business Days after such amount is drawn (it being understood that any borrowing, whether automatic or otherwise, to fund such reimbursement shall be counted))) and (i) (to the extent relating to Indebtedness of the type described in clauses (a), (b), (c), (e) and (f) of the definition thereof), in each case determined on a consolidated basis in accordance with GAAP; provided that Consolidated Total Debt shall not include (x) Indebtedness in respect of obligations under Rate Contracts or (y) operating leases on the balance sheet of the Borrower and the Subsidiaries.

"**Contractual Obligation**" means, as applied to any Person, any provision of any of the Securities issued by that Person or of any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

"**Contributing Guarantors**" as defined in Section 7.2.

"**Contribution Indebtedness**" means Indebtedness of a Credit Party in an aggregate principal amount up to 100.0% of the net cash proceeds received by the Borrower since the Closing Date from the issue or sale of Capital Stock (other than Disqualified Capital Stock) of the Borrower or Capital Stock of a Parent of the Borrower the proceeds of which have been contributed to the Borrower or contributions to the common equity capital of the Borrower (in each case, other than Specified Equity Contributions or proceeds of sales of Capital Stock to the Borrower or any Subsidiary) to the extent such net cash proceeds or cash have not been otherwise utilized in accordance with the term of this Agreement and such net cash proceeds or cash have been designated as "Contribution Indebtedness" by the Borrower in a written certification to the Administrative Agent no less than 90 days after the receipt thereof; *provided* that (i) such Indebtedness does not mature prior to 91 days after the Latest Term Loan Maturity Date at the time such Indebtedness is incurred, or have a shorter Weighted Average Life to Maturity than the Term Loans at the time such Indebtedness is incurred; (ii) immediately before and after giving effect thereto and to the use of the proceeds thereof no Event of Default has occurred and is continuing or would result therefrom; and (iii) after giving effect thereto and the use of proceeds thereof, the Borrower and its Subsidiaries are in Pro Forma compliance with the Financial Covenants set forth in Section 6.7.

"**Controlled Entity**" means, as to any Person, any other Person that is in control of, or is controlled by, such Person. For purposes of this definition, "control" of a Person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

"**Controlled Investment Affiliate**" means, as to any Person, any other Person which directly or indirectly is in control of, is controlled by, or is under common control with, such Person and is organized by such Person (or any Person controlling or controlled by such Person) primarily for making equity or debt investments, directly or indirectly, in the Borrower or other portfolio companies of such Person. For purposes of this definition, "control" of a Person means the power, directly or indirectly, to direct or cause the direction of the management or policies of such Person, whether by contract or otherwise.

"**Conversion/Continuation Date**" means the effective date of a continuation or conversion, as the case may be, as set forth in the applicable Conversion/Continuation Notice.

"**Conversion/Continuation Notice**" means a Conversion/Continuation Notice substantially in the form of Exhibit A-2.

"**Counterpart Agreement**" means a Counterpart Agreement substantially in the form of Exhibit H.

"**Covered Entity**" means any of the following:

(a) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(b) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R § 47.3(b); or

(c) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"**Credit Agreement Refinancing Indebtedness**" means secured or unsecured Indebtedness of the Borrower in the form of (i) Refinancing Term Commitments or Refinancing Term Loans or (ii) other term loans or notes or revolving commitments governed by definitive documentation other than this Agreement; *provided* that:

(a) such Indebtedness is incurred or otherwise obtained (including by means of the extension or renewal of existing Indebtedness) in exchange for, or to extend, renew, replace, or refinance, in whole or part, any of the Term Loans, any Class of Term Loans, Revolving Loans or Revolving Commitments;

(b) such Indebtedness is in an original aggregate principal amount not greater than the Maximum Refinancing Amount;

(c) any such Indebtedness will not mature prior to the final maturity date of the Refinanced Indebtedness, or have a shorter Weighted Average Life to Maturity than the Refinanced Indebtedness;

(d) any mandatory prepayments (and, with respect to any Credit Agreement Refinancing Indebtedness comprising Revolving Loans, to the extent commitments thereunder are permanently reduced or terminated) of:

(i) any Credit Agreement Refinancing Indebtedness that comprises junior lien or unsecured notes or loans may not be made except to the extent that prepayments are (A) permitted hereunder and (B) to the extent required hereunder or pursuant to the terms of any Credit Agreement Refinancing Indebtedness that is Pari Passu Lien Indebtedness, first made or offered to the Loans and any such Pari Passu Lien Indebtedness; and

(ii) any Credit Agreement Refinancing Indebtedness that is Pari Passu Lien Indebtedness will be made on a *pro rata* basis or less than *pro rata* basis with the Initial Term Loans or Initial Revolving Commitments, as applicable (but not greater than a pro rata basis except for prepayments with the proceeds of Credit Agreement Refinancing Indebtedness and in respect of an earlier maturing tranche);

(e) such Indebtedness is not incurred or guaranteed by any Person other than a Credit Party;

(f) if such Indebtedness is secured:

(i) such Indebtedness is not secured by any assets or property of the Borrower or any Subsidiary that does not constitute Collateral;

(ii) [reserved];

(iii) if such Indebtedness constitutes Pari Passu Lien Indebtedness, a debt representative acting on behalf of the holders of such Indebtedness has become party to or is otherwise subject to the provisions of a Pari Passu Lien Intercreditor Agreement; and

(iv) if such Indebtedness is secured on a junior basis to the Obligations, a debt representative, acting on behalf of the holders of such Indebtedness, has become party to or is otherwise subject to the provisions of a Junior Lien Intercreditor Agreement; and

(g) the other terms applicable to such Indebtedness are either (i) substantially identical to or (taken as a whole as determined by the Borrower and the Administrative Agent) no more favorable to the lenders or holders providing such Indebtedness than those applicable to such Refinanced Indebtedness or (ii) otherwise on customary market terms (taken as a whole as determined by the Borrower in its reasonable judgment), including with respect to high yield debt securities to the extent applicable; *provided* that the Borrower will promptly deliver to the Administrative Agent final copies of the definitive credit documentation relating to such Indebtedness (unless the Borrower or applicable Subsidiary is bound by a confidentiality obligation with respect thereto, in which case the Borrower will deliver a reasonably detailed description of the material terms and conditions of such Indebtedness in lieu thereof); *provided further,* that this clause (g) will not apply to (1) terms addressed in the preceding clauses (a) through (f), (2) interest rate, fees, funding discounts and other pricing terms, (3) redemption, prepayment or other premiums, (4) optional prepayment terms, and (5) covenants and other terms that are (i) applied to the Loans and Commitments existing at the time of incurrence of such Credit Agreement Refinancing Indebtedness (so that existing Lenders also receive the benefit of such provisions) and/or (ii) applicable only to periods after the Latest Term Loan Maturity Date at the time of incurrence of such Indebtedness.

"**Credit Date**" means the date of a Credit Extension.

"**Credit Document**" means any of (i) this Agreement, (ii) the Notes, if any, (iii) the Collateral Documents, (iv) the Wells Fee Letter, solely with respect to the provision regarding the annual administrative fee due to the Administrative Agent and any documents or certificates executed by the Borrower in favor of an Issuing Bank relating to Letters of Credit, (v) the Intercompany Subordination Agreement, (vi) any other subordination and intercreditor agreement (including any Pari Passu Lien Intercreditor Agreement or Junior Lien Intercreditor Agreement) entered into pursuant to the terms hereof and (vii) any Incremental Amendment, Refinancing Amendment or Extension Amendment.

"**Credit Extension**" means the making of a Loan or the Issuing of a Letter of Credit.

"**Credit Party**" means the Borrower and each Guarantor Subsidiary.

"**Default**" means a condition or event that, after notice or lapse of time or both, would constitute an Event of Default.

"**Default Excess**" means, with respect to any Defaulting Lender, the excess, if any, of such Defaulting Lender's Pro Rata Share of the aggregate outstanding principal amount of Loans of all of the Lenders (calculated as if all Defaulting Lenders (including such Defaulting Lender) had funded all of their respective Defaulted Loans) over the aggregate outstanding principal amount of all Loans of such Defaulting Lender.

"**Default Period**" means, with respect to any Defaulting Lender, the period commencing on the date of the applicable Funding Default and ending on the earliest of the following dates: (a) the date on which all Commitments are cancelled or terminated and/or the Obligations are declared or become immediately due and payable, (b) with respect to any Funding Default (other than any such Funding Default arising pursuant to clause (e) of the definition of "Defaulting Lender"), the date on which (i) the Default Excess with respect to such Defaulting Lender will have been reduced to zero (whether by the funding by such Defaulting Lender of any Defaulted Loans of such Defaulting Lender or by the non-pro rata application of any voluntary or mandatory prepayments of the Loans in accordance with the terms of Section 2.13 or Section 2.14 or by a combination thereof) and (ii) such Defaulting Lender will have delivered to the Borrower and the Administrative Agent a written reaffirmation of its intention to honor its obligations hereunder with respect to its Commitments, and (c) the date on which the Borrower, the Administrative Agent and the Required Lenders waive all Funding Defaults of such Defaulting Lender in writing.

"**Default Right**" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"**Defaulted Loan**" as defined in Section 2.22.

"**Defaulting Lender**" will mean any Lender that has (a) failed to fund its portion of any Loan, or any portion of its participation in any Letter of Credit or Swing Line Loan within two (2) Business Days of the date on which it will have been required to fund the same, unless such Lender notifies the Borrower that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, will be specifically identified in such writing) has not been satisfied, (b)

notified the Borrower, the Administrative Agent, any Issuing Bank, any Swing Line Lender or any other Lender in writing that it does not intend to comply with any of its funding obligations under this Agreement or has made a public statement to the effect that it does not intend to comply with its funding obligations under this Agreement or under agreements in which it commits to extend credit generally unless such Lender notifies the Borrower that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, will be specifically identified in such writing) has not been satisfied, (c) failed, within three Business Days after written request by the Administrative Agent or the Borrower, to confirm that it will comply with the terms of this Agreement relating to its obligations to fund prospective Loans (unless such failure is the result of such Lender's good faith determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, will be specifically identified in writing to the Borrower prior to such failure) cannot be satisfied) and participations in then outstanding Letters of Credit and Swing Line Loans; *provided* that any such Lender will cease to be a Defaulting Lender under this clause (c) upon receipt of such confirmation by the Administrative Agent and the Borrower, (d) otherwise failed to pay over to the Borrower, the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within one Business Day of the date when due, (e) has become the subject of a Bail-In Action or (f)(i) been adjudicated as, or determined by any Governmental Authority having regulatory authority over such Lender or its properties or assets to be, insolvent or (ii) become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar person charged with reorganization or liquidation of its business or custodian, appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment, unless, in the case of any Lender referred to in this clause (f), the Borrower, the Administrative Agent, each Swing Line Lender and each Issuing Bank will be satisfied that such Lender intends, and has all approvals required to enable it, to continue to perform its obligations as a Lender hereunder. For the avoidance of doubt, a Lender will not be deemed to be a Defaulting Lender solely by virtue of the Undisclosed Administration of such Lender or its Parent or of the ownership or acquisition of any Capital Stock in such Lender or its Parent by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender; *provided* that, as of any date of determination, the determination of whether any Lender is a Defaulting Lender hereunder will not take into account, and will not otherwise impair, any amounts funded by such Lender which have been assigned by such Lender to an SPC pursuant to Section 10.6. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (e) above will be conclusive and binding absent manifest error, and such Lender will be deemed to be a Defaulting Lender upon delivery of written notice of such determination by the Administrative Agent to the Borrower and each other Lender.

"**Designated Non-Cash Consideration**" means the fair market value of non-cash consideration received by the Borrower or any Subsidiary in connection with an Asset Sale pursuant to Section 6.8(e) that is designated as Designated Non-Cash Consideration pursuant to a certificate of an Executive Officer, setting forth the basis of such valuation (which amount will be reduced by the fair market value of the portion of the non-cash consideration converted to cash within one hundred eighty (180) days following the consummation of the applicable Asset Sale).

"**Disqualified Capital Stock**" means any Capital Stock which, by its terms (or by the terms of any security or other Capital Stock into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely in exchange for Capital Stock that is not otherwise Disqualified Capital Stock), pursuant to a sinking fund obligation or otherwise, (b) is redeemable at the option of the holder thereof (other than solely in exchange for Capital Stock that is not otherwise Disqualified Capital Stock), in whole or in part, (c) provides for the scheduled payment of dividends in cash, or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Capital Stock that would constitute Disqualified Capital Stock, in each case, prior to the date that is ninety-one (91) days after the Latest Term Loan Maturity Date, except, in the case of clauses (a) and (b), if as a result of a change of control or asset sale, so long as any rights of the holders thereof upon the occurrence of such a change of control or asset sale event are subject to the prior payment in full of all Obligations, the cancellation or expiration of all Letters of Credit and the termination of the Commitments; *provided*, if such Capital Stock is issued pursuant to a plan for the benefit of future, current or former employees, directors or officers of the Borrower or any Subsidiary or by any such plan to such employees, directors or officers, such Capital Stock will not constitute Disqualified Capital Stock solely because they may be required to be repurchased by the Borrower or a Subsidiary in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's, director's or officer's termination, death or disability.

"**Disqualified Lender**" means (a) any person identified by name in writing to the Lead Arrangers on or prior to November 15, 2019, (b) any other Person that is identified by name in writing to the Lead Arrangers (if after November 15, 2019 and prior to the Closing Date) or the Administrative Agent (on or after the Closing Date), to the extent such person is a competitor or is an affiliate of a competitor of the Borrower or its Subsidiaries, which supplement to the Disqualified Lender List shall become effective three (3) Business Days after delivery thereof to the Lead Arrangers or the Administrative Agent, as applicable and (c) any affiliate of any person referred to in clauses (a) or (b) above that is (I) clearly identifiable as such solely on the basis of the similarity of its name or (II) identified as such by name in writing to the Administrative Agent, which supplement to the Disqualified Lender List shall become effective three (3) Business Days after delivery thereof to the Administrative Agent; provided, that (i) any supplement to the Disqualified Lender List shall not apply retroactively to disqualify any Persons that have previously acquired an assignment or participation interest in the Loans and Commitments and (ii) a "competitor" or an affiliate of a competitor shall not include any bona fide fixed income investors or debt funds (other than a bona fide fixed income investors or debt fund that has been identified in writing pursuant to clause (a) above) that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of business which is managed, sponsored or advised by any Person controlling, controlled by or under common control with such competitor or affiliate thereof, as applicable, and for which no personnel involved with the competitive activities of its affiliates (x) makes any investment decisions for such fixed income investors or debt fund, as applicable or (y) has access to any information (other than information publicly available) relating to the Borrower or its Subsidiaries from such fixed income investors or debt fund, as applicable.

"**Disqualified Lender List**" means the list of Disqualified Lenders identified by the Borrower to the Administrative Agent in writing prior to the Closing Date, as such list of Disqualified Lenders may be supplemented from time to time pursuant to the definition of "Disqualified Lender".

"**Dollar Equivalent**" means, at any time as to any amount denominated in any Agreed Currency other than Dollars, the equivalent amount in Dollars as determined by the Administrative Agent at such time on the basis of the Exchange Rate for the purchase of Dollars with such Agreed Currency, on the most recent Calculation Date for such currency.

"**Dollars**" and the sign "$" mean the lawful money of the United States of America.

"**Documentation Agent**" means BBVA USA, in its capacity as Documentation Agent hereunder.

"**Domestic Subsidiary**" means any Subsidiary organized under the laws of the United States of America, any State thereof or the District of Columbia.

"**E-Fax**" means any system used to receive or transmit faxes electronically.

"**E-Signature**" means the process of attaching to or logically associating with an Electronic Transmission an electronic symbol, encryption, digital signature or process (including the name or an abbreviation of the name of the party transmitting the Electronic Transmission) with the intent to sign, authenticate or accept such Electronic Transmission.

"**E-System**" means any electronic system approved by the Administrative Agent, including IntraLinks® and ClearPar® and any other Internet or extranet-based site, whether such electronic system is owned, operated or hosted by the Administrative Agent, any of its Related Persons or any other Person, providing for access to data protected by passcodes or other security system.

"**Early Opt-in Election**" means the occurrence of:

(a) (i) a determination by the Administrative Agent or (ii) a notification by the Required Lenders to the Administrative Agent (with a copy to the Borrower) that the Required Lenders have determined that U.S. dollar-denominated syndicated credit facilities being executed at such time, or that include language similar to that contained in Section 2.18(e) are being executed or amended, as applicable, to incorporate or adopt a new benchmark interest rate to replace the Eurodollar Rate, and

(b) (i) the election by the Administrative Agent or (ii) the election by the Required Lenders to declare that an Early Opt-in Election has occurred and the provision, as applicable, by the Administrative Agent of written notice of such election to the Borrower and the Lenders or by the Required Lenders of written notice of such election to the Administrative Agent.

"**EEA Financial Institution**" means (a) any institution established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"**EEA Member Country**" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"**EEA Resolution Authority**" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"**Electronic Transmission**" means each document, instruction, authorization, file, information and any other communication transmitted, posted or otherwise made or communicated by e-mail or E-Fax, or otherwise to or from an E-System.

"**Eligible Assignee**" means, in each case, subject to the proviso at the end of this definition, (a) any Lender, any Affiliate of any Lender and any Related Fund (any two or more Related Funds being treated as a single Eligible Assignee for all purposes hereof), (b) any Person (other than a Natural Person and/or the Borrower or any of the Borrower's Subsidiaries or Affiliates) in compliance with Section 10.6(c)(ii) or (c) any Approved Fund; *provided* that in no event will (i) a Disqualified Lender be an Eligible Assignee without the Borrower's consent (which may be withheld in its sole discretion) and (ii) any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons in this clause (ii) be an Eligible Assignee.

"**Eligible Currency**" means any currency other than Dollars (a) that is readily available, (b) that is freely traded, (c) in which deposits are customarily offered to banks in the London interbank market, (d) that is convertible into Dollars in the international interbank market and (e) as to which a Dollar Equivalent may be readily calculated. If, after the designation by an Issuing Bank of any currency as an Agreed Currency, (x) currency control or other exchange regulations are imposed in the country in which such currency is issued with the result that different types of such currency are introduced, (y) such currency is, in the reasonable determination of the applicable Issuing Bank, no longer readily available or freely traded or (z) in the reasonable determination of the applicable Issuing Bank, a Dollar Equivalent Amount of such currency is not readily calculable, the applicable Issuing Bank shall promptly notify the Administrative Agent and the Borrower, and such currency shall no longer be an Agreed Currency until such time as an Issuing Bank agrees to reinstate such currency as an Agreed Currency.

"**Employee Benefit Plan**" means any "employee benefit plan" as defined in Section 3(3) of ERISA which is or was sponsored, maintained or contributed to by, or required to be contributed by the Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates.

"**Environmental Claim**" means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive (conditional or

otherwise), by any Governmental Authority or any other Person, arising (a) pursuant to or in connection with any actual or alleged Environmental Liability or violation of any Environmental Law; (b) in connection with any Hazardous Material or any actual or alleged Hazardous Materials Activity; or (c) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment.

"**Environmental Laws**" means any and all current or future foreign or domestic, federal or state (or any subdivision of either of them) Laws, Governmental Authorizations, or any other requirements of Governmental Authorities relating to (a) the environment, natural resources and environmental matters, including those relating to any Hazardous Materials Activity; (b) the generation, use, storage, transportation or disposal of Hazardous Materials; or (c) occupational health and safety, land use or the protection of human, plant or animal health or welfare, in any manner applicable to the Borrower or any of its Subsidiaries or any Facility.

"**Environmental Liabilities**" means all Liabilities (including costs of Remedial Actions, natural resource damages and costs and expenses of investigation and feasibility studies, including the cost of environmental consultants and attorneys' costs) that may be imposed on, incurred by or asserted against any Credit Party or any Subsidiary of any Credit Party as a result of, or related to, (a) any actual or alleged violation of any Environmental Law; (b) any Release or threatened Release; (c) any Remedial Action or Hazardous Materials Activity; or (d) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor thereto.

"**ERISA Affiliate**" means, as applied to any Person, (a) any entity, whether or not incorporated, that is under common control with the Person within the meaning of Section 4001(a)(14) of ERISA, (b) any corporation which is a member of a controlled group of corporations within the meaning of Section 414(b) of the Internal Revenue Code of which that Person is a member; (c) any trade or business (whether or not incorporated) which is a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Internal Revenue Code of which that Person is a member; and (d) any member of an affiliated service group within the meaning of Section 414(m) or (o) of the Internal Revenue Code of which that Person, any corporation described in clause (b) above or any trade or business described in clause (c) above is a member. Any former ERISA Affiliate of the Borrower or Subsidiary will continue to be considered an ERISA Affiliate of any the Borrower or such Subsidiary within the meaning of this definition with respect to the period such entity was an ERISA Affiliate of the Borrower or such Subsidiary and with respect to liabilities arising after such period for which the Borrower or such Subsidiary could be liable under the Internal Revenue Code or ERISA.

"**ERISA Event**" means (a) a "reportable event" within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Pension Plan; (b) the filing pursuant to Section 412 of the Internal Revenue Code or Section 302 of ERISA of an application for a waiver of the minimum funding standard with respect to any Pension Plan, the failure to meet the minimum funding standard of Section 412 of the Internal Revenue Code or Section 302

or 303 of ERISA with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Internal Revenue Code) or the failure to make by its due date a required installment under Section 430(j) of the Internal Revenue Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (c) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (d) the withdrawal by the Borrower or any Subsidiary or any of their respective ERISA Affiliates from any Pension Plan with two or more non-related contributing sponsors or the termination of any such Pension Plan resulting in liability to the Borrower, any Subsidiary or any of their respective Affiliates pursuant to Section 4063 or 4064 of ERISA; (e) the institution by the PBGC of proceedings to terminate any Pension Plan or Multiemployer Plan, or the occurrence of any event or condition which could reasonably constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any such plan; (f) the imposition of any liability under Title IV of ERISA on the Borrower, any Subsidiary or any of their respective ERISA Affiliates, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA; (g) the withdrawal of the Borrower, any Subsidiary or any of their respective ERISA Affiliates in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefor, or the receipt by the Borrower, any Subsidiary or any of their respective ERISA Affiliates of notice from any Multiemployer Plan that it is in "endangered" or "critical" status (within the meaning of Sections 431 or 432 of the Internal Revenue Code or Sections 304 or 305 of ERISA), or in "critical and declining status" (within the meaning of Section 305 of ERISA) or in insolvency pursuant to Section 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (h) the occurrence of an act or omission which could give rise to the imposition on the Borrower, any Subsidiary or any of their respective ERISA Affiliates of fines, penalties, taxes or related charges under Chapter 43 of the Internal Revenue Code or under Section 409, Section 502(c), (i) or (l), or Section 4071 of ERISA in respect of any Employee Benefit Plan; (i) the assertion of a material claim (other than routine claims for benefits) against any Employee Benefit Plan other than a Multiemployer Plan or the assets thereof, or against the Borrower, any Subsidiary or any of their respective ERISA Affiliates in connection with any Employee Benefit Plan; (j) receipt from the Internal Revenue Service of notice of the failure of any Pension Plan or Multiemployer Plan (or any other Employee Benefit Plan intended to be qualified under Section 401(a) of the Internal Revenue Code) to qualify under Section 401(a) of the Internal Revenue Code, or the failure of any trust forming part of any such plan to qualify for exemption from taxation under Section 501(a) of the Internal Revenue Code; (k) the imposition of a Lien pursuant to Section 430(k) of the Internal Revenue Code or pursuant to ERISA with respect to any Pension Plan; (l) the occurrence of a non-exempt "prohibited transaction" with respect to which the Borrower or any Subsidiary is a "disqualified person" or a "party in interest" (within the meaning of Section 4975 of the Internal Revenue Code or Section 406 of ERISA, respectively) or which could reasonably be expected to result in Liability to the Borrower or any Subsidiary; (m) a determination that any Pension Plan is, or is expected to be, in "at risk" status (as defined in Section 430(j) of the Internal Revenue Code or Section 303 of ERISA); or (n) the imposition of liability on the Borrower or any Subsidiary or any of their respective ERISA Affiliates pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA.

"**EU Bail-In Legislation Schedule**" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"**Euro**" means the lawful currency of any member state of the European Union that has the euro as its lawful currency in accordance with legislation of the European Union relating to economic and monetary union.

"**Eurodollar Base Rate**" means, subject to the implementation of a Benchmark Replacement in accordance with Section 2.18(e),

(a) for any interest rate calculation with respect to a Eurodollar Rate Loan, the rate of interest per annum determined on the basis of the rate for deposits in Dollars for a period equal to the applicable Interest Period as published by the ICE Benchmark Administration Limited, a United Kingdom company, or a comparable or successor quoting service approved by the Administrative Agent, at approximately 11:00 a.m. (London time) two (2) London Banking Days prior to the first day of the applicable Interest Period. If, for any reason, such rate is not so published then "Eurodollar Base Rate" shall be determined by the Administrative Agent to be the arithmetic average of the rate per annum at which deposits in Dollars would be offered by first class banks in the London interbank market to the Administrative Agent at approximately 11:00 a.m. (London time) two (2) London Banking Days prior to the first day of the applicable Interest Period for a period equal to such Interest Period, and

(b) for any interest rate calculation with respect to a Base Rate Loan, the rate of interest per annum determined on the basis of the rate for deposits in Dollars for an Interest Period equal to one month (commencing on the date of determination of such interest rate) as published by ICE Benchmark Administration Limited, a United Kingdom company, or a comparable or successor quoting service approved by the Administrative Agent, at approximately 11:00 a.m. (London time) on such date of determination, or, if such date is not a Business Day, then the immediately preceding Business Day. If, for any reason, such rate is not so published then "Eurodollar Base Rate" for such Base Rate Loan shall be determined by the Administrative Agent to be the arithmetic average of the rate per annum at which deposits in Dollars would be offered by first class banks in the London interbank market to the Administrative Agent at approximately 11:00 a.m. (London time) on such date of determination for a period equal to one month commencing on such date of determination.

Each calculation by the Administrative Agent of the Eurodollar Base Rate shall be conclusive and binding for all purposes, absent manifest error.

Notwithstanding the foregoing, (x) in no event shall the Eurodollar Base Rate (including any Benchmark Replacement with respect thereto) be less than 0% and (y) unless otherwise specified in any amendment to this Agreement entered into in accordance with Section 2.18(e), in the event that a Benchmark Replacement with respect to the Eurodollar Base Rate is implemented then all references herein to the Eurodollar Base Rate shall be deemed references to such Benchmark Replacement.

"**Eurodollar Rate**" means, with respect to any Eurodollar Rate Loan for any Interest Period, an interest rate per annum equal to (a) the Eurodollar Base Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

"**Eurodollar Rate Loan**" means a Loan bearing interest at a rate determined by reference to the Eurodollar Rate.

"**Event of Default**" means each of the conditions or events set forth in Section 8.1.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended from time to time, and any successor statute.

"**Exchange Rate**" means, on any day, for purposes of determining the Dollar Equivalent of any Eligible Currency, the rate at which such other currency may be exchanged into Dollars at the time of determination on such day on the Bloomberg WCR Page for such currency. If such rate does not appear on any Bloomberg WCR Page, the Exchange Rate shall be determined by reference to such other publicly available service for displaying exchange rates as may be selected by the Administrative Agent, or, in the event no such service is selected, such Exchange Rate shall instead be the arithmetic average of the spot rates of exchange of the Administrative Agent in the market where its foreign currency exchange operations in respect of such currency are then being conducted, at or about such time as the Administrative Agent shall elect after determining that such rates shall be the basis for determining the Exchange Rate, on such date for the purchase of Dollars for delivery two Business Days later; *provided* that, if at the time of any such determination, for any reason, no such spot rate is being quoted, the Administrative Agent, after consultation with the Borrower, may use any reasonable method it deems in good faith appropriate to determine such rate, and such determination shall be presumed correct absent manifest error.

"**Excluded Assets**" has the meaning assigned to that term in the Pledge and Security Agreement.

"**Excluded Subsidiary**" means (a) each Immaterial Subsidiary, (b) each Unrestricted Subsidiary, (c) each Foreign Subsidiary, (d) each Foreign Subsidiary Holding Company, (e) each direct or indirect Subsidiary of any Foreign Subsidiary or any Foreign Subsidiary Holding Company, (f) each Subsidiary to the extent that such Subsidiary is prohibited or restricted by any applicable Law from guaranteeing the Obligations, (g) each Subsidiary if, and for so long as, the guarantee of the Obligations by such Subsidiary would require the consent, approval, license or authorization of a Governmental Authority or under any binding Contractual Obligation with any Person other than the Borrower or any Subsidiary existing on the Closing Date (or, if later, the date such Subsidiary is acquired (so long as such Contractual Obligation is not incurred in contemplation of such acquisition), except to the extent such consent, approval, license or authorization has actually been obtained; it being understood and agreed that there shall not be a requirement to seek to obtain any such consent, (h) each Subsidiary that is not a wholly owned Subsidiary of the Borrower or a Guarantor, (i) each special purpose securitization vehicle (or similar entity), (j) each Subsidiary that is a not-for-profit organization, (k) each Captive Insurance Subsidiary and (l) each Subsidiary with respect to which, as determined by the Borrower and the Administrative Agent, the cost of providing a guarantee is excessive in view of the benefits to be obtained by the Lenders; in each case of this definition, unless such Subsidiary is designated as a Guarantor pursuant to the definition of "**Guarantors**."

"**Excluded Swap Obligation**" means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, and only for so long as, all or a portion of the guaranty of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" (determined after giving effect to any applicable keep well, support or other agreement for the benefit of such Guarantor and any and all guarantees of such Guarantor's Swap Obligations by other Credit Parties) as defined in the Commodity Exchange Act and the regulations thereunder (determined after giving effect to Section 7.14) at the time the guaranty of such Guarantor, or a grant by such Guarantor of a security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion will apply only to the portion of such Swap Obligation that is attributable to swaps for which the guaranty or security interest is or becomes excluded in accordance with the first sentence of this definition.

"**Excluded Tax**" means any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient (a) Taxes imposed on or measured by net income (however denominated, and including branch profits taxes) and franchise taxes, in each case (i) imposed as a result of such Recipient being organized under the Laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) imposed on any Recipient as a result of a present or former connection between such Recipient and the jurisdiction of the Governmental Authority imposing such Tax or any political subdivision or taxing authority thereof or therein (other than such connection arising from any such Recipient having executed, delivered, become a party to, performed its obligations or received a payment under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced, any Credit Document, or sold or assigned an interest in any Credit Document or Loan); (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a Law in effect on the date on which such Lender (i) acquires such interest in the Loan or Commitment or otherwise becomes a party to this Agreement (other than pursuant to an assignment request by the Borrower under Section 2.23) or (ii) changes its lending office, except in each case, to the extent that, pursuant to Section 2.20, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office; (c) Taxes that are attributable to the failure by any Recipient to deliver the documentation required to be delivered pursuant to Section 2.20(f) or Section 2.20(g); and (d) Taxes imposed under FATCA.

"**Executive Officer**" means, as applied to any Person, any individual holding the position of chairman of the Board of Directors, chief executive officer, chief financial officer, chief operating officer, chief compliance officer, chief legal officer and any other executive officer having substantially the same authority and responsibility as any of the foregoing.

"**Executive Order No. 13224**" means Executive Order No. 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.

"**Existing Credit Agreement**" means that certain Credit and Guaranty Agreement, dated as of November 15, 2016 (as amended, amended and restated, supplemented or otherwise modified prior to the date hereof), among the Borrower, the several lenders from time to time party thereto and JPMorgan Chase Bank, N.A., as administrative agent and collateral agent.

"**Existing Letters of Credit**" means those letters of credit existing on the Closing Date and identified on Schedule 1.1.

"**Extended Revolving Credit Commitment**" as defined in Section 10.5(g)(i)(2).

"**Extended Term Lender**" as defined in Section 10.5(g)(i)(3).

"**Extended Term Loans**" as defined in Section 10.5(g)(i)(3).

"**Extension**" as defined in Section 10.5(g)(i).

"**Extension Amendment**" as defined in Section 10.5(g)(iii).

"**Extension Offer**" as defined in Section 10.5(g)(i).

"**Facility**" means any real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or heretofore owned, leased, operated or used by the Borrower, any Subsidiary or any of their respective predecessors or Affiliates.

"**Fair Share**" as defined in Section 7.2.

"**Fair Share Contribution Amount**" as defined in Section 7.2.

"**FATCA**" means Sections 1471 through 1474 of the Internal Revenue Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code, any intergovernmental agreement between a non-U.S. jurisdiction and the United States with respect to the foregoing and any law or regulation (or official interpretation thereof) adopted pursuant to any such intergovernmental agreement.

"**FCPA**" means the U.S. Foreign Corrupt Practices Act (15 U.S.C. §§78dd-1 et seq.).

"**Federal Funds Effective Rate**" means, for any day, the rate calculated by the NYFRB based on such day's federal funds transactions by depositary institutions (as determined in such manner as the NYFRB shall set forth on its public website from time to time) and published on the next succeeding Business Day by the NYFRB as the federal funds effective rate.

"**Federal Reserve Bank of New York's Website**" means the website of the Federal Reserve Bank of New York at http://www.newyorkfed.org, or any successor source.

"**Finance Lease**" means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person as lessee that, in conformity with GAAP as in effect on the Closing Date, is or should be accounted for as a finance lease or capital lease on the balance sheet of that Person; provided that for all purposes hereunder the amount of obligations under any Finance Lease shall be the amount thereof accounted for as a liability in accordance with GAAP as in effect on January 1, 2019.

"**Financial Officer Certification**" means, with respect to the financial statements for which such certification is required, the certification of the chief financial officer, treasurer, controller or other officer with equivalent duties of the Borrower that such financial statements fairly present, in all material respects, the financial condition of the Borrower and the Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments and the absence of footnotes.

"**Financial Covenants**" are, as of any date of determination, the covenants set forth in Section 6.7(a) as applicable on such date.

"**Financial Plan**" as defined in Section 5.1(k).

"**First Lien Net Leverage Ratio**" means, as of any date, the ratio of (a) Consolidated Total Debt of the Borrower and the Subsidiaries that is secured by a Lien on the Collateral that ranks pari passu with the Liens on the Collateral securing the Obligations outstanding as of the most recently ended Test Period, *minus* up to $50,000,000 of Unrestricted Cash as of such date to (b) Consolidated Adjusted EBITDA for the most recently ended Test Period, all of the foregoing determined on a Pro Forma Basis.

"**Fiscal Quarter**" means a fiscal quarter of any Fiscal Year.

"**Fiscal Year**" means the fiscal year of the Borrower and the Subsidiaries ending on December 31st of each calendar year.

"**Flood Hazard Property**" means any improved portion of a Material Real Estate Asset subject to a Mortgage in favor of the Collateral Agent, for the benefit of the Secured Parties, and located in an area designated by the Federal Emergency Management Agency (or any successor thereto) as having special flood or mud slide hazards.

"**Flood Insurance Laws**" means, collectively, (i) the National Flood Insurance Reform Act of 1994 (which comprehensively revised the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973) as now or hereafter in effect or any successor statute thereto, (ii) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto, and (iv) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

"**Foreign Casualty Event**" as defined in Section 2.15(f)(i).

"**Foreign Currency Letter of Credit**" means a Letter of Credit denominated in any Available Foreign Currency.

"**Foreign Disposition**" as defined in Section 2.15(f)(i).

"**Foreign Subsidiary**" means any Subsidiary that is not a Domestic Subsidiary.

"**Foreign Subsidiary Holding Company**" means any Subsidiary that has no material assets other than the Capital Stock (or Capital Stock and Indebtedness) of one or more CFCs or other Foreign Subsidiary Holding Companies.

"**Funded Debt**" means all Indebtedness of the Borrower and the Subsidiaries for borrowed money that matures more than one year from the date of its creation or matures within one year from such date that is renewable or extendable, at the option of such Person, to a date more than one year from such date or arises under a revolving credit or similar agreement that obligates the lender or lenders to extend credit during a period of more than one year from such date, including Indebtedness in respect of the Loans.

"**Funding Default**" as defined in Section 2.22(d).

"**Funding Guarantor**" as defined in Section 7.2.

"**Funding Notice**" means a notice substantially in the form of Exhibit A-1.

"**GAAP**" means, subject to the limitations on the application thereof set forth in Section 1.2 and in the definition of Finance Lease, United States generally accepted accounting principles in effect as of the date of determination thereof; *provided, however,* that if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof (including through the adoption of IFRS) on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof (including through the adoption of IFRS), then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. Notwithstanding anything herein to the contrary, all leases of the Borrower and its Subsidiaries that are treated as operating leases for purposes of GAAP on January 1, 2019 shall continue to be accounted for as operating leases regardless of any change in or application of GAAP following such date that would otherwise require such leases to be treated as Finance Leases.

"**Government Official**" means (a) any official, officer, employee or representative of, or any Person acting in an official capacity for or on behalf of, any Governmental Authority, (b) any political party or party official or candidate for political office or (c) any official, officer, employee, or any Person acting in an official capacity for or on behalf of, any company, business, enterprise or other entity owned (in whole or in substantial part) controlled by or Affiliated (as defined without reference to clause (a) of the second sentence set forth in the definition of "Affiliate") with a Governmental Authority.

"**Governmental Acts**" means any act or omission, whether rightful or wrongful, of any present or future de jure or de facto government or Governmental Authority.

"**Governmental Authority**" means any federal, state, municipal, national or other government, governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof or any entity, officer or examiner exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with a state of the United States, the United States, or a foreign entity or government in a jurisdiction where the Borrower and its Subsidiaries operate the Businesses.

"**Governmental Authorization**" means any permit, license, authorization, plan, directive, consent order or consent decree of or from any Governmental Authority.

"**Granting Lender**" as defined in Section 10.6(k).

"**Grantor**" as defined in the Pledge and Security Agreement.

"**Guarantor**" means (i) each Guarantor Subsidiary and (ii) to the extent that any Person, if any, becomes the direct Parent of the Borrower and such Parent elects, in its sole discretion, to Guarantee the Obligations (it being understood that there is no requirement for any such Parent to give such Guaranty) by executing a supplement to the Guaranty in substantially the form attached thereto, then such Parent shall be a Guarantor hereunder; *provided* that, with respect to any such Parent that is not organized under the laws of the United States of America, any State thereof or the District of Columbia, the Required Lenders shall have granted their consent to such Parent as a Guarantor taking into account the local laws and regulations in the jurisdiction of such Parent's organization and operations, and the availability and enforceability of guarantees and security to be provided by such Parent, and all documentation of such guarantees and security and related filings (if applicable) shall be in form and substance satisfactory to the Required Lenders.

"**Guarantor Subsidiary**" means each Subsidiary of the Borrower (other than an Excluded Subsidiary). The Borrower may, in its sole discretion, cause any Subsidiary that is not required to be a Guarantor to Guarantee the Obligations by causing such Subsidiary to execute a supplement to the Guaranty in substantially the form attached thereto, and any such Subsidiary shall be a Guarantor hereunder for all purposes; *provided* that with respect to any Subsidiary that is not a Domestic Subsidiary, the Required Lenders shall have granted their consent to such Subsidiary as a Guarantor taking into account the local laws and regulations in the jurisdiction of such Subsidiary's organization and operations, and the availability and enforceability of guarantees and security to be provided by such Subsidiary, and all documentation of such guarantees and security and related filings (if applicable) shall be in form and substance satisfactory to the Required Lenders.

"**Guaranty**" means the guaranty of each Guarantor set forth in Section 7.

"**Hazardous Materials**" means any chemical, material, substance or waste, (i) exposure to, or the Release of which is prohibited, limited or regulated by any Governmental Authority, (ii) which may or could result in liability under Environmental Law, or (iii) which may or could

pose a hazard to human health and safety or to the indoor or outdoor environment, including any gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products, asbestos, polychlorinated biphenyls, urea-formaldehyde insulation, toxic mold and biomedical waste.

"**Hazardous Materials Activity**" means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Materials, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Materials, and any corrective action or response action with respect to any of the foregoing.

"**Highest Lawful Rate**" means the maximum lawful interest rate, if any, that at any time or from time to time may be contracted for, charged, or received under the laws applicable to any Lender which are presently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum non-usurious interest rate than applicable laws now allow.

"**Historical Financial Statements**" means as of the Closing Date, with respect to the Borrower and its consolidated Subsidiaries, (i) the audited consolidated balance sheets as of December 31, 2017 and 2018 and the related audited consolidated statements of operations and comprehensive (loss) income, statements of changes in members' equity and cash flows for the years ended December 31, 2017 and 2018, and (ii) the unaudited consolidated balance sheet as of September 30, 2019 and the related unaudited consolidated statement of operations and comprehensive (loss) income and statements of changes in members' equity and cash flows for the nine months then ended, in each case together with the notes thereto.

"**IFRS**" means International Financial Reporting Standards and applicable accounting requirements set by the International Accounting Standards Board or any successor thereto (or the Financial Accounting Standards Board, the Accounting Principles Board of the American Institute of Certified Public Accountants, or any successor to either such Board, or the SEC, as the case may be), as in effect from time to time.

"**Immaterial Subsidiary**" means on any date, any Subsidiary of the Borrower that has less than 2.5% of consolidated total assets on a Pro Forma Basis and generates less than 2.5% of annual consolidated revenues of the Borrower and the Subsidiaries as reflected on the most recent financial statements delivered pursuant to Section 5.1(a) prior to such date; *provided* that if, at any time and from time to time after the Closing Date (or such longer period as the Administrative Agent may agree in its sole discretion), Domestic Subsidiaries that are not Guarantors solely because they meet the thresholds set forth above comprise in the aggregate more than (when taken together with the consolidated total assets of the Subsidiaries of such Domestic Subsidiaries at the last day of the most recent Test Period) 5.0% of consolidated total assets of the Borrower and the Subsidiaries as of the end of the most recently ended Test Period or more than (when taken together with the revenues of the Subsidiaries of such Domestic Subsidiaries for such Test Period) 5.0% of the consolidated revenues of the Borrower and the Subsidiaries for such Test Period, then the Borrower shall, not later than forty-five (45) days after the date by which financial statements for such Test Period were required to be delivered

pursuant to this Agreement (or such longer period as the Administrative Agent may agree in its reasonable discretion), (i) cause one or more Domestic Subsidiaries to comply with the provisions of Section 5.10 with respect to any such Subsidiaries so that the foregoing excess is eliminated.

"**Increased Cost Lender**" as defined in Section 2.23(a).

"**Incremental Amendment**" has the meaning specified in Section 2.24(e).

"**Incremental Amount**" has the meaning specified in Section 2.24(c).

"**Incremental Equivalent Debt**" means Indebtedness of any one or more Credit Parties in the form of loans or notes that constitute Pari Passu Lien Indebtedness or Junior Lien Indebtedness or that are unsecured; *provided* that:

(a) the aggregate principal amount of all Incremental Equivalent Debt on any date such Indebtedness is incurred will not, together with any Incremental Revolving Facilities and/or Incremental Term Facilities previously incurred, exceed the Incremental Amount (on the same basis as the Borrower may incur Incremental Facilities pursuant to the fourth, fifth and sixth sentences of Section 2.24(c), but substituting "Incremental Equivalent Debt" for "Incremental Facility" therein); *provided* that (i) loans or notes that constitute Pari Passu Lien Indebtedness will only be incurred when the First Lien Net Leverage Ratio, after giving effect to the incurrence thereof on a Pro Forma Basis and excluding the cash proceeds to the Borrower or the Subsidiaries therefrom (but otherwise giving effect to the use of such proceeds), would not exceed 3.25:1.00; *provided* that such ratio level shall increase to 3.50:1.00 in connection with any Material Permitted Acquisition that results in the Financial Covenant level set forth in Section 6.7(a)(i) to increase and for any other Incremental Equivalent Debt incurred to finance a Material Permitted Acquisition during the duration of such increase, (ii) loans or notes that constitute Junior Lien Indebtedness will only be incurred when the Secured Net Leverage Ratio, after giving effect to the incurrence thereof on a Pro Forma Basis and excluding the cash proceeds to the Borrower or the Subsidiaries therefrom (but otherwise giving effect to the use of such proceeds), would not exceed 3.25:1.00; *provided* that such ratio level shall increase to 3.50:1.00 in connection with any Material Permitted Acquisition that results in the Financial Covenant level set forth in Section 6.7(a)(i) to increase and for any other Incremental Equivalent Debt incurred to finance a Material Permitted Acquisition during the duration of such increase and (iii) unsecured loans or notes will only be incurred when the Total Net Leverage Ratio, after giving effect to the incurrence thereof on a Pro Forma Basis and excluding the cash proceeds to the Borrower or the Subsidiaries therefrom (but otherwise giving effect to the use of such proceeds), would not exceed 3.25:1.00; *provided* that such ratio level shall increase to 3.50:1.00 in connection with any Material Permitted Acquisition that results in the Financial Covenant level set forth in Section 6.7(a)(i) to increase and for any other Incremental Equivalent Debt incurred to finance a Material Permitted Acquisition during the duration of such increase;

(b) (i) any Incremental Equivalent Debt that constitutes Pari Passu Lien Indebtedness will not mature prior to the maturity date of the Initial Term Loans and (ii) any Incremental Equivalent Debt that constitutes Junior Lien Indebtedness or unsecured Indebtedness will not mature prior to the date that is 91 days after the maturity date of the Initial Term Loans;

(c) any Incremental Equivalent Debt will not have a shorter Weighted Average Life to Maturity than the Initial Term Loans;

(d) any Incremental Equivalent Debt that is secured (i) will not be secured by any property or assets of the Borrower or any Subsidiary other than the Collateral and (ii) will be subject to a Pari Passu Lien Intercreditor Agreement or Junior Lien Intercreditor Agreement, as applicable;

(e) any Incremental Equivalent Debt constituting Pari Passu Lien Indebtedness may participate on a *pro rata* basis or less than *pro rata* basis (but not greater than a *pro rata* basis except for prepayments with the proceeds of a Permitted Refinancing and in respect of an earlier maturing tranche) with the then-existing Term Loans in any mandatory prepayments hereunder, and any mandatory prepayments of any Incremental Equivalent Debt that is unsecured or Junior Lien Indebtedness may not be made except to the extent that prepayments are offered, to the extent required under this Agreement or any Pari Passu Lien Indebtedness, first on a *pro rata* basis to the Term Loans and any applicable Pari Passu Lien Indebtedness;

(f) Incremental Equivalent Debt will not be guaranteed by any Person other than the Credit Parties;

(g) with respect to any Incremental Equivalent Debt incurred as Pari Passu Lien Indebtedness in the form of term loans, the MFN Adjustment will apply to any such Incremental Equivalent Debt (but the MFN Adjustment will not apply to any other Incremental Equivalent Debt);

(h) subject to the provisions set forth in Section 1.5 with respect to any Limited Condition Transaction, no Default or Event of Default will have occurred and be continuing on the date such Incremental Equivalent Debt is incurred, or would occur immediately after giving effect thereto; and

(i) Other Applicable Incurrence Requirements shall apply, *mutatis mutandis.*

For the avoidance of doubt, if the Borrower shall incur indebtedness as Incremental Equivalent Debt under the Incremental Fixed Amount substantially concurrently with the incurrence of indebtedness under any of the First Lien Net Leverage Ratio, Secured Net Leverage Ratio and/or Total Net Leverage Ratio tests described above, such applicable ratio will be calculated with respect to such incurrence without regard to any incurrence of indebtedness under the Incremental Fixed Amount. Unless the Borrower elects otherwise, each Incremental Equivalent Debt will be deemed incurred first under the applicable First Lien Net Leverage Ratio, Secured Net Leverage Ratio and/or Total Net Leverage Ratio to the extent permitted, with the balance incurred under the Incremental Fixed Amount. If any of the First Lien Net Leverage Ratio, Secured Net Leverage Ratio and/or Total Net Leverage Ratio tests described above for the incurrence of any Incremental Equivalent Debt would be satisfied on a Pro Forma Basis as of the end of any Fiscal Quarter, the classification shall be deemed to have occurred automatically.

"**Incremental Facility**" has the meaning specified in Section 2.24(a).

"**Incremental Fixed Amount**" means, as of the date of measurement, (a) the greater of (i) $100,000,000 and (ii) 100% of TTM Consolidated Adjusted EBITDA on a Pro Forma Basis as of the applicable date of determination, ***minus*** (b) the aggregate amount of Incremental Term Loans previously incurred in reliance on this definition, ***minus*** (c) the aggregate amount of Revolving Credit Commitments previously committed in reliance on this definition to fund Incremental Revolving Facilities, ***minus*** (d) the aggregate amount of all Incremental Equivalent Debt previously incurred in reliance on this definition, ***plus*** (e) the aggregate principal amount of any prepayments of Term Loans made pursuant to Section 2.13(a) to the extent not funded with the proceeds of Funded Debt, ***plus*** (f) the aggregate principal amount of any reductions of the Revolving Credit Commitments made pursuant to Section 2.13(b) to the extent not funded with the proceeds of Funded Debt.

"**Incremental Loans**" has the meaning specified in Section 2.24(a).

"**Incremental Ratio Amount**" means an aggregate principal amount of Indebtedness that, after giving effect to the incurrence thereof on a Pro Forma Basis and excluding the cash proceeds to the Borrower or the Subsidiaries therefrom (but otherwise giving effect to the use of such proceeds), would not result in, with respect to any Incremental Facility or Incremental Equivalent Debt to be incurred as Pari Passu Lien Indebtedness, the First Lien Net Leverage Ratio being equal to or greater than 3.25:1.00 for the most recently ended Test Period; *provided* that such ratio level shall increase to 3.50:1.00 in connection with any Material Permitted Acquisition that results in the Financial Covenant level set forth in Section 6.7(a)(i) to increase and for any other Incremental Facility or Incremental Equivalent Debt incurred to finance a Material Permitted Acquisition during the duration of such increase.

"**Incremental Revolving Facilities**" has the meaning specified in Section 2.24(a).

"**Incremental Revolving Loans**" has the meaning specified in Section 2.24(a).

"**Incremental Term Facilities**" has the meaning specified in Section 2.24(a).

"**Incremental Term Loans**" has the meaning specified in Section 2.24(a).

"**Incremental Term Loan Commitment**" means the commitment of a Lender to make or otherwise fund an Incremental Term Loan and "Incremental Term Loan Commitments" means such commitments of all Lenders in the aggregate.

"**Incremental Term Loan Exposure**" means, with respect to any Lender, as of any date of determination, the outstanding principal amount of the Incremental Term Loans of such Lenders; *provided*, at any time prior to the making of the Incremental Term Loans, the Incremental Term Loan Exposure of any Lender will be equal to such Lender's Incremental Term Loan Commitment.

"**Indebtedness**," as applied to any Person, means, without duplication, (a) all indebtedness for borrowed money; (b) that portion of obligations with respect to Finance Leases that is properly classified as a liability on a balance sheet in conformity with GAAP as in effect of the date hereof; (c) notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money; (d) any obligation owed for all or

any part of the deferred purchase price of property or services to the extent the same would be required to be shown as a liability on the balance sheet of such Person prepared in accordance with GAAP; (e) all indebtedness secured by any Lien on any property or asset owned or held by that Person regardless of whether the indebtedness secured thereby will have been assumed by that Person or is nonrecourse to the credit of that Person (*provided* that the amount of such Indebtedness for purposes of this clause (e) will be the lesser of the fair market value of such property at such date of determination and the amount of Indebtedness so secured); (f) the face amount of any letter of credit issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings; (g) [reserved], (h) Disqualified Capital Stock; (i) the direct or indirect guaranty, endorsement (otherwise than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of Indebtedness of any other Person in respect of items in clauses (a)-(g) of this definition other than by endorsement of negotiable instruments for collection in the ordinary course of business; (j) [reserved]; (k) [reserved]; and (l) obligations of such Person in respect of any exchange traded or over the counter derivative transaction, including any Rate Contract, whether entered into for hedging or speculative purposes; *provided* that in no event (i) will obligations under any Rate Contract be deemed "Indebtedness" for the purpose of calculating any ratio contemplated by this Agreement and (ii) will operating leases of the Borrower and the Subsidiaries be deemed "Indebtedness" for any purpose under this Agreement. Notwithstanding anything to the contrary in clause (f) of this definition, to the extent any letter of credit issued for the benefit of the Borrower or any Subsidiary (a "**Primary LC**") is supported (including any "back-to-back" arrangement) by a another letter of credit (including any Letter of Credit hereunder) also issued for the benefit of the Borrower or any Subsidiary (the "**Supporting LC**"), to the extent that any both such Primary LC and the relevant Supporting LC would constitute "Indebtedness" for any purpose under this Agreement, then the Primary LC and the relevant Support LC shall be deemed to be a single obligation in an amount equal to the amount of Indebtedness attributable to the Primary LC (and any corresponding amount of the Supporting LC that also would then constitute "Indebtedness" will be disregarded).

For all purposes hereof, the Indebtedness of any Person will (A) include the Indebtedness of any partnership or Joint Venture (other than a Joint Venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, except to the extent such Person's liability for such Indebtedness is otherwise limited and only to the extent such Indebtedness would be included in the calculation of Consolidated Total Debt and (B) in the case of Subsidiaries that are not Credit Parties, exclude loans and advances made by Credit Parties having a term not exceeding 364 days (inclusive of any roll over or extensions of terms) and made in the ordinary course of business solely to the extent the aggregate principal amount of all such loans and advances at any time outstanding does not exceed $2,000,000 solely to the extent that such intercompany loans and advances are evidenced by one or more notes in form and substance reasonably satisfactory to the Administrative Agent and pledged as Collateral. The amount of Indebtedness of any Person for purposes of clause (e) will be deemed to be equal to the lesser of (i) the aggregate unpaid amount of such Indebtedness and (ii) the fair market value (as determined by such Person in good faith) of the property encumbered thereby as determined by such Person in good faith.

"**Indemnified Liabilities**" means, collectively, any and all liabilities (including Environmental Liabilities), obligations, losses, damages (including natural resource damages),

penalties, claims (including Environmental Claims), actions, judgments, suits, costs (including the costs of any Remedial Action), expenses and disbursements of any kind or nature whatsoever (including the reasonable and documented fees and disbursements of counsel for Indemnitees in connection with any investigative, administrative or judicial proceeding or hearing commenced or threatened by any Person, whether or not any such Indemnitee will be designated as a party or a potential party thereto, and any reasonable and documented out-of-pocket fees or expenses incurred by Indemnitees in enforcing this indemnity), whether direct, indirect or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations (including securities and commercial laws, statutes, rules or regulations and Environmental Laws), on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted against any such Indemnitee, in any manner relating to or arising out of (a) this Agreement or the other Credit Documents or the transactions contemplated hereby or thereby (including the Lenders' agreement to make Credit Extensions or the use or intended use of the proceeds thereof, or any enforcement of any of the Credit Documents (including any sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Guaranty)); (b) the Wells Fee Letter and any Contractual Obligation entered into in connection with any Approved Electronic Communications; (c) any Environmental Claim or any Hazardous Materials Activity relating to or arising from, directly or indirectly, any past or present activity, operation, land ownership, or practice of the Borrower or any Subsidiary; or (d) any investigation, litigation or other proceeding relating to any of the foregoing, whether or not brought by any such Indemnitee or any of its Related Persons, any holders of securities or creditors (and including attorneys' fees in any case), whether or not any such Indemnitee, Related Person, holder or creditor is a party thereto, and whether or not based on any securities or commercial law or regulation or any other Law or theory thereof, including common law, equity, contract, tort or otherwise.

"**Indemnified Taxes**" means (a) all Taxes other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Credit Party under any Credit Document, and (b) to the extent not otherwise described in (a), Other Taxes.

"**Indemnitee**" as defined in Section 10.3(a).

"**Initial Credit Extension**" as defined in Section 3.1.

"**Initial Revolving Borrowing**" means one or more borrowings of Revolving Loans in amounts not to exceed up to $10,000,000 (including for working capital purposes and/or to pay Transaction Costs).

"**Initial Revolving Commitment**" means the commitment of a Lender set forth on Appendix A-2 to make or otherwise fund any Revolving Loan and to acquire participations in Letters of Credit and Swing Line Loans hereunder, and "**Initial Revolving Commitments**" means such commitments of all of the Lenders in the aggregate. The amount of each Lender's Initial Revolving Commitment, if any, is subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Initial Revolving Commitments as of the Closing Date is $50,000,000.

"**Initial Term Loan**" means a Term Loan made by a Lender to the Borrower on the Closing Date pursuant to Section 2.1.

"**Initial Term Loan Commitment**" means the commitment of a Lender to make or otherwise fund an Initial Term Loan and "**Initial Term Loan Commitments**" means such commitments of all of the Lenders in the aggregate. The amount of each Lender's Initial Term Loan Commitment, if any, is set forth on Appendix A-1 or in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Initial Term Loan Commitments as of the Closing Date is $200,000,000.

"**Initial Term Loan Exposure**" means, with respect to any Lender, as of any date of determination, the outstanding principal amount of the Initial Term Loans of such Lender; *provided*, at any time prior to the making of the Initial Term Loans, the Initial Term Loan Exposure of any Lender will be equal to such Lender's Initial Term Loan Commitment.

"**Intellectual Property**" has the meaning set forth in the Pledge and Security Agreement.

"**Intercompany Subordination Agreement**" means the Intercompany Subordination Agreement to be executed by the Borrower and its Subsidiaries substantially in the form of Exhibit K.

"**Interest Coverage Ratio**" means, as of any date, the ratio of (a) Consolidated Adjusted EBITDA for the most recently ended Test Period to (b) Consolidated Interest Expense paid in cash and net of cash interest income for the most recently ended Test Period, in each case for the Test Period as of such date, all of the foregoing determined on a Pro Forma Basis.

"**Interest Payment Date**" means with respect to (a) any Base Rate Loan, the last Business Day of each Calendar Quarter, commencing on the first such date to occur after the borrowing of such Loan and the final maturity date or conversion date of such Loan; and (b) any Eurodollar Rate Loan, the last day of each Interest Period applicable to such Loan; *provided* that in the case of each Interest Period of longer than three months "Interest Payment Date" will also include each date that is three months, or an integral multiple thereof, after the commencement of such Interest Period.

"**Interest Period**" means, in connection with a Eurodollar Rate Loan, an interest period of one-, two-, three- or six-months (or if available twelve-months or other periods, in each case, with the consent of each applicable Lender), as selected by the Borrower in the applicable Funding Notice or Conversion/Continuation Notice, (a) initially, commencing on the Credit Date or Conversion/Continuation Date thereof, as the case may be; and (b) thereafter, commencing on the day on which the immediately preceding Interest Period expires; *provided* that (i) if an Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period will expire on the next succeeding Business Day unless no further Business Day occurs in such month, in which case such Interest Period will expire on the immediately preceding Business Day; (ii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) will, subject to clauses (iii) and (iv) of this definition, end on the last Business

Day of a calendar month; (iii) no Interest Period with respect to any portion of any Class of Term Loans will extend beyond such Class's Term Loan Maturity Date; and (iv) no Interest Period with respect to any portion of the Revolving Loans will extend beyond the Revolving Credit Commitment Termination Date applicable to such Revolving Loans.

"**Interest Rate Determination Date**" means, with respect to any Interest Period, the date that is two Business Days prior to the first day of such Interest Period.

"**Internal Revenue Code**" means the Internal Revenue Code of 1986, as amended, and any successor statute.

"**Investment**" means (a) any direct or indirect purchase or other acquisition by the Borrower or any Subsidiary of, or of a beneficial interest in, any of the Securities of any other Person; (b) any direct or indirect redemption, retirement, purchase or other acquisition for value, by any Subsidiary from any Person, of any Capital Stock of such Person; (c) any direct or indirect loan, advance or capital contribution by the Borrower or any Subsidiary to any other Person, including all indebtedness and accounts receivable from that other Person that are not current assets or did not arise from sales to that other Person in the ordinary course of business; and (d) the purchase or other acquisition of property and assets or businesses of any Person or of assets constituting a business unit, a line of business or division of such Person, a facility or Capital Stock in a Joint Venture or other Capital Stock in another Person that, upon the consummation thereof, will be a Subsidiary (including as a result of a merger or consolidation) or, in the case of a purchase or acquisition of assets (other than Capital Stock), will be owned by the Borrower or a Subsidiary. The amount of any Investment will be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment, but net of any return, whether a return of capital, interest, dividend or otherwise, with respect to such Investment.

"**Issuance Notice**" means an Issuance Notice substantially in the form of Exhibit A-3.

"**Issue**" means, with respect to any Letter of Credit, to issue, extend the expiration date of, renew (including by failure to object to any automatic renewal on the last day such objection is permitted), increase the face amount of, or reduce or eliminate any scheduled decrease in the face amount of, such Letter of Credit, or to cause any Person to do any of the foregoing. The terms "Issued" and "Issuance" have correlative meanings.

"**Issuing Bank**" means each of (a) with respect to Letters of Credit issued hereunder on or after the Closing Date, (i) Wells Fargo Bank, National Association, in its capacity as an issuer of Letters of Credit hereunder and (ii) any (A) Lender, (B) Affiliate of a Lender and (C) other bank or legally authorized Person, in each case under this clause (ii), that agrees to act in such capacity and reasonably acceptable to the Borrower and the Administrative Agent, in such Person's capacity as an issuer of Letters of Credit hereunder and (b) with respect to the Existing Letters of Credit, JPMorgan Chase Bank, N.A., in its capacity as issuer thereof.

"**Joint Venture**" means (a) any Person which would constitute an "equity method investee" of the Borrower or any Subsidiary and (b) any Person in whom the Borrower or any

Subsidiary beneficially owns any Capital Stock that is not a Subsidiary (other than an Unrestricted Subsidiary); *provided* that in no event will any Subsidiary of any Person be considered a Joint Venture of such Person.

"**Judgment Currency**" as defined in Section 10.26(a).

"**Junior Financing**" means any Junior Lien Indebtedness, any Subordinated Debt and any unsecured Indebtedness, in each case in excess of the Threshold Amount.

"**Junior Lien Indebtedness**" means any Indebtedness of any Credit Party that is secured by Liens on Collateral that rank junior in priority to the Liens that secure the Obligations.

"**Junior Lien Intercreditor Agreement**" means an Intercreditor Agreement, in form and substance reasonably acceptable to the Borrower, the Collateral Agent and the applicable debt representatives for Junior Lien Indebtedness permitted hereunder.

"**L/C Reimbursement Agreement**" as defined in Section 2.4(a).

"**Latest Term Loan Maturity Date**" means, as at any date of determination, the latest maturity or expiration date applicable to any Term Loan (including any Incremental Term Loan), as extended in accordance with this Agreement from time to time.

"**Laws**" means any federal, state, local or foreign law (including common law), statute, code or ordinance, or any rule or regulation promulgated by any Governmental Authority.

"**LCT Election**" as defined in Section 1.5.

"**LCT Test Date**" as defined in Section 1.5.

"**Lead Arrangers**" means Wells Fargo Securities, LLC, JPMorgan Chase Bank, N.A. and SunTrust Robinson Humphrey, Inc., in their respective capacities as joint lead arrangers and joint bookrunners hereunder.

"**Lender**" means, collectively, (a) each Person listed on the signature pages hereto as a Lender holding a Commitment or a Loan and (b) any other Person (other than a Natural Person) that becomes a party hereto pursuant to an Assignment Agreement and holds a Commitment or a Loan. Unless the context clearly indicates otherwise, the term "Lenders" will include the Swing Line Lenders.

"**Lender Presentation**" means that certain lender presentation dated November 12, 2019.

"**Lending Office**" means, with respect to any Lender, the office or offices of such Lender specified as its "**Lending Office**" beneath its name on Appendix B hereto or in the administrative questionnaire delivered by such Lender to the Borrower and the Administrative Agent, or, in each case, such other office or offices of such Lender as it may from time to time notify the Borrower and the Administrative Agent.

"**Letter of Credit**" means a commercial or standby letter of credit Issued or to be Issued by an Issuing Bank pursuant to this Agreement and the Existing Letters of Credit.

"**Letter of Credit Obligations**" means all outstanding obligations incurred by any Issuing Bank or any Lender at the request of the Borrower, whether direct or indirect, contingent or otherwise, due or not due, in connection with the Issuance or any other amendment to Letters of Credit by any Issuing Bank or the purchase of a participation as set forth in Section 2.4(e) with respect to any Letter of Credit. The amount of such Letter of Credit Obligations will equal the maximum amount that may be payable by the Issuing Banks and the Lenders thereupon or pursuant thereto; *provided* that such calculation will, with respect to Foreign Currency Letters of Credit, be made using the Dollar Equivalent of any Foreign Currency Letters of Credit with respect to amounts denominated in Available Foreign Currencies.

"**Letter of Credit Sublimit**" means, as of any date of determination, the lower of the following amounts: (a) $7,500,000 and (b) the aggregate amount of the Revolving Credit Commitments as of such date minus the Total Utilization of Revolving Credit Commitments as of such date.

"**Letter of Credit Usage**" means, as at any date of determination, the sum of (a) the maximum aggregate amount which is, or at any time thereafter may become, available for drawing under all Letters of Credit then outstanding, and (b) the aggregate amount of all drawings under Letters of Credit honored by the Issuing Banks and not theretofore reimbursed by or on behalf of the Borrower; *provided* that such calculation will, with respect to Foreign Currency Letters of Credit, be made using the Dollar Equivalent of any Foreign Currency Letters of Credit with respect to amounts denominated in Available Foreign Currencies.

"**Liabilities**" means all claims, actions, suits, judgments, damages, losses, liability, obligations, responsibilities, fines, penalties, sanctions, costs, fees, taxes, commissions, charges, disbursements and expenses (including those incurred upon any appeal or in connection with the preparation for and/or response to any subpoena or request for document production relating thereto), in each case of any kind or nature (including interest accrued thereon or as a result thereto and fees, charges and disbursements of financial, legal and other advisors and consultants), whether joint or several, whether or not indirect, contingent, consequential, actual, punitive, treble or otherwise.

"**Lien**" means (a) any lien, mortgage, pledge, assignment, security interest, charge or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease in the nature thereof) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing and (b) in the case of Securities, any purchase option, call or similar right of a third party with respect to such Securities; *provided* that in no event shall an operating lease in and of itself be deemed a Lien.

"**Limited Condition Transaction**" means any Permitted Acquisition, other Investment, irrevocable (which can be conditional) repayment or redemption of, or offer to purchase, any Indebtedness permitted hereunder by any one or more of the Borrower and/or one or more of its Subsidiaries whose consummation is not conditioned on the availability of, or on obtaining, third party financing.

"**Loan**" means an Initial Term Loan, an Incremental Term Loan, an Extended Term Loan, a Refinancing Term Loan, a Revolving Loan (including any Incremental Revolving Loan) or a Swing Line Loan.

"**Margin Stock**" means "margin stock" as such term is defined in Regulation U of the Board of Governors as in effect from time to time.

"**Material Adverse Effect**" means a material adverse effect with respect to (a) the business, operations, properties, assets or financial condition of the Borrower and the Subsidiaries, taken as a whole, (b) the ability of the Credit Parties, taken as a whole, to fully and timely perform their payment obligations under this Agreement or any other Credit Document, (c) the legality, validity, binding effect or enforceability against a Credit Party of a Credit Document to which it is a party or (d) the rights, remedies and benefits available to, or conferred upon, any Agent and any Lender or any Secured Party under any Credit Document.

"**Material Permitted Acquisition**" means any Permitted Acquisition with a purchase price in excess of $25,000,000.

"**Material Real Estate Asset**" means any fee-owned Real Estate Asset located in the United States having a fair market value (determined in good faith by the Borrower) in excess of $7,500,000 as of the date of the acquisition thereof.

"**Maximum Refinancing Amount**" means, with respect to any Credit Agreement Refinancing Indebtedness, Permitted Refinancing or other refinancing, the principal amount (including interest paid in kind or otherwise capitalized to principal) and/or undrawn commitments, as applicable, of such Refinanced Indebtedness plus the sum of (i) the amount of all accrued and unpaid interest on such Refinanced Indebtedness, (ii) the amount of any premiums (including tender premiums), make-whole amounts or penalties on such Refinanced Indebtedness, (iii) the amount of all fees (including any exit consent fees) on such Refinanced Indebtedness, (iv) the amount of all fees (including commitment, underwriting, structuring, ticking and closing fees), commissions, costs, expenses and other amounts associated with such Refinancing Indebtedness and (v) the amount of all original issue discount and upfront fees associated with such Refinancing Indebtedness ("**Refinancing Amount**"); *provided* that (1) to the extent on the date of such Permitted Refinancing the Borrower has capacity under the clause of Section 6.1 pursuant to which such Refinanced Indebtedness was initially incurred (or to which such Refinanced Indebtedness at such time has been classified, as applicable) to incur additional principal amount of the same type as the Refinanced Indebtedness ("**Additional Incurrence Capacity**"), then the Borrower and its Subsidiaries may incur Refinancing Indebtedness in an aggregate principal amount not to exceed the maximum Additional Incurrence Capacity if greater than the Refinancing Amount; *provided further,* that the amount of Refinancing Indebtedness incurred in reliance on the Additional Incurrence Capacity will be considered to have been incurred under the clause of Section 6.1 pursuant to which such Refinanced Indebtedness was initially incurred (or to which such Refinanced Indebtedness at such time has been classified, as applicable).

"**MFN Adjustment**" means, with respect to the incurrence of any Incremental Term Loans, Incremental Equivalent Debt that is Pari Passu Lien Indebtedness in the form of term

loans (but not notes or securities) or Permitted Ratio Debt that is Pari Passu Lien Indebtedness in the form of term loans (but not notes or securities), in each case during the first 12 months following the Closing Date, in the event that the All-In Yield applicable to such Indebtedness exceeds the All-In Yield of the Initial Term Loans at the time of such incurrence by more than 50 basis points, then the interest rate margins for the Initial Term Loans will automatically be increased on the date of incurrence of such specified Indebtedness to the extent necessary so that the All-In Yield of the Initial Term Loans is equal to the All-In Yield of such specified Indebtedness minus 50 basis points *(provided* that any increase in All-In Yield of the Initial Term Loans due to the increase in a Eurodollar Base Rate floor on such specified Indebtedness will be effected solely through an increase in any Eurodollar Rate floor applicable to the Initial Term Loans).

"**Moody's**" means Moody's Investor Services, Inc.

"**Mortgage**" means a mortgage, deed of trust, deed to secure debt or other document creating a Lien on any Real Estate Asset or any interest in any Real Estate Asset, as applicable, made in favor of the Collateral Agent for the benefit of the Secured Parties in form reasonably acceptable to the Borrower and the Administrative Agent.

"**Multiemployer Plan**" means any Employee Benefit Plan which is a "multiemployer plan" as defined in Section 3(37) of ERISA.

"**NAIC**" means The National Association of Insurance Commissioners and any successor thereto.

"**Narrative Report**" means, with respect to the financial statements for which such narrative report is required, a narrative report describing the results of operations and financial condition of the Borrower and its Subsidiaries in the form prepared for presentation to senior management thereof for the applicable Fiscal Quarter or Fiscal Year and for the period from the beginning of the Fiscal Year in which such Fiscal Quarter occurs to the end of such Fiscal Quarter.

"**Natural Person**" means a natural person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person.

"**Net Cash Proceeds**" means:

(a) with respect to any Asset Sale subject to Section 2.14(a) or Casualty Event subject to Section 2.14(b), an amount equal to: (i) cash payments (including any cash received by way of release from escrow or deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) received by the Borrower or any Subsidiary from such Asset Sale, *minus* (ii) any bona fide direct costs incurred in connection with such Asset Sale, including (A) Taxes payable (including related Tax Payments) in connection with such Asset Sale (including taxes imposed on the distribution or repatriation of such Net Cash Proceeds), (B) payment of the outstanding principal amount of, premium or penalty, if any, interest and breakage costs on any Indebtedness (other than the Loans or any Incremental Equivalent Debt) that is secured by a Lien on the stock or assets in question (and, to the extent such stock or assets constitute Collateral, which Lien is senior to the Lien of Agent or is *pari*

passu with the Lien of Agent to the extent permitted hereunder) and that is required to be repaid under the terms thereof as a result of such Asset Sale, (C) a reserve for any purchase price adjustment or indemnification payments (fixed or contingent) established in accordance with GAAP or attributable to seller's indemnities and representations and warranties to purchaser in respect of such Asset Sale undertaken by the Borrower or any Subsidiary in connection with such Asset Sale, (D) the out-of-pocket expenses, costs and fees (including with respect to legal, investment banking, brokerage, advisor and accounting and other professional fees, sales commissions and disbursements, survey costs, title insurance premiums and related search and recording charges, transfer taxes and deed or mortgage recording taxes or following a Casualty Event, restoration costs) in each case actually incurred in connection with such sale or disposition and payable to a Person that is not an Affiliate of the Borrower, (E) in the case of any Asset Sale or Casualty Event by a non-wholly owned Subsidiary, the *pro rata* portion of the Net Cash Proceeds thereof attributable to minority interests and not available for distribution to or for the account of the Borrower as a result thereof and (F) any reserve for adjustment in respect of (x) the sale price of such asset or assets established in accordance with GAAP and (y) any liabilities associated with such asset or assets and retained by the Borrower or any Subsidiary after such sale or other disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction, it being understood that "**Net Cash Proceeds**" shall include the amount of any reversal (without the satisfaction of any applicable liabilities in cash in a corresponding amount) of any reserve described in this subclause (F); and

(b) with respect to the sale, incurrence or issuance of any Indebtedness by the Borrower or any Subsidiary, the excess, if any, of (A) the sum of the cash and Cash Equivalents received in connection with such incurrence or issuance ***minus*** (B) the sum of Taxes paid or reasonably estimated to be payable as a result thereof, fees (including investment banking fees, attorneys' fees, accountants' fees, underwriting fees and discounts), commissions, costs and other out-of-pocket expenses and other customary expenses, incurred by the Borrower or such Subsidiary in connection with such sale, incurrence or issuance.

"**Non-Consenting Lender**" as defined in Section 2.23(c).

"**Non-Credit Party**" means any Subsidiary that is not a Credit Party.

"**Non-U.S. Lender**" means a Lender (including any Issuing Bank) that is not a United States person as defined in Section 7701(a)(30) of the Internal Revenue Code.

"**Nonpublic Information**" means material information with respect to the Borrower, any Subsidiary or their respective securities which has not been disseminated in a manner making it available to investors generally, within the meaning of Regulation FD.

"**Note**" means a Term Loan Note, a Revolving Loan Note or a Swing Line Note.

"**Notice**" means a Funding Notice, an Application, an Issuance Notice or a Conversion/Continuation Notice.

"**NYFRB**" means the Federal Reserve Bank of New York.

"**NYFRB Rate**" means, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Banking Day, for the immediately preceding Banking Day); *provided* that if none of such rates are published for any day that is a Business Day, the term "NYFRB Rate" means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received to the Administrative Agent from a Federal funds broker of recognized standing selected by it; *provided, further,* that if any of the aforesaid rates shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"**Obligations**" means all obligations of every nature of each Credit Party from time to time owed to any Agent (including any former Agent), any Lender, any Issuing Bank, any Indemnitee or any other Secured Party under any Credit Document (including, without limitation, Letter of Credit Obligations), any obligations owed to any Secured Swap Provider under any Secured Rate Contract, or any obligations owed to any Bank Product Provider in respect of Bank Product Obligations under any Bank Product Agreement, in each case, whether for principal, premium, interest (including interest premiums, fees and other amounts incurred during the pendency of any bankruptcy, insolvency, receivership or similar proceeding, whether or not due and payable and whether or not allowed or allowable in such proceeding), reimbursement of amounts drawn under Letters of Credit payments for early termination of Secured Rate Contracts, fees, expenses, indemnification or otherwise; *provided* that the Obligations with respect to any Guarantor shall exclude all Excluded Swap Obligations of such Guarantor. For the avoidance of doubt, "Obligations" will include obligations arising under any Incremental Term Loan or any Extended Term Loan.

"**Obligee Guarantor**" as defined in Section 7.6.

"**OFAC**" means the U.S. Department of Treasury's Office of Foreign Assets Control.

"**OFAC Lists**" means, collectively, the SDN List and/or any other list of terrorists or other restricted Persons maintained by OFAC.

"**OIG Matter**" means the "OIG Matter" as disclosed in the Lender Presentation.

"**Organizational Documents**" means (a) with respect to any corporation, its certificate or articles of incorporation or organization, as amended, and its by-laws, as amended, (b) with respect to any limited partnership, its certificate of limited partnership, as amended, and its partnership agreement, as amended, (c) with respect to any general partnership, its partnership agreement, as amended, and (d) with respect to any limited liability company, its articles of organization, as amended, and its operating agreement, as amended. In the event any term or condition of this Agreement or any other Credit Document requires any Organizational Document to be certified by a secretary of state or similar governmental official, the reference to any such "Organizational Document" will only be to a document of a type customarily certified by such governmental official.

"**Other Applicable Incurrence Requirements**" as defined in Section 2.24(g).

"**Other Taxes**" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution,

delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Credit Document, except any such Taxes that are imposed as a result of a present or former connection between a Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Credit Document or sold or assigned an interest in any Loan or Credit Document) imposed with respect to an assignment (other than an assignment made pursuant to Section 2.23).

"**Overnight Bank Funding Rate**" means, for any day, the rate comprised of both overnight federal funds and overnight Eurodollar borrowings by U.S.-managed banking offices of depository institutions (as such composite rate shall be determined by the NYFRB as set forth on its public website from time to time) and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate (from and after such date as the NYFRB shall commence to publish such composite rate).

"**Parent**" means, with respect to any Person, any other Person of which the first Person is a direct or indirect Subsidiary.

"**Pari Passu Lien Indebtedness**" means any Indebtedness of any Credit Party that is secured by Liens on Collateral that rank *pari passu* in priority with the Liens on Collateral that secure the Obligations.

"**Pari Passu Lien Intercreditor Agreement**" means an intercreditor agreement among the Collateral Agent and one or more debt representatives for Pari Passu Lien Indebtedness permitted hereunder in form and substance reasonably acceptable to the Borrower, the Collateral Agent and the applicable debt representatives for such Pari Passu Lien Indebtedness.

"**Participant Register**" as defined in Section 10.6(g).

"**PATRIOT Act**" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56, signed into law October 26, 2001, as amended from time to time.

"**Payment Office**" means the office of the Administrative Agent set forth on Appendix B hereto, or such other office or person as the Administrative Agent may hereafter designate in writing as such to the other parties hereto.

"**PBGC**" means the Pension Benefit Guaranty Corporation or any successor thereto.

"**Pension Plan**" means any Employee Benefit Plan, other than a Multiemployer Plan, which is subject to Section 412 of the Internal Revenue Code or Section 302 of ERISA.

"**Perfection Certificate**" shall mean a certificate in the form of Exhibit L or any other form approved by the Borrower and the Administrative Agent, as the same shall be supplemented from time to time.

"**Permitted Acquisition**" means the purchase or other acquisition of property and assets or businesses of any Person or of assets constituting a business unit, a line of business or division of such Person, a facility or Capital Stock in a Joint Venture or other Capital Stock in another Person that, upon the consummation thereof, will be a Subsidiary (including as a result of a merger or consolidation) or, in the case of a purchase or acquisition of assets (other than Capital Stock), will be owned by the Borrower or a Subsidiary; *provided* that:

(a) subject to the provisions of Section 1.5 to the extent an LCT Election has been made with respect to such acquisition, immediately prior to and after giving effect thereto, no Event of Default has occurred and is continuing;

(b) the Person, assets or division acquired are in the same business as the Businesses engaged in by the Borrower and the Subsidiaries on the Closing Date, after giving effect to the Transactions, or other ancillary or generally related Businesses or logical extensions thereof;

(c) such acquisition is not a hostile or contested acquisition;

(d) to the extent any acquired Person is required to become a Guarantor, the Borrower takes all actions required by Sections 5.10 and 5.11, as applicable; *provided* that the Borrower and its Subsidiaries will not be permitted to make Permitted Acquisitions of Persons that do not become Guarantor Subsidiaries (or of assets that are acquired by Non-Credit Parties) unless the aggregate amount of TTM Consolidated Adjusted EBITDA attributable to all such Persons acquired pursuant to Permitted Acquisitions consummated after the Closing Date (and, for the avoidance of doubt, excluding all Non-Credit Parties existing as of the Closing Date and Investments therein), together with the aggregate amount of TTM Consolidated Adjusted EBITDA attributable to Investments made in reliance on the proviso to Section 6.6(b) and the proviso to Section 6.6(f), shall be no greater than an amount equal to the greater of (i) $3,850,000 and (ii) 5% of TTM Consolidated Adjusted EBITDA of the Borrower on a Pro Forma Basis as of the applicable date of determination; and

(e) (i) the Borrower and its Subsidiaries are in Pro Forma compliance with the Financial Covenants set forth in Section 6.7 immediately after giving effect to such acquisition and related transactions (giving effect to any increase in the Financial Covenant level set forth in Section 6.7(a)(i) as provided for therein, including with respect to any Material Permitted Acquisition which causes such increase to become effective) and (ii) with respect to acquisitions with a purchase price in excess of $25,000,000, the Borrower will have delivered to the Administrative Agent (which, for the avoidance of doubt, shall be posted to the Lenders) a customary compliance certificate.

"**Permitted Holders**" means (a) the Sponsor, (b) any limited partners or other investors in Sponsor that acquire via a *pro rata* dividend or similar distribution and continue to hold any of Sponsor's beneficial ownership or voting interests in the Capital Stock of the Borrower or any Parent thereof (collectively "**Sponsor Parties**") and (c) any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision) the members of which include the Sponsor and that (directly or indirectly) hold or acquire beneficial ownership of voting interests in the Capital Stock of the Borrower or any Parent thereof, so long as the Sponsor (directly or indirectly) owns more than 50% of the economic and voting interests

in the Capital Stock of the Borrower; *provided* that (I) for purposes of clause (a) of the definition of "Change of Control," Permitted Holders may include Sponsor Parties only so long as Sponsor retains the power, by Voting Capital Stock, contract or otherwise, to elect a majority of the members of the Board of Directors of the Borrower and (II) for purposes of clause (b) of the definition of "Change of Control," Permitted Holders will include Sponsor Parties only to the extent they comprise part of a group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision) in accordance with clause (c) of this definition.

"**Permitted IPO Reorganization**" means any transactions or actions taken in connection with and reasonably related to consummating an initial public offering (including any tax sharing arrangements or tax receivable agreements entered into in connection therewith on customary terms for similar transactions), so long as (i) after giving effect thereto the security interest of the Lenders in the Collateral and the value of the Guaranty given by the Guarantors, taken as a whole, are not materially impaired (as determined by the Borrower in good faith), (ii) immediately prior to and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing, (iii) the Credit Parties immediately prior to giving effect thereto continue to be Credit Parties immediately after giving effect thereto (or their successors as a result thereof are or become Credit Parties no later than immediately after giving effect thereto), (iv) the assets and property constituting Collateral immediately prior to giving effect thereto continue to constitute Collateral immediately after giving effect thereto, (v) the revenues of the Credit Parties (taken as a whole) on a Pro Forma Basis for the most recent Test Period shall not be reduced as a result thereof in any material respect, (vi) in the good faith determination of the Borrower, such transactions are not materially disadvantageous to the Lenders, and (vii) not less than ten (10) Business Days (or such shorter period as may be agreed by the Administrative Agent in its sole discretion) prior to any such transactions or actions, the Borrower shall deliver to the Administrative Agent written notice of such transactions or actions and a general description of such transactions or actions to be taken.

"**Permitted Liens**" as defined in Section 6.2.

"**Permitted Ratio Debt**" means Indebtedness of the Borrower and/or any Subsidiary; *provided* that:

(a) immediately after giving effect to the issuance, incurrence, or assumption of such Indebtedness and excluding the cash proceeds to the Borrower or the Subsidiaries therefrom (but otherwise giving effect to the use of such proceeds), (x) if such incurrence constitutes Pari Passu Lien Indebtedness, the First Lien Net Leverage Ratio, after giving effect to the incurrence thereof on a Pro Forma Basis and excluding the cash proceeds to the Borrower or the Subsidiaries therefrom (but otherwise giving effect to the use of such proceeds), would not exceed 3.25:1.00; *provided* that such ratio level shall increase to 3.50:1.00 in connection with any Material Permitted Acquisition that results in the Financial Covenant level set forth in Section 6.7(a)(i) to increase and for any other Permitted Ratio Debt incurred to finance a Material Permitted Acquisition during the duration of such increase, (y) if such incurrence constitutes Junior Lien Indebtedness, the Secured Net Leverage Ratio, after giving effect to the incurrence thereof on a Pro Forma Basis and excluding the cash proceeds to the Borrower or the Subsidiaries therefrom (but otherwise giving effect to the use of such proceeds), would not exceed 3.25:1.00; *provided* that such ratio level shall increase to 3.50:1.00 in connection with any Material Permitted

Acquisition that results in the Financial Covenant level set forth in Section 6.7(a)(i) to increase and for any other Permitted Ratio Debt incurred to finance a Material Permitted Acquisition during the duration of such increase and (z) if such incurrence constitutes unsecured Indebtedness, the Total Net Leverage Ratio, after giving effect to the incurrence thereof on a Pro Forma Basis and excluding the cash proceeds to the Borrower or the Subsidiaries therefrom (but otherwise giving effect to the use of such proceeds), would not exceed 3.25:1.00; provided that such ratio level shall increase to 3.50:1.00 in connection with any Material Permitted Acquisition that results in the Financial Covenant level set forth in Section 6.7(a)(i) to increase and for any other Permitted Ratio Debt incurred to finance a Material Permitted Acquisition during the duration of such increase;

(b) (i) any such Indebtedness that constitutes Pari Passu Lien Indebtedness will not mature prior to the maturity date of the Initial Term Loans and (ii) any such Indebtedness that constitutes Junior Lien Indebtedness or unsecured Indebtedness will not mature prior to the date that is 91 days after the maturity date of the Initial Term Loans;

(c) such Indebtedness does not have a shorter Weighted Average Life to Maturity than, the Term Loans at the time such Indebtedness is incurred;

(d) subject to the provisions set forth in Section 1.5 with respect to any Limited Condition Transaction, immediately before and after giving effect thereto and to the use of the proceeds thereof no Event of Default has occurred and is continuing or would result therefrom;

(e) Other Applicable Incurrence Requirements shall apply, *mutatis mutandis;*

(f) any mandatory prepayments of any Permitted Ratio Debt that is Pari Passu Lien Indebtedness shall be made on a *pro rata* basis or less than *pro rata* basis with mandatory prepayments of the Term Loans;

(g) (x) if such Indebtedness is Pari Passu Lien Indebtedness, a debt representative acting on behalf of the holders of such Indebtedness has become party to or is otherwise subject to the provisions of a Pari Passu Lien Intercreditor Agreement; and (y) if such Indebtedness is secured on a junior basis to the Term Loans, a debt representative, acting on behalf of the holders of such Indebtedness, has become party to or is otherwise subject to the provisions of a Junior Lien Intercreditor Agreement;

(h) any such Indebtedness constituting Pari Passu Lien Indebtedness may participate on a *pro rata* basis or less than *pro rata* basis (but not greater than a *pro rata* basis except for prepayments with the proceeds of a Permitted Refinancing and in respect of an earlier maturing tranche) with the then-existing Term Loans in any mandatory prepayments hereunder, and any mandatory prepayments of any such Indebtedness that is unsecured or Junior Lien Indebtedness may not be made except to the extent that prepayments are offered, to the extent required under this Agreement or any Pari Passu Lien Indebtedness, first on a *pro rata* basis to the Term Loans and any applicable Pari Passu Lien Indebtedness; and

(i) with respect to any Permitted Ratio Debt incurred as Pari Passu Lien Indebtedness in the form of term loans, the MFN Adjustment will apply to any such Permitted Ratio Debt.

The proceeds of any Permitted Ratio Debt received will not (but the application of such proceeds may) reduce Indebtedness for purposes of determining compliance with the First Lien Net Leverage Ratio or the Secured Net Leverage Ratio or the Total Net Leverage Ratio specified in clause (a) of the foregoing sentence.

"**Permitted Refinancing**" means, with respect to any specified Indebtedness of any Person ("**Refinanced Indebtedness**"), any modification, refinancing, refunding, replacement, renewal, extension, defeasance or discharge (the Indebtedness incurred to effect such modification, refinancing, refunding, replacement, renewal, extension, defeasance or discharge, "**Refinancing Indebtedness**") of such Refinanced Indebtedness; *provided* that:

(a) the principal amount (and/or undrawn commitments, as applicable) of such Refinancing Indebtedness is not greater than the Maximum Refinancing Amount;

(b) except with respect to Indebtedness of the Borrower and its Subsidiaries incurred pursuant to Section 6.1(c) or (d), has a scheduled final maturity that is no sooner than, and a Weighted Average Life to Maturity that is no shorter than, the final scheduled final maturity date and Weighted Average Life to Maturity of such Refinanced Indebtedness;

(c) the only obligors in respect of such Refinancing Indebtedness are the obligors on such Refinanced Indebtedness; *provided* that, in the case of a Permitted Refinancing that occurs in connection with a Permitted Acquisition or other Investment permitted pursuant to Section 6.6, additional Persons that are created or acquired as part of such Permitted Acquisition or Investment may be added as obligors to the Refinancing Indebtedness;

(d) the other terms applicable to such new Indebtedness are either (i) substantially identical to or (taken as a whole as determined by the Borrower in good faith in consultation with the Administrative Agent) no more favorable to the lenders or holders providing such Indebtedness than, those applicable to such Refinanced Indebtedness or (ii) otherwise on customary market terms (taken as a whole as determined by the Borrower in its reasonable judgment), including with respect to high yield debt securities to the extent applicable; *provided* that the Borrower will promptly deliver to the Administrative Agent final copies of the definitive credit documentation relating to such Indebtedness (unless the Borrower or applicable Subsidiary is bound by a confidentiality obligation with respect thereto, in which case the Borrower will deliver a reasonably detailed description of the material terms and conditions of such Indebtedness in lieu thereof);

(e) to the extent such Refinanced Indebtedness is Subordinated Debt, such Refinancing Indebtedness is Subordinated Debt;

(f) to the extent such Refinanced Indebtedness is secured by Liens on any property or assets of the Borrower or any Subsidiary, such Refinancing Indebtedness is either (i) secured solely by Liens on such property and assets securing such Refinanced Indebtedness (except to the extent that the applicable obligors have capacity under Section 6.2 for the incurrence of additional Liens on other property and assets) or (ii) unsecured; *provided* that (i) if such Refinanced Indebtedness is Junior Lien Indebtedness, the Refinancing Indebtedness is either (x) unsecured or (y) Junior Lien Indebtedness on intercreditor terms at least as favorable to the

Lenders as those contained in the intercreditor documentation governing the Refinanced Indebtedness and (ii) if such Refinanced Indebtedness is Pari Passu Lien Indebtedness, the Refinancing Indebtedness is either (x) unsecured or (y) Pari Passu Lien Indebtedness or Junior Lien Indebtedness, in either case on intercreditor terms at least as favorable to the Lenders as those contained in the intercreditor documentation governing the Refinanced Indebtedness (as reasonably determined by the Borrower in good faith); and

(g) to the extent such Refinanced Indebtedness is unsecured, such Refinancing Indebtedness is unsecured;

provided further, in the case of clauses (d), (e) and (f) of this definition, a certificate of the Borrower delivered to the Administrative Agent at least five (5) Business Days prior to the incurrence of such Refinancing Indebtedness (or such shorter period as may be agreed by the Administrative Agent), together with a reasonably detailed description of the material covenants and events of default of such Refinancing Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has reasonably determined in good faith that such terms and conditions satisfy the requirements of such clause shall be conclusive evidence that such terms and conditions satisfy the foregoing requirements unless the Administrative Agent notifies the Borrower within such five (5) Business Day period that it disagrees with such determination (including a reasonably detailed description of the basis upon which it disagrees); *provided further*, that with respect to any Refinanced Indebtedness which is revolving in nature, the commitments related to such Refinanced Indebtedness shall be terminated in connection and substantially simultaneously with the applicable Permitted Refinancing.

"**Permitted Reorganization**" means any re-organizations and other activities and actions related to tax planning and/or re-organization, including any tax sharing arrangement or tax receivable agreement on customary terms for similar transactions, so long as (i) after giving effect thereto the security interest of the Lenders in the Collateral and the value of the Guaranty given by the Guarantors, taken as a whole, are not materially impaired (as determined by the Borrower in good faith), (ii) immediately prior to and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing, (iii) the Credit Parties immediately prior to giving effect thereto continue to be Credit Parties immediately after giving effect thereto (or their successors as a result thereof are or become Credit Parties no later than immediately after giving effect thereto), (iv) the assets and property constituting Collateral immediately prior to giving effect thereto continue to constitute Collateral immediately after giving effect thereto, (v) the revenues of the Credit Parties (taken as a whole) on a Pro Forma Basis for the most recent Test Period shall not be reduced as a result thereof in any material respect, (vi) in the good faith determination of the Borrower, such transactions are not materially disadvantageous to the Lenders, and (vii) not less than ten (10) Business Days (or such shorter period as may be agreed by the Administrative Agent in its sole discretion) prior to any such transactions or actions, the Borrower shall deliver to the Administrative Agent written notice of such transactions or actions and a general description of such transactions or actions to be taken.

"**Person**" means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, Joint Ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and Governmental Authorities.

"**Platform**" as defined in Section 5.1(p).

"**Pledge and Security Agreement**" means the Pledge and Security Agreement to be executed by the Borrower and each Guarantor substantially in the form of Exhibit I.

"**Prime Rate**" means the rate of interest *per annum* publicly announced from time to time by the Administrative Agent as its prime rate; each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective.

"**Pro Forma**" or "**Pro Forma Basis**" means, with respect to the calculation of the First Lien Net Leverage Ratio, Secured Net Leverage Ratio, the Total Net Leverage Ratio, the Interest Coverage Ratio or for any other pro forma calculation called for by this Agreement to be made Pro Forma or on a Pro Forma Basis, as of any time, that pro forma effect will be given to the Transactions, any Permitted Acquisition, or any other Specified Transaction (including any such transaction prior to the Closing Date), as follows:

(a) with respect to any incurrence, assumption, guarantee, redemption or permanent repayment of Indebtedness, such ratio will be calculated giving pro forma effect thereto as if such incurrence, assumption, guarantee, redemption or permanent repayment of indebtedness had occurred on the first day of such Test Period;

(b) with respect to the Transactions, acquisitions prior to the Closing Date, any Permitted Acquisition, other Investment or acquisition or the redesignation of an Unrestricted Subsidiary, such ratio or other calculation will be calculated giving pro forma effect thereto as if such action occurred on the first day of such Test Period in a manner consistent, where applicable, with the pro forma adjustments (along with the limitations and caps pertaining thereto) set forth in the definition of "Consolidated Adjusted EBITDA" (including clause (xxi) thereof) and including pro forma adjustments arising out of events that are directly attributable to such Permitted Acquisition or other Investment, are factually supportable and are expected to have a continuing impact, in each case as determined on a basis consistent with Article 11 of Regulation S-X of the Securities Act of 1933, as amended, as interpreted by the SEC, and as certified by a financial officer of such Borrower; and

(c) with respect to any merger, sale, transfer or other disposition, and the designation of an "Unrestricted Subsidiary," such ratio will be calculated giving pro forma effect thereto as if such action had occurred on the first day of such Test Period and including pro forma adjustments arising out of events that are directly attributable to any sale, transfer or other disposition, are factually supportable and are expected to have a continuing impact, in each case as determined on a basis consistent with Article 11 of Regulation S-X of the Securities Act of 1933, as amended, as interpreted by the SEC, and as certified by a financial officer of such Borrower.

"**Pro Rata Share**" means (a) with respect to all payments, computations and other matters relating to the Initial Term Loan of any Lender, the percentage obtained by dividing (i) the Initial Term Loan Exposure of that Lender by (ii) the aggregate Initial Term Loan Exposure of all of the Lenders; (b) with respect to all payments, computations and other matters relating to any Class of the Incremental Term Loan of any Lender, the percentage obtained by dividing (i)

the Incremental Term Loan Exposure of that Lender by (ii) the aggregate Incremental Term Loan Exposure of all of the Lenders; (c) with respect to all payments, computations and other matters relating to any Class of the Extended Term Loan of any Lender, the percentage obtained by dividing (i) the Term Loan Exposure of that Lender arising from Extended Term Loans of such Lender by (ii) the aggregate Term Loan Exposure of all of the Lenders arising from the Extended Term Loans; (d) with respect to all payments, computations and other matters relating to any Class of the Refinancing Term Loan of any Lender, the percentage obtained by dividing (i) the Term Loan Exposure of that Lender arising from Refinancing Term Loans of such Lender by (ii) the aggregate Term Loan Exposure of all of the Lenders arising from the Refinancing Term Loans; (e) with respect to all payments, computations and other matters relating to the Revolving Credit Commitment or Revolving Loans of any Lender or any Letters of Credit Issued or participations purchased therein by any Lender or any participations in any Swing Line Loans purchased by any Lender, the percentage obtained by dividing (i) the Revolving Credit Exposure of that Lender by (ii) the aggregate Revolving Credit Exposure of all of the Lenders; and (f) with respect to all payments, computations and other matters relating to the Term Loans of any Lender, the percentage obtained by dividing (i) the Term Loan Exposure of that Lender by (ii) the aggregate Term Loan Exposure of all of the Lenders. For all other purposes with respect to each Lender, "Pro Rata Share" means the percentage obtained by dividing (A) an amount equal to the sum of the Term Loan Exposure and the Revolving Credit Exposure of that Lender, by (B) an amount equal to the sum of the aggregate Term Loan Exposure and the aggregate Revolving Credit Exposure of all of the Lenders.

"**Prohibited Transaction**" as defined in Section 406 of ERISA and Section 4975(c) of the Internal Revenue Code.

"**Projections**" as defined in Section 4.8.

"**PTE**" means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

"**Public Company Costs**" shall mean costs relating to compliance with the Sarbanes-Oxley Act of 2002, as amended, and other expenses arising out of or incidental to the status of the Borrower (or of any Parent thereof that does not own any Subsidiaries other than the Borrower and any Subsidiary and any other Parents of the Borrower) as a reporting company, including costs, fees and expenses (including legal, accounting and other professional fees) relating to compliance with provisions of the Securities Act and the Exchange Act, the rules of securities exchange companies with listed equity securities, directors' compensation, fees and expense reimbursement, shareholder meetings and reports to shareholders, directors' and officers' insurance and other executive costs, legal and other professional fees, and listing fees.

"**Public Lender**" as defined in Section 5.1(p).

"**Purchase Money Indebtedness**" means Indebtedness of any the Borrower or any Subsidiary incurred for the purpose of financing all or any part of the purchase price or cost of acquisition, repair, construction or improvement of property or assets used or useful in the business of the Borrower or any Subsidiary (whether through the direct purchase of property or assets or the Capital Stock of any Person owning such property or assets).

"**QFC**" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

"**Qualified ECP Guarantor**" means, in respect of any Swap Obligation, each Credit Party that has assets exceeding $10,000,000 at the time the relevant Guaranty or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other person as constitutes an "eligible contract participant" under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"**Qualifying IPO**" means the issuance by the Borrower or any Parent thereof of its Securities in an underwritten primary public offering (other than a public offering pursuant to a registration statement on Form S-8) pursuant to an effective registration statement filed with the SEC in accordance with the Securities Act (whether alone or in connection a secondary public offering).

"**Rate Contracts**" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, interest rate options, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, forward foreign exchange transactions, currency swap transactions, cross-currency rate swap transactions, currency options, derivative transactions, insurance transactions, cap transactions, floor transactions, collar transactions, spot contracts, or any other similar transactions or any combination of any of the foregoing whether relating to interest rates, commodities, investments, securities, currencies or any other reference measure (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "**Master Agreement**"), including any such obligations or liabilities under any Master Agreement; *provided* that no phantom stock, phantom profits interests, profits interests or similar plan providing for payments only on account of services provided by current or former directors, managers, officers, employees or consultants of the Borrower or any of its Subsidiaries shall be a "Rate Contract".

"**Real Estate Asset**" means, at any time of determination, any interest (fee, leasehold or otherwise) then held by any Credit Party in any real property.

"**Recipient**" means (a) the Administrative Agent or (b) any Lender, as applicable.

"**Refinanced Indebtedness**" means, (a) with respect to any Credit Agreement Refinancing Indebtedness, the Indebtedness refinanced thereby, (b) with respect to any Permitted Refinancing, as defined in the definition thereof and (c) with respect to any other refinancing, the obligations being refinanced.

"**Refinancing Amendment**" means an amendment to this Agreement in form and substance reasonably satisfactory to the Administrative Agent and the Borrower executed by each of (a) the Borrower, (b) the Administrative Agent and (c) each Additional Lender and Lender that agrees to provide any portion of the Credit Agreement Refinancing Indebtedness being incurred pursuant thereto, in accordance with Section 2.26.

"**Refinancing Indebtedness**" means, (a) with respect to any Loans or Revolving Credit Commitments, Credit Agreement Refinancing Indebtedness, (b) with respect to any Permitted Refinancing, as defined in the definition thereof and (c) with respect to any other refinancing, the new obligations being incurred the proceeds of which will be used to refinance other obligations.

"**Refinancing Commitments**" means any Refinancing Term Commitments or Refinancing Revolving Commitments.

"**Refinancing Loans**" means any Refinancing Term Loans or Refinancing Revolving Loans.

"**Refinancing Revolving Commitments**" means one or more Classes of commitments in respect of Revolving Loans hereunder that result from a Refinancing Amendment.

"**Refinancing Revolving Loans**" means one or more Classes of Revolving Loans that result from a Refinancing Amendment.

"**Refinancing Term Commitments**" means one or more Classes of Term Loan Commitments hereunder that result from a Refinancing Amendment.

"**Refinancing Term Loans**" means one or more Classes of Term Loans that result from a Refinancing Amendment.

"**Refunded Swing Line Loans**" as defined in Section 2.3(b)(iv).

"**Register**" as defined in Section 2.7(b).

"**Regulation D**" means Regulation D of the Board of Governors, as in effect from time to time.

"**Regulation FD**" means Regulation FD as promulgated by the U.S. Securities and Exchange Commission under the Securities Act and Exchange Act as in effect from time to time.

"**Reimbursement Date**" as defined in Section 2.4(d).

"**Related Fund**" means, with respect to any Lender that is an investment fund, any other investment fund that invests in commercial loans and that is managed or advised by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

"**Related Person**" means, with respect to any Person, each Affiliate of such Person and each director, officer, employee, partner, agent, trustee, representative, attorney, accountant and each insurance, environmental, legal, financial and other advisor and other consultants and agents of or to such Person or any of its Affiliates.

"**Release**" means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material).

"**Relevant Governmental Body**" means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York or any successor thereto.

"**Remedial Action**" means all actions required to (a) clean up, remove, treat or in any other way address any Hazardous Material in the indoor or outdoor environment, (b) prevent or minimize any Release so that a Hazardous Material does not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment or (c) perform pre-remedial studies and investigations and post-remedial monitoring and care with respect to any Hazardous Material.

"**Required Lenders**" means one or more of the Lenders having or holding Term Loan Exposure and/or Revolving Credit Exposure and representing more than 50% of the sum of (i) the aggregate Term Loan Exposure of all of the Lenders, and (ii) the aggregate Revolving Credit Exposure of all of the Lenders; *provided* that to the extent there are two or more Lenders that are not Affiliates, the Required Lenders must include at least two such Lenders that are not Affiliates.

"**Required Prepayment Date**" as defined in Section 2.15(e).

"**Reset Date**" as defined in Section 1.6(c).

"**Responsible Officer**" means the chief executive officer, president or chief financial officer of the Borrower.

"**Restricted Debt Payment**" means any payment of principal of, or any payment of any premium, if any, or interest on, or fees on, or indemnities or expenses owing to any holder of, or redemption, purchase, retirement, defeasance (including in substance or legal defeasance), sinking fund or similar payment, in each case prior to the stated maturity or due date thereof, with respect to any Junior Financing.

"**Restricted Equity Payment**" means (a) any dividend or other distribution, direct or indirect, on account of any shares of any class of stock of the Borrower now or hereafter outstanding, except a dividend payable solely in Capital Stock of the Borrower (other than Disqualified Capital Stock); (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of stock of the Borrower now or hereafter outstanding, other than in exchange for Capital Stock of the Borrower (other than Disqualified Capital Stock); and (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of stock of the Borrower now or hereafter outstanding.

"**Restricted Junior Payment**" means any (a) Restricted Equity Payment and (b) Restricted Debt Payment.

"**Revolving Credit Commitment**" means (a) the Initial Revolving Commitments and (b) each additional commitment of a Lender to make or otherwise fund any Revolving Loan (including any Incremental Revolving Loan and any Refinancing Revolving Loan) and to acquire participations in Letters of Credit and Swing Line Loans hereunder, and "**Revolving Credit Commitments**" means such commitments of all of the Lenders in the aggregate. The amount of each Lender's Revolving Credit Commitment is set forth on Appendix A-2 hereto, in the applicable Assignment Agreement, if applicable, or in the Incremental Amendment evidencing an Incremental Revolving Facility, if applicable, or in the Refinancing Amendment evidencing an Refinancing Revolving Commitments, if applicable, in each case is subject to any adjustment or reduction pursuant to the terms and conditions hereof.

"**Revolving Credit Commitment Period**" means the period from the Closing Date to but excluding the Revolving Credit Commitment Termination Date.

"**Revolving Credit Commitment Termination Date**" means the earliest to occur of (a) the fifth anniversary of the Closing Date, as extended in accordance with this Agreement from time to time solely with respect to any Extended Revolving Credit Commitments, as applicable, (b) the date the Revolving Credit Commitments are permanently reduced to zero pursuant to Section 2.13(b), and (c) the date of the termination of the Revolving Credit Commitments pursuant to Section 8.1.

"**Revolving Credit Exposure**" means, with respect to any Lender as of any date of determination, (a) prior to the termination of the Revolving Credit Commitments, that Lender's Revolving Credit Commitment; and (b) after the termination of the Revolving Credit Commitments, the sum of (i) the aggregate outstanding principal amount of the Revolving Loans of that Lender, (ii) in the case of an Issuing Bank, the aggregate Letter of Credit Usage in respect of all Letters of Credit Issued by that Lender (net of any participations by the Lenders in such Letters of Credit), (iii) the aggregate amount of all participations by that Lender in any outstanding Letters of Credit or any unreimbursed drawing under any Letter of Credit, (iv) in the case of the Swing Line Lenders, the aggregate outstanding principal amount of all Swing Line Loans (net of any funded participations therein by the Lenders) made by such Swing Line Lenders, and (v) the aggregate amount of all funded participations therein by that Lender in any outstanding Swing Line Loans.

"**Revolving Credit Limit**" means, as of any date of determination, the aggregate amount of the Revolving Credit Commitments as of such date.

"**Revolving Lender**" means, at any time, any Lender that has a Revolving Credit Commitment at such time or, if the Revolving Credit Commitments have terminated, Revolving Credit Exposure.

"**Revolving Loan**" means a Loan made by a Lender to the Borrower pursuant to Section 2.2(a).

"**Revolving Loan Note**" means a promissory note in the form of Exhibit B-2, as it may be amended, supplemented or otherwise modified from time to time.

"**S&P**" means Standard & Poor's Ratings Services, or any successor entity thereto.

"**Sanctioned Country**" means, at any time, any country or territory that is the subject or target of any comprehensive economic or financial sanctions or trade embargoes under Anti-Terrorism Laws (as of the date of this Agreement, the Crimea region of Ukraine, Cuba, Iran, North Korea, and Syria).

"**SDN List**" means the Specially Designated Nationals and Blocked Persons List maintained by OFAC.

"**Secured Net Leverage Ratio**" means, as of any date, the ratio of (a) Consolidated Total Debt of the Borrower and the Subsidiaries that is secured by a Lien on any asset or property of the Borrower or any Subsidiary outstanding as of the most recently ended Test Period, *minus* up to $50,000,000 of Unrestricted Cash as of such date to (b) Consolidated Adjusted EBITDA for the most recently ended Test Period, all of the foregoing determined on a Pro Forma Basis.

"**Secured Obligation**" as defined in the Pledge and Security Agreement.

"**Secured Party**" means the Administrative Agent, the Collateral Agent, each other Agent (including any former Agent), each Lender, each Issuing Bank, each other Indemnitee solely to the extent of any outstanding claim under Section 10.2 or for Indemnified Liabilities of such Indemnitee pursuant to and in accordance with Section 10.3, each Secured Swap Provider and each Bank Product Provider.

"**Secured Rate Contract**" means any Rate Contract between the Borrower and/or any Subsidiary and a Secured Swap Provider and entered into not for speculative purposes.

"**Secured Swap Provider**" means (a) an Agent or a Lender or an Affiliate of an Agent or a Lender (or a Person who was an Agent or a Lender or an Affiliate of an Agent or a Lender at the time of execution and delivery of a Rate Contract) who has entered into a Secured Rate Contract with the Borrower and/or any Subsidiary or (b) any other Person with whom the Borrower and/or any Subsidiary has entered into a Secured Rate Contract and any assignee thereof.

"**Securities**" means any Capital Stock, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

"**Securities Act**" means the Securities Act of 1933, as amended from time to time, and any successor statute.

"**SOFR**" with respect to any day means the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark, (or a successor administrator) on the Federal Reserve Bank of New York's Website.

"**Solvent**" means, with respect to any Person, that as of the date of determination, (a) the fair value of the assets of the Borrower and the Subsidiaries, on a consolidated basis, exceeds their debts and liabilities, subordinated, contingent or otherwise, on a consolidated basis, (b) the present fair saleable value of the property of the Borrower and the Subsidiaries, on a consolidated basis, is greater than the amount that will be required to pay the probable liability, on a consolidated basis, of their debts and other liabilities, subordinated, contingent or otherwise, on a consolidated basis, as such debts and other liabilities become absolute and matured, (c) the Borrower and the Subsidiaries, on a consolidated basis, are able to pay their debts and liabilities, subordinated, contingent or otherwise, on a consolidated basis, as such liabilities become absolute and matured, and (d) the Borrower and the Subsidiaries, on a consolidated basis, are not engaged in, and are not about to engage in, business for which they have unreasonably small capital.

"**SPC**" as defined in Section 10.6(k).

"**Specified Acquisition Agreement Representations**" means such of the representations and warranties made by the acquired business with respect to the acquired business in the definitive documentation for any Limited Condition Transaction that is an acquisition to the extent a breach of such representations and warranties is material to the interests of the Lenders (in their capacities as such), but only to the extent that the Borrower or its applicable Affiliate has the right to terminate its obligations in accordance with such definitive documentation or decline to consummate such acquisition in accordance with such definitive documentation, in each case, as a result of a breach of such representations and warranties in such definitive documentation.

"**Specified Representations**" means the representations and warranties of the Credit Parties in the Credit Documents relating to their organizational existence, organizational power and authority (only as to execution, delivery and performance of the applicable Credit Documents and the extensions of credit thereunder), the due authorization, execution, delivery and enforceability (against the Credit Parties) of the applicable Credit Documents, solvency on a consolidated basis as of the closing date of a Limited Condition Transaction after giving effect to the Limited Condition Transaction, no conflicts of Credit Documents with the charter documents of the Credit Parties, compliance with Federal Reserve margin regulations, the Investment Company Act, OFAC, FCPA or other sanctions matters and the Patriot Act and the creation, attachment and perfection of security interests in the Collateral (subject to Permitted Liens).

"**Specified Transaction**" means any Permitted Acquisition, any permitted Investment or other acquisition (including acquisition of a book of business), any issuance, incurrence, assumption, guarantee, redemption, repayment of, or offer to purchase, any indebtedness (including any irrevocable or conditional indebtedness, indebtedness issued, incurred or assumed

as a result of, or to finance, any relevant transaction), any designation or re-designation of an "Unrestricted Subsidiary," any merger or other fundamental change, all sales, transfers and other dispositions or discontinuance of any Subsidiary, line of business or division, any Restricted Junior Payment or Incremental Term Loan.

"**Sponsor**" means the collective reference to Smith & Nephew, Inc., Smith & Nephew OUS, Inc., Beluga I, Inc., Beluga II, Inc., Beluga III, Inc., Beluga IV, Inc., Beluga V, Inc., Beluga VI, Inc., Beluga VII, Inc., Beluga VII-A, Inc., and Beluga VIII, Inc., each a Delaware corporation, and their respective Controlled Investment Affiliates.

"**Statutory Reserve Rate**" means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentage (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board of Governors to which the Administrative Agent is subject with respect to the Eurodollar Rate, for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D). Such reserve percentage shall include those imposed pursuant to such Regulation D. Eurodollar Rate Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"**Sterling**" means the lawful currency of the United Kingdom of Great Britain and Northern Ireland.

"**Subordinated Debt**" means, collectively, any Incremental Equivalent Debt, Permitted Ratio Debt or other Indebtedness permitted to be incurred hereunder that is expressly subordinated in right of payment to the payment in full in cash of all Obligations; *provided*, that to the extent such Indebtedness is secured by Liens, such Liens are, in each case, subject to a Junior Lien Intercreditor Agreement or such other intercreditor arrangement as is reasonably acceptable to the Administrative Agent.

"**Subsidiary**" means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof; *provided* that in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a "qualifying share" of the former Person will be deemed to be outstanding.

For purposes of this Agreement, except to the extent expressly stated otherwise, (a) with respect to the Borrower or any of its direct or indirect subsidiaries, references to "Subsidiary" will not include, or be a reference to, any Unrestricted Subsidiary and (b) references to any "Subsidiary" will mean a Subsidiary of the Borrower.

"**Swap Obligation**" means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act.

"**Swing Line Commitment**" means as to any Lender (i) the amount set forth opposite such Lender's name on Appendix A-3 hereto or (ii) if such Lender has entered into an Assignment Agreement, the amount set forth for such Lender as its Swing Line Commitment in the Register maintained by the Administrative Agent pursuant to Section 9.7(b).

"**Swing Line Lender**" means each of (a) Wells Fargo Bank, National Association, in its capacity as a Swing Line Lender hereunder, or, upon the resignation of Wells Fargo Bank, National Association as the Administrative Agent hereunder, any Lender (or Affiliate or Approved Fund of any Lender) that agrees, with the approval of the Administrative Agent (or, if there is no such successor Administrative Agent, the Required Lenders) and the Borrower, to act as a Swing Line Lender hereunder or any replacement Swing Line Lender in accordance with Section 2.3(d), and (b) any (i) Lender, (ii) Affiliate of a Lender and (iii) other bank or legally authorized Person, in each case under this clause (b), that agrees to act in such capacity and reasonably acceptable to the Borrower and the Administrative Agent, in such Person's capacity as a Swing Line Lender hereunder.

"**Swing Line Loan**" means a Loan made by a Swing Line Lender to the Borrower pursuant to Section 2.3.

"**Swing Line Loan Outstandings**" means, at any time of calculation, the then existing aggregate outstanding principal amount of Swing Line Loans.

"**Swing Line Note**" means a promissory note in the form of Exhibit B-3, as it may be amended, supplemented or otherwise modified from time to time.

"**Swing Line Sublimit**" means, as of any date of determination, the lower of the following amounts: (a) $7,500,000 and (b) the aggregate amount of the Revolving Credit Commitments as of such date minus the Total Utilization of Revolving Credit Commitments as of such date.

"**Syndication Agents**" means JPMorgan Chase Bank, N.A. and SunTrust Bank, in their respective capacities as Syndication Agents hereunder.

"**Tax**" means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding (including backup withholding) of any nature and whatever called, levied, collected, withheld or assessed by any Governmental Authority, together with any interest thereon, additions to tax or penalties imposed with respect thereto.

"**Tax Payments**" means:

(a) prior to any Permitted IPO Reorganization or Permitted Reorganization, for any taxable year or portion thereof during which the Borrower is a pass-through entity for U.S. federal income tax purposes (other than any pass-through entity or disregarded entity described in clause (c) below), an amount in cash sufficient to fund (but not to exceed) tax distributions required under Section 4.02 of the Borrower LLC Agreement as in effect on the date hereof, provided, however, for this purpose that the definition of "Assumed Tax Rate" in the Borrower LLC Agreement shall mean 40%, or such higher rate as may from time to time be reasonably determined by the Borrower's Board of Managers to be the appropriate tax rate;

(b) following any Permitted IPO Reorganization or Permitted Reorganization, for any taxable year or portion thereof during which the Borrower is a pass-through entity for U.S. federal income tax purposes (other than any pass-through entity or disregarded entity described in clause (c) below), any payments and distributions to the members or partners of the Borrower, on or prior to each estimated tax payment date as well as each other applicable due date, such that each such member or partner receives, in the aggregate in respect of such taxable year or portion thereof, payments or distributions not to exceed an amount equal to the product of (i) the U.S. federal taxable income allocated by the Borrower to such member or partner in respect of the relevant period less the sum of any U.S. federal taxable loss allocated by the Borrower to such member or partner in respect of the relevant period and any loss carryforwards available from losses allocated to such member or partner by the Borrower in prior periods to the extent not taken into account in prior periods (in both cases, subject to any applicable limitations on the use of such losses), multiplied by (ii) the highest combined marginal U.S. federal, state and local income tax rates (including any tax rate imposed on "net investment income" by Section 1411 of the Internal Revenue Code) applicable to an individual or, if higher, a corporation, resident in New York, New York, determined by taking into account (A) the character of the income and loss allocable to the members or partners as it affects the applicable tax rate, (B) the deductibility of state and local income taxes for U.S. federal income tax purposes (and any limitations thereon), and (C) any application of the alternative minimum tax; *provided,* that to the extent a member or partner would be entitled to receive less than its pro rata share of the amounts otherwise distributable to all members or partners on any given date, the amounts distributable to such member or partner shall be increased to ensure that all distributions are made pro rata in accordance with each member or partner's relative ownership of the Borrower; *provided further,* that to the extent all of the Borrower's U.S. federal taxable income is allocated to or otherwise taxed by an entity taxed as a corporation for U.S. federal income tax purposes, then for purposes of clause (ii) the assumed highest combined marginal U.S. federal, state and local income tax rates shall be the tax rates applicable to a Delaware corporation; and

(c) without duplication of any amounts paid or distributed under clause (a) or clause (b) of this definition, for any taxable year or portion thereof during which (i) the Borrower or any of its Subsidiaries other than any Unrestricted Subsidiaries are members of a consolidated, combined, unitary or similar income tax group for U.S. federal or applicable foreign, state or local income tax purposes (a "**Tax Group**") of which a direct or indirect parent company of the Borrower is the common parent or (ii) the Borrower is a pass-through or disregarded entity for U.S. federal or applicable foreign, state or local income tax purposes that is wholly-owned (directly or indirectly) by an entity that is taxable as a corporation for U.S. federal income tax purposes (a "**Parent Corporation**"), any payments and distributions to fund the portion of the U.S. federal, foreign, state or local income taxes of such Tax Group or such Parent Corporation

(as applicable) for such taxable period that is attributable to the net taxable income of the Borrower and/or the applicable Subsidiaries other than any Unrestricted Subsidiaries (and, to the extent permitted in the following proviso, the applicable Unrestricted Subsidiaries); provided that for each taxable period, (x) the amount of such payments and distributions made in respect of such taxable period in the aggregate will not exceed the amount that the Borrower and the applicable Subsidiaries other than any Unrestricted Subsidiaries (and, to the extent permitted by this proviso, the applicable Unrestricted Subsidiaries), as applicable, would have been required to pay in respect of such net taxable income as stand-alone taxpayers or as a stand-alone Tax Group and (y) the amount of any such payments made in respect of an Unrestricted Subsidiary will be permitted only to the extent that cash distributions are first made by such Unrestricted Subsidiary to the Borrower or any Subsidiary other than an Unrestricted Subsidiary for such purpose.

"**Term Loan**" means, individually and collectively, the Initial Term Loans, the Incremental Term Loans, if any, Extended Term Loans, if any, and Refinancing Term Loans, if any.

"**Term Loan Commitment**" means, collectively, the Initial Term Loan Commitments, the Incremental Term Loan Commitments (if any) and commitments to make Refinancing Term Loans, if any, and Extended Term Loans, if any.

"**Term Loan Exposure**" means, with respect to any Lender, as of any date of determination, the outstanding principal amount of the Term Loans of such Lender; *provided* that, at any time prior to the making of the Term Loans, the Term Loan Exposure of any Lender will be equal to such Lender's Term Loan Commitment.

"**Term Loan Maturity Date**" means (a) for the Initial Term Loans, the earlier of (i) the fifth anniversary of the Closing Date, as extended in accordance with this Agreement from time to time, and (ii) the date that all such Initial Term Loans will become due and payable in full hereunder, whether by acceleration or otherwise; (b) for any Incremental Term Loans, the earlier of (i) the date identified in the applicable Incremental Amendment, as extended in accordance with this Agreement from time to time, and (ii) the date that all such Incremental Term Loans will become due and payable in full hereunder, whether by acceleration or otherwise; (c) for any Extended Term Loans, the earlier of (A) the final maturity date as specified in the applicable Extension Amendment and (B) the date such Extended Term Loans will become due and payable in full hereunder, whether by acceleration or otherwise, (iv) with respect to any Refinancing Term Loans, the earlier of (A) the final maturity date as specified in the applicable Refinancing Amendment and (B) the date such Refinancing Term Loans will become due and payable in full hereunder, whether by acceleration or otherwise.

"**Term Loan Note**" means a promissory note in the form of Exhibit B-1, as it may be amended, supplemented or otherwise modified from time to time.

"**Term SOFR**" means the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

"**Terminated Lender**" as defined in Section 2.23.

"**Test Date**" means the last day of any Test Period.

"**Test Period**" in effect at any time means the most recent period of four consecutive Fiscal Quarters of the Borrower ended on or prior to such time (taken as one accounting period) in respect of which financial statements for each quarter or fiscal year in such period have been or are required to be delivered pursuant to Section 5.1(a) or (b), as applicable; *provided* that, prior to the first date that financial statements have been or are required to be delivered pursuant to Section 5.1(a) or (b), the Test Period in effect will be the period of four consecutive Fiscal Quarters of the Borrower ended September 30, 2019. A Test Period may be designated by reference to the last day thereof (i.e., the "December 31, 2018 Test Period" refers to the period of four consecutive Fiscal Quarters of the Borrower ended on December 31, 2018), and a Test Period will be deemed to end on the last day thereof.

"**Threshold Amount**" means $10,000,000.

"**Total Net Leverage Ratio**" means, as of any date, the ratio of (a) Consolidated Total Debt of the Borrower and the Subsidiaries outstanding as of the most recently ended Test Period, *minus* up to $50,000,000 of Unrestricted Cash as of such date to (b) Consolidated Adjusted EBITDA for the most recently ended Test Period, all of the foregoing determined on a Pro Forma Basis.

"**Total Utilization of Revolving Credit Commitments**" means, as at any date of determination, the sum of (a) the aggregate principal amount of all outstanding Revolving Loans (other than Revolving Loans made for the purpose of repaying any Refunded Swing Line Loans or reimbursing the applicable Issuing Bank for any amount drawn under any Letter of Credit, but not yet so applied), (b) the aggregate principal amount of all outstanding Swing Line Loans, and (c) the Letter of Credit Usage.

"**Transaction Costs**" means the fees, costs and expenses paid or payable by the Borrower or any Subsidiary in connection with the Transactions.

"**Transactions**" means the (i) Initial Credit Extension and (ii) the repayment or release of all amounts outstanding under the Existing Credit Agreement and the payment of all related fees, premiums and expenses on the Closing Date.

"**TTM Consolidated Adjusted EBITDA**" means, as of any date of determination, the Consolidated Adjusted EBITDA of the Borrower for the four consecutive Fiscal Quarters most recently ended prior to such date for which financial statements have been delivered pursuant to Section 5.1(a) or (b) (or, in the case of a determination date that occurs prior to the first such delivery pursuant to such Sections, for the four consecutive Fiscal Quarters ended as of September 30, 2019).

"**Type of Loan**" means (a) with respect to either Term Loans or Revolving Loans, a Base Rate Loan or a Eurodollar Rate Loan, and (b) with respect to Swing Line Loans, a Base Rate Loan.

"**UCC**" means the Uniform Commercial Code as in effect from time to time in the State of New York; *provided* that if by reason of mandatory provisions of law, the perfection, the

effect of perfection or non-perfection or the priority of the security interests of the Collateral Agent in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than New York, the term "UCC" means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

"**Unadjusted Benchmark Replacement**" means the Benchmark Replacement excluding the Benchmark Replacement Adjustment.

"**Undisclosed Administration**" means the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official by a supervisory authority or regulator with respect to a Lender or its direct or indirect parent under or pursuant to the law in the country where such Lender or parent is subject to home jurisdiction supervision, if applicable law requires that such appointment is not to be publicly disclosed.

"**Unrestricted Cash**" means the sum of the aggregate amount of cash and Cash Equivalents held in accounts of the Credit Parties in the U.S. reflected on the combined consolidated balance sheet of the Borrower and the Subsidiaries to the extent that (a) it would not appear as "restricted" on the combined consolidated balance sheet of the Borrower and the Subsidiaries (unless such appearance is related to the Credit Documents (or the Liens created thereunder)), (b) it is not subject to any Lien (other than Permitted Liens) in favor of any Person other than the Collateral Agent for the benefit of the Secured Parties or (c) for purposes of calculating any of the Secured Net Leverage Ratio, the Total Leverage Ratio or the Total Net Leverage Ratio, it does not represent the cash proceeds of any Indebtedness then being incurred.

"**Unrestricted Subsidiary**" means collectively and individually, any direct or indirect subsidiary of the Borrower identified by the Borrower in writing to the Administrative Agent as being an "Unrestricted Subsidiary" pursuant to Section 5.13; *provided* that (a) except to the extent provided in Section 5.13, no Subsidiary may be designated (or re-designated) as an Unrestricted Subsidiary, (b) notwithstanding anything to the contrary in this Agreement, no Subsidiary may be designated as an Unrestricted Subsidiary if it was previously designated an Unrestricted Subsidiary and (c) no Person may be designated as an "Unrestricted Subsidiary" if such Person is not an "Unrestricted Subsidiary" or is a "Guarantor" under any agreement, document or instrument evidencing any Incremental Equivalent Debt, Credit Agreement Refinancing Indebtedness or other Indebtedness in excess of the Threshold Amount, or any Permitted Refinancing in respect of the foregoing, or has otherwise guaranteed or given assurances of payment or performance under or in respect of any such Indebtedness for purposes of calculating Investments permitted under Section 6.6. The designation of any Subsidiary as an "Unrestricted Subsidiary" will constitute an Investment in an amount equal to the fair market value of the Borrower's or such Subsidiary's Investment in such Subsidiary, determined as of the date of such designation by the Borrower in its good faith and reasonable business judgment, and the aggregate amount of all Investments permitted to be made in all "Unrestricted Subsidiaries" will be limited as provided in Section 6.6. The designation of any Unrestricted Subsidiary as a Subsidiary shall constitute (i) the incurrence at the time of designation of any Investment, Indebtedness or Liens of such Subsidiary existing at such time and (ii) a return on any Investment by the Borrower in Unrestricted Subsidiaries pursuant to the preceding sentence in an amount equal to the fair market value at the date of such designation of the Borrower's or its Subsidiary's (as applicable) Investment in such Subsidiary. As of the Closing Date, there are no Unrestricted Subsidiaries.

"**Unused Line Fee Rate**" means the applicable percentage set forth below, as determined by reference to the Total Net Leverage Ratio, as set forth in the then most recent Compliance Certificate received by the Administrative Agent pursuant to Section 5.1(e):

LEVEL	TOTAL NET LEVERAGE RATIO	UNUSED LINE FEE RATE
I	> 2.50:1.00	0.30%
II	> 1.50:1.00 and < 2.50:1.00	0.25%
III	> 1.25:1.00 and < 1.50:1.00	0.20%
IV	> 0.75:1.00 and < 1.25:1.00	0.15%
V	< 0.75:1.00	0.10%

From the Closing Date until the first Business Day that immediately follows the date on which a Compliance Certificate is delivered pursuant to Section 5.1(e) for the Fiscal Quarter ending March 31, 2020, "**Level II**" shall apply.

"**U.S.**" or "**United States**" means United States of America.

"**U.S. Lender**" means each Lender (including any Issuing Bank) that is a United States person as defined in Section 7701(a)(30) of the Internal Revenue Code.

"**Voting Capital Stock**" means, with respect to any Person, shares of such Person's Capital Stock having the right to vote for the election of directors of such Person and any other Capital Stock of such Person treated as voting stock for purposes of Treasury Regulation Section 1.956-2(c)(2).

"**Waivable Mandatory Prepayment**" as defined in Section 2.15(e).

"**Wells Fee Letter**" means that certain Fee Letter, dated November 15, 2019, by and among the Borrower, Wells Fargo Securities, LLC and Wells Fargo Bank, National Association.

"**Weighted Average Life to Maturity**" means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Indebtedness.

"**Write-Down and Conversion Powers**" means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

1.2 Accounting Terms. Except as otherwise expressly provided herein, all accounting terms not otherwise defined herein will have the meanings assigned to them in conformity with GAAP. Financial statements and other information required to be delivered by the Borrower to the Lenders pursuant to Sections 5.1(a) and 5.1(b) will be prepared in accordance with GAAP as in effect at the time of such preparation (and delivered together with the reconciliation statements provided for in Section 5.1(f), if applicable). If at any time any change in GAAP would affect the computation of any financial ratio or financial requirement, or compliance with any covenant, set forth in any Credit Document, and either the Borrower or the Required Lenders will so request, the Administrative Agent, the Lenders and the Borrower will negotiate in good faith to amend such ratio, requirement or covenant to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); *provided* that until so amended, (a) such ratio, requirement or covenant will continue to be computed in accordance with GAAP prior to such change therein and (b) the Borrower will provide to the Administrative Agent and the Lenders reconciliation statements to the extent provided in Section 5.1(f), if applicable. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein will be construed, and all computations of amounts and ratios referred to in Section 5 and Section 6 will be made, without giving effect to any election under Accounting Standards Codification 825-10 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other Liabilities of any Credit Party or any Subsidiary of any Credit Party at "fair value." Subject to the foregoing, calculations in connection with the definitions, covenants and other provisions hereof may utilize accounting principles and policies in conformity with those used to prepare the Historical Financial Statements, including those identified as exceptions to generally accepted accounting principles in the definition of "GAAP."

1.3 Interpretation, **etc**. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. References to "hereof" or "herein" mean of or in this Agreement, as applicable. References herein to any Section, Appendix, Schedule or Exhibit will be to a Section, an Appendix, a Schedule or an Exhibit, as the case may be, hereof unless otherwise specifically provided. The use herein of the word "include" or "including," when following any general statement, term or matter, will not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather will be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. The terms lease and license will include sub-lease and sub-license, as applicable. Unless the context requires otherwise, any definition of or reference to any agreement, instrument or other document (including any Organizational Document) will be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Credit Document). Any reference herein to any Person will be construed to include such Person's successors and permitted assigns. The words "asset" and "property" will be construed to have the same meaning and effect. The word "will" shall be construed to have the same meaning and effect as the word "shall." Any reference to any law or regulation will (i) include all statutory and regulatory provisions consolidating, replacing or interpreting or supplementing such law or regulation and (ii) unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time. This Section 1.3 will apply, *mutatis mutandis*, to all Credit Documents.

1.4 Certifications. Any certificate or other writing required hereunder or under any other Credit Document to be certified by any officer or other authorized representative of any Person will be deemed to be executed and delivered by such officer or other authorized representative solely in such individual's capacity as an officer or other authorized representative of such Person and not in such officer's or other authorized representative's individual capacity.

1.5 Limited Condition Transactions. Notwithstanding anything in this Agreement or any Credit Document to the contrary, when (a)(i) calculating any applicable ratio or the use of any basket, (ii) determining the accuracy of the representations and warranties set forth in Section 4 hereof or (iii) determining satisfaction of any conditions precedent, in the case of each of clause (i), (ii) and (iii), in connection with any Specified Transaction or (b) determining compliance with any provision that requires that no Default or Event of Default has occurred, is continuing or would result thereof, in the case of each of (a) and (b) in connection with a Limited Condition Transaction, the date of determination of such ratio and determination of such accuracy, satisfaction and compliance will, at the option of the Borrower (the Borrower's election to exercise such option in connection with any Limited Condition Transaction, an "**LCT Election**"), be deemed to be the date the definitive agreements for such Limited Condition Transaction are entered into (the "**LCT Test Date**"). If on a Pro Forma Basis after giving effect to such Limited Condition Transaction and the other Specified Transactions to be entered into in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) calculated as if such Limited Condition Transaction or other transactions had occurred at the beginning of the most recently ended Test Period ending prior to the LCT Test Date for which financial statements are delivered (or were required to have been delivered), the Borrower could have taken such action on the relevant LCT Test Date in compliance with such representation, warranty, condition, provision, ratio or basket, such provisions will be deemed to have been complied; *provided* that, on the consummation date of such Limited Condition Transaction, (x) no Event of Default pursuant to Section 8.1(a), (f) or (g) has occurred and is continuing and (y) the Specified Representations and the Specified Acquisition Agreement Representations (to the extent applicable) shall be true and correct in all material respects (except for representations and warranties that are already qualified by materiality, which representations and warranties will be true and correct in all respects) immediately prior to, and immediately after giving effect to, such Limited Condition Transaction. For the avoidance of doubt, (i) if any of such ratios are exceeded as a result of fluctuations in such ratio (including due to fluctuations in Consolidated Adjusted EBITDA) at or prior to the consummation of the relevant Limited Condition Transaction, such ratios and other provisions will not be deemed to have been exceeded as a result of such fluctuations solely for purposes of determining whether the Limited Condition Transaction is permitted hereunder and (ii) such ratios and compliance with such conditions will not be tested at the time of consummation of such Limited Condition Transaction or related Specified Transactions, unless on such date an Event of Default pursuant to Section 8.1(a), (f) or (g) will be continuing. If the Borrower has made an LCT Election for any Limited Condition Transaction, then in connection with any subsequent calculation of any ratio (excluding, for the avoidance of doubt, any ratio contained in Section 6.7) or basket availability with respect to any other Specified Transaction on or following the relevant LCT Test Date and prior to the earlier of the date on which such Limited Condition Transaction is consummated or the date that the definitive agreement for such Limited Condition Transaction is

terminated or expires without consummation of such Limited Condition Transaction, any such ratio or basket will be calculated on a Pro Forma Basis assuming such Limited Condition Transaction and other transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof and the use of cash which would have otherwise constituted Unrestricted Cash for the purpose of calculating any applicable ratio) have been consummated until such time as the applicable Limited Condition Transaction has actually closed or the definitive agreement with respect thereto has been terminated or expires.

1.6 Currency Conversion and Fluctuations.

(a) If more than one currency or currency unit are at the same time recognized by the central bank of any country as the lawful currency of that country, then (i) any reference in the Credit Documents to, and any obligations arising under the Credit Documents in, the currency of that country shall be translated into or paid in the currency or currency unit of that country designated by the Administrative Agent and (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognized by the central bank for conversion of that currency or currency unit into the other, rounded up or down (to the next 1/16 of 1%) by the Administrative Agent as it deems appropriate.

(b) If a change in any currency of a country occurs, this Agreement shall be amended (and each party hereto agrees to enter into any supplemental agreement necessary to effect any such amendment) to the extent that the Administrative Agent determines such amendment to be necessary to reflect the change in currency and to put the Lenders in the same position, so far as possible, that they would have been in if no change in currency had occurred.

(c) No later than 11:00 a.m. London time on each Calculation Date, the Administrative Agent shall determine the Exchange Rate as of such Calculation Date with respect to each applicable currency; *provided* that, upon receipt of an Application or Issuance Notice for a Foreign Currency Letter of Credit pursuant to Section 2.4(b), the Administrative Agent shall determine the Exchange Rate with respect to the relevant currency on the related Calculation Date (it being acknowledged and agreed that the Administrative Agent shall use such Exchange Rate for the purposes of determining compliance with Section 2.4(a) with respect to such Application). The Exchange Rates so determined shall become effective on the relevant Calculation Date (a "**Reset Date**"), shall remain effective until the next succeeding Reset Date and shall for all purposes of this Agreement (other than Section 10.26 and any other provision expressly requiring the use of a current Exchange Rate) be the Exchange Rates employed in converting any amounts between Dollars and any other currency.

(d) No later than 11:00 a.m. London time on each Reset Date, the Administrative Agent shall determine the aggregate amount of the Dollar Equivalents of the Letter of Credit Obligations then outstanding in a currency other than Dollars.

(e) The Administrative Agent shall promptly notify the Borrower of each determination of an Exchange Rate hereunder.

1.7 Divisions. For all purposes under the Credit Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset,

right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Capital Stock at such time and (c) such action shall be deemed to be permitted, in each case, if after giving effect to the preceding clauses (a) and (b), such action would otherwise be permitted under Section 6.8. Any division of a limited liability company shall for all purposes under the Credit Documents constitute a separate Person hereunder and thereunder (and each division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

1.8 Rates. The Administrative Agent does not warrant or accept responsibility for, and shall not have any liability with respect to, the administration, submission or any other matter related to the rates in the definition of "Eurodollar Rate" or with respect to any rate that is an alternative or replacement for or successor to any such rate (including, without limitation, any Benchmark Replacement) or the effect of any of the foregoing, or of any Benchmark Replacement Conforming Changes.

2. LOANS AND LETTERS OF CREDIT

2.1 Term Loans.

Initial Term Loan Commitments. Subject to the terms and conditions hereof, each Lender identified on Appendix A-1 hereto severally agreed to make, on the Closing Date, an Initial Term Loan in Dollars to the Borrower in an amount equal to such Lender's Initial Term Loan Commitment as of such date; *provided* that the Borrower will deliver to Administrative Agent on behalf of the Lenders a fully executed Funding Notice no later than 11:00 a.m. (New York City time) at least one Business Day in advance of the proposed funding date (in the case of a Base Rate Loan) or at least three Business Days (or at least two Business Days for any funding on the Closing Date) in advance of the proposed funding date (in the case of a Eurodollar Rate Loan). The Borrower may make only one borrowing under the Initial Term Loan Commitment, which will be on the Closing Date. Any amount borrowed under this Section 2.1(a) and subsequently repaid or prepaid may not be reborrowed. Subject to Sections 2.13(a) and 2.14, all amounts owed hereunder with respect to the Initial Term Loans will be paid in full no later than the Term Loan Maturity Date. Each Lender's Initial Term Loan Commitment shall terminate immediately and without further action on the Closing Date after giving effect to the funding of such Lender's Initial Term Loan Commitment on such date.

2.2 Revolving Loans.

(a) Revolving Credit Commitments. During the Revolving Credit Commitment Period, subject to the terms and conditions hereof, each Lender severally agrees to make Revolving Loans in Dollars to the Borrower in an aggregate amount up to but not exceeding such Lender's Revolving Credit Commitment; *provided* that, after giving effect to the making of any Revolving Loans in no event will the Total Utilization of Revolving Credit Commitments exceed either (i) as to any Revolving Loans made on the Closing Date, the Initial Revolving Borrowing or (ii) at all times, the Revolving Credit Limit. Amounts borrowed pursuant to this Section 2.2(a) may be repaid and reborrowed during the Revolving Credit Commitment Period. Each Lender's Revolving Credit Commitment will expire on the Revolving Credit Commitment Termination Date and all Revolving Loans and all other amounts owed hereunder with respect to the Revolving Loans and the Revolving Credit Commitments will be paid in full no later than such date.

(b) [Reserved].

(c) Borrowing Mechanics for Revolving Loans after the Closing Date.

(i) Except pursuant to Section 2.4(d), Revolving Loans that are Base Rate Loans will be made in an aggregate minimum amount of $100,000 and integral multiples of $50,000 in excess of that amount, and Revolving Loans that are Eurodollar Rate Loans will be in an aggregate minimum amount of $100,000 and integral multiples of $50,000 in excess of that amount.

(ii) Whenever the Borrower desires that the Lenders make Revolving Loans, the Borrower will deliver to the Administrative Agent by Electronic Transmission a fully executed and delivered Funding Notice no later than 11:00 a.m. (New York City time) at least three Business Days in advance of the proposed Credit Date in the case of a Eurodollar Rate Loan, and at least one Business Day in advance of the proposed Credit Date in the case of a Revolving Loan that is a Base Rate Loan. Except as otherwise provided herein, a Funding Notice for a Revolving Loan that is a Eurodollar Rate Loan will be irrevocable on and after the related Interest Rate Determination Date, and the Borrower will be bound to make a borrowing in accordance therewith.

(iii) Notice of receipt of each Funding Notice in respect of Revolving Loans, together with the amount of each Lender's Pro Rata Share thereof, if any, together with the applicable interest rate, will be provided by the Administrative Agent to each applicable Lender by Electronic Transmission with reasonable promptness, but *(provided* the Administrative Agent will have received such notice by 11:00 a.m. (New York City time)) not later than 2:00 p.m. (New York City time) on the same day as the Administrative Agent's receipt of such Notice from the Borrower.

(d) Each Lender will make the amount of its Revolving Loan available to the Administrative Agent not later than 12:00 noon (New York City time) on the applicable Credit Date by wire transfer of same day funds in Dollars at the Payment Office. Except as provided herein, upon satisfaction or waiver of the conditions precedent specified herein, the Administrative Agent will make the proceeds of such Revolving Loans available to the Borrower on the applicable Credit Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Revolving Loans received by the Administrative Agent from the Lenders to be credited to the account of the Borrower at the Payment Office or such other account as may be designated in writing to the Administrative Agent by the Borrower.

2.3 Swing Line Loans.

(a) Swing Line Loans Commitments. During the Revolving Credit Commitment Period, subject to the terms and conditions hereof, each Swing Line Lender hereby

severally agrees to make Swing Line Loans to the Borrower; *provided* that after giving effect to the making of any Swing Line Loan, in no event will (i) the Swing Line Loan Outstandings exceed the Swing Line Sublimit then in effect, (ii) the Revolving Credit Exposure exceed the Revolving Credit Limit, (iii) the aggregate principal amount of outstanding Swing Line Loans made by such Swing Line Lender exceed such Swing Line Lender's Commitment or (iv) such Swing Line Lender's Revolving Credit Exposure exceed its Revolving Credit Commitment. Amounts borrowed pursuant to this Section 2.3 may be repaid and reborrowed during the Revolving Credit Commitment Period. The Borrower hereby unconditionally promises to pay the unpaid principal amount of each Swing Line Loan on the earlier of the Revolving Credit Commitment Termination Date and the first date after such Swing Line Loan is made that is the fifteenth (15th) or last day of a calendar month (or, if such date is not a Business Day, on the next succeeding Business Day) and is at least five (5) Business Days after such Swing Line Loan is made; *provided* that, on each date that a Revolving Loan is made, the Borrower will repay all Swing Line Loans that were outstanding on the date such Loan was requested to be made. Each Swing Line Lender's Revolving Credit Commitment will expire on the Revolving Credit Commitment Termination Date and all Swing Line Loans and all other amounts owed hereunder with respect to the Swing Line Loans and the Revolving Credit Commitments will be paid in full no later than such date.

(b) Borrowing Mechanics for Swing Line Loans.

(i) Swing Line Loans will be made in an aggregate minimum amount of $50,000 and integral multiples of $50,000 in excess of that amount.

(ii) Whenever the Borrower desires that the Swing Line Lenders make a Swing Line Loan, the Borrower will deliver to the Administrative Agent by Electronic Transmission a Funding Notice no later than 11:00 a.m. (New York City time) on the proposed Credit Date, in which Funding Notice the Borrower will specify the Swing Line Lender requested to make such Swing Line Loan. The Administrative Agent will promptly advise the applicable Swing Line Lender of any such notice received from the Borrower.

(iii) The applicable Swing Line Lender will make such Swing Line Loan available to the Borrower by wire transfer of same day funds in Dollars to an account of the Borrower with the Administrative Agent designated for such purpose by 2:00 p.m. (New York City time) on the applicable Credit Date. Except as provided herein, upon satisfaction or waiver of the conditions precedent specified herein, the Administrative Agent will make the proceeds of such Swing Line Loans available to the Borrower on the applicable Credit Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Swing Line Loans received by the Administrative Agent from the Swing Line Lenders to be credited to the account of the Borrower at the Payment Office, or to such other account as may be designated in writing to the Administrative Agent by the Borrower.

(iv) With respect to any Swing Line Loans which have not been voluntarily prepaid by the Borrower pursuant to Section 2.13, any Swing Line Lender may at any time in its sole and absolute discretion, deliver to the Administrative Agent (with a copy to the Borrower), no later than 11:00 a.m. (New York

City time) at least one Business Day in advance of the proposed Credit Date, a notice (which will be deemed to be a Funding Notice given by the Borrower) requesting that each Lender holding a Revolving Credit Commitment make Revolving Loans that are Base Rate Loans to the Borrower on such Credit Date in an amount not to exceed the amount of such Swing Line Lender's Swing Line Loans (the "**Refunded Swing Line Loans**") outstanding on the date such notice is given which the applicable Swing Line Lender requests the Lenders to prepay. Anything contained in this Agreement to the contrary notwithstanding, (1) the proceeds of such Revolving Loans made by the Lenders other than the applicable Swing Line Lender will be immediately delivered by the Administrative Agent to the applicable Swing Line Lender (and not to the Borrower) and applied to repay a corresponding portion of the Refunded Swing Line Loans and (2) on the day such Revolving Loans are made, the applicable Swing Line Lender's Pro Rata Share of the Refunded Swing Line Loans will be deemed to be paid with the proceeds of a Revolving Loan made by the applicable Swing Line Lender to the Borrower, and such portion of the Swing Line Loans deemed to be so paid will no longer be outstanding as Swing Line Loans and will no longer be due under the Swing Line Note of the applicable Swing Line Lender but will instead constitute part of the applicable Swing Line Lender's outstanding Revolving Loans to the Borrower and will be due under the Revolving Loan Note issued by the Borrower to the applicable Swing Line Lender. The Borrower hereby authorizes the Administrative Agent and each Swing Line Lender to charge the Borrower's accounts with the Administrative Agent and the Swing Line Lenders (up to the amount available in each such account) in order to immediately pay any applicable Swing Line Lender the amount of the Refunded Swing Line Loans to the extent the proceeds of such Revolving Loans made by the Lenders, including the Revolving Loans deemed to be made by any applicable Swing Line Lender, are not sufficient to repay in full the Refunded Swing Line Loans. If any portion of any such amount paid (or deemed to be paid) to any Swing Line Lender should be recovered by or on behalf of the Borrower from a Swing Line Lender in bankruptcy, by assignment for the benefit of creditors or otherwise, the loss of the amount so recovered will be ratably shared among all of the Lenders in the manner contemplated by Section 2.17.

(v) If for any reason Revolving Loans are not made pursuant to Section 2.3(b)(iv) in an amount sufficient to repay any amounts owed to a Swing Line Lender in respect of any outstanding Swing Line Loans on or before the third Business Day after demand for payment thereof by the applicable Swing Line Lender, each Lender holding a Revolving Credit Commitment will be deemed to, and hereby agrees to, have purchased a participation in such outstanding Swing Line Loans, and in an amount equal to its Pro Rata Share of the applicable unpaid amount together with accrued interest thereon. Upon one (1) Business Days' notice from the applicable Swing Line Lender, each Lender holding a Revolving Credit Commitment will deliver to the applicable Swing Line Lender an amount equal to its respective participation in the applicable unpaid amount in same day funds at the Payment Office of the applicable Swing Line Lender. In order to evidence such participation each Lender holding a Revolving Credit Commitment agrees to enter into a participation agreement at the request of the applicable Swing Line Lender in

form and substance reasonably satisfactory to such Swing Line Lender. In the event any Lender holding a Revolving Credit Commitment fails to make available to the applicable Swing Line Lender the amount of such Lender's participation as provided in this paragraph, such Swing Line Lender will be entitled to recover such amount on demand from such Lender together with interest thereon for three Business Days at the rate customarily used by such Swing Line Lender for the correction of errors among banks and thereafter at the Base Rate, as applicable.

(vi) Notwithstanding anything contained herein to the contrary, (1) each Lender's obligation to make Revolving Loans for the purpose of repaying any Refunded Swing Line Loans pursuant to the second preceding paragraph and each Lender's obligation to purchase a participation in any unpaid Swing Line Loans pursuant to the immediately preceding paragraph will be absolute and unconditional and will not be affected by any circumstance, including without limitation (A) any set-off, counterclaim, recoupment, defense or other right which such Lender may have against any Swing Line Lender, any Credit Party or any other Person for any reason whatsoever; (B) the occurrence or continuation of a Default or Event of Default; (C) any adverse change in the business, operations, properties, assets, condition (financial or otherwise) or prospects of any Credit Party; (D) any breach of this Agreement or any other Credit Document by any party thereto; or (E) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing; and (2) no Swing Line Lender will be obligated to make any Swing Line Loans (A) if it has elected not to do so after the occurrence and during the continuation of a Default or Event of Default or (B) so long as any Lender is a Defaulting Lender, unless such Swing Line Lender has entered into arrangements satisfactory to it and the Borrower to eliminate such Swing Line Lender's risk with respect to the Defaulting Lender's participation in such Swing Line Loan, including by cash collateralizing such Defaulting Lender's Pro Rata Share of the outstanding Swing Line Loans and participating interests in any such Swing Line Loan will be allocated among non-Defaulting Lenders in a manner consistent with Section 2.22 (and Defaulting Lenders will not participate therein).

(c) Independent Swing Line Lender Obligations. The failure of any Swing Line Lender to make a Swing Line Loan shall not relieve any other Swing Line Lender of its obligation hereunder to make Swing Line Loans, but no Swing Line Lender shall be responsible for the failure of any other Swing Line Lender to make a Swing Line Loan requested to be made by such other Swing Line Lender.

(d) Resignation or Removal of a Swing Line Lender. Any Swing Line Lender may resign as a Swing Line Lender hereunder at any time upon at least 30 days' prior written notice to the Lenders, the Administrative Agent and the Borrower. Following such notice of resignation, the applicable Swing Line Lender may be replaced at any time by written agreement among the Borrower, the Administrative Agent and the successor Swing Line Lender. The Administrative Agent will notify the Lenders of any such replacement of the applicable Swing Line Lender. At the time any such resignation or replacement will become effective, the Borrower will pay all unpaid fees accrued for the account of the replaced Swing Line Lender. From and after the effective date of any such resignation or replacement, (i) the successor Swing Line Lender

will have all the rights and obligations of the replaced Swing Line Lender under this Agreement with respect to Swing Line Loans to be made by it thereafter and (ii) references herein and in the other Credit Documents to the term "Swing Line Lender" will be deemed to refer to such successor or to any previous Swing Line Lender, or to such successor and all current Swing Line Lenders and all previous Swing Line Lenders, as the context will require. After the resignation or replacement of the Swing Line Lender hereunder, the replaced Swing Line Lender will remain a party hereto and will continue to have all the rights and obligations of a Swing Line Lender under this Agreement with respect to Swing Line Loans made by it prior to such resignation or replacement, but will not be required to make additional Swing Line Loans.

2.4 Issuance of Letters of Credit and Purchase of Participations Therein.

(a) Letters of Credit. From time to time on any Business Day from the Closing Date through the earlier of the Revolving Credit Commitment Termination Date and the fifth Business Day prior to the date specified in clause (a) of the definition of "Revolving Credit Commitment Termination Date," subject to the terms and conditions hereof, each Issuing Bank agrees to Issue, in accordance with such Issuing Bank's usual and customary business practices, Letters of Credit for the account of the Borrower in the aggregate amount up to but not exceeding the Letter of Credit Sublimit; *provided* that the Revolving Credit Exposure does not exceed the Revolving Credit Limit; and *provided, further,* that (i) each Letter of Credit will be denominated in Dollars or in one or more Available Foreign Currencies; (ii) immediately after giving effect to such Issuance, in no event will the Revolving Credit Exposure of any Revolving Credit Lender exceed the Revolving Credit Commitment of such Lender; (iii) after giving effect to such Issuance, in no event will the Total Utilization of Revolving Credit Commitments exceed the Revolving Credit Limit then in effect; (iv) after giving effect to such Issuance, in no event will the Letter of Credit Usage exceed the Letter of Credit Sublimit then in effect; and (v) in no event will any Letter of Credit have an expiration date that is not a Business Day or is later than the earlier of (1) the fifth Business Day prior to the date specified in clause (a) of the definition of "Revolving Credit Commitment Termination Date" and (2) the date which is one year from the date of Issuance of such standby Letter of Credit or such later date as is acceptable to such applicable Issuing Bank, in each case except to the extent cash collateralized or backstopped pursuant to arrangements reasonably acceptable to the Issuing Lender. Subject to the foregoing, each Issuing Bank may agree that a Letter of Credit will automatically be extended for one or more successive periods not to exceed one year each (and in any event not to exceed the period prescribed in clause (v)(1) above), unless such Issuing Bank elects not to extend for any such additional period; *provided* that such Issuing Bank will not extend any such Letter of Credit if it has received written notice that an Event of Default has occurred and is continuing at the time such Issuing Bank must elect to allow such extension; *provided, further,* that no Issuing Bank will Issue any Letter of Credit if (A) any fee due in connection with, and on or prior to, the Issuance of such Letter of Credit has not been paid, (B) such Letter of Credit is requested to be Issued in a form that is not acceptable to such Issuing Bank or (C) such Issuing Bank will not have received, each in form and substance reasonably acceptable to it and duly executed by the Borrower, the documents that such Issuing Bank generally uses in the ordinary course of business for the Issuance of letters of credit of the type of such Letter of Credit (collectively, the "**L/C Reimbursement Agreement**"); *provided, further,* that so long as any Lender is a Defaulting Lender, such Issuing Bank will not be required to Issue any Letter of Credit unless such Issuing Bank has entered into arrangements satisfactory to it and the Borrower to eliminate such Issuing Bank's risk with respect to the participation in

Letters of Credit of the Defaulting Lender, including by cash collateralizing such Defaulting Lender's Pro Rata Share of the Letter of Credit Usage, and participating interests in any such newly issued or increased Letter of Credit will be allocated among non-Defaulting Lenders in a manner consistent with Section 2.22 (and Defaulting Lenders will not participate therein). No Issuing Bank shall be under any obligation to issue Letters of Credit if the issuance of such Letter of Credit would violate one or more policies of such Issuing Bank applicable to letters of credit generally. As of the Closing Date, each of the Existing Letters of Credit shall constitute, for all purposes of this Agreement and the other Credit Documents, a Letter of Credit issued and outstanding hereunder.

(b) Notice of Issuance. Whenever the Borrower desires the Issuance of a Letter of Credit, it will deliver in a writing or Electronic Transmission to the applicable Issuing Bank and the Administrative Agent an Application or Issuance Notice no later than 12:00 noon (New York City time) at least three (3) Business Days, or such shorter period as may be agreed to by the applicable Issuing Bank in any particular instance, in advance of the proposed date of Issuance. For each Issuance, the applicable Issuing Bank may, but will not be required to, determine that, or take notice whether, the conditions precedent set forth in Section 3.2 have been satisfied or waived in connection with the Issuance of any Letter of Credit; *provided, however,* that no Letters of Credit will be Issued during the period starting on the first Business Day after the receipt by such Issuing Bank of notice from the Administrative Agent or the Lenders holding more than 50% of the aggregate Revolving Credit Exposure of all Lenders that any condition precedent contained in Section 3.2 is not satisfied and ending on the date all such conditions are satisfied or duly waived. Upon receipt by the applicable Issuing Bank of the L/C Reimbursement Agreement, in form and substance reasonably acceptable to such Issuing Bank and duly executed by the Borrower, the applicable Issuing Bank will Issue the requested Letter of Credit only in accordance with such Issuing Bank's standard operating procedures. Upon the Issuance of any Letter of Credit or amendment or modification to a Letter of Credit, such Issuing Bank will promptly notify the Administrative Agent, which will in turn promptly notify each Lender with a Revolving Credit Commitment of such Issuance, which notice will be accompanied by a copy of such Letter of Credit or amendment or modification to a Letter of Credit and the amount of such Lender's respective participation in such Letter of Credit pursuant to Section 2.4(e). Each Issuing Bank further agrees to provide the Administrative Agent, in form and substance satisfactory to the Administrative Agent, upon the request of the Administrative Agent (or any Lender with a Revolving Credit Commitment through the Administrative Agent), copies of any Letter of Credit Issued by such Issuing Bank and any related L/C Reimbursement Agreement and such other documents and information as may reasonably be requested by the Administrative Agent. To the extent that any provision of any Application related to any Letter of Credit is inconsistent with the provisions of this Section 2.4, the provisions of this Section 2.4 shall control.

(c) Responsibility of the Issuing Banks With Respect to Requests for Drawings and Payments. In determining whether to honor any drawing under any Letter of Credit by the beneficiary thereof, the applicable Issuing Bank will be responsible only to examine the documents delivered under such Letter of Credit with reasonable care so as to determine whether they appear on their face to be in accordance with the terms and conditions of such Letter of Credit. The parties hereto expressly agree that, in the absence of gross negligence, bad faith or willful misconduct on the part of the applicable Issuing Bank (as determined by a court of competent jurisdiction in a final non-appealable order) with respect to such a determination, such Issuing Bank will be deemed

to have exercised reasonable care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, any Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit. As between the Borrower and the Issuing Banks, the Borrower assumes all risks of the acts and omissions of, or misuse of the Letters of Credit Issued by the Issuing Banks, by the respective beneficiaries of such Letters of Credit. In furtherance and not in limitation of the foregoing, the Issuing Banks will not be responsible for: (i) the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for and Issuance of any such Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged; (ii) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any such Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason; (iii) failure of the beneficiary of any such Letter of Credit to comply fully with any conditions required in order to draw upon such Letter of Credit; (iv) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, email, cable, telex or otherwise, whether or not they be in cipher; (v) errors in interpretation of technical terms; (vi) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any such Letter of Credit or of the proceeds thereof; (vii) the misapplication by the beneficiary of any such Letter of Credit of the proceeds of any drawing under such Letter of Credit; or (viii) any consequences arising from causes beyond the control of the Issuing Banks, including any Governmental Acts; none of the above will affect or impair, or prevent the vesting of, any of the Issuing Banks' rights or powers hereunder. Without limiting the foregoing and in furtherance thereof, any action taken or omitted by the Issuing Banks under or in connection with the Letters of Credit or any documents and certificates delivered thereunder, if taken or omitted in good faith, will not give rise to any liability on the part of the Issuing Banks to the Borrower. Notwithstanding anything to the contrary contained in this Section 2.4(c), the Borrower will retain any and all rights it may have against the applicable Issuing Bank for any liability arising solely out of the gross negligence, bad faith or willful misconduct of such Issuing Bank as determined by a court of competent jurisdiction in a final non-appealable order.

(d) Reimbursement by the Borrower of Amounts Drawn or Paid Under Letters of Credit. In the event any Issuing Bank has determined to honor a drawing under a Letter of Credit, it will immediately notify the Borrower and the Administrative Agent, and the Borrower will reimburse the applicable Issuing Bank, or the Administrative Agent for the benefit of such Issuing Bank, on or before the Business Day immediately following the date on which such drawing is honored (the "**Reimbursement Date**") in an amount in Dollars and in same day funds equal to the amount of such honored drawing or, in the case of reimbursement in an Available Foreign Currency, in such Available Foreign Currency and in same day funds equal to the amount of such honored drawing; *provided* that anything contained herein to the contrary notwithstanding, (i) unless the Borrower will have notified the Administrative Agent and the applicable Issuing Bank prior to 10:00 a.m. (New York City time) on the date such drawing is honored that the Borrower intends to reimburse the applicable Issuing Bank for the amount of such honored drawing with funds other than the proceeds of Revolving Loans, the Borrower will be deemed to

have given a timely Funding Notice to the Administrative Agent requesting each Lender with a Revolving Credit Commitment to make Revolving Loans that are Base Rate Loans on the Reimbursement Date in an amount in Dollars equal to the amount of such honored drawing (and in the event any amounts denominated in Available Foreign Currencies are not paid when due, such amount shall be converted to Dollars based on the Dollar Equivalent thereof), and (ii) without regard to the satisfaction of the conditions specified in Section 3.2 (each of which conditions precedent the Lenders with a Revolving Credit Commitment hereby irrevocably waive), each Lender with a Revolving Credit Commitment will, on the later of the Reimbursement Date or one (1) Business Day after receipt of written notice that a drawing has not been reimbursed, make Revolving Loans that are Base Rate Loans in the amount of such honored drawing, the proceeds of which will be applied directly by the Administrative Agent to reimburse the applicable Issuing Bank for the amount of such honored drawing; and *provided*, *further*, if for any reason proceeds of Revolving Loans are not received by the applicable Issuing Bank on the Reimbursement Date in an amount equal to the amount of such honored drawing, the Borrower will reimburse such Issuing Bank, on demand, in an amount in same day funds equal to the excess of the amount of such honored drawing over the aggregate amount of such Revolving Loans, if any, which are so received. Nothing in this Section 2.4(d) will be deemed to relieve any Lender with a Revolving Credit Commitment from its obligation to make Revolving Loans on the terms and conditions set forth herein, and the Borrower will retain any and all rights it may have against any Lender resulting from the failure of such Lender to make such Revolving Loans under this Section 2.4(d). In the event any amount denominated in an Available Foreign Currency is not paid when due, such amount shall, for all purposes of this Agreement, be converted to an amount in Dollars based on the Dollar Equivalent thereof.

(e) Lenders' Purchase of Participations in Letters of Credit. Immediately upon the Issuance of each Letter of Credit, each Lender having a Revolving Credit Commitment will be deemed to have purchased, in each case, without recourse or warranty, and hereby agrees to irrevocably purchase, from the Issuing Banks a participation in such Letter of Credit and any drawings honored thereunder in an amount equal to such Lender's Pro Rata Share (with respect to the Revolving Credit Commitments) of the maximum amount which is or at any time may become available to be drawn thereunder. In the event that the Borrower will fail for any reason to reimburse the applicable Issuing Bank as provided in Section 2.4(d), the applicable Issuing Bank will promptly notify each Lender with a Revolving Credit Commitment of the unreimbursed amount in Dollars of such honored drawing and of such Lender's respective participation therein based on such Lender's Pro Rata Share of the Revolving Credit Commitments. Each Lender with a Revolving Credit Commitment will make available to the applicable Issuing Bank an amount equal to its respective participation, in Dollars and in same day funds, at the office of the Issuing Bank specified in such notice, not later than 12:00 noon (New York City time) on the first Business Day (under the laws of the jurisdiction in which such office of such Issuing Bank is located) after the date notified by such Issuing Bank. In the event that any Lender with a Revolving Credit Commitment fails to make available to the applicable Issuing Bank on such Business Day the amount of such Lender's participation in such Letter of Credit as provided in this Section 2.4(e), such Issuing Bank will be entitled to recover such amount on demand from such Lender together with interest thereon for three Business Days at the rate customarily used by such Issuing Bank for the correction of errors among banks and thereafter at the Base Rate. Nothing in this Section 2.4(e) will be deemed to prejudice the right of any Lender with a Revolving Credit Commitment to recover from such Issuing Bank any amounts made available by such Lender to such Issuing Bank

pursuant to this Section in the event that it is determined that the payment with respect to a Letter of Credit in respect of which payment was made by such Lender constituted gross negligence, bad faith or willful misconduct on the part of such Issuing Bank as determined by a court of competent jurisdiction in a final non-appealable order. In the event such Issuing Bank will have been reimbursed by other Lenders pursuant to this Section 2.4(e) for all or any portion of any drawing honored by such Issuing Bank under a Letter of Credit, such Issuing Bank will distribute to the Administrative Agent, which will in turn distribute to each Lender which has paid all amounts payable by it under this Section 2.4(e) with respect to such honored drawing, such Lender's Pro Rata Share of all payments subsequently received by such Issuing Bank from the Borrower in reimbursement of such honored drawing when such payments are received. Any such distribution will be made to a Lender at its primary address set forth below its name on Appendix B, in the administrative questionnaire delivered by such Lender to the Borrower and the Administrative Agent or at such other address as such Lender may request.

(f) Obligations Absolute. The obligation of the Borrower to reimburse the Issuing Banks for drawings honored under the Letters of Credit Issued by it and to repay any Revolving Loans made by the Lenders pursuant to Section 2.4(d) and the obligations of the Lenders under Section 2.4(e) will be unconditional and irrevocable and will be performed strictly in accordance with the terms hereof under all circumstances including any of the following circumstances: (i) any lack of validity or enforceability of any Letter of Credit, any document transferring or purporting to transfer any Letter of Credit, any Credit Document (including the sufficiency of any such instrument), or any modification to any provision of any of the foregoing; (ii) the existence of any claim, set-off, defense, abatement, recoupment or other right which the Borrower or any Lender may have at any time against a beneficiary or any transferee of any Letter of Credit (or any Persons for whom any such transferee may be acting), the Issuing Banks, Lender or any other Person or, in the case of a Lender, against the Borrower, whether in connection herewith, the transactions contemplated herein or any transaction (including any underlying transaction between the Borrower or Subsidiary and the beneficiary for which any Letter of Credit was procured); (iii) any draft or other document presented under any Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; (iv) payment by the applicable Issuing Bank under any Letter of Credit against presentation of a draft or other document which does not substantially comply with the terms of such Letter of Credit; (v) any adverse change in the business, operations, properties, assets, condition (financial or otherwise) or prospects of the Borrower or any Subsidiary; (vi) any breach hereof or any other Credit Document by any party thereto; (vii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing; (viii) the fact that an Event of Default or a Default will have occurred and be continuing; or (ix) solely with respect to the obligations of the Lenders under Section 2.4(c), the failure of any condition precedent set forth in Section 3.2 to be satisfied (each of which conditions precedent the Lenders with a Revolving Credit Commitment hereby irrevocably waive); *provided* that, in each case, that payment by the applicable Issuing Bank under the applicable Letter of Credit will not have constituted gross negligence, bad faith or willful misconduct of such Issuing Bank as determined by a court of competent jurisdiction in a final non-appealable order under the circumstances in question.

(g) Indemnification. Without duplication of any obligation of the Borrower under Section 10.2 or Section 10.3, in addition to amounts payable as provided herein, the Borrower hereby agrees to protect, indemnify, pay and save harmless the Issuing Banks from and

against any and all claims, demands, liabilities, damages, losses, costs, charges and expenses (including reasonable fees, expenses and disbursements of a single firm of outside counsel (and, if reasonably necessary, one local counsel in any relevant jurisdiction (which may be a single local counsel acting in multiple jurisdictions) and, solely in the event of an actual or potential conflict of interest between any Issuing Bank, where the Person or Persons affected by such conflict of interest inform the Borrower in writing of such conflict of interest, one additional counsel in each relevant jurisdiction to each group of affected Persons similarly situated taken as a whole) but excluding allocated costs of internal counsel) which the Issuing Banks may incur or be subject to as a consequence, direct or indirect, of (i) the Issuance of any Letter of Credit by an Issuing Bank, other than as a result of (1) the gross negligence, bad faith or willful misconduct of such Issuing Bank as determined by a court of competent jurisdiction in a final non-appealable order or (2) the failure by such Issuing Bank to exercise reasonable care when determining whether a proper demand for payment is made under any Letter of Credit Issued by it, or (ii) the failure of an Issuing Bank to honor a drawing under any such Letter of Credit as a result of any Governmental Act.

(h) Cash Collateralization of Letters of Credit. In the event that any Letter of Credit is outstanding at the time that the Borrower prepays, or is required to repay, the Obligations or the Revolving Credit Commitments are terminated, the Borrower will (i) deposit with the Administrative Agent, for the benefit of all Lenders having Revolving Credit Exposure, cash or Cash Equivalents in an amount equal to one hundred and three percent (103%) of the aggregate outstanding Letter of Credit Usage to be available to Administrative Agent, for its benefit and the benefit of Issuing Banks, to reimburse payments of drafts drawn under such Letters of Credit and pay any fees and expenses related thereto and (ii) prepay the fee payable under Section 2.11(a)(ii) with respect to such Letters of Credit for the full remaining terms of such Letters of Credit. Upon termination of any such Letter of Credit and provided no Event of Default will have occurred and be continuing, the unearned portion of such prepaid fee attributable to such Letter of Credit will be refunded to the Borrower, together with the deposit described in the preceding clause (i) to the extent not previously applied by the Administrative Agent in the manner described herein.

2.5 Pro Rata Shares; Availability of Funds.

(a) Pro Rata Shares. All Loans will be made, and all participations will be purchased, by the Lenders simultaneously and proportionately to their respective Pro Rata Shares. No Lender will be responsible for any default by any other Lender in such other Lender's obligation to make a Loan requested hereunder or purchase a participation required hereby nor will any Term Loan Commitment or any Revolving Credit Commitment of any Lender be increased or decreased as a result of a default by any other Lender in such other Lender's obligation to make a Loan requested hereunder or purchase a participation required hereby.

(b) Availability of Funds. Unless the Administrative Agent will have been notified by any Lender prior to the applicable Credit Date that such Lender does not intend to make available to the Administrative Agent the amount of such Lender's Loan requested on such Credit Date, the Administrative Agent may assume that such Lender has made such amount available to the Administrative Agent on such Credit Date and the Administrative Agent may, in its sole discretion, but will not be obligated to, make available to the Borrower a corresponding amount on such Credit Date. If such corresponding amount is not in fact made available to the Administrative Agent by such Lender, the Administrative Agent will be entitled to recover such

corresponding amount on demand from such Lender together with interest thereon, for each day from such Credit Date until the date such amount is paid to the Administrative Agent, at the customary rate set by the Administrative Agent for the correction of errors among banks for three Business Days and thereafter at the Base Rate. If such Lender does not pay such corresponding amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent will promptly notify the Borrower and the Borrower will immediately pay such corresponding amount to the Administrative Agent together with interest thereon, for each day from such Credit Date until the date such amount is paid to the Administrative Agent, at the rate payable hereunder for Base Rate Loans for such Class of Loans. Nothing in this Section 2.5(b) will be deemed to relieve any Lender from its obligation to fulfill its Term Loan Commitments and Revolving Credit Commitments hereunder or to prejudice any rights that the Borrower may have against any Lender as a result of any default by such Lender hereunder.

2.6 Use of Proceeds.

(a) The proceeds of the Initial Term Loans will be used to (i) consummate the Transactions and (ii) after the usage specified in clause (i) above, for working capital needs and general corporate purposes of the Borrower and the Subsidiaries, including for Permitted Acquisitions, capital expenditures and other transactions not prohibited under the terms of this Agreement.

(b) The proceeds of the Revolving Loans, Letters of Credit and Swing Line Loans made after the Closing Date will be applied by the Borrower for working capital and general corporate purposes of the Borrower and the Subsidiaries, including for Permitted Acquisitions, capital expenditures and other transactions not prohibited under the terms of this Agreement.

(c) No portion of the proceeds of or draws related to any Credit Extension will be used in any manner that causes or might cause such Credit Extension or the application of such proceeds to violate Regulation T, Regulation U or Regulation X of the Board of Governors or any other regulation thereof or to violate the Exchange Act.

(d) No Credit Party, nor any of its Controlled Entities or any of their respective directors and officers, will directly or knowingly indirectly use any part of any proceeds of any Credit Extension or lend, contribute, or otherwise make available such proceeds to any Person (a) to fund or facilitate any activities or business of or with any Person that, at the time of such funding or facilitation, is a Blocked Person, (b) to fund or facilitate any activities or business of or in any Sanctioned Country or

(e) in any other manner that will result in a violation by any Person of Anti-Terrorism Law. No part of the proceeds of any Credit Extension will be used directly or knowingly indirectly for any corrupt payments to any government official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of Anti-Corruption Law.

2.7 Evidence of Debt; Register; Disqualified Lender List; Notes.

(a) Evidence of Debt. Each Lender will maintain on its internal records an account or accounts evidencing the Indebtedness of the Borrower to such Lender, including the amounts of the Loans made by it and each repayment and prepayment in respect thereof. Any such recordation will be conclusive and binding on the Borrower, absent manifest error; *provided* that failure to make any such recordation, or any error in such recordation, will not affect any Lender's Revolving Credit Commitments or the Borrower's Obligations in respect of any applicable Loans; and *provided further*, in the event of any inconsistency between the Register and any Lender's records, the recordations in the Register will govern.

(b) Register. The Administrative Agent will maintain a register for the recordation of the names and addresses of the Lenders and the Revolving Credit Commitments, the Swing Line Commitments and the Loans of each Lender from time to time (the "**Register**"). The Register will be available for inspection by the Borrower or any Lender (with respect to any entry relating to such Lender's Loans) at any reasonable time from time to time upon reasonable prior notice. The Administrative Agent will record in the Register the Revolving Credit Commitments and the Loans, the principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from to time and each repayment or prepayment in respect of the principal amount of the Loans, and any such recordation will be conclusive and binding on the Borrower and each Lender, absent manifest error; *provided* that failure to make any such recordation, or any error in such recordation, will not affect any Lender's Revolving Credit Commitments or the Borrower's Obligations in respect of any Loan. The Borrower hereby designates the Administrative Agent to serve as the Borrower's agent solely for purposes of maintaining the Register as provided in this Section 2.7, and the Borrower hereby agrees that, to the extent the Administrative Agent serves in such capacity, the Administrative Agent and its officers, directors, employees, agents and affiliates will constitute "Indemnitees."

(c) Disqualified Lender List. The Disqualified Lenders List will be (i) posted to the Lenders on both the "Public Side Information" and the "Private Side Information" portions of the Platform, subject to the confidentiality provisions thereof in accordance with Section 10.17 hereof, and (ii) made available to the Lenders, other Agents and Issuing Banks upon written request to the Administrative Agent. The Borrower hereby acknowledges and consents to the posting and/or distribution of the Disqualified Lenders List pursuant to the terms set forth in this Agreement. The parties to this Agreement hereby acknowledge and agree that the Administrative Agent will not be deemed to be in default under this Agreement or to have any duty or responsibility or to incur any liabilities as a result of a breach of this Section 2.7(c), nor will the Administrative Agent have any duty, responsibility or liability to monitor or enforce assignments, participations or other actions in respect of Disqualified Lenders, or otherwise take (or omit to take) any action with respect thereto.

(d) Notes. If so requested by any Lender by written notice to the Borrower (with a copy to the Administrative Agent) at least three Business Days prior to the Closing Date, or at any time thereafter, the Borrower will execute and deliver to such Lender (and/or, if applicable and if so specified in such notice, to any Person who is an assignee of such Lender pursuant to Section 10.6) on the Closing Date (or, if such notice is delivered after the date that is three Business Days prior to the Closing Date, promptly after the Borrower's receipt of such notice) a Note or Notes to evidence such Lender's Term Loan, Revolving Loan or Swing Line Loan as the case may be.

2.8 Interest on Loans.

(a) Except as otherwise set forth herein, each Class of Loan will bear interest on the unpaid principal amount thereof from the date made through repayment (whether by acceleration or otherwise) thereof as follows:

Class of Loans	Interest
Term Loans (other than Incremental Term Loans) and Revolving Loans that are, in each case, Base Rate Loans	Base Rate *plus* the Applicable Margin
Term Loans (other than Incremental Term Loans) and Revolving Loans that are, in each case, Eurodollar Rate Loans	Eurodollar Rate *plus* the Applicable Margin
Swing Line Loans	Base Rate *plus* the Applicable Margin
Incremental Term Loans, Extended Term Loans or Refinancing Term Loans that are, in each case, Base Rate Loans	Base Rate *plus* the applicable margin set forth in the applicable Incremental Amendment, Extension Amendment or Refinancing Amendment.
Incremental Term Loans, Extended Term Loans or Refinancing Term Loans that are, in each case, Eurodollar Rate Loans	Eurodollar Rate *plus* the applicable margin set forth in the applicable Incremental Amendment, Extension Amendment or Refinancing Amendment.

(b) The basis for determining the rate of interest with respect to any Loan (except a Swing Line Loan which can be made and maintained as Base Rate Loans only), and the Interest Period with respect to any Eurodollar Rate Loan, will be selected by the Borrower and notified to the Administrative Agent and the Lenders pursuant to the applicable Funding Notice or Conversion/Continuation Notice, as the case may be. If on any day a Loan is outstanding with respect to which a Funding Notice or Conversion/Continuation Notice has not been delivered to the Administrative Agent in accordance with the terms hereof specifying the applicable basis for determining the rate of interest, then for that day such Loan will be a Base Rate Loan; provided that if such Loan is a Eurodollar Rate Loan with an Interest Period of one month, then such Loan shall be automatically continued as a Eurodollar Rate Loan with an Interest Period of one month.

(c) In connection with Eurodollar Rate Loans there will be no more than eight (8) Interest Periods outstanding at any time. In the event the Borrower fails to specify between a Base Rate Loan or a Eurodollar Rate Loan in the applicable Funding Notice or

Conversion/Continuation Notice, such Loan (if outstanding as a Eurodollar Rate Loan) will be automatically converted into a Base Rate Loan on the last day of the then-current Interest Period for such Loan (or if outstanding as a Base Rate Loan will remain as, or (if not then outstanding) will be made as, a Base Rate Loan); provided that if no Conversion/Continuation Notice is provided with respect to an outstanding Eurodollar Rate Loan with an Interest Period of one month, such Eurodollar Rate Loan shall be continued as a Eurodollar Rate Loan with an Interest Period of one month. In the event the Borrower fails to specify an Interest Period for any Eurodollar Rate Loan in the applicable Funding Notice or Conversion/Continuation Notice, the Borrower will be deemed to have selected an Interest Period of one month. As soon as practicable after 10:00 a.m. (New York City time) on each Interest Rate Determination Date, the Administrative Agent will determine (which determination will, absent manifest error, be final, conclusive and binding upon all parties) the interest rate that will apply to the Eurodollar Rate Loans for which an interest rate is then being determined for the applicable Interest Period and will promptly give notice thereof (in writing or by telephone confirmed in writing) to the Borrower and each Lender.

(d) Interest payable pursuant to Section 2.8(a) will be computed (i) in the case of Base Rate Loans based on the Prime Rate on the basis of a 365-day year (or 366-day year, in the case of a leap year), and (ii) in the case of Eurodollar Rate Loans and Base Rate Loans not based on the Prime Rate, on the basis of a 360-day year, in each case for the actual number of days elapsed in the period during which it accrues. In computing interest on any Loan, the date of the making of such Loan or the first day of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted from a Eurodollar Rate Loan, the date of conversion of such Eurodollar Rate Loan to such Base Rate Loan, as the case may be, will be included, and the date of payment of such Loan or the expiration date of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted to a Eurodollar Rate Loan, the date of conversion of such Base Rate Loan to such Eurodollar Rate Loan, as the case may be, will be excluded; *provided* that if a Loan is repaid on the same day on which it is made, one day's interest will be paid on that Loan.

(e) Except as otherwise set forth herein, interest on each Loan will accrue on a daily basis and be payable in arrears (i) on each Interest Payment Date applicable to that Loan; (ii) any prepayment of that Loan, whether voluntary or mandatory, to the extent accrued on the amount being prepaid; and (iii) at maturity, including final maturity (or, in the case of Revolving Loans, such earlier date on which the Revolving Credit Commitments are terminated) and, after such maturity (or termination), on each date on which demand for payment is made; *provided*, *however*, that, with respect to any voluntary prepayment of a Revolving Loan outstanding as a Base Rate Loan, accrued interest will instead be payable on the applicable Interest Payment Date.

(f) The Borrower agrees to pay to the applicable Issuing Bank, with respect to drawings honored under any Letter of Credit, interest on the amount paid by such Issuing Bank in respect of each such honored drawing from the date such drawing is honored to but excluding the date such amount is reimbursed by or on behalf of the Borrower at a rate equal to (i) for the period from the date such drawing is honored to but excluding the applicable Reimbursement Date, the rate of interest otherwise payable hereunder with respect to Revolving Loans that are Base Rate Loans, and (ii) thereafter, a rate which is 2.00% per annum in excess of the rate of interest otherwise payable hereunder with respect to Revolving Loans that are Base Rate Loans.

(g) Interest payable pursuant to Section 2.8(f) will be computed on the basis of a 365/366-day year for the actual number of days elapsed in the period during which it accrues, and will be payable on demand or, if no demand is made, on the date on which the related drawing under a Letter of Credit is reimbursed in full. Promptly upon receipt by an Issuing Bank of any payment of interest pursuant to Section 2.8(f), such Issuing Bank will distribute to the Administrative Agent, which will in turn distribute to each Lender, out of the interest received by such Issuing Bank in respect of the period from the date such drawing is honored to but excluding the date on which such Issuing Bank is reimbursed for the amount of such drawing (including any such reimbursement out of the proceeds of any Revolving Loans), the amount that such Lender would have been entitled to receive in respect of the letter of credit fee that would have been payable in respect of such Letter of Credit for such period if no drawing had been honored under such Letter of Credit. In the event an Issuing Bank will have been reimbursed by the Lenders for all or any portion of such honored drawing, such Issuing Bank will distribute to each Lender which has paid all amounts payable by it under Section 2.4(e) with respect to such honored drawing such Lender's Pro Rata Share of any interest received by such Issuing Bank in respect of that portion of such honored drawing so reimbursed by the Lenders for the period from the date on which such Issuing Bank was so reimbursed by the Lenders to but excluding the date on which such portion of such honored drawing is reimbursed by the Borrower.

2.9 Conversion/Continuation.

(a) Subject to Section 2.18 and (other than in the case of a conversion of a Eurodollar Rate Loan to a Base Rate Loan) so long as no Event of Default will have occurred and then be continuing, the Borrower will have the option:

(i) to convert at any time all or any part of any Term Loan or Revolving Loan equal to $100,000 and integral multiples of $50,000 in excess of that amount from one Type of Loan to another Type of Loan; *provided* that a Eurodollar Rate Loan may only be converted on the expiration of the Interest Period applicable to such Eurodollar Rate Loan unless the Borrower will pay all amounts due under Section 2.18 in connection with any such conversion; or

(ii) upon the expiration of any Interest Period applicable to any Eurodollar Rate Loan, to continue all or any portion of such Loan equal to $100,000 and integral multiples of $50,000 in excess of that amount as a Eurodollar Rate Loan.

(b) The Borrower will deliver a Conversion/Continuation Notice to the Administrative Agent by Electronic Transmission no later than 11:00 a.m. (New York City time) at least one Business Day in advance of the proposed conversion date (in the case of a conversion to a Base Rate Loan) and at least three Business Days in advance of the proposed Conversion/Continuation Date (in the case of a conversion to, or a continuation of, a Eurodollar Rate Loan). Except as otherwise provided herein, a Conversion/Continuation Notice for conversion to, or continuation of, any Eurodollar Rate Loans will be irrevocable on and after the related Interest Rate Determination Date, and the Borrower will be bound to effect a conversion or continuation in accordance therewith.

2.10 Default Interest. Upon the occurrence and during the continuance of an Event of Default under Section 8.1(a), 8.1(f) or 8.1(g), the overdue principal amount of any Loans and, to the extent permitted by applicable law and due and owing, any overdue interest payments on the Loans and any other overdue fees and other overdue amounts, will bear interest (including post-petition interest in any proceeding under the Bankruptcy Code or other applicable bankruptcy laws) from the date of such Event of Default, payable on demand at a rate that is 2.00% per annum in excess of the interest rate otherwise payable hereunder with respect to the applicable Loans (or, in the case of any such fees and other amounts, at a rate which is 2.00% per annum in excess of the interest rate otherwise payable hereunder for Initial Term Loans outstanding as Base Rate Loans); *provided* that in the case of Eurodollar Rate Loans, upon the expiration of the Interest Period in effect at the time any such increase in interest rate is effective, such Eurodollar Rate Loans will thereupon become Base Rate Loans and will thereafter bear interest payable upon demand at a rate that is 2.00% per annum in excess of the interest rate otherwise payable hereunder for such Base Rate Loans. Payment or acceptance of the increased rates of interest provided for in this Section 2.10 is not a permitted alternative to timely payment and will not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of the Administrative Agent or any Lender.

2.11 Fees.

(a) Revolving Commitment Fee. The Borrower agrees to pay to the Lenders having Revolving Credit Exposure the following fees:

(i) commitment fees equal to the Unused Line Fee Rate multiplied by the amount by which the Revolving Credit Commitments (other than Revolving Credit Commitments of a Defaulting Lender) exceed the average daily balance of outstanding Revolving Loans (other than Swing Line Loans); and

(ii) letter of credit fees equal to (A) the Applicable Margin for Revolving Loans that are Eurodollar Rate Loans, times (B) the face amount of all Letters of Credit issued and outstanding under this Agreement (regardless of whether any conditions for drawing could then be met and determined as of the close of business on any date of determination); *provided* that, in the case of Foreign Currency Letters of Credit, such calculation will be based on the Dollar Equivalent of the face amount thereof.

All fees referred to in this Section 2.11(a) will be paid to the Administrative Agent at the Payment Office and upon receipt, the Administrative Agent will promptly distribute to each Lender its Pro Rata Share thereof.

(b) Letter of Credit Fees. The Borrower agree to pay to the Administrative Agent (in Dollars), for the account of each Issuing Bank, the following fees:

(i) a fronting fee equal to 0.125% per annum, times the average aggregate daily maximum amount available to be drawn under all Letters of Credit issued by it and outstanding under this Agreement (determined as of the close of business on any date of determination); *provided* that, in the case of Foreign Currency Letters of Credit, such calculation will be based on the Dollar Equivalent of the maximum amount available to be drawn thereunder; and

(ii) such documentary and processing charges for any Issuance, amendment, transfer or payment of a Letter of Credit as are in accordance with such Issuing Bank's standard schedule for such charges and as in effect at the time of such Issuance, amendment, transfer or payment, as the case may be.

(c) [Reserved].

(d) [Reserved].

(e) All fees referred to in Section 2.11(a) and 2.11(b) (except 2.11(b)(i)) will be calculated on the basis of a 360-day year and the actual number of days elapsed. The fees referred to in Sections 2.11(a) and 2.11(b)(i) will be payable quarterly in arrears on the last Business Day of each Calendar Quarter of each year during the Revolving Credit Commitment Period, commencing on the first such date to occur at the end of the first full Calendar Quarter ending after the Closing Date, and on the Revolving Credit Commitment Termination Date.

(f) In addition to the foregoing fees, the Borrower agree to pay to Agents such other fees in the amounts and at the times separately agreed upon.

(g) Once paid, none of the foregoing fees will be refundable under any circumstances.

2.12 Scheduled Payments.

(a) The Borrower will repay to the Administrative Agent for the ratable account of the Lenders:

(i) on the last Business Day of each Fiscal Quarter (commencing with the first full Fiscal Quarter ending after the Closing Date) an aggregate principal amount of the original aggregate principal amount of all Initial Term Loans outstanding on the Closing Date as follows:

(1) for the first four such payment dates, 1.25% of the original principal amount of all Initial Term Loans outstanding on the Closing Date;

(2) for the next eight such payment dates after the first four such payment dates, 1.875% of the original principal amount of all Initial Term Loans outstanding on the Closing Date;

(3) for the next eight such payment dates after the first twelve such payment dates, 2.50% of the original principal amount of all Initial Term Loans outstanding on the Closing Date; and

(ii) on the Term Loan Maturity Date, the aggregate principal amount of all Initial Term Loans outstanding on such date.

(b) In the event any Incremental Term Loans, Extended Term Loans or Refinancing Term Loans are made, such Incremental Term Loans, Extended Term Loans or Refinancing Term Loans will be repaid in such installments as may be set forth in the applicable Incremental Amendment, Extension Amendment or Refinancing Amendment, as applicable.

(c) Notwithstanding the foregoing clauses (a) and (b):

(i) any installment payments contemplated by clause (a) or (b) above will be reduced in connection with any voluntary or mandatory prepayments of the Term Loans in accordance with Sections 2.13, 2.14 and 2.15, as applicable;

(ii) the rate of amortization (or the amount of any installment) with respect to any Class of Loans may be increased (and the provisions of clause (a)(i) or the applicable Incremental Amendment, Extension Amendment or Refinancing Amendment may be amended accordingly) without the consent of the Lenders or the Administrative Agent in connection with the incurrence of any subsequent Incremental Term Loans, Extended Term Loans or Refinancing Term Loans that also comprise part of such Class of Loans; and

(iii) the Term Loans, together with all other amounts owed hereunder with respect thereto, will, in any event, be paid in full no later than the applicable Term Loan Maturity Date.

2.13 Voluntary Prepayments/Commitment Reductions.

(a) Voluntary Prepayments. Any time and from time to time, with respect to any Type of Loan, the Borrower may prepay the Loans, in whole or in part, on any Business Day in whole or in part, in an aggregate minimum amount of and integral multiples in excess of that amount (or, in each case, if less the entire amount thereof), and upon prior written notice given to the Administrative Agent or any applicable Swing Line Lender, as the case may be, by 12:00 noon (New York City time) on the applicable date indicated below, in each case, as set forth in the following table:

Class of Loans	Minimum Amount	Integral Multiple	Prior Notice
Base Rate Loans (other than Swing Line Loans)	$100,000	$50,000	One Business Day
Eurodollar Rate Loans	$100,000	$50,000	Three Business Days
Swing Line Loans	$ 50,000	$50,000	Same Day

Any amounts received after such time on such date will be deemed to have been received on the next succeeding Business Day. Upon the giving of any such notice, the principal amount of the Loans specified in such notice will become due and payable without premium or penalty (subject to Section 2.18(c)) on the prepayment date specified therein; *provided* that such notice may be conditioned on receiving the proceeds necessary for such prepayment in a refinancing or otherwise. Any such voluntary prepayment will be applied as specified in Section 2.15(a).

(b) Voluntary Commitment Reductions. The Borrower may, upon not less than three Business Days' prior written notice, at any time and from time to time terminate in whole or permanently reduce in part, without premium or penalty, the Revolving Credit Commitments in an amount up to the amount by which the Revolving Credit Limit exceeds the Total Utilization of Revolving Credit Commitments at the time of such proposed termination or reduction; *provided* that any such partial reduction of the Revolving Credit Commitments must be in an aggregate minimum amount of $100,000 and integral multiples of $50,000 in excess of that amount (or, in each case, if less the entire amount thereof); *provided, further,* that the Borrower may rescind any notice of termination under this Section 2.13(b) if such notice was delivered in connection with a refinancing or other transaction, that is not consummated or is otherwise delayed. The Borrower's notice to the Administrative Agent will designate the date (which must be a Business Day) of such termination or reduction and the amount of any partial reduction, and such termination or reduction of the Revolving Credit Commitments will be effective on the date specified in the Borrower's notice and will reduce the Revolving Credit Commitment of each Lender proportionately to its Pro Rata Share thereof.

2.14 Mandatory Prepayments/Commitment Reductions.

(a) Asset Sales. No later than the fifth Business Day following the date of receipt by the Borrower or any Subsidiary of any Net Cash Proceeds from Asset Sales made pursuant to Section 6.8(e) or (h), together with the Net Cash Proceeds from Casualty Events pursuant to clause (b) below, in excess of $5,000,000 in any Fiscal Year, the Borrower will prepay, or cause to be prepaid, the Term Loans in accordance with Section 2.15(b) in an aggregate amount equal to 100% of such excess; *provided* that the Borrower will have the option, directly or through one or more of its Subsidiaries, to invest such Net Cash Proceeds within three hundred sixty-five (365) days of receipt thereof in assets of the type used or useful in the Businesses of the Borrower and the Subsidiaries; *provided further*, that if the Borrower or any Subsidiary enters into a legally binding commitment to invest such Net Cash Proceeds within such 365-day period, it may directly or through one or more of its Subsidiaries, so invest such Net Cash Proceeds within one hundred eighty (180) days following the end of such initial 365-day period; *provided, further,* that pending any such investment such Net Cash Proceeds may be applied to prepay Revolving Loans to the extent then outstanding (without a reduction in Revolving Credit Commitments).

(b) Casualty Events. No later than the fifth Business Day following the date of receipt by the Borrower or any Subsidiary of any Net Cash Proceeds from a Casualty Event, together with the Net Cash Proceeds from Asset Sales pursuant to clause (a) above, in excess of $5,000,000 in any Fiscal Year, the Borrower will prepay, or cause to be prepaid, the Term Loans in accordance with Section 2.15(b) in an aggregate amount equal to 100% of such excess; *provided* that (i) the Borrower will have the option, directly or through one or more of its Subsidiaries, to invest such Net Cash Proceeds within three hundred sixty-five (365) days of receipt thereof in

assets used or useful in the Businesses of the Borrower and the Subsidiaries, which investment may include the repair, restoration or replacement of the applicable assets thereof; *provided, further*, that if the Borrower or any Subsidiary enters into a legally binding commitment to invest such Net Cash Proceeds within such 365-day period, it may directly or through one or more of its Subsidiaries, so invest such Net Cash Proceeds within one hundred eighty (180) days following the end of such initial 365-day period; *provided, further,* that pending any such investment such Net Cash Proceeds may be applied to prepay Revolving Loans to the extent then outstanding (without a reduction in Revolving Credit Commitments).

(c) Issuance of Debt. No later than the first Business Day following receipt by the Borrower or any Subsidiary of any Net Cash Proceeds from the incurrence of any Indebtedness of the Borrower or any Subsidiary (other than any Indebtedness permitted to be incurred or issued pursuant to Section 6.1 (but, for the avoidance of doubt, excluding Credit Agreement Refinancing Indebtedness and Replacement Term Loans)), the Borrower will prepay the Term Loans in accordance with Section 2.15(b) in an aggregate amount equal to 100% of such Net Cash Proceeds.

(d) Prepayment Certificate. Concurrently with any prepayment of the Loans pursuant to Sections 2.14(a) through 2.14(c), the Borrower will deliver to the Administrative Agent a calculation of the amount of the applicable net proceeds. In the event that the Borrower will subsequently determine that the actual amount received exceeded the applied pursuant to this Section 2.14, the Borrower will promptly make an additional prepayment of the Loans in an amount equal to such excess, and the Borrower will concurrently therewith deliver to the Administrative Agent a calculation of such excess.

2.15 Application of Prepayments/Reductions.

(a) Application of Voluntary Prepayments. Subject to Section 2.15(d), any prepayment of any Loan pursuant to Section 2.13(a) will be applied as specified by the Borrower in the applicable notice of prepayment and absent any such direction as to the prepayment of such Loans, in direct order of maturity; *provided* that in any event, any prepayment shall be applied ratably among holders of the same Class of Loans (or, in the case of any Obligations other than Loans, of the same type of such Obligations).

(b) Application of Mandatory Prepayments. Subject to Section 2.15(d), any amount required to be paid pursuant to Sections 2.14(a) through 2.14(c) will be applied as follows:

(i) except as set forth in any Refinancing Amendment, Extension Amendment or Incremental Amendment with respect to such applicable Refinancing Term Loans, Extended Term Loans or Incremental Term Loans, as applicable, such prepayment will be applied to each Class of Term Loans on a pro rata basis (in accordance with the respective outstanding principal amounts thereof); *provided* that any prepayment of Term Loans with the Net Cash Proceeds of Credit Agreement Refinancing Indebtedness will be applied solely to each applicable Class of Refinanced Indebtedness, and

(ii) such prepayment will be applied to the next eight (8) installments of each applicable Class of Term Loans in direct order of maturity, with the balance, if any, applied to the amount due at maturity.

Notwithstanding anything to the contrary in any Credit Document, the Borrower may use a portion of the amounts required to be paid pursuant to Sections 2.14(a) and 2.14(b) to prepay, repurchase, redeem, defease or otherwise repay, or offer to prepay, repurchase, redeem, defease or otherwise repay, with such amounts other Pari Passu Lien Indebtedness and the amount required to be paid pursuant to such Sections will be ratably reduced; *provided* that the definitive documentation in respect of such Pari Passu Lien Indebtedness requires the issuer or borrower thereof to prepay, repurchase, redeem, defease or otherwise repay, or offer to prepay, repurchase, redeem, defease or otherwise repay, such Pari Passu Lien Indebtedness with such amounts, in each case, on a pro rata basis with the outstanding principal amount of Term Loans.

(c) Application of Prepayments of Loans to Base Rate Loans and Eurodollar Rate Loans. Considering each Class of Loans being prepaid separately, any prepayment thereof will be applied first to Base Rate Loans to the full extent thereof before application to Eurodollar Rate Loans, in each case, in a manner that minimizes the amount of any payments required to be made by the Borrower pursuant to Section 2.18(c).

(d) Application of Payments or Proceeds. During the continuance of an Event of Default, the Administrative Agent may and will upon the direction of the Required Lenders apply any and all payments received by the Administrative Agent in respect of any Obligation in accordance with Section 8.2. All payments made by a Credit Party to the Administrative Agent after any or all of the Obligations have been accelerated (so long as such acceleration has not been rescinded), including proceeds of Collateral, will be applied in accordance with Section 8.2.

(e) Waivable Mandatory Prepayment. Anything contained herein to the contrary notwithstanding, so long as any Term Loans are outstanding, in the event the Borrower is required to make any mandatory prepayment pursuant to Section 2.14(a) through (c) (other than any mandatory prepayment with the Net Cash Proceeds of any Credit Agreement Refinancing Indebtedness) (a "**Waivable Mandatory Prepayment**"), not less than three Business Days prior to the date (the "**Required Prepayment Date**") on which the Borrower is required to make such Waivable Mandatory Prepayment, the Borrower will notify the Administrative Agent of the amount of such prepayment. Each such Lender may exercise its option to refuse any Waivable Mandatory Prepayment by giving written notice to the Borrower and the Administrative Agent of its election to do so on or before the first Business Day prior to the Required Prepayment Date (it being understood that any Lender that does not notify the Borrower and the Administrative Agent of its election to exercise such option on or before the first Business Day prior to the Required Prepayment Date will be deemed to have elected, as of such date, not to exercise such option). On the Required Prepayment Date, the Borrower will pay to the Administrative Agent the amount of the Waivable Mandatory Prepayment, which amount will be applied to those Lenders that have elected not to exercise such option, as prepayment of the Term Loans (which prepayment will be applied to the scheduled installments of principal of the Term Loans of Lenders not electing to exercise such option, in accordance with Section 2.15(b)), with any balance of the Waivable Mandatory Prepayment to be retained by the Borrower and used for any purpose permitted by the terms of this Agreement.

(f) Repatriation; Foreign Considerations. Notwithstanding any provisions of Section 2.14 or this Section 2.15 to the contrary:

(i) to the extent that any or all of the Net Cash Proceeds of any Asset Sale by a Foreign Subsidiary giving rise to a prepayment event pursuant to Section 2.14(a) (a "**Foreign Disposition**"), the Net Cash Proceeds of any Casualty Event from a Foreign Subsidiary giving rise to a prepayment event pursuant to Section 2.14(b) (a "**Foreign Casualty Event**") attributable to Foreign Subsidiaries, FSHCOs or any Domestic Subsidiary of the foregoing are prohibited or delayed by applicable local law from being repatriated to the United States, the portion of such Net Cash Proceeds so affected will not be required to be applied to repay Term Loans at the times provided in Section 2.14 but may be retained by the applicable Foreign Subsidiary so long, but only so long, as the applicable local law will not permit repatriation to the United States (the Borrower hereby agreeing to cause the applicable Foreign Subsidiary to promptly take all commercially reasonable actions required by the applicable local law to permit such repatriation), and once such repatriation of any of such affected Net Cash Proceeds is permitted under the applicable local law, such repatriation will be effected promptly and such repatriated Net Cash Proceeds will be promptly (and in any event not later than three (3) Business Days after such repatriation) applied (net of additional Taxes (including Tax Payments) payable or reserved against as a result thereof) to the repayment of the Term Loans pursuant to Section 2.14 to the extent provided therein, and

(ii) to the extent that the Borrower has reasonably determined in good faith that repatriation of any of or all the Net Cash Proceeds of any Foreign Disposition, Net Cash Proceeds of any Foreign Casualty Event would result in adverse Tax consequences (that are not de minimis) to the Borrower, its Subsidiaries or any direct or indirect equity owners of the Borrower, the Net Cash Proceeds so affected may be retained by the applicable Foreign Subsidiary (the Borrower hereby agreeing to promptly take and cause such Foreign Subsidiary to take all commercially reasonable actions to eliminate or minimize any such adverse Tax consequences in furtherance of allowing the repatriation of such Net Cash Proceeds, provided that in no event will Borrower be required to undertake any action that would result in any material costs or Taxes payable by the Borrower or its Affiliates).

2.16 General Provisions Regarding Payments.

(a) All payments by the Borrower of principal, interest, fees and other Obligations will be made in Dollars in same day funds and by wire transfer or ACH transfer (which will be the exclusive means of payment hereunder), without defense, setoff or counterclaim, free of any restriction or condition, and delivered to the Administrative Agent not later than 2:00 p.m. (New York City time) on the date due at the Payment Office (or such other address as the Administrative Agent may from time to time specify in accordance with Section 10.1) for the account of the Lenders; for purposes of computing interest and fees, funds received by the Administrative Agent after that time on such due date will be deemed to have been paid by the Borrower on the next succeeding Business Day.

(b) All payments of the principal amount of any Term Loan made pursuant to Section 2.13 will be accompanied by payment of accrued interest on the principal amount being repaid or prepaid, and all such payments will be applied to the payment of interest then due and payable before application to principal.

(c) The Administrative Agent (or its agent or sub-agent appointed by it) will promptly distribute to each Lender at such address as such Lender may indicate in writing, (i) such Lender's applicable Pro Rata Share of all payments and prepayments of principal and interest due to such Lender pursuant to Sections 2.8, 2.10, 2.12, 2.13 or 2.14, and (ii) all other amounts due to such Lender, including all fees payable with respect thereto, to the extent received by the Administrative Agent.

(d) Notwithstanding the foregoing provisions hereof, if any Conversion/Continuation Notice is withdrawn as to any Affected Lender or if any Affected Lender makes Base Rate Loans in lieu of its Pro Rata Share of any Eurodollar Rate Loans, the Administrative Agent will give effect thereto in apportioning payments received thereafter.

(e) Subject to the provisos set forth in the definition of "Interest Period," whenever any payment to be made hereunder is stated to be due on a day that is not a Business Day, such payment will be made on the next succeeding Business Day and such extension of time will be included in the computation of the payment of interest hereunder or of the Revolving Credit Commitment fees hereunder.

(f) [Reserved].

(g) The Administrative Agent will deem any payment by or on behalf of the Borrower hereunder that is not made in same day funds prior to 2:00 p.m. (New York City time) to be a non-conforming payment. Any such payment will not be deemed to have been received by the Administrative Agent until the later of (i) the time such funds become available funds and (ii) the applicable next Business Day. The Administrative Agent will give prompt written notice to the Borrower if any payment is non-conforming. Any non-conforming payment may constitute or become a Default or Event of Default in accordance with the terms of Section 8.1(a). Interest will continue to accrue on any principal as to which a non-conforming payment is made until such funds become available funds (but in no event less than the period from the date of such payment to the next succeeding applicable Business Day) at the rate determined pursuant to Section 2.10 from the date such amount was due and payable until the date such amount is paid in full.

(h) Notwithstanding any other provisions hereof, so long as no Event of Default has occurred and is continuing, if any prepayment of Eurodollar Rate Loans is required to be made prior to the last day of the Interest Period therefor, in lieu of making any payment in respect of any such Eurodollar Rate Loan prior to the last day of the Interest Period therefor, the Borrower may, in the sole discretion of the Borrower, deposit an amount sufficient to make any such prepayment otherwise required to be made thereunder together with accrued interest to the last day of such Interest Period into an escrow account designated by the Administrative Agent until the last day of such Interest Period, at which time the Administrative Agent will be authorized (without any further action by or notice to or from the Borrower or any other Credit Party) to apply such amount to the prepayment of such Loans in accordance with the provisions of this Agreement otherwise applicable to such payment. Upon the occurrence and during the continuance of any Event of

Default, the Administrative Agent will also be authorized (without any further action by or notice to or from the Borrower or any other Credit Party) to apply such amount to the prepayment of the outstanding Loans in accordance with the provisions of this Agreement otherwise applicable to such payment.

2.17 Ratable Sharing. The Lenders hereby agree among themselves that, except as otherwise provided in the Collateral Documents with respect to amounts realized from the exercise of rights with respect to Liens on the Collateral, if any of them, whether by voluntary payment (other than a voluntary prepayment of Loans made and applied in accordance with the terms hereof), through the exercise of any right of set-off or banker's lien, by counterclaim or cross action or by the enforcement of any right under the Credit Documents, or as adequate protection of a deposit treated as cash collateral under the Bankruptcy Code or as a distribution in connection with a plan of reorganization, plan of liquidation or similar dispositive plan, receive payment or reduction of a proportion of the aggregate amount of principal, interest, amounts payable in respect of Letters of Credit, fees and other amounts then due and owing to such Lender hereunder or under the other Credit Documents (collectively, the "**Aggregate Amounts Due**" to such Lender) which is greater than the proportion received by any other relevant Lender in respect of the Aggregate Amounts Due to such other Lender, then the Lender receiving such proportionately greater payment will (a) notify the Administrative Agent and each other Lender of the receipt of such payment and (b) apply a portion of such payment to purchase participations (which it will be deemed to have purchased from each seller of a participation simultaneously upon the receipt by such seller of its portion of such payment) in the Aggregate Amounts Due to the other Lenders so that all such recoveries of Aggregate Amounts Due will be shared by all of the Lenders in proportion to the Aggregate Amounts Due to them; *provided* that if all or part of such proportionately greater payment received by such purchasing Lender is thereafter recovered from such Lender upon the bankruptcy or reorganization of the Borrower or otherwise, those purchases will be rescinded and the purchase prices paid for such participations will be returned to such purchasing Lender ratably to the extent of such recovery, but without interest. The Borrower expressly consents to the foregoing arrangement and agrees that any holder of a participation so purchased may exercise any and all rights of banker's lien, set-off or counterclaim with respect to any and all monies owing by the Borrower to that holder with respect thereto as fully as if that holder were owed the amount of the participation held by that holder. The provisions of this Section 2.17 will not be construed to apply to (i) any payment made by a Credit Party pursuant to and in accordance with the express terms of this Agreement, (ii) any payment obtained by any Lender as consideration for the assignment or sale of a participation in any of its Loans or other Obligations owed to it, (iii) the exchange of any Loans held by a Lender for all or a portion of a new tranche of Loans issued hereunder or (iv) the acceptance of the Waivable Mandatory Prepayment in accordance with Section 2.15(e).

2.18 Making or Maintaining Eurodollar Rate Loans.

(a) Inability to Determine Applicable Interest Rate. Subject in all respects to the provisions of Section 2.18(e), in the event that the Administrative Agent determines (which determination will be final and conclusive and binding upon all parties hereto), on any Interest Rate Determination Date with respect to any Eurodollar Rate Loans, that by reason of circumstances affecting the London interbank market adequate and fair means do not exist for ascertaining the interest rate applicable to such Loans on the basis provided for in the definition of

"Eurodollar Base Rate" or the Eurodollar Base Rate for any requested Interest Period does not adequately and fairly reflect the cost to Lenders of funding such Eurodollar Rate Loan, the Administrative Agent will on such date give notice (by telefacsimile or by telephone confirmed in writing) to the Borrower and each Lender of such determination, whereupon (i) no Loans may be made as, or converted to, Eurodollar Rate Loans until such time as the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist and (ii) any Funding Notice or Conversion/Continuation Notice given by the Borrower with respect to the Loans in respect of which such determination was made will be deemed to be rescinded by the Borrower.

(b) Illegality or Impracticability of Eurodollar Rate Loans. Subject in all respects to the provisions of Section 2.18(e), in the event that on any date any Lender determines in good faith (which determination will be final and conclusive and binding upon all parties hereto but will be made only after consultation with the Borrower and the Administrative Agent) that the making, maintaining or continuation of its Eurodollar Rate Loans (i) has become unlawful as a result of compliance by such Lender in good faith with any law, treaty, governmental rule, regulation, guideline or order (or would conflict with any such treaty, governmental rule, regulation, guideline or order not having the force of law even though the failure to comply therewith would not be unlawful), or (ii) has become impracticable, as a result of contingencies occurring after the Closing Date that materially and adversely affect the London interbank market or the position of such Lender in that market, then, and in any such event, such Lender will be an "**Affected Lender**" and it will on that day give notice (by telefacsimile or by telephone confirmed in writing) to the Borrower and the Administrative Agent of such determination (which notice the Administrative Agent will promptly transmit to each other Lender). If the Administrative Agent receives a notice from any Lender pursuant to the preceding sentence, then (A) the obligation of such Lender to make Loans as, or to convert Loans to, Eurodollar Rate Loans will be suspended until such notice is withdrawn by such Affected Lender, (B) to the extent such determination by the Affected Lender relates to a Eurodollar Rate Loan then being requested by the Borrower pursuant to a Funding Notice or a Conversion/Continuation Notice, such Lender makes such Loan as (or continue such Loan as or convert such Loan to, as the case may be) a Base Rate Loan, (C) such Lender's obligations to maintain its outstanding Eurodollar Rate Loans (the "**Affected Loans**") will be terminated at the earlier to occur of the expiration of the Interest Period then in effect with respect to the Affected Loans or when required by law, and (D) the Affected Loans will automatically convert into Base Rate Loans on the date of such termination. Notwithstanding the foregoing, to the extent a determination by an Affected Lender as described above relates to a Eurodollar Rate Loan then being requested by the Borrower pursuant to a Funding Notice or a Conversion/Continuation Notice, the Borrower will have the option, subject to the provisions of Section 2.18(c), to rescind such Funding Notice or Conversion/Continuation Notice as to all Lenders by giving written notice to Administrative Agent of such rescission on the date on which the Affected Lender gives notice of its determination as described above (which notice of rescission the Administrative Agent will promptly transmit to each other Lender). Except as provided in the immediately preceding sentence, nothing in this Section 2.18(b) will affect the obligation of any Lender other than an Affected Lender to make or maintain Loans as, or to convert Loans to, Eurodollar Rate Loans in accordance with the terms hereof.

(c) Compensation for Breakage or Non-Commencement of Interest Periods. In the event of (i) the payment or prepayment (voluntary or otherwise) of any principal of any

Eurodollar Rate Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (ii) the conversion of any Eurodollar Rate Loan other than on the last day of the Interest Period applicable thereto, (iii) the failure to borrow, convert, continue or prepay any Eurodollar Rate Loan on the date specified in any notice delivered pursuant hereto or (iv) the assignment of any Eurodollar Rate Loan earlier than the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.23, then, in any such event, the Borrower will compensate each Lender for the actual loss, cost and expense incurred by such Lender attributable to such event, excluding loss of anticipated profits or margin and without giving to any applicable LIBOR "floor." A certificate of any Lender computing any amount or amounts that such Lender is entitled to receive pursuant to this Section in reasonable detail will be delivered to the Borrower and will be presumptively correct (absent manifest error). The Borrower will pay such Lender the amount shown as due on any such certificate within thirty (30) days after receipt thereof.

(d) Booking of Eurodollar Rate Loans. Any Lender may make, carry or transfer Eurodollar Rate Loans at, to, or for the account of any of its branch offices or the office of an Affiliate of such Lender.

(e) Effect of Benchmark Transition Event.

(i) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Credit Document, upon the occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, the Administrative Agent and the Borrower may amend this Agreement to replace the Eurodollar Rate with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth (5th) Business Day after the Administrative Agent has posted such proposed amendment to all Lenders and the Borrower so long as the Administrative Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. Any such amendment with respect to an Early Opt-in Election will become effective on the date that Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders accept such amendment. No replacement of the Eurodollar Rate with a Benchmark Replacement pursuant to this Section 2.18(e) will occur prior to the applicable Benchmark Transition Start Date.

(ii) Benchmark Replacement Conforming Changes. In connection with the implementation of a Benchmark Replacement, the Administrative Agent (in consultation with the Borrower) will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Credit Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement.

(iii) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (A) any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as

applicable, and its related Benchmark Replacement Date and Benchmark Transition Start Date, (B) the implementation of any Benchmark Replacement, (C) the effectiveness of any Benchmark Replacement Conforming Changes and (D) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or Lenders pursuant to this Section 2.18(e), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 2.18(e).

(iv) Benchmark Unavailability Period. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a Eurodollar Borrowing of, conversion to or continuation of Eurodollar Rate Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to Base Rate Loans. During any Benchmark Unavailability Period, the component of Base Rate based upon the Eurodollar Rate will not be used in any determination of Base Rate.

2.19 Increased Costs; Capital Adequacy.

(a) Compensation For Increased Costs and Taxes. Subject to the provisions of Section 2.20 (which will be controlling with respect to the matters covered thereby), in the event that any Lender (which term includes each Issuing Bank for purposes of this Section 2.19(a)) determines in good faith (which determination will, absent manifest error, be final and conclusive and binding upon all parties hereto) that any law, treaty or governmental rule, regulation or order, or any change therein or in the interpretation, administration or application thereof (including the introduction of any new law, treaty or governmental rule, regulation or order), or any determination of a Governmental Authority, in each case that becomes effective after the Closing Date, or compliance by such Lender with any guideline, request or directive issued or made after the Closing Date by any central bank or other Governmental Authority: (i) subjects such Lender (or its applicable Lending Office) to any additional Tax (other than (x) Indemnified Taxes and (y) Excluded Taxes) with respect to this Agreement or any of the other Credit Documents or any of its obligations hereunder or thereunder or any payments to such Lender (or its applicable Lending Office) of principal, interest, fees or any other amount payable hereunder or thereunder; (ii) imposes, modifies or holds applicable any reserve (including any marginal, emergency, supplemental, special or other reserve), special deposit, compulsory loan, FDIC insurance or similar requirement against assets held by, or deposits or other liabilities in or for the account of, or advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of such Lender (other than any such reserve or other requirements with respect to Eurodollar Rate Loans that are reflected in the definition of "Eurodollar Base Rate"); or (iii) imposes any other condition (other than with respect to a Tax matter) on or affecting such Lender (or its applicable Lending Office) or its obligations hereunder or the London interbank market; and the result of any of the foregoing is to increase the cost to such Lender of agreeing to make, making

or maintaining Loans hereunder or to reduce any amount received or receivable by such Lender (or its applicable Lending Office) with respect thereto; then, in any such case, the Borrower will pay to such Lender, within ten (10) Business Days of receipt of the statement referred to in the next sentence, such additional amount or amounts (in the form of an increased rate of, or a different method of calculating, interest or otherwise as such Lender in its sole discretion may determine) as may be necessary to compensate such Lender for any such increased cost or reduction in amounts received or receivable hereunder. Such Lender will deliver to the Borrower (with a copy to the Administrative Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to such Lender under this Section 2.19(a), which statement will be conclusive and binding upon all parties hereto absent manifest error.

(b) Capital Adequacy Adjustment. In the event that any Lender (which term includes each Issuing Bank for purposes of this Section 2.19(b)) determines that the adoption, effectiveness, phase-in or applicability after the Closing Date of any law, rule or regulation (or any provision thereof) regarding capital or liquidity requirements, or any change therein or in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender (or its applicable Lending Office) or any entity controlling any Lender with any guideline, request or directive regarding capital or liquidity requirements (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on the capital of such Lender or any entity controlling such Lender as a consequence of, or with reference to, such Lender's Loans or Revolving Credit Commitments or Letters of Credit, or participations therein or other obligations hereunder with respect to the Loans or the Letters of Credit to a level below that which such Lender or such controlling entity could have achieved but for such adoption, effectiveness, phase-in, applicability, change or compliance (taking into consideration the policies of such Lender or such controlling entity with regard to capital or liquidity requirements), then from time to time, within five Business Days after receipt by the Borrower from such Lender of the statement referred to in the next sentence, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such controlling entity for such reduction. Such Lender will deliver to the Borrower (with a copy to the Administrative Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to Lender under this Section 2.19(b), which statement will be conclusive and binding upon all parties hereto absent manifest error.

(c) Dodd-Frank; Basel III. Notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States of America or foreign regulatory authorities, in each case in respect of this clause (ii) pursuant to Basel III, will, in each case, be deemed to be a change in law, treaty or governmental rule, regulation or order under subsection (a) above and/or a change in law, rule or regulation (or any provision thereof) regarding capital or liquidity requirements under subsection (b) above, as applicable, regardless of the date enacted, adopted or issued.

(d) Delay in Requests. The failure or delay on the part of any Lender (which term will include each Issuing Bank for purposes of this Section 2.19(d)) to demand compensation pursuant to the foregoing provisions of this Section 2.19 will not constitute a waiver of such Lender's right to demand such compensation; *provided* that the Borrower will not be required to compensate a Lender pursuant to the foregoing provisions of this Section 2.19 for any increased costs incurred or reductions suffered more than one hundred and eighty (180) days prior to the date that such Lender sends the Borrower written notice of such Lender's intention to claim compensation therefor; *provided further,* that if the circumstance giving rise to such increased costs or reductions suffered is retroactive, then the 180-day period referred to above will be extended to include the period of retroactive effect thereof.

2.20 Taxes; Withholding, etc.

(a) Except as required by Law or otherwise provided in this Section 2.20, each payment by any Credit Party under any Credit Document will be made free and clear of all Taxes with respect thereto.

(b) If any Taxes will be required by any Law to be deducted from or in respect of any amount payable under any Credit Document to any Recipient (as determined in the good faith discretion of the applicable withholding agent) (i) to the extent such Taxes required to be deducted are Indemnified Taxes, such amount will be increased as necessary to ensure that, after all required deductions for Indemnified Taxes are made (including deductions for Indemnified Taxes applicable to any increases to any amount under this Section 2.20(b)(i)), such Recipient receives the amount it would have received had no such deductions for Indemnified Taxes been made, (ii) the relevant Credit Party or the Administrative Agent, as applicable, will make such deductions, (iii) the relevant Credit Party or the Administrative Agent, as applicable, will timely pay the full amount deducted to the relevant taxing authority or other authority in accordance with applicable Law and (iv) as soon as practicable after any such payment by a Credit Party is made, the relevant Credit Party will deliver to the Administrative Agent an original or certified copy of a receipt evidencing such payment or other evidence of payment reasonably satisfactory to the Administrative Agent.

(c) In addition, the Credit Parties will timely pay to the relevant Governmental Authority, in accordance with applicable law, any Other Taxes. As soon as practicable after the date of any payment of Other Taxes by any Credit Party pursuant to this Section 2.20(c), the Borrower will deliver to the Administrative Agent the original or a certified copy of a receipt evidencing payment thereof or other evidence of payment reasonably satisfactory to the Administrative Agent.

(d) Without duplication of Section 2.20(b) or Section 2.20(c), the Credit Parties will jointly and severally indemnify and reimburse, within ten (10) days after receipt of a demand therefor (with copy to the Administrative Agent), each Recipient for all Indemnified Taxes (including any Indemnified Taxes imposed by any jurisdiction on amounts payable under this Section 2.20) imposed on or with respect to any payment made by the Credit Parties hereunder, and any reasonable out-of-pocket expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally asserted. Any Recipient claiming indemnity pursuant to this Section 2.20(d) will notify the Credit Parties of the imposition of the relevant

Indemnified Taxes as soon as practicable after the Recipient becomes aware of such imposition. A certificate of the Recipient (or of the Administrative Agent on behalf of such Recipient) claiming any compensation under this clause (d), setting forth in reasonable detail the amounts to be paid thereunder and delivered to the Borrower with copy to the Administrative Agent, will be conclusive, binding and final for all purposes, absent manifest error.

(e) Without limiting Section 2.21, any Lender claiming any additional amounts payable pursuant to this Section 2.20 will use its reasonable efforts (consistent with its internal policies and Law) to change the jurisdiction of its Lending Office if such a change would reduce any such additional amounts (or any similar amount that may thereafter accrue) and would not, in the sole determination of such Lender, subject such Lender to any unreimbursed cost or expense and would not be otherwise disadvantageous to such Lender. The Credit Parties hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such change.

(f)

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Credit Document will deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, will deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.20(f)(ii)(1), Section 2.20(f)(ii)(2) and Section 2.20(f)(ii)(4) below) will not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing:

(1) any U.S. Lender will deliver to the Borrower and the Administrative Agent, on or prior to the date on which such Lender becomes a party to this Agreement from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent, executed originals of IRS Form W-9 (certifying that such U.S. Lender is exempt from U.S. federal backup withholding tax);

(2) Any Non-U.S. Lender will, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as will be requested by the recipient), on or prior to the

date on which such Non-U.S. Lender becomes a party to this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

i) in the case of a Non-U.S. Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Credit Document, executed originals of IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Credit Document, executed originals of IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

ii) executed originals of IRS Form W-8ECI or W-8EXP;

iii) in the case of a Non-U.S. Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Internal Revenue Code, (x) a certificate substantially in the form of Exhibit F-1 to the effect that such Non-U.S. Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, a "10-percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Internal Revenue Code or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Internal Revenue Code (a "**U.S. Tax Compliance Certificate**") and (y) executed originals of IRS Form W-8BEN or W-8-BEN-E; or

iv) to the extent a Non-U.S. Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W- 8BEN or W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-2 or Exhibit F-3, IRS Form W-9 and/or other certification documents from each beneficial owner, as applicable; *provided* that, if the Non-U.S. Lender is a partnership and one or more direct or indirect partners of such Non-U.S. Lender are claiming the portfolio interest exemption, such Non-U.S. Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-4 on behalf of each such direct and indirect partner;

(3) any Non-U.S. Lender will, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as will be requested by the recipient), on or prior to the

date on which such Non-U.S. Lender becomes a party to this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(4) if a payment made to a Recipient under any Credit Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Recipient were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), such Recipient will deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Recipient has complied with such Recipient's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 2.20(f)(ii)(4), "FATCA" will include any amendments made to FATCA after the date of this Agreement.

Each Recipient agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it will update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(g) Any Administrative Agent that (i) is a United States person (within the meaning of Section 7701(a)(30) of the Internal Revenue Code) will deliver to the Borrower, on or prior to the date on which it becomes a party to this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or when any form or certification it previously provided expires or becomes obsolete or inaccurate in any respect), duly completed copies of IRS Form W-9 certifying that such Administrative Agent is exempt from U.S. federal backup withholding tax or (ii) is not a United States person (within the meaning of Section 7701(a)(30) of the Internal Revenue Code) will deliver to the Borrower, on or prior to the date on which it becomes a party to this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or when any form or certification it previously provided expires or becomes obsolete or inaccurate in any respect), duly completed copies of IRS Form W-8IMY evidencing its agreement with the Borrower to be treated as a United States person (within the meaning of Section 7701(a)(30) of the Internal Revenue Code) with respect to payments received by it from the Borrower.

(h) If any Recipient determines in its sole discretion exercised in good faith that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.20 (including by the payment of additional amounts pursuant to this Section 2.20), it will pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made or additional amounts paid under this Section 2.20 with respect to the Taxes giving rise to such refund), net of all reasonable out-of-pocket expenses of such Recipient and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). The Borrower, upon the request of such Recipient, will repay to such Recipient the amount paid over pursuant to this Section 2.20(h) *(plus* any penalties, interest or other charges properly imposed by the relevant Governmental Authority) in the event that such Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (h), in no event will the Recipient be required to pay any amount to a Credit Party pursuant to this paragraph (h) the payment of which would place the Recipient in a less favorable net after-Tax position than the Recipient would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph will not be construed to require any Recipient to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to any Credit Party or any other Person.

(i) Each Lender will severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Credit Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Credit Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.6(g) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Credit Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent will be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Credit Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this Section 2.20(i).

(j) Each party's obligations under this Section 2.20 will survive the resignation or replacement of the Administrative Agent or any assignment of right by, or the replacement of, a Recipient.

2.21 Obligation to Mitigate. Each Lender (which term includes each Issuing Bank for purposes of this Section 2.21) agrees that, as promptly as practicable after the officer of such Lender responsible for administering its Loans or Letters of Credit, as the case may be, becomes aware of the occurrence of an event or the existence of a condition that would cause such Lender to become an Affected Lender or that would entitle such Lender to receive payments under Section 2.18, 2.19 or 2.20, it will, to the extent not inconsistent with the internal policies of such Lender and any applicable legal or regulatory restrictions, use reasonable efforts (a) to make, Issue, fund or maintain its Credit Extensions, including any Affected Loans, through another office of

such Lender, or (b) to take such other measures as such Lender may deem reasonable, if as a result thereof the circumstances which would cause such Lender to be an Affected Lender would cease to exist or the additional amounts which would otherwise be required to be paid to such Lender pursuant to Section 2.18, 2.19 or 2.20 would be materially reduced and if, as determined by such Lender in its sole discretion, the making, Issuing, funding or maintaining of such Revolving Credit Commitments, Loans or Letters of Credit through such other office or in accordance with such other measures, as the case may be, would not otherwise adversely affect such Revolving Credit Commitments, Loans or Letters of Credit or the interests of such Lender; *provided* that such Lender will not be obligated to utilize such other office pursuant to this Section 2.21 unless the Borrower agree to pay all incremental expenses incurred by such Lender as a result of utilizing such other office as described above. A certificate as to the amount of any such expenses payable by the Borrower pursuant to this Section 2.21 (setting forth in reasonable detail the basis for requesting such amount) submitted by such Lender to the Borrower (with a copy to the Administrative Agent) will be conclusive absent manifest error.

2.22 Defaulting Lenders. Anything contained herein to the contrary notwithstanding, in the event that any Lender becomes a Defaulting Lender, then:

(a) during any Default Period with respect to such Defaulting Lender, such Defaulting Lender will be deemed not to be a "Lender" for purposes of voting on any matters (including the granting of any consents or waivers, except with respect to Section 10.5(b) to the extent that any such matter disproportionately affects such Defaulting Lender) with respect to any of the Credit Documents;

(b) to the extent permitted by applicable law, until such time as the Default Excess with respect to such Defaulting Lender has been reduced to zero, any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 8 or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 10.4 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to any Issuing Bank or Swing Line Lender hereunder; *third*, to cash collateralize the Issuing Banks' fronting exposure with respect to such Defaulting Lender in accordance with Section 2.4(h); *fourth*, as the Borrower may request (so long as no Default or Event of Default has occurred and is continuing), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) cash collateralize the Issuing Banks' future fronting exposure with respect to such Defaulting Lender with respect to such future Letters of Credit issued under this Agreement, in accordance with Section 2.4(h); *sixth*, to the payment of any amounts owing to the Lenders, the Issuing Banks or Swing Line Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the Issuing Banks or Swing Line Lenders against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default has occurred and is continuing, to

the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided* that if (x) such payment is a payment of the principal amount of any Loans or Letter of Credit Usage in respect of which such Defaulting Lender has not fully funded its appropriate share and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 3.2 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and Letter of Credit Usage owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or Letter of Credit Usage owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in Letter of Credit Obligations and Swing Line Loans are held by the Lenders pro rata in accordance with the Commitments under the applicable Facility without giving effect to Section 2.22(c). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post cash collateral pursuant to this Section 2.22(a) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto. Such Defaulting Lender will not be entitled to receive (i) any interest calculated at the Default rate pursuant to Section 2.10 and (ii) any fee pursuant to Section 2.11(a), in each case, in respect of any Default Period with respect to such Defaulting Lender;

(c) all or any part of a Defaulting Lender's participation in Letter of Credit Obligations and Swing Line Loans will be reallocated among the non-defaulting Lenders holding Revolving Credit Commitments on a pro rata basis according to their Revolving Credit Commitments (calculated without regard to such Defaulting Lender's Revolving Credit Commitment) but only to the extent that such reallocation does not cause any non-defaulting Lender's Revolving Credit Exposure (defined, solely for purposes of this clause (c), by reference to clause (b) of the definition of "Revolving Credit Exposure") at such time to exceed such Lender's Revolving Credit Commitment (it being understood that no reallocation hereunder will constitute a waiver or release of any claim of a non-defaulting Lender against a Defaulting Lender as a result of such non-defaulting Lender's increased exposure following such reallocation); *provided* that:

(i) if the reallocation described in this clause (c) cannot, or can only partially, be effected, the Borrower will, without prejudice to any right or remedy available to it hereunder or under Law, within one Business Day following written notice by the Administrative Agent (A) first, prepay the Swing Line Loans of such Defaulting Lender in an amount equal to the amount by which such Defaulting Lender's Swing Line Loans exceed the amount of such Defaulting Lender's Swing Line Loans reallocated pursuant to this clause (c) (after giving effect to any partial reallocation pursuant to this clause (c)) and (B) second, cash collateralize such Defaulting Lender's portion of the Revolving Credit Exposure in respect of Letters of Credit (after giving effect to any partial reallocation pursuant to this clause (c)) in accordance with the procedures set forth in Section 2.4(h) for so long as such Revolving Credit Exposure in respect of Letters of Credit is outstanding;

(ii) if the Borrower cash collateralize any portion of such Defaulting Lender's Revolving Credit Exposure in respect of Letters of Credit pursuant to this

proviso, the Borrower will not be required to pay any letter of credit participation fee to such Defaulting Lender during the period such Defaulting Lender's Revolving Credit Exposure in respect of Letters of Credit is cash collateralized;

(iii) if the Revolving Credit Exposure in respect of Letters of Credit of the non-Defaulting Lenders is reallocated pursuant to this clause (c), then the fees payable to the Lenders pursuant to Section 2.11(a)(i) will be adjusted in accordance with such non-Defaulting Lenders' reallocated Revolving Credit Exposure in respect of Letters of Credit; and

(iv) if any Defaulting Lender's Revolving Credit Exposure in respect of Letters of Credit is neither cash collateralized nor reallocated pursuant to this clause (c), then, without prejudice to any rights or remedies of the Issuing Banks or any Lender hereunder, all commitment fees that otherwise would have been payable to such Defaulting Lender (solely with respect to the portion of such Defaulting Lender's Commitment that was utilized by such Revolving Credit Exposure in respect of Letters of Credit) and letter of credit participation fee payable with respect to such Defaulting Lender's Revolving Credit Exposure in respect of Letters of Credit will be payable to the applicable Issuing Banks until such Revolving Credit Exposure in respect of Letters of Credit is cash collateralized and/or reallocated; and

(d) the Total Utilization of Revolving Credit Commitments as at any date of determination will be calculated as if such Defaulting Lender has funded all Defaulted Loans. No Revolving Credit Commitment of any Lender will be increased or otherwise affected, and, except as otherwise expressly provided in this Section 2.22, performance by the Borrower of its obligations hereunder and the other Credit Documents will not be excused or otherwise modified as a result of any Funding Default or the operation of this Section 2.22. The rights and remedies against a Defaulting Lender under this Section 2.22 are in addition to other rights and remedies that the Borrower may have against such Defaulting Lender with respect to any Funding Default and that the Administrative Agent or any Lender may have against such Defaulting Lender with respect to any Funding Default.

For purposes of this Agreement, (i) "Funding Default" means, with respect to any Defaulting Lender, the occurrence of any of the events set forth in the definition of "Defaulting Lender," and (ii) "Defaulted Loan" means any Loan of a Defaulting Lender with respect to which such Defaulting Lender is a Defaulting Lender.

2.23 Removal or Replacement of a Lender. Anything contained herein to the contrary notwithstanding, in the event that:

(a) (i) any Lender (an "**Increased Cost Lender**") gives notice to Borrower that such Lender is an Affected Lender or that such Lender is entitled to receive payments under Section 2.18, 2.19 or 2.20, (ii) the circumstances that have caused such Lender to be an Affected Lender or that entitle such Lender to receive such payments remain in effect, and (iii) such Lender fails to withdraw such notice within five Business Days after the Borrower's request for such withdrawal; or

(b) (i) any Lender becomes a Defaulting Lender, (ii) the Default Period for such Defaulting Lender remains in effect, and (iii) such Defaulting Lender fails to cure the default as a result of which it has become a Defaulting Lender within five Business Days after the Borrower's request that it cure such default; or

(c) in connection with any proposed amendment, modification, termination, waiver or consent with respect to any of the provisions of a Credit Document as contemplated by Section 10.5(b), the consent of Required Lenders with respect to which has been obtained but the consent of one or more of such other Lenders (each a "**Non-Consenting Lender**") whose consent is required has not been obtained;

then, with respect to each such Increased Cost Lender, Defaulting Lender or Non-Consenting Lender (the "**Terminated Lender**"), the Borrower may, by giving written notice to the Administrative Agent and any Terminated Lender of its election to do so, elect to cause such Terminated Lender (and such Terminated Lender hereby irrevocably agrees) to assign its outstanding Loans and its Revolving Credit Commitments, if any, in full to one or more Eligible Assignees (each a "**Replacement Lender**") in accordance with the provisions of Section 10.6 and the Borrower will pay the fees, if any, payable thereunder in connection with any such assignment from an Increased Cost Lender or a Non-Consenting Lender and the Defaulting Lender will pay the fees, if any, payable thereunder in connection with any such assignment from such Defaulting Lender; *provided* that (1) on the date of such assignment, the Replacement Lender must pay to a Terminated Lender an amount equal to the sum of (A) an amount equal to the principal of, and all accrued interest on, all outstanding Loans of the Terminated Lender, (B) an amount equal to all unreimbursed drawings that have been funded by such Terminated Lender, together with all then unpaid interest with respect thereto at such time and (C) an amount equal to all accrued, but theretofore unpaid fees owing to such Terminated Lender pursuant to Section 2.11; (2) on the date of such assignment, the Borrower must pay any amounts payable to such Terminated Lender pursuant to Section 2.11, 2.18(c), 2.19 or 2.20; and (3) in the event such Terminated Lender is a Non-Consenting Lender, each Replacement Lender will consent, at the time of such assignment, to each matter in respect of which such Terminated Lender was a Non-Consenting Lender; *provided* that the Borrower may not make such election with respect to any Terminated Lender that is also an Issuing Bank unless, prior to the effectiveness of such election, the Borrower has caused each outstanding Letter of Credit Issued thereby to be cancelled, backstopped or cash collateralized. Upon the assignment of all amounts owing to any Terminated Lender and the termination or assignment of such Terminated Lender's Revolving Credit Commitments, if any, such Terminated Lender will no longer constitute a "Lender" for purposes hereof; *provided* that any rights of such Terminated Lender to indemnification hereunder will survive as to such Terminated Lender. Each Lender agrees that if the Borrower exercises its option hereunder to cause an assignment by such Lender as a Non-Consenting Lender or Terminated Lender, such Lender will, promptly after receipt of written notice of such election, execute and deliver all documentation necessary to effectuate such assignment in accordance with Section 10.6. In the event that a Lender does not comply with the requirements of the immediately preceding sentence within one Business Day after receipt of such notice, each Lender hereby grants to the Administrative Agent an irrevocable power of attorney (which power of attorney will be coupled with an interest) to execute and deliver such documentation as may be required to give effect to an assignment in accordance with Section 10.6 on behalf of a Non-Consenting Lender or Terminated Lender and any such documentation so executed by the Administrative Agent will be effective for purposes of documenting an assignment pursuant to Section 10.6.

2.24 Incremental Facilities.

(a) Notice. At any time and from time to time, on one or more occasions, the Borrower may, by notice to the Administrative Agent, (i) increase the aggregate principal amount of any outstanding tranche of Term Loans or add one or more additional tranches of term loans under the Credit Documents (the "**Incremental Term Facilities**" and the term loans made thereunder, the "**Incremental Term Loans**") or (ii) increase the aggregate principal amount of Revolving Commitments on the same terms as the then-existing Revolving Commitments, including ratably increasing the Letter of Credit Sublimit (with the consent of the Issuing Banks) and the Swing Line Sublimit (with the consent of the Swing Line Lender) (the "**Incremental Revolving Facilities**" and the revolving loans and other extensions of credit made thereunder, the "**Incremental Revolving Loans**") (each such increase or tranche pursuant to clauses (i) and (ii), an "**Incremental Facility**" and the loans or other extensions of credit made thereunder, the "**Incremental Loans**").

(b) Ranking. Incremental Facilities will (i) rank *pari passu* in right of payment and security with the Initial Term Loans and the Initial Revolving Commitments (subject to Section 8.2) and (ii) be secured by the same Liens (with the same ranking in priority) that secure the Initial Revolving Commitments and the Initial Term Loans.

(c) Size. The aggregate principal amount of Incremental Facilities on any date Indebtedness thereunder is first incurred (or in the case of Incremental Revolving Facilities, first committed), together with the aggregate principal amount of Incremental Equivalent Debt incurred as of such date, will not exceed an amount equal to the sum of the Incremental Fixed Amount and the Incremental Ratio Amount (the "**Incremental Amount**"). Calculation of the Incremental Ratio Amount, if used, will be made on a Pro Forma Basis. Each Incremental Amendment executed in connection with an Incremental Facility will identify whether all or any portion of such Incremental Facility is being incurred pursuant to the Incremental Fixed Amount or the Incremental Ratio Amount. For the avoidance of doubt, if the Borrower shall incur indebtedness under an Incremental Facility under the Incremental Fixed Amount substantially concurrently with the incurrence of indebtedness under the Incremental Ratio Amount, then the First Lien Net Leverage Ratio will be calculated with respect to such incurrence under the Incremental Ratio Amount without regard to any incurrence of indebtedness under the Incremental Fixed Amount. Unless the Borrower elects otherwise, each Incremental Facility will be deemed incurred first under the Incremental Ratio Amount to the extent permitted, with the balance incurred under the Incremental Fixed Amount. If the First Lien Net Leverage Ratio test for the incurrence of any Incremental Facility would be satisfied on a Pro Forma Basis as of the end of any Fiscal Quarter, the classification described in the preceding sentence shall be deemed to have occurred automatically. Each Incremental Facility will be in an integral multiple of $500,000 and in an aggregate principal amount that is not less than $2,500,000 (or such lesser minimum amount approved by the Administrative Agent in its reasonable discretion); *provided* that such amount may be less than such minimum amount or integral multiple amount if such amount represents all the remaining availability under the limit set forth above.

(d) Incremental Lenders. Incremental Facilities may be provided by any existing Lender (it being understood that no existing Lender will have an obligation to make all or any portion of any Incremental Loan) or by any Additional Lender on terms permitted by this Section 2.24; *provided* that the Administrative Agent, each Issuing Bank and each Swing Line Lender will have consented (in each case, such consent not to be unreasonably withheld, conditioned or delayed) to any such Person's providing Incremental Revolving Facilities if such consent would be required under Section 10.6(c)(ii) for an assignment of Revolving Loans or Revolving Commitments to such Person.

(e) Incremental Facility Amendments; Use of Proceeds. Each Incremental Facility will become effective pursuant to an amendment (each, an "**Incremental Amendment**") to this Agreement and, as appropriate, the other Credit Documents, executed by the Borrower, each Person providing such Incremental Facility and the Administrative Agent. Incremental Amendments may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Credit Documents as may be necessary or appropriate, in the reasonable good faith opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.24. An Incremental Amendment may at the election of the Borrower and the Administrative Agent effect such amendments as may be reasonably necessary or advisable so that such Incremental Term Loans and the applicable existing Term Loans form the same Class of Term Loans or so that such Incremental Term Loans are fungible with other outstanding Loans, including by (i) adding equivalent "call protection" to any existing tranche of Term Loans, and (ii) amending the schedule of amortization payments relating to any existing tranche of Term Loans, including amendments to Section 2.12(a) *(provided* that any such amendment will not decrease any amortization payment to any Lender that would have otherwise been payable to such Lender immediately prior to the effectiveness of the applicable Incremental Amendment); *provided* that such amendments are not adverse to the existing Term Loan Lenders (as determined in good faith by the Borrower). Each of the parties hereto hereby agrees that, upon the effectiveness of any Incremental Amendment, this Agreement and the other Credit Documents, as applicable, will be amended to the extent necessary to reflect the existence and terms of the Incremental Facility and the Incremental Loans evidenced thereby. This Section 2.24 will supersede any provisions in Section 2.17 or 10.5 to the contrary. The Borrower may use the proceeds of the Incremental Loans for any purpose permitted by this Agreement.

(f) Conditions. Subject to the provisions set forth in Section 1.5 with respect to any Limited Condition Transaction, the availability of Incremental Facilities under this Agreement will be subject solely to the following conditions:

(i) no Default or Event of Default will have occurred and be continuing on the date such Incremental Loans are incurred or Revolving Credit Commitments under such Incremental Revolving Facilities are committed, or would occur immediately after giving effect thereto;

(ii) the representations and warranties in the Credit Documents will be true and correct in all material respects (except for representations and warranties that are already qualified by materiality, which representations and warranties will be true and correct in all respects) immediately prior to, and immediately after giving effect to, the incurrence of such Incremental Facility, or in the case of an

Incremental Facility incurred in connection with a Limited Condition Transaction, the Specified Representations and the Specified Acquisition Agreement Representations (to the extent applicable) shall be true and correct in all material respects (except for representations and warranties that are already qualified by materiality, which representations and warranties will be true and correct in all respects) immediately prior to, and immediately after giving effect to, the incurrence of such Incremental Facility; and

(iii) the Borrower and its Subsidiaries shall be in compliance with the Financial Covenants (after giving effect to any increase to the Total Net Leverage Ratio test set forth in Section 6.7(a)(i) as a result of a Material Permitted Acquisition), determined on a Pro Forma Basis as of the last day of the most recently ended Test Period, as if any Incremental Loans or Revolving Credit Commitments under any Incremental Revolving Facilities, as applicable, incurred or committed, as applicable, under such Incremental Facilities had been outstanding on the last day of such Fiscal Quarter for testing compliance therewith, and, in each case (x) with respect to any Incremental Revolving Facility, assuming a borrowing of the maximum amount of Loans available thereunder, and (y) without netting the cash proceeds of any such Incremental Loans (but otherwise giving effect to the use of such proceeds).

(g) Terms. Each Incremental Amendment will set forth the amount and terms of the relevant Incremental Facility. The other terms of each Incremental Revolving Facility will be on terms and pursuant to documentation applicable to the Revolving Credit Commitments then in effect; *provided* that to the extent an Incremental Revolving Facility has a greater All-In Yield than the Revolving Facility, the All-In Yield on the Revolver Facility shall be increased to match the All-In Yield of such Incremental Revolving Facility. The other terms of each tranche of Incremental Term Loans will be as agreed between the Borrower and the Persons providing such Incremental Term Loans; *provided* that:

(i) the final maturity date of such Incremental Term Loans will be no earlier than the Latest Term Loan Maturity Date of the Initial Term Loans;

(ii) the Weighted Average Life to Maturity of such Incremental Term Loans will be no shorter than the longest remaining Weighted Average Life to Maturity of the Initial Term Loans;

(iii) any such Incremental Term Loans may participate on a *pro rata* basis or a less than *pro rata* basis (but not greater than a *pro rata* basis) in any voluntary or mandatory repayments or prepayments of the Initial Term Loans (other than pursuant to a refinancing or with respect to greater than *pro rata* payments to an earlier maturing tranche); and

(iv) to the extent such terms and documentation are not consistent with, in the case of an Incremental Term Facility, the Initial Term Loan Facility, they shall be no more favorable (taken as a whole as determined by the Borrower and the Administrative Agent) to the lenders providing such Incremental Term Facility than those applicable to the Initial Term Facility; *provided* that this clause (iv) will

not apply to (1) interest rate, fees, funding discounts and other pricing terms, (2) redemption, prepayment or other premiums, (3) optional prepayment terms, and (4) covenants and other terms that are (i) applied to the Term Loans existing at the time of incurrence of such Incremental Term Facility (so that existing Lenders also receive the benefit of such provisions) and/or (ii) applicable only to periods after the Latest Term Loan Maturity Date at the time of incurrence of such Indebtedness (the requirements in this clause (iv), collectively, "**Other Applicable Incurrence Requirements**").

(h) Pricing. The interest rate, fees, and original issue discount for any Incremental Term Loans will be as determined by the Borrower and the Persons providing such Incremental Term Loans; *provided* that the MFN Adjustment will apply to any Incremental Term Loans.

(i) Adjustments to Revolving Loans. Upon each increase in the Revolving Commitments pursuant to this Section 2.24,

(i) each Revolving Lender immediately prior to such increase will automatically and without further act be deemed to have assigned to each lender providing a portion of such increase (each an "**Incremental Revolving Facility Lender**"), and each such Incremental Revolving Facility Lender will automatically and without further act be deemed to have assumed, a portion of such Revolving Lender's participations hereunder in outstanding Letters of Credit and Swing Line Loans such that, after giving effect to each such deemed assignment and assumption of participations, the percentage of the aggregate outstanding (1) participations hereunder in Letters of Credit and (2) participations hereunder in Swing Line Loans held by each Revolving Lender will equal the percentage of the aggregate Revolving Commitments of all Lenders represented by such Revolving Lender's Revolving Commitments; and

(ii) if, on the date of such increase, there are any Revolving Loans outstanding, such Revolving Loans will on or prior to the effectiveness of such Incremental Revolving Facility be prepaid from the proceeds of Incremental Revolving Loans made hereunder (reflecting such increase in Revolving Commitments), which prepayment will be accompanied by accrued interest on the Revolving Loans being prepaid and any costs incurred by any Revolving Lender in accordance with Section 2.18(c). The Administrative Agent and the Lenders hereby agree that the minimum borrowing, *pro rata* borrowing and *pro rata* payment requirements contained elsewhere in this Agreement will not apply to the transactions effected pursuant to the immediately preceding sentence.

2.25 [Reserved].

2.26 Credit Agreement Refinancing Indebtedness; Refinancing Amendments.

(a) Refinancing Loans. At any time after the Closing Date, the Borrower may obtain (i) from any Lender or any Additional Lender, Credit Agreement Refinancing Indebtedness in the form of Refinancing Loans or Refinancing Commitments, in each case pursuant to a

Refinancing Amendment, or (ii) from any bank, other financial institution or institutional investor that agrees to provide any portion of any Credit Agreement Refinancing Indebtedness in any other form, such other Credit Agreement Refinancing Indebtedness, in each case to refinance (and to reduce on a dollar-for-dollar or greater basis) all or any portion of the Term Loans then outstanding under this Agreement.

(b) Refinancing Amendments. The effectiveness of any Refinancing Amendment will be subject only to the satisfaction on the date thereof of such of the conditions set forth in Sections 3.1 and 3.2 as may be requested by the providers of applicable Refinancing Loans. The Administrative Agent will promptly notify each Lender as to the effectiveness of each Refinancing Amendment. Each of the parties hereto hereby agrees that, upon the effectiveness of any Refinancing Amendment, this Agreement will be deemed amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Refinancing Loans incurred pursuant thereto (including any amendments necessary to treat the Term Loans or Revolving Loans subject thereto as Refinancing Term Loans or Refinancing Revolving Loans, respectively).

(c) Required Consents. Any Refinancing Amendment may, without the consent of any Person other than the Administrative Agent (which consent shall not be unreasonably withheld, conditioned or delayed), the Borrower and the Persons providing the applicable Refinancing Loans, effect such amendments to this Agreement and the other Credit Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.26. This Section 2.26 supersedes any provisions in Section 2.17 or Section 10.5 to the contrary.

(d) Providers of Refinancing Loans. Refinancing Loans may be provided by any existing Lender (it being understood that no exiting Lender will have an obligation to make all or any portion of any Refinancing Loan) or by any Additional Lender on terms permitted by this Section 2.26; *provided* that the Administrative Agent, each Issuing Bank and the Swing Line Lender will have consented (in each case, such consent not to be unreasonably withheld, conditioned or delayed) to any such Person's providing Refinancing Loans or Refinancing Commitments if such consent would be required under Section 10.6(c), respectively, for an assignment of Loans or Commitments to such Person.

3. CONDITIONS PRECEDENT

3.1 Closing Date. The obligation of the Lenders on the Closing Date to make the initial Credit Extension(s) on the Closing Date (the "**Initial Credit Extension**") is subject to the satisfaction, or waiver by the Administrative Agent, of the following conditions on or before the Closing Date:

(a) Credit Documents. The Administrative Agent will have received a copy of each of the following Credit Documents, in each case where applicable, executed and delivered by the Borrower and each Guarantor Subsidiary: (A) this Agreement; (B) the Pledge and Security Agreement; (C) each of the Notes (if such Notes have been requested at least three (3) Business Days prior to the date the closing would otherwise occur); (D) the Intercompany Subordination Agreement and (E) the Perfection Certificate.

(b) Organizational Documents; Incumbency; Resolutions; Good Standing Certificates. The Administrative Agent will have received:

(i) *Organizational Documents*. A copy of each Organizational Document of the Borrower and each Guarantor Subsidiary and, to the extent applicable, certified as of a recent date by the appropriate governmental official, each dated the Closing Date or a recent date prior thereto.

(ii) *Incumbency Certificate.* A signature and incumbency certificate of the officers or other authorized representatives of the Borrower and each Guarantor Subsidiary executing the Credit Documents referenced in Section 3.1(a).

(iii) *Resolutions.* Resolutions of the Board of Directors or similar governing body of the Borrower and each Guarantor Subsidiary approving and authorizing the execution, delivery and performance of this Agreement and the other Credit Documents to which it is a party or by which it or its assets may be bound as of the Closing Date, certified as of the Closing Date by its secretary or an assistant secretary (or any other officer with an equivalent role) as being in full force and effect without modification or amendment.

(iv) *Good Standing Certificates.* A good standing certificate from the applicable Governmental Authority of the jurisdiction of incorporation, organization or formation of the Borrower and each Guarantor Subsidiary.

(c) Funding Notice. The Administrative Agent will have received a fully executed and delivered Funding Notice as required pursuant to Section 2.1 and/or 2.2, as applicable (or, in the case of the Issuance of a Letter of Credit, an Application or Issuance Notice pursuant to Section 2.4); *provided* that all certifications made under such Funding Notice will be made (or deemed made) as of the Closing Date; *provided further* that utilization of the Initial Revolving Commitments on the Closing Date will be limited to the Initial Revolving Borrowing.

(d) Closing Date Certificate and Attachments. The Administrative Agent will have received an executed Closing Date Certificate, together with all attachments thereto, certifying to the satisfaction of the condition set forth in Section 3.2(a)(iii) and (iv).

(e) [Reserved].

(f) Financial Statements. The Administrative Agent and the Lenders will have received the unaudited consolidated balance sheet and related consolidated statement of income of the Borrower and its Subsidiaries as of September 30, 2019 (and the Administrative Agent and the Lenders hereby acknowledge satisfactory receipt of such financial statements).

(g) Solvency. The Administrative Agent will have received a solvency certificate in the form attached as Exhibit D from the chief financial officer or other officer with equivalent duties of the Borrower certifying to the solvency of the Borrower and the Subsidiaries on a consolidated basis after giving effect to the Transactions.

(h) Existing Debt. On the Closing Date, the Administrative Agent will have received one or more fully executed customary payoff letters and lien terminations regarding the repayment in full of all amounts outstanding under the Existing Credit Agreement on the Closing Date substantially concurrently with the Initial Credit Extension and providing that all Indebtedness, liens, guarantees and commitments to extend credit thereunder will terminate upon the receipt of the proceeds of the Initial Credit Extension applied to repay such indebtedness; *provided* that such payoff letter may provide that the Lien releases thereunder be subject to the receipt of either cash collateral or a back-to-back letter of credit, in each case in respect of the outstanding letters of credit under the Existing Credit Agreement.

(i) Personal Property Collateral. The Collateral Agent will have received:

(i) *Deliverables, Etc*. In connection with the pledge of the Capital Stock of each Guarantor Subsidiary and each direct Subsidiary of the Borrower and each Guarantor Subsidiary, and the pledge of Indebtedness owing to the Credit Parties, in each case to the extent required under the Security Agreement, the Borrower and each applicable Guarantor Subsidiary will deliver, or cause to be delivered, to the Collateral Agent, to the extent required under the Pledge and Security Agreement, an original stock certificate or other instruments representing such pledged Capital Stock or Indebtedness, together with customary blank stock or other equity transfer powers and instruments of transfer and irrevocable powers duly executed in blank.

(ii) *Lien Searches.* The results of customary lien searches with regard to the Borrower and each Guarantor Subsidiary; and

(iii) UCC financing statements in appropriate form for filing under the UCC, and any short form Intellectual Property security agreement to be filed with the United States Patent and Trademark Office and United States Copyright Office and all other documents and instruments necessary to establish and perfect the Collateral Agent's first priority Lien in the Collateral (subject to Permitted Liens), in each case, executed and delivered (if applicable, in proper form for filing) by the Borrower and the Guarantors;

provided that, to the extent any liens on the Collateral have not attached or are not perfected on the Closing Date (other than to the extent that a lien on such Collateral may be perfected by (A) the filing of a financing statement under the Uniform Commercial Code or (B) the delivery of certificated securities representing equity of the direct wholly-owned material Domestic Subsidiaries of the Borrower) after the Borrower's use of commercially reasonable efforts to do so, such attachment or perfection will not constitute a condition precedent to the borrowing on the Closing Date, but will be required in accordance with Section 5.15.

(j) Opinion of Counsel to Credit Parties. The Administrative Agent and its counsel will have received copies of (and each Credit Party hereby instructs such counsel to deliver such opinions to the Administrative Agent and the Lenders) customary legal opinions, each dated as of the Closing Date, of Latham & Watkins LLP, special counsel to the Borrower and each Guarantor Subsidiary.

(k) Fees and Expenses. All costs, fees, expenses (including reasonable, documented, out-of-pocket legal fees and expenses of consultants and other advisors) and other compensation payable to the Lead Arrangers, Administrative Agent and the Lenders will have been paid (or will concurrently be paid) to the extent then due; *provided* that an invoice of such expenses will have been presented no less than two (2) Business Days prior to the Closing Date.

(l) "Know-Your-Customer". The Administrative Agent will have received all documentation and other information required by bank regulatory authorities under applicable "know-your-customer" and anti-money laundering rules and regulations including the PATRIOT Act at least three (3) Business Days prior to the Closing Date. The Borrower shall have delivered to the Administrative Agent, and directly to any Lender requesting the same, a Beneficial Ownership Certification in relation to it.

For purposes of determining compliance with the conditions specified in this Section 3.1, (i) each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto and (ii) transactions occurring (or to occur) on the Closing Date in accordance with, and as expressly set forth in, the funds flow memorandum delivered to (and approved by) the Administrative Agent shall be deemed to occur and have occurred substantially simultaneously with the Initial Credit Extension.

3.2 Conditions to Each Credit Extension.

(a) Conditions Precedent. Except as may be limited in respect of certain conditions precedent as set forth in Section 2.24(f) with respect to Incremental Term Loans or in Section 1.5 with respect to any Limited Condition Transaction and other related Specified Transactions after the Closing Date, the obligation of each Lender to make any Loan, or each Issuing Bank to Issue any Letter of Credit, on any Credit Date, including the Initial Credit Extension on the Closing Date, are subject to the satisfaction, or waiver in accordance with Section 10.5, of the following conditions precedent:

(i) *Notice.* The Administrative Agent will have received a fully executed and delivered Funding Notice, Application or Issuance Notice, as the case may be;

(ii) *Revolving Credit Limit.* After making the Credit Extensions requested on such Credit Date, the Total Utilization of Revolving Credit Commitments will not exceed the Revolving Credit Limit then in effect;

(iii) *Representations and Warranties.* As of such Credit Date, the representations and warranties contained herein and in the other Credit Documents will be true and correct in all material respects (except for those representations and warranties that are conditioned by materiality, which will be true and correct in all respects) on and as of that Credit Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties will have

been true and correct in all material respects (except for those representations and warranties that are conditioned by materiality, which will have been true and correct in all respects) on and as of such earlier date; and

(iv) *No Default or Event of Default.* As of such Credit Date, no event will have occurred and be continuing or would result from the consummation of the applicable Credit Extension that would constitute a Default or an Event of Default.

Each borrowing by and issuance of a Letter of Credit on behalf of the Borrower hereunder shall constitute a representation and warranty by the Borrower as of the date of such Credit Extension that the conditions contained in this Section 3.2(a) have been satisfied.

(b) Letters of Credit. In addition, with respect to any Letter of Credit, the Administrative Agent will have received all other information required by the applicable Application or Issuance Notice, and such other documents or information as the applicable Issuing Bank may reasonably require in connection with the Issuance of such Letter of Credit.

(c) Notices. Any Notice will be executed by an Authorized Officer in a writing delivered to the Administrative Agent. The Administrative Agent, any Lender or any Issuing Bank will not have any obligation to verify the veracity of any such notice referred to above nor will the Administrative Agent, any Lender or any Issuing Bank incur any liability to the Borrower in acting upon any notice referred to above that the Administrative Agent believes in good faith to have been given by a duly authorized officer or other person authorized on behalf of the Borrower. Each delivery of a Notice will constitute a representation and warranty that as of the date of any Credit Extension (both immediately before and immediately after such Credit Extension) the conditions contained in Section 3.2 have been satisfied.

4. REPRESENTATIONS AND WARRANTIES

In order to induce the Lenders, each Agent and each Issuing Bank to enter into this Agreement and to make each Credit Extension to be made thereby, each Credit Party represents and warrants to the Lenders, the Agents and the Issuing Banks, on the Closing Date and on each Credit Date, that the following statements are true and correct:

4.1 Organization; Requisite Power and Authority; Qualification. The Borrower and each Subsidiary (a) is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, (b) has all requisite organizational power and authority to (i) own and operate its properties, to lease the property it operates as lessee, to carry on its business as now conducted and as proposed to be conducted, except to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect and (ii) to enter into the Credit Documents to which it is a party and to carry out the transactions contemplated thereby, and (c) is qualified to do business and in good standing as a foreign entity in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or in good standing has not had, and could not be reasonably expected to have, a Material Adverse Effect.

4.2 Capital Stock and Ownership. The Capital Stock of the Borrower and each Subsidiary has been duly authorized and validly issued in compliance with all applicable federal,

state and other Laws and is fully paid and non-assessable (except to the extent such concepts are not applicable under the applicable Law of such Subsidiary's jurisdiction of formation). Except as set forth on Schedule 4.2, as of the Closing Date, there is no existing option, warrant, call, right, commitment or other agreement (including preemptive rights) (other than stock options granted to employees or directors and directors' qualifying shares) to which the Borrower or any Subsidiary is a party requiring, and there is no membership interest or other Capital Stock of the Borrower or any Subsidiary outstanding which upon conversion or exchange would require, the issuance by the Borrower or any Subsidiary of any additional membership interests or other Capital Stock of the Borrower or any Subsidiary or other Securities convertible into, exchangeable for or evidencing the right to subscribe for or purchase, a membership interest or other Capital Stock of the Borrower or any Subsidiary. On the Closing Date, immediately after giving effect to the Transactions, there are no Unrestricted Subsidiaries. As of the Closing Date, Schedule 4.2 sets forth the name and jurisdiction of incorporation, formation or organization of the Borrower and each Subsidiary and, as to each such Person, the percentage of each class of Capital Stock owned by any Credit Party, and, with respect to Subsidiaries, whether such Person is a Guarantor.

4.3 Due Authorization. The execution, delivery and performance of the Credit Documents have been duly authorized by all necessary action on the part of each Credit Party that is a party thereto.

4.4 No Conflict. The execution, delivery and performance by the Credit Parties of the Credit Documents to which they are parties and the consummation of the transactions contemplated by the Credit Documents do not (a)(i) violate any of the Organizational Documents of such Credit Parties or (ii) otherwise require any approval of any stockholder, member or partner of such Credit Parties, except for such approvals or consents which will be obtained on or before the Closing Date; (b) violate any provision of any law, rule, regulation, order, judgment or decree of any Governmental Authority applicable to or otherwise binding on such Credit Parties, except to the extent such violation could not reasonably be expected to have a Material Adverse Effect; (c) result in or require the creation or imposition of any Lien upon any of the properties or assets of such Credit Parties (other than any Liens created under any of the Credit Documents in favor of the Collateral Agent, on behalf of the Secured Parties); or (d) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under, or otherwise require any approval or consent of any Person under, any Contractual Obligation of such Credit Parties, except to the extent such conflict, breach or default could not reasonably be expected to have a Material Adverse Effect, and except for such approvals or consents which will be obtained on or before the Closing Date and have been disclosed in writing to the Administrative Agent.

4.5 Governmental Consents. The execution, delivery and performance by the Credit Parties of the Credit Documents to which they are parties and the consummation of the transactions contemplated by the Credit Documents do not and will not require any registration with, consent or approval of, or notice to, or other action to, with or by, any Governmental Authority, except for such filings and recordings with respect to the Collateral to be made, or otherwise delivered to the Collateral Agent for (a) filing and/or recordation, as of the Closing Date and (b) except for such registrations, consents, approvals, notices and other actions that failure of which to obtain, deliver or perform could not reasonably expected to have a Material Adverse Effect.

4.6 Binding Obligation. Each Credit Document has been duly executed and delivered by each Credit Party that is a party thereto and is the legally valid and binding obligation of such Credit Party, enforceable against such Credit Party in accordance with its respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

4.7 Historical Financial Statements. The Historical Financial Statements were prepared in conformity with GAAP applied on a consistent basis throughout the periods covered thereby, except as may be indicated in the notes thereto, and fairly present, in all material respects, the financial position, on a consolidated basis, of the Persons described in such financial statements as at the respective dates thereof and the results of operations and cash flows, on a consolidated basis, of the entities described therein for each of the periods then ended, subject, in the case of any such unaudited financial statements, to changes resulting from audit and normal year-end adjustments. As of the Closing Date, except (a) as reserved for in the Historical Financial Statements, (b) liabilities incurred on behalf of the Borrower and its Subsidiaries in connection with the Credit Documents in accordance with the terms thereof, and (c) liabilities incurred since December 31, 2018 in the ordinary course of business (none of which results from or arises out of any material breach of or material default under any contract (whether written or oral), material breach of warranty, tort, material infringement or material violation of Law), none of the Borrower or any Subsidiary has any material liabilities or obligations of a nature (whether accrued, absolute, contingent or otherwise) required by GAAP (as modified by the first sentence of this Section 4.7) to be set forth on a combined consolidated balance sheet of the Borrower and its Subsidiaries (or the notes thereto) prepared in accordance with GAAP (as modified by the first sentence of this Section 4.7).

4.8 Projections. On and as of the Closing Date, the projections of the Borrower and its Subsidiaries for the period from the Closing Date through and including December 31, 2024 (the "**Projections**") are based on good faith estimates and assumptions made by the management of the Borrower; *provided* that (i) forecasts are as to future events and are not to be viewed as facts, (ii) any forecasts are subject to significant uncertainties and contingencies, many of which are beyond the control of the Credit Parties, (iii) no assurance can be given that any particular forecasts will be realized and (iv) actual results may differ significantly from the forecasted results and such differences may be material.

4.9 No Material Adverse Effect. Except as set forth on Schedule 4.9, since December 31, 2018, no event or change has occurred that has caused or would reasonably be expected to cause, either in any case or in the aggregate, a Material Adverse Effect.

4.10 Adverse Proceedings. Except as set forth on Schedule 4.10, there are no Adverse Proceedings (a) with respect to this Agreement or any other Credit Document or any of the Transactions contemplated hereby or thereby, or (b) which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. None of the Borrower nor the Subsidiaries is subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

4.11 Payment of Taxes. Except as otherwise permitted under Section 5.3 or as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, the Borrower and the Subsidiaries have timely filed with the appropriate United States federal, state, local and foreign taxing authorities all tax returns and reports that were required to be filed and have timely paid all Taxes owed by them, whether or not shown on such tax returns or reports, and all such tax returns are true, correct and complete in all material respects. No Executive Officer of the Borrower has any knowledge of any proposed Tax assessment against the Borrower or any Subsidiary with respect to material Taxes which is not being actively contested by the Borrower or such Subsidiary in good faith and by appropriate proceedings; *provided* that such reserves or other appropriate provisions, if any, as will be required in conformity with GAAP will have been made or provided therefor.

4.12 Title and Intellectual Property. The Borrower and each Subsidiary has (a) good, sufficient and legal title to (in the case of fee interests in real property), (b) valid leasehold interests in (in the case of leasehold interests in real or tangible personal property) and (c) good title to (in the case of all other tangible personal property), all of their respective properties and material assets reflected in their Historical Financial Statements referred to in Section 4.7 and in the most recent financial statements delivered pursuant to Section 5.1, in each case, to the extent necessary to conduct the Businesses as of the date of such financial statements, except (i) for assets disposed of since the date of such financial statements in the ordinary course of business or as otherwise permitted under Section 6.8 and (ii) as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Except as permitted by this Agreement or as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, all such properties and assets are free and clear of Liens. The Borrower and each Subsidiary owns or has a valid right to use all Intellectual Property that is used in the operation of their respective businesses as currently conducted, except where the failure of the foregoing could not reasonably be expected to have a Material Adverse Effect. Except to the extent the same could not reasonably be expected to have a Material Adverse Effect, no material claim has been asserted or is pending by any Person challenging or questioning the use of any Intellectual Property or the validity or effectiveness of any Intellectual Property owned by any of the Borrower or its Subsidiaries, nor does the Borrower or any Subsidiary know of any valid basis for any such claim. To the knowledge of any Executive Officer of the Borrower, the operation of their respective businesses by the Borrower and each Subsidiary does not infringe upon, misappropriate, violate or otherwise conflict with the Intellectual Property of any other Person, except, in each case, as could not reasonably be expected to have a Material Adverse Effect.

4.13 Real Estate Assets. Each Credit Party has title in fee simple to, or a valid leasehold interest in, all its real property, and good title to, or a valid leasehold interest in, all its other property, free and clear of any Lien except as permitted hereunder and except where the failure to have such title or valid leasehold interest would not, in the aggregate, reasonably be expected to have a Material Adverse Effect. Schedule 4.13 is a complete and correct list as of the Closing Date of (a) all fee owned Real Estate Assets and (b) all material leases, subleases or assignments of material leases (together with all amendments, modifications, supplements, renewals or extensions of any thereof) affecting each Real Estate Asset of any Credit Party, regardless of whether such Credit Party is the landlord or tenant (whether directly or as an assignee or successor in interest) under such lease, sublease or assignment. Each agreement listed in clause (b) of the immediately preceding sentence is (x) in full force and effect and (y) no Executive Officer of the

Borrower has any knowledge of any default that has occurred and is continuing thereunder which could reasonably be expected, either individually or together with other defaults, to have a Material Adverse Effect; and each such agreement constitutes the legally valid and binding obligation of each applicable Credit Party, enforceable against such Credit Party in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles or except as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. The Borrower represents and warrants that prior to the date hereof, Borrower has cooperated with Administrative Agent in order for Administrative Agent to obtain a completed "**Life-of-Loan**" Federal Emergency Management Agency standard flood hazard determination (together with notices about special flood hazard area status and flood disaster assistance relating thereto, duly executed by the Borrower) with respect to each Material Real Estate Asset subject to a Mortgage.

4.14 Environmental Matters. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect:

(a) none of the Borrower, any Subsidiary or any of their respective Facilities or operations are subject to any actual or, to the knowledge of the Borrower, threatened Environmental Claim, or any Environmental Liability, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding under any Environmental Law with respect to the Borrower, any Subsidiary or any of their respective Facilities or operations;

(b) there are and have been, no conditions, occurrences, or Hazardous Materials Activities, including to the knowledge of the Borrower, at any third-party location, which could reasonably be expected to form the basis of an Environmental Claim against the Borrower or any Subsidiary or give rise to any Environmental Liabilities of the Borrower or any Subsidiary; and

(c) none of the Borrower, any Subsidiary or any of their respective Facilities or operations has failed to comply with any Environmental Law or to obtain, maintain or comply with any Governmental Authorizations required under any Environmental Law.

4.15 No Defaults. None of the Borrower or any Subsidiary is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations, and no condition exists which, with the giving of notice or the lapse of time or both, could constitute such a default, except in each case where the consequences, direct or indirect, of such default or defaults, if any, could not reasonably be expected to have a Material Adverse Effect.

4.16 Governmental Regulation. None of the Borrower or any Subsidiary is an "investment Company", "registered investment company" or a company "controlled" by a "registered investment company" or a "principal underwriter" of a "registered investment company" as such terms are defined in the Investment Company Act of 1940.

4.17 Margin Stock. None of the Borrower or any Subsidiary is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of any Credit Extension made to or for the

benefit of any Credit Party or any of its Subsidiaries will be used to purchase or carry any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any Margin Stock or for any purpose that violates, or is inconsistent with, the provisions of Regulation T, U or X of the Board of Governors, as in effect from time to time or any other regulation thereof or to violate the Exchange Act.

4.18 Employee Matters. None of the Borrower or any Subsidiary is engaged in any unfair labor practice that could reasonably be expected to have a Material Adverse Effect. There is (a) no unfair labor practice complaint pending against the Borrower or any Subsidiary, or to the knowledge of any Executive Officer of the Borrower, threatened against any of them before the National Labor Relations Board and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement that is pending against the Borrower or any Subsidiary or to the knowledge of any Executive Officer of the Borrower, threatened against any of them, (b) no strike or work stoppage in existence or, to the knowledge of any Executive Officer of the Borrower, threatened involving the Borrower or any Subsidiary, (c) there are no collective bargaining agreements covering the employees of any Credit Party or any of its Subsidiaries as of the Closing Date and (d) to the knowledge of any Executive Officer of the Borrower, no pending proceeding before the National Labor Relations Board seeking union representation with respect to the employees of the Borrower or any Subsidiary and, to the knowledge of any Executive Officer of the Borrower, no union organization activity that is taking place, except, with respect to any matter specified in clause (a), (b) or (d) above, either individually or in the aggregate, as could not be reasonably likely to result in a Material Adverse Effect.

4.19 Employee Benefit Plans. (a) The Borrower and each Subsidiary and each of their respective ERISA Affiliates is in compliance in all material respects with all applicable provisions and requirements of ERISA and the Internal Revenue Code and the regulations and published interpretations thereunder with respect to each Employee Benefit Plan, and have performed all their obligations under each Employee Benefit Plan, (b) each Employee Benefit Plan which is intended to qualify under Section 401(a) of the Internal Revenue Code has received a favorable determination letter from the Internal Revenue Service indicating that such Employee Benefit Plan is so qualified and, to the knowledge of any Executive Officer of the Borrower, nothing has occurred subsequent to the issuance of such determination letter which would cause such Employee Benefit Plan to lose its qualified status, (c) no Liability to the PBGC (other than required premium payments), the Internal Revenue Service, any Employee Benefit Plan (except in the ordinary course) or any trust established under Title IV of ERISA has been or is expected to be incurred by the Borrower, any Subsidiary or any of their respective ERISA Affiliates, (d) no ERISA Event has occurred or is reasonably expected to occur, (e) except to the extent required under Section 4980B of the Internal Revenue Code or similar state laws, no Employee Benefit Plan provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employee of the Borrower, any Subsidiary or any of their respective ERISA Affiliates, (f) the present value of the aggregate benefit liabilities under each Pension Plan sponsored, maintained or contributed to by the Borrower, any Subsidiary or any of their respective ERISA Affiliates, (determined as of the end of the most recent plan year on the basis of the actuarial assumptions specified for funding purposes in the most recent actuarial valuation for such Pension Plan), did not exceed the aggregate current value of the assets of such Pension Plan, (g) as of the most recent valuation date for each Multiemployer Plan for which the actuarial report is available, the potential liability of the Borrower, its Subsidiaries and their respective ERISA

Affiliates for a complete withdrawal from such Multiemployer Plan (within the meaning of Section 4203 of ERISA), when aggregated with such potential liability for a complete withdrawal from all Multiemployer Plans, based on information available pursuant to Section 4221(e) of ERISA is zero, (h) the Borrower, each Subsidiary and each of their respective ERISA Affiliates has complied with the requirements of Section 515 of ERISA with respect to each Multiemployer Plan and are not in material "default" (as defined in Section 4219(c)(5) of ERISA) with respect to payments to a Multiemployer Plan, (i) each Employee Benefit Plan has been operated in compliance with its terms and the applicable provisions and requirements of ERISA, the Internal Revenue Code and other Laws, and (j) there has been no Prohibited Transaction or violation of the fiduciary responsibility rules with respect to any Employee Benefit Plan or Pension Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect; in each case (a) through (i), except as would not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect.

4.20 Solvency. On the Closing Date, after giving effect to the Transactions, including the making of the Credit Extensions to be made on the Closing Date and giving effect to the application of the proceeds thereof, the Borrower and its Subsidiaries, on a consolidated basis, are Solvent.

4.21 Compliance with Laws.

(a) Generally. Except as set forth on Schedule 4.21, the Borrower and each Subsidiary is in compliance with all applicable Laws in respect of the conduct of its business as currently conducted and the ownership of its property, except such non-compliance that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(b) Anti-Terrorism Laws, Etc. Without limiting the foregoing, no Credit Party nor any of its Controlled Entities or any of their respective directors or officers nor, to the knowledge of any Credit Party or any of its Controlled Entities, any of their respective employees or agents (i) is organized or resident in a Sanctioned Country, (ii) is in material violation of any Anti-Terrorism Law, (iii) is a Blocked Person, (iv) has received formal notice that it is the target of any proceeding or investigation by any Governmental Authority in connection with any violation of Anti-Terrorism Law or (v) has been convicted by any Governmental Authority within the past five years of a violation of any Anti-Terrorism Law. No Credit Party nor any of its Controlled Entities directly or knowingly indirectly (1) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person in violation of any applicable Anti-Terrorism Law, or (2) deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law, in violation of any applicable Anti-Terrorism Law.

(c) Anti-Corruption Laws, Etc. Since five (5) years prior to the Closing Date, there has been no action taken by any Credit Party or any of its Controlled Entities or any officer, director, or employee, or to the knowledge of any Credit Party or any of its Controlled Entities, any agent, representative, sales intermediary, or other third party of any Credit Party or any of its Controlled Entities, in each case, acting on behalf of any Credit Party or any of its Controlled

Entities in material violation of any applicable Anti-Corruption Law. None of the Credit Parties or any of their Controlled Entities has been convicted of violating any Anti-Corruption Laws or to the knowledge of any Credit Party or any of its Controlled Entities subjected to any investigation by a Governmental Authority for violation of any applicable Anti-Corruption Laws. There is no material suit, litigation, arbitration, claim, audit, action, proceeding or investigation pending or, to the knowledge of any Executive Officer of the Borrower, threatened against or affecting the Credit Parties or any of their Controlled Entities related to any applicable Anti-Corruption Law, before or by any Governmental Authority. None of the Credit Parties or any of their respective Subsidiaries made a voluntary, directed, or involuntary disclosure to any Governmental Authority with respect to any alleged act or omission arising under or relating to any noncompliance with any Anti-Corruption Law. In the five (5) years prior to the Closing Date, none of the Credit Parties or any of their respective Subsidiaries or Unrestricted Subsidiaries has received any written notice, request or citation for any actual or potential noncompliance with any of the foregoing.

4.22 Disclosure. None of the written information and data (other than any projections, any information of a forward-looking nature and any general economic or specific industry information developed by, and obtained from, third-party sources) heretofore furnished to any Agent or the Lenders by or on behalf of the Borrower on or prior to the Closing Date for use in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Credit Document, when taken as a whole, contains any untrue statement of a material fact or omits to state a material fact (known to any Executive Officer of the Borrower, in the case of any document not furnished by the Borrower) necessary in order to make the statements contained therein taken as a whole not materially misleading in light of the circumstances under which such statements were made (after giving effect to all supplements and updates to such written information and data, in each case, furnished after the date on which such written information or data was originally delivered and prior to the Closing Date). Any projections and information of a forward-looking nature furnished to any Agent or the Lenders by or on behalf of the Borrower have been prepared in good faith based upon assumptions believed by the Borrower to be reasonable at the time made (it being understood and agreed that such projections and information of a forward-looking nature are not to be viewed as a guarantee of financial performance or achievement, that such projections and information of a forward-looking nature are as to future events and are not to be viewed as facts, that such projections and information of a forward-looking nature are subject to significant uncertainties and contingencies, many of which are beyond your control, that no assurance can be given that any particular projections will be realized and that actual results may differ significantly from the Projections and such differences may be material). As of the Closing Date, all of the information included in the Beneficial Ownership Certification is true and correct.

4.23 Perfection of Security Interests in the Collateral. On the Closing Date, the Collateral Documents create valid security interests in, and Liens on, the Collateral of the Credit Parties purported to be covered thereby on such date and described therein, which security interests and Liens will be first priority Liens (subject to Permitted Liens) with respect to personal property of the Credit Parties, to the extent such Liens are perfected by filing appropriate UCC-1 financing statements against each such Credit Party with the secretary of state of the state of incorporation or formation of each such Credit Party and appropriate filings with the U.S. Patent and Trademark Office and the U.S. Copyright Office, as applicable, or the pledge of original stock certificates representing Capital Stock and customary stock and other equity powers related thereto upon the

timely and proper filings, deliveries, notations and other actions contemplated by the Collateral Documents (to the extent that such security interests and Liens may be perfected by such filings, deliveries, notations and other actions contemplated by the Collateral Documents).

4.24 Status as Senior Debt. The Obligations are "Designated Senior Debt," "Senior Debt," "Senior Obligations," "Senior Indebtedness," "Guarantor Senior Debt" and/or "Senior Secured Financing" (or any comparable term) under, and as defined in, any indenture or document governing any applicable Subordinated Debt.

4.25 Use of Proceeds. The Borrower has used (or will use) the proceeds of the Initial Term Loans, the Revolving Loans and the Swing Line Loans in accordance with Section 2.6.

4.26 EEA Financial Institutions. No Credit Party is an EEA Financial Institution.

5. AFFIRMATIVE COVENANTS

The Borrower and each Guarantor Subsidiary covenants and agrees that so long as the Commitments have not been terminated and until the principal of and interest on each Loan, all fees and all other expenses or amounts payable under any Credit Document (other than amounts in respect of indemnification, expense reimbursement, yield protection or tax gross-up and contingent obligations, in each case that are not then owing or with respect to which no claim has been made) have been paid in full and all Letters of Credit have been cancelled, or have expired or have been cash collateralized or otherwise backstopped in a manner satisfactory to the applicable Issuing Bank and all amounts drawn thereunder have been reimbursed in full, it will perform, and the Borrower will cause each Subsidiary to perform (to the extent applicable to such Subsidiary), all covenants in this Section 5.

5.1 Financial Statements and Other Reports. The Borrower will deliver to the Administrative Agent by Electronic Transmission, and the Administrative Agent will deliver to the Lenders by Electronic Transmission:

(a) Annual Financial Statements. Within one hundred and twenty (120) days after the end of each Fiscal Year (or, in the case of the Fiscal Year ending December 31, 2019, one hundred and fifty (150) days after the end of such Fiscal Year), commencing with the Fiscal Year ending December 31, 2019, (i) the consolidated balance sheet of the Borrower and the Subsidiaries and Unrestricted Subsidiaries as at the end of such Fiscal Year and the related consolidated statements of operations and comprehensive (loss) income, changes in members' or stockholders' equity and cash flows of the Borrower and the Subsidiaries and Unrestricted Subsidiaries for such Fiscal Year, setting forth, in each case, in comparative form the corresponding figures for the previous Fiscal Year delivered pursuant to this Section 5.1(a), together with a Financial Officer Certification and a Narrative Report with respect thereto; and (ii) with respect to such consolidated financial statements a report thereon of independent certified public accountants of recognized national or regional standing selected by the Borrower, or another accounting firm reasonably satisfactory to the Administrative Agent (which report will not be subject to any explanatory statement as to the Borrower's ability to continue as a "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit (other than any such explanatory statement, qualification or exception with respect to (A) an upcoming maturity of the Term Loans or the Revolving Loans or (B) any actual or anticipated inability to satisfy the

Financial Covenants)) and will state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of the Borrower, the Subsidiaries and the Unrestricted Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards).

(b) Quarterly Financial Statements. Within forty-five (45) days after the end of the first three Fiscal Quarters of each Fiscal Year, commencing with the Fiscal Quarter ending March 31, 2020, the consolidated balance sheet of the Borrower and the Subsidiaries and Unrestricted Subsidiaries as at the end of such Fiscal Quarter and the related consolidated statements of operations and comprehensive (loss) income and cash flows of the Borrower and the Subsidiaries and Unrestricted Subsidiaries for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, setting forth, in each case, commencing with the Fiscal Quarter ending March 31, 2021, in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year delivered pursuant to this Section 5.1(b), all in reasonable detail and in accordance with GAAP in all material respects (subject to normal year-end audit adjustments and the absence of footnotes), together with a Financial Officer Certification and a Narrative Report with respect thereto.

(c) [Reserved].

(d) Information Regarding Unrestricted Subsidiaries. Notwithstanding anything to the contrary in this Section 5.1, if the Borrower has any Unrestricted Subsidiaries, the Borrower will include, together with each delivery of financial statements or a Financial Plan pursuant to Section 5.1(a), 5.1(b) or 5.1(k), consolidating information (which may be unaudited) that shows in reasonable detail in accordance with GAAP the breakdown of assets, liabilities, and revenues and expenses, between the Borrower and the Subsidiaries, on the one hand, and the Unrestricted Subsidiaries, on the other hand, as of the dates and for the periods covered by such financial statements.

(e) Compliance Certificate. Together with each delivery of financial statements of the Borrower and the Subsidiaries and Unrestricted Subsidiaries pursuant to Sections 5.1(a) and 5.1(b), a duly executed and completed Compliance Certificate.

(f) Statements of Reconciliation after Change in Accounting Principles. If, as a result of any change in GAAP from those used in the preparation of the Historical Financial Statements, the consolidated financial statements of the Borrower and the Subsidiaries and Unrestricted Subsidiaries delivered pursuant to this Section 5.1 will differ in any material respect from the consolidated financial statements that would have been delivered had no such change in GAAP occurred, then, together with the first delivery of such financial statements after such change, one or more statements of reconciliation for all such prior financial statements in form reasonably satisfactory to the Administrative Agent delivered during the Fiscal Year and immediately preceding Fiscal Year in which such change occurred.

(g) Accountants' Report. Promptly upon receipt thereof, copies of all final management letters identifying a material weakness or significant deficiency submitted by the independent certified public accountants referred to in Section 5.1(a) in connection with each annual, interim or special audit or review of any type of the financial statements or related internal control systems of the Borrower or any Subsidiary made by such accountants.

(h) Notice of Default. Promptly upon an Executive Officer of the Borrower obtaining knowledge:

(i) of the occurrence of any Default or Event of Default;

(ii) that any Person has given any notice to the Borrower or any Subsidiary or taken any other action with respect to any event or condition set forth in Section 8.1(b); or

(iii) of the occurrence of any event or change that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect;

a certificate of an Authorized Officer of the Borrower specifying the nature and period of existence of such condition, event or change, or specifying the notice given and action taken by any such Person and the nature of such claimed Event of Default, Default, default, event or condition, and what action the Borrower has taken, is taking and proposes to take with respect thereto.

(i) Notice of Litigation and Judgments. Promptly upon an Executive Officer of the Borrower obtaining knowledge of:

(i) the institution of, or non-frivolous threat of, any Adverse Proceeding not previously disclosed in writing by the Borrower to the Lenders that if adversely determined could be reasonably expected to result in a Material Adverse Effect; or

(ii) any material development in any Adverse Proceeding or the entry of any judgment that if adversely determined could be reasonably expected to result in a Material Adverse Effect; or

(iii) any change to the status of the OIG Matter that is materially adverse to the Borrower and its Subsidiaries since the delivery of the most recent financial statements pursuant to Section 5.1(a) or (b), as applicable,

written notice thereof by an Authorized Officer of the Borrower.

(j) ERISA. (i) Promptly upon an Executive Officer of the Borrower becoming aware of the occurrence of or forthcoming occurrence of any ERISA Event that would reasonably be expected to result in a Material Adverse Effect, a written notice specifying the nature thereof, what action the Borrower, any Subsidiary or any of their respective ERISA Affiliates has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, the Department of Labor or the PBGC with respect thereto; and (ii) with reasonable promptness, copies of (A) all notices received by the Borrower, any Subsidiary or any of their respective ERISA Affiliates from a Multiemployer Plan sponsor concerning an ERISA Event that would reasonably be expected to result in a Material Adverse Effect and (B) copies of such other documents or governmental reports or filings relating to any Pension Plan or Multiemployer Plan as the Administrative Agent will reasonably request.

(k) Financial Plan. No later than ninety (90) days after the beginning of each Fiscal Year, commencing with the Fiscal Year that begins January 1, 2020, a consolidated plan and financial forecast for such Fiscal Year (a "**Financial Plan**"), that includes (i) a forecasted consolidated balance sheet and forecasted consolidated statements of income and cash flows of the Borrower and the Subsidiaries for such Fiscal Year and an explanation of the assumptions on which such forecasts are based and (ii) forecasted consolidated statements of income and cash flows of the Borrower and the Subsidiaries for each Fiscal Quarter of such Fiscal Year, together with an explanation of the assumptions on which such forecasts are based.

(l) OFAC, Etc. The Borrower will notify the Administrative Agent (i) immediately if an Executive Officer of the Borrower has knowledge that any Credit Party or any of its Subsidiaries or its Unrestricted Subsidiaries or any of their respective directors, officers, and employees is (A) listed on the OFAC Lists or otherwise becomes a Blocked Person or (B) convicted on, pleads *nolo contendere* to, is indicted on, or is arraigned and held over on, charges involving money laundering or predicate crimes to money laundering, or (ii) promptly if an Executive Officer of the Borrower has knowledge that any Credit Party or any of its Subsidiaries or its Unrestricted Subsidiaries or any of their respective directors, officers, and employees is subject to or has received formal notice of any proceeding or investigation by any Governmental Authority in connection with any violation of Anti-Terrorism Laws.

(m) [Reserved].

(n) Other Information. Such other information and data with respect to the Borrower or any Subsidiary as from time to time may be reasonably requested by the Administrative Agent or any Lender (through the Administrative Agent).

(o) Intellectual Property. Concurrently with delivery of the financial statements referred to in Section 5.1(a), a list of any Intellectual Property registered or applied for in the United States Patent and Trademark Office and/or registered in the United States Copyright Office by the Borrower and each of its Subsidiaries, to the extent such Intellectual Property is included in the Collateral and has not been previously (i) identified in a short form Intellectual Property security agreement executed and delivered by the Borrower or its applicable Subsidiary pursuant to Section 3.1(i), or (ii) included on a list previously delivered by the Borrower and the Administrative Agent, as applicable, pursuant to this Section 5.1(o).

(p) Certification of Public Information. Concurrently with the delivery of any document or notice required to be delivered pursuant to this Section 5.1, the Borrower will indicate in writing whether such document or notice contains Nonpublic Information. The Borrower and each Lender acknowledge that certain of the Lenders may be "public-side" Lenders (Lenders that do not wish to receive Nonpublic Information, a "**Public Lender**") and, if documents or notices required to be delivered pursuant to this Section 5.1 or otherwise are being distributed by Electronic Transmission (including, through IntraLinks/IntraAgency, SyndTrak or another relevant website or other information platform approved by the Administrative Agent (the "**Platform**")), any document or notice that the Borrower has indicated contains Nonpublic Information will not be posted on that portion of the Platform designated for such public-side Lenders. If the Borrower has not indicated whether a document or notice delivered pursuant to this Section 5.1 contains Nonpublic Information, the Administrative Agent reserves the right to

post such document or notice solely on that portion of the Platform designated for Lenders who wish to receive Nonpublic Information with respect to the Borrower, the Subsidiaries and their respective securities. Notwithstanding anything herein to the contrary, the Borrower shall not be obligated to mark any document or notice required to be delivered pursuant to this Section 5.1 as being suitable for posting to the portion of the Platform designated for Public Lenders.

The filing by the Borrower of a Form 10-K or Form 10-Q (or any successor or comparable forms) with the Securities and Exchange Commission (or any successor thereto) as at the end of and for any applicable Fiscal Year or Fiscal Quarter will be deemed to satisfy the obligations under Section 5.1(a) or 5.1(b), as applicable, as to the Credit Parties and Subsidiaries covered by such filing to deliver financial statements and a Narrative Report. The obligations referred to in Sections 5.1(a) and 5.1(b) may be satisfied with respect to financial information of the Borrower and the Subsidiaries by furnishing (A) the applicable financial statements of any Parent of the Borrower or (B) any such Parent's Form 10-K or 10-Q, as applicable, filed with the SEC (and the public filing of such report with the SEC will constitute delivery under this Section 5.1); *provided* that with respect to each of the preceding clauses (A) and (B), (1) if and so long as such Parent has no material independent operations, such information is accompanied by consolidating information that need not be audited and that explains in reasonable detail the differences between the information relating to such Parent and its assets and operations, on the one hand, and the information relating to the Borrower and the Subsidiaries on a stand-alone basis, on the other hand, and (2) to the extent such information is in lieu of information required to be provided under Section 5.1(a) such materials are accompanied by a report and opinion of independent registered public accounting firm of nationally or regionally recognized standing or another accounting firm reasonably acceptable to the Administrative Agent, which report and opinion (I) will be prepared in accordance with generally accepted auditing standards and (II) will not be subject to any qualification as to the scope of such audit or be subject to any explanatory statement as to the Borrower's ability to continue as a "going concern" or like qualification (other than with respect to (i) an upcoming maturity of the Term Loans or the Revolving Loans or (ii) any actual or anticipated inability to satisfy the Financial Covenants).

Any financial statements required to be delivered pursuant to Sections 5.1(a) or 5.1(b) will not be required to contain purchase accounting adjustments relating to the Transactions or any other transaction(s) permitted hereunder (including Permitted Acquisitions or other Investments permitted under Section 6.6) to the extent it is not practicable to include any such adjustments in such financial statements.

Notwithstanding anything to the contrary in any Credit Document, neither the Borrower nor any of its Subsidiaries will be required to deliver or disclose to the Administrative Agent or any Lender any financial information or data (i) that constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure is prohibited by applicable Laws, (iii) that is subject to bona fide attorney client or similar privilege or constitutes attorney work product or (iv) the disclosure of which is prohibited by binding agreements not entered into primarily for the purpose of qualifying for the exclusion in this clause (iv); *provided* the foregoing will not limit the Borrower's obligation to deliver financial statements or forecasts pursuant to Section 5.1(a), 5.1(b) and 5.1(k).

Borrower hereby authorizes the Administrative Agent to make the financial statements to be provided under Section 5.1(a) and 5.1(b) above, along with the Credit Documents, available to Public Lenders. The Borrower will not request that any other material be posted to Public Lenders without expressly representing and warranting to the Administrative Agent in writing that (A) such materials do not constitute material non-public information within the meaning of the federal securities laws ("**MNPI**") or that (B)(i) each of the Borrower, its Parent (if any) and each of their respective subsidiaries has no outstanding publicly traded securities, and (ii) if at any time the Borrower, its Parent (if any) or any of their respective subsidiaries issues publicly traded securities then prior to the issuance of such securities, the Borrower will make such materials that do constitute MNPI publicly available by press release or public filing with the Securities and Exchange Commission.

5.2 Existence. Except as otherwise permitted under Section 6.8, each Credit Party will, and will cause each of its Subsidiaries to, at all times preserve and keep in full force and effect its existence and all rights and franchises, licenses and permits required by applicable Laws, in each case unless (other than with respect to the preservation of the existence of the Borrower) the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

5.3 Payment of Taxes. Except as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, the Borrower will, and will cause each Subsidiary to, pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all of its Taxes when due; *provided* that no such payment need be paid if the amount or validity thereof is currently being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as adequate reserve or other appropriate provisions, as may be required pursuant to GAAP, have been made therefor.

5.4 Maintenance of Properties. Except if the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and as otherwise permitted under Section 6.8, the Borrower will, and will cause each Subsidiary to, maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear excepted, all tangible properties used or useful in the business of such Person and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof, and prosecute, protect, defend, preserve, maintain, renew and enforce all Intellectual Property (except to the extent the Borrower reasonably determines in good faith in consultation with the Administrative Agent that (a) such actions are not necessary or (b) the cost of such actions is excessive in relation to the value of such Intellectual Property).

5.5 Insurance. The Borrower will maintain or cause to be maintained, with financially sound and reputable unaffiliated insurers, such liability insurance, third party property damage insurance, business interruption insurance and casualty insurance with respect to liabilities, losses or damage in respect of the assets, properties and businesses of the Borrower and the Subsidiaries as may customarily (in the reasonable determination of the Borrower) be carried or maintained under similar circumstances by Persons engaged in similar businesses, in each case, in such amounts (giving effect to self-insurance), with such deductibles, covering such risks and otherwise on such terms and conditions as may be customary for such Persons. Without limiting the generality of the foregoing, the Borrower will maintain or cause to be maintained (a) with respect

to each Flood Hazard Property, (i) flood insurance in an amount and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws, and (ii) deliver to the Administrative Agent evidence of such compliance in form and substance reasonably acceptable to the Administrative Agent, including, without limitation, evidence of annual renewals of such insurance, and (b) replacement value casualty insurance on the Collateral under such policies of insurance, with such insurance companies, in such amounts, with such deductibles, and covering such risks as are at all times customary (in the reasonable determination of the Borrower) carried or maintained under similar circumstances by Persons engaged in similar businesses. Subject to Section 5.15, each such policy of insurance will, (i) in the case of liability insurance, name the Collateral Agent, on behalf of the Secured Parties, as an additional insured thereunder as its interests may appear and (ii) in the case of each casualty insurance policy, contain a lender loss payable clause or endorsement that names the Collateral Agent, on behalf of the Secured Parties, as the lender loss payee thereunder for any covered loss. The Borrower will use commercially reasonable efforts to cause such policy of insurance to provide for at least 10 days' prior written notice to the Collateral Agent of any modification or cancellation of the policy. To the extent that the requirements of this Section 5.5 are not satisfied on the Closing Date, the Borrower may satisfy such requirements within ninety (90) days after the Closing Date (as extended by the Administrative Agent in its reasonable discretion).

5.6 Books and Records; Inspections. Each Credit Party will, and the Borrower will cause its Subsidiaries to, keep proper books of record and accounts in which full, true and correct entries will be made of all material dealings and transactions in relation to its business and activities. Subject to the second to last paragraph of Section 5.1, each Credit Party will, and the Borrower will cause its Subsidiaries to, permit the Administrative Agent and any Lender and their respective authorized representatives to visit and inspect any of the properties of such Person, to inspect, copy and take extracts from its and their financial and accounting records, and to discuss its and their affairs, finances and accounts with its and their officers and independent public accountants, all upon reasonable notice and at such reasonable times during normal business hours and as often as may reasonably be requested; *provided* that (a) unless an Event of Default has occurred and is continuing, only the Administrative Agent on behalf of the Lenders may exercise rights under this Section 5.6, and the exercise of such rights by the Administrative Agent may only be done once per calendar year and such visit shall be at the Borrower's expense and (b) in respect of any such discussions with any independent accountants, the Borrower or such Subsidiary, as the case may be, must receive reasonable advance notice thereof and a reasonable opportunity to participate therein and such discussions will be subject to the execution of any indemnity, non-reliance letter or other than requirements of such accountants.

5.7 Compliance with Laws. The Borrower will comply, and will cause the Subsidiaries to comply, with the requirements of all applicable Laws, rules, regulations and orders of any Governmental Authority (including all Environmental Laws, ERISA, FCPA, OFAC, PATRIOT Act and anti-money laundering Laws), noncompliance with which could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

5.8 Compliance with Anti-Terrorism Laws, **Anti-Corruption Laws and Beneficial Ownership Regulation**. The Borrower will, within 90 days of the date of this Agreement (or such longer period as reasonably agreed by the Administrative Agent), amend and will thereafter maintain in effect, policies, procedures and internal controls reasonably designed to achieve

compliance by the Borrower, the Subsidiaries, and their respective directors, officers, and employees with applicable Anti-Terrorism Laws and Anti-Corruption Laws. The Borrower will (a) concurrently with the delivery of the annual financial statements pursuant to Section 5.1(a) and (b), notify the Administrative Agent (which shall provide a copy of such notification to the Lenders) of any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified in such certification since the later of the date of such Beneficial Ownership Certification or the most recent list provided and (b) promptly upon the reasonable request of the Administrative Agent or any Lender, provide the Administrative Agent or directly to such Lender, as the case may be, any information or documentation requested by it for purposes of complying with the Beneficial Ownership Regulation.

5.9 Environmental.

(a) Environmental Disclosure. The Borrower will deliver to the Administrative Agent:

(i) *Audits, Etc.* As soon as reasonably practicable following receipt thereof, copies of all environmental audits, investigations, analyses and reports of any kind or character, whether prepared by personnel of the Borrower or any Subsidiary or by independent consultants, governmental authorities or any other Persons, with respect to environmental matters at any Facility or which relate to any Environmental Claims against the Borrower or Subsidiary, which, in the case of any such environmental matter or Environmental Claim could reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect;

(ii) *Releases, Etc.* Promptly upon the occurrence thereof, written notice describing in reasonable detail (A) any Release required to be reported to any federal, state or local governmental or regulatory agency under any applicable Environmental Laws that could reasonably be expected to result in a Material Adverse Effect, (B) any Remedial Action taken by the Borrower or any other Person in response to (1) any Hazardous Materials Activities the existence of which could reasonably be expected to result in one or more Environmental Claims against the Borrower or any Subsidiary resulting in, individually or in the aggregate, a Material Adverse Effect, or (2) any Environmental Claims against the Borrower or any Subsidiary that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, and (C) the Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of any then current Facility that could reasonably be expected to cause such Facility or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use thereof under any Environmental Laws that could reasonably be expected to result in a Material Adverse Effect; and

(iii) *Claims, Etc.* As soon as practicable following the sending or receipt thereof by the Borrower or any Subsidiary, a copy of any and all material written communications with respect to (A) any Environmental Claims against the Borrower or any Subsidiary that, individually or in the aggregate, could reasonably

be expected to result in a Material Adverse Effect, (B) any Release that could require Remedial Action by the Borrower or any Subsidiary that is required to be reported to any federal, state or local governmental or regulatory agency that could reasonably be expected to result in a Material Adverse Effect, and (C) any request for information from any governmental agency that suggests such agency is investigating whether the Borrower or any Subsidiary may be potentially responsible for any Hazardous Materials Activity that could reasonably be expected to result in a Material Adverse Effect.

(b) Hazardous Materials Activities, Etc. The Borrower will promptly take, and will cause each of its Subsidiaries promptly to take, any and all reasonable actions necessary to (i) cure any violation of applicable Environmental Laws by such Credit Party or such Subsidiaries that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and (ii) make an appropriate response to any Environmental Claim against the Borrower or any Subsidiary and discharge any obligations it may have to any Person thereunder where failure to do so could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

5.10 Subsidiaries.

(a) In the event that any Person becomes a Subsidiary of the Borrower, such Person will be deemed to be a Subsidiary hereunder until such time as the Borrower has designated such Subsidiary as an Unrestricted Subsidiary in accordance with the terms hereof.

(b) In the event that any Person becomes a Subsidiary (other than an Excluded Subsidiary), the Borrower will, within 60 days (or such longer time as the Administrative Agent may agree in its sole discretion):

(i) cause such Subsidiary to become a Guarantor hereunder and a Grantor under the Pledge and Security Agreement by executing and delivering to the Administrative Agent and the Collateral Agent a Counterpart Agreement and such other Collateral Documents as may be reasonably requested by the Collateral Agent and take and cause such Subsidiary to take such actions as are required by the Collateral Documents or are reasonably requested (subject to the provisions of Section 7.3 of the Pledge and Security Agreement) by the Collateral Agent to perfect the security interests created by the Collateral Documents;

(ii) upon reasonable request by the Administrative Agent, take all such actions and execute and deliver, or cause to be executed and delivered, all appropriate resolutions, secretary certificates, certified Organizational Documents and customary legal opinions relating to the matters described in this Section 5.10(b); and

(iii) deliver to the Administrative Agent a supplement to Schedule 4.2, which will be deemed to supplement Schedule 4.2, for all purposes hereof.

(c) In the event that any Person becomes a Foreign Subsidiary or a Foreign Subsidiary Holding Company of the Borrower, and the ownership interests of such Foreign

Subsidiary or Foreign Subsidiary Holding Company are owned by the Borrower or by any Guarantor Subsidiary, the Borrower will, or will cause such Subsidiary to (in the absence of any other applicable limitation hereunder), within 60 days (or such longer time as the Administrative Agent may agree in its sole discretion), deliver (subject to the provisions of Section 7.3 of the Pledge and Security Agreement) all such applicable documents, instruments and agreements necessary in the reasonable determination of the Administrative Agent to grant to the Collateral Agent a perfected Lien in such ownership interests in favor of the Collateral Agent, for the benefit of the Secured Parties, under the Pledge and Security Agreement; *provided* that in no event will (x) more than 65.0% of the Voting Capital Stock of any first-tier Foreign Subsidiary or first-tier Foreign Subsidiary Holding Company or (y) any Capital Stock owned directly or indirectly by any Foreign Subsidiary or Foreign Subsidiary Holding Company, in each case be required to be delivered or granted or perfected as a Lien for the benefit of the Secured Parties; *provided further,* that in no event will the Borrower or any Subsidiary be required to execute any document, instrument or agreement, complete any filing or take any other action (i) with respect to the perfection of the Collateral Agent's security interest in such ownership interests in any jurisdiction outside of the United States or any State thereof or (ii) that would violate applicable Law.

5.11 Material Real Estate Assets. In the event that any Credit Party acquires a Material Real Estate Asset or an Executive Officer of the Borrower discovers that a Real Estate Asset owned on the Closing Date becomes a Material Real Estate Asset and such interest has not otherwise been made subject to the Lien of the Collateral Documents in favor of the Collateral Agent, for the benefit of the Secured Parties, then such Credit Party, no later than ninety (90) days (or such later date agreed to by the Administrative Agent) following the acquisition of such Material Real Estate Asset or such discovery, will take all such actions and execute and deliver, or cause to be executed and delivered, all such applicable Mortgages (in form and substance reasonably acceptable to the Borrower and Administrative Agent), endorsements to title insurance policies (to the extent available in the applicable jurisdiction and such title insurance policies shall be in an amount not to exceed the fair market value (determined in good faith by the Borrower) of the Material Real Estate Asset covered thereby), appraisals (only to the extent required by law), Phase I environmental assessments, A. L. T. A. survey plans (but new or updated surveys will not be required if an existing survey is available or zip map, express map or similar map is available in the applicable jurisdiction and, in either case, survey coverage is available for the title insurance policies without the need for such new or updated surveys and provided further this foregoing requirement shall only be in connection with any Material Real Estate Asset located in the United States), flood determination certificates, customary local counsel opinions and certificates that the Administrative Agent will, in each case, reasonably request to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a valid and perfected security interest in such Material Real Estate Assets. Notwithstanding the foregoing, the parties hereto acknowledge and agree that at least twenty (20) days prior to the execution and delivery of any Mortgage, the Lenders shall have received (which may be via electronic delivery) all flood determination certifications, acknowledgements and evidence of flood insurance and other flood-related documentation with respect to such Material Real Estate Asset reasonably sufficient to evidence compliance with Flood Insurance Laws.

5.12 Further Assurances. At any time or from time to time upon the request of the Administrative Agent, each Credit Party will, at its expense, promptly execute, acknowledge and deliver such further documents and do such other acts and things as the Administrative Agent or

the Collateral Agent may reasonably request in order to effect fully the purposes of the Credit Documents. In furtherance and not in limitation of the foregoing, each Credit Party will take such actions as the Administrative Agent or the Collateral Agent may reasonably request from time to time to ensure that the Obligations are guaranteed by the Guarantors and are secured by the Collateral, including all of the outstanding Capital Stock of the Borrower and each Subsidiary to the extent constituting Collateral.

5.13 Designation of Subsidiaries and Unrestricted Subsidiaries. The Borrower may designate a Subsidiary as an Unrestricted Subsidiary or re-designate an Unrestricted Subsidiary as a Subsidiary, in each case, so long as immediately before and after giving effect to such designation or re-designation, (a) no Event of Default will have occurred and be continuing and (b) the Borrower and its Subsidiaries are in Pro Forma compliance with the Financial Covenants set forth in Section 6.7 hereto and, as a condition precedent to the effectiveness of any such designation, the Borrower shall deliver to the Administrative Agent a certificate setting forth in reasonable detail the calculations demonstrating such compliance. No Unrestricted Subsidiary may own any Capital Stock or Indebtedness of, or hold any Lien on any property of, Borrower or any Subsidiary; *provided* that for the avoidance of doubt, any Unrestricted Subsidiary may own Capital Stock or Indebtedness of, or hold a Lien on any property of, any other Unrestricted Subsidiary.

5.14 Use of Proceeds. All proceeds of the Term Loans, the Revolving Loans and the Swing Line Loans will be used in accordance with Section 2.6 (including that no part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that would entail a violation of Regulation T, Regulation U or Regulation X).

5.15 Post-Closing Matters. The Borrower will, and will cause each Subsidiary to, take each of the actions set forth on Schedule 5.15 within the time period prescribed therefor on such schedule (as such time period may be extended by the Administrative Agent).

6. NEGATIVE COVENANTS

The Borrower and each Guarantor Subsidiary covenants and agrees that so long as the Commitments have not been terminated and until the principal of and interest on each Loan, all fees and all other expenses or amounts payable under any Credit Document (other than amounts in respect of indemnification, expense reimbursement, yield protection or tax gross-up and contingent obligations, in each case that are not then owing or with respect to which no claim has been made) have been paid in full and all Letters of Credit have been cancelled, or have expired or have been cash collateralized or otherwise backstopped in a manner satisfactory to the applicable Issuing Bank and all amounts drawn thereunder have been reimbursed in full, it will perform, and the Borrower will cause each Subsidiary to perform (to the extent applicable to such Subsidiary), all covenants in this Section 6.

6.1 Indebtedness. The Borrower will not, nor will it permit any Subsidiary to, directly or indirectly, create, incur, assume or guaranty, or otherwise become directly or indirectly liable with respect to any Indebtedness, except:

(a) the Obligations (including Incremental Term Facilities, Refinancing Term Loans, Extended Term Loans, all obligations arising under any Secured Rate Contract and all Bank Product Obligations, in each case to the extent constituting Obligations);

(b) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business;

(c) Indebtedness of the Borrower or any Subsidiary described on Schedule 6.1 in existence on the Closing Date;

(d) Indebtedness of the Borrower or any Subsidiary with respect to Finance Leases and Purchase Money Indebtedness in an aggregate amount at any time outstanding not to exceed the greater of (1) $12,500,000 and (2) an amount equal to 16% of TTM Consolidated Adjusted EBITDA of the Borrower on a Pro Forma Basis as of the applicable date of determination, in each case determined at the time of incurrence (but not any refinancings thereof); *provided* that (i) such Indebtedness is issued and any Liens securing such Indebtedness are created within 365 days after the acquisition, construction, lease or improvement of the asset financed and (ii) any such Indebtedness is secured only by the asset acquired, constructed, leased or improved in connection with the incurrence of such Indebtedness or proceeds thereof and related property; *provided further,* that individual financings provided by a lender or group of lenders may be cross collateralized to other financings provided by such lender or group;

(e) Indebtedness in respect of Rate Contracts entered into for non-speculative purposes;

(f) Indebtedness of any Subsidiary owing to the Borrower or to any other Subsidiary, or of the Borrower owing to any Subsidiary; *provided* that (i) all such Indebtedness owed by a Credit Party to a Non-Credit Party is subject to the Intercompany Subordination Agreement and (ii) in the case of any Indebtedness of any such Subsidiary that is not a Guarantor Subsidiary owing to the Borrower or Guarantor Subsidiary, such Indebtedness is permitted under Section 6.6;

(g) Incremental Equivalent Debt;

(h) Credit Agreement Refinancing Indebtedness that does not constitute Obligations;

(i) Permitted Ratio Debt;

(j) Contribution Indebtedness;

(k) Indebtedness of a Person or Indebtedness attaching to assets of a Person that, in either case, becomes a Subsidiary, or Indebtedness attaching solely to assets that are acquired by the Borrower or any Subsidiary, in each case after the Closing Date; *provided* that (i) such Indebtedness existed at the time such Person became a Subsidiary or at the time such assets were acquired and, in each case, was not created in anticipation or contemplation thereof, (ii) such and Indebtedness is not guaranteed by the Borrower or any Subsidiary (other than by any Person that becomes a Subsidiary in connection with the foregoing and its Subsidiaries), and (iii) after giving effect thereto, the Borrower and its Subsidiaries are in Pro Forma compliance with the Financial Covenants set forth in Section 6.7;

(l) Indebtedness incurred by the Borrower or any Subsidiary in the form of indemnification, incentive, non-compete, consulting, adjustment of purchase price or similar obligations (including "earn-outs" or similar obligations in connection with acquisitions) and other contingent obligations (other than in respect of Indebtedness for borrowed money of another Person), or guaranty securing the performance of the Borrower or any Subsidiary (both before and after liability associated therewith becomes fixed), in each case, incurred or assumed pursuant to any agreement entered into in connection with dispositions or acquisitions (including Permitted Acquisitions and other permitted Investments) of any business, assets or Subsidiary;

(m) Indebtedness pursuant to any guaranties, performance, surety, statutory, appeal or similar bonds or obligations incurred in the ordinary course of business or any bankers' acceptance, bank guarantees, letter of credit, warehouse receipt or similar facilities (including in respect of workers compensation claims, deferred compensation, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims) or tenant improvement loans incurred in the ordinary course of business;

(n) guaranties of the obligations of suppliers, customers, franchisees, lessors and licensees of the Borrower or any Subsidiary incurred in the ordinary course of business;

(o) Indebtedness in respect of letters of credit, bank guarantees and similar obligations issued for the account of the Borrower or any Subsidiary in the ordinary course of business;

(p) Indebtedness of the Borrower or any Subsidiary in connection with Bank Products incurred in the ordinary course of business;

(q) Indebtedness (x) in connection with the financing of insurance premiums in the ordinary course of business or (y) consisting of take or pay obligations contained in supply arrangements incurred in the ordinary course of business or consistent with past practice;

(r) Indebtedness by and among the Borrower and any Subsidiary in connection with a Permitted Reorganization or Permitted IPO Reorganization; *provided* that all such Indebtedness owed by a Credit Party to a Non-Credit Party is subject to the Intercompany Subordination Agreement;

(s) to the extent constituting Indebtedness, Investments permitted under Section 6.6 (other than under Section 6.6(n) or 6.6(q));

(t) additional Indebtedness of Non-Credit Parties in an aggregate principal amount not to exceed the greater of (1) $10,000,000 and (2) an amount equal to 13% of TTM Consolidated Adjusted EBITDA of the Borrower on a Pro Forma Basis as of the applicable date of determination;

(u) Indebtedness incurred in connection with deferred compensation or stock-based compensation, in each case to the extent incurred in the ordinary course of business or in connection with a Permitted Acquisition or similar Investment;

(v) Indebtedness consisting of promissory notes issued by the Borrower or any Subsidiary to current or former officers, managers, consultants, directors and employees (or their respective spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees) to finance the purchase or redemption of Capital Stock or securities convertible into Capital Stock of the Borrower or any Parent thereof permitted pursuant to Section 6.4(c);

(w) the incurrence by the Borrower or any Subsidiary of Indebtedness constituting a Permitted Refinancing in exchange for, or the net proceeds of which are used to renew, refund, refinance, replace, defease or discharge any Indebtedness (other than intercompany Indebtedness) that was permitted to be incurred under clause (c), (d), (g), (h), (i), (j), (k), (t) or (y) of this Section 6.1;

(x) (i) guaranties by the Borrower of Indebtedness of a Guarantor Subsidiary, (ii) guaranties by any Subsidiary of Indebtedness of the Borrower or any Guarantor Subsidiary, or (iii) guaranties by the Borrower or any Guarantor Subsidiary of Indebtedness of any Subsidiary that is not a Credit Party and that would have been permitted as an Investment by the Borrower or any Guarantor Subsidiary in such Subsidiary pursuant to Section 6.6, with respect, in each case, to Indebtedness otherwise permitted to be incurred pursuant to this Section 6.1; *provided* that if the Indebtedness that is being guarantied is unsecured and/or Subordinated Debt, the guaranty will also be unsecured and/or be expressly subordinated in right of payment to the Obligations;

(y) additional Indebtedness of the Borrower or any Subsidiary in an aggregate principal amount, not to exceed the greater of (1) $12,500,000 and (2) an amount equal to 16% of TTM Consolidated Adjusted EBITDA of the Borrower on a Pro Forma Basis as of the applicable date of determination;

(z) Indebtedness representing any taxes, assessments or governmental charges to the extent (i) such taxes, assessments or governmental charges are being contested in good faith and adequate reserves have been provided therefor or (ii) that payment thereof shall not at any time be required to be made in accordance with Section 5.3; and

(aa) Indebtedness arising as a direct result of judgments, in each case to the extent not constituting an Event of Default;

provided that, the aggregate principal amount of Indebtedness of Non-Credit Parties incurred in reliance on any clause of this Section 6.1 (other than Section 6.1(f)) will not exceed, at any one time outstanding, the greater of (1) $20,000,000 and (2) an amount equal to 26% of TTM Consolidated Adjusted EBITDA of the Borrower on a Pro Forma Basis as of the applicable date of determination, and Permitted Refinancings of the foregoing.

For purposes of determining compliance with this Section 6.1:

(1) the principal amount in Indebtedness outstanding under any clause of this Section 6.1 will be determined after giving effect to the application of proceeds of any such Indebtedness to refinance any such other Indebtedness;

(2) guarantees of, or obligations in respect of letters of credit relating to, Indebtedness that is otherwise permitted will not be included in the determination of such amount of Indebtedness.

(3) (i) the accrual of interest, the accretion of accreted value, the accretion or amortization of original issue discount and the payment of interest in the form of additional Indebtedness, (ii) the payment of premiums, fees, expenses, charges and additional or contingent interest on obligations and (iii) increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies, in each case, will not be deemed to be an incurrence of Indebtedness;

(4) for purposes of determining compliance with any Cap on the incurrence of Indebtedness, the Dollar equivalent principal amount of Indebtedness denominated in a foreign currency will be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed or first incurred (whichever yields the lower Dollar equivalent), in the case of revolving credit debt; *provided* that if such Indebtedness is issued to refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable Dollar denominated Cap to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such Dollar denominated Cap will be deemed not to have been exceeded so long as the principal amount of such Refinancing Indebtedness does not exceed (i) the principal amount of such Indebtedness being refinanced ***plus*** (ii) the aggregate amount of accrued but unpaid interest, fees, underwriting discounts, defeasance costs, premiums (including tender premiums) and other costs and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with such refinancing;

(5) the principal amount of any Indebtedness incurred to refinance other Indebtedness, if incurred in a different currency from the Indebtedness being refinanced, will be calculated based on the currency exchange rate applicable to the currencies in which such respective Indebtedness is denominated that is in effect on the date of such refinancing. The principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date will be the principal amount thereof that would be shown on a balance sheet of the Borrower dated such date prepared in accordance with GAAP;

(6) in the event that an item of Indebtedness (or any portion thereof) meets the criteria of more than one of the clauses of this Section 6.1, the Borrower may, in its sole discretion, at the time of incurrence, divide, classify or reclassify, or at any later time divide, classify or reclassify, such item of Indebtedness (or any portion thereof) in any manner that complies with this covenant; *provided* that (x) all Indebtedness created pursuant to the Credit Documents will be deemed to have been incurred in reliance on the exception in clause (a) above and shall not be permitted to be reclassified pursuant to this paragraph, (y) Indebtedness may be reclassified pursuant to this paragraph to clause (g) or (i) above or otherwise in a manner that would reclassify such Indebtedness as having been incurred in reliance on any calculation of the First Lien Net Leverage Ratio, Secured Net Leverage Ratio or Total Net Leverage Ratio tests described above (and, for the avoidance of doubt, if the Borrower or any Subsidiary incurs Indebtedness using a ratio-based test on the same date that it incurs Indebtedness under any Dollar-based Cap (or substantially concurrently with the incurrence of Indebtedness under any Dollar-based Cap), then the ratio-based test will be calculated with respect to such incurrence under the ratio-based test without

regard to any incurrence of Indebtedness under the Dollar-based Cap) and (z) the reclassification described in the preceding clause (y) shall be deemed to have automatically occurred if the applicable First Lien Net Leverage Ratio, Secured Net Leverage Ratio or Total Net Leverage Ratio test is satisfied on a Pro Forma Basis as of the end of any Fiscal Quarter after the incurrence of the relevant amount; and

(7) in the case of any Permitted Refinancing of Indebtedness, (x) the original amount of Refinanced Indebtedness (including with respect to successive Permitted Refinancings) will continue to be considered to have been incurred under the clause of this Section 6.1 in reliance on which such Refinanced Indebtedness was initially incurred (or to which such Refinanced Indebtedness at such time has been classified, as applicable), and (y) if Refinanced Indebtedness was initially incurred in reliance on (or at such time has been classified to, as applicable) a clause of this Section 6.1 that is subject to a Cap, and such Permitted Refinancing would cause such Cap to be exceeded, then such Cap will be deemed not to be exceeded to the extent that the aggregate principal amount of the Refinancing Indebtedness incurred to replace the Refinanced Indebtedness does not exceed the Maximum Refinancing Amount.

6.2 Liens. The Borrower will not, nor will it permit any Subsidiary to, directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to any of its property or assets (including any document or instrument in respect of goods or accounts receivable) of the Borrower or any Subsidiary, whether now owned or hereafter acquired, or any income or profits therefrom, except the following (collectively, "**Permitted Liens**"):

(a) Liens securing the Obligations (including Incremental Facilities, Refinancing Commitments, Refinancing Loans, Extended Revolving Credit Commitments, Extended Term Loans, and all obligations arising under any Secured Rate Contract and all Bank Product Obligations, in each case to the extent constituting Obligations);

(b) [reserved];

(c) Liens described on Schedule 6.2 in existence on the Closing Date, including the replacement, extension or renewal of any such Lien upon or in the same property subject thereto (including, if such Lien secures Indebtedness described on Schedule 6.2, Liens securing any Permitted Refinancing thereof);

(d) Liens securing Indebtedness in respect of Finance Leases and Purchase Money Indebtedness, in each case permitted pursuant to Section 6.1(d), and Permitted Refinancings thereof;

(e) Liens granted to (and in favor of) a Credit Party;

(f) Liens on the Collateral securing (i) Incremental Equivalent Debt, (ii) Credit Agreement Refinancing Indebtedness or (iii) Permitted Ratio Debt permitted under Sections 6.1(g), (h) or (i), respectively, and Permitted Refinancings thereof;

(g) Liens on assets acquired, or on assets of a Person that is acquired, securing Indebtedness permitted pursuant to Section 6.1(k) *(provided* that such (i) Liens were existing at the time of such acquisition and were not created in anticipation or contemplation of such acquisition and (ii) do not extend to property not subject to such Liens at the time of such acquisition (other than improvements thereon); and Permitted Refinancings thereof;

(h) Liens (x) solely on any cash earnest money deposits made by the Borrower or any Subsidiary in connection with any letter of intent or purchase agreement permitted hereunder or (y) consisting of an agreement to dispose of any property pursuant to a disposition permitted hereunder;

(i) Liens of landlords, carriers, warehousemen, mechanics, repairmen, lessors, workmen and materialmen, and other Liens imposed by law (other than any such Lien imposed pursuant to Section 430(k) of the Internal Revenue Code or by Section 303(k) or 4068 of ERISA), in each case incurred in the ordinary course of business overdue for a period of more than forty-five (45) days or, if more than forty-five (45) days overdue, are unfiled and no other action has been taken to enforce such Lien or that are being contested in good faith and by appropriate actions, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(j) Liens for Taxes not yet due or to the extent the Borrower and the Subsidiaries are in compliance with Section 5.3 with respect thereto;

(k) deposits and other Liens to secure the performance of (i) tenders, bids, trade contracts, governmental contracts, trade contracts, performance and return-of-money bonds and other similar contracts (other than obligations for the payment of Indebtedness for borrowed money) and (ii) leases, subleases, statutory obligations, surety, stay, judgment and appeal bonds, performance bonds and other obligations of a like nature, in each case incurred in the ordinary course of business;

(l) Liens incurred by the Borrower or any Subsidiary in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security;

(m) Liens created in the ordinary course of business on deposits to secure liability for premiums to insurance carriers or securing insurance premium financing arrangements;

(n) (i) Liens that are contractual or common law rights of set-off or rights of pledge relating to (A) the establishment of depository relations in the ordinary course of business with banks or other deposit-taking financial institutions not given in connection with the incurrence of Indebtedness or (B) pooled deposit or sweep accounts of the Borrower or any Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower and the Subsidiaries, or (C) purchase orders and other agreements entered into with customers of the Borrower or any Subsidiary in the ordinary course of business or consistent with past practice and (ii) Liens securing cash management obligations (that do not constitute Indebtedness) and obligations in respect of Bank Products incurred in the ordinary course of business;

(o) Liens (i) of a collection bank arising under Section 4-208 or 4-210 of the Uniform Commercial Code on the items in the course of collection, (ii) encumbering reasonable

customary initial deposits and margin deposits, (iii) attaching to commodity trading accounts or other commodities brokerage accounts incurred in the ordinary course of business or consistent with past practice and not for speculative purposes and (iv) in favor of a banking or other financial institution arising as a matter of law encumbering deposits or other funds maintained with a financial institution (including the right of set-off) and that are within the general parameters customary in the banking industry;

(p) possessory Liens in favor of brokers and dealers arising in connection with the acquisition or disposition of Investments owned as of the Closing Date and in connection with Investments not otherwise prohibited by this Agreement; *provided* that such Liens (i) attach only to such Investments and (ii) secure only obligations incurred in the ordinary course and arising in connection with the acquisition or disposition of such Investments and not any obligation in connection with margin financing or otherwise;

(q) easements, rights-of-way, restrictions (including zoning restrictions), encroachments, protrusions, and other similar charges, encumbrances and other minor defects or irregularities in title, in each case which do not and will not interfere in any material respect with the ordinary conduct of the business of the Borrower or any Subsidiary;

(r) any zoning or similar law or right reserved to or vested in any governmental office or agency to control or regulate the use of any real property;

(s) any interest or title of a lessor or sublessor under any lease of real estate permitted hereunder;

(t) leases, licenses, subleases or sublicenses granted to others in the ordinary course of business or consistent with past practice (or other agreement under which the Borrower or any Subsidiary has granted rights to end users to access and use the Borrower's or any Subsidiary's products, technologies, facilities or services) which do not (x) interfere in any material respect with the business of the Borrower and the Subsidiaries, taken as a whole, or (y) secure any Indebtedness;

(u) non-exclusive outbound licenses or sub-licenses of Intellectual Property rights granted by the Borrower or any Subsidiary in the ordinary course of business;

(v) Liens arising in connection with conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by the Borrower or any Subsidiary in the ordinary course of business permitted by this Agreement, purchase orders and other agreements entered into with customers of the Borrower or any Subsidiary in the ordinary course of business;

(w) purported Liens (i) evidenced by the filing of precautionary financing statements relating solely to operating leases of personal property entered into in the ordinary course of business or (ii) arising from equipment or other materials which are not owned by the Borrower or any Guarantor Subsidiary located on the premises of the Borrower or a Guarantor Subsidiary (but not in connection with, or as part of, the financing thereof) from time to time in the ordinary course of business and consistent with current practices of the Borrower and the Guarantor Subsidiaries and precautionary financing statement filings in respect thereof;

(x) Liens on cash or Cash Equivalents used to defease or to satisfy and discharge Indebtedness; *provided* that such defeasance or satisfaction and discharge is not prohibited hereunder;

(y) trustees' Liens granted pursuant to any indenture governing any Indebtedness not otherwise prohibited by this Agreement in favor of the trustee under such indenture and securing only obligations to pay compensation to such trustee, to reimburse such trustee of its expenses and to indemnify such trustee under the terms of such indenture;

(z) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods and Liens on specific items of inventory or other goods and proceeds thereof of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit permitted under Section 6.1 issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods in the ordinary course of business;

(aa) Liens on Capital Stock in Joint Ventures securing obligations of such Joint Venture;

(bb) judgment Liens not constituting an Event of Default under Section 8.1(h);

(cc) Liens securing letters of credit or cash collateralization (which includes Liens over both the applicable cash or Cash Equivalents and the accounts into which the same are deposited) of letters of credit, in each case issued for the account of the Borrower or any Subsidiary in the ordinary course of business;

(dd) Liens on specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(ee) Liens securing Indebtedness and/or other obligations of, or on assets of, Subsidiaries that are not Credit Parties, to the extent such Indebtedness was permitted to be incurred under Section 6.1; and

(ff) Liens securing obligations, including Indebtedness, in an aggregate amount not to exceed, on the date such Liens are granted, the greater of (1) $12,500,000 and (2) an amount equal to 16% of TTM Consolidated Adjusted EBITDA of the Borrower on a Pro Forma Basis as of the applicable date of determination, and Permitted Refinancings thereof.

For purposes of determining compliance with this Section 6.2:

(1) the increase in the amount of any obligation secured by a Lien by virtue of (i) the accretion or amortization of original issue discount, (ii) the payment of interest, fees and other amounts in the form of Indebtedness, and (iii) as a result of fluctuations in the exchange rate of currencies, in each case will not be deemed to be an incurrence or existence of additional Liens;

(2) if any Liens securing obligations are incurred to refinance Liens securing obligations initially incurred in reliance on a clause of this Section 6.2 measured by a Cap, and

such refinancing would cause such Cap to be exceeded, then such clause will be deemed not to be exceeded to the extent that the aggregate principal amount of the new obligations incurred to replace such existing obligations does not exceed the Maximum Refinancing Amount; and

(3) in the event that any Lien (or any portion thereof) meets the criteria of more than one of the clauses of this Section 6.2, the Borrower may, in its sole discretion, at the time of incurrence, divide, classify or reclassify, or at any later time divide, classify or reclassify, such Lien (or any portion thereof) in any manner that complies with this covenant; *provided* that (x) all Liens created pursuant to the Credit Documents will be deemed on the Closing Date to have been incurred in reliance on the exception in clauses (a) or (f)(i) above and shall not be permitted to be reclassified pursuant to this paragraph, (y) Liens may be reclassified pursuant to this paragraph to clause (f) or (ff) above or otherwise in a manner that would reclassify such Liens as having been incurred in reliance on any calculation of the First Lien Net Leverage Ratio, Secured Net Leverage Ratio or Total Net Leverage Ratio tests described above (and, for the avoidance of doubt, if the Borrower or any Subsidiary incurs Liens using a ratio-based test on the same date that it incurs Liens under any Dollar-based Cap (or substantially concurrently with the incurrence of Liens under any Dollar-based Cap), then the ratio-based test will be calculated with respect to such incurrence under the ratio-based test without regard to any incurrence of Liens under the Dollar-based Cap) and (z) the reclassification described in the preceding clause (y) shall be deemed to have automatically occurred if the applicable First Lien Net Leverage Ratio, Secured Net Leverage Ratio or Total Net Leverage Ratio test is satisfied on a Pro Forma Basis as of the end of any Fiscal Quarter after the incurrence of the relevant amount.

6.3 No Further Negative Pledges. The Borrower will not, nor will it permit any Subsidiary to, enter into any agreement prohibiting the creation or assumption of any Lien upon any of its properties or assets, whether now owned or hereafter acquired, to secure the Obligations other than:

(a) specific property encumbered to secure payment of particular Indebtedness or to be sold pursuant to an executed agreement with respect to a permitted Asset Sale or other disposition described in the definition of “Asset Sale”;

(b) restrictions by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses, joint venture agreements, asset sale agreements, stock sale agreements and similar agreements entered into to the extent permitted hereunder; *provided* that such restrictions are limited to the property or assets secured by such Liens or the property or assets subject to such leases, licenses, joint venture agreements, asset sale agreements, stock sale agreements or similar agreements, as the case may be;

(c) [reserved];

(d) restrictions set forth in any document governing Incremental Equivalent Debt, Permitted Ratio Debt, Extended Term Loans and Credit Agreement Refinancing Indebtedness, in each case, so long as such restrictions do not restrict or otherwise impair the rights of the Agents, the Lenders or any other Secured Party under this Agreement or any other Credit Document or any refinancing thereof;

(e) restrictions under any subordination or intercreditor agreement reasonably acceptable to the Administrative Agent with respect to Indebtedness permitted under Section 6.1;

(f) restrictions on non-Guarantor Subsidiaries pursuant to Indebtedness permitted under Section 6.1;

(g) restrictions on Persons or property at the time such Person or property is acquired (including under Indebtedness permitted to be incurred pursuant to Section 6.1(k)); *provided* such restrictions were existing at the time of such acquisition and were not created in anticipation or contemplation thereof and are limited to the Person or property so acquired;

(h) restrictions on assets financed or acquired pursuant to Section 6.1(d) (to the extent such restrictions were not created in contemplation of such acquisition of assets and do not extend to any assets other than such assets so acquired except to the extent permitted by Section 6.1(d));

(i) restrictions that exist on the Closing Date and (to the extent not otherwise permitted by this Section 6.3) are listed on Schedule 6.3 hereto and to the extent such restrictions are set forth in an agreement evidencing Indebtedness, are set forth in any agreement evidencing any permitted modification, replacement, renewal, extension or refinancing of such Indebtedness so long as such modification, replacement, renewal, extension or refinancing does not expand the scope of such restrictions;

(j) apply by reason of any applicable Law, rule, regulation or order or are required by any Governmental Authority having jurisdiction over the Borrower or any Subsidiary;

(k) restrictions arise in connection with cash or other deposits permitted under Section 6.2;

(l) restrictions imposed by any agreement governing Indebtedness entered into after the Closing Date and permitted under Section 6.1 that are, taken as a whole, in the good faith judgment of the Borrower, not materially more restrictive with respect to the Borrower or any Subsidiary than customary market terms for Indebtedness of such type (and, in the case of any term indebtedness, are no more restrictive than the restrictions contained in this Agreement), so long as the Borrower shall have determined in good faith that such restrictions will not affect its obligation or ability to make any payments required or to provide security hereunder; and

(m) other restrictions or encumbrances imposed by any amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing of the contracts, instruments or obligations referred to in the preceding clauses of this Section; provided that no such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing is, in the good faith determination of the Borrower, materially more restrictive with respect to such encumbrances and other restrictions, taken as a whole, than those in effect prior to the relevant amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

6.4 Restricted Junior Payments. The Borrower will not, nor will it permit any Subsidiary to, directly or indirectly, pay or make any Restricted Junior Payment except:

(a) (i) payments to any member, partner or Parent of the Borrower or Affiliate thereof constituting Tax Payments and payments as are needed to pay any amounts owed under any customary tax sharing agreement or customary tax receivable agreement entered into in connection with a Permitted Tax Reorganization or a Permitted IPO Reorganization; and (ii) payments to any Parent of the Borrower or Affiliate thereof (A) to the extent necessary to permit such Parent or Affiliate to pay operating costs and expenses (including, following the consummation of a Qualifying IPO, Public Company Costs) of such Parent that does not own any Subsidiaries other than the Borrower, any Subsidiary and any other Parent of the Borrower incurred in the ordinary course of business and other corporate overhead costs and expenses (including administrative, legal, accounting and similar expenses provided by third parties), in each case which are reasonable and customary and incurred in the ordinary course of business, attributable to the ownership or operations of the Borrower and the Subsidiaries, (B) the proceeds of which shall be used to pay costs, fees and expenses (other than to Affiliates) related to any successful or unsuccessful equity or debt offering permitted by this Agreement, (C) the proceeds of which shall be used to pay customary salary, bonus and other benefits payable to officers and employees of such Parent to the extent such salaries, bonuses and other benefits are attributable to the ownership or operation of the Borrower and its Subsidiaries, or (D) the proceeds of which shall be used to pay franchise taxes and other fees, Taxes and expenses required to maintain any of such Parent's or Affiliate's corporate or legal existence; *provided* that (x) the aggregate payments pursuant to clause (a)(i) in respect of any taxable year shall not exceed the amount of Tax Payments that would have been payable as Tax Payments in respect of such taxable year had such Permitted Reorganization or a Permitted IPO Reorganization not occurred, and (y) the aggregate payments pursuant to clause (a)(ii) in any Fiscal Year shall not exceed the greater of (1) $5,000,000 and (2) an amount equal to 6% of TTM Consolidated Adjusted EBITDA of the Borrower on a Pro Forma Basis as of the applicable date of determination;

(b) payments of (or payments to any Parent of the Borrower to allow such Parent to pay) (i) indemnity and documented reimbursable expenses payable pursuant to any venture capital operating company management letters or in connection with board observer rights related to debt or equity financings the proceeds of which are contributed (whether in cash or other property or assets) to the Borrower and the Subsidiaries and (ii) reasonable director fees and reasonable out-of-pocket expenses of directors payable by such Parent thereof; *provided* that the aggregate payments pursuant to this clause (b) in any Fiscal Year shall not exceed the greater of (1) $3,000,000 and (2) an amount equal to 4% of TTM Consolidated Adjusted EBITDA of the Borrower on a Pro Forma Basis as of the applicable date of determination;

(c) (i) so long as no Event of Default has occurred and is continuing or would be caused thereby, the redemption or repurchase of (or payments to any Parent of the Borrower to enable such Parent to redeem or repurchase) Capital Stock from officers, directors, employees, advisors or consultants or their respective estates, trusts, family members or former spouses of any Credit Party or any of its Subsidiaries (or their Affiliates), upon termination of employment, in connection with the exercise of stock options, stock appreciation rights or other equity incentives or equity based incentives or in connection with the death or disability of such officers, directors, employees, advisors or consultants (or Affiliate), (ii) so long as no Event of Default has occurred and is continuing or would be caused thereby, payments by the Borrower or any Subsidiary (or payments to any Parent of the Borrower to enable such Parent) to pay amounts due to officers, directors, employees, advisors or consultants or their respective estates, trusts, family members or

former spouses of any Credit Party or any of its Subsidiaries (or their Affiliates) pursuant to the Borrower's profit interest plans or phantom profit interest plans; *provided* that in all such cases under clauses (i) and (ii) of this clause (c), the aggregate amount of such payments in respect of all such Capital Stock so redeemed or repurchased or amounts due (x) prior to a Qualifying IPO does not exceed $2,000,000 (with unused amounts in any Fiscal Year rolled over to the next two following Fiscal Years) and (y) after a Qualifying IPO does not exceed $3,000,000 (with unused amounts in an Fiscal Year rolled over to the next two following Fiscal Years), ***plus*** (A) an amount not to exceed the cash proceeds of key man life insurance policies received by the Borrower or any Subsidiary after the Closing Date, (B) the amount of net cash proceeds from the sale of Capital Stock of any Parent of the Borrower contributed to the Borrower (other than Disqualified Capital Stock) to officers, directors, employees, advisors or consultants, to the extent not otherwise used under this Agreement or applied to the Available Amount and (C) and the amount of any cash bonuses or other compensation otherwise payable to any future, present or former director, employee, consultant or distributor of Borrower, Subsidiary, any Parent of the Borrower that are foregone in return for the receipt of Capital Stock of any Parent of the Borrower; (iii) the cancellation of Indebtedness owing to a Credit Party from officers, directors, employees, advisors or consultants of a Credit Party or any of its Subsidiaries in connection with any repurchase of Capital Stock; and (iv) cashless repurchases of Capital Stock deemed to occur upon the exercise of stock options, warrants, settlements or vesting if such stock represents a portion of the exercise price thereof; *provided* that in all cases under clause (iii) of this clause (c), after giving effect thereto the Borrower and its Subsidiaries shall be in *Pro Forma* compliance with the Financial Covenants set forth in Section 6.7;

(d) payments in the form of Capital Stock of any Parent of the Borrower or in the form of proceeds of Capital Stock of, or contributions by, any Parent of the Borrower (other than Disqualified Capital Stock and to the extent not otherwise used under this Agreement or applied to the Available Amount);

(e) payments to any Parent of the Borrower for payments in lieu of the issuance of fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Capital Stock;

(f) (i) subject to the terms of any applicable subordination provisions, the Borrower or any Subsidiary may (A) make all regularly scheduled payments of principal, interest, fees and premiums and all payments of indemnities and expenses in respect of any Junior Financing when due, (B) pay customary closing, consent and similar fees related to any Junior Financing, (C) make mandatory prepayments, mandatory redemptions and mandatory purchases, in each case pursuant to the terms governing any Junior Financing as in effect on the date of incurrence or issuance (including in connection with a refinancing thereof) of such Junior Financing, (D) prepay Indebtedness (x) of the Borrower or any Subsidiary owed to the Borrower or any Guarantor Subsidiary, (y) of any Non-Credit Party owed to any Non-Credit Party or (z) of the Borrower or any Guarantor Subsidiary to any Non-Credit Party to the extent the amount of such prepayment is treated as an Investment in Non-Credit Parties and may be made in compliance with Section 6.6, (E) prepay or refinance any Junior Financing (including the payment of any premium in connection therewith) with the proceeds of any other Junior Financing otherwise permitted by Section 6.1 (including any Permitted Refinancing thereof and/or with the proceeds of any sale of or contribution to the Capital Stock of the Borrower) and (F) convert any Junior

Financing to Capital Stock (other than Disqualified Capital Stock) of the Borrower or any Parent of the Borrower, and (ii) after the fifth anniversary of the incurrence of any such Indebtedness, any payments necessary to prevent any such Indebtedness from being treated as "applicable high yield discount obligations" under Section 163(e)(5) or Section 163(i) of the Internal Revenue Code;

(g) the declaration and payment of any dividend or distribution by any Subsidiary on a ratable basis to its equity holders within sixty (60) days after the date of declaration thereof, if at the date of declaration such payment would have complied with the provisions of this Agreement;

(h) so long as the OIG Matter has been resolved (as reasonably determined by the Borrower and the Administrative Agent), payments required to be made in connection with the termination of the Borrower's profit interest plans or phantom profit interest plans and taxes associated therewith in connection with a Permitted Reorganization or Permitted IPO Reorganization; provided that the amount of any Restricted Junior Payments pursuant to this clause (h) shall not exceed (i) $30,000,000 less (ii) the dollar amount by which the aggregate amount of payments required to be paid by the Borrower and its Subsidiaries in connection with the OIG Matter exceeds $26,000,000;

(i) so long as no Event of Default has occurred and is continuing or would result therefrom, Restricted Junior Payments made from the net cash proceeds received by the Borrower after the Closing Date pursuant to contributions by third parties to its common equity capital or issuances of its Capital Stock (other than Disqualified Capital Stock) or of any Parent thereof (other than Specified Equity Contributions or to the extent used under this Agreement or applied to the Available Amount) that are used substantially contemporaneously to make such Restricted Junior Payment;

(j) so long as no Event of Default has occurred and is continuing at the time of declaration thereof, the declaration and payment of dividends on the Borrower's common stock, or common stock of any Parent of the Borrower, following the first public offering of the Borrower's common stock or the common stock of any Parent of the Borrower after the Closing Date in an amount not to exceed per annum 6% of the net cash proceeds received by or contributed to the Borrower in or from any public offering;

(k) [reserved];

(l) Restricted Junior Payments in an aggregate amount not to exceed the Available Amount as in effect immediately before such Restricted Junior Payment; *provided* that (i) no Event of Default has occurred and is continuing or would result therefrom; (ii) the Total Net Leverage Ratio, determined on a Pro Forma Basis as of the last day of the most recently ended Test Period, is less than or equal to 2.50:1.00; *provided* that the foregoing clause (ii) will not apply if the Restricted Junior Payments are being made exclusively in reliance on clauses (a)(iii) and/or (a)(iv) of the definition of "**Available Amount**" and (iii) substantially concurrently with the making of such Restricted Junior Payment, the Borrower shall provide the Administrative Agent a reasonably detailed calculation of the Available Amount prior to and after giving effect to such Restricted Junior Payment;

(m) Restricted Equity Payments and Restricted Debt Payments, so long as (i) no Event of Default has occurred and is continuing at such time or would result after giving effect to such Restricted Equity Payment or Restricted Debt Payment and (ii) the Total Net Leverage Ratio (calculated on a Pro Forma Basis to account for the making of such Restricted Equity Payment or Restricted Debt Payment and the use of proceeds thereof) for the Test Period immediately preceding the incurrence of such Restricted Equity Payment or Restricted Debt Payment is less than or equal to (x) prior to a Qualifying IPO, 1.50:1.00 or (y) after a Qualifying IPO, 2.00:1.00; and

(n) additional Restricted Junior Payments in an aggregate amount, together with any Investments made pursuant to Section 6.6(z), not to exceed the greater of $15,000,000 and 19% of TTM Consolidated Adjusted EBITDA on a Pro Forma Basis as of the applicable date of determination.

The amount set forth in Section 6.4(n) (without duplication) may, in lieu of Restricted Junior Payments, be utilized by the Borrower or any Subsidiary to make or hold any Investments without regards to Section 6.6.

The amount of any Restricted Junior Payment at any time shall be the amount of cash and the fair market value of other property used to make the Restricted Junior Payment at the time such Restricted Junior Payment is made. In the event that any Restricted Junior Payment (or any portion thereof) meets the criteria of more than one of the clauses of this Section 6.4, the Borrower may, in its sole discretion, at the time of the making of such Restricted Junior Payment, divide, classify or reclassify, or at any later time divide, classify or reclassify, such Restricted Junior Payment (or any portion thereof) in any manner that complies with this covenant; *provided* that (x) Restricted Junior Payments may be reclassified pursuant to this paragraph to clause (m) above or otherwise in a manner that would reclassify such Restricted Junior Payments as having been incurred in reliance on any calculation of the Total Net Leverage Ratio test described above (and, for the avoidance of doubt, if the Borrower or any Subsidiary makes any Restricted Junior Payment using a ratio-based test on the same date that it makes any Restricted Junior Payment under any Dollar-based Cap (or substantially concurrently with the making of Restricted Junior Payments under any Dollar-based Cap), then the ratio-based test will be calculated with respect to such incurrence under the ratio-based test without regard to any making of Restricted Junior Payments under the Dollar-based Cap) and (y) the reclassification described in the preceding clause (x) shall be deemed to have automatically occurred if the Total Net Leverage Ratio test described in clause (m) above is satisfied on a Pro Forma Basis as of the end of any Fiscal Quarter after the making of the relevant Restricted Junior Payment.

6.5 Restrictions on Subsidiary Distributions. Except as provided herein, the Borrower will not, nor will it permit any Subsidiary to, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary to (i) pay dividends or make any other distributions on any of such Subsidiary's Capital Stock owned by the Borrower or any other Subsidiary; (ii) repay or prepay any Indebtedness owed by such Subsidiary to the Borrower or any

other Subsidiary; (iii) make loans or advances to the Borrower or any other Subsidiary; or (iv) transfer any of its property or assets to the Borrower or any other Subsidiary, in each case, other than restrictions:

(a) in agreements evidencing Indebtedness permitted in accordance with Section 6.1(a), (c), (d) (that impose restrictions on the property so acquired, constructed, leased or improved), (g), (h), (i), (j), (k) (limited to such acquired Person or asset) and (y);

(b) in agreements evidencing Permitted Refinancing of Indebtedness permitted in accordance with Section 6.1(w) or other Indebtedness issued or incurred (including by means of the extension or renewal of existing Indebtedness) to refinance, refund, extend, defease, discharge, renew or replace other Indebtedness; *provided* that the encumbrances, restrictions and conditions under any such refinancing are not materially more restrictive, taken as a whole, than those contained in the documentation governing the Indebtedness being refinanced (as determined by the Borrower in good faith);

(c) by reason of customary provisions restricting assignments, subletting, or other transfers contained in leases, licenses, joint venture agreements and similar agreements entered into in the ordinary course of business;

(d) that are or were created by virtue of any transfer of, agreement to transfer or option or right with respect to any property, assets or Capital Stock not otherwise prohibited under this Agreement;

(e) apply by reason of any applicable Law, rule, regulation or order or are required by any Governmental Authority having jurisdiction over the Borrower or any Subsidiary;

(f) restrictions on Subsidiaries that are not Credit Parties pursuant to Indebtedness permitted under Section 6.1 and pursuant to restrictions in agreements related to Investments and acquisitions permitted by Section 6.6;

(g) restrictions on Persons or property at the time such Person or property is acquired; *provided* such restrictions were existing at the time of such acquisition and were not created in anticipation or contemplation thereof;

(h) under licensing, sub-licensing, leasing or sub-leasing agreements entered into by the Borrower or any Subsidiary, in each case entered into in the ordinary course of business and provisions restricting assignment of any agreement entered into by a Subsidiary in the ordinary course of business;

(i) restrictions that exist on the Closing Date;

(j) restrictions imposed by any agreement governing Indebtedness entered into after the Closing Date and permitted under Section 6.1 that are, taken as a whole, in the good faith judgment of the Borrower, no more restrictive with respect to the Borrower or any Subsidiary than customary market terms for Indebtedness of such type (and, in any event, are no more restrictive than the restrictions contained in this Agreement), so long as the Borrower shall have determined in good faith that such restrictions will not affect its obligation or ability to make any payments required hereunder;

(k) negative pledges that are permitted pursuant to Section 6.3;

(l) customary provisions restricting assignment of any agreement entered into in the ordinary course of business;

(m) restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business and restrictions that arise in connection with cash or other deposits permitted hereunder; and

(n) other restrictions or encumbrances imposed by any amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing of the contracts, instruments or obligations referred to in the preceding clauses of this Section; provided that no such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing is, in the good faith determination of the Borrower, materially more restrictive with respect to such encumbrances and other restrictions, taken as a whole, than those in effect prior to the relevant amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

6.6 Investments. The Borrower will not, nor will it permit any Subsidiary to, directly or indirectly, make or own any Investment in any Person, including any Joint Venture, except:

(a) cash and Cash Equivalents; *provided* that any Investment which when made complies with the requirements of the definition of "**Cash Equivalents**" may continue to be held notwithstanding that such Investment if made thereafter would not comply with such requirements;

(b) Investments by (i) the Borrower in any Subsidiary and (ii) any Subsidiary in the Borrower or any other Subsidiary; *provided* that to the extent any Investment is made by Credit Parties in Non-Credit Parties, the aggregate amount of TTM Consolidated Adjusted EBITDA attributable to all such Investments made after the Closing Date (and, for the avoidance of doubt, excluding all Non-Credit Parties existing as of the Closing Date and Investments therein) after giving effect to the Transactions and in reliance on this Section 6.6(b) shall not exceed, together with the aggregate amount attributable to any Investments made in reliance on the proviso to Section 6.6(f) and clause (d) of the definition of "**Permitted Acquisition**", the greater of $3,850,000 and 5% of TTM Consolidated Adjusted EBITDA on a Pro Forma Basis as of the applicable date of determination;

(c) accounts receivable arising and trade credit granted in the ordinary course of business or consistent with past practice;

(d) Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors or pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of such account debtors;

(e) deposits, prepayments and other credits to suppliers made in the ordinary course of business;

(f) capital expenditures in respect of the Borrower or any Subsidiary in accordance with GAAP (other than any expenditure that involves the acquisition, whether by purchase, merger or otherwise, of all or substantially all of the assets of, all of the Capital Stock of, or a business line or unit or a division of, any Person); *provided* that to the extent any capital

expenditure is made in respect of Non-Credit Parties, the aggregate amount of TTM Consolidated Adjusted EBITDA attributable to all such capital expenditures made after the Closing Date (and, for the avoidance of doubt, excluding all Non-Credit Parties existing as of the Closing Date and Investments therein) after giving effect to the Transactions and in reliance on this Section 6.6(f) shall not exceed, together with the aggregate amount of Investments made in reliance on the proviso to Section 6.6(b) and clause (d) of the definition of "Permitted Acquisition", the greater of $3,850,000 and 5% of TTM Consolidated Adjusted EBITDA on a Pro Forma Basis as of the applicable date of determination;

(g) (i) advances, loans or extensions of credit by the Borrower or any Subsidiary in compliance with applicable laws to officers, directors, and employees of the Borrower or any Subsidiary for reasonable and customary travel, entertainment or relocation, out-of-pocket or other business-related expenses in an aggregate amount outstanding at any date of determination not to exceed the greater of (1) $3,000,000 and (2) 4% of TTM Consolidated Adjusted EBITDA on a Pro Forma Basis as of the applicable date of determination, (ii) Investments made pursuant to a "rabbi trust" or similar employee benefit plan or arrangement designed to defer the taxability of compensation to an employee, officer or director of purchase payments made in connection with an acquisitions (so long as the direct payment of such compensation would not otherwise be prohibited hereunder), (iii) loans by the Borrower or any Subsidiary in compliance with applicable laws to officers, directors, and employees of the Borrower or any Subsidiary the proceeds of which are used to pay taxes owed in connection with the vesting of Capital Stock of the Borrower or any Subsidiary and (iv) advances, loans or extensions of credit by the Borrower or any Subsidiary to officers, directors, and employees of the Borrower or any Subsidiary for any other purpose not to exceed $2,000,000;

(h) cash and non-cash loans to officers, directors, and employees of the Borrower or any Subsidiary, the proceeds of which will be used to purchase Capital Stock of any Parent of the Borrower, if the proceeds of loans are contributed to the Borrower;

(i) advances of payroll payments to employees in the ordinary course of business;

(j) Permitted Acquisitions;

(k) Investments described on Schedule 6.6 in existence on the Closing Date and any modification, replacement, renewal, reinvestment or extension of any of such Investments; *provided* that the amount of any Investment permitted pursuant to this Section 6.6(k) is not increased from the amount of such Investment on the Closing Date except pursuant to the terms of such Investment as of the Closing Date or as otherwise permitted by another clause of this Section 6.6;

(l) Investments in an aggregate amount not to exceed the Available Amount as in effect immediately before such Investment; *provided* that substantially concurrently with the making of such Investment, the Borrower shall provide the Administrative Agent a reasonably detailed calculation of the Available Amount prior to and after giving effect to such Investment;

(m) Investments of any Person that becomes a Subsidiary on or after the Closing Date; *provided* that (i) such Investments exist at the time such Person is acquired and (ii) such Investments are not made in anticipation or contemplation of such Person becoming a Subsidiary;

(n) Indebtedness permitted by Section 6.1 (other than Indebtedness permitted by Section 6.1(f)(ii), 6.1(s) or 6.1(x)(iii));

(o) bank deposits in the ordinary course of business;

(p) Investments made as a result of the receipt of non-cash consideration from a disposition made in compliance with Section 6.8;

(q) any Investments pursuant to (i) any Permitted Reorganization and (ii) any Permitted IPO Reorganization in an amount not to exceed, at any time outstanding for clauses (i) and (ii) in the aggregate at any date of determination, $1,000,000;

(r) (i) Investments by the Borrower or any Subsidiary made from the net cash proceeds received by the Borrower after the Closing Date pursuant to contributions to the common equity capital of the Borrower (other than Specified Equity Contributions) or issuances of its Capital Stock (other than Disqualified Capital Stock) or of any Parent thereof and (ii) Investments made by the Borrower or any Subsidiary in exchange for Capital Stock (other than Disqualified Capital Stock) of the Borrower or any Parent thereof, in each case to the extent not otherwise used under this Agreement or applied to the Available Amount;

(s) Guarantees by (i) the Borrower of obligations of any Subsidiary and (ii) any Subsidiary of obligations of the Borrower or any other Subsidiary, in each case which obligations do not constitute Indebtedness;

(t) Investments in Rate Contracts entered into for non-speculative purposes;

(u) Investments made to effect the Transactions;

(v) Investments (including debt obligations and Capital Stock) (i) received in connection with the bankruptcy, workout, recapitalization or reorganization of, or in settlement of delinquent obligations of, or other disputes with, the issuer of such Investment or an Affiliate thereof, (ii) received in settlement of delinquent obligations of, or other disputes with, customers and suppliers arising in the ordinary course of business or upon the foreclosure with respect to any secured Investment, (iii) received in satisfaction of judgments against any other Person and (iv) as a result of the settlement, compromise or resolutions of litigation, arbitration or other disputes of the Borrower or any Subsidiary with Persons who are not Affiliates;

(w) Investments in the ordinary course of business consisting of UCC Article 3 endorsements for collection or deposit and UCC Article 4 customary trade arrangements with customers consistent with past practices;

(x) to the extent constituting Investments, purchases and acquisitions of inventory, supplies, materials and equipment or purchases of contract rights or licenses or leases of Intellectual Property, in each case in the ordinary course of business;

(y) Investments, so long as (i) no Event of Default has occurred and is continuing at such time or would result after giving effect to such Investment and (ii) the Total Net Leverage Ratio (calculated on a Pro Forma Basis after giving effect to such Investment and the use of proceeds thereof) for the Test Period immediately preceding the making of such Investment is less than or equal to (x) prior to a Qualifying IPO, 1.75:1:00 or (y) after a Qualifying IPO, 2.25:1.00;

(z) Investments that do not exceed, at any time outstanding, in the aggregate at any date of determination, together with any Restricted Junior Payments made pursuant to Section 6.4(n), the greater of $15,000,000 and 19% of TTM Consolidated Adjusted EBITDA on a Pro Forma Basis as of the applicable date of determination; and

(aa) Investments in Unrestricted Subsidiaries, Joint Ventures and minority investments in an amount not to exceed, at any time outstanding in the aggregate at any date of determination, the greater of $1,000,000 and 1% of TTM Consolidated Adjusted EBITDA on a Pro-Forma Basis as of the applicable date of determination.

For purposes of determining compliance with this Section 6.6:

(1) to the extent any Investment in any Person is made in compliance with this Section 6.6 in reliance on a clause above that is subject to a Cap (without duplication of any amounts increasing the Available Amount pursuant to the definition thereof) and, subsequently, such Person returns to the Borrower, any other Credit Party or, to the extent applicable, any Subsidiary all or any portion of such Investment (in the form of a dividend, distribution, liquidation or otherwise but excluding intercompany Indebtedness), such return shall be deemed to be credited to the clause of this Section 6.6 against which the Investment is then charged, but in any event not in an amount that would result in the aggregate dollar amount able to be invested in reliance on such category to exceed such Cap;

(2) for purposes of determining compliance with any Cap on the making of Investments, the Dollar equivalent amount of the Investment denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Investment was made; and

(3) in the event that any Investment (or any portion thereof) meets the criteria of more than one of the clauses of this Section 6.6, the Borrower may, in its sole discretion, at the time such Investment is made, divide, classify or reclassify, or at any later time divide, classify or reclassify, such Investment (or any portion thereof) in any manner that complies with this covenant; *provided* that (x) Investments may be reclassified pursuant to this paragraph to clause (y) above or otherwise in a manner that would reclassify such Investments as having been incurred in reliance on any calculation of the Total Net Leverage Ratio test described above (and, for the avoidance of doubt, if the Borrower or any Subsidiary makes any Investment using a ratio-based test on the same date that it makes any Investment under any Dollar-based Cap (or substantially concurrently with the making of Investments under any Dollar-based Cap), then the ratio-based test will be calculated with respect to such incurrence under the ratio-based test without regard to any making of Investments under the Dollar-based Cap) and (y) the reclassification described in the preceding clause (x) shall be deemed to have automatically occurred if the Total Net Leverage Ratio test described in clause (y) above is satisfied on a Pro Forma Basis as of the end of any Fiscal Quarter after the making of the relevant Investment.

6.7 Financial Covenants; Equity Cure.

(a) Financial Covenants.

(i) Total Net Leverage Ratio. Commencing with the Test Period ending March 31, 2020, the Borrower will not permit the Total Net Leverage Ratio at the end of any Test Period (measured on a Pro Forma Basis) to exceed 3.50:1.00; *provided* that such ratio level shall increase to 4.00:1.00 upon the consummation of any Material Permitted Acquisition and shall continue to be in effect for the quarter-end test date in which such Material Permitted Acquisition occurs as well as for the next three Test Periods; provided that there shall be at least two full Fiscal Quarters following the cessation of each such increase during which no such increase shall then be in effect.

(ii) Interest Coverage Ratio. Commencing with the Test Period ending March 31, 2020, the Borrower will not permit the Interest Coverage Ratio for any Test Period (measured on a Pro Forma Basis) to be less than 3.00:1.00.

(b) Equity Cure. In the event the Borrower fails to comply with the Financial Covenants as of any Test Date, any cash equity contribution (or qualified preferred equity or other equity on terms reasonably satisfactory to the Administrative Agent) in the Borrower after the beginning of the applicable Fiscal Quarter ending on such Test Date and on or prior to the day that is ten (10) Business Days after the day on which financial statements are required to be delivered for the Fiscal Quarter ended on such Test Date will, at the irrevocable election of the Borrower, be included in the calculation of Consolidated Adjusted EBITDA solely for the purposes of determining compliance with the Financial Covenants as of such Test Date and as of any subsequent Test Date that includes such Fiscal Quarter for purposes of determining compliance with the Financial Covenants (any such equity contribution so included in the calculation of Consolidated Adjusted EBITDA, a "**Specified Equity Contribution**"); *provided* that (i) no more than two Specified Equity Contributions may be made in any four consecutive Fiscal Quarter period and only three Specified Equity Contributions may be made during the term of this Agreement, (ii) the amount of any Specified Equity Contribution will be no greater than the amount required to cause the Borrower to be in compliance with the Financial Covenants, (iii) all Specified Equity Contributions will be disregarded for all other purposes, including the calculation of Consolidated Adjusted EBITDA for all purposes other than the compliance with the Financial Covenants for such applicable Test Period and subsequent Test Periods that include the Fiscal Quarter ending on the applicable Test Date, and including calculating basket levels and other items governed by reference to Consolidated Adjusted EBITDA, (iv) with respect to the Fiscal Quarter for which it is contributed to cure a breach of the Financial Covenants, any Specified Equity Contribution shall not reduce the outstanding Indebtedness of the Borrower for such Fiscal Quarter (it being understood and agreed that such limitation shall not apply in subsequent Fiscal Quarters if actually applied to repay Term Loans) and (v) the Borrower shall not, unless otherwise agreed by the Required Lenders under the Revolving Facility, be permitted to incur Revolving Loans or request the issuance of Letters of Credit during the ten Business Day period referred to above unless and until the Borrower has received the proceeds of such Specified Equity Contribution.

6.8 Fundamental Changes; Disposition of Assets. The Borrower will not, nor will it permit any Subsidiary to, (i) enter into any transaction of merger or consolidation, or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution), (ii) convey, sell, lease, exchange, transfer or otherwise dispose of, in one transaction or a series of transactions, all or any part of its business, assets or property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, whether now owned or hereafter acquired or leased or (iii) sell, assign, pledge or otherwise dispose of any Capital Stock of any of its Subsidiaries, except:

(a) any Parent or Subsidiary may merge or consolidate with the Borrower (including a merger, the purpose of which is to reorganize the Borrower into a new jurisdiction); *provided* that (x) the Borrower shall be the continuing or surviving Person, (y) such merger or consolidation does not result in the Borrower ceasing to be organized under the Laws of the United States, any state thereof or the District of Columbia and (z) in the case of a merger or consolidation of any Parent of the Borrower with and into the Borrower, (1) such Parent shall not be an obligor in respect of any Indebtedness that is not permitted to be Indebtedness of the Borrower under this Agreement and (2) such Parent shall have no direct Subsidiaries at the time of such merger or consolidation other than the Borrower;

(b) (i) any Subsidiary that is not a Credit Party may merge or consolidate with or into any other Subsidiary that is not a Credit Party, (ii) any Subsidiary may merge or consolidate with or into any other Subsidiary that is a Credit Party, (iii) any merger the sole purpose of which is to reincorporate or reorganize a Credit Party in another jurisdiction in the United States shall be permitted and (iv) any Subsidiary may liquidate or dissolve or change its legal form if the Borrower determines in good faith that such action is in the best interests of the Borrower and its Subsidiaries and is not materially disadvantageous to the Lenders, *provided*, in the case of clauses (ii) through (iv), that (A) no Change of Control shall result therefrom and (B) the surviving Person (or, with respect to clause (iv), the Person who receives the assets of such dissolving or liquidated Subsidiary that is a Guarantor) shall be a Credit Party;

(c) any Subsidiary may dispose of all or substantially all of its assets to the Borrower or any other Subsidiary; *provided* that a Guarantor Subsidiary may not dispose of all or substantially all of its assets to a Non-Credit Party unless treated as an Investment that is permitted by Section 6.6.

(d) conveyances, sales, leases, exchanges, transfers or other dispositions that do not constitute Asset Sales;

(e) Asset Sales; *provided* that (i) the consideration received for such assets is in an amount at least equal to the fair market value thereof (determined in good faith by the Borrower), (ii) no less than 75% of which will paid in cash, and (iii) the Net Cash Proceeds thereof are applied as required by Section 2.14(a); *provided further,* that for the purposes of clause (ii), (A) any liabilities (as shown on the Borrower's most recent balance sheet provided hereunder or in the footnotes thereto) of the Borrower that are assumed by the transferee with respect to the applicable Asset Sale and for which the Borrower and all of the Subsidiaries shall have been validly released by all applicable creditors in writing and (B) any Designated Non-Cash Consideration

received in respect of such Asset Sale having an aggregate fair market value as reasonably determined by the Borrower in good faith, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (B) that is at that time outstanding, not in excess of the greater of (x) $3,000,000 and (y) an amount equal to 4% of TTM Consolidated Adjusted EBITDA of the Borrower on a Pro Forma Basis at the time of the receipt of such Designated Non-Cash Consideration, with the fair market value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value, shall be deemed to be cash;

(f) the Borrower and the Subsidiaries may lease (as lessee) or license (as licensee) real or personal property, in each case in the ordinary course of business, so long as any such lease or license does not create a Finance Lease except to the extent permitted by Section 6.1(d);

(g) any transaction (other than an Asset Sale) in connection with a Permitted Acquisition or other Investment permitted by Section 6.6; *provided* that if the merging or consolidating Subsidiary is a Guarantor Subsidiary, the surviving entity is or becomes a Guarantor Subsidiary;

(h) sales, leases, assignments, conveyances, transfers, licenses, exchanges or dispositions of other assets for aggregate consideration of less than the greater of $8,000,000 and 10% of TTM Consolidated Adjusted EBITDA on a Pro Forma Basis as of the applicable date of determination in the aggregate during any Fiscal Year so long as the Net Cash Proceeds therefrom are applied pursuant to Section 2.14(a);

(i) dispositions of Investments in Joint Ventures to the extent required by, or pursuant to, customary agreements between the Joint Venture parties set forth in binding agreements between such parties; and

(j) dispositions in connection with a Permitted Reorganization or Permitted IPO Reorganization.

Notwithstanding anything to the contrary contained in this Section 6.8, it is understood and agreed among the parties to this Agreement that (i) the Borrower or any Subsidiary may effect a Permitted Reorganization or Permitted IPO Reorganization and (ii) the Borrower may change its corporate identity or type of organization (e.g., convert from a limited liability company to a corporation), so long as such change does not result in the Borrower ceasing to be organized under the Laws of the United States, any state thereof or the District of Columbia; provided that, with respect to clause (ii), the Borrower will notify the Collateral Agent in accordance with Section 6.1 of the Pledge and Security Agreement.

6.9 Transactions with Affiliates. The Borrower will not, nor will it permit any Subsidiary to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of the Borrower, on terms that are less favorable to the Borrower or such Subsidiary, as the case may be, than those that might be obtained at the time from a Person who is not such an Affiliate; *provided* that the foregoing restriction will not apply to:

(a) any transaction between or among any of the Credit Parties and/or any of their Subsidiaries to the extent not otherwise prohibited by this Agreement;

(b) indemnity provided to and reasonable and customary fees and expense reimbursement paid to members of the Board of Directors of the Borrower or any Subsidiary in the ordinary course of business to the extent attributable to the ownership or operation of the Borrower and/or its Subsidiaries, as applicable;

(c) (i) compensation, benefits and indemnification arrangements (including the payment of bonuses and other deferred compensation) for directors, officers and other employees of the Borrower or any Subsidiary, in each case entered into in the ordinary course of business or approved by the Board of Directors of the Borrower or the applicable Subsidiary, (ii) employment and severance agreements between the Borrower or any Subsidiary and their employees, officers or directors, entered into in the ordinary course of business, (iii) any issuance of securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, stock options, stock ownership plans, including restricted stock plans, stock grants, directed share programs and other equity based plans (including the Borrower's profits interests plans and phantom profits interests plans) and the granting and stockholder rights of registration rights, in each case entered into in the ordinary course of business or approved by the Borrower's Board of Directors; and (iv) payments or loans (or cancellation of loans) to officers, directors and employees that are approved by the Borrower's Board of Directors, subject to the limitations set forth in Section 6.6;

(d) reimbursement of out-of-pocket expenses of the Permitted Holders' tax manager pursuant to the Borrower's Limited Liability Company Agreement not exceeding $1,000,000 in any fiscal year of the Borrower;

(e) transactions described in Schedule 6.9 in existence on the Closing Date;

(f) any purchase by any Parent of the Borrower of Capital Stock (other than Disqualified Capital Stock) of the Borrower, or any contribution by any Parent of the Borrower to the equity capital of the Borrower;

(g) the existence of, or the performance of obligations under the terms of, agreements entered into in connection with a Permitted Acquisition or other Investment permitted by Section 6.6 (including payments of earn-outs, contingent obligations and other similar payments);

(h) Restricted Junior Payments permitted by Section 6.4, Investments permitted by Section 6.6, Indebtedness permitted by Section 6.1 and transactions permitted by Section 6.8 (including Asset Sales and the exceptions thereto);

(i) the entering into or performance of any customary tax sharing agreement or customary tax receivable agreement; *provided* that any payments made thereunder shall comply with Section 6.4;

(j) transactions and activities necessary or advisable to effectuate a Permitted Reorganization or a Permitted IPO Reorganization;

(k) investments by the Sponsor in securities or Indebtedness of the Borrower or any Subsidiary so long as the investment is being offered generally to other investors on the same or more favorable terms; and

(l) any transaction or series of related transactions involving consideration valued at less than $2,000,000 (as determined in good faith by the Borrower).

6.10 Conduct of Business. The Borrower will not, nor will it permit any Subsidiary to, engage in any material business other than the Businesses engaged in by the Borrower and the Subsidiaries on the Closing Date and other reasonably related or ancillary to such Businesses, or reasonable or logical extensions of such Businesses.

6.11 [Reserved].

6.12 Certain Amendments or Waivers. The Borrower will not, nor will it permit any Subsidiary to, (a) amend, supplement, waive or otherwise modify any provision of its Organizational Documents in a manner that would be materially adverse to the interests of the Lenders or (b) change or amend the terms of the documentation with regard to any Indebtedness that is Junior Financing (except to the extent such changes or amendments are not prohibited by any applicable intercreditor or subordination provisions applicable to such Junior Financing), in each case in a manner that would be materially adverse to the interests of the Lenders; it being agreed that any amendment, modification, waiver or other change that, in the case of any such Junior Financing, would extend the maturity or reduce the amount of any payment of principal thereof or reduce the rate or extend any date for payment of interest thereon is not materially adverse to the interests of the Lenders.

6.13 Fiscal Year. Make any change in fiscal year; *provided, however,* that the Borrower may, upon written notice to the Administrative Agent, change its fiscal year to any other fiscal year reasonably acceptable to the Administrative Agent, in which case, the Borrower and the Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary to reflect such change in fiscal year.

7. GUARANTY

7.1 Guaranty of the Obligations. Each Guarantor jointly and severally hereby irrevocably and unconditionally guarantees to the Administrative Agent for the ratable benefit of the Secured Parties the due and punctual payment in full of all Obligations when the same will become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)). Each Guarantor hereby jointly and severally agrees that if the Borrower or other Guarantor(s) shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Obligations, such Guarantor will promptly pay the same in cash, without any demand or notice whatsoever, and that in the case of any extension of payment or renewal of any of the Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

7.2 Contribution by Guarantors. All Guarantors desire to allocate among themselves (collectively, the "**Contributing Guarantors**"), in a fair and equitable manner, their obligations arising under this Guaranty. Accordingly, and subject to the provisions of Section 7.5, in the event any payment or distribution is made on any date by a Guarantor (a "**Funding Guarantor**") under this Guaranty such that its Aggregate Payments exceed its Fair Share as of such date, such Funding Guarantor will be entitled to a contribution from each of the other Contributing Guarantors in an amount sufficient to cause each Contributing Guarantor's Aggregate Payments to equal its Fair Share as of such date. "**Fair Share**" means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (a) the ratio of (i) the Fair Share Contribution Amount with respect to such Contributing Guarantor to (ii) the aggregate of the Fair Share Contribution Amounts with respect to all Contributing Guarantors multiplied by (b) the aggregate amount paid or distributed on or before such date by all Funding Guarantors under this Guaranty in respect of the Obligations. "**Fair Share Contribution Amount**" means, with respect to a Contributing Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Contributing Guarantor under this Guaranty that would not render its obligations hereunder or thereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any comparable applicable provisions of state law; *provided* that, solely for purposes of calculating the Fair Share Contribution Amount with respect to any Contributing Guarantor for purposes of this Section 7.2, any assets or liabilities of such Contributing Guarantor arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder will not be considered as assets or liabilities of such Contributing Guarantor. "**Aggregate Payments**" means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (1) the aggregate amount of all payments and distributions made on or before such date by such Contributing Guarantor in respect of this Guaranty (including in respect of this Section 7.2), *minus* (2) the aggregate amount of all payments received on or before such date by such Contributing Guarantor from the other Contributing Guarantors as contributions under this Section 7.2. The amounts payable as contributions hereunder will be determined as of the date on which the related payment or distribution is made by the applicable Funding Guarantor. The allocation among Contributing Guarantors of their obligations as set forth in this Section 7.2 will not be construed in any way to limit the liability of any Contributing Guarantor hereunder. Each Guarantor is a third party beneficiary to the contribution agreement set forth in this Section 7.2.

7.3 Liability of Guarantors Absolute. Each Guarantor acknowledges and agrees that its obligations hereunder are continuing, irrevocable, absolute, independent and unconditional and will not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Obligations. In furtherance of the foregoing and without limiting the generality thereof, each Guarantor agrees as follows:

(a) this Guaranty is a guaranty of payment when due and not of collectability;

(b) this Guaranty is a primary obligation of each Guarantor and not merely a contract of surety;

(c) the Administrative Agent may enforce this Guaranty upon the occurrence of an Event of Default notwithstanding the existence of any dispute between the Borrower and any Secured Party with respect to whether such Event of Default has occurred and is continuing;

(d) the obligations of each Guarantor hereunder are independent of the obligations of the Borrower and the obligations of any other guarantor (including any other Guarantor) of the obligations of the Borrower, and a separate action or actions may be brought and prosecuted against such Guarantor whether or not any action is brought against the Borrower or any of such other guarantors and whether or not the Borrower is joined in any such action or actions;

(e) payment by any Guarantor of a portion, but not all, of the Obligations will in no way limit, affect, modify or abridge any Guarantor's liability for any portion of the Obligations which has not been paid. Without limiting the generality of the foregoing, if the Administrative Agent is awarded a judgment in any suit brought to enforce any Guarantor's covenant to pay a portion of the Obligations, such judgment will not be deemed to release such Guarantor from its covenant to pay the portion of the Obligations that is not the subject of such suit, and such judgment will not, except to the extent satisfied by such Guarantor, limit, affect, modify or abridge any other Guarantor's liability hereunder in respect of the Obligations;

(f) any Secured Party, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability hereof or giving rise to any reduction, limitation, impairment, discharge or termination of any Guarantor's liability hereunder, from time to time may (i) renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of the Obligations; (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Obligations or any agreement relating thereto and/or subordinate the payment of the same to the payment of any other obligations; (iii) request and accept other guaranties of the Obligations and take and hold security for the payment hereof or the Obligations; (iv) release, surrender, exchange, sell, substitute, compromise, settle, rescind, waive, alter, renew, extend, amend, subordinate or modify, with or without consideration, any security for payment of the Obligations, any other guaranties of the Obligations, or any other obligation of any Person (including any other Guarantor) with respect to the Obligations; (v) enforce and apply any security now or hereafter held by or for the benefit of such Secured Party in respect hereof or the Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that such Secured Party may have against any such security, in each case as such Secured Party in its discretion may determine consistent herewith or the applicable Secured Rate Contract or Bank Product Agreement and any applicable security agreement, including foreclosure on any such security pursuant to one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable, and even though such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Guarantor against the Borrower or any security for the Obligations; (vi) exercise any other rights available to it under the Credit Documents, the Secured Rate Contracts or the Bank Product Agreements; and amend, modify, supplement or terminate, in whole or in part, this Agreement and any other Credit Document as the Administrative Agent (or the Required Lenders or all Lenders, as the case may be) may deem advisable from time to time; and

(g) this Guaranty and the obligations of Guarantors hereunder will be valid and enforceable and will not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than payment in full of the Obligations), including the occurrence of any of the following, whether or not any Guarantor will have had notice or knowledge of any

of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Credit Documents, the Secured Rate Contracts or the Bank Product Agreements, at law, in equity or otherwise) with respect to the Obligations or any agreement relating thereto, or with respect to any other guaranty of or security for the payment of the Obligations; (ii) any renewal, extension, rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including provisions relating to events of default) hereof, any of the other Credit Documents, any of the Secured Rate Contracts, the Bank Product Agreements or any agreement or instrument executed pursuant thereto, or of any other guaranty or security for the Obligations, in each case whether or not in accordance with the terms hereof or such Credit Document, such Secured Rate Contract, such Bank Product Agreements or any agreement relating to such other guaranty or security; (iii) the Obligations, or any agreement relating thereto, at any time being found to be illegal, invalid or unenforceable in any respect; (iv) the application of payments received from any source (other than payments received pursuant to the other Credit Documents, any of the Secured Rate Contracts, any Bank Product Agreements or from the proceeds of any security for the Obligations, except to the extent such security also serves as collateral for indebtedness other than the Obligations) to the payment of indebtedness other than the Obligations, even though any Secured Party might have elected to apply such payment to any part or all of the Obligations; (v) any Secured Party's consent to the change, reorganization or termination of the corporate structure or existence of the Borrower or any Subsidiary and to any corresponding restructuring of the Obligations; (vi) any failure to perfect or continue perfection of a security interest in any collateral which secures any of the Obligations; (vii) any defenses, set-offs or counterclaims which the Borrower may allege or assert against any Secured Party in respect of the Obligations, including failure of consideration, breach of warranty, payment, statute of frauds, statute of limitations, accord and satisfaction and usury; (viii) the release of any other guarantor pursuant to Section 7.11; and (ix) any other act or thing or omission, or delay to do any other act or thing, which may or might in any manner or to any extent vary the risk of any Guarantor as an obligor in respect of the Obligations.

7.4 Waivers by Guarantors. To the fullest extent permitted by law, each Guarantor hereby waives, for the benefit of the Secured Parties: (a) any right to require any Secured Party, as a condition of payment or performance by such Guarantor, to (i) proceed against the Borrower, any other guarantor (including any other Guarantor) of the Obligations or any other Person, (ii) proceed against or exhaust any security held from the Borrower, any such other guarantor or any other Person, (iii) proceed against or have resort to any balance of any credit on the books of any Secured Party in favor of the Borrower or any other Person, or (iv) pursue any other remedy in the power of any Secured Party whatsoever; (b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of any Guarantor including any defense based on or arising out of the lack of validity or the unenforceability of the Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of any Guarantor from any cause other than payment in full of the Obligations; (c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (d) any defense based upon any Secured Party's errors or omissions in the administration of the Obligations, except behavior which amounts to bad faith (e) any defense based upon the validity or invalidity of this Agreement, this Guaranty or any other Credit Document; (f) (i) any principles or provisions of law, statutory or

otherwise, which are or might be in conflict with the terms hereof and any legal or equitable discharge of such Guarantor's obligations hereunder, (ii) the benefit of any statute of limitations affecting such Guarantor's liability hereunder or the enforcement hereof, (iii) any rights to set-offs, recoupments and counterclaims, and (iv) promptness, diligence and any requirement that any Secured Party protect, secure, perfect or insure any security interest or lien or any property subject thereto; (g) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance hereof, notices of default hereunder, the Secured Rate Contracts, the Bank Product Agreements or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Obligations or any agreement related thereto, notices of any extension of credit to the Borrower and notices of any of the matters referred to in Section 7.3 and any right to consent to any thereof; and (h) any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms hereof. Each Guarantor further waives notice of or proof of reliance by any Secured Party upon this Guaranty or acceptance of this Guaranty, and the Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred in reliance upon this Guaranty, and all dealings between the Borrower and the Secured Parties shall likewise be conclusively presumed to have been had or consummated in reliance upon this Guaranty.

7.5 Guarantors' Rights of Subrogation, Contribution, etc. Until the Obligations will have been paid in full in cash and the Revolving Credit Commitments will have terminated and all Letters of Credit have been cancelled, or have expired or have been cash collateralized or otherwise backstopped in a manner satisfactory to the applicable Issuing Bank and all amounts drawn thereunder have been reimbursed in full, each Guarantor hereby waives any claim, right or remedy, direct or indirect, that such Guarantor now has or may hereafter have against the Borrower or any other Guarantor or any of its assets in connection with this Guaranty or the performance by such Guarantor of its obligations hereunder, in each case whether such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise and including (a) any right of subrogation, reimbursement or indemnification that such Guarantor now has or may hereafter have against the Borrower with respect to the Obligations, (b) any right to enforce, or to participate in, any claim, right or remedy that any Secured Party now has or may hereafter have against the Borrower, and (c) any benefit of, and any right to participate in, any collateral or security now or hereafter held by any Secured Party. In addition, until the Obligations will have been paid in full in cash and the Revolving Credit Commitments will have terminated and all Letters of Credit have been cancelled, or have expired or have been cash collateralized or otherwise backstopped in a manner satisfactory to the applicable Issuing Bank and all amounts drawn thereunder have been reimbursed in full, each Guarantor will withhold exercise of any right of contribution such Guarantor may have against any other guarantor (including any other Guarantor) of the Obligations, including any such right of contribution as contemplated by Section 7.2. Each Guarantor further agrees that, to the extent the waiver or agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement or indemnification such Guarantor may have against the Borrower or against any collateral or security, and any rights of contribution such Guarantor may have against any such other guarantor, will be junior and subordinate to any rights any Secured Party may have against the Borrower, to all right, title and interest any Secured Party may have in any such collateral or security, and to any right any Secured Party may have against such other guarantor.

If any amount will be paid to any Guarantor on account of any such subrogation, reimbursement, indemnification or contribution rights at any time when all Obligations will not have been finally and paid in full, such amount will be held in trust for the Administrative Agent on behalf of Secured Parties and will forthwith be paid over to the Administrative Agent for the benefit of Secured Parties to be credited and applied against the Obligations, whether matured or unmatured, in accordance with the terms hereof.

7.6 Subordination of Other Obligations. Any Indebtedness of the Borrower or any Guarantor now or hereafter held by any Guarantor (the "**Obligee Guarantor**") is hereby subordinated in right of payment to the Obligations, and any such Indebtedness collected or received by the Obligee Guarantor after an Event of Default has occurred and is continuing will be held in trust for the Administrative Agent on behalf of Secured Parties and will forthwith be paid over to the Administrative Agent for the benefit of Secured Parties to be credited and applied against the Obligations but without affecting, impairing or limiting in any manner the liability of the Obligee Guarantor under any other provision hereof.

7.7 Continuing Guaranty. This Guaranty is a continuing guaranty and shall apply to all Obligations whenever arising. This Guaranty will remain in effect until all of the Obligations will have been paid in full and the Revolving Credit Commitments will have terminated and all Letters of Credit have been cancelled, or have expired or have been cash collateralized or otherwise backstopped in a manner satisfactory to the Issuing Banks and all amounts drawn thereunder have been reimbursed in full. Each Guarantor hereby irrevocably waives any right to revoke this Guaranty as to future transactions giving rise to any Obligations. This Guaranty shall remain in full force and effect and be binding in accordance with and to the extent of its terms upon each Guarantor and the successors and assigns thereof, and shall inure to the benefit of the Lenders, and their respective successors and assigns, notwithstanding that from time to time during the term of this Agreement there may be no Obligations notwithstanding.

7.8 Authority of Guarantors or Borrower. It is not necessary for any Secured Party to inquire into the capacity or powers of any Guarantor or the Borrower or the officers, directors or any agents acting or purporting to act on behalf of any of them.

7.9 Financial Condition of Borrower. Any Credit Extension may be made to the Borrower or continued from time to time, and any Rate Contracts may be entered into from time to time, in each case without notice to or authorization from any Guarantor regardless of the financial or other condition of the Borrower at the time of any such grant or continuation or at the time such Rate Contracts is entered into, as the case may be. No Secured Party will have any obligation to disclose or discuss with any Guarantor its assessment, or any Guarantor's assessment, of the financial condition of the Borrower. Each Guarantor has adequate means to obtain information from the Borrower on a continuing basis concerning the financial condition of the Borrower and its ability to perform its obligations under the Credit Documents and the Rate Contracts, and each Guarantor assumes the responsibility for being and keeping informed of the financial condition of the Borrower and of all circumstances bearing upon the risk of nonpayment of the Obligations. Each Guarantor hereby waives and relinquishes any duty on the part of any Secured Party to disclose any matter, fact or thing relating to the business, operations or conditions of the Borrower now known or hereafter known by any Secured Party.

7.10 Bankruptcy, etc.

(a) The obligations of the Guarantors hereunder will not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any case or proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of the Borrower or any other Guarantor or by any defense which the Borrower or any other Guarantor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) Each Guarantor acknowledges and agrees that any interest on any portion of the Obligations which accrues after the commencement of any case or proceeding referred to in clause (a) above (or, if interest on any portion of the Obligations ceases to accrue by operation of law by reason of the commencement of such case or proceeding, such interest as would have accrued on such portion of the Obligations if such case or proceeding had not been commenced) will be included in the Obligations because it is the intention of the Guarantors and Secured Parties that the Obligations which are guaranteed by Guarantors pursuant hereto should be determined without regard to any rule of law or order which may relieve the Borrower of any portion of such Obligations. Guarantors will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar person to pay the Administrative Agent, or allow the claim of the Administrative Agent in respect of, any such interest accruing after the date on which such case or proceeding is commenced.

(c) In the event that all or any portion of the Obligations are paid by the Borrower or any Guarantor, the obligations of Guarantors hereunder will continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from any Secured Party as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered will constitute Obligations for all purposes hereunder.

7.11 Discharge of Guaranty upon Sale of Guarantor. If, in compliance with the terms and provisions of the Credit Documents, all of the Capital Stock of any Guarantor or any of its successors in interest hereunder is sold, disposed of or otherwise transferred (such Guarantor, a "**Transferred Guarantor**") to any Person (other than any other Credit Party), such Transferred Guarantor will, upon the consummation of such sale, disposition or other transfer (including by merger or consolidation), automatically be discharged and released, without any further action by any Secured Party or any other Person, effective as of the time of such sale, disposition or other transfer, from its obligations under this Agreement (including under Sections 10.2 and 10.3) and the other Credit Documents, including its obligations to pledge and grant any Collateral owned by it pursuant to any Collateral Document and, in the case of the sale of all of the Capital Stock of such Transferred Guarantor, the pledge of such Capital Stock to the Collateral Agent pursuant to the Collateral Documents will be released, and the Collateral Agent will take, and the Secured Parties hereby irrevocably authorize the Collateral Agent to take, such actions as are necessary or desirable to effect each discharge and release described in this Section 7.11 in accordance with the relevant provisions of the Collateral Documents.

7.12 Instrument for Payment of Money. Each Guarantor hereby acknowledges that the guarantee in this Section 7 constitutes an instrument for the payment of money, and consents

and agrees that any Lender or Agent, at its sole option, in the event of a dispute by such Guarantor in the payment of any moneys due hereunder, will have the right to bring a motion-action under New York CPLR Section 3213.

7.13 General Limitation on Guarantee Obligations. In any action or proceeding involving any state corporate limited partnership or limited liability company law, or any applicable state, federal or foreign bankruptcy, insolvency, reorganization or other Law affecting the rights of creditors generally, if the obligations of any Guarantor under Section 7.1 would otherwise be held or determined to be void, voidable, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under Section 7.1, then, notwithstanding any other provision to the contrary, the amount of such liability will, without any further action by such Guarantor, any Credit Party or any other person, be automatically limited and reduced to the highest amount (after giving effect to the rights of subrogation and contribution established in Section 7.5) that is valid and enforceable, not void or voidable and not subordinated to the claims of other creditors as determined in such action or proceeding.

7.14 Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Credit Party to honor all of its obligations under this Guaranty in respect of Swap Obligations *(provided, however,* that each Qualified ECP Guarantor will only be liable under this Section 7.14 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 7.14, or otherwise under this Guaranty, voidable under applicable Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section 7.14 will remain in full force and effect until the Obligations have been paid in full and the Revolving Commitments will have terminated, and all Loans or other Obligations hereunder which are accrued and payable have been paid or satisfied and all Letters of Credit will have expired (without any pending drawing) or have been cancelled or cash collateralized in accordance with the terms of this Agreement. Each Qualified ECP Guarantor intends that this Section 7.14 constitute, and this Section 7.14 will be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Credit Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

7.15 Remedies. Each Guarantor hereby jointly and severally agrees that, as between each Guarantor and the Lenders, the obligations of the Borrower under this Agreement, if any, may be declared to be forthwith due and payable as provided in Section 8 hereof (and shall be deemed to have become automatically due and payable in the circumstances provided in Section 8) for purposes of this Guaranty, notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against the Borrower and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by the Borrower) shall forthwith become due and payable by each Guarantor for purposes of this Guaranty.

8. EVENTS OF DEFAULT

8.1 Events of Default. If any one or more of the following conditions or events occurs:

(a) Failure to Make Payments When Due. Failure by the Borrower to pay (i) when due any installment of principal of any Loan, whether at stated maturity, by acceleration, by mandatory prepayment or otherwise; or (ii) when due any amount payable to the applicable Issuing Bank in reimbursement of any drawing under a Letter of Credit (including any requirement to deposit cash collateral in connection therewith); or (iii) any interest on any Loan or any fee or any other amount due hereunder or under any other Credit Document within five (5) Business Days after the date due; or

(b) Default in Other Agreements.

(i) Failure of the Borrower or any Subsidiary (other than an Immaterial Subsidiary) to pay when due any principal of or interest on or any other amount payable in respect of one or more items of Indebtedness (other than Indebtedness referred to in Section 8.1(a)) constituting Indebtedness in excess of the Threshold Amount, in each case beyond the grace period, if any, provided therefor; or

(ii) a breach or default by the Borrower or any Subsidiary (other than an Immaterial Subsidiary) with respect to any other material term of (1) one or more items of Indebtedness constituting Indebtedness in excess of the Threshold Amount or (2) any loan agreement, mortgage, indenture or other agreement relating to Indebtedness in excess of the Threshold Amount, in each case beyond the grace period, if any, provided therefor, if the effect of such breach or default is to cause, or to permit the holder or holders of that Indebtedness (or a trustee or agent on behalf of such holder or holders), to cause, that Indebtedness to become or be declared due and payable (or redeemable) prior to its stated maturity;

provided, that (i) Section 8.1(b)(ii) will not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, (ii) for the avoidance of doubt, for the purposes of Section 8.1(b)(ii), the occurrence of any termination events or equivalent events (in respect of which no Credit Party is an "Affected Party," as such term is defined in the 1992 or 2002 Master Agreement, as published by the International Swaps and Derivatives Association, as applicable) under Rate Contracts shall not constitute a "breach or default by the Borrower or any Subsidiary (other than an Immaterial Subsidiary)" under Section 8.1(b)(ii) and (iii) such failure is unremedied or is not duly waived or cured prior to any termination of commitments of acceleration hereunder; or

(c) Breach of Certain Covenants. Failure of any Credit Party to perform or comply with any term or condition contained in Section 5.1(h)(i), 5.2 (as it relates to the Borrower only), 5.15 or Section 6; or

(d) Breach of Representations, etc. Any representation, warranty, certification or other statement made or deemed made by any Credit Party in any Credit Document or in any statement or certificate at any time given by any Credit Party or any of its Subsidiaries in writing pursuant to the terms of or in connection with the Credit Documents was false in any material respect (or, to the extent such representation and warranty contains qualifications as to materiality, it was false in any respect) as of the date made or deemed made; or

(e) Breach of Other Covenants. Any Credit Party defaults in the performance of or compliance with any other term, covenant or provision in this Agreement or in any of the other Credit Documents, other than any such term, covenant or provision referred to in any other provision of this Section 8.1, and such default is not remedied, cured or waived within thirty (30) days after the earlier to occur of the date on which a Responsible Officer has knowledge of such default and the date of receipt by the Borrower of notice from the Administrative Agent of such default; or

(f) Involuntary Bankruptcy; Appointment of Receiver, Etc. (i) A court of competent jurisdiction enters a decree or order for relief in respect of the Borrower or any Subsidiary (other than an Immaterial Subsidiary) in an involuntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order is not stayed; or any other similar relief is granted under any applicable federal or state law; or (ii) an involuntary case is commenced against the Borrower or any Subsidiary (other than an Immaterial Subsidiary) under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over the Borrower or any Subsidiary (other than an Immaterial Subsidiary), or over all or a substantial part of its property, is entered; or there occurs the involuntary appointment of an interim receiver, trustee or other custodian of the Borrower or any Subsidiary (other than an Immaterial Subsidiary) for all or a substantial part of its property; or a warrant of attachment, execution or similar process is issued against any substantial part of the property of the Borrower or any Subsidiary (other than an Immaterial Subsidiary), and any such event described in this clause (ii) continues for sixty (60) days without having been dismissed, bonded or discharged; or

(g) Voluntary Bankruptcy; Appointment of Receiver, etc.(i) The Borrower or any Subsidiary (other than an Immaterial Subsidiary) has an order for relief entered with respect to it or commences a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, or consents to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or consents to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or the Borrower or any Subsidiary (other than an Immaterial Subsidiary) makes any assignment for the benefit of creditors; or (ii) the Borrower or any Subsidiary (other than an Immaterial Subsidiary) becomes unable, or fails generally, or admits in writing its inability, to pay its debts as such debts become due; or the Board of Directors of the Borrower or any Subsidiary (other than an Immaterial Subsidiary) (or any committee thereof) adopts any resolution or otherwise authorizes any action to approve any of the actions referred to herein or in Section 8.1(f); or

(h) Judgments and Attachments. Any money judgment, writ or warrant of attachment or similar process (including any settlement of the OIG Matter) involving in any individual case in an amount in excess of the Threshold Amount (other than any judgment, settlement, writ, warrant or similar process involving claims in any way relating to the OIG Matter, including but not limited to, claims or matters arising under the False Claims Act, 31 U.S.C. 3729 and any other Laws, so long as the aggregate amount of such judgments, settlements, writs, warrants or similar processes does not exceed $56,000,000) (to the extent not covered by insurance

(as to which a solvent and unaffiliated insurance company has acknowledged coverage) or third-party indemnities (as to which the indemnitor has acknowledged responsibility)) is entered or filed against the Borrower or any Subsidiary (other than an Immaterial Subsidiary) or any of their respective assets and remains undischarged, unvacated, unbonded or unstayed for a period of sixty (60) days (or in any event later than five (5) days prior to the date of any proposed sale thereunder); or

(i) Dissolution. Any order, judgment or decree is entered against the Borrower or any Subsidiary (other than an Immaterial Subsidiary) decreeing the involuntary dissolution or split up of such Credit Party and such order remains undischarged or unstayed for a period in excess of sixty (60) days; or

(j) Employee Benefit Plans. There occurs one or more ERISA Events that individually or in the aggregate results in or could reasonably be expected to result in a Material Adverse Effect; or

(k) Change of Control. A Change of Control occurs; or

(l) Guaranties, Collateral Documents and other Credit Documents. At any time after the execution and delivery thereof:

(i) the Guaranty for any reason, other than the satisfaction in full of all Obligations, ceases to be in full force and effect (other than in accordance with its terms) or is declared to be null and void or any Guarantor repudiates its obligations thereunder;

(ii) this Agreement or any Collateral Document ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms hereof or thereof or the satisfaction in full of the Obligations in accordance with the terms hereof) or is declared null and void, or the Collateral Agent does not have or ceases to have a valid and perfected Lien in any Collateral having a fair market value, individually or in the aggregate, in excess of the Threshold Amount purported to be covered by the Collateral Documents (except to the extent not required to be valid or perfected by the Credit Documents) with the priority required by the relevant Collateral Document, in each case, for any reason other than actions taken by or on behalf of the Collateral Agent or any Secured Party or the failure of the Collateral Agent or any Secured Party to take any action within its control and except as to Collateral consisting of real property to the extent that such losses are covered by a lender's title insurance policy; or

(iii) any Credit Party contests the validity or enforceability of any Credit Document in writing or denies in writing that it has any further liability, including with respect to future advances by the Lenders, under any Credit Document to which it is a party;

THEN, (1) upon the occurrence of any Event of Default described in Section 8.1(f) or 8.1(g), automatically, and (2) upon the occurrence of any other Event of Default, upon notice to the

Borrower by the Administrative Agent (which notice may be given by the Administrative Agent, but must be given by the Administrative Agent at the request of the Required Lenders):

(i) the applicable Commitments and the obligation of the Issuing Banks to Issue any Letter of Credit will immediately terminate or be reduced (as specified by the Administrative Agent);

(ii) the aggregate principal of all applicable Loans, all accrued and unpaid interest thereon, all fees and all other Obligations under this Agreement and the other Credit Documents, together with an amount equal to 103% of the maximum amount that may at any time be drawn under all Letters of Credit then outstanding (regardless of whether any beneficiary under any such Letter of Credit will have presented, or will be entitled at such time to present, the drafts or other documents or certificates required to draw under such Letters of Credit), will become due and payable immediately, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by each Credit Party; *provided* that the foregoing will not affect in any way the obligations of the Lenders under Section 2.3(b)(iv) or Section 2.4(e);

(iii) the Borrower will immediately comply with the provisions of Section 2.4(h) with respect to the deposit of cash collateral to secure the existing Letter of Credit Usage and future payment of related fees; and

(iv) the Administrative Agent may, and may cause the Collateral Agent to, exercise any and all of its other rights and remedies under applicable law (including any applicable UCC) or at equity, hereunder and under the other Credit Documents.

Notwithstanding anything herein to the contrary, if a notice of a Specified Equity Contribution is delivered before or within the ten (10) Business Day period specified in Section 6.7(b), so long as no other Event of Default has occurred and is continuing, the Lenders will not accelerate the Loans and other Obligations or terminate or reduce the Commitments or the obligation of the Issuing Bank to Issue any Letter of Credit or require the Borrower to comply with the provisions of Section 2.4(h) or exercise rights and remedies (including against the Collateral) on the basis of an Event of Default that would be cured by such Specified Equity Contribution unless and until a breach of the Financial Covenants is not cured by such Specified Equity Contribution on or prior to the end of such ten (10) Business Day period.

8.2 Application of Proceeds. Notwithstanding anything to the contrary contained in this Agreement or any other Credit Document, upon the occurrence and during the continuance of an Event of Default and after the acceleration of the principal amount of any of the Loans hereunder:

(a) each Credit Party irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by the Administrative Agent, the Collateral Agent or any Issuing Bank from or on behalf of any Credit Party, and, as between each Credit Party on the one hand and the Administrative Agent, the Collateral Agent, each Issuing Bank and the Lenders on the other, the Administrative Agent and each Issuing Bank will have the

continuing and exclusive right to apply and to reapply any and all payments received against the Obligations in such manner as the Administrative Agent (or, as applicable, such Issuing Bank) may deem advisable and consistent with this Agreement notwithstanding any previous application by Administrative Agent (or, as applicable, such Issuing Bank); and

(b) subject to Section 2.15(d), any and all payments received by any Secured Party, including proceeds of Collateral, will be applied:

(i) *first*, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to the Administrative Agent or the Collateral Agent with respect to this Agreement, the other Credit Documents or the Collateral,

together with interest on each such amount from and after the date such amount is due, owing or unpaid until paid in full;

(ii) *second*, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to any Lender or Issuing Bank with respect to this Agreement, the other Credit Documents or the Collateral, together with interest on each such amount at the highest rate then in effect under this Agreement from and after the date such amount is due, owing or unpaid until paid in full;

(iii) *third*, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the Bankruptcy Code, would have accrued on such amounts);

(iv) *fourth*, (A) to the principal amount of the Obligations, including, without limitation, with respect to the deposit of cash collateral to secure the existing Letter of Credit Usage and future payment of related fees in compliance with Section 2.4(h), (B) to any Obligations under any Secured Rate Contract for which the Administrative Agent has received written notice of such Obligations as being outstanding and (C) to any Obligation under any Bank Product Agreement for which the Administrative Agent has received written notice of such Obligations as being outstanding;

(v) *fifth*, to any other Indebtedness or obligations of any Credit Party owing to the Administrative Agent, the Collateral Agent, any Lender or any other Secured Party under the Credit Documents; and

(vi) *sixth*, to the Borrower or to whomever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct.

In carrying out the foregoing, (a) amounts received will be applied in the numerical order provided until exhausted prior to the application to the next succeeding category and (b) each of the Persons entitled to receive a payment in any particular category will receive an amount equal to its *pro rata* share of amounts available to be applied pursuant thereto for such category. Notwithstanding the foregoing, no amount received from any Guarantor shall be applied to any Excluded Swap Obligation of such Guarantor. In the event that any such proceeds are insufficient to pay in full the items described in clauses (b)(i) through (b)(vi) of this Section 8.2, the Credit Parties shall remain liable, jointly and severally, for any deficiency.

Notwithstanding the foregoing, Obligations under any Secured Rate Contract and any Bank Product Agreement shall be excluded from the application described above if the Administrative Agent has not received written notice thereof, together with such supporting documentation as the Administrative Agent may request, from the applicable holders thereof following such acceleration or exercise of remedies and at least three (3) Business Days prior to the application of the proceeds thereof. Each holder of Obligations under any Secured Rate Contract or any Bank Product Agreement not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Section 9 for itself and its Affiliates as if a "**Lender**" party hereto.

9. AGENTS

9.1 Appointment and Duties.

(a) Appointment of Agent. Each Lender and each Issuing Bank hereby appoints Wells Fargo Bank, National Association (together with any successor Agent pursuant to Section 9.9) as the Administrative Agent and the Collateral Agent hereunder and authorizes each such Agent to (i) execute and deliver the Credit Documents and accept delivery thereof on its behalf from any Credit Party, (ii) take such action on its behalf and to exercise all rights, powers and remedies and perform the duties as are expressly delegated to such Agent under such Credit Documents and (iii) exercise such powers as are reasonably incidental thereto. In furtherance of the foregoing, each of the Lenders (including in its capacity as a potential Secured Swap Provider or a Bank Product Provider) hereby irrevocably appoints and authorizes the Collateral Agent to act as the agent of (and to hold any security interest created by the Collateral Documents for and on behalf of or in trust for) such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Credit Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Collateral Agent (and any co-agents, sub-agents and attorneys-in-fact appointed by the Collateral Agent pursuant to Section 9.4 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Collateral Agent) will be entitled to the benefits of all provisions of this Section 9 (including Section 9.8(b), as though such co-agents, sub-agents and attorneys-in-fact were the "collateral agent" under the Credit Documents) as if set forth in full herein with respect thereto. The provisions of this Section 9 (other than Sections 9.9, 9.10(a) and 9.10(b)) are solely for the benefit of the Agents, the Issuing Banks and the Lenders and no Credit Party will have any rights as a third party beneficiary of any of the provisions thereof (other than Sections 9.9, 9.10(a) and 9.10(b)). In performing its functions and duties hereunder, each Agent will act solely as an agent of the Lenders and does not assume and will not be deemed to have assumed any obligation towards or relationship of agency or trust with or for the Borrower or any Subsidiary.

(b) Duties as Collateral and Disbursing Agent. Without limiting the generality of clause (a) above, each of the Administrative Agent and the Collateral Agent, as applicable, will each have the right and authority (to the exclusion of the Lenders and the Issuing Banks), and is hereby authorized, to (i) act as the disbursing and collecting agent for the Lenders and the Issuing Banks with respect to all payments and collections arising in connection with the Credit

Documents (including in any proceeding described in Section 8.1(f) or (g) or any other bankruptcy, insolvency or similar proceeding), and each Person making any payment in connection with any Credit Document to any Secured Party is hereby authorized to make such payment to such Agent, (ii) file and prove claims and file other documents necessary or desirable to allow the claims of the Secured Parties with respect to any Obligation in any proceeding described in Section 8.1(f) or (g) or any other bankruptcy, insolvency or similar proceeding (but not to vote, consent or otherwise act on behalf of such Person), (iii) act as collateral agent for each Secured Party for purposes of the perfection of all Liens created by such agreements and all other purposes stated therein, (iv) manage, supervise and otherwise deal with the Collateral, (v) take such other action as is necessary or desirable to maintain the perfection and priority of the Liens created or purported to be created by the Credit Documents, (vi) except as may be otherwise specified in any Credit Document, exercise all remedies given to such Agent and the other Secured Parties with respect to the Credit Parties and/or the Collateral, whether under the Credit Documents, applicable Law or otherwise and (vii) execute any amendment, consent or waiver under the Credit Documents on behalf of any Lender that has consented in writing to such amendment, consent or waiver; *provided, however,* that each such Agent hereby appoints, authorizes and directs each Lender and the Issuing Bank to act as collateral sub-agent for such Agent, the Lenders and the Issuing Banks for purposes of the perfection of all Liens with respect to the Collateral, including any deposit account maintained by a Credit Party with, and cash and Cash Equivalents held by, such Lender or Issuing Bank, and may further authorize and direct the Lenders and the Issuing Banks to take further actions as collateral sub-agents for purposes of enforcing such Liens or otherwise to transfer the Collateral subject thereto to such Agent, and each Lender and Issuing Bank hereby agrees to take such further actions to the extent, and only to the extent, so authorized and directed.

(c) Limited Duties. Under the Credit Documents, each of the Administrative Agent and the Collateral Agent (i) is acting solely on behalf of the Secured Parties (except to the limited extent provided in Section 2.7(b) with respect to the Register), with duties that are entirely administrative in nature, notwithstanding the use of the defined terms "Administrative Agent," "Collateral Agent," "Agent," the terms "agent" and "collateral agent" and similar terms in any Credit Document to refer to such Agent, which terms are used for title purposes only, (ii) is not assuming any obligation under any Credit Document other than as expressly set forth therein or any role as agent, fiduciary or trustee of or for any Lender, Issuing Bank or other Person and (iii) will have no implied functions, responsibilities, duties, obligations or other liabilities under any Credit Document, and each Secured Party, by accepting the benefits of the Credit Documents, hereby waives and agrees not to assert any claim against such Agent based on the roles, duties and legal relationships expressly disclaimed in clauses (i) through (iii) above. Without limiting the generality of the foregoing, the use of the term "agent" in this Agreement with reference to the Administrative Agent or the Collateral Agent is not intended to connote any fiduciary duty or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom and is intended to create or reflect only an administrative relationship between independent contracting parties.

9.2 Binding Effect. Each Secured Party, by accepting the benefits of the Credit Documents, agrees that (a) any action taken by the Administrative Agent, the Collateral Agent or the Required Lenders (or, if expressly required hereby, a greater proportion of the Lenders) in accordance with the provisions of the Credit Documents, (b) any action taken by the Administrative Agent or the Collateral Agent in reliance upon the instructions of Required Lenders

(or, where so required, such greater proportion) and (c) the exercise by the Administrative Agent, the Collateral Agent or the Required Lenders (or, where so required, such greater proportion) of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, will be authorized and binding upon all of the Secured Parties.

9.3 Use of Discretion .

(a) No Action without Instructions. Neither the Administrative Agent nor the Collateral Agent will be required to exercise any discretion or take, or to omit to take, any action, including with respect to enforcement or collection, except any action it is required to take or omit to take (i) under any Credit Document or (ii) pursuant to instructions from the Required Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders). Each Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons, and shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for Borrower and the Subsidiaries), accountants, experts and other professional advisors selected by it. No Lender shall have any right of action whatsoever against any Agent as a result of such Agent acting or (where so instructed) refraining from acting hereunder or any of the other Credit Documents in accordance with the instructions of Required Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders).

(b) Right Not to Follow Certain Instructions. Notwithstanding clause (a) above, neither the Administrative Agent nor the Collateral Agent will be required to take, or to omit to take, any action in connection herewith or any of the other Credit Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder (i) unless, upon demand, such Agent receives an indemnification satisfactory to it from the Lenders (or, to the extent applicable and acceptable to such Agent, any other Person) against all Liabilities that, by reason of such action or omission, may be imposed on, incurred by or asserted against such Agent or any Related Person thereof or (ii) that is, in the opinion of such Agent or its counsel, may expose such Agent to liability or that is contrary to any Credit Document or applicable Law including, for the avoidance of doubt any action that may be in violation of the automatic stay or that may affect a foreclosure, modification or termination of property of a Defaulting Lender under any Bankruptcy Proceeding or under the Bankruptcy Code, and no Agent will have any duty to disclose or will be liable for the failure to disclose, any information relating to any Credit Party or any of its Affiliates that is communicated to or obtained by the person serving as such Agent or any of its Affiliates in any capacity.

(c) Exclusive Right to Enforce Rights and Remedies. Notwithstanding anything to the contrary contained herein or in any other Credit Document, the authority to enforce rights and remedies hereunder and under the other Credit Documents against the Credit Parties or any of them will be vested exclusively in, and all actions and proceedings in equity or at law in connection with such enforcement will be instituted and maintained exclusively by, the Administrative Agent and the Collateral Agent in accordance with the Credit Documents for the benefit of all the Lenders and the Issuing Banks; *provided* that the foregoing will not prohibit (i) each of the Administrative Agent and the Collateral Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as such Agent) hereunder and

under the other Credit Documents, (ii) each Issuing Bank and each Swing Line Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as Issuing Bank or Swing Line Lender, as the case may be) hereunder and under the other Credit Documents, (iii) any Lender from exercising setoff rights in accordance with Section 10.4 or (iv) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Credit Party under any bankruptcy or other debtor relief law; *provided further*, that if at any time there is no Person acting as the Administrative Agent hereunder and under the other Credit Documents, then (A) the Required Lenders will have the rights otherwise ascribed to the Administrative Agent pursuant to Section 9.1 and (B) in addition to the matters set forth in clauses (ii), (iii) and (iv) of the preceding proviso and subject to Section 10.4, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

9.4 Delegation of Rights and Duties. Each of the Administrative Agent and the Collateral Agent may, upon any term or condition it specifies, delegate or exercise any of its rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any Credit Document by or through any trustee, co-agent, sub-agent, employee, attorney-in-fact and any other Person (including any Secured Party). Any such Person will benefit from this Section 9 to the extent provided by such Agent. No Agent will be liable for any action taken or omitted to be taken, or for the negligence or misconduct of, any trustee, co-agent, sub-agent, employee, attorney-in-fact or other agent selected by it with reasonable care.

9.5 Reliance and Liability.

(a) Each of the Administrative Agent and the Collateral Agent may, without incurring any liability hereunder, (i) treat the payee of any Note as its holder until such Note has been assigned in accordance with Section 10.6, (ii) rely on the Register to the extent set forth in Section 10.6, (iii) consult with any of its Related Persons and, whether or not selected by it, any other advisors, accountants and other experts (including advisors to, and accountants and experts engaged by, any Credit Party) and (iv) rely and act upon any document and information (including those transmitted by Electronic Transmission) and any telephone message or conversation, in each case believed by it to be genuine and transmitted, signed or otherwise authenticated by the appropriate parties.

(b) None of the Administrative Agent, the Collateral Agent and their respective Related Persons will be liable for any action taken or omitted to be taken by any of them under or in connection with any Credit Document, and each Secured Party, the Borrower and each other Credit Party hereby waive and will not assert (and the Borrower will cause each other Credit Party to waive and agree not to assert) any right, claim or cause of action based thereon, except to the extent of liabilities resulting primarily from the gross negligence, bad faith or willful misconduct of such Agent or, as the case may be, such Related Person (each as determined in a final, non-appealable judgment by a court of competent jurisdiction) in connection with the duties expressly set forth herein. Without limiting the foregoing, neither the Administrative Agent nor the Collateral Agent:

(i) will be responsible or otherwise incur liability for any action or omission taken in reliance upon the instructions of the Required Lenders or for the

actions or omissions of any of its Related Persons selected with reasonable care (other than employees, officers and directors of such Agent, when acting on behalf of such Agent);

(ii) will be responsible to any Lender, Issuing Bank or other Person for the due execution, legality, validity, enforceability, effectiveness, genuineness, sufficiency or value of, or the attachment, perfection or priority of any Lien created or purported to be created under or in connection with, any Credit Document;

(iii) makes any warranty or representation, or will be responsible, to any Lender, Issuing Bank or other Person for (A) any statement, document, information, including any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by any Agent to Lenders or by or on behalf of any Credit Party to any Agent or any Lender in connection with the Credit Documents and the transactions contemplated thereby or for the financial condition or business affairs of any Credit Party or any other Person liable for the payment of any Obligations, (B) any representation or warranty made or furnished by or on behalf of any Credit Party or any Related Person of any Credit Party in connection herewith or with any Credit Document or any transaction contemplated herein or therein or any other document, certificate or information with respect to any Credit Party, whether or not transmitted or (except for documents expressly required under any Credit Document to be transmitted to the Lenders) omitted to be transmitted by such Agent, including as to completeness, accuracy, scope or adequacy thereof, or for the scope, nature or results of any due diligence performed by such Agent in connection with the Credit Documents, (C) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Credit Document or the occurrence of any Default, (D) the execution, effectiveness, genuineness, validity, enforceability, collectability, sufficiency or genuineness hereof or of any Credit Document or any other agreement, instrument or document or (E) the satisfaction of any condition set forth in Section 3 or elsewhere in any Credit Document, and (F) and, for each of the items set forth in clauses (A) through (E) hereof, each Lender and Issuing Bank hereby waives and agrees not to assert any right, claim or cause of action it might have against the Administrative Agent or the Collateral Agent based thereon; and

(iv) will have any duty to ascertain or to inquire as to the performance or observance of any provision of any Credit Document, whether any condition set forth in any Credit Document is satisfied or waived, as to the financial condition of any Credit Party or as to the occurrence or continuation or possible occurrence or continuation of any Default or Event of Default or will be deemed to have notice or knowledge of such occurrence or continuation unless it has received a notice from the Borrower or any Lender or Issuing Bank describing such Default or Event of Default and clearly labeled “notice of default” (in which case such Agent will promptly give notice of such receipt to all Lenders).

(c) Each party to this Agreement acknowledges and agrees that the Administrative Agent may from time to time use one or more outside service providers for the

tracking of all Uniform Commercial Code financing statements (and/or other collateral related filings and registrations from time to time) required to be filed or recorded pursuant to the Credit Documents and the notification to the Administrative Agent, of, among other things, the upcoming lapse or expiration thereof. No Agent will be liable for any action taken or not taken by any such service provider.

9.6 Agent Individually. Each of the Administrative Agent and the Collateral Agent and their Affiliates may make loans and other extensions of credit to, acquire Capital Stock of, engage in any kind of business, including but not limited to any type of financial advisory business, with any Credit Party or Affiliate thereof as though it were not acting as an Agent and may receive separate fees and other payments therefor. To the extent the Administrative Agent, the Collateral Agent or any of their respective Affiliates makes any Loan or otherwise becomes a Lender hereunder, it will have and may exercise the same rights and powers hereunder and will be subject to the same obligations and liabilities as any other Lender and the terms "**Lender**," "**Required Lender**," and any similar terms will, except where otherwise expressly provided in any Credit Document, include such Agent or such Affiliate, as the case may be, in its individual capacity as Lender or as one of the Required Lenders, respectively.

9.7 Lender Credit Decision.

(a) Each Lender and Issuing Bank acknowledges that it will, independently and without reliance upon the Administrative Agent, the Collateral Agent, any Lender or Issuing Bank or any of their Related Persons or upon any document (including any offering and disclosure materials in connection with the syndication of the Loans) solely or in part because such document was transmitted by such Agent or any of its Related Persons, conduct its own independent investigation of the financial condition and affairs of each Credit Party and make and continue to make its own credit decisions in connection with entering into, and taking or not taking any action under, any Credit Document or with respect to any transaction contemplated in any Credit Document, in each case based on such documents and information as it will deem appropriate. Each Lender further represents and warrants that it has reviewed the confidential information memorandum and each other document made available to it on the Platform in connection with this Agreement and has acknowledged and accepted the terms and conditions applicable to the recipients thereof (including any such terms and conditions set forth, or otherwise maintained, on the Platform with respect thereto). Except for documents expressly required by any Credit Document to be transmitted by the Administrative Agent or the Collateral Agent to the Lenders or Issuing Banks, no such Agent will have any duty or responsibility to provide any Lender or Issuing Bank with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Credit Party or any Affiliate of any Credit Party that may come in to the possession of such Agent or any of its Related Persons.

(b) If any Lender or Issuing Bank has elected to abstain from receiving Nonpublic Information concerning the Credit Parties or their Affiliates, such Lender or Issuing Bank acknowledges that, notwithstanding such election, the Administrative Agent and/or the Credit Parties will, from time to time, make available syndicate-information (which may contain Nonpublic Information) as required by the terms of, or in the course of administering the Loans to the credit contact(s) identified for receipt of such information on the Lender's administrative questionnaire who are able to receive and use all syndicate-level information (which may contain

Nonpublic Information) in accordance with such Lender's compliance policies and contractual obligations and applicable Law, including federal and state securities laws; *provided* that if such contact is not so identified in such questionnaire, the relevant Lender or Issuing Bank hereby agrees to promptly (and in any event within one (1) Business Day) provide such a contact to the Administrative Agent and the Credit Parties upon request therefor by the Administrative Agent or the Credit Parties. Notwithstanding such Lender's or Issuing Bank's election to abstain from receiving material non-public information, such Lender or Issuing Bank acknowledges that if such Lender or Issuing Bank chooses to communicate with the Administrative Agent, it assumes the risk of receiving Nonpublic Information concerning the Credit Parties or their Affiliates. In the event that any Lender has determined for itself to not access any information disclosed through the Platform or otherwise, such Lender acknowledges that (i) other Lenders may have availed themselves of such information and (ii) neither the Borrower nor the Administrative Agent has any responsibility for such Lender's decision to limit the scope of the information it has obtained in connection with this Agreement and the other Credit Documents.

(c) Each Lender, by delivering its signature page to this Agreement or an Assignment Agreement and funding its Loan, will be deemed to have acknowledged receipt of, and consented to and approved, each Credit Document and each other document required to be approved by any Agent, the Required Lenders or the Lenders, as applicable, on the Closing Date.

9.8 Expenses; Indemnities; Withholding.

(a) Each Lender and Issuing Bank agrees to reimburse the Administrative Agent, the Collateral Agent and each of their respective Related Persons (to the extent not reimbursed by any Credit Party) promptly upon demand, severally and ratably, for any costs and expenses (including fees, charges and disbursements of financial, legal and other advisors and Other Taxes paid in the name of, or on behalf of, any Credit Party) that may be incurred by such Agent or any of its Related Persons in connection with the preparation, syndication, execution, delivery, administration, modification, consent, waiver or enforcement of, or the taking of any other action (whether through negotiations, through any work-out, bankruptcy, restructuring or other legal or other proceeding (including preparation for and/or response to any subpoena or request for document production relating thereto) or otherwise) in respect of, or legal advice with respect to, its rights or responsibilities under, any Credit Document.

(b) Each Lender and Issuing Bank further agrees to indemnify the Administrative Agent, the Collateral Agent and each of their respective Related Persons (to the extent not reimbursed by any Credit Party), severally and ratably, in proportion to its Pro Rata Share, from and against Liabilities (including, to the extent not indemnified pursuant to Section 9.8(c), taxes, interests and penalties imposed for not properly withholding or backup withholding on payments made to or for the account of any Lender) that may be imposed on, incurred by or asserted against such Agent or any of its Related Persons in any matter relating to or arising out of, in connection with or as a result of any Credit Document or any other act, event or transaction related, contemplated in or attendant to any such document, or, in each case, any action taken or omitted to be taken by such Agent or any of its Related Persons under or with respect to any of the foregoing (**IN ALL CASES**, **WHETHER OR NOT CAUSED OR ARISING**, **IN WHOLE OR IN PART**, **OUT OF THE COMPARATIVE**, **CONTRIBUTORY OR SOLE NEGLIGENCE OF ANY AGENT OR RELATED PERSON**); *provided, however,*

that no Lender will be liable to the Administrative Agent, the Collateral Agent or any of their respective Related Persons to the extent such liability has resulted solely and directly for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, claims, suits, judgments, litigations, investigations, inquiries or proceedings, costs, expenses or disbursements which have resulted from the gross negligence, bad faith or willful misconduct of such Agent or, as the case may be, such Related Person, as determined by a court of competent jurisdiction in a final non-appealable judgment or order. No Lender shall be liable under this Section or otherwise for any failure of another Lender to satisfy such other Lender's obligations under the Credit Documents.

(c) To the extent required by any applicable law, the Administrative Agent and the Collateral Agent may withhold from any payment to any Lender under a Credit Document an amount equal to any applicable withholding tax. If the Internal Revenue Service or any other Governmental Authority asserts a claim that such Agent did not properly withhold tax from amounts paid to or for the account of any Lender (because the appropriate certification form was not delivered, was not properly executed, or fails to establish an exemption from, or reduction of, withholding tax with respect to a particular type of payment, or because such Lender failed to notify such Agent or any other Person of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason), or such Agent reasonably determines that it was required to withhold taxes from a prior payment but failed to do so, such Lender will promptly indemnify such Agent fully for all amounts paid, directly or indirectly, by such Agent as tax or otherwise, including penalties and interest, and together with all expenses incurred by such Agent, including legal expenses of outside counsel and out-of-pocket expenses. Each of the Administrative Agent and the Collateral Agent may offset against any payment to any Lender under a Credit Document, any applicable withholding tax that was required to be withheld from any prior payment to such Lender but which was not so withheld, as well as any other amounts for which such Agent is entitled to indemnification from such Lender under this Section 9.8(c).

9.9 Resignation of Administrative Agent, Collateral Agent or Issuing Bank.

(a) Each of the Administrative Agent and the Collateral Agent may resign at any time by delivering notice of such resignation to the Lenders and the Borrower, with such resignation becoming effective subject to and in accordance with the terms of this Section 9.9(a). If such Agent delivers any such notice, the Required Lenders will have the right, subject to the consent of the Borrower (such consent not to be unreasonably withheld, conditioned or delayed) at all times other than during the continuation of an Event of Default under Section 8.1(a), (f) or (g), to appoint a successor Administrative Agent or Collateral Agent, as applicable. The Administrative Agent's resignation shall become effective on the earliest of (i) thirty (30) days after delivery of the notice of resignation (regardless of whether a successor has been appointed or not), (ii) the appointment of a successor Administrative Agent by the Required Lenders or (iii) such other date, if any, agreed to by the Required Lenders. If, after thirty (30) days after the date of such retiring Agent's notice of resignation, no successor Administrative Agent or Collateral Agent, as applicable, has been appointed by the Required Lenders that has accepted such appointment, then such retiring Agent may, on behalf of the Lenders, and subject to the consent of the Borrower (such consent not to be unreasonably withheld, conditioned or delayed) at all times other than during the continuation of an Event of Default under Section 8.1(a), (f) or (g), appoint

a successor Administrative Agent or Collateral Agent, as applicable, from among the Lenders or a commercial banking institution organized under the laws of the United States (or any State thereof) or a United States branch or agency of a commercial banking institution, in each case, having combined capital and surplus of at least $500,000,000.

(b) Effective immediately upon its resignation, (i) any retiring Administrative Agent or Collateral Agent will be discharged from its duties and obligations under the Credit Documents, (ii) to the extent applicable, the Lenders will assume and perform all of the duties of such Agent until a successor Administrative Agent or Collateral Agent, as applicable, will have accepted a valid appointment hereunder, (iii) such retiring Agent and its Related Persons will no longer have the benefit of any provision of any Credit Document as Administrative Agent or Collateral Agent, as applicable, other than with respect to any actions taken or omitted to be taken while such retiring Agent was, or because such Agent had been, validly acting as Administrative Agent or Collateral Agent, as applicable, under the Credit Documents and (iv) subject to its rights under Section 9.3, such retiring Agent will take such action as may be reasonably necessary to assign to the applicable successor Administrative Agent or Collateral Agent its rights as Administrative Agent or Collateral Agent, as applicable, under the Credit Documents. After any retiring Administrative Agent's or Collateral Agent's resignation hereunder as the Administrative Agent, the provisions of this Section 9 and Sections 10.2, 10.3, 10.4, 10.10, 10.14, 10.15, and 10.16 will inure to its benefit, its sub-agents' and their respective affiliates' benefit as to any actions taken or omitted to be taken by any of them while it was Administrative Agent or Collateral Agent hereunder. Any resignation of the Administrative Agent pursuant to this Section will also constitute the resignation of Wells Fargo Bank, National Association or its successor as a Swing Line Lender, and any successor Administrative Agent appointed pursuant to this Section will, upon its acceptance of such appointment, become a successor Swing Line Lender for all purposes hereunder. Effective immediately upon the acceptance of a valid appointment as Administrative Agent or Collateral Agent by a successor Administrative Agent or Collateral Agent, such successor Administrative Agent or Collateral Agent will succeed to, and become vested with, all the rights, powers, privileges and duties of such retiring Agent under the Credit Documents and the retiring Administrative Agent or Collateral Agent will promptly (A) transfer to its successor all sums, Securities and other items of Collateral held under the Collateral Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Administrative Agent or Collateral Agent under the Credit Documents, and (B) execute and deliver to such successor Administrative Agent or Collateral Agent such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Administrative Agent or Collateral Agent of the security interests created under the Collateral Documents.

(c) Any Issuing Bank may resign at any time by delivering notice of such resignation to the Administrative Agent, effective on the date set forth in such notice or, if no such date is set forth therein, on the date such notice will be effective. Upon such resignation, the applicable Issuing Bank will remain an Issuing Bank and will retain its rights and obligations in its capacity as such (other than any obligation to Issue Letters of Credit but including the right to receive fees or to have Lenders participate in any Letter of Credit) with respect to Letters of Credit Issued by such Issuing Bank prior to the date of such resignation and will otherwise be discharged from all other duties and obligations under the Credit Documents.

9.10 Release of Collateral or Guarantors.

(a) Each Lender and Issuing Bank hereby consents to the release and hereby directs the Administrative Agent and the Collateral Agent to release (or, in the case of clause (a)(ii) below, release or subordinate) the following:

(i) any Guarantor from its guaranty of any Obligation pursuant to Section 7.11 or upon such Guarantor becoming an Excluded Subsidiary, and such Guarantor will be automatically released from its Obligations thereunder and its Obligations under all other Credit Documents (and any Liens on Collateral of such former Guarantor shall be released); *provided* that if such Guarantor becomes an Excluded Subsidiary by virtue of becoming a non-wholly owned Subsidiary, such release shall be subject to the consent of the Administrative Agent (such consent not to be unreasonably withheld); and

(ii) any Lien held by the Collateral Agent for the benefit of the Secured Parties against (1) any Collateral that is sold, transferred, conveyed or otherwise disposed of by a Credit Party in a transaction permitted by the Credit Documents (including pursuant to a valid waiver or consent) or any Collateral that becomes an Excluded Asset, (2) any property subject to a Lien permitted hereunder in reliance upon Section 6.2(d) and (3) all of the Collateral and all Credit Parties, upon (A) termination of the Revolving Credit Commitments, (B) payment and satisfaction in full of all Loans, all obligations to reimburse the Issuing Banks for drawings honored under Letters of Credit and all other Obligations under the Credit Documents (excluding contingent obligations as to which no claim has been asserted) and all Obligations arising under Secured Rate Contracts and Bank Product Agreements (or otherwise cash collateralized in amounts and on terms satisfactory to the Administrative Agent and the applicable holder of such Obligations arising under Secured Rate Contracts and Bank Product Agreements) that the Administrative Agent has theretofore been notified in writing by the holder of such Obligations are then due and payable and (C) deposit of cash collateral with respect to all contingent Letter of Credit Obligations (or, as an alternative to cash collateral, receipt by the applicable Issuing Bank of a back-up letter of credit) in amounts and on terms and conditions and with parties satisfactory to the Administrative Agent and the applicable Issuing Bank that is, or may be, owed such contingent Letter of Credit Obligations (excluding contingent Obligations (other than obligations to reimburse the Issuing Banks for drawings honored under Letters of Credit) as to which no claim has been asserted), and, in the case of this clause (3), the Collateral Documents, the guarantees made herein, the Liens and all other security interests granted thereunder will automatically terminate.

(b) Each Lender and Issuing Bank hereby irrevocably authorizes the Administrative Agent and the Collateral Agent, and each of the Administrative Agent and the Collateral Agent hereby agrees, upon three (3) Business Days' (or such shorter period as is acceptable to the Administrative and the Collateral Agent) prior written request by the Borrower to the Administrative Agent, to execute and deliver or file such documents and to perform other actions reasonably necessary to release the guaranties and Liens when and as directed in this

Section 9.10, subject to receipt by the Administrative Agent of a certification of the Borrower as to such matters as are reasonably required by the Administrative Agent (and the Collateral Agent may rely conclusively on such certification without further inquiry); *provided* that (i) neither the Administrative Agent nor the Collateral Agent shall be required to execute any such document on terms which, in such Agent's opinion, would expose such Agent to liability or create any obligation or entail any consequence other than the release of such Liens without recourse or warranty, and (ii) such release shall not in any manner discharge, affect or impair the Obligations or any Liens upon (or obligations of the Borrower or any Guarantor in respect of) all interests retained by the Borrower or any Guarantor, including (without limitation) the proceeds of the sale, all of which shall continue to constitute part of the Collateral. Any execution and delivery by the Administrative Agent or the Collateral Agent of documents in connection with any such release shall be without recourse to or warranty by either the Administrative Agent or the Collateral Agent. Upon request by the Administrative Agent or the Collateral Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's or the Collateral Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.10. To the extent any Collateral is disposed of as permitted by this Section to any Person other than a Credit Party, such Collateral will be sold free and clear of Liens created by the Credit Documents and the Administrative Agent will be authorized to take any actions deemed appropriate in order to effect the foregoing.

(c) In the event of a foreclosure by the Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition, the Collateral Agent (at the direction of the Required Lenders) or any Lender may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition and the Collateral Agent, as agent for and representative of Secured Parties (but not any Lender or Lenders in its or their respective individual capacities unless Required Lenders will otherwise agree in writing), at the direction of the Required Lenders, will be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by the Collateral Agent at such sale or other disposition (including pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code), the Collateral Agent (or any Lender, except with respect to a "credit bid" pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code). Any release of guarantee obligations will be deemed subject to the provision that such guarantee obligations will be reinstated if after such release any portion of any payment in respect of the Obligations guaranteed thereby will be rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any Guarantor or any substantial part of its property, or otherwise, all as though such payment had not been made. The Collateral Agent will not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Collateral Agent's Lien thereon, or any certificate prepared by any Credit Party in connection therewith, nor will the Collateral Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

9.11 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, each Lead Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Credit Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments or this Agreement;

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement;

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84- 14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, each Lead Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the

benefit of the Borrower or any other Credit Party, that the Administrative Agent, any Lead Arranger and their respective Affiliates is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Credit Document or any documents related hereto or thereto).

9.12 Lead Arrangers, **Syndication Agents and Documentation Agent**. Notwithstanding any provision to the contrary contained elsewhere in this Agreement or in any other Credit Document, none of the Lead Arrangers, the Syndication Agents or the Documentation Agent will have any duties or responsibilities, nor will any of such Agents have or be deemed to have any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities will be read into this Agreement or any other Credit Document or otherwise exist against any of such Agents. At any time that any Lender serving (or whose Affiliate is serving) as a Lead Arranger, Syndication Agent or Documentation Agent will have transferred to any other Person (other than any Affiliates) all of its interests in the Loans, such Lender (or an Affiliate of such Lender acting as a Lead Arranger, Syndication Agent or Documentation Agent) will be deemed to have concurrently resigned as such Lead Arranger, Syndication Agent or Documentation Agent.

9.13 Administrative Agent May File Bankruptcy Disclosure and Proofs of Claim. In the case of pendency of any proceeding under any Bankruptcy Proceeding relative to any Credit Party, the Administrative Agent (irrespective of whether the principal of any Loan will then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent will have made any demand on the Borrower) will be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file a verified statement pursuant to the Federal Rules of Bankruptcy Procedure that, in its sole opinion, complies with such rule's disclosure requirements for entities representing more than one creditor;

(b) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, each Issuing Bank and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its respective agents and counsel and all other amounts due the Administrative Agent under Section 2, Section 10.2 and Section 10.3) allowed in such judicial proceeding; and

(c) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and each Issuing Bank to make such payments to the Administrative Agent and, in the event that the Administrative Agent will consent to the making of such payments directly to the Lenders and the Issuing Banks, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other

amounts due the Administrative Agent under this Agreement. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Administrative Agent, its agents and counsel, and any other amounts due the Administrative Agent under this Agreement out of the estate in any such proceeding, will be denied for any reason, payment of the same will be secured by a Lien on, and will be paid out of, any and all distributions, dividends, money, securities and other properties that the Lenders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise.

Nothing contained herein will be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or Issuing Bank any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or Issuing Bank or to authorize the Administrative Agent to vote in respect of the claim of any Lender or Issuing Bank in any such proceeding.

10. MISCELLANEOUS

10.1 Notices.

(a) Addresses. All notices and other communications required or expressly authorized to be made by this Agreement will be given in writing, unless otherwise expressly specified herein, and (i) addressed to the address set forth on Appendix B or otherwise indicated to the Borrower and the Administrative Agent in writing, (ii) posted to the Platform (to the extent such system is available and set up by or at the direction of the Administrative Agent prior to posting), (iii) posted to any other E-System approved by or set up by or at the direction of the Administrative Agent or (iv) addressed to such other address as will be notified in writing (A) in the case of the Borrower, the Administrative Agent, the Collateral Agent and the Swing Line Lenders, to the other parties hereto and (B) in the case of all other parties, to the Borrower, the Administrative Agent and the Collateral Agent. Transmissions made by electronic mail or E-Fax to the Administrative Agent will be effective only (x) for notices where such transmission is specifically authorized by this Agreement, (y) if such transmission is delivered in compliance with procedures of the Administrative Agent applicable at the time and previously communicated to Borrower, and (z) if receipt of such transmission is acknowledged by the Administrative Agent.

(b) Effectiveness. (i) All communications described in clause (a) above and all other notices, demands, requests and other communications made in connection with this Agreement will be effective and be deemed to have been received (i) if delivered by hand, upon personal delivery, (ii) if delivered by overnight courier service, one (1) Business Day after delivery to such courier service, (iii) if delivered by mail, three (3) Business Days after deposit in the mail, (iv) if delivered by facsimile (including electronic mail) other than to post to an E-System pursuant to clause (a)(ii) or (a)(iii) above), upon sender's receipt of confirmation of proper transmission, and (v) if delivered by posting to any E-System, on the later of the Business Day of such posting and the Business Day access to such posting is given to the recipient thereof in accordance with the standard procedures applicable to such E-System; *provided*, *however*, that no communications to the Administrative Agent pursuant to this Section 10.1 will be effective until received by the Administrative Agent.

(ii) The posting, completion and/or submission by any Credit Party of any communication pursuant to an E-System will constitute a representation and

warranty by the Credit Parties that any representation, warranty, certification or other similar statement required by the Credit Documents to be provided, given or made by a Credit Party in connection with any such communication is true, correct and complete except as expressly noted in such communication or E-System.

(c) Each Lender will notify the Administrative Agent and the Collateral Agent in writing of any changes in the address to which notices to such Lender should be directed, of addresses of its Lending Office, of payment instructions in respect of all payments to be made to it hereunder and of such other administrative information as the Administrative Agent will reasonably request.

(d) Electronic Transmissions.

(i) Authorization. Subject to the provisions of Section 10.1(a), each of the Administrative Agent, the Collateral Agent, the Lenders, each Credit Party and each of their Related Persons, is authorized (but not required) to transmit, post or otherwise make or communicate, in its sole discretion, Electronic Transmissions in connection with any Credit Document and the transactions contemplated therein. Each Credit Party and each Secured Party hereto acknowledges and agrees that the use of Electronic Transmissions is not necessarily secure and that there are risks associated with such use, including risks of interception, disclosure and abuse and each indicates it assumes and accepts such risks by hereby authorizing the transmission of Electronic Transmissions.

(ii) Signatures. Subject to the provisions of Section 10.1(a), (i)(A) no posting to any E-System will be denied legal effect merely because it is made electronically, (B) each E Signature on any such posting will be deemed sufficient to satisfy any requirement for a "signature" and (C) each such posting will be deemed sufficient to satisfy any requirement for a "writing," in each case including pursuant to any Credit Document, any applicable provision of any applicable UCC, the federal Uniform Electronic Transactions Act, the Electronic Signatures in Global and National Commerce Act and any substantive or procedural Law governing such subject matter, (ii) each such posting that is not readily capable of bearing either a signature or a reproduction of a signature may be signed, and will be deemed signed, by attaching to, or logically associating with such posting, an E-Signature, upon which the Administrative Agent, the Collateral Agent, each other Secured Party and each Credit Party may rely and assume the authenticity thereof, (iii) each such posting containing a signature, a reproduction of a signature or an E-Signature will, for all intents and purposes, have the same effect and weight as a signed paper original and (iv) each party hereto or beneficiary hereto agrees not to contest the validity or enforceability of any posting on any E-System or E-Signature on any such posting under the provisions of any applicable Law requiring certain documents to be in writing or signed; *provided, however,* that nothing herein will limit such party's or beneficiary's right to contest whether any posting to any E-System or E-Signature has been altered after transmission.

(iii) Separate Agreements. All uses of an E-System will be governed by and subject to, in addition to Section 10.1, the separate terms, conditions and privacy policy posted or referenced in such E-System (or such terms, conditions and privacy policy as may be updated from time to time, including on such E-System) and related Contractual Obligations executed by the Administrative Agent and Credit Parties in connection with the use of such E-System.

(iv) LIMITATION OF LIABILITY. ALL E-SYSTEMS AND ELECTRONIC TRANSMISSIONS WILL BE PROVIDED "AS IS" AND "AS AVAILABLE." NONE OF THE ADMINISTRATIVE AGENT, THE COLLATERAL AGENT, ANY LENDER OR ANY OF THEIR RELATED PERSONS WARRANTS THE ACCURACY, ADEQUACY OR COMPLETENESS OF ANY E-SYSTEMS OR ELECTRONIC TRANSMISSION AND DISCLAIMS ALL LIABILITY (WHETHER OR NOT BASED ON STRICT LIABILITY AND INCLUDING DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN CONTRACT, TORT OR OTHERWISE)) FOR ERRORS OR OMISSIONS THEREIN. NO WARRANTY OF ANY KIND IS MADE BY THE ADMINISTRATIVE AGENT, THE COLLATERAL AGENT ANY LENDER OR ANY OF THEIR RELATED PERSONS IN CONNECTION WITH ANY E-SYSTEMS OR ELECTRONIC COMMUNICATION, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS. The Borrower, each other Credit Party executing this Agreement and each Secured Party agrees that the Administrative Agent has no responsibility for maintaining or providing any equipment, software, services or any testing required in connection with any Electronic Transmission or otherwise required for any E-System.

(e) Each Credit Party agrees that the Administrative Agent may make the communications described in clause (a) above available to the other Agents, the Lenders, the Swing Line Lenders or the Issuing Banks by posting such communications on any Platform.

(f) Each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable law, including United States federal and state securities laws, to make reference to information that is not made available through the "Public Side Information" portion of the Platform and that may contain Nonpublic Information with respect to the Borrower, the Subsidiaries or their respective securities for purposes of United States federal or state securities laws. In the event that any Public Lender has determined for itself to not access any information disclosed through the Platform or otherwise, such Public Lender acknowledges that (i) other Lenders may have availed themselves of such information and (ii) neither the Borrower nor the Administrative Agent has any responsibility for such Public Lender's decision to limit the scope of the information it has obtained in connection with this Agreement and the other Credit Documents.

10.2 Expenses. The Borrower agrees to pay promptly (a) all reasonable and documented out-of-pocket costs and expenses of the Administrative Agent, the Collateral Agent, the Issuing Banks and the Agents associated with the preparation, execution, delivery and administration of the Credit Documents and any consents, amendments, waivers or other modifications thereto (and with respect to legal fees, expenses and disbursements, limited to fees, expenses and disbursements of one primary counsel and, if reasonably necessary, one local counsel in each relevant jurisdiction (which may be a single local counsel acting in multiple jurisdictions)); (b) [reserved]; (c) [reserved]; (d) all reasonable documented out-of-pocket costs and reasonable expenses of creating, perfecting and recording Liens in favor of the Collateral Agent, for the benefit of the Secured Parties, including filing and recording fees, expenses and taxes, stamp or documentary taxes, search fees, title insurance premiums; (e) [reserved]; (f) all reasonable documented out-of-pocket costs and reasonable expenses (including the reasonable fees, expenses and disbursements of any appraisers, consultants, advisors and agents employed or retained by the Collateral Agent and its counsel) in connection with the custody or preservation of any of the Collateral; (g) [reserved]; (h) without duplication of payments described in Section 2.20(c), all Other Taxes; and (i) all reasonable documented out-of-pocket costs and expenses, including reasonable attorneys' fees and costs of settlement, incurred by any Agent, any Issuing Bank and the Lenders in enforcing any Obligations of or in collecting any payments due from any Credit Party hereunder or under the other Credit Documents and the preservation of any right or remedy under any Credit Document or in connection with any refinancing or restructuring of the credit arrangements provided hereunder whether in the nature of a "work-out" or pursuant to any insolvency or bankruptcy cases or proceedings or otherwise, limited, in the case of legal fees and expenses, to fees, disbursements and expenses of one counsel to the Agents and the Lenders taken as a whole (and, if reasonably necessary, one local counsel in any relevant jurisdiction (which may be a single local counsel acting in multiple jurisdictions) and, solely in the event of an actual or potential conflict of interest between any Agent and the Lenders, where the Person or Persons affected by such conflict of interest inform the Borrower in writing of such conflict of interest, one additional counsel in each relevant jurisdiction to each group of affected Persons similarly situated taken as a whole)).

10.3 Indemnity; Certain Waivers.

(a) Indemnity. In addition to the payment of expenses pursuant to Section 10.2, each Credit Party agrees to indemnify, pay and hold harmless, each Agent, each Issuing Bank, each Lender and each of their respective Related Persons (each, an "**Indemnitee**"), from and against any and all Indemnified Liabilities; *provided* that no Credit Party will have any obligation to any Indemnitee hereunder with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities (i) arise from (A) the gross negligence, bad faith, or willful misconduct of that Indemnitee or its Related Persons as determined by a court of competent jurisdiction in a final non-appealable order or (B) any material breach of the obligations of that Indemnitee or its Related Persons under this Agreement or any other Credit Document as determined by a court of competent jurisdiction in a final non-appealable order, (ii) relate to any dispute solely among Indemnitees other than (A) claims against an Agent, in its capacity as such or in fulfilling its role as an Agent, and (B) claims arising out of any act or omission on the part of any Credit Party or any of its Subsidiaries or Affiliates or (iii) any settlement entered into by any Indemnitee or of any Related Person in connection with the foregoing without the Borrower's prior written consent (such consent not to be unreasonably withheld or delayed), but, if such settlement occurs with the Borrower's written consent or if there is a final judgment for the plaintiff in any action or claim

with respect to any of the foregoing, the Borrower will be liable for such settlement or for such final judgment; provided, further, that any reimbursement of legal fees shall be limited to the reasonable and documented fees and disbursements of one counsel to all Indemnitees taken as a whole, and solely in the case of a conflict of interest, one additional counsel to all affected Indemnitee taken as a whole (and, if applicable, one local counsel in each appropriate jurisdiction to all affected indemnified persons taken as a whole and, solely in the case of a conflict of interest, one additional local counsel in each appropriate jurisdiction to all affected Indemnitee taken as a whole). To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this Section 10.3 may be unenforceable in whole or in part because they are violative of any law or public policy, the applicable Credit Party will contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them. The Credit Parties agree, jointly and severally, that, without the prior written consent of the Administrative Agent, which consent will not be unreasonably withheld or delayed (provided that it shall not be unreasonable to withhold consent if clauses (i) and (ii) below are not satisfied)), the Credit Parties will not enter into any settlement of a claim in respect of which indemnification could have been sought by an Indemnitee under this Section 10.3(a) unless such settlement (i) includes an unconditional release from the party bringing such claim of all Indemnitees which could have sought indemnification with respect to such claim under this Section 10.3(a) in form and substance reasonably satisfactory to such Indemnitee and (ii) does not include any statement as to any admission of fault. This Section 10.3 will not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim. Notwithstanding the foregoing, each Indemnitee shall be obligated to refund and return promptly any and all amounts paid under the indemnification provisions of this Agreement to such Indemnitee for any Indemnified Liabilities to the extent such Indemnitee is not entitled to payment of such amounts in accordance with the terms hereof as determined by a final, non-appealable judgment of a court of competent jurisdiction.

(b) Without limiting the foregoing, and to the extent permitted by applicable law, the Borrower agrees not to assert and to cause its Subsidiaries not to assert, and hereby waives and agrees to cause its Subsidiaries to waive, all rights for contribution or any other rights of recovery with respect to all claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature, under or related to Environmental Laws, that any of them might have by statute or otherwise against any Indemnitee.

(c) To the extent that the Credit Parties fail to pay any amount required to be paid by them to the Agents, the Issuing Banks or the Swing Line Lenders under Sections 10.3(a) in accordance with Section 9.8(b), each Lender severally agrees to pay to the Agents, the Issuing Banks or the Swing Line Lenders, as the case may be, such Lender's Pro Rata Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount (such indemnity will be effective whether or not the related losses, claims, damages, liabilities and related expenses are incurred or asserted by any party hereto or any third party); *provided* that the unreimbursed claim was incurred by or asserted against any of the Agents, the Issuing Banks or the Swing Line Lenders in its capacity as such.

(d) No Indemnitee will be liable for any damages arising from the use by others of information or other materials obtained through electronic, telecommunications or other information transmission systems (including the Platform) except to the extent any such damages

arise from the gross negligence, bad faith or willful misconduct of, or breach of the Credit Documents by such Indemnitee, in each case, as determined by a final, nonappealable judgment of a court of competent jurisdiction. Neither any Indemnitee nor any Credit Party (or any of their respective directors, officers, employees, controlling persons, controlled affiliates or agents) will be liable for any indirect, special, punitive or consequential damages in connection with the Transactions, this Agreement or any other Credit Document (including the Facilities and the use of proceeds hereunder), or with respect to any activities or other transactions related to the Facilities; *provided* that nothing contained in this sentence limits the Credit Parties' indemnity and reimbursement obligations to the extent such special, indirect, punitive or consequential damages are included in any third party claim in connection with which such Indemnitee is entitled to indemnification hereunder.

10.4 Set-Off. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence of any Event of Default each Lender is hereby authorized by each Credit Party at any time or from time to time subject to the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed), without notice to any Credit Party or to any other Person (other than the Administrative Agent), any such notice being hereby expressly waived, to set off and to appropriate and to apply any and all deposits (general or special, including Indebtedness evidenced by certificates of deposit, whether matured or unmatured, but not including (i) trust accounts and (ii) accounts into which Medicare and/or Medicaid receivables are deposited in accordance with the last two sentences of this Section 10.4) and any other Indebtedness at any time held or owing by such Lender to or for the credit or the account of any Credit Party against and on account of the obligations and liabilities of any Credit Party to such Lender hereunder, the Letters of Credit and participations therein and under the other Credit Documents, including all claims of any nature or description arising out of or connected hereto, the Letters of Credit and participations therein or with any other Credit Document, irrespective of whether or not (a) such Lender will have made any demand hereunder or (b) the principal of or the interest on the Loans or any amounts in respect of the Letters of Credit or any other amounts due hereunder will have become due and payable pursuant to Section 2 and although such obligations and liabilities, or any of them, may be contingent or unmatured; *provided* that if any Defaulting Lender shall exercise any such right of setoff, (i) all amounts so set-off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of this Agreement and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Bank, the Swing Line Lenders and the Lenders and (ii) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the obligations owing to such Defaulting Lender as to which it exercised such right of set-off; *provided*, *further,* that to the extent prohibited by applicable law as described in the definition of "Excluded Swap Obligation," no amounts received from, or set off with respect to, any Guarantor shall be applied to any Excluded Swap Obligations of such Guarantor. Each Lender agrees promptly to notify the Borrower and the Administrative Agent after any such application made by such Lender; *provided*, that the failure to give such notice shall not affect the validity of such application. Notwithstanding the foregoing, to the extent that the Administrative Agent or any Lender (the "***Affected Depositary***") is a depositary institution with which any Credit Party maintains an account into which Medicare or Medicaid payments are deposited (the "***Affected Account***"), the Affected Depositary hereby waives its rights of set-off under this Section 10.4 (as well as any right of set-off under applicable statute or common law) with respect

to each such Affected Account; it being understood and agreed that, within one hundred eighty (180) days of the Closing Date (or such longer period as the Administrative Agent may agree in its reasonable discretion), no deposits shall be made into, and no funds shall be held in, any Affected Account other than Medicare and Medicaid payments. The foregoing waiver of rights of set-off are intended to comply with, and shall be construed in accordance with, The Centers for Medicare & Medicaid Services ("***CMS***") Publication 100-04 Chapter 1, Section 30.2.5 - Payment to Bank, and any applicable successor provisions.

10.5 Amendments and Waivers.

(a) Required Consents. Except as expressly provided in this Section 10.5 (or otherwise in this Agreement or the applicable Credit Document), no amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by any Credit Party therefrom, will in any event be effective without the written concurrence of the Required Lenders, except the Administrative Agent may, with the consent of the Borrower only, (i) amend, modify or supplement this Agreement and any other Credit Document to cure any ambiguity, omission, defect, inconsistency or other manifest error or any other necessary or desirable technical change, so long as such amendment, modification or supplement does not materially adversely affect the rights of any Lender or Issuing Bank, *provided* that no such amendment will become effective until the fifth (5th) Business Day after it has been posted to the Lenders, and then only if the Required Lenders have not objected in writing within such five (5) Business Day period, (ii) to enter into additional or supplemental Collateral Documents or (iii) to release Collateral or Guarantors in accordance with Section 9 of this Agreement and the Collateral Documents. Notwithstanding the foregoing, the Wells Fee Letter may be amended by the parties thereto without the consent of any other Person.

(b) Affected Lenders' Consent. No amendment, modification, termination, or consent will be effective if the effect thereof would:

(i) extend the scheduled final maturity date of any Loan of any Lender without the written consent of such Lender; *provided* that no amendment, modification or waiver of any condition precedent, covenant, Default or Event of Default will constitute an extension of a final maturity date;

(ii) waive, reduce or postpone any scheduled repayment (but not prepayment or mandatory prepayment, which will be governed by Section 10.5(a)) of any Loan held by any Lender pursuant to Section 2.12 without the written consent of such Lender;

(iii) extend the stated expiration date of any Letter of Credit beyond the Revolving Credit Commitment Termination Date without the written consent of the applicable Issuing Bank (it being acknowledged and agreed that each Issuing Bank may agree to extend such stated expiration date in connection with an Extension under Section 10.5(g));

(iv) reduce the rate of interest on any Loan held by any Lender (other than any waiver of any increase in the interest rate applicable to any Loan pursuant to Section 2.10) or any fee payable to a Lender under this Agreement without the

written consent of such Lender; *provided* that any amendment or modification of defined terms used in the Financial Covenants in this Agreement shall not constitute a reduction in the rate of interest or any fee payable to a Lender for purposes of this clause (iv);

(v) extend the time for payment of any such interest, fees or reimbursement obligation in respect of any Letter of Credit without the written consent of all the Lenders directly affected thereby (it being understood that the waiver of any mandatory prepayment will not constitute an extension of any time for payment of interest or fees);

(vi) reduce the principal amount of any Loan held by a Lender without the written consent of such Lender or reduce any reimbursement obligation in respect of any Letter of Credit without the written consent of the applicable Issuing Bank to which such reimbursement obligation is payable;

(vii) amend, modify, terminate or waive any provision of Section 10.5(a), this Section 10.5(b) or Section 10.5(c) without the written consent of all Lenders and, as applicable, all Issuing Banks;

(viii) amend the definition of "Required Lenders" or "Pro Rata Share" without the written consent of all Lenders; *provided* that, with the consent of the Required Lenders, additional extensions of credit pursuant hereto may be included in the determination of "Required Lenders" or "Pro Rata Share" on substantially the same basis as the Initial Term Loan Commitments, the Initial Term Loans, the Revolving Credit Commitments and the Revolving Loans are included on the Closing Date; *provided further,* that such definitions may also be amended in furtherance of any amendment permitted by another subsection of this Section 10.5(b) with the consent of such Persons as are required by such subsection;

(ix) amend, modify or waive Section 3.2 if the effect of such amendment, modification or waiver is to require the Revolving Lenders to make Revolving Loans when such Revolving Lenders would not otherwise be required to do so without the written consent of Revolving Lenders having or holding Revolving Credit Exposure representing more than 50% of the aggregate Revolving Credit Exposure of all of the Revolving Lenders;

(x) release or subordinate the Collateral Agent's Liens on, all or substantially all of the Collateral or release all or substantially all of the Guarantors from the Guaranty, except as expressly provided in the Credit Documents, or in connection with securing additional secured obligations equally and ratably with the other Secured Obligations in accordance with the Credit Documents, without the written consent of all Lenders;

(xi) consent to the assignment or transfer by the Borrower of any of its rights and obligations under any Credit Document without the written consent of all Lenders;

(xii) extend or increase any Commitments of any Lender without the written consent of such Lender;

(xiii) subordinate the Obligations under the Credit Documents to any other Indebtedness without the consent of all Lenders;

(xiv) amend or modify the definition of "Secured Swap Provider", "Obligations", "Secured Rate Contracts", "Bank Products" and "Bank Product Provider", in each case, in a manner materially adverse to any Secured Swap Provider or Bank Product Provider (as applicable) holding outstanding Obligations under Secured Rate Contracts or Bank Products (as applicable) at such time without the written consent of such Person; or

(xv) amend, modify or waive any provision of Section 2.17 without the written consent of all Lenders in respect of each Class of Lenders adversely affected thereby.

(c) Other Consents. No amendment, waiver or consent will, unless in writing and signed by the Administrative Agent, the Collateral Agent, the Swing Line Lenders or the Issuing Banks, as the case may be, in addition to the Required Lenders or all Lenders directly affected thereby, as the case may be (or by Administrative Agent with the consent of the Required Lenders or all the Lenders directly affected thereby, as the case may be), affect the rights or duties of the Administrative Agent, the Collateral Agent, the Swing Line Lenders or the Issuing Banks, as applicable, in its capacity as such, under this Agreement or any other Credit Document. Further, no amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by any Credit Party therefrom, will:

(i) increase or extend any Revolving Credit Commitment of any Lender over the amount thereof then in effect without the consent of such Lender; *provided* that no amendment, modification or waiver of any condition precedent, covenant, Default or Event of Default will constitute an increase in any Revolving Credit Commitment of any Lender;

(ii) amend, modify, terminate or waive any provision hereof relating to the Swing Line Sublimit or the Swing Line Loans without the consent of the Swing Line Lenders, or amend, extend or increase the Swing Line Commitment of any Lender without the written consent of such Lender;

(iii) alter the required application of any repayments or prepayments (including payments made from proceeds of Collateral) as between Classes pursuant to Section 2.15 or Section 8.2 or modify Section 2.17 without the consent of all Lenders of each Class which is being allocated a lesser repayment or prepayment (including payments made from proceeds of Collateral) as a result thereof; *provided* that any Lender may waive, in whole or in part, any Waivable Mandatory Prepayment so long as the application, as between Classes, of any portion of such prepayment which is still required to be made is not altered;

(iv) amend, modify, terminate or waive any obligation of the Lenders relating to the purchase of participations in Letters of Credit as provided in Section 2.4(e) without the written consent of the Administrative Agent and of the Issuing Banks;

(v) amend, modify, terminate or waive any provision of Section 9 as the same applies to any Agent, or any other provision hereof as the same applies to the rights or obligations of any Agent, in each case without the consent of such Agent; or

(vi) amend, modify or waive any provision of Section 2.4 without the written consent of each Issuing Bank to the extent such proposed amendment, modification and/ or wavier affects the rights or duties of, or any fees or other amounts payable to, such Issuing Bank under this Agreement.

(d) Execution of Amendments, etc. The Administrative Agent may, but will have no obligation to, with the concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of such Lender. Any waiver or consent will be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on any Credit Party in any case will entitle any Credit Party to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 10.5 will be binding upon each Lender at the time outstanding, each future Lender and, if signed by a Credit Party, on such Credit Party. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit will not be construed as a waiver of any Default, regardless of whether any Agent, any Lender or Issuing Bank may have had notice or knowledge of such Default at the time. No notice or demand on the Borrower or any other Credit Party in any case will entitle the Borrower or any other Credit Party to any other or further notice or demand in similar or other circumstances.

(e) Subordination and Intercreditor Agreements. Notwithstanding anything to the contrary in this Agreement, no Lender consent is required to effect any amendment or supplement to any Pari Passu Lien Intercreditor Agreement or Junior Lien Intercreditor Agreement that is (A) for the purpose of adding the holders of Subordinated Debt, Pari Passu Lien Indebtedness, Junior Lien Indebtedness, Incremental Equivalent Debt or Credit Agreement Refinancing Indebtedness in each case permitted hereunder (or a debt representative with respect thereto) as parties thereto, as expressly contemplated by the terms of such Pari Passu Lien Intercreditor Agreement or Junior Lien Intercreditor Agreement (it being understood that any such amendment or supplement may make such other changes to the applicable intercreditor agreement as determined by the Administrative Agent, are required to effectuate the foregoing and *provided* that such other changes are not adverse, in any material respect, to the interests of the Lenders) or (B) expressly contemplated by any Pari Passu Lien Intercreditor Agreement or Junior Lien Intercreditor Agreement.

(f) Additional Amendments Provisions.

(i) Nothing herein will be deemed to prohibit an amendment and/or amendment and restatement of this Agreement consented to by the Required Lenders, the Borrower and the Administrative Agent (A) to add one or more

additional credit facilities (including any Incremental Term Facility) to this Agreement (it being understood that no Lender will have any obligation to provide or to commit to provide all or any portion of any such additional credit facility or Incremental Term Facility) and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Credit Documents with the Term Loans and Revolving Loans and the accrued interest and fees in respect thereof and (B) to effect the amendments contemplated by the proviso in Section 10.5(b)(viii) and such other amendments to this Agreement and the other Credit Documents as may be necessary or appropriate, in the opinion of the Administrative Agent to provide for such additional credit facility.

(ii) In addition, notwithstanding anything herein to the contrary, this Agreement may be amended with the written consent of the Administrative Agent, the Borrower and the Lenders providing the relevant Replacement Term Loans (as defined below) to permit the refinancing or exchange of all outstanding Term Loans of any tranche ("**Refinanced Term Loans**") with a replacement term loan tranche hereunder ("**Replacement Term Loans**"); *provided* that (A) the aggregate principal amount of such Replacement Term Loans will not exceed the aggregate principal amount of such Refinanced Term Loans plus any interest, premium or other amount due with respect to such Refinanced Term Loans, (B) the scheduled final maturity of such Replacement Term Loans will not be sooner than the scheduled final maturity of such Refinanced Term Loans at the time of such refinancing, (C) the Weighted Average Life to Maturity of such Replacement Term Loans will not be shorter than the Weighted Average Life to Maturity of such Refinanced Term Loans at the time of such refinancing, and (D) the other terms applicable to such Indebtedness are either (i) substantially identical to or (taken as a whole as determined by the Borrower and the Administrative Agent) are no more favorable to the lenders providing such Replacement Term Loans than, those applicable to the Initial Term Loans or (ii) otherwise on customary market terms as determined in good faith by the Borrower in its reasonable judgment, including with respect to high yield debt securities to the extent applicable; *provided* that this clause (ii) will not apply to (1) interest rate, fees, funding discounts and other pricing terms, (2) redemption, prepayment or other premiums, (3) optional prepayment terms, and (4) covenants and other terms that are (i) applied to the Term Loans existing at the time of incurrence of such Replacement Term Loans (so that existing Lenders also receive the benefit of such provisions) and/or (ii) applicable only to periods after the Latest Term Loan Maturity Date at the time of incurrence of such Indebtedness.

(iii) In addition, notwithstanding anything herein to the contrary, the Borrower and the Administrative Agent may, without the consent of any Lender or Issuing Bank, amend, supplement and/or waive this Agreement, any guaranty, security agreement, pledge agreement and/or related document (if any) executed in connection with this Agreement, enter into amendments or modifications to this Agreement or any of the other Loan Documents or enter into additional Loan Documents in order to (A) implement any Benchmark Replacement or any

Benchmark Replacement Conforming Changes or otherwise effectuate the terms of Section 2.18(e) in accordance with the terms of Section 2.18(e) as the Administrative Agent and the Borrower reasonably deem appropriate, (B) comply with any Laws or (C) cause any such guaranty, security agreement, pledge agreement or other document to be consistent with this Agreement and/or the relevant other Credit Documents.

(g) Extension.

(i) Notwithstanding anything to the contrary in this Agreement, pursuant to one or more offers (each, an "**Extension Offer**") made from time to time by the Borrower to all Lenders holding Term Loans with a like maturity date or all Lenders having Revolving Credit Commitments with a like commitment termination date, in each case on a *pro rata* basis (based on the aggregate outstanding principal amount of such respective Term Loans or amounts of Revolving Credit Commitments) and on the same terms to each such Lender, the Borrower is hereby permitted to consummate from time to time transactions with individual Lenders that accept the terms contained in such Extension Offers to extend the maturity date and/or commitment termination of each such Lender's Term Loans and/or Revolving Credit Commitments of such class, and, subject to the terms hereof, otherwise modify the terms of such Term Loans and/or Revolving Credit Commitments pursuant to the terms of the relevant Extension Offer (including by increasing the interest rate and/or fees payable in respect of such Term Loans and/or Revolving Credit Commitments (and related outstandings) and/or modifying the amortization schedule in respect of such Lender's Term Loans) (each, an "**Extension**" and each group of Term Loans or Revolving Credit Commitments, as applicable, in each case as so extended, as well as the original Term Loans and the original Revolving Credit Commitments (in each case not so extended), being a separate "**tranche**"), so long as the following terms are satisfied:

(1) no Default or Event of Default will have occurred and be continuing at the time the Extension Offer is delivered to the Lenders or at the time of such Extension;

(2) except as to interest rates, fees and final commitment termination date (which will be determined by the Borrower and set forth in the relevant Extension Offer, subject to acceptance by the applicable Lenders), the Revolving Credit Commitment of any Lender that agrees to an Extension with respect to such Revolving Credit Commitment extended pursuant to an Extension (an "**Extended Revolving Credit Commitment**") and the related outstandings will be a Revolving Credit Commitment (or related outstandings, as the case may be) with the same terms (or terms not less favorable to existing Lenders holding Revolving Credit Commitments) as the original Revolving Credit Commitments (and related outstandings); *provided* that (1) the borrowing and payments (except for (A) payments of interest and fees at different rates on Extended Revolving Credit Commitments (and related outstandings), (B) repayments required upon the

commitment termination date of the non-extending tranche of Revolving Credit Commitments and (C) repayment made in connection with a permanent repayment and termination of commitments) of Revolving Loans with respect to Extended Revolving Credit Commitments after the applicable Extension date will be made on a *pro rata* basis with all other Revolving Credit Commitments, (2) subject to Section 10.5(c), all Swing Line Loans and Letters of Credit will be participated in on a *pro rata* basis by all Lenders with Revolving Credit Commitments (including Extended Revolving Credit Commitments) in accordance with their percentage of the Revolving Credit Commitments, (3) assignments and participations of Extended Revolving Credit Commitments and related Revolving Loans will be governed by the same assignment and participation provisions applicable to the other Revolving Credit Commitments and Revolving Loans and (4) at no time will there be Revolving Credit Commitments hereunder (including Extended Revolving Credit Commitments and any existing Revolving Credit Commitments) which have more than two (2) different maturity dates;

(3) except as to interest rates, fees, amortization, final maturity date, premium, required prepayment dates and participation in prepayments (which will, subject to the immediately succeeding clauses (4), (5) and (6), be determined by the Borrower and set forth in the relevant Extension Offer, subject to acceptance by the Extended Term Lenders), the Term Loans of any Lender that agrees to an Extension with respect to such Term Loans owed to it (an "**Extended Term Lender**") extended pursuant to any Extension ("**Extended Term Loans**") will have the same terms as the tranche of Term Loans subject to such Extension Offer (except for covenants or other provisions contained therein or other provisions contained therein applicable only to periods after the then Latest Term Loan Maturity Date);

(4) the final maturity date of any Extended Term Loans will be no earlier than the Latest Term Loan Maturity Date of the Term Loans extended thereby;

(5) the Weighted Average Life to Maturity of any Extended Term Loans will be no shorter than the Weighted Average Life to Maturity of the Term Loans extended thereby;

(6) any Extended Term Loans may participate on a *pro rata* basis or a less than *pro rata* basis (but not greater than a *pro rata* basis except for prepayments with the proceeds of Credit Agreement Refinancing Indebtedness and in respect of an earlier maturing tranche) with non-extending tranches of Term Loans in any voluntary or mandatory prepayments hereunder, in each case as specified in the respective Extension Offer;

(7) there will be no more than three (3) Extended Term Loan tranches at any time during the term of this Agreement; and

(ii) if the aggregate principal amount of Term Loans (calculated on the outstanding principal amount thereof) or Revolving Credit Commitments in respect of which a Lender will have accepted the relevant Extension Offer will exceed the maximum aggregate principal amount of Term Loans or Revolving Credit Commitments offered to be extended by the Borrower pursuant to such Extension Offer, then the Term Loans or Revolving Credit Commitments of such Lender will be extended ratably up to such maximum amount based on the respective principal or commitment amounts with respect to which such Lender have accepted such Extension Offer. With respect to all Extensions consummated by the Borrower pursuant to this Section, (i) such Extensions will not constitute voluntary or mandatory payments or prepayments for purposes of Sections 2.13 or 2.14 and (ii) no Extension Offer is required to be in any minimum amount or any minimum increment; *provided* that the Borrower may at its election specify as a condition to consummating any such Extension that a minimum amount (to be determined and specified in the relevant Extension Offer in the Borrower's sole discretion and may be waived by the Borrower) of Term Loans or Revolving Credit Commitments (as applicable) of any or all applicable tranches be tendered. The Administrative Agent, the Collateral Agent, the Issuing Banks, the Swing Line Lenders and the Lenders hereby consent to the transactions contemplated by this Section (including, for the avoidance of doubt, payment of any interest, fees or premium in respect of any Extended Term Loans and/or Extended Revolving Credit Commitments on the such terms as may be set forth in the relevant Extension Offer) and hereby waive the requirements of any provision of this Agreement or any other Credit Document that may otherwise prohibit or conflict with any such Extension or any other transaction contemplated by this Section.

(iii) No consent of any Lender, any Issuing Bank, any Swing Line Lender, the Collateral Agent or the Administrative Agent will be required to effectuate any Extension, other than (A) the consent of each Lender agreeing to such Extension with respect to one or more of its Term Loans and/or Revolving Credit Commitments (or a portion thereof) and (B) with respect to any Extension of the Revolving Credit Commitments, the consent of the Issuing Banks and the Swing Line Lenders. All Extended Term Loans, Extended Revolving Credit Commitments and all obligations in respect thereof will be Obligations under this Agreement and the other Credit Documents and secured by the same Liens on the Collateral that secure all other applicable Obligations. The Lenders hereby irrevocably authorize the Administrative Agent and the Collateral Agent to enter into amendments to this Agreement and the other Credit Documents with the Borrower (on behalf of all Credit Parties) as may be necessary in order to establish new tranches or sub-tranches in respect of Term Loans or Revolving Credit Commitments so extended and such technical amendments as may be necessary in the reasonable opinion of the Administrative Agent and the Borrower in connection with the establishment of such new tranches or sub-tranches, in each case on terms consistent with this Section (any such amendment, an "**Extension Amendment**").

In addition, if so provided in such amendment and with the consent of the Issuing Banks, participations in Letters of Credit expiring on or after the applicable commitment termination date will be re-allocated from Lenders holding non-extended Revolving Credit Commitments to Lenders holding Extended Revolving Credit Commitments in accordance with the terms of such amendment; *provided*, *however,* that such participation interests will, upon receipt thereof by the relevant Lenders holding Revolving Credit Commitments, be deemed to be participation interests in respect of such Revolving Credit Commitments and the terms of such participation interests will be adjusted accordingly. Without limiting the foregoing, in connection with any Extensions the applicable Credit Parties will (at their expense) amend (and the Collateral Agent is hereby directed by the Lenders to amend) any Mortgage that has a maturity date prior to the then latest maturity date so that such maturity date referenced therein is extended to the then latest maturity date (or such later date as may be advised by local counsel to the Collateral Agent). The Administrative Agent will promptly notify each Lender of the effectiveness of each such Extension Amendment.

(iv) In connection with any Extension, the Borrower will provide the Administrative Agent at least five (5) Business Days (or such shorter period as may be agreed by the Administrative Agent) prior written notice thereof, and will agree to such procedures (including regarding timing, rounding and other adjustments and to ensure reasonable administrative management of the credit facilities hereunder after such Extension), if any, as may be established by, or acceptable to, the Administrative Agent, in each case acting reasonably to accomplish the purposes of this Section 10.5(g). This Section 10.5(g) will supersede any provisions of this Section 10.5 or Section 2.17 or 10.4 to the contrary.

10.6 Successors and Assigns; Participations.

(a) Generally. This Agreement will be binding upon the parties hereto and their respective successors and assigns and will inure to the benefit of the parties hereto and the successors and assigns of the Lenders. No Credit Party's rights or obligations hereunder nor any interest therein may be assigned or delegated by any Credit Party without the prior written consent of all of the Lenders. Nothing in this Agreement, expressed or implied, will be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, Affiliates of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Register. Each Credit Party, the Administrative Agent and the Lenders will deem and treat the Persons listed as the Lenders in the Register as the holders and owners of the corresponding Commitments and Loans listed therein for all purposes hereof, and no assignment or transfer of any such Commitment or Loan (whether or not evidenced by a Note) will be effective, in each case, unless and until recorded in the Register following receipt of an Assignment Agreement effecting the assignment or transfer thereof, together with the required forms and certificates regarding tax matters and any fees payable in connection with such assignment, in each case, as provided in Section 10.6(d). Each assignment will be recorded in the Register on the

Business Day the Assignment Agreement is received by the Administrative Agent, if received by 12:00 noon New York City time, and on the following Business Day if received after such time, prompt notice thereof will be provided to the Borrower and a copy of such Assignment Agreement will be maintained. The date of such recordation of a transfer will be referred to herein as the "**Assignment Effective Date**." Any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the Register as a Lender will be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Commitments or Loans.

(c) Right to Assign. Each Lender will have the right at any time to sell, assign or transfer all or a portion of its rights and obligations under this Agreement, including all or a portion of its Commitment or Loans owing to it or other Obligation *(provided* that, *pro rata* assignments will not be required, but each such assignment will be of a uniform, and not varying, percentage of all rights and obligations under and in respect of any Loan and any related Commitment):

(i) to any Person meeting the criteria of clause (a) or clause (c) of the definition of "Eligible Assignee" upon the giving of notice to the Administrative Agent and the Borrower and, for any assignment of Revolving Credit Commitments and/or Revolving Loans, consented to by each of the Swing Line Lenders and the Issuing Banks (such consent not to be unreasonably withheld or delayed); and

(ii) to any Person meeting the criteria of clause (b) of the definition of "Eligible Assignee" and consented to by each of the Borrower and the Administrative Agent and, for any assignment of Revolving Credit Commitments and/or Revolving Loans, the Swing Line Lenders and the Issuing Banks (each such consent not to be (x) unreasonably withheld or delayed and (y) in the case of the Borrower, required at any time an Event of Default will have occurred and then be continuing under Section 8.1(a), (f) or (g)); *provided* that (1) the Borrower's refusal to accept an assignment to a Disqualified Lender will be deemed to be reasonable, (2) the Borrower's consent will be required with respect to any assignments to Disqualified Lenders and (3) the Borrower will be deemed to have consented to any such assignment (other than to an assignment to a Disqualified Lender) unless it will object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received written notice thereof; *provided further,* that each such assignment pursuant to this Section 10.6(c)(ii) will be in an aggregate amount of not less than (A) $5,000,000 (or such lesser amount as may be agreed to by the Borrower and the Administrative Agent or as will constitute the aggregate amount of the Revolving Credit Commitments and Revolving Loans of the assigning Lender) with respect to the assignment of the Revolving Credit Commitments and Revolving Loans and (B) $1,000,000 (or such lesser amount as may be agreed to by the Borrower and the Administrative Agent or as will constitute the aggregate amount of the Term Loan of the assigning Lender) with respect to the assignment of Term Loans.

Notwithstanding anything to the contrary contained in this Agreement, no Lender may sell, assign or transfer all or any portion of its rights and obligations under this Agreement to (i) a Person that is a Defaulting Lender, (ii) a Person that is a Disqualified Lender, (iii) a natural Person or (iv) the Borrower or any of its Subsidiaries or Affiliates.

(d) Mechanics. Assignments and assumptions of Loans and Commitments will only be effected by manual execution and delivery to the Administrative Agent of an Assignment Agreement and will be effective as of the applicable Assignment Effective Date. In connection with all assignments there will be delivered to the Administrative Agent such forms, certificates or other evidence, if any, with respect to United States federal income tax withholding matters as the assignee under such Assignment Agreement may be required to deliver pursuant to Section 2.20(f), together with payment to the Administrative Agent of a registration and processing fee of $3,500; *provided* that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment.

(e) Representations and Warranties of Assignee. Each Lender, upon execution and delivery hereof or upon succeeding to an interest in the Commitments and Loans, as the case may be, represents and warrants as of the Closing Date or as of the Assignment Effective Date that (i) (A) it is an Eligible Assignee and (B) it is not a Disqualified Lender, it being acknowledged by the Credit Parties, the Lenders and the other Secured Parties that the Administrative Agent will be entitled to rely on such representations and warranties set forth in this clause (i) without any diligence in respect to the accuracy of such representations and warranties and any breach of such representations and warranties by such Lender will not give rise to any liability on the part of the Administrative Agent; and (ii) it has experience and expertise in the making of or investing in commitments or loans such as the applicable Commitments or Loans, as the case may be.

(f) Effect of Assignment. Subject to the terms and conditions of this Section 10.6, as of the Assignment Effective Date (i) the assignee thereunder will have the rights and obligations of a "Lender" hereunder to the extent of its interest in the Loans and Commitments as reflected in the Register and will thereafter be a party hereto and a "Lender" for all purposes hereof; (ii) the assigning Lender thereunder will, to the extent that rights and obligations hereunder have been assigned to the assignee, relinquish its rights (other than any rights which survive the termination hereof under Section 10.8) and be released from its obligations hereunder (and, in the case of an assignment covering all or the remaining portion of an assigning Lender's rights and obligations hereunder, such Lender will cease to be a party hereto on the Assignment Effective Date; *provided* that anything contained in any of the Credit Documents to the contrary notwithstanding, (A) the Issuing Banks will continue to have all rights and obligations thereof with respect to such Letters of Credit until the cancellation or expiration of such Letters of Credit and the reimbursement of any amounts drawn thereunder and (B) such assigning Lender will continue to be entitled to the benefit of all indemnities hereunder as specified herein with respect to matters arising out of the prior involvement of such assigning Lender as a Lender hereunder); (iii) the Commitments will be modified to reflect the Commitment of such assignee and any Revolving Credit Commitment of such assigning Lender, if any; and (iv) if any such assignment occurs after the issuance of any Note hereunder, the assigning Lender will, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender its applicable Notes to the Administrative Agent for cancellation, and thereupon the Borrower will issue and deliver new Notes, if so requested by the assignee and/or assigning Lender, to such assignee and/or to such assigning Lender, with appropriate insertions, to reflect the new Revolving Credit Commitments and/or outstanding Loans of the assignee and/or the assigning Lender. Any assignment or transfer

by a Lender of rights or obligations under this Agreement that does not comply with clauses (b) through (f) will be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with clause (g).

(g) Participations. Each Lender will have the right at any time to sell one or more participations to any Person (other than to a Disqualified Lender or a Defaulting Lender) in all or any part of its Commitments, Loans or in any other Obligation; *provided* that with respect to any participation by a Lender to a Disqualified Lender or, to the extent the Borrower's consent is required under this Section 10.6, to any other Person, such participation will not be rendered void as a result but the Borrower shall be entitled to pursue any remedy available to it (whether at law or in equity, but excluding specific performance to unwind such participation) against the Lender and such Disqualified Lender, but in no case shall the Borrower or any other Person be entitled to pursue any remedy against the Administrative Agent. The holder of any such participation, other than an Affiliate of the Lender granting such participation, will not be entitled to require such Lender to take or omit to take any action hereunder except with respect to any amendment, modification or waiver that would (i) extend the final scheduled maturity of any Loan, Note or Letter of Credit (unless such Letter of Credit is not extended beyond the Revolving Credit Commitment Termination Date) in which such participant is participating, or reduce the rate or extend the time of payment of interest or fees thereon (except in connection with a waiver of applicability of any post-default increase in interest rates) or reduce the principal amount thereof, or increase the amount of the participant's participation over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default or of a mandatory reduction in the Commitment will not constitute a change in the terms of such participation, and that an increase in any Commitment or Loan will be permitted without the consent of any participant if the participant's participation is not increased as a result thereof), (ii) consent to the assignment or transfer by any Credit Party of any of its rights and obligations under this Agreement or (iii) release all or substantially all of the Collateral under the Collateral Documents (except as expressly provided in the Credit Documents) supporting the Loans hereunder or release all or substantially all of the Guarantees in which such participant is participating;. The Borrower agrees that each participant will be entitled to the benefits of Sections 2.18(c), 2.19 and 2.20 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (c) of this Section; *provided* that (i) the participant agrees to be subject to the provisions of Sections 2.21 and 2.23 as if it were an assignee under Section 10.6(c), (ii) a participant will not be entitled to receive any greater payment under Sections 2.19 or 2.20 than the applicable Lender would have been entitled to receive with respect to the participation sold to such participant, unless the sale of the participation to such participant is made with the Borrower's prior written consent to the participant or except to the extent such entitlement to receive a greater payment results from a change in law that occurs after the participant acquired the applicable participation and (iii) a participant that would be a Non-U.S. Lender if it were a Lender will not be entitled to the benefits of Section 2.20 unless such participant agrees, for the benefit of the Borrower, to comply with Section 2.20 as though it were a Lender (it being understood that the documentation required under Section 2.20(f) will be delivered to the participant). Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Sections 2.21 and 2.23 with respect to any participant. To the extent permitted by law, each participant also will be entitled to the benefits of Section 10.4 as though it were a Lender; *provided* that such participant agrees to be subject to Section 2.17 as though it were a Lender. Each Lender that sells a participation, acting solely for this purpose as a non-fiduciary

agent of the Borrower, will maintain a register on which it records the name and address of each participant and the principal amounts (and stated interest) of each participant's interest in the Loans and Commitments (each, a "**Participant Register**"). The entries in the Participant Register will be conclusive absent manifest error, and such Lender, the Borrower and the Administrative Agent will treat each Person whose name is recorded in the Participant Register pursuant to the terms hereof as the owner of such Loans and Commitments for all purposes of this Agreement, notwithstanding any notice to the contrary. No Lender will have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any participant or any information relating to a participant's interest in any commitments, loans, letters of credit or its other obligations under any Credit Document) except to the extent that such disclosure is necessary to establish that such commitment, loan, or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. Notwithstanding anything to the contrary contained in this Agreement, no Lender may sell participations to (i) a Person that is a Defaulting Lender, (ii) a natural Person, (iii) the Borrower or any of its Subsidiaries or Affiliates or (iv) a Disqualified Lender.

(h) Certain Other Assignments and Participations. In addition to any other assignment or participation permitted pursuant to this Section 10.6, any Lender may assign and/or pledge all or any portion of its Loans, the other Obligations owed by or to such Lender, and its Notes, if any, to secure obligations of such Lender, including, without limitation, to any Federal Reserve Bank as collateral security pursuant to Regulation A of the Board of Governors and any operating circular issued by such Federal Reserve Bank or any central bank; provided that no Lender, as between the Borrower and such Lender, will be relieved of any of its obligations hereunder as a result of any such assignment and pledge, and provided, further, in no event will the applicable Federal Reserve Bank, central bank, pledgee or trustee be considered to be a "Lender" or be entitled to require the assigning Lender to take or omit to take any action hereunder. Without limiting the foregoing, in the case of any Lender that is a fund that invests in bank loans or similar extensions of credit, such Lender may, without the consent of Borrower, the Issuing Banks, the Swing Line Lenders, the Administrative Agent or any other person, collaterally assign or pledge all or any portion of its rights under this Agreement, including the Loans and Notes or any other instrument evidencing its rights as a Lender under this Agreement, to any holder of, trustee for, or any other representative of holders of, obligations owed or securities issued, by such fund, as security for such obligations or securities. For the avoidance of doubt, the Administrative Agent (in its capacity as the Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(i) [Reserved].

(j) [Reserved].

(k) Notwithstanding anything to the contrary contained herein, any Lender (a "**Granting Lender**") may grant to a special purpose funding vehicle (an "**SPC**"), identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower, the option to provide to the Borrower all or any part of any Loan that such Granting Lender would otherwise be obligated to make to the Borrower pursuant to this Agreement; *provided* that (i) nothing herein will constitute a commitment by any SPC to make any Loan and (ii) if an SPC elects not to exercise such option or otherwise fails to provide all or any part of such

Loan, the Granting Lender will be obligated to make such Loan pursuant to the terms hereof; *provided further*, that nothing herein will make the SPC a "Lender" for the purposes of this Agreement, obligate the Borrower or any other Credit Party or the Administrative Agent to deal with such SPC directly, obligate the Borrower or any other Credit Party in any manner to any greater extent than they were obligated to the Granting Lender, or increase costs or expenses of the Borrower. The Credit Parties and the Administrative Agent will be entitled to deal solely with, and obtain good discharge from, the Granting Lender and will not be required to investigate or otherwise seek the consent or approval of any SPC, including for the approval of any amendment, waiver or other modification of any provision of any Credit Document. The making of a Loan by an SPC hereunder will utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Each party hereto hereby agrees that no SPC will be liable for any indemnity or similar payment obligation under this Agreement (all liability for which will remain with the Granting Lender). In furtherance of the foregoing, each party hereto hereby agrees (which agreement will survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPC, it will not institute against, or join any other person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States of America or any state thereof. In addition, notwithstanding anything to the contrary contained in this Section 10.6(k), any SPC may (i) with notice to, but without the prior written consent of, the Borrower and the Administrative Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Loans to the Granting Lender or to any financial institutions (consented to by the Borrower and the Administrative Agent) providing liquidity and/or credit support to or for the account of such SPC to support the funding or maintenance of Loans and (ii) disclose on a confidential basis any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of any surety, guarantee or credit or liquidity enhancement to such SPC.

(l) Electronic Signatures, Etc. The words "execution," "signed," "signature," and words of like import in any Assignment Agreement will be deemed to include electronic signatures or the keeping of records in electronic form, each of which will be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

10.7 Independence of Covenants; Interpretation. All covenants hereunder will be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant will not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists. Any dispute regarding the occurrence or continuance of a Default or Event of Default will be resolved by the Borrower and the Required Lenders (or Administrative Agent), no Person other than the Required Lenders (or the Administrative Agent) will assert that a Default or Event of Default will have occurred and be continuing. Any Default or Event of Default that has been cured (including by means of delivery or performance of an obligation after the date by which such delivery or performance was due) or waived will be deemed to no longer be continuing.

10.8 Survival of Representations, **Warranties and Agreements**. All representations, warranties and agreements made herein will survive the execution and delivery hereof and the making of any Credit Extension. Notwithstanding anything herein or implied by law to the contrary, the agreements of each Credit Party set forth in Sections 2.18, 2.19, 2.20, 10.2, 10.3, 10.14, 10.15 and 10.16 and the agreements of the Lenders set forth in Sections 2.17, 9.5, 9.6 and 9.8 will survive the termination of all Commitments, the cancellation or expiration of the Letters of Credit and the reimbursement of any amounts drawn thereunder, and the termination hereof, and the payment in full of all other Obligations.

10.9 No Waiver; Remedies Cumulative. No failure or delay on the part of any Agent or any Lender in the exercise of any power, right, remedy or privilege hereunder or under any other Credit Document will impair such power, right, remedy or privilege or be construed to be a waiver of any default or acquiescence therein, nor will any single or partial exercise of any such power, right, remedy or privilege preclude other or further exercise thereof or of any other power, right, remedy or privilege. The rights, powers and remedies given to each Agent and each Lender hereby are cumulative and will be in addition to and independent of all rights, powers and remedies existing by virtue of any statute or rule of law or in any of the other Credit Documents or any of the Secured Rate Contracts or any of the Bank Product Agreements. Any forbearance or failure to exercise, and any delay in exercising, any right, power or remedy hereunder will not impair any such right, power or remedy or be construed to be a waiver thereof, nor will it preclude the further exercise of any such right, power or remedy.

10.10 Marshalling; Payments Set Aside. No Agent or any Lender will be under any obligation to marshal any assets in favor of any Credit Party or any other Person or against or in payment of any or all of the Obligations. To the extent that any Credit Party makes a payment or payments to the Administrative Agent or the Lenders (or to the Administrative Agent, on behalf of the Lenders), or the Administrative Agent or the Lenders enforce any security interests or exercise their rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, any other state or federal law, common law, any equitable cause or any intercreditor arrangement contemplated hereunder, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, will be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

10.11 Severability. In case any provision in or obligation hereunder or any Note will be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, will not in any way be affected or impaired thereby.

10.12 Obligations Several; Independent Nature of the Lenders' Rights.

(a) The obligations of the Lenders hereunder are several and no Lender will be responsible for the obligations or Commitment of any other Lender hereunder. Nothing contained herein or in any other Credit Document, and no action taken by the Lenders pursuant hereto or thereto, will be deemed to constitute the Lenders as a partnership, an association, a joint venture

or any other kind of entity. The amounts payable at any time hereunder to each Lender will be a separate and independent debt, and each Lender will be entitled to protect and enforce its rights arising out hereof and it will not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

(b) Each Lender acknowledges and agrees that it will act collectively through the Administrative Agent and, without limiting the delegation of authority to the Administrative Agent set forth herein, the Required Lenders will direct the Administrative Agent with respect to the exercise of rights and remedies hereunder (including with respect to alleging the existence or occurrence of, and exercising rights and remedies as a result of, any Default or Event of Default in each case that could be waived with the consent of the Required Lenders), and such rights and remedies will not be exercised other than through the Administrative Agent.

10.13 Headings. Section headings herein are included herein for convenience of reference only and will not constitute a part hereof for any other purpose or be given any substantive effect.

10.14 Applicable Law. This Agreement and the rights and obligations of the parties hereunder will be governed by, and will be construed and enforced in accordance with, the laws of the State of New York.

10.15 Consent to Jurisdiction. By executing and delivering this Agreement, each Credit Party, for itself and in connection with its properties, and each other party hereto irrevocably (a) accepts generally and unconditionally the exclusive jurisdiction and venue of each state or Federal court of competent jurisdiction in the State, County and City of New York; (b) waives any defense of forum non conveniens; (c) agrees that service of all process in any such proceeding in any such court may be made by registered or certified mail, return receipt requested, to the applicable Credit Party at its address provided in accordance with Section 10.1; (d) agrees that service as provided in clause (c) above is sufficient to confer personal jurisdiction over the applicable Person in any such proceeding in any such court, and otherwise constitutes effective and binding service in every respect; and (e) notwithstanding anything to the contrary herein, agrees that Agents and Lenders retain the right to serve process in any other manner permitted by law or to bring proceedings against any Credit Party in the courts of any other jurisdiction.

10.16 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE CREDIT DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH OF THE PARTIES HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH OF THE PARTIES HERETO WARRANTS AND REPRESENTS THAT EACH HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

10.17 Confidentiality; Tombstones; Etc.

(a) Confidentiality. Each Agent, each Issuing Bank and each Lender will (A) not furnish any Information identified as such by the Borrower to any other Person and (B) treat all Information with the same degree of care as it treats its own confidential information, it being understood and agreed by the Borrower that, in any event, an Agent, an Issuing Bank or a Lender may make (i) disclosures of such information to creditors of any such Lender, Affiliates of such Agent, such Issuing Bank or such Lender, to their and such Affiliates' shareholders, officers, directors, employees, legal counsel, independent auditors and other experts, advisors or agents who need to know such information in connection with the transactions contemplated hereby, are informed of the confidential nature of such information and are instructed to keep such information confidential (and to other persons authorized by an Agent, Issuing Bank or Lender to organize, present or disseminate such information in connection with disclosures otherwise made in accordance with this Section 10.17) other than any Disqualified Lender, (ii) disclosure to any rating agency when required by it, (iii) disclosures required or requested by any governmental agency or self-regulatory authority or representative thereof or by the NAIC or pursuant to legal or judicial process, including in connection with assignments or pledges made pursuant to Section 10.6(h); *provided* that, unless specifically prohibited by applicable law, court order or any Governmental Authority or representative thereof, each Agent, each Issuing Bank and each Lender will notify the Borrower of any request by any Governmental Authority or representative thereof (other than any such request in connection with any examination of the financial condition or other routine examination of such Agent, such Issuing Bank or such Lender by such Governmental Authority or representative thereof or self-regulatory authority or any such request pursuant to the Right to Financial Privacy Act of 1978) for disclosure of any such Information prior to disclosure of such information, (iv) disclosures in connection with the enforcement of its rights under any Credit Document, (v) disclosures to any other party to this Agreement, (vi) disclosures to any assignee or participant or any prospective assignee or participant (*provided* that such assignee, participant, prospective assignee or prospective participant is not a Disqualified Lender and is advised of and agrees to be bound by either the provisions of this Section 10.17 or other provisions at least as restrictive as this Section 10.17; *provided, further,* that notwithstanding anything to the contrary contained herein, the disclosure of the Disqualified Lender List to any assignee, participant, prospective assignee or prospective assignee, regardless of whether such Person is a Disqualified Lender, shall be permitted), (vii) disclosures with the consent of the Borrower, (viii) disclosures to the extent such Information (A) becomes publicly available other than as a result of a breach of this Section 10.17 or (B) becomes available to such Agent, such Issuing Bank or such Lender on a non-confidential basis from a source other than the Borrower, any Subsidiary or any of their respective Affiliates that is not known by such Agent, such Issuing Bank or such Lender to be subject to confidentiality obligations to the Borrower, any Subsidiary or their respective Affiliate, (ix) to a Person that is a trustee, investment advisor, collateral manager, servicer, noteholder or secured party in a Securitization (as hereinafter defined) in connection with the administration, servicing and reporting on the assets serving as collateral for such Securitization and (x) to any direct or indirect contractual counterparties (or the advisors thereto) to any swap or derivative transaction relating to the Borrower or its Subsidiaries or its or their obligations (*provided* that such counterparty or advisor is not a Disqualified Lender and is advised of and

agrees to be bound by either the provisions of this Section 10.17 or other provisions at least as restrictive as this Section 10.17). For the purposes of this Section, "Securitization" shall mean a public or private offering by a Lender or any of its Affiliates or their respective successors and assigns, of securities which represent an interest in, or which are collateralized, in whole or in party, by the Loans. In addition, each Agent, each Issuing Bank and each Lender may disclose the existence of this Agreement and the certain limited generic information about this Agreement (but not any Information) to market data collectors, similar services providers to the lending industry, and service providers to the Agents, the Issuing Banks and the Lenders, in each case limited to the extent necessary to obtain league table credit. For the avoidance of doubt, in no event will any Agent, any Issuing Bank or any Lender disclose Information to any Disqualified Lender unless such disclosure is otherwise consented to by the Borrower. Any Person required to maintain the confidentiality of Information as provided in this Section 10.17 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. For purposes of this Section, "Information" shall mean all information received from any Credit Party or any Subsidiary thereof relating to any Credit Party or its business, other than any such information that is available to any Agent, the Issuing Banks, the Swing Line Lenders or any Lender on a non-confidential basis prior to disclosure by such Person other than as a result of a breach of this Section 10.17 and other than information pertaining to this Agreement routinely provided by arrangers to data service providers, including league table providers, that serve the lending industry; *provided* that, after a Qualifying IPO, in the case of information received from a Credit Party, such information is clearly identified at the time of delivery as confidential.

Each Lender acknowledges that information furnished to it pursuant to this Agreement or the other Credit Documents may include material non-public information concerning the Borrower and its Affiliates and their related parties or their respective securities, and confirms that it has developed compliance procedures regarding the use of material non-public information and that it will handle such material non-public information in accordance with those procedures and applicable law, including Federal and state securities laws.

All information, including requests for waivers and amendments, furnished by the Borrower or the Administrative Agent pursuant to, or in the course of administering, this Agreement or the other Credit Documents will be syndicate-level information, which may contain material non-public information about the Borrower and its Affiliates and their related parties or their respective securities. Accordingly, each Lender represents to the Borrower and the Administrative Agent that it has identified in its administrative questionnaire a credit contact who may receive information that may contain material non-public information in accordance with its compliance procedures and applicable law, including Federal and state securities laws.

(b) Tombstones. Each Credit Party consents to the publication by the Administrative Agent of advertisements in financial and other newspapers and periodicals or on a home page or similar place for dissemination of information on the Internet or worldwide web as it may choose (subject to the Borrower's right to approve any such advertisements, which approval will not be unreasonably withheld or delayed), and the circulation, on a confidential basis, of promotional materials, on and following the Closing Date in the form of a "tombstone" or "case study", containing information customarily included in such promotional materials, including (i)

the names of the Borrower and its Affiliates (or any of them), (ii) the Administrative Agent and its Affiliates' titles and roles in connection with the Transactions and (iii) the amount, type and closing date of the Commitments and the Loans.

10.18 Usury Savings Clause. Notwithstanding any other provision herein, the aggregate interest rate charged with respect to any of the Obligations, including all charges or fees in connection therewith deemed in the nature of interest under applicable law will not exceed the Highest Lawful Rate. If the rate of interest (determined without regard to the preceding sentence) under this Agreement at any time exceeds the Highest Lawful Rate, the outstanding amount of the Loans made hereunder will bear interest at the Highest Lawful Rate until the total amount of interest due hereunder equals the amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Loans made hereunder are repaid in full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then to the extent permitted by law, the Borrower will pay to the Administrative Agent an amount equal to the difference between the amount of interest paid and the amount of interest which would have been paid if the Highest Lawful Rate had at all times been in effect. Notwithstanding the foregoing, it is the intention of the Lenders and the Borrower to conform strictly to any applicable usury laws. Accordingly, if any Lender contracts for, charges, or receives any consideration which constitutes interest in excess of the Highest Lawful Rate, then any such excess will be cancelled automatically and, if previously paid, will at such Lender's option be applied to the outstanding amount of the Loans made hereunder or be refunded to the Borrower.

10.19 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered will be deemed an original, but all such counterparts together will constitute but one and the same instrument. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart. Delivery of an executed signature page of this Agreement by facsimile transmission or Electronic Transmission will be as effective as delivery of a manually executed counterpart hereof.

10.20 No Strict Construction. The parties hereto 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 will be construed as if drafted jointly by the parties hereto and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

10.21 Effectiveness; Entire Agreement. This Agreement will become effective upon the execution of a counterpart hereof by each of the parties hereto and receipt by the Borrower and the Administrative Agent of written or telephonic notification of such execution and authorization of delivery thereof.

10.22 No Fiduciary Duty. Each Agent, each Lender and their Affiliates (collectively, solely for purposes of this paragraph, the "**Lenders**"), may have economic interests that conflict with those of the Credit Parties. Each Credit Party acknowledges and agrees:

(a) nothing in the Credit Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between the Lenders and each Credit Party, its stockholders or its affiliates;

(b) the transactions contemplated by the Credit Documents are arm's-length commercial transactions between the Lenders, on the one hand, and each Credit Party, on the other;

(c) in connection therewith and with the process leading to such transaction each of the Lenders is acting solely as a principal and not the agent or fiduciary of any Credit Party, its management, stockholders, creditors or any other person;

(d) no Lender has assumed an advisory or fiduciary responsibility in favor of any Credit Party with respect to the transactions contemplated hereby or the process leading thereto (irrespective of whether any Lender or any of its affiliates has advised or is currently advising any Credit Party on other matters) or any other obligation to any Credit Party except the obligations expressly set forth in the Credit Documents;

(e) each Credit Party has consulted its own legal and financial advisors to the extent it deemed appropriate;

(f) each Credit Party is responsible for making its own independent judgment with respect to such transactions and the process leading thereto; and

(g) no Credit Party will claim that any Lender has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to any Credit Party, in connection with such transaction or the process leading thereto.

10.23 No Third Parties Benefit. This Agreement is made and entered into for the sole protection and legal benefit of the Borrower, the Lenders, the Issuing Banks party hereto, the Agents and each other Secured Party, and their permitted successors and assigns, and no other Person will be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any of the other Credit Documents. No Agent or any Lender will have any obligation to any Person not a party to this Agreement or the other Credit Documents.

10.24 PATRIOT Act. Each Lender and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Credit Parties that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies the Credit Parties, which information includes the name and address of each Credit Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Credit Parties in accordance with the PATRIOT Act.

10.25 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Credit Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Credit Document may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable: (i) a reduction in full or in part or cancellation of any such liability; (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Credit Document; or (iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

10.26 Judgment Currency.

(a) The Credit Parties' obligations hereunder and under the other Credit Documents to make payments in Dollars shall not be discharged or satisfied by any tender or recovery pursuant to any judgment expressed in or converted into any currency other than Dollars, except to the extent that such tender or recovery results in the effective receipt by the Administrative Agent, the respective Lender or the applicable Issuing Bank of the full amount of Dollars expressed to be payable to the Administrative Agent or such Lender or such Issuing Bank under this Agreement or the other Credit Documents. If, for the purpose of obtaining or enforcing judgment against any Credit Party in any court or in any jurisdiction, it becomes necessary to convert into or from any currency other than Dollars (such other currency being hereinafter referred to as the "**Judgment Currency**") an amount due in Dollars, the conversion shall be made at the Dollar Equivalent determined as of the Calculation Date immediately preceding the day on which the judgment is given.

(b) If there is a change in the rate of exchange prevailing between the Calculation Date described in clause (a) above and the date of actual payment of the amount due, the Credit Parties shall pay, or cause to be paid, such additional amounts, if any (but in any event not a lesser amount) as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of Dollars which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial award at the rate of exchange prevailing on the Calculation Date.

(c) For purposes of determining the Dollar Equivalent or any other rate of exchange for this Section 10.26, such amounts shall include any premium and costs payable in connection with the purchase of Dollars.

10.27 Acknowledgement Regarding Any Supported QFCs. To the extent that the Credit Documents provide support, through a guarantee or otherwise, for Rate Contracts or any other agreement or instrument that is a QFC (such support, "**QFC Credit Support**" and each such QFC, a "**Supported QFC**"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "**U.S. Special Resolution Regimes**") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable

notwithstanding that the Credit Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a "**Covered Party**") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Credit Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Credit Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

[Remainder of Page Intentionally Left Blank]

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

BORROWER:

BIOVENTUS LLC, as Borrower

By: /s/ Gregory Anglum
Name: Gregory Anglum
Title: Chief Financial Officer

GUARANTOR SUBSIDIARIES:

EXOGEN, INC., as a Guarantor Subsidiary

By: /s/ Gregory Anglum
Name: Gregory Anglum
Title: Chief Financial Officer

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent, Collateral Agent, Issuing Bank, Swing Line Lender and as a Lender

By: /s/ Lindsey Stuckey

Name: Lindsey Stuckey
Title: Vice President

JPMorgan Chase bank, N.A., as a Lender

By: /s/ Thomas Gallagher
Name: Thomas Gallagher
Title: VP, Credit Risk

SUNTRUST BANK, as a Lender

By: /s/ Jared Cohen
Name: Jared Cohen
Title: Director

BBVA USA, as a Lender

By: /s/ Dillon Ortman
Name: Dillon Ortman
Title: Relationship Manager / VP

MORGAN STANLEY SENIOR FUNDING, INC.,
as a Lender

By: /s/ Michael King
Name: Michael King
Title: Vice President

TD BANK, NA, as a Lender

By: /s/ Nate Barrett
Name: Nate Barrett
Title: Vice President

FIRST NATIONAL BANK OF PENNSYLVANIA,
as a Lender

By: /s/ Walter Ricks

Name: W. Walter Ricks
Title: Senior Vice President

BIOVENTUS LLC
PHANTOM PROFITS INTERESTS PLAN

DATED AS OF MAY 4, 2012

The purpose of the Bioventus LLC Phantom Profits Interests Plan (the "**Plan**") is to provide eligible employees of Bioventus LLC (the "**Company**") who are important to the success and growth of the business of the Company an opportunity to share in the future appreciation in value of the Company by receiving grants of Phantom Profits Interest Units in the Company. The Company believes that the Plan will encourage participants to contribute materially to the growth of the Company's owners, thereby benefiting the Company, and will align the economic interests of the participants with those of the owners. Awards under the Plan shall consist of grants of Phantom Profits Interest Units as described in Section 5 ("**Awards**"). Capitalized terms that are used but not defined herein shall have the respective meanings accorded to such terms in the Amended and Restated Limited Liability Company Agreement of the Company, as amended (the "**LLC Agreement**").

1. DEFINITIONS.

(a) "**Benchmark Amount**" means the cumulative distributions that must be made by the Company pursuant to the LLC Agreement before a Grantee is entitled to receive any distributions in respect of such Grantee's Phantom Profits Interest Units. The Benchmark Amount as of the initial effective date of the Plan is $231,372,549.02.

(b) "**Code**" means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

(c) "**Employee**" means an employee of the Company.

(d) "**Grantee**" means an Employee who receives an Award.

(e) "**Initial Waterfall Distribution Event**" means the closing of (i) a sale of Units representing a Percentage Interest of more than 66.66%, or (ii) a sale of all or substantially all of the assets of the Company; provided that such event constitutes a change in ownership or a change in effective control of the Company within the meaning of Section 409A of the Code.

(f) "**Management Distribution Cap**" means 10% of the aggregate amount, if any, available for distribution pursuant to Section 10.05(a)(v) of the LLC Agreement.

(g) "**Management Incentive Plan**" means the Bioventus LLC Management Incentive Plan.

(h) "**Payment Amount**" means the amount payable with respect to each vested Phantom Profits Interest Unit upon the applicable Payment Event.

(i) "**Phantom Profits Interest Unit**" means a right to receive cash in an amount equal to the Payment Amount upon the Payment Event as set forth in the applicable Award Agreement.

(j) "**Profits Interest Unit**" means a non-managing, non-voting ownership interest in the Company issued pursuant to Section 3.01(b) of the LLC Agreement and the Management Incentive Plan.

(k) "**Qualifying Subsequent Waterfall Distribution Event**" means a Subsequent Waterfall Distribution Event that constitutes a change in ownership or a change in effective control of the Company within the meaning of Section 409A of the Code.

(l) "**Subsequent Waterfall Distribution Event**" means, following an Initial Waterfall Distribution Event under Section 1(a) above with respect to Units representing a Percentage Interest of less than 100%, the closing of (i) a subsequent sale of Units, or (ii) a sale of all or substantially all of the assets of the Company

(m) "**Termination Date**" means the date of the Grantee's separation of service, as defined in Section 409A of the Code.

(n) "**Waterfall Distribution Event**" means an Initial Waterfall Distribution Event or a Subsequent Waterfall Distribution Event.

2. ADMINISTRATION

(a) Administration. The Plan shall be administered and interpreted by the Board of Managers (the "**Administrator**") or by a committee or subcommittee, which shall be appointed by the Administrator. To the extent that a committee or subcommittee administers the Plan, references in the Plan to the "Administrator" shall be deemed to refer to the committee or the subcommittee.

(b) Administrator Authority. The Administrator shall determine (i) the Employees to receive Awards, (ii) the size and terms of the Awards, (iii) the time when the Awards will be made, (iv) the applicable Payment Event, (v) the duration of any applicable vesting period, provided that such vesting period shall not be less than four years and that the Award shall vest ratably over the vesting period, and (vi) the Benchmark Amount with respect to any Award.

(c) Administrator Determinations. The Administrator shall have full power and authority to administer and interpret the Plan, to make factual determinations, and to adopt or amend such rules, regulations, agreements, and instruments for implementing the Plan and for the conduct of its business as it deems necessary or advisable. All powers of the Administrator shall be executed without the approval or consent of the Grantees.

3. INTERESTS SUBJECT TO THE PLAN

(a) Awards Authorized by the LLC Agreement. The total amount of Phantom Profits Interest Units available for grants under the Plan, when combined with the total amount of Profits Interest Units (as defined in the Management Incentive Plan) granted under the Management Incentive Plan and any other form of employee, management or other service provider equity or equity-related awards of the Company, shall not result in aggregate distributions to the holders thereof in excess of the Management Distribution Cap (such amount determined, solely for this purpose, as if there were no Phantom Profits Interest Units or Other Management Equity Awards (as defined in the LLC Agreement)) ("**Excess Distributions**"), unless and to the extent that S&N and the Essex Members consent in their capacity as Members to such Excess Distributions. If, and to the extent that, Phantom Profits Interest Units granted under the Plan terminate or are canceled, forfeited, exchanged, or surrendered without payment, such Phantom Profits Interest Units shall be available again for purposes of the Plan.

(b) Adjustments. If there is any change in the total amount or kind of Phantom Profits Interest Units outstanding (i) by reason of a spinoff, split of the Phantom Profits Interest Units, reclassification, combination, or exchange of such Phantom Profits Interest Units or similar event; (ii) by reason of a merger, reorganization, or consolidation; (iii) by reason of any other extraordinary or unusual event affecting the outstanding Phantom Profits Interest Units as a class without the Company's receipt of consideration; or (iv) by reason of a change in the structure of the Company, or if the value of the outstanding Phantom Profits Interest Units are substantially reduced as a result of a spinoff, the amount or percentage of such Phantom Profits Interest Units covered by outstanding Awards, and the kind of Phantom Profits Interest Units issued under the Plan shall be appropriately adjusted by the Administrator to reflect any increase or decrease in the amount of, or change in the kind or value of, issued Phantom Profits Interest Units to preclude, to the extent practicable, the enlargement or dilution of rights and benefits under such Awards. Any adjustments determined by the Administrator shall be final, binding, and conclusive.

4. ELIGIBILITY FOR PARTICIPATION

All Employees who are designated by the Administrator shall be eligible to participate in the Plan.

5. GRANTS OF AWARDS

(a) Award Agreement. All Awards shall be subject to the terms and conditions of this Plan, the terms of the LLC Agreement, and the Grantee's award instrument (the "**Award Agreement**"). Each Award Agreement shall contain the number of Phantom Profits Interest Units underlying the Grantee's Award and the applicable grant date Benchmark Amount (subject to adjustment as provided in the LLC Agreement), and each Award shall vest in accordance with the terms of the Grantee's Award Agreement. The Award Agreement shall also designate whether the Payment Amount shall be paid (i) upon the earlier of the Grantee's Termination Date or an Initial Waterfall Distribution Event (with any subsequent amounts paid upon the earlier of a Qualifying Subsequent Waterfall Distribution Event or the Grantee's Termination Date) (a "**Termination Payment Event**") or (ii) upon an Initial Waterfall Distribution Event, with any subsequent amounts paid upon the earlier of (A) a Qualifying Subsequent Waterfall Distribution Event or (B) provided that a Subsequent Waterfall event has occurred, the fifth anniversary of the grant date (a "**Waterfall Payment Event**") (a Termination Payment Event or a Waterfall Payment Event, also referred to as the "**Payment Event**").

(b) Payment Amount.

(i) If the Payment Event is a Termination Payment Event, the Payment Amount shall be, for each vested Phantom Profits Interest Unit, an amount that would be allocated to an equivalent number of Profits Interest Units with an equivalent Benchmark Amount, (A) if the Grantee's Termination Date is prior to a Waterfall Distribution Event, as if the Company were liquidated on the Termination Date at fair market value (as determined in good faith by the Administrator), or (B) where there is an Initial Waterfall Distribution Event and one or more Subsequent Waterfall Distribution Events prior to the Termination Date, pursuant to the LLC Agreement with respect to each such Waterfall Distribution Event. Such Payment Amount shall be paid to the Grantee within 30 days of the Termination Date, the Initial Waterfall Distribution Event, or any Qualifying Subsequent Waterfall Distribution Event, as applicable. In the event that a Subsequent Waterfall Distribution Event is not a Qualifying Subsequent Waterfall Distribution Event, the Payment Amount with respect to such Subsequent Waterfall Distribution Event shall be paid within 30 days of the Termination Date. No further Payment Amount shall be paid to the Grantee with respect to Waterfall Distribution Events following the Grantee's Termination Date.

(ii) Subject to (iii) below, if the Payment Event is a Waterfall Payment Event and a Waterfall Distribution Event occurs before the Grantee's Termination Date, the Payment Amount shall be equal to, for each vested Phantom Profits Interest Unit, an amount that would be payable with respect to the equivalent number of Profits Interest Units with an equivalent Benchmark Amount pursuant to the LLC Agreement. Such Payment Amount shall be paid to the Grantee within 30 days of an Initial Waterfall Distribution Event, and for any Subsequent Waterfall Distribution Event, shall be paid to the Grantee within 30 days of the earlier of a Qualifying Subsequent Waterfall Distribution Event or the fifth anniversary of the date of grant. No Payment Amount shall be paid to the Grantee with respect to any Subsequent Waterfall Distribution Event that is not a Qualifying Subsequent Waterfall Distribution Event and that occurs after the fifth anniversary of the Grant Date.

(iii) If the Payment Event is a Waterfall Payment Event and a Waterfall Distribution Event occurs after the Grantee's Termination Date, the Payment Amount with respect to such event shall in no event be greater than the lesser of, for each vested Phantom Profits Interest Unit, (A) an amount that would be allocated to an equivalent number of Profits Interest Units with an equivalent Benchmark Amount if the Company were liquidated on the valuation date next following the Termination Date at fair market value (as determined in good faith by the Administrator) and (B) the amount specified in Section 5(b)(ii) above; provided that if a Waterfall Distribution Event occurs prior to the valuation date next following the Termination Date, the Payment Amount shall be the amount specified in Section 5(b)(ii). Such Payment Amount shall be paid to the Grantee within 30 days of the Initial Waterfall Distribution Event, and for any Subsequent Waterfall Distribution Event, shall be paid to the Grantee within 30 days of the earlier of a Qualifying Subsequent Waterfall Distribution Event or the fifth anniversary of the date of grant. No Payment Amount shall be paid to the Grantee with respect to any Subsequent Waterfall Distribution Event that is not a Qualifying Subsequent Waterfall Distribution Event and that occurs after the fifth anniversary of the Grant Date.

(c) Acknowledgement by Grantee. All Awards shall be made conditional upon the Grantee's acknowledgement, in writing or by acceptance of the Award, that all decisions and determinations of the Administrator shall be final and binding on the Grantee, his or her beneficiaries, and any other person having or claiming an interest under such award. Awards need not be uniform as among the Grantees.

6. FORFEITURE

(a) Termination of Employment. Any and all of a Grantee's unvested Phantom Profits Interest Units shall be forfeited upon the termination of the Grantee's employment for any reason.

(b) Termination of Employment for Cause. Any and all of a Grantee's vested and unvested Phantom Profits Interest Units shall be forfeited upon the termination of the Grantee's employment for Cause. For purposes of this Plan, "Cause" shall have the meaning set forth in the written employment agreement between the Grantee and the Company in effect on the date of the Grantee's termination of employment, or if no such agreement exists, shall mean (i) conviction (including guilty plea or plea of nolo contendere) of any felony or any other crime involving fraud, violence or dishonesty; (ii) commission of or participation in a fraud or act of dishonesty or misrepresentation against the Company; (iii) violation of any written and fully executed contract or agreement between the Grantee and the Company, including without limitation, breach of Grantee's Proprietary Information, Inventions, Non-Competition and Non-Solicitation Agreement; (iv) gross negligence or willful misconduct, (v) continued and substantial failure to perform the Grantee's duties to the Company; or (vi) violation of any material policies, practices, or procedures of the Company.

(c) Waterfall Distribution Event. As soon as practicable following an Initial Waterfall Distribution Event or any Subsequent Waterfall Distribution Event that results in an aggregate sale of Units representing a Percentage Interest of 100%, or upon a sale of all or substantially all of the assets of the Company, all vested and unvested Phantom Profits Interest Units shall be cancelled (after the Grantee has been paid any amounts due with respect to such Units, if applicable).

(d) Confidentiality, Non-Compete, Non-Solicitation. Notwithstanding anything herein to the contrary, a Grantee shall forfeit any and all rights to all vested and unvested Phantom Profits Interest Units if the Grantee violates the terms of any confidentiality, non-solicitation and non-competition provisions of any agreement between the Grantee and the Company, if applicable.

7. WITHHOLDING OF TAXES

All Awards under the Plan shall be subject to applicable federal (including FICA), state, and local tax withholding requirements. The Company may require that the Grantee pay to the Company the amount of any federal, state, or local taxes that the Company is required to withhold with respect to such Awards, or the Company may deduct from other wages paid by the Company the amount of any withholding taxes due with respect to such Awards.

8. NONTRANSFERABILITY OF AWARDS

Only the Grantee has any rights under an Award. A Grantee may not transfer those rights, directly or indirectly, except by will or the laws of descent and distribution.

9. LIMITATIONS ON ISSUANCE OR TRANSFER OF PHANTOM PROFITS INTEREST UNITS

No Phantom Profits Interest Units shall be issued or transferred in connection with any Award until all legal requirements applicable to the issuance or transfer of such Phantom Profits Interest Units have been complied with to the satisfaction of the Administrator. The Administrator shall have the right to condition any Award made to any Grantee hereunder on such Grantee's undertaking in writing to comply with any restrictions on his or her subsequent disposition of such Phantom Profits Interest Units as the Administrator shall deem necessary or advisable.

10. AMENDMENT AND TERMINATION OF THE PLAN

(a) Amendment and Termination. The Administrator may, in accordance with the LLC Agreement, amend the Plan or any Award under the Plan, or terminate the Plan, at any time; provided that no amendment or termination of the Plan or any Award shall, without the consent of a Grantee, adversely impact the rights of any Grantee under any Award granted to such Grantee under the Plan, unless necessary to meet the requirements of any applicable law or regulation. Before amending or terminating the Plan or any Award to meet the requirements of an applicable law or regulation, the Administrator will attempt to bring the Plan or Award into compliance with the applicable law or regulation without reducing the benefits or payments to a Grantee to the greatest extent possible. If amendment or termination is still necessary and adversely impacts the rights of a Grantee, the Administrator will reasonably cooperate with such Grantee to adopt replacement benefits or payments that to the greatest extent possible places the Grantee in the same or a comparable economic position as if the Plan or Award had not been amended or terminated.

(b) Governing Document. In the event of any conflict between any Award in the form attached hereto as Exhibit A or B and the LLC Agreement, such Award shall control. In the event of any conflict between any subsequent Award not in the form attached hereto and the LLC Agreement, the LLC agreement shall control unless such subsequent Award has been approved by the Board and Smith & Nephew, Inc., in which case such Award shall control. No other statements, representations, explanatory materials or examples, oral or written, may amend the Plan in any manner. The Plan shall be binding upon and enforceable against the Company and its successors and assigns.

11. FUNDING OF THE PLAN

This Plan shall be unfunded. The Company shall not be required to establish any special or separate fund or to make any other segregation of assets to assure the payment of any Awards under this Plan. In no event shall interest be paid or accrued on any Award.

12. RIGHTS OF GRANTEES

No Award shall entitle any Grantee to any (i) voting rights with respect to any action or decision taken or made (or to be taken or made) by the Company or the Board of Managers, (ii) right to appoint Managers to the Board of Managers, or (iii) appraisal or preemption rights. Nothing in this Plan shall entitle any Employee or any other person to any claim or right to receive an Award under this Plan. Neither this Plan nor any action taken hereunder shall be construed as giving any individual any rights to be retained by or in the employ of the Company or any other employment rights.

13. HEADINGS

Section headings are for reference only. In the event of a conflict between a title and the content of a Section, the content of the Section shall control.

14. EFFECTIVE DATE OF THE PLAN

The Plan shall be effective on May 4, 2012.

15. MISCELLANEOUS

(a) Compliance with Law. The Plan and the obligations of the Company to issue or transfer Phantom Profits Interest Units in connection with Awards shall be subject to all applicable laws and to approvals by any governmental or regulatory agency as may be required. The Administrator may revoke any Award if it is contrary to law or modify an Award to bring it into compliance with any valid and mandatory government regulation. The Administrator may also adopt rules regarding the withholding of taxes on payments to Grantees. The Administrator may, in its sole discretion, agree to limit its authority under this Section.

(b) Governing Law. The validity, construction, interpretation, and effect of the Plan and Award Agreements issued under the Plan shall be governed and construed by and determined in accordance with the laws of the State of Delaware, without giving effect to the conflict of laws provisions thereof.

BIOVENTUS STOCK PLAN
AS AMENDED AND RESTATED JUNE 1, 2020

The purpose of the Bioventus Stock Plan (formerly known as the Bioventus LLC Phantom Profit Interest Plan) (the "**Plan**") is to provide eligible employees and independent members of the Board of Managers of Bioventus LLC (the "**Company**") who are important to the success and growth of the business of the Company an opportunity to share in the future appreciation in value of the Company by receiving grants under the Plan in the Company. The Company believes that the Plan will encourage participants to contribute materially to the growth of the Company's owners, thereby benefiting the Company, and will align the economic interests of the participants with those of the owners. Awards under the Plan shall consist of grants of Plan Units as described in Section 5 ("**Awards**"). Capitalized terms that are used but not defined herein shall have the respective meanings accorded to such terms in the Amended and Restated Limited Liability Company Agreement of the Company, as amended (the "**LLC Agreement**").

Definitions.

"**Bioventus Stock Plan Unit or "Plan Unit**" means a right to receive cash in an amount equal to the Payment Amount upon the Payment Event as set forth in the applicable Award Agreement under the Plan.

"**Benchmark Amount**" means the cumulative distributions that must be made by the Company pursuant to the LLC Agreement before a Grantee is entitled to receive any distributions in respect of such Grantee's Plan Units. The Benchmark Amount shall equal $840,849,878 or such other greater amount as set forth in the applicable Award Agreement.

"**Board Member**" means an independent member of the Board of Managers of the Company appointed or elected to the Board of Managers on or after January 1, 2016.

"**Code**" means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

"**Employee**" means an employee of the Company.

"**Grantee**" means an Employee or Board Member who receives an Award.

"**Initial Waterfall Distribution Event**" means the closing of (i) a sale of Units representing a Percentage Interest of more than 66.66%, or (ii) a sale of all or substantially all of the assets of the Company; provided that such event constitutes a change in ownership or a change in effective control of the Company within the meaning of Section 409A of the Code.

"**Management Distribution Cap**" means 17.5% of the aggregate amount, if any, available for distribution pursuant to Section 10.05(a)(v) of the LLC Agreement.

"**Management Incentive Plan**" means the Bioventus LLC Management Incentive Plan.

"**Payment Amount**" means the amount payable with respect to each vested Plan Unit upon the applicable Payment Event.

"**Profit Interest Unit**" means a non-managing, non-voting ownership interest in the Company issued pursuant to Section 3.01(b) of the LLC Agreement and the Management Incentive Plan.

"**Qualifying Subsequent Waterfall Distribution Event**" means a Subsequent Waterfall Distribution Event that constitutes a change in ownership or a change in effective control of the Company within the meaning of Section 409A of the Code.

"**Subsequent Waterfall Distribution Event**" means, following an Initial Waterfall Distribution Event under Section 1(a) above with respect to Units representing a Percentage Interest of less than 100%, the closing of (i) a subsequent sale of Units, or (ii) a sale of all or substantially all of the assets of the Company

"**Termination Date**" means in the case of an Employee, the date of the Grantee's separation of service, as defined in Section 409A of the Code, and in the case of a Board Member, resignation or removal from the Board of Managers of the Company.

"**Waterfall Distribution Event**" means an Initial Waterfall Distribution Event or a Subsequent Waterfall Distribution Event.

Administration

Administration. The Plan shall be administered and interpreted by the Board of Managers (the "**Administrator**") or by a committee or subcommittee, which shall be appointed by the Administrator. To the extent that a committee or subcommittee administers the Plan, references in the Plan to the "Administrator" shall be deemed to refer to the committee or the subcommittee.

Administrator Authority. The Administrator shall determine (i) the Employees and Board Members to receive Awards, (ii) the size and terms of the Awards, (iii) the time when the Awards will be made, (iv) the applicable Payment Event, (v) the duration of any applicable vesting period, provided that such vesting period shall not be less than four years and that the Award shall vest ratably over the vesting period, and (vi) the Benchmark Amount with respect to any Award.

Administrator Determinations. The Administrator shall have full power and authority to administer and interpret the Plan, to make factual determinations, and to adopt or amend such rules, regulations, agreements, and instruments for implementing the Plan and for the conduct of its business as it deems necessary or advisable. All powers of the Administrator shall be executed without the approval or consent of the Grantees.

Interests Subject to the Plan

Awards Authorized by the LLC Agreement. The total amount of Plan Units available for grants under the Plan, when combined with the total amount of Profits Interest Units (as defined in the Management Incentive Plan) granted under the Management Incentive Plan and any other form of employee, management or other service provider equity or equity-related awards of the Company, shall not result in aggregate distributions to the holders thereof in excess of the Management Distribution Cap (such amount determined, solely for this purpose, as if there were no Plan Units or Other Management Equity Awards (as defined in the LLC Agreement)) ("**Excess Distributions**"), unless and to the extent that S&N and the Essex Members consent in their capacity as Members to such Excess Distributions. If, and to the extent that, Plan Units granted under the Plan terminate or are canceled, forfeited, exchanged, or surrendered without payment, such Plan Units shall be available again for purposes of the Plan.

Adjustments. If there is any change in the total amount or kind of Plan Units outstanding (i) by reason of a spinoff, split of the Plan Units, reclassification, combination, or exchange of such Units or similar event; (ii) by reason of a merger, reorganization, or consolidation; (iii) by reason of any other extraordinary or unusual event affecting the outstanding Plan Units as a class without the Company's receipt of consideration; or (iv) by reason of a change in the structure of the Company, or if the value of the outstanding Plan Units are substantially reduced as a result of a spinoff, the amount or percentage of such Plan Units covered by outstanding Awards, and the kind of Plan Units issued under the Plan shall be appropriately adjusted by the Administrator to reflect any increase or decrease in the amount of, or change in the kind or value of, issued Plan Units to preclude, to the extent practicable, the enlargement or dilution of rights and benefits under such Awards. Any adjustments determined by the Administrator shall be final, binding, and conclusive.

Eligibility for Participation

All Employees and Board Members who are designated by the Administrator shall be eligible to participate in the Plan.

Grants of Awards

Award Agreement. All Awards shall be subject to the terms and conditions of this Plan, the terms of the LLC Agreement, and the Grantee's award instrument (the "**Award Agreement**"). Each Award Agreement shall contain the number of Plan Units underlying the Grantee's Award and the applicable grant date Benchmark Amount (subject to adjustment as provided in the LLC Agreement), and each Award shall vest in accordance with the terms of the Grantee's Award Agreement. The Award Agreement shall also designate whether the Payment Amount shall be paid (i) upon the earlier of the Grantee's Termination Date or an Initial Waterfall Distribution Event (with any subsequent amounts paid upon the earlier of a Qualifying Subsequent Waterfall Distribution Event or the Grantee's Termination Date) (a "**Termination Payment Event**") or (ii) upon an Initial Waterfall Distribution Event, with any subsequent amounts paid upon the earlier of (A) a Qualifying Subsequent Waterfall Distribution Event or (B) provided that a Subsequent Waterfall event has occurred, the fifth anniversary of the grant date (a "**Waterfall Payment Event**") (a Termination Payment Event or a Waterfall Payment Event, also referred to as the "**Payment Event**").

Payment Amount.

(i) If the Payment Event is a Termination Payment Event, the Payment Amount shall be, for each vested Plan Unit, an amount that would be allocated to an equivalent number of Plan Units with an equivalent Benchmark Amount, (A) if the Grantee's Termination Date is prior to a Waterfall Distribution Event, as if the Company were liquidated on the Termination Date at fair market value (as determined in good faith by the Administrator), or (B) where there is an Initial Waterfall Distribution Event and one or more Subsequent Waterfall Distribution Events prior to the Termination Date, pursuant to the LLC Agreement with respect to each such Waterfall Distribution Event. Such Payment Amount shall be paid to the Grantee within 30 days of the Termination Date, the Initial Waterfall Distribution Event, or any Qualifying Subsequent Waterfall Distribution Event, as applicable. In the event that a Subsequent Waterfall Distribution Event is not a Qualifying Subsequent Waterfall Distribution Event, the Payment Amount with respect to such Subsequent Waterfall Distribution Event shall be paid within 30 days of the Termination Date. No further Payment Amount shall be paid to the Grantee with respect to Waterfall Distribution Events following the Grantee's Termination Date.

(ii) Subject to (iii) below, if the Payment Event is a Waterfall Payment Event and a Waterfall Distribution Event occurs before the Grantee's Termination Date, the Payment Amount shall be equal to, for each vested Plan Unit, an amount that would be payable with respect to the equivalent number of Profit Interest Units with an equivalent Benchmark Amount pursuant to the LLC Agreement. Such Payment Amount shall be paid to the Grantee within 30 days of an Initial Waterfall Distribution Event, and for any Subsequent Waterfall Distribution Event, shall be paid to the Grantee within 30 days of the earlier of a Qualifying Subsequent Waterfall Distribution Event or the fifth anniversary of the date of grant. No Payment Amount shall be paid to the Grantee with respect to any Subsequent Waterfall Distribution Event that is not a Qualifying Subsequent Waterfall Distribution Event and that occurs after the fifth anniversary of the Grant Date.

(iii) If the Payment Event is a Waterfall Payment Event and a Waterfall Distribution Event occurs after the Grantee's Termination Date, the Payment Amount with respect to such event shall in no event be greater than the lesser of, for each vested Plan Unit, (A) an amount that would be allocated to an equivalent number of Profits Interest Units with an equivalent Benchmark Amount if the Company were liquidated on the valuation date next following the Termination Date at fair market value (as determined in good faith by the Administrator) and (B) the amount specified in Section 5(b)(ii) above; provided that if a Waterfall Distribution Event occurs prior to the valuation date next following the Termination Date, the Payment Amount shall be the amount specified in Section 5(b)(ii). Such Payment Amount shall be paid to the Grantee within 30 days of the Initial Waterfall Distribution Event, and for any Subsequent Waterfall Distribution Event, shall be paid to the Grantee within 30 days of the earlier of a Qualifying Subsequent Waterfall Distribution Event or the fifth anniversary of the date of grant. No Payment Amount shall be paid to the Grantee with respect to any Subsequent Waterfall Distribution Event that is not a Qualifying Subsequent Waterfall Distribution Event and that occurs after the fifth anniversary of the Grant Date.

Acknowledgement by Grantee. All Awards shall be made conditional upon the Grantee's acknowledgement, in writing or by acceptance of the Award, that all decisions and determinations of the Administrator shall be final and binding on the Grantee, his or her beneficiaries, and any other person having or claiming an interest under such award. Awards need not be uniform as among the Grantees.

Forfeiture

Termination of Employment. Any and all of an Employee Grantee's unvested Plan Units shall be forfeited upon the termination of the Grantee's employment for any reason.

Termination of Membership on the Board of Managers. Any and all of a Board Member Grantee's unvested Plan Units shall be forfeited upon resignation or removal from the Board of Managers of the Company.

Termination of Employment for Cause. Any and all of an Employee Grantee's vested and unvested Plan Units shall be forfeited upon the termination of the Grantee's employment for Cause. For purposes of this Plan, "Cause" shall have the meaning set forth in the written employment agreement between the Grantee and the Company in effect on the date of the Grantee's termination of employment, or if no such agreement exists, shall mean (i) conviction (including guilty plea or plea of nolo contendere) of any felony or any other crime involving fraud, violence or dishonesty; (ii) commission of or participation in a fraud or act of dishonesty or misrepresentation against the Company; (iii) violation of any written and fully executed contract or agreement between the Grantee and the Company, including without limitation, breach of Grantee's Proprietary Information, Inventions, Non-Competition and Non-Solicitation Agreement; (iv) gross negligence or willful misconduct, (v) continued and substantial failure to perform the Grantee's duties to the Company; or (vi) violation of any material policies, practices, or procedures of the Company.

Removal from the Board of Managers. Any and all of a Board Member Grantee's vested and unvested Plan Units shall be forfeited upon the removal of the Grantee from the Board of Managers for Cause. For purposes of this Plan, "Cause" shall mean (i) conviction (including guilty plea or plea of nolo contendere) of any felony or any other crime involving fraud, violence or dishonesty; (ii) commission of or participation in a fraud or act of dishonesty or misrepresentation against the Company; (iii) violation of any agreement between the Grantee and the Company; (iv) gross negligence or willful misconduct; (v) continued and substantial failure to perform the Grantee's duties to the Company as a Member of the Board of Managers of the Company; or (vi) violation of any material policies, practices, or procedures of the Company including without limitation, the Company's Code of Conduct and Confidential Information policies.

Waterfall Distribution Event. As soon as practicable following an Initial Waterfall Distribution Event or any Subsequent Waterfall Distribution Event that results in an aggregate sale of Units representing a Percentage Interest of 100%, or upon a sale of all or substantially all of the assets of the Company, all vested and unvested Plan Units shall be cancelled (after the Grantee has been paid any amounts due with respect to such Units, if applicable).

Confidentiality, Non-Compete, Non-Solicitation. Notwithstanding anything herein to the contrary, a Grantee shall forfeit any and all rights to all vested and unvested Plan Units if the Grantee violates the terms of any confidentiality, non-solicitation and non-competition provisions of any agreement between the Grantee and the Company, if applicable.

Withholding of Taxes

All Awards under the Plan shall be subject to applicable federal (including FICA), state, and local tax withholding requirements. The Company may require that the Grantee pay to the Company the amount of any federal, state, or local taxes that the Company is required to withhold with respect to such Awards, or the Company may deduct from other wages paid by the Company the amount of any withholding taxes due with respect to such Awards.

Nontransferability of Awards

Only the Grantee has any rights under an Award. A Grantee may not transfer those rights, directly or indirectly, except by will or the laws of descent and distribution.

Limitations on Issuance or Transfer of Plan Units

No Plan Units shall be issued or transferred in connection with any Award until all legal requirements applicable to the issuance or transfer of such Plan Units have been complied with to the satisfaction of the Administrator. The Administrator shall have the right to condition any Award made to any Grantee hereunder on such Grantee's undertaking in writing to comply with any restrictions on his or her subsequent disposition of such Plan Units as the Administrator shall deem necessary or advisable.

Amendment and Termination of the Plan

Amendment and Termination. The Administrator may, in accordance with the LLC Agreement, amend the Plan or any Award under the Plan, or terminate the Plan, at any time; provided that no amendment or termination of the Plan or any Award shall, without the consent of a Grantee, adversely impact the rights of any Grantee under any Award granted to such Grantee under the Plan, unless necessary to meet the requirements of any applicable law or regulation. Before amending or terminating the Plan or any Award to meet the requirements of an applicable law or regulation, the Administrator will attempt to bring the Plan or Award into compliance with the applicable law or regulation without reducing the benefits or payments to a Grantee to the greatest extent possible. If amendment or termination is still necessary and adversely impacts the rights of a Grantee, the Administrator will reasonably cooperate with such Grantee to adopt replacement benefits or payments that to the greatest extent possible places the Grantee in the same or a comparable economic position as if the Plan or Award had not been amended or terminated.

Governing Document. In the event of any conflict between any Award in the form attached hereto as Exhibit A or B and the LLC Agreement, such Award shall control. In the event of any conflict between any subsequent Award not in the form attached hereto and the LLC Agreement, the LLC agreement shall control unless such subsequent Award has been approved by the Board and Smith & Nephew, Inc., in which case such Award shall control. No other statements, representations, explanatory materials or examples, oral or written, may amend the Plan in any manner. The Plan shall be binding upon and enforceable against the Company and its successors and assigns.

Funding of the Plan

This Plan shall be unfunded. The Company shall not be required to establish any special or separate fund or to make any other segregation of assets to assure the payment of any Awards under this Plan. In no event shall interest be paid or accrued on any Award.

Rights of Grantees

No Award shall entitle any Grantee to any (i) voting rights with respect to any action or decision taken or made (or to be taken or made) by the Company or the Board of Managers, (ii) right to appoint Managers to the Board of Managers, or (iii) appraisal or preemption rights. Nothing in this Plan shall entitle any Employee, Board Member or any other person to any claim or right to receive an Award under this Plan. Neither this Plan nor any action taken hereunder shall be construed as giving any individual any rights to be retained by or in the employ of the Company or any other employment rights.

Headings

Section headings are for reference only. In the event of a conflict between a title and the content of a Section, the content of the Section shall control.

Effective Date of the Plan

The initial effective date of the Plan was May 4, 2012. The amended and restated version of the Plan shall be effective on June 1, 2020.

Miscellaneous

Compliance with Law. The Plan and the obligations of the Company to issue or transfer Plan Units in connection with Awards shall be subject to all applicable laws and to approvals by any governmental or regulatory agency as may be required. The Administrator may revoke any Award if it is contrary to law or modify an Award to bring it into compliance with any valid and mandatory government regulation. The Administrator may also adopt rules regarding the withholding of taxes on payments to Grantees. The Administrator may, in its sole discretion, agree to limit its authority under this Section.

Governing Law. The validity, construction, interpretation, and effect of the Plan and Award Agreements issued under the Plan shall be governed and construed by and determined in accordance with the laws of the State of Delaware, without giving effect to the conflict of laws provisions thereof.

FORM OF PROFITS INTEREST *AWARD* – *Execution Version*

BIOVENTUS LLC

MANAGEMENT INCENTIVE PLAN

AWARD AGREEMENT

The Administrator, as defined in the Bioventus LLC Management Incentive Plan (the **"Plan**"), of the Plan has decided to grant to yon Profits Interest Units in the Company under the Plan. The terms of the grant (the **"Grant**") are set forth in this Bioventus LLC Management Incentive Plan Award Agreement (the **"Award Agreement**") provided to you. The following provides a summary of the key terms of the Grant; however, you should read the entire Award Agreement, along with the terms of the Plan and the Company's Amended and Restated Limited Liability Company Agreement (as might be amended), to fully understand the Grant.

SUMMARY OF MANAGEMENT INCENTIVE PLAN AWARD AGREEMENT

Grantee:	**Anthony P. Bihl III**
Date of Award:	**December 2, 2013**
Vesting Schedule:	**25% on the first anniversary of the Effective Date** **6.25% on the first day of each quarter following the first anniversary of the Effective Date**
Profits Interest Units Awarded:	**333,330**
Grant Date Benchmark Amount:	**$231,372,549.02**

FORM OF PROFITS INTEREST *AWARD* – *Execution Version*

BIOVENTUS LLC

MANAGEMENT INCENTIVE PLAN

AWARD AGREEMENT

This Bioventus LLC Management Incentive Plan Award Agreement (this **"Award Agreement**"), dated as of December 2, 2013 (the **"Effective Date**"), is delivered by Bioventus LLC (the **"Company**") to Anthony P. Bihl III (the **"Grantee**")

RECITALS

A. The Bioventus LLC Management Incentive Plan (the **"Plan**") provides for the grant of Profits Interest Units in the Company in accordance with the terms of the Plan and the Amended and Restated Limited Liability Company Agreement of the Company, as amended (the **"LLC Agreement**"). The Administrator (as defined in the Plan) has granted the Award (as defined below) to encourage the Grantee to contribute materially to the growth of the Company's owners, thereby benefitting the Company, and to align the economic interests of the Grantee with those of the owners. A copy of the Plan is attached. All capitalized terms not defined herein shall have the meaning given to such terms in the Plan or, if not defined in the Plan, in the LLC Agreement.

B. The Administrator shall administer the Plan.

NOW, THEREFORE, the parties to this Award Agreement, intending to be legally bound, hereby agree as follows:

1. **Grant of Management Incentive Award.**

(a) Subject to the terms and conditions set forth in this Award Agreement, the Plan, and the LLC Agreement, the Company hereby grants to the Grantee 333,330 Profits Interest Units (the **"Award**"). This Award Agreement (which is effective as of the Effective Date), the Plan, and the LLC Agreement govern the terms of the grant of the Award.

(b) The Award is intended to qualify as "profits interests" within the meaning of Revenue Procedure 93-27 as clarified by Revenue Procedure 2001-43. The Award shall become vested according to Section 2 below.

2. **Vesting of Awarded Units.**

(a) The Award shall vest in accordance with the following schedule (each date described below, a **"Vesting Date**"), if the Grantee is employed by the Company on the applicable Vesting Date.

Applicable Date	Vesting Percentage
1st anniversary of the Effective Date	25%
First day of each quarter following the 1st anniversary of the Effective Date	6.25%

(b) Upon termination of the employment of the Grantee for any reason, (i) any portion of the Award that is vested shall be subject to a repurchase right as set forth in the Plan and (ii) any portion of the Award that is unvested shall be forfeited on the date of such termination. Notwithstanding any provision of this Award, the Plan or the LLC Agreement to the contrary, if the Grantee terminates employment due to his retirement on or after the fifth anniversary of the Effective Date, the Grantee shall have the right to require the Company to repurchase the vested portion of the Award at the fair market value on the date of termination, provided that the Grantee exercises such put right within 120 days of such termination of employment. For the purposes of this put right, "fair market value" shall be determined based upon going concern value in an arms-length transaction, with no illiquidity or transferability discounts, either (i) as determined in good faith by the Administrator, but in no event shall such value be less than the value determined by multiplying the annualized EBITDA for the most recently completed six month period prior to the repurchase, by the EBITDA multiple applicable in that certain transaction among Smith & Nephew, Inc. and various entities denominated as "Beluga" or (ii) by a mutually acceptable independent qualified third party appraisal mechanism. Payment in full shall be made at the time of the repurchase.

(c) Upon a Waterfall Distribution Event that occurs prior to the termination of employment of the Grantee, the Board shall determine, in its sole discretion, whether any portion of the Award that is unvested shall vest.

3. **Issuance of Profits Interest Units.**

(a) The obligation of the Company to deliver the Profits Interest Units shall be subject to all applicable laws, rules, and regulations and such approvals by governmental agencies as may be deemed appropriate by the Administrator, including such actions as Company counsel shall deem necessary or appropriate to comply with relevant securities laws and regulations.

(b) All obligations of the Company under this Agreement shall be subject to the rights of the Company to withhold amounts required to be withheld for any taxes, if applicable.

(c) The Grantee shall have no balance in his Capital Account immediately after receipt of this Award. The Grantee shall receive allocations and distributions of the Company's profits and losses based upon the terms of the Plan, and the LLC Agreement and based upon a Benchmark Amount equal to $231,372,549.02, subject to adjustment as provided in the LLC Agreement.

4. **Transfer; Repurchase Right**. As a condition of receiving the Award, the Grantee hereby agrees that any Profits Interest Units issued hereby shall be subject to the transfer restrictions and repurchase rights described herein, in the Plan, and in the LLC Agreement.

5. **Restrictions on Transfer**. Only the Grantee has any rights under this Award. The Grantee may not transfer those rights, directly or indirectly, except by will or the laws of descent and distribution.

6. **Award Subject to Plan and LLC Agreement Provisions**. This Award is made pursuant to the Plan and the LLC Agreement, the terms of which are incorporated herein by reference, and in all respects shall be interpreted in accordance with the Plan and the LLC Agreement; provided that, in the event of a conflict between the Plan or LLC Agreement and this Award Agreement, this Award Agreement shall control.[1] The Administrator shall have the full power and authority to administer and interpret the Plan and this Award Agreement, to make factual determinations, and to adopt or amend such rules, regulations, agreements, and instruments for implementing the Plan and this Award Agreement and for the conduct of its business as it deems necessary or advisable. All powers of the Administrator shall be executed without the approval or consent of the Grantee.

7. **No Employment or Other Rights**. This Award Agreement is not an agreement of employment and the grant of this Award shall not confer upon the Grantee any right to be retained by or in the employ of the Company and shall not interfere in any way with the right of the Company to terminate the Grantee's employment at any time. The right of the Company, as applicable, to terminate at will the Grantee's employment at any time for any reason is specifically reserved. The grant of this Award shall not entitle the Grantee to any (i) voting rights with respect to any action or decision taken or made (or to be taken or made) by the Company or the Board of Managers, (ii) right to appoint Managers to the Board of Managers, or (iii) appraisal or preemption rights.

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1 Note: The proviso in this sentence will apply only to Awards, if any, in the form attached to the Plan as of May 4, 2012 or attached to that certain side letter entered into on May 4,2012 or any subsequent award agreement that is approved by the Board and Smith & Nephew, Inc. in accordance with Section 10(b) of the Plan.

8. **Notice**. Any notice to the Company provided for in this Award Agreement must be in writing and will be deemed given: (a) on the date established by the sender as having been delivered personally; (b) on the date delivered by a private, nationally recognized, overnight courier as established by the sender by evidence obtained from the courier; (c) on the date sent by facsimile, with confirmation of transmission, if sent during normal business hours of the recipient (and, if not sent during normal business hours of the recipient, then on the next business day); or (d) on the fifth business day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such

If to the Company, to:

Bioventus LLC
4721 Emperor Blvd., Suite 100
Raleigh, NC 27608
Attention: General Counsel

If to the Grantee, to the address on file with the Company.

If more than one method for sending notice as set forth above is used, the earliest notice date established as set forth above will control for purposes of determining when such notice is deemed to have been given.

9. **Amendment and Termination**. The Administrator may amend the Plan or this Award, or terminate the Plan, at any time; provided that no amendment or termination of the Plan or this Award shall, without the consent of a Grantee, adversely impact the rights of the Grantee under this Award, unless necessary to meet the requirements of any applicable law or regulation. Before amending or terminating the Plan or this Award to meet the requirements of an applicable law or regulation, the Administrator will attempt to bring the Plan or Award into compliance with the applicable law or regulation without reducing the benefits or payments to the Grantee to the greatest extent possible. If amendment or termination is still necessary and adversely impacts the rights of the Grantee, the Administrator will reasonably cooperate with the Grantee to adopt replacement benefits or payments that to the greatest extent possible places the Grantee in the same or a comparable economic position as if the Plan or Award had not been amended or terminated.

10. **Headings**. Section headings are for reference only. In the event of a conflict between a heading and the content of a Section, the content of the Section shall control.

11. **Applicable Law**. The validity, construction, interpretation and effect of this Award Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to the conflicts of laws provisions thereof.

[*Signature page follows*]

IN WITNESS WHEREOF, the Company has caused its duly authorized officer to execute this Award Agreement, and the Grantee has executed this Award Agreement, effective as of the Effective Date.

Bionventus LLC

By: /s/ Leigh Ann Stradford
Leigh Ann Stradford
Vice President, Human Resources

I hereby accept the Award described in this Award Agreement, and I agree to be bound by the terms of this Award Agreement, the Plan and the LLC Agreement. I hereby further agree that all of the decisions and determinations of the Administrator shall be final and binding.

Grantee: /s/ Anthony P. Bihl III
Anthony P. Bihl III

Date: 7/11/14

FORM OF PROFITS INTEREST *AWARD* – *Execution Version*

BIOVENTUS LLC

MANAGEMENT INCENTIVE PLAN

AWARD AGREEMENT

The Administrator, as defined in the Bioventus LLC Management Incentive Plan (the **"Plan**"), of the Plan has decided to grant to yon Profits Interest Units in the Company under the Plan. The terms of the grant (the **"Grant**") are set forth in this Bioventus LLC Management Incentive Plan Award Agreement (the **"Award Agreement**") provided to you. The following provides a summary of the key terms of the Grant; however, you should read the entire Award Agreement, along with the terms of the Plan and the Company's Amended and Restated Limited Liability Company Agreement (as might be amended), to fully understand the Grant.

SUMMARY OF MANAGEMENT INCENTIVE PLAN AWARD AGREEMENT

Grantee:	**Anthony P. Bihl III**
Date of Award:	**December 2, 2013**
Vesting Schedule:	**25% on the first anniversary of the Effective Date** **6.25% on the first day of each quarter following the first anniversary of the Effective Date**
Profits Interest Units Awarded:	**333,330**
Grant Date Benchmark Amount:	**$231,372,549.02**

Exhibit 10.15

BIOVENTUS LLC

PHANTOM PROFITS INTERESTS PLAN

AWARD AGREEMENT

The Administrator, as defined in the Bioventus LLC Phantom Profits Interests Plan (the "**Plan**"), of the Plan has decided to grant to you Phantom Profits Interest Units in the Company under the Plan. The terms of the grant (the "**Grant**") are set forth in this Bioventus LLC Phantom Profits Interests Plan Award Agreement (the "**Award Agreement**") provided to you. The following provides a summary of the key terms of the Grant; however, you should read the entire Award Agreement, along with the terms of the Plan and the Company's Amended and Restated Limited Liability Company Agreement (as might be amended), to fully understand the Grant.

SUMMARY OF PHANTOM PROFITS INTERESTS PLAN AWARD AGREEMENT

Grantee:	**Anthony Bihl III**
Date of Award:	**April 21, 2016**
Vesting Schedule:	**20% vests on December 31, 2016 and the remaining 80% vests in equal installments on a quarterly basis over the next four years**
Phantom Profits Interest Units Awarded:	**38,618**
Payment Event:	**Termination Payment Event**
Grant Date Benchmark Amount:	**$472,003,000**

BIOVENTUS LLC

PHANTOM PROFITS INTERESTS PLAN

AWARD AGREEMENT

This Bioventus LLC Phantom Profits Interests Plan Award Agreement (this "**Award Agreement**"), dated as of April 21, 2016 (the "**Effective Date**"), is delivered by Bioventus LLC (the "**Company**") to Anthony Bihl III (the "**Grantee**").

RECITALS

A. The Bioventus LLC Phantom Profits Interests Plan (the "**Plan**") provides for the grant of Phantom Profits Interest Units in the Company in accordance with the terms of the Plan and the Amended and Restated Limited Liability Company Agreement of the Company, as amended (the "**LLC Agreement**"). The Administrator (as defined in the Plan) has granted the Award (as defined below) to encourage the Grantee to contribute materially to the growth of the Company's owners, thereby benefitting the Company, and to align the economic interests of the Grantee with those of the owners. A copy of the Plan is attached. All capitalized terms not defined herein shall have the meaning given to such terms in the Plan or, if not defined in the Plan, in the LLC Agreement.

B. The Administrator shall administer the Plan.

NOW, THEREFORE, the parties to this Award Agreement, intending to be legally bound, hereby agree as follows:

1. **Grant of Phantom Profits Interests Units**. Subject to the terms and conditions set forth in this Award Agreement, the Plan, and the LLC Agreement, the Company hereby grants to the Grantee 38,618 Phantom Profits Interest Units (the "Award"). This Award Agreement (which is effective as of the Effective Date upon the parties' exchange of signed counterpart signature pages hereto), the Plan, and the LLC Agreement govern the terms of the grant of the Award.

2. **Vesting of Awarded Units.**

(a) Unless otherwise determined by the Administrator, the Award shall vest in accordance with the following schedule (each date described below, a "**Vesting Date**"), if the Grantee is employed by the Company on the applicable Vesting Date.

Applicable Date	Vesting Percentage
December 31, 2016	20%
Each quarter after December 31, 2016	5%

(b) On a Payment Event, the Grantee shall receive the Payment Amount, if any, with respect to the portion of the Award that is vested, as set forth in Section 5(b)(i) of the Plan. Any portion of the Award that is unvested as of the Termination Date shall be forfeited at the time of the Grantee's termination.

(c) Upon an Initial Waterfall Distribution Event that occurs prior to the Grantee's Termination Date, the unvested portion of the Award shall vest at the time of such Initial Waterfall Distribution Event.

(d) Upon the termination of the Grantee's employment for Cause, both the vested and the unvested portion of the Award shall be forfeited.

3. **Withholding**. All obligations of the Company under this Agreement shall be subject to the rights of the Company to withhold amounts required to be withheld for any taxes, if applicable.

4. **Restrictions on Transfer**. Only the Grantee has any rights under this Award. The Grantee may not transfer those rights, directly or indirectly, except by will or the laws of descent and distribution.

5. **Award Subject to Plan and LLC Agreement Provisions**. This Award is made pursuant to the Plan and the LLC Agreement, the terms of which are incorporated herein by reference, and in all respects shall be interpreted in accordance with the Plan and the LLC Agreement. The Administrator shall have the full power and authority to administer and interpret the Plan and this Award Agreement, to make factual determinations, and to adopt or amend such rules, regulations, agreements, and instruments for implementing the Plan and this Award Agreement and for the conduct of its business as it deems necessary or advisable. All powers of the Administrator shall be executed without the approval or consent of the Grantee.

6. **No Employment or Other Rights**. This Award Agreement is not an agreement of employment and the grant of this Award shall not confer upon the Grantee any right to be retained by or in the employ of the Company and shall not interfere in any way with the right of the Company to terminate the Grantee's employment at any time. The right of the Company, as applicable, to terminate at will the Grantee's employment at any time for any reason is specifically reserved. The grant of this Award shall not entitle the Grantee to any (i) voting rights with respect to any action or decision taken or made (or to be taken or made) by the Company or the Board, (ii) right to appoint Managers to the Board, or (iii) appraisal or preemption rights.

7. **Notice**. Any notice to the Company provided for in this Award Agreement must be in writing and will be deemed given: (a) on the date established by the sender as having been delivered personally; (b) on the date delivered by a private, nationally recognized, overnight courier as established by the sender by evidence obtained from the courier; (c) on the date sent by facsimile, with confirmation of transmission, if sent during normal business hours of the recipient (and, if not sent during normal business hours of the recipient, then on the next business day); or (d) on the fifth business day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications, to be valid, must be addressed as follows:

If to the Company, to:

Bioventus LLC
4721 Emperor Blvd. Suite 100
Durham, NC 27703
Attention: General Counsel
Facsimile: 866-467-1531

If to the Grantee, to the address on file with the Company.

If more than one method for sending notice as set forth above is used, the earliest notice date established as set forth above will control for purposes of determining when such notice is deemed to have been given.

8. **Amendment and Termination; Section 409A**. The Administrator may amend the Plan or this Award, or terminate the Plan, at any time; provided that no amendment or termination of the Plan or this Award shall, without the consent of a Grantee, adversely impact the rights of the Grantee under this Award, unless necessary to meet the requirements of any applicable law or regulation. Before amending or terminating the Plan or this Award to meet the requirements of an applicable law or regulation, the Administrator will attempt to bring the Plan or Award into compliance with the applicable law or regulation without reducing the benefits or payments to the Grantee to the greatest extent possible. If amendment or termination is still necessary and adversely impacts the rights of the Grantee, the Administrator will reasonably cooperate with the Grantee to adopt replacement benefits or payments that to the greatest extent possible places the Grantee in the same or a comparable economic position as if the Plan or Award had not been amended or terminated.

Subject to the first paragraph of this Section 8, while the Company does not guarantee any particular tax treatment with respect to the Award, payment of the Payment Amount is intended to comply with Section 409A, to the extent subject thereto, and shall be interpreted and construed consistent with that intent. The Company may reform this Award or any provision hereof to maintain to the maximum extent practicable the original intent of the provision without violating the provisions of Section 409A, provided, that any deferral of payments shall be only for such time period as may be required to comply with Section 409A.

9. **Headings**. Section headings are for reference only. In the event of a conflict between a heading and the content of a Section, the content of the Section shall control.

10. **Applicable Law**. The validity, construction, interpretation and effect of this Award Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to the conflicts of laws provisions thereof.

IN WITNESS WHEREOF, the Company has caused its duly authorized officer to execute this Award Agreement, and the Grantee has executed this Award Agreement, effective as of the Effective Date.

Bioventus LLC

By: /s/ Leigh Ann Stradford

Name: Leigh Ann Stradford

Title: Sr. VP Human Resources

I hereby accept the Award described in this Award Agreement, and I agree to be bound by the terms of this Award Agreement, the Plan and the LLC Agreement. I hereby further agree that all of the decisions and determinations of the Administrator shall be final and binding.

Grantee: /s/ Anthony Bihl III

Anthony Bihl III

Date: _____

Exhibit 10.16

Bioventus LLC
4721 Emperor Blvd., Suite 100
Durham, NC 27703
USA

1-919-474-6700
1-800-396-4325
www.BioventusGlobal.com

September 17, 2018

Anthony Bihl

RE: Bioventus Phantom Profit Interests Award

Dear Tony:

As Bioventus drives forward to become a global leader in Orthobiologics, we will rely on the continued strong contribution of key leaders like yourself. In recognition, and as incentive for this contribution, our Board of Managers has approved an additional pool of Phantom Profits Interests Units to be awarded to a select group of leaders who we believe will have the greatest impact in achieving our mission. You have been designated as one of these key leaders and, as a result, you are being granted 25,000 Phantom Profits Interests Units.

This Performance Units Award is granted to you under, and is subject to, all of the terms of the Phantom Profits Interests Plan ("**Plan**") and the applicable Bioventus LLC Phantom Profits Interests Plan Award Agreement ("**Award Agreement**"). A copy of the Plan and your corresponding Award Agreement are included with this letter and I encourage you to review both documents carefully.

We recognize that consistent and predictable revenue growth will be an important measure of our future success, and this growth is therefore a key component for vesting of the 2018 Performance Units. The plan provides for cliff-vesting of the units on June 1, 2021, based on 2020 revenue attainment consistent with the projections specified below. The Vesting Schedule for 2018 Performance Units is as follows:

Vesting Schedule:

Cliff vesting if, and only if, 2020 revenue growth is attained as outlined below:

1. Revenue is equal to or greater than $391.8M, 100% of the units vest.
2. Revenue is equal to or greater than $370.8M, 75% of the units vest and the remaining units expire.
3. Revenue is equal to or greater than $350.6M, 50% of the units vest and the remaining units expire.
4. Revenue is less than $350.6M, none of the units vest and all of the units expire.

Shown below is an example of potential value of a PPI Unit at a Waterfall, and how the Waterfall Distribution is calculated. The payout amounts shown below are provided for illustrative purposes and shall apply only to units vested pursuant to the above-referenced schedule. Actual payouts under the Plan may vary from those shown and are subject to all of the terms of the Plan documents and applicable withholding requirements[1].

Illustrative Waterfall Scenarios[2]
(as of 10.31.17)

Enterprise value	$1 BILLION	$1.2 BILLION
Approximate $ payout/unit	$ 4.87	$ 19.23
Assumes $703,691,178 benchmark[2]		

I am delighted to notify you of this Award and I look forward to celebrating with you as we achieve our mission and continue to impact the lives of thousands of people around the world each year!

Sincerely,

/s/ Leigh Ann Stradford
Leigh Ann Stradford
Senior Vice President Human Resources

Enclosures

1 The revenue targets and any other financial projections contained in this letter have been provided to you by the Company solely for your information and may be deemed to be forward-looking statements, which involve known and unknown risks and uncertainties. Given these risks and uncertainties, you are advised not to place any undue reliance on such forward-looking statements. Further, the Company does not make any representations or warranties, express or implied, as to the ultimate value of your Award or whether a Waterfall Distribution Event will occur. In the event of any inconsistency between this letter and the Plan, the provisions of the Plan shall govern.

2 **Waterfall Distribution Formula**:
Enterprise Value - Debt (net of cash) - Benchmark of PPI units = Remaining Equity Value available for Distribution / Units Outstanding = PPI Payout per unit

BIOVENTUS LLC
PHANTOM PROFITS INTERESTS PLAN

AWARD AGREEMENT

The Administrator, as defined in the Bioventus LLC Phantom Profits Interests Plan (the "**Plan**"), of the Plan has decided to grant to you Phantom Profits Interest Units in the Company under the Plan. The terms of the grant (the "**Grant**") are set forth in this Bioventus LLC Phantom Profits Interests Plan Award Agreement (the "**Award Agreement**") provided to you. The following provides a summary of the key terms of the Grant; however, you should read the entire Award Agreement, along with the terms of the Plan and the Company's Amended and Restated Limited Liability Company Agreement (as might be amended), to fully understand the Grant.

SUMMARY OF PHANTOM PROFITS INTERESTS PLAN AWARD AGREEMENT

Grantee:	**Anthony Bihl**
Date of Award:	**September 17, 2018**
Vesting Schedule:	**On June 1, 2021, the plan provides for cliff-vesting, if and only if, the 2020 revenue attainment is consistent with the projections outlined below**: **1. Revenue is equal to or greater than $391.8M, 100% of the units vest.** **2. Revenue is equal to or greater than $370.8M, 75% of the units vest and the remaining units expire.** **3. Revenue is equal to or greater than $350.6M, 50% of the units vest and the remaining units expire.** **4. Revenue is less than $350.6M, none of the units vest and all of the units expire.**
Phantom Profits Interest Units Awarded:	**25,000**
Payment Event:	**Termination Payment Event**
Grant Date Benchmark Amount:	**$703,691,178**

BIOVENTUS LLC

PHANTOM PROFITS INTERESTS PLAN

AWARD AGREEMENT

This Bioventus LLC Phantom Profits Interests Plan Award Agreement (this "**Award Agreement**"), dated as of September 17, 2018 (the "**Effective Date**"), is delivered by Bioventus LLC (the "**Company**") to Anthony Bihl (the "**Grantee**").

RECITALS

A. The Bioventus LLC Phantom Profits Interests Plan (the "**Plan**") provides for the grant of Phantom Profits Interest Units in the Company in accordance with the terms of the Plan and the Amended and Restated Limited Liability Company Agreement of the Company, as amended (the "**LLC Agreement**"). The Administrator (as defined in the Plan) has granted the Award (as defined below) to encourage the Grantee to contribute materially to the growth of the Company's owners, thereby benefitting the Company, and to align the economic interests of the Grantee with those of the owners. A copy of the Plan is attached. All capitalized terms not defined herein shall have the meaning given to such terms in the Plan or, if not defined in the Plan, in the LLC Agreement.

B. The Administrator shall administer the Plan.

NOW, THEREFORE, the parties to this Award Agreement, intending to be legally bound, hereby agree as follows:

Grant of Phantom Profits Interests Units. Subject to the terms and conditions set forth in this Award Agreement, the Plan, and the LLC Agreement, the Company hereby grants to the Grantee 25,000 Phantom Profits Interest Units (the "**Award**"). This Award Agreement (which is effective as of the Effective Date upon the parties' exchange of signed counterpart signature pages hereto), the Plan, and the LLC Agreement govern the terms of the grant of the Award.

Vesting of Awarded Units.

Unless otherwise determined by the Administrator, the Award shall vest in accordance with the following schedule on June 1, 2021 (the "**Vesting Date**"), if the Grantee is employed by the Company on such Vesting Date.

The Award is subject to cliff-vesting in amounts as determined by the schedule below if, and only if, the Company's annual revenue for calendar year 2020 equals or exceeds $350.6M:

1. $391.8M, then 100% of the Award shall vest on the Vesting Date
2. $370.8M, then 75% of the Award shall vest on the Vesting Date and the remaining units expire.

3. $350.6M, then 50% of the Award shall vest on the Vesting Date and the remaining units expire.

4. Less than $350.6M, none of the Awarded units shall vest and all of the units shall expire.

Revenue numbers will be determined by Bioventus in accordance with accounting principles generally accepted in the United States and consistent with Bioventus' accounting policies.

On a Payment Event, the Grantee shall receive the Payment Amount, if any, with respect to the portion of the Award that is vested, as set forth in Section 5(b)(i) of the Plan. Any portion of the Award that is unvested as of the Vesting Date shall be forfeited.

Any and all of a Grantee's unvested Phantom Profits Interest Units shall be forfeited upon the termination of the Grantee's employment for any reason.

Upon the termination of the Grantee's employment for Cause, both the vested and the unvested portion of the Award shall be forfeited.

Withholding. All obligations of the Company under this Agreement shall be subject to the rights of the Company to withhold amounts required to be withheld for any taxes, if applicable.

Restrictions on Transfer. Only the Grantee has any rights under this Award. The Grantee may not transfer those rights, directly or indirectly, except by will or the laws of descent and distribution.

Award Subject to Plan and LLC Agreement Provisions. This Award is made pursuant to the Plan and the LLC Agreement, the terms of which are incorporated herein by reference, and in all respects shall be interpreted in accordance with the Plan and the LLC Agreement. The Administrator shall have the full power and authority to administer and interpret the Plan and this Award Agreement, to make factual determinations, and to adopt or amend such rules, regulations, agreements, and instruments for implementing the Plan and this Award Agreement and for the conduct of its business as it deems necessary or advisable. All powers of the Administrator shall be executed without the approval or consent of the Grantee.

No Employment or Other Rights. This Award Agreement is not an agreement of employment and the grant of this Award shall not confer upon the Grantee any right to be retained by or in the employ of the Company and shall not interfere in any way with the right of the Company to terminate the Grantee's employment at any time. The right of the Company, as applicable, to terminate at will the Grantee's employment at any time for any reason is specifically reserved. The grant of this Award shall not entitle the Grantee to any (i) voting rights with respect to any action or decision taken or made (or to be taken or made) by the Company or the Board, (ii) right to appoint Managers to the Board, or (iii) appraisal or preemption rights.

Notice. Any notice to the Company provided for in this Award Agreement must be in writing and will be deemed given: (a) on the date established by the sender as having been delivered personally; (b) on the date delivered by a private, nationally recognized, overnight courier as established by the sender by evidence obtained from the courier; (c) on the date sent by facsimile, with confirmation of transmission, if sent during normal business hours of the recipient (and, if not sent during normal business hours of the recipient, then on the next business day); or (d) on the fifth business day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications, to be valid, must be addressed as follows:

If to the Company, to:

Bioventus LLC
4721 Emperor Blvd. Suite 100
Durham, NC 27703
Attention: General Counsel
Facsimile: 866-467-1531

If to the Grantee, to the address on file with the Company.

If more than one method for sending notice as set forth above is used, the earliest notice date established as set forth above will control for purposes of determining when such notice is deemed to have been given.

Amendment and Termination; Section 409A. The Administrator may amend the Plan or this Award, or terminate the Plan, at any time; provided that no amendment or termination of the Plan or this Award shall, without the consent of a Grantee, adversely impact the rights of the Grantee under this Award, unless necessary to meet the requirements of any applicable law or regulation. Before amending or terminating the Plan or this Award to meet the requirements of an applicable law or regulation, the Administrator will attempt to bring the Plan or Award into compliance with the applicable law or regulation without reducing the benefits or payments to the Grantee to the greatest extent possible. If amendment or termination is still necessary and adversely impacts the rights of the Grantee, the Administrator will reasonably cooperate with the Grantee to adopt replacement benefits or payments that to the greatest extent possible places the Grantee in the same or a comparable economic position as if the Plan or Award had not been amended or terminated.

Subject to the first paragraph of this Section 8, while the Company does not guarantee any particular tax treatment with respect to the Award, payment of the Payment Amount is intended to comply with Section 409A, to the extent subject thereto, and shall be interpreted and construed consistent with that intent. The Company may reform this Award or any provision hereof to maintain to the maximum extent practicable the original intent of the provision without violating the provisions of Section 409A, provided, that any deferral of payments shall be only for such time period as may be required to comply with Section 409A.

Headings. Section headings are for reference only. In the event of a conflict between a heading and the content of a Section, the content of the Section shall control.

Applicable Law. The validity, construction, interpretation and effect of this Award Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to the conflicts of laws provisions thereof.

IN WITNESS WHEREOF, the Company has caused its duly authorized officer to execute this Award Agreement, and the Grantee has executed this Award Agreement, effective as of the Effective Date.

Bioventus LLC

By: /s/ Leigh Ann Stradford

Name: Leigh Ann Stradford

Title: SVP and Chief HR Officer

I hereby accept the Award described in this Award Agreement, and I agree to be bound by the terms of this Award Agreement, the Plan and the LLC Agreement. I hereby further agree that all of the decisions and determinations of the Administrator shall be final and binding.

Grantee: /s/ Anthony P. Bihl III

Date: 9/26/2018

BIOVENTUS LLC

PHANTOM PROFITS INTERESTS PLAN

AS AMENDED AND RESTATED DECEMBER 8, 2017

The purpose of the Bioventus LLC Phantom Profits Interests Plan (the " **Plan**") is to provide eligible employees and independent members of the Board of Managers of Bioventus LLC (the "**Company**") who are important to the success and growth of the business of the Company an opportunity to share in the future appreciation in value of the Company by receiving grants of Phantom Profits Interest Units in the Company. The Company believes that the Plan will encourage participants to contribute materially to the growth of the Company's owners, thereby benefiting the Company, and will align the economic interests of the participants with those of the owners. Awards under the Plan shall consist of grants of Phantom Profits Interest Units as described in Section 5 ("**Awards**"). Capitalized terms that are used but not defined herein shall have the respective meanings accorded to such terms in the Amended and Restated Limited Liability Company Agreement of the Company, as amended (the "**LLC Agreement**").

Definitions

"**Benchmark Amount**" means the cumulative distributions that must be made by the Company pursuant to the LLC Agreement before a Grantee is entitled to receive any distributions in respect of such Grantee's Phantom Profits Interest Units. The Benchmark Amount shall equal $703,691,178 or such other greater amount as set forth in the applicable Award Agreement.

"**Board Member**" means an independent member of the Board of Managers of the Company appointed or elected to the Board of Managers on or after January 1, 2016.

"**Code**" means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

"**Employee**" means an employee of the Company.

"**Grantee**" means an Employee or Board Member who receives an Award.

"**Initial Waterfall Distribution Event**" means the closing of (i) a sale of Units representing a Percentage Interest of more than 66.66%, or (ii) a sale of all or substantially all of the assets of the Company; provided that such event constitutes a change in ownership or a change in effective control of the Company within the meaning of Section 409A of the Code.

"**Management Distribution Cap**" means 17.5% of the aggregate amount, if any, available for distribution pursuant to Section 10.05(a)(v) of the LLC Agreement.

"**Management Incentive Plan**" means the Bioventus LLC Management Incentive Plan.

"**Payment Amount**" means the amount payable with respect to each vested Phantom Profits Interest Unit upon the applicable Payment Event.

"**Phantom Profits Interest Unit**" means a right to receive cash in an amount equal to the Payment Amount upon the Payment Event as set forth in the applicable Award Agreement.

"**Profits Interest Unit**" means a non-managing, non-voting ownership interest in the Company issued pursuant to Section 3.01(b) of the LLC Agreement and the Management Incentive Plan.

"**Qualifying Subsequent Waterfall Distribution Event**" means a Subsequent Waterfall Distribution Event that constitutes a change in ownership or a change in effective control of the Company within the meaning of Section 409A of the Code.

"**Subsequent Waterfall Distribution Event**" means, following an Initial Waterfall Distribution Event under Section 1(a) above with respect to Units representing a Percentage Interest of less than 100%, the closing of (i) a subsequent sale of Units, or (ii) a sale of all or substantially all of the assets of the Company

"**Termination Date**" means in the case of an Employee, the date of the Grantee's separation of service, as defined in Section 409A of the Code, and in the case of a Board Member, resignation or removal from the Board of Managers of the Company.

"**Waterfall Distribution Event**" means an Initial Waterfall Distribution Event or a Subsequent Waterfall Distribution Event.

Administration

Administration. The Plan shall be administered and interpreted by the Board of Managers (the "**Administrator**") or by a committee or subcommittee, which shall be appointed by the Administrator. To the extent that a committee or subcommittee administers the Plan, references in the Plan to the "Administrator" shall be deemed to refer to the committee or the subcommittee.

Administrator Authority. The Administrator shall determine (i) the Employees and Board Members to receive Awards, (ii) the size and terms of the Awards, (iii) the time when the Awards will be made, (iv) the applicable Payment Event, (v) the duration of any applicable vesting period, provided that such vesting period shall not be less than four years and that the Award shall vest ratably over the vesting period, and (vi) the Benchmark Amount with respect to any Award.

Administrator Determinations. The Administrator shall have full power and authority to administer and interpret the Plan, to make factual determinations, and to adopt or amend such rules, regulations, agreements, and instruments for implementing the Plan and for the conduct of its business as it deems necessary or advisable. All powers of the Administrator shall be executed without the approval or consent of the Grantees.

Interests Subject to the Plan

Awards Authorized by the LLC Agreement. The total amount of Phantom Profits Interest Units available for grants under the Plan, when combined with the total amount of Profits Interest Units (as defined in the Management Incentive Plan) granted under the Management Incentive Plan and any other form of employee, management or other service provider equity or equity-related awards of the Company, shall not result in aggregate distributions to the holders thereof in excess of the Management Distribution Cap (such amount determined, solely for this purpose, as if there were no Phantom Profits Interest Units or Other Management Equity Awards (as defined in the LLC Agreement)) ("**Excess Distributions**"), unless and to the extent that S&N and the Essex Members consent in their capacity as Members to such Excess Distributions. If, and to the extent that, Phantom Profits Interest Units granted under the Plan terminate or are canceled, forfeited, exchanged, or surrendered without payment, such Phantom Profits Interest Units shall be available again for purposes of the Plan.

Adjustments. If there is any change in the total amount or kind of Phantom Profits Interest Units outstanding (i) by reason of a spinoff, split of the Phantom Profits Interest Units, reclassification, combination, or exchange of such Phantom Profits Interest Units or similar event; (ii) by reason of a merger, reorganization, or consolidation; (iii) by reason of any other extraordinary or unusual event affecting the outstanding Phantom Profits Interest Units as a class without the Company's receipt of consideration; or (iv) by reason of a change in the structure of the Company, or if the value of the outstanding Phantom Profits Interest Units are substantially reduced as a result of a spinoff, the amount or percentage of such Phantom Profits Interest Units covered by outstanding Awards, and the kind of Phantom Profits Interest Units issued under the Plan shall be appropriately adjusted by the Administrator to reflect any increase or decrease in the amount of, or change in the kind or value of, issued Phantom Profits Interest Units to preclude, to the extent practicable, the enlargement or dilution of rights and benefits under such Awards. Any adjustments determined by the Administrator shall be final, binding, and conclusive.

Eligibility for Participation

All Employees and Board Members who are designated by the Administrator shall be eligible to participate in the Plan.

Grants of Awards

Award Agreement. All Awards shall be subject to the terms and conditions of this Plan, the terms of the LLC Agreement, and the Grantee's award instrument (the "**Award Agreement**"). Each Award Agreement shall contain the number of Phantom Profits Interest Units underlying the Grantee's Award and the applicable grant date Benchmark Amount (subject to adjustment as provided in the LLC Agreement), and each Award shall vest in accordance with the terms of the Grantee's Award Agreement. The Award Agreement shall also designate whether the Payment Amount shall be paid (i) upon the earlier of the Grantee's Termination Date or an Initial Waterfall Distribution Event (with any subsequent amounts 10 paid upon the earlier of a Qualifying Subsequent Waterfall Distribution Event or the Grantee's Termination Date) (a "**Termination Payment Event**") or (ii) upon an Initial Waterfall Distribution Event, with any subsequent amounts paid upon the earlier of (A) a Qualifying Subsequent Waterfall Distribution Event or (B) provided that a Subsequent Waterfall event has occurred, the fifth anniversary of the grant date (a "**Waterfall Payment Event**") (a Termination Payment Event or a Waterfall Payment Event, also referred to as the "**Payment Event**").

Payment Amount.

(i) If the Payment Event is a Termination Payment Event, the Payment Amount shall be, for each vested Phantom Profits Interest Unit, an amount that would be allocated to an equivalent number of Profits Interest Units with an equivalent Benchmark Amount, (A) if the Grantee's Termination Date is prior to a Waterfall Distribution Event, as if the Company were liquidated on the Termination Date at fair market value (as determined in good faith by the Administrator), or (B) where there is an Initial Waterfall Distribution Event and one or more Subsequent Waterfall Distribution Events prior to the Termination Date, pursuant to the LLC Agreement with respect to each such Waterfall Distribution Event. Such Payment Amount shall be paid to the Grantee within 30 days of the Termination Date, the Initial Waterfall Distribution Event, or any Qualifying Subsequent Waterfall Distribution Event, as applicable. In the event that a Subsequent Waterfall Distribution Event is not a Qualifying Subsequent Waterfall Distribution Event, the Payment Amount with respect to such Subsequent Waterfall Distribution Event shall be paid within 30 days of the Termination Date. No further Payment Amount shall be paid to the Grantee with respect to Waterfall Distribution Events following the Grantee's Termination Date.

(ii) Subject to (iii) below, if the Payment Event is a Waterfall Payment Event and a Waterfall Distribution Event occurs before the Grantee's Termination Date, the Payment Amount shall be equal to, for each vested Phantom Profits Interest Unit, an amount that would be payable with respect to the equivalent number of Profits Interest Units with an equivalent Benchmark Amount pursuant to the LLC Agreement. Such Payment Amount shall be paid to the Grantee within 30 days of an Initial Waterfall Distribution Event, and for any Subsequent Waterfall Distribution Event, shall be paid to the Grantee within 30 days of the earlier of a Qualifying Subsequent Waterfall Distribution Event or the fifth anniversary of the date of grant. No Payment Amount shall be paid to the Grantee with respect to any Subsequent Waterfall Distribution Event that is not a Qualifying Subsequent Waterfall Distribution Event and that occurs after the fifth anniversary of the Grant Date.

(iii) If the Payment Event is a Waterfall Payment Event and a Waterfall Distribution Event occurs after the Grantee's Termination Date, the Payment Amount with respect to such event shall in no event be greater than the lesser of, for each vested Phantom Profits Interest Unit, (A) an amount that would be allocated to an equivalent number of Profits Interest Units with an equivalent Benchmark Amount if the Company were liquidated on the valuation date next following the Termination Date at fair market value (as determined in good faith by the Administrator) and (B) the amount specified in Section 5(b)(ii) above; provided that if a Waterfall Distribution Event occurs prior to the valuation date next following the Termination Date, the Payment Amount shall be the amount specified in Section 5(b)(ii). Such Payment Amount shall be paid to the Grantee within 30 days of the Initial Waterfall Distribution Event, and for any Subsequent Waterfall Distribution Event, shall be paid to the Grantee within 30 days of the earlier of a Qualifying Subsequent Waterfall Distribution Event or the fifth anniversary of the date of grant. No Payment Amount shall be paid to the Grantee with respect to any Subsequent Waterfall Distribution Event that is not a Qualifying Subsequent Waterfall Distribution Event and that occurs after the fifth anniversary of the Grant Date.

Acknowledgement by Grantee. All Awards shall be made conditional upon the Grantee's acknowledgement, in writing or by acceptance of the Award, that all decisions and determinations of the Administrator shall be final and binding on the Grantee, his or her beneficiaries, and any other person having or claiming an interest under such award. Awards need not be uniform as among the Grantees.

Forfeiture

Termination of Employment. Any and all of an Employee Grantee's unvested Phantom Profits Interest Units shall be forfeited upon the termination of the Grantee's employment for any reason.

Termination of Membership on the Board of Managers. Any and all of a Board Member Grantee's unvested Phantom Profits Interest Units shall be forfeited upon resignation or removal from the Board of Managers of the Company.

Termination of Employment for Cause. Any and all of an Employee Grantee's vested and unvested Phantom Profits Interest Units shall be forfeited upon the termination of the Grantee's employment for Cause. For purposes of this Plan, "Cause" shall have the meaning set forth in the written employment agreement between the Grantee and the Company in effect on the date of the Grantee's termination of employment, or if no such agreement exists, shall mean (i) conviction (including guilty plea or plea of nolo contendere) of any felony or any other crime involving fraud, violence or dishonesty; (ii) commission of or participation in a fraud or act of dishonesty or misrepresentation against the Company; (iii) violation of any written and fully executed contract or agreement between the Grantee and the Company, including without limitation, breach of Grantee's Proprietary Information, Inventions, Non-Competition and Non-Solicitation Agreement; (iv) gross negligence or willful misconduct, (v) continued and substantial failure to perform the Grantee's duties to the Company; or (vi) violation of any material policies, practices, or procedures of the Company.

Removal from the Board of Managers. Any and all of a Board Member Grantee's vested and unvested Phantom Profits Interest Units shall be forfeited upon the removal of the Grantee from the Board of Managers for Cause. For purposes of this Plan, "Cause" shall mean (i) conviction (including guilty plea or plea of nolo contendere) of any felony or any other crime involving fraud, violence or dishonesty; (ii) commission of or participation in a fraud or act of dishonesty or misrepresentation against the Company; (iii) violation of any agreement between the Grantee and the Company; (iv) gross negligence or willful misconduct; (v) continued and substantial failure to perform the Grantee's duties to the Company as a Member of the Board of Managers of the Company; or (vi) violation of any material policies, practices, or procedures of the Company including without limitation, the Company's Code of Conduct and Confidential Information policies.

Waterfall Distribution Event. As soon as practicable following an Initial Waterfall Distribution Event or any Subsequent Waterfall Distribution Event that results in an aggregate sale of Units representing a Percentage Interest of 100%, or upon a sale of all or substantially all of the assets of the Company, all vested and unvested Phantom Profits Interest Units shall be cancelled (after the Grantee has been paid any amounts due with respect to such Units, if applicable).

Confidentiality, Non-Compete, Non-Solicitation. Notwithstanding anything herein to the contrary, a Grantee shall forfeit any and all rights to all vested and unvested Phantom Profits Interest Units if the Grantee violates the terms of any confidentiality, non-solicitation and non-competition provisions of any agreement between the Grantee and the Company, if applicable.

Withholding of Taxes

All Awards under the Plan shall be subject to applicable federal (including FICA), state, and local tax withholding requirements. The Company may require that the Grantee pay to the Company the amount of any federal, state, or local taxes that the Company is required to withhold with respect to such Awards, or the Company may deduct from other wages paid by the Company the amount of any withholding taxes due with respect to such Awards.

Nontransferability of Awards

Only the Grantee has any rights under an Award. A Grantee may not transfer those rights, directly or indirectly, except by will or the laws of descent and distribution.

Limitations on Issuance or Transfer of Phantom Profits Interest Units

No Phantom Profits Interest Units shall be issued or transferred in connection with any Award until all legal requirements applicable to the issuance or transfer of such Phantom Profits Interest Units have been complied with to the satisfaction of the Administrator. The Administrator shall have the right to condition any Award made to any Grantee hereunder on such Grantee's undertaking in writing to comply with any restrictions on his or her subsequent disposition of such Phantom Profits Interest Units as the Administrator shall deem necessary or advisable.

Amendment and Termination of the Plan

Amendment and Termination. The Administrator may, in accordance with the LLC Agreement, amend the Plan or any Award under the Plan, or terminate the Plan, at any time; provided that no amendment or termination of the Plan or any Award shall, without the consent of a Grantee, adversely impact the rights of any Grantee under any Award granted to such Grantee under the Plan, unless necessary to meet the requirements of any applicable law or regulation. Before amending or terminating the Plan or any Award to meet the requirements of an applicable law or regulation, the Administrator will attempt to bring the Plan or Award into compliance with the applicable law or regulation without reducing the benefits or payments to a Grantee to the greatest extent possible. If amendment or termination is still necessary and adversely impacts the rights of a Grantee, the Administrator will reasonably cooperate with such Grantee to adopt replacement benefits or payments that to the greatest extent possible places the Grantee in the same or a comparable economic position as if the Plan or Award had not been amended or terminated.

Governing Document. In the event of any conflict between any Award in the form attached hereto as Exhibit A or B and the LLC Agreement, such Award shall control. In the event of any conflict between any subsequent Award not in the form attached hereto and the LLC Agreement, the LLC agreement shall control unless such subsequent Award has been approved by the Board and Smith & Nephew, Inc., in which case such Award shall control. No other statements, representations, explanatory materials or examples, oral or written, may amend the Plan in any manner. The Plan shall be binding upon and enforceable against the Company and its successors and assigns.

Funding of the Plan

This Plan shall be unfunded. The Company shall not be required to establish any special or separate fund or to make any other segregation of assets to assure the payment of any Awards under this Plan. In no event shall interest be paid or accrued on any Award.

Rights of Grantees

No Award shall entitle any Grantee to any (i) voting rights with respect to any action or decision taken or made (or to be taken or made) by the Company or the Board of Managers, (ii) right to appoint Managers to the Board of Managers, or (iii) appraisal or preemption rights. Nothing in this Plan shall entitle any Employee, Board Member or any other person to any claim or right to receive an Award under this Plan. Neither this Plan nor any action taken hereunder shall be construed as giving any individual any rights to be retained by or in the employ of the Company or any other employment rights.

Headings

Section headings are for reference only. In the event of a conflict between a title and the content of a Section, the content of the Section shall control.

Effective Date of the Plan

The initial effective date of the Plan was May 4, 2012. The amended and restated version of the Plan shall be effective on December 8, 2017.

Miscellaneous

Compliance with Law. The Plan and the obligations of the Company to issue or transfer Phantom Profits Interest Units in connection with Awards shall be subject to all applicable laws and to approvals by any governmental or regulatory agency as may be required. The Administrator may revoke any Award if it is contrary to law or modify an Award to bring it into compliance with any valid and mandatory government regulation. The Administrator may also adopt rules regarding the withholding of taxes on payments to Grantees. The Administrator may, in its sole discretion, agree to limit its authority under this Section.

Governing Law. The validity, construction, interpretation, and effect of the Plan and Award Agreements issued under the Plan shall be governed and construed by and determined in accordance with the laws of the State of Delaware, without giving effect to the conflict of laws provisions thereof.

Exhibit 10.17

BIOVENTUS LLC

PHANTOM PROFITS INTERESTS PLAN

AWARD AGREEMENT

The Administrator, as defined in the Bioventus LLC Phantom Profits Interests Plan (the "**Plan**"), of the Plan has decided to grant to you Phantom Profits Interest Units in the Company under the Plan. The terms of the grant (the "**Grant**") are set forth in this Bioventus LLC Phantom Profits Interests Plan Award Agreement (the "**Award Agreement**") provided to you. The following provides a summary of the key terms of the Grant; however, you should read the entire Award Agreement, along with the terms of the Plan and the Company's Amended and Restated Limited Liability Company Agreement (as might be amended), to fully understand the Grant.

SUMMARY OF PHANTOM PROFITS INTERESTS PLAN AWARD AGREEMENT

Grantee:	**William Hawkins**
Date of Award:	**January 1, 2016**
Vesting Schedule:	**20% vests on the first anniversary of the Effective Date and the remaining 80% vests in equal installments on a quarterly basis over the next four years**
Phantom Profits Interest Units Awarded:	**50,000**
Payment Event:	**Termination Payment Event**
Grant Date Benchmark Amount:	**$472,003,000**

BIOVENTUS LLC

PHANTOM PROFITS INTERESTS PLAN

AWARD AGREEMENT

This Bioventus LLC Phantom Profits Interests Plan Award Agreement (this "**Award Agreement**"), dated as of January 1, 2016 (the "**Effective Date**"), is delivered by Bioventus LLC (the "**Company**") to William Hawkins (the "**Grantee**").

RECITALS

A. The Bioventus LLC Phantom Profits Interests Plan (the "**Plan**") provides for the grant of Phantom Profits Interest Units in the Company in accordance with the terms of the Plan and the Amended and Restated Limited Liability Company Agreement of the Company, as amended (the "**LLC Agreement**"). The Administrator (as defined in the Plan) has granted the Award (as defined below) to encourage the Grantee to contribute materially to the growth of the Company's owners, thereby benefitting the Company, and to align the economic interests of the Grantee with those of the owners. A copy of the Plan is attached. All capitalized terms not defined herein shall have the meaning given to such terms in the Plan or, if not defined in the Plan, in the LLC Agreement.

B. The Administrator shall administer the Plan.

NOW, THEREFORE, the parties to this Award Agreement, intending to be legally bound, hereby agree as follows:

1. **Grant of Phantom Profits Interests Units**. Subject to the terms and conditions set forth in this Award Agreement, the Plan, and the LLC Agreement, the Company hereby grants to the Grantee 50,000 Phantom Profits Interest Units (the "**Award**"). This Award Agreement (which is effective as of the Effective Date upon the parties' exchange of signed counterpart signature pages hereto), the Plan, and the LLC Agreement govern the terms of the grant of the Award.

2. **Vesting of Awarded Units**.

(a) Unless otherwise determined by the Administrator, the Award shall vest in accordance with the following schedule (each date described below, a "**Vesting Date**"), if the Grantee is employed by the Company on the applicable Vesting Date.

Applicable Date	Vesting Percentage
1st anniversary of the Effective Date	20%
Each quarter after the 1st anniversary of the Effective Date	5%

(b) On a Payment Event, the Grantee shall receive the Payment Amount, if any, with respect to the portion of the Award that is vested, as set forth in Section 5(b)(i) of the Plan. Any portion of the Award that is unvested as of the Termination Date shall be forfeited at the time of the Grantee's termination.

(c) Upon an Initial Waterfall Distribution Event that occurs prior to the Grantee's Termination Date, the unvested portion of the award shall vest at the time of such Initial Waterfall Distribution Event.

(d) Upon the termination of the Grantee's employment for Cause, both the vested and the unvested portion of the Award shall be forfeited.

3. **Withholding**. All obligations of the Company under this Agreement shall be subject to the rights of the Company to withhold amounts required to be withheld for any taxes, if applicable.

4. **Restrictions on Transfer**. Only the Grantee has any rights under this Award. The Grantee may not transfer those rights, directly or indirectly, except by will or the laws of descent and distribution.

5. **Award Subject to Plan and LLC Agreement Provisions**. This Award is made pursuant to the Plan and the LLC Agreement, the terms of which are incorporated herein by reference, and in all respects shall be interpreted in accordance with the Plan and the LLC Agreement. The Administrator shall have the full power and authority to administer and interpret the Plan and this Award Agreement, to make factual determinations, and to adopt or amend such rules, regulations, agreements, and instruments for implementing the Plan and this Award Agreement and for the conduct of its business as it deems necessary or advisable. All powers of the Administrator shall be executed without the approval or consent of the Grantee.

6. **No Employment or Other Rights**. This Award Agreement is not an agreement of employment and the grant of this Award shall not confer upon the Grantee any right to be retained by or in the employ of the Company and shall not interfere in any way with the right of the Company to terminate the Grantee's employment at any time. The right of the Company, as applicable, to terminate at will the Grantee's employment at any time for any reason is specifically reserved. The grant of this Award shall not entitle the Grantee to any (i) voting rights with respect to any action or decision taken or made (or to be taken or made) by the Company or the Board, (ii) right to appoint Managers to the Board, or (iii) appraisal or preemption rights.

7. **Notice**. Any notice to the Company provided for in this Award Agreement must be in writing and will be deemed given: (a) on the date established by the sender as having been delivered personally; (b) on the date delivered by a private, nationally recognized, overnight courier as established by the sender by evidence obtained from the courier; (c) on the date sent by facsimile, with confirmation of transmission, if sent during normal business hours of the recipient (and, if not sent during normal business hours of the recipient, then on the next business day); or (d) on the fifth business day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications, to be valid, must be addressed as follows:

If to the Company, to:

Bioventus LLC
4721 Emperor Blvd. Suite 100
Durham, NC 27703
Attention: General Counsel
Facsimile: 866-467-1531

If to the Grantee, to the address on file with the Company.

If more than one method for sending notice as set forth above is used, the earliest notice date established as set forth above will control for purposes of determining when such notice is deemed to have been given.

8. **Amendment and Termination; Section 409A**. The Administrator may amend the Plan or this Award, or terminate the Plan, at any time; provided that no amendment or termination of the Plan or this Award shall, without the consent of a Grantee, adversely impact the rights of the Grantee under this Award, unless necessary to meet the requirements of any applicable law or regulation. Before amending or terminating the Plan or this Award to meet the requirements of an applicable law or regulation, the Administrator will attempt to bring the Plan or Award into compliance with the applicable law or regulation without reducing the benefits or payments to the Grantee to the greatest extent possible. If amendment or termination is still necessary and adversely impacts the rights of the Grantee, the Administrator will reasonably cooperate with the Grantee to adopt replacement benefits or payments that to the greatest extent possible places the Grantee in the same or a comparable economic position as if the Plan or Award had not been amended or terminated.

Subject to the first paragraph of this Section 8, while the Company does not guarantee any particular tax treatment with respect to the Award, payment of the Payment Amount is intended to comply with Section 409A, to the extent subject thereto, and shall be interpreted and construed consistent with that intent. The Company may reform this Award or any provision hereof to maintain to the maximum extent practicable the original intent of the provision without violating the provisions of Section 409A, provided, that any deferral of payments shall be only for such time period as may be required to comply with Section 409A.

9. **Headings**. Section headings are for reference only. In the event of a conflict between a heading and the content of a Section, the content of the Section shall control.

10. **Applicable Law**. The validity, construction, interpretation and effect of this Award Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to the conflicts of laws provisions thereof.

IN WITNESS WHEREOF, the Company has caused its duly authorized officer to execute this Award Agreement, and the Grantee has executed this Award Agreement, effective as of the Effective Date.

Bioventus LLC

By: /s/ Leigh Ann Stradford

Name: Leigh Ann Stradford

Title: VP of Human Resources

I hereby accept the Award described in this Award Agreement, and I agree to be bound by the terms of this Award Agreement, the Plan and the LLC Agreement. I hereby further agree that all of the decisions and determinations of the Administrator shall be final and binding.

Grantee: /s/ William Hawkins
William Hawkins

Date: 2/23/16

Bioventus LLC
4721 Emperor Blvd., Suite 100
Durham, NC 27703
USA

1-919-474-6700
1-800-396-4325
www.BioventusGlobal.com

BIOVENTUS LLC
PHANTOM PROFITS INTERESTS PLAN

AWARD AGREEMENT

The Administrator, as defined in the Bioventus LLC Phantom Profits Interests Plan (the "**Plan**"), of the Plan has decided to grant to you Phantom Profits Interest Units in the Company under the Plan. The terms of the grant (the "**Grant**") are set forth in this Bioventus LLC Phantom Profits Interests Plan Award Agreement (the "**Award Agreement**") provided to you. The following provides a summary of the key terms of the Grant; however, you should read the entire Award Agreement, along with the terms of the Plan and the Company's Amended and Restated Limited Liability Company Agreement (as might be amended), to fully understand the Grant.

SUMMARY OF PHANTOM PROFITS INTERESTS PLAN AWARD AGREEMENT

Grantee:	**Susan M. Stalnecker**
Date of Award:	**October 9, 2018**
Vesting Schedule:	**20% vests on each of the first five anniversaries of the Effective Date**
Phantom Profits Interest Units Awarded:	**50,000**
Payment Event:	**Termination Payment Event**
Grant Date Benchmark Amount:	**$703,691,178**

BIOVENTUS LLC

PHANTOM PROFITS INTERESTS PLAN

AWARD AGREEMENT

This Bioventus LLC Phantom Profits Interests Plan Award Agreement (this "**Award Agreement**"), dated as of October 9, 2018 (the "**Effective Date**"), is delivered by Bioventus LLC (the "**Company**") to Susan M. Stalnecker (the "**Grantee**").

RECITALS

A. The Bioventus LLC Phantom Profits Interests Plan (the "**Plan**") provides for the grant of Phantom Profits Interest Units in the Company in accordance with the terms of the Plan and the Amended and Restated Limited Liability Company Agreement of the Company, as amended (the "**LLC Agreement**"). The Administrator (as defined in the Plan) has granted the Award (as defined below) to encourage the Grantee to contribute materially to the growth of the Company's owners, thereby benefitting the Company, and to align the economic interests of the Grantee with those of the owners. A copy of the Plan is attached. All capitalized terms not defined herein shall have the meaning given to such terms in the Plan or, if not defined in the Plan, in the LLC Agreement.

B. The Administrator shall administer the Plan.

NOW, THEREFORE, the parties to this Award Agreement, intending to be legally bound, hereby agree as follows:

Grant of Phantom Profits Interests Units. Subject to the terms and conditions set forth in this Award Agreement, the Plan, and the LLC Agreement, the Company hereby grants to the Grantee 50,000 Phantom Profits Interest Units (the "**Award**"). This Award Agreement (which is effective as of the Effective Date upon the parties' exchange of signed counterpart signature pages hereto), the Plan, and the LLC Agreement govern the terms of the grant of the Award.

Vesting of Awarded Units.

Unless otherwise determined by the Administrator, the Award shall vest in accordance with the following schedule (each date described below, a "**Vesting Date**"), if the Grantee is employed by the Company on the applicable Vesting Date.

Applicable Date	Vesting Percentage
1s anniversary of the Effective Date	20%
Each quarter after the 1st anniversary of the Effective Date	5%

On a Payment Event, the Grantee shall receive the Payment Amount, if any, with respect to the portion of the Award that is vested, as set forth in Section 5(b)(i) of the Plan. Any portion of the Award that is unvested as of the Termination Date shall be forfeited at the time of the Grantee's termination.

Upon an Initial Waterfall Distribution Event that occurs prior to the Grantee's Termination Date, the unvested portion of the Award shall vest at the time of such Initial Waterfall Distribution Event.

Upon the termination of the Grantee's employment for Cause, both the vested and the unvested portion of the Award shall be forfeited.

Withholding. All obligations of the Company under this Agreement shall be subject to the rights of the Company to withhold amounts required to be withheld for any taxes, if applicable.

Restrictions on Transfer. Only the Grantee has any rights under this Award. The Grantee may not transfer those rights, directly or indirectly, except by will or the laws of descent and distribution.

Award Subject to Plan and LLC Agreement Provisions. This Award is made pursuant to the Plan and the LLC Agreement, the terms of which are incorporated herein by reference, and in all respects shall be interpreted in accordance with the Plan and the LLC Agreement. The Administrator shall have the full power and authority to administer and interpret the Plan and this Award Agreement, to make factual determinations, and to adopt or amend such rules, regulations, agreements, and instruments for implementing the Plan and this Award Agreement and for the conduct of its business as it deems necessary or advisable. All powers of the Administrator shall be executed without the approval or consent of the Grantee.

No Employment or Other Rights. This Award Agreement is not an agreement of employment and the grant of this Award shall not confer upon the Grantee any right to be retained by or in the employ of the Company and shall not interfere in any way with the right of the Company to terminate the Grantee's employment at any time. The right of the Company, as applicable, to terminate at will the Grantee's employment at any time for any reason is specifically reserved. The grant of this Award shall not entitle the Grantee to any (i) voting rights with respect to any action or decision taken or made (or to be taken or made) by the Company or the Board, (ii) right to appoint Managers to the Board, or (iii) appraisal or preemption rights.

Notice. Any notice to the Company provided for in this Award Agreement must be in writing and will be deemed given: (a) on the date established by the sender as having been delivered personally; (b) on the date delivered by a private, nationally recognized, overnight courier as established by the sender by evidence obtained from the courier; (c) on the date sent by facsimile, with confirmation of transmission, if sent during normal business hours of the recipient (and, if not sent during normal business hours of the recipient, then on the next business day); or (d) on the fifth business day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications, to be valid, must be addressed as follows:

If to the Company, to:

Bioventus LLC
4721 Emperor Blvd. Suite 100
Durham, NC 27703
Attention: General Counsel
Facsimile: 866-467-1531

If to the Grantee, to the address on file with the Company.

If more than one method for sending notice as set forth above is used, the earliest notice date established as set forth above will control for purposes of determining when such notice is deemed to have been given.

Amendment and Termination; Section 409A. The Administrator may amend the Plan or this Award, or terminate the Plan, at any time; provided that no amendment or termination of the Plan or this Award shall, without the consent of a Grantee, adversely impact the rights of the Grantee under this Award, unless necessary to meet the requirements of any applicable law or regulation. Before amending or terminating the Plan or this Award to meet the requirements of an applicable law or regulation, the Administrator will attempt to bring the Plan or Award into compliance with the applicable law or regulation without reducing the benefits or payments to the Grantee to the greatest extent possible. If amendment or termination is still necessary and adversely impacts the rights of the Grantee, the Administrator will reasonably cooperate with the Grantee to adopt replacement benefits or payments that to the greatest extent possible places the Grantee in the same or a comparable economic position as if the Plan or Award had not been amended or terminated.

Subject to the first paragraph of this Section 8, while the Company does not guarantee any particular tax treatment with respect to the Award, payment of the Payment Amount is intended to comply with Section 409A, to the extent subject thereto, and shall be interpreted and construed consistent with that intent. The Company may reform this Award or any provision hereof to maintain to the maximum extent practicable the original intent of the provision without violating the provisions of Section 409A, provided, that any deferral of payments shall be only for such time period as may be required to comply with Section 409A.

Headings. Section headings are for reference only. In the event of a conflict between a heading and the content of a Section, the content of the Section shall control.

Applicable Law. The validity, construction, interpretation and effect of this Award Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to the conflicts of laws provisions thereof.

IN WITNESS WHEREOF, the Company has caused its duly authorized officer to execute this Award Agreement, and the Grantee has executed this Award Agreement, effective as of the Effective Date.

Bioventus LLC

By: _____

Name: Leigh Ann Stradford

Title: SVP & Chief Human Resources Officer

I hereby accept the Award described in this Award Agreement, and I agree to be bound by the terms of this Award Agreement, the Plan and the LLC Agreement. I hereby further agree that all of the decisions and determinations of the Administrator shall be final and binding.

Grantee: _____
Susan M. Stalnecker

Date: _____

BIOVENTUS LLC
PHANTOM PROFITS INTERESTS PLAN

AS AMENDED AND RESTATED DECEMBER 8, 2017

The purpose of the Bioventus LLC Phantom Profits Interests Plan (the "**Plan**") is to provide eligible employees and independent members of the Board of Managers of Bioventus LLC (the "**Company**") who are important to the success and growth of the business of the Company an opportunity to share in the future appreciation in value of the Company by receiving grants of Phantom Profits Interest Units in the Company. The Company believes that the Plan will encourage participants to contribute materially to the growth of the Company's owners, thereby benefiting the Company, and will align the economic interests of the participants with those of the owners. Awards under the Plan shall consist of grants of Phantom Profits Interest Units as described in Section 5 ("**Awards**"). Capitalized terms that are used but not defined herein shall have the respective meanings accorded to such terms in the Amended and Restated Limited Liability Company Agreement of the Company, as amended (the "**LLC Agreement**").

Definitions.

"**Benchmark Amount**" means the cumulative distributions that must be made by the Company pursuant to the LLC Agreement before a Grantee is entitled to receive any distributions in respect of such Grantee's Phantom Profits Interest Units. The Benchmark Amount shall equal $703,691,178 or such other greater amount as set forth in the applicable Award Agreement.

"**Board Member**" means an independent member of the Board of Managers of the Company appointed or elected to the Board of Managers on or after January 1, 2016.

"**Code**" means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

"**Employee**" means an employee of the Company.

"**Grantee**" means an Employee or Board Member who receives an Award.

"**Initial Waterfall Distribution Event**" means the closing of (i) a sale of Units representing a Percentage Interest of more than 66.66%, or (ii) a sale of all or substantially all of the assets of the Company; provided that such event constitutes a change in ownership or a change in effective control of the Company within the meaning of Section 409A of the Code.

"**Management Distribution Cap**" means 17.5% of the aggregate amount, if any, available for distribution pursuant to Section 10.05(a)(v) of the LLC Agreement.

"**Management Incentive Plan**" means the Bioventus LLC Management Incentive Plan.

"**Payment Amount**" means the amount payable with respect to each vested Phantom Profits Interest Unit upon the applicable Payment Event.

"**Phantom Profits Interest Unit**" means a right to receive cash in an amount equal to the Payment Amount upon the Payment Event as set forth in the applicable Award Agreement.

"**Profits Interest Unit**" means a non-managing, non-voting ownership interest in the Company issued pursuant to Section 3.01(b) of the LLC Agreement and the Management Incentive Plan.

"**Qualifying Subsequent Waterfall Distribution Event**" means a Subsequent Waterfall Distribution Event that constitutes a change in ownership or a change in effective control of the Company within the meaning of Section 409A of the Code.

"**Subsequent Waterfall Distribution Event**" means, following an Initial Waterfall Distribution Event under Section 1(a) above with respect to Units representing a Percentage Interest of less than 100%, the closing of (i) a subsequent sale of Units, or (ii) a sale of all or substantially all of the assets of the Company

"**Termination Date**" means in the case of an Employee, the date of the Grantee's separation of service, as defined in Section 409A of the Code, and in the case of a Board Member, resignation or removal from the Board of Managers of the Company.

"**Waterfall Distribution Event**" means an Initial Waterfall Distribution Event or a Subsequent Waterfall Distribution Event.

Administration

Administration. The Plan shall be administered and interpreted by the Board of Managers (the "**Administrator**") or by a committee or subcommittee, which shall be appointed by the Administrator. To the extent that a committee or subcommittee administers the Plan, references in the Plan to the "Administrator" shall be deemed to refer to the committee or the subcommittee.

Administrator Authority. The Administrator shall determine (i) the Employees and Board Members to receive Awards, (ii) the size and terms of the Awards, (iii) the time when the Awards will be made, (iv) the applicable Payment Event, (v) the duration of any applicable vesting period, provided that such vesting period shall not be less than four years and that the Award shall vest ratably over the vesting period, and (vi) the Benchmark Amount with respect to any Award.

Administrator Determinations. The Administrator shall have full power and authority to administer and interpret the Plan, to make factual determinations, and to adopt or amend such rules, regulations, agreements, and instruments for implementing the Plan and for the conduct of its business as it deems necessary or advisable. All powers of the Administrator shall be executed without the approval or consent of the Grantees.

Interests Subject to the Plan

Awards Authorized by the LLC Agreement. The total amount of Phantom Profits Interest Units available for grants under the Plan, when combined with the total amount of Profits Interest Units (as defined in the Management Incentive Plan) granted under the Management Incentive Plan and any other form of employee, management or other service provider equity or equity-related awards of the Company, shall not result in aggregate distributions to the holders thereof in excess of the Management Distribution Cap (such amount determined, solely for this purpose, as if there were no Phantom Profits Interest Units or Other Management Equity Awards (as defined in the LLC Agreement)) ("**Excess Distributions**"), unless and to the extent that S&N and the Essex Members consent in their capacity as Members to such Excess Distributions. If, and to the extent that, Phantom Profits Interest Units granted under the Plan terminate or are canceled, forfeited, exchanged, or surrendered without payment, such Phantom Profits Interest Units shall be available again for purposes of the Plan.

Adjustments. If there is any change in the total amount or kind of Phantom Profits Interest Units outstanding (i) by reason of a spinoff, split of the Phantom Profits Interest Units, reclassification, combination, or exchange of such Phantom Profits Interest Units or similar event; (ii) by reason of a merger, reorganization, or consolidation; (iii) by reason of any other extraordinary or unusual event affecting the outstanding Phantom Profits Interest Units as a class without the Company's receipt of consideration; or (iv) by reason of a change in the structure of the Company, or if the value of the outstanding Phantom Profits Interest Units are substantially reduced as a result of a spinoff, the amount or percentage of such Phantom Profits Interest Units covered by outstanding Awards, and the kind of Phantom Profits Interest Units issued under the Plan shall be appropriately adjusted by the Administrator to reflect any increase or decrease in the amount of, or change in the kind or value of, issued Phantom Profits Interest Units to preclude, to the extent practicable, the enlargement or dilution of rights and benefits under such Awards. Any adjustments determined by the Administrator shall be final, binding, and conclusive.

Eligibility for Participation

All Employees and Board Members who are designated by the Administrator shall be eligible to participate in the Plan.

Grants of Awards

Award Agreement. All Awards shall be subject to the terms and conditions of this Plan, the terms of the LLC Agreement, and the Grantee's award instrument (the "**Award Agreement**"). Each Award Agreement shall contain the number of Phantom Profits Interest Units underlying the Grantee's Award and the applicable grant date Benchmark Amount (subject to adjustment as provided in the LLC Agreement), and each Award shall vest in accordance with the terms of the Grantee's Award Agreement. The Award Agreement shall also designate whether the Payment Amount shall be paid (i) upon the earlier of the Grantee's Termination Date or an Initial Waterfall Distribution Event (with any subsequent amounts paid upon the earlier of a Qualifying Subsequent Waterfall Distribution Event or the Grantee's Termination Date) (a "**Termination Payment Event**") or (ii) upon an Initial Waterfall Distribution Event, with any subsequent amounts paid upon the earlier of (A) a Qualifying Subsequent Waterfall Distribution Event or (B) provided that a Subsequent Waterfall event has occurred, the fifth anniversary of the grant date (a "**Waterfall Payment Event**") (a Termination Payment Event or a Waterfall Payment Event, also referred to as the "**Payment Event**").

Payment Amount.

(i) If the Payment Event is a Termination Payment Event, the Payment Amount shall be, for each vested Phantom Profits Interest Unit, an amount that would be allocated to an equivalent number of Profits Interest Units with an equivalent Benchmark Amount, (A) if the Grantee's Termination Date is prior to a Waterfall Distribution Event, as if the Company were liquidated on the Termination Date at fair market value (as determined in good faith by the Administrator), or (B) where there is an Initial Waterfall Distribution Event and one or more Subsequent Waterfall Distribution Events prior to the Termination Date, pursuant to the LLC Agreement with respect to each such Waterfall Distribution Event. Such Payment Amount shall be paid to the Grantee within 30 days of the Termination Date, the Initial Waterfall Distribution Event, or any Qualifying Subsequent Waterfall Distribution Event, as applicable. In the event that a Subsequent Waterfall Distribution Event is not a Qualifying Subsequent Waterfall Distribution Event, the Payment Amount with respect to such Subsequent Waterfall Distribution Event shall be paid within 30 days of the Termination Date. No further Payment Amount shall be paid to the Grantee with respect to Waterfall Distribution Events following the Grantee's Termination Date.

(ii) Subject to (iii) below, if the Payment Event is a Waterfall Payment Event and a Waterfall Distribution Event occurs before the Grantee's Termination Date, the Payment Amount shall be equal to, for each vested Phantom Profits Interest Unit, an amount that would be payable with respect to the equivalent number of Profits Interest Units with an equivalent Benchmark Amount pursuant to the LLC Agreement. Such Payment Amount shall be paid to the Grantee within 30 days of an Initial Waterfall Distribution Event, and for any Subsequent Waterfall Distribution Event, shall be paid to the Grantee within 30 days of the earlier of a Qualifying Subsequent Waterfall Distribution Event or the fifth anniversary of the date of grant. No Payment Amount shall be paid to the Grantee with respect to any Subsequent Waterfall Distribution Event that is not a Qualifying Subsequent Waterfall Distribution Event and that occurs after the fifth anniversary of the Grant Date.

(iii) If the Payment Event is a Waterfall Payment Event and a Waterfall Distribution Event occurs after the Grantee's Termination Date, the Payment Amount with respect to such event shall in no event be greater than the lesser of, for each vested Phantom Profits Interest Unit, (A) an amount that would be allocated to an equivalent number of Profits Interest Units with an equivalent Benchmark Amount if the Company were liquidated on the valuation date next following the Termination Date at fair market value (as determined in good faith by the Administrator) and (B) the amount specified in Section 5(b)(ii) above; provided that if a Waterfall Distribution Event occurs prior to the valuation date next following the Termination Date, the Payment Amount shall be the amount specified in Section 5(b)(ii). Such Payment Amount shall be paid to the Grantee within 30 days of the Initial Waterfall Distribution Event, and for any Subsequent Waterfall Distribution Event, shall be paid to the Grantee within 30 days of the earlier of a Qualifying Subsequent Waterfall Distribution Event or the fifth anniversary of the date of grant. No Payment Amount shall be paid to the Grantee with respect to any Subsequent Waterfall Distribution Event that is not a Qualifying Subsequent Waterfall Distribution Event and that occurs after the fifth anniversary of the Grant Date.

Acknowledgement by Grantee. All Awards shall be made conditional upon the Grantee's acknowledgement, in writing or by acceptance of the Award, that all decisions and determinations of the Administrator shall be final and binding on the Grantee, his or her beneficiaries, and any other person having or claiming an interest under such award. Awards need not be uniform as among the Grantees.

Forfeiture

Termination of Employment. Any and all of an Employee Grantee's unvested Phantom Profits Interest Units shall be forfeited upon the termination of the Grantee's employment for any reason.

Termination of Membership on the Board of Managers. Any and all of a Board Member Grantee's unvested Phantom Profits Interest Units shall be forfeited upon resignation or removal from the Board of Managers of the Company.

Termination of Employment for Cause. Any and all of an Employee Grantee's vested and unvested Phantom Profits Interest Units shall be forfeited upon the termination of the Grantee's employment for Cause. For purposes of this Plan, "Cause" shall have the meaning set forth in the written employment agreement between the Grantee and the Company in effect on the date of the Grantee's termination of employment, or if no such agreement exists, shall mean (i) conviction (including guilty plea or plea of nolo contendere) of any felony or any other crime involving fraud, violence or dishonesty; (ii) commission of or participation in a fraud or act of dishonesty or misrepresentation against the Company; (iii) violation of any written and fully executed contract or agreement between the Grantee and the Company, including without limitation, breach of Grantee's Proprietary Information, Inventions, Non-Competition and Non-Solicitation Agreement; (iv) gross negligence or willful misconduct, (v) continued and substantial failure to perform the Grantee's duties to the Company; or (vi) violation of any material policies, practices, or procedures of the Company.

Removal from the Board of Managers. Any and all of a Board Member Grantee's vested and unvested Phantom Profits Interest Units shall be forfeited upon the removal of the Grantee from the Board of Managers for Cause. For purposes of this Plan, "Cause" shall mean (i) conviction (including guilty plea or plea of nolo contendere) of any felony or any other crime involving fraud, violence or dishonesty; (ii) commission of or participation in a fraud or act of dishonesty or misrepresentation against the Company; (iii) violation of any agreement between the Grantee and the Company; (iv) gross negligence or willful misconduct; (v) continued and substantial failure to perform the Grantee's duties to the Company as a Member of the Board of Managers of the Company; or (vi) violation of any material policies, practices, or procedures of the Company including without limitation, the Company's Code of Conduct and Confidential Information policies.

Waterfall Distribution Event. As soon as practicable following an Initial Waterfall Distribution Event or any Subsequent Waterfall Distribution Event that results in an aggregate sale of Units representing a Percentage Interest of 100%, or upon a sale of all or substantially all of the assets of the Company, all vested and unvested Phantom Profits Interest Units shall be cancelled (after the Grantee has been paid any amounts due with respect to such Units, if applicable).

Confidentiality, Non-Compete, Non-Solicitation. Notwithstanding anything herein to the contrary, a Grantee shall forfeit any and all rights to all vested and unvested Phantom Profits Interest Units if the Grantee violates the terms of any confidentiality, non-solicitation and non-competition provisions of any agreement between the Grantee and the Company, if applicable.

Withholding of Taxes

All Awards under the Plan shall be subject to applicable federal (including FICA), state, and local tax withholding requirements. The Company may require that the Grantee pay to the Company the amount of any federal, state, or local taxes that the Company is required to withhold with respect to such Awards, or the Company may deduct from other wages paid by the Company the amount of any withholding taxes due with respect to such Awards.

Nontransferability of Awards

Only the Grantee has any rights under an Award. A Grantee may not transfer those rights, directly or indirectly, except by will or the laws of descent and distribution.

Limitations on Issuance or Transfer of Phantom Profits Interest Units

No Phantom Profits Interest Units shall be issued or transferred in connection with any Award until all legal requirements applicable to the issuance or transfer of such Phantom Profits Interest Units have been complied with to the satisfaction of the Administrator. The Administrator shall have the right to condition any Award made to any Grantee hereunder on such Grantee's undertaking in writing to comply with any restrictions on his or her subsequent disposition of such Phantom Profits Interest Units as the Administrator shall deem necessary or advisable.

Amendment and Termination of the Plan

Amendment and Termination. The Administrator may, in accordance with the LLC Agreement, amend the Plan or any Award under the Plan, or terminate the Plan, at any time; provided that no amendment or termination of the Plan or any Award shall, without the consent of a Grantee, adversely impact the rights of any Grantee under any Award granted to such Grantee under the Plan, unless necessary to meet the requirements of any applicable law or regulation. Before amending or terminating the Plan or any Award to meet the requirements of an applicable law or regulation, the Administrator will attempt to bring the Plan or Award into compliance with the applicable law or regulation without reducing the benefits or payments to a Grantee to the greatest extent possible. If amendment or termination is still necessary and adversely impacts the rights of a Grantee, the Administrator will reasonably cooperate with such Grantee to adopt replacement benefits or payments that to the greatest extent possible places the Grantee in the same or a comparable economic position as if the Plan or Award had not been amended or terminated.

Governing Document. In the event of any conflict between any Award in the form attached hereto as Exhibit A or B and the LLC Agreement, such Award shall control. In the event of any conflict between any subsequent Award not in the form attached hereto and the LLC Agreement, the LLC agreement shall control unless such subsequent Award has been approved by the Board and Smith & Nephew, Inc., in which case such Award shall control. No other statements, representations, explanatory materials or examples, oral or written, may amend the Plan in any manner. The Plan shall be binding upon and enforceable against the Company and its successors and assigns.

Funding of the Plan

This Plan shall be unfunded. The Company shall not be required to establish any special or separate fund or to make any other segregation of assets to assure the payment of any Awards under this Plan. In no event shall interest be paid or accrued on any Award.

Rights of Grantees

No Award shall entitle any Grantee to any (i) voting rights with respect to any action or decision taken or made (or to be taken or made) by the Company or the Board of Managers, (ii) right to appoint Managers to the Board of Managers, or (iii) appraisal or preemption rights. Nothing in this Plan shall entitle any Employee, Board Member or any other person to any claim or right to receive an Award under this Plan. Neither this Plan nor any action taken hereunder shall be construed as giving any individual any rights to be retained by or in the employ of the Company or any other employment rights.

Headings

Section headings are for reference only. In the event of a conflict between a title and the content of a Section, the content of the Section shall control.

Effective Date of the Plan

The initial effective date of the Plan was May 4, 2012. The amended and restated version of the Plan shall be effective on December 8, 2017.

Miscellaneous

Compliance with Law. The Plan and the obligations of the Company to issue or transfer Phantom Profits Interest Units in connection with Awards shall be subject to all applicable laws and to approvals by any governmental or regulatory agency as may be required. The Administrator may revoke any Award if it is contrary to law or modify an Award to bring it into compliance with any valid and mandatory government regulation. The Administrator may also adopt rules regarding the withholding of taxes on payments to Grantees. The Administrator may, in its sole discretion, agree to limit its authority under this Section.

Governing Law. The validity, construction, interpretation, and effect of the Plan and Award Agreements issued under the Plan shall be governed and construed by and determined in accordance with the laws of the State of Delaware, without giving effect to the conflict of laws provisions thereof.

Exhibit 10.19

Bioventus LLC
4721 Emperor Blvd., Suite 100
Durham, NC 27703
USA

1-919-474-6700
1-800-396-4325
www.BioventusGlobal.com

June 25, 2020

Kenneth Reali

RE: Bioventus Phantom Profit Interests Award

Dear Ken

As Bioventus develops its global leadership position in Orthobiologics, you will play a key role in developing a great company that makes a difference in peoples' lives every day. In recognition of your expected contribution as the Chief Executive Officer, the Bioventus Leadership Team, Board of Managers and I have granted you 417,804 Phantom Profits Interests Units.

The Award is granted to you under and is subject to the terms of the Phantom Profits Interests Plan ("Plan") and your Bioventus LLC Phantom Profits Interests Plan Award Agreement ("Award Agreement"). A copy of the Plan and your Award Agreement are included with this letter and I encourage you to review both documents carefully.

To assist in your review of the Award, below is a brief summary of some of the key terms of this Award:

- **Phantom Profits Interests**: The Plan is designed to provide grantees the opportunity to share in the appreciation in value of the Company. Phantom Profits Interests Units awarded under the Plan, however, have no immediate value and do not reflect a true equity interest in the Company. In recognition of your anticipated contributions to the Company's growth, upon a Waterfall Distribution Event (defined in the Plan and summarized below) and subject to the waterfall, you, as the holder of Phantom Profits Interest Units, will be eligible to receive a cash payment equal to a share of the appreciation in the value of the Company from the Effective Date of your Award Agreement.
- **Grant Date Benchmark Amount**: The Grant Date Benchmark Amount represents the cumulative distributions that must be made by the Company under the Plan prior to grantees receiving payment. Note that since Units do not represent an equity interest in the Company, your award is not subject to a "strike" or "exercise" price or require you to fund any purchase of the interest.
- Vesting Schedule: For so long as you remain an employee of the Company, 20% of the Award will vest on April 13, 2021 and 5% of the Award will vest each quarter thereafter.

- **Termination**: Upon termination of your employment for any reason other than for Cause (as defined in the Plan) the Company will repurchase any vested Profits Interest Units granted with this Award. All vested and unvested units are forfeited in the event of termination for Cause.
- **Waterfall Distribution Event**: In the event that the Company is sold or sells all or substantially all of its assets or a similar event occurs (a "Waterfall Distribution Event") prior to the termination of your employment with the Company, your Award will vest at the time of such Initial Waterfall Distribution Event. Listed below is an example of potential value per PPI Unit at a Waterfall, and how the Waterfall Distribution is calculated. The payout amounts shown below are provided for illustrative purposes only. Actual payouts under the Plan may vary from those shown and are subject to all of the terms of the Plan documents and applicable withholding requirements.

Illustrative Waterfall Scenarios
(as of 4.30.20)

Enterprise value	$1.25 BILLION	$1.5 BILLION
Approximate $ payout/unit	$ 17.09	$ 35.04

***Assumes $840,849,878 benchmark

- **Waterfall Distribution Formula**:
  Enterprise Value - Debt (net of cash) - Benchmark of PPI units = Remaining Equity
  Value available for Distribution / Units Outstanding = PPI Payout per unit

I am delighted to be notifying you of this Award and I look forward to a productive and enjoyable working relationship.

Sincerely,

/s/ Leigh Ann Stradford
Leigh Ann Stradford
SVP & Chief Human Resources Officer

Enclosures

This letter has been provided to you by the Company solely for your information and may be deemed to contain forward-looking statements, which involve known and unknown risks and uncertainties. Given these risks and uncertainties, you are advised not to place any undue reliance on such forward-looking statements. Specifically, the Company does not make any representations or warranties, express or implied, as to the ultimate value of your Award or whether a Waterfall Distribution Event will occur. In the event of any inconsistency between this letter and the Plan, the provisions of the Plan shall govern.

BIOVENTUS LLC
PHANTOM PROFITS INTERESTS PLAN

AWARD AGREEMENT

The Administrator, as defined in the Bioventus LLC Phantom Profits Interests Plan (the "**Plan**"), of the Plan has decided to grant to you Phantom Profits Interest Units in the Company under the Plan. The terms of the grant (the "**Grant**") are set forth in this Bioventus LLC Phantom Profits Interests Plan Award Agreement (the "**Award Agreement**") provided to you. The following provides a summary of the key terms of the Grant; however, you should read the entire Award Agreement, along with the terms of the Plan and the Company's Amended and Restated Limited Liability Company Agreement (as might be amended), to fully understand the Grant.

SUMMARY OF PHANTOM PROFITS INTERESTS PLAN AWARD AGREEMENT

Grantee:	**Kenneth Reali**
Date of Award:	**August 14, 2017**
Vesting Schedule:	**20% vests on the first anniversary of the Effective Date and the remaining 80% vests in equal installments on a quarterly basis over the next four years**
Phantom Profits Interest Units Awarded:	**40,000**
Payment Event:	**Termination Payment Event**
Grant Date Benchmark Amount:	**$510,000,000**

BIOVENTUS LLC

PHANTOM PROFITS INTERESTS PLAN

AWARD AGREEMENT

This Bioventus LLC Phantom Profits Interests Plan Award Agreement (this "**Award Agreement**"), dated as of June 25, 2020 (the "**Effective Date**"), is delivered by Bioventus LLC (the "**Company**") to Kenneth Reali (the "**Grantee**").

RECITALS

A. The Bioventus LLC Phantom Profits Interests Plan (the "**Plan**") provides for the grant of Phantom Profits Interest Units in the Company in accordance with the terms of the Plan and the Amended and Restated Limited Liability Company Agreement of the Company, as amended (the "**LLC Agreement**"). The Administrator (as defined in the Plan) has granted the Award (as defined below) to encourage the Grantee to contribute materially to the growth of the Company's owners, thereby benefitting the Company, and to align the economic interests of the Grantee with those of the owners. A copy of the Plan is attached. All capitalized terms not defined herein shall have the meaning given to such terms in the Plan or, if not defined in the Plan, in the LLC Agreement.

B. The Administrator shall administer the Plan.

NOW, THEREFORE, the parties to this Award Agreement, intending to be legally bound, hereby agree as follows:

Grant of Phantom Profits Interests Units. Subject to the terms and conditions set forth in this Award Agreement, the Plan, and the LLC Agreement, the Company hereby grants to the Grantee 417,804 Phantom Profits Interest Units (the "**Award**"). This Award Agreement (which is effective as of the Effective Date upon the parties' exchange of signed counterpart signature pages hereto), the Plan, and the LLC Agreement govern the terms of the grant of the Award.

Vesting of Awarded Units.

Unless otherwise determined by the Administrator, the Award shall vest in accordance with the following schedule (each date described below, a "**Vesting Date**"), if the Grantee is employed by the Company on the applicable Vesting Date.

Applicable Date	Vesting Percentage
1st anniversary of the Effective Date	20%
Each quarter after the 1st anniversary of the Effective Date	5%

On a Payment Event, the Grantee shall receive the Payment Amount, if any, with respect to the portion of the Award that is vested, as set forth in Section 5(b)(i) of the Plan. Any portion of the Award that is unvested as of the Termination Date shall be forfeited at the time of the Grantee's termination.

Upon an Initial Waterfall Distribution Event that occurs prior to the Grantee's Termination Date, the unvested portion of the Award shall vest at the time of such Initial Waterfall Distribution Event.

Upon the termination of the Grantee's employment for Cause, both the vested and the unvested portion of the Award shall be forfeited.

Withholding. All obligations of the Company under this Agreement shall be subject to the rights of the Company to withhold amounts required to be withheld for any taxes, if applicable.

Restrictions on Transfer. Only the Grantee has any rights under this Award. The Grantee may not transfer those rights, directly or indirectly, except by will or the laws of descent and distribution.

Award Subject to Plan and LLC Agreement Provisions. This Award is made pursuant to the Plan and the LLC Agreement, the terms of which are incorporated herein by reference, and in all respects shall be interpreted in accordance with the Plan and the LLC Agreement. The Administrator shall have the full power and authority to administer and interpret the Plan and this Award Agreement, to make factual determinations, and to adopt or amend such rules, regulations, agreements, and instruments for implementing the Plan and this Award Agreement and for the conduct of its business as it deems necessary or advisable. All powers of the Administrator shall be executed without the approval or consent of the Grantee.

No Employment or Other Rights. This Award Agreement is not an agreement of employment and the grant of this Award shall not confer upon the Grantee any right to be retained by or in the employ of the Company and shall not interfere in any way with the right of the Company to terminate the Grantee's employment at any time. The right of the Company, as applicable, to terminate at will the Grantee's employment at any time for any reason is specifically reserved. The grant of this Award shall not entitle the Grantee to any (i) voting rights with respect to any action or decision taken or made (or to be taken or made) by the Company or the Board, (ii) right to appoint Managers to the Board, or (iii) appraisal or preemption rights.

Notice. Any notice to the Company provided for in this Award Agreement must be in writing and will be deemed given: (a) on the date established by the sender as having been delivered personally; (b) on the date delivered by a private, nationally recognized, overnight courier as established by the sender by evidence obtained from the courier; (c) on the date sent by facsimile, with confirmation of transmission, if sent during normal business hours of the recipient (and, if not sent during normal business hours of the recipient, then on the next business day); or (d) on the fifth business day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications, to be valid, must be addressed as follows:

If to the Company, to:

Bioventus LLC
4721 Emperor Blvd. Suite 100
Durham, NC 27703
Attention: General Counsel
Facsimile: 866-467-1531

If to the Grantee, to the address on file with the Company.

If more than one method for sending notice as set forth above is used, the earliest notice date established as set forth above will control for purposes of determining when such notice is deemed to have been given.

Amendment and Termination; Section 409A. The Administrator may amend the Plan or this Award, or terminate the Plan, at any time; provided that no amendment or termination of the Plan or this Award shall, without the consent of a Grantee, adversely impact the rights of the Grantee under this Award, unless necessary to meet the requirements of any applicable law or regulation. Before amending or terminating the Plan or this Award to meet the requirements of an applicable law or regulation, the Administrator will attempt to bring the Plan or Award into compliance with the applicable law or regulation without reducing the benefits or payments to the Grantee to the greatest extent possible. If amendment or termination is still necessary and adversely impacts the rights of the Grantee, the Administrator will reasonably cooperate with the Grantee to adopt replacement benefits or payments that to the greatest extent possible places the Grantee in the same or a comparable economic position as if the Plan or Award had not been amended or terminated.

Subject to the first paragraph of this Section 8, while the Company does not guarantee any particular tax treatment with respect to the Award, payment of the Payment Amount is intended to comply with Section 409A, to the extent subject thereto, and shall be interpreted and construed consistent with that intent. The Company may reform this Award or any provision hereof to maintain to the maximum extent practicable the original intent of the provision without violating the provisions of Section 409A, provided, that any deferral of payments shall be only for such time period as may be required to comply with Section 409A.

Headings. Section headings are for reference only. In the event of a conflict between a heading and the content of a Section, the content of the Section shall control.

Applicable Law. The validity, construction, interpretation and effect of this Award Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to the conflicts of laws provisions thereof.

IN WITNESS WHEREOF, the Company has caused its duly authorized officer to execute this Award Agreement, and the Grantee has executed this Award Agreement, effective as of the Effective Date.

Bioventus LLC

By: /s/ Leigh Ann Stradford

Name: Leigh Ann Stradford

Title: SVP of Human Resources

I hereby accept the Award described in this Award Agreement, and I agree to be bound by the terms of this Award Agreement, the Plan and the LLC Agreement. I hereby further agree that all of the decisions and determinations of the Administrator shall be final and binding.

Grantee: /s/ Kenneth Reali
Kenneth Reali

Date: 6/26/2020

BIOVENTUS LLC

PHANTOM PROFITS INTERESTS PLAN

AS AMENDED AND RESTATED DECEMBER 8, 2017

The purpose of the Bioventus LLC Phantom Profits Interests Plan (the "**Plan**") is to provide eligible employees and independent members of the Board of Managers of Bioventus LLC (the "**Company**") who are important to the success and growth of the business of the Company an opportunity to share in the future appreciation in value of the Company by receiving grants of Phantom Profits Interest Units in the Company. The Company believes that the Plan will encourage participants to contribute materially to the growth of the Company's owners, thereby benefiting the Company, and will align the economic interests of the participants with those of the owners. Awards under the Plan shall consist of grants of Phantom Profits Interest Units as described in Section 5 ("**Awards**"). Capitalized terms that are used but not defined herein shall have the respective meanings accorded to such terms in the Amended and Restated Limited Liability Company Agreement of the Company, as amended (the "**LLC Agreement**").

Definitions.

"**Benchmark Amount**" means the cumulative distributions that must be made by the Company pursuant to the LLC Agreement before a Grantee is entitled to receive any distributions in respect of such Grantee's Phantom Profits Interest Units. The Benchmark Amount shall equal $840,849,878 or such other greater amount as set forth in the applicable Award Agreement.

"**Board Member**" means an independent member of the Board of Managers of the Company appointed or elected to the Board of Managers on or after January 1, 2016.

"**Code**" means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

"**Employee**" means an employee of the Company.

"**Grantee**" means an Employee or Board Member who receives an Award.

"**Initial Waterfall Distribution Event**" means the closing of (i) a sale of Units representing a Percentage Interest of more than 66.66%, or (ii) a sale of all or substantially all of the assets of the Company; provided that such event constitutes a change in ownership or a change in effective control of the Company within the meaning of Section 409A of the Code.

"**Management Distribution Cap**" means 17.5% of the aggregate amount, if any, available for distribution pursuant to Section 10.05(a)(v) of the LLC Agreement.

"**Management Incentive Plan**" means the Bioventus LLC Management Incentive Plan.

"**Payment Amount**" means the amount payable with respect to each vested Phantom Profits Interest Unit upon the applicable Payment Event.

"**Phantom Profits Interest Unit**" means a right to receive cash in an amount equal to the Payment Amount upon the Payment Event as set forth in the applicable Award Agreement.

"**Profits Interest Unit**" means a non-managing, non-voting ownership interest in the Company issued pursuant to Section 3.01(b) of the LLC Agreement and the Management Incentive Plan.

"**Qualifying Subsequent Waterfall Distribution Event**" means a Subsequent Waterfall Distribution Event that constitutes a change in ownership or a change in effective control of the Company within the meaning of Section 409A of the Code.

"**Subsequent Waterfall Distribution Event**" means, following an Initial Waterfall Distribution Event under Section 1(a) above with respect to Units representing a Percentage Interest of less than 100%, the closing of (i) a subsequent sale of Units, or (ii) a sale of all or substantially all of the assets of the Company

"**Termination Date**" means in the case of an Employee, the date of the Grantee's separation of service, as defined in Section 409A of the Code, and in the case of a Board Member, resignation or removal from the Board of Managers of the Company.

"**Waterfall Distribution Event**" means an Initial Waterfall Distribution Event or a Subsequent Waterfall Distribution Event.

Administration

Administration. The Plan shall be administered and interpreted by the Board of Managers (the "**Administrator**") or by a committee or subcommittee, which shall be appointed by the Administrator. To the extent that a committee or subcommittee administers the Plan, references in the Plan to the "Administrator" shall be deemed to refer to the committee or the subcommittee.

Administrator Authority. The Administrator shall determine (i) the Employees and Board Members to receive Awards, (ii) the size and terms of the Awards, (iii) the time when the Awards will be made, (iv) the applicable Payment Event, (v) the duration of any applicable vesting period, provided that such vesting period shall not be less than four years and that the Award shall vest ratably over the vesting period, and (vi) the Benchmark Amount with respect to any Award.

Administrator Determinations. The Administrator shall have full power and authority to administer and interpret the Plan, to make factual determinations, and to adopt or amend such rules, regulations, agreements, and instruments for implementing the Plan and for the conduct of its business as it deems necessary or advisable. All powers of the Administrator shall be executed without the approval or consent of the Grantees.

Interests Subject to the Plan

Awards Authorized by the LLC Agreement. The total amount of Phantom Profits Interest Units available for grants under the Plan, when combined with the total amount of Profits Interest Units (as defined in the Management Incentive Plan) granted under the Management Incentive Plan and any other form of employee, management or other service provider equity or equity-related awards of the Company, shall not result in aggregate distributions to the holders thereof in excess of the Management Distribution Cap (such amount determined, solely for this purpose, as if there were no Phantom Profits Interest Units or Other Management Equity Awards (as defined in the LLC Agreement)) ("**Excess Distributions**"), unless and to the extent that S&N and the Essex Members consent in their capacity as Members to such Excess Distributions. If, and to the extent that, Phantom Profits Interest Units granted under the Plan terminate or are canceled, forfeited, exchanged, or surrendered without payment, such Phantom Profits Interest Units shall be available again for purposes of the Plan.

Adjustments. If there is any change in the total amount or kind of Phantom Profits Interest Units outstanding (i) by reason of a spinoff, split of the Phantom Profits Interest Units, reclassification, combination, or exchange of such Phantom Profits Interest Units or similar event; (ii) by reason of a merger, reorganization, or consolidation; (iii) by reason of any other extraordinary or unusual event affecting the outstanding Phantom Profits Interest Units as a class without the Company's receipt of consideration; or (iv) by reason of a change in the structure of the Company, or if the value of the outstanding Phantom Profits Interest Units are substantially reduced as a result of a spinoff, the amount or percentage of such Phantom Profits Interest Units covered by outstanding Awards, and the kind of Phantom Profits Interest Units issued under the Plan shall be appropriately adjusted by the Administrator to reflect any increase or decrease in the amount of, or change in the kind or value of, issued Phantom Profits Interest Units to preclude, to the extent practicable, the enlargement or dilution of rights and benefits under such Awards. Any adjustments determined by the Administrator shall be final, binding, and conclusive.

Eligibility for Participation

All Employees and Board Members who are designated by the Administrator shall be eligible to participate in the Plan.

Grants of Awards

Award Agreement. All Awards shall be subject to the terms and conditions of this Plan, the terms of the LLC Agreement, and the Grantee's award instrument (the "**Award Agreement**"). Each Award Agreement shall contain the number of Phantom Profits Interest Units underlying the Grantee's Award and the applicable grant date Benchmark Amount (subject to adjustment as provided in the LLC Agreement), and each Award shall vest in accordance with the terms of the Grantee's Award Agreement. The Award Agreement shall also designate whether the Payment Amount shall be paid (i) upon the earlier of the Grantee's Termination Date or an Initial Waterfall Distribution Event (with any subsequent amounts paid upon the earlier of a Qualifying Subsequent Waterfall Distribution Event or the Grantee's Termination Date) (a "**Termination Payment Event**") or (ii) upon an Initial Waterfall Distribution Event, with any subsequent amounts paid upon the earlier of (A) a Qualifying Subsequent Waterfall Distribution Event or (B) provided that a Subsequent Waterfall event has occurred, the fifth anniversary of the grant date (a "**Waterfall Payment Event**") (a Termination Payment Event or a Waterfall Payment Event, also referred to as the "**Payment Event**").

Payment Amount.

(i) If the Payment Event is a Termination Payment Event, the Payment Amount shall be, for each vested Phantom Profits Interest Unit, an amount that would be allocated to an equivalent number of Profits Interest Units with an equivalent Benchmark Amount, (A) if the Grantee's Termination Date is prior to a Waterfall Distribution Event, as if the Company were liquidated on the Termination Date at fair market value (as determined in good faith by the Administrator), or (B) where there is an Initial Waterfall Distribution Event and one or more Subsequent Waterfall Distribution Events prior to the Termination Date, pursuant to the LLC Agreement with respect to each such Waterfall Distribution Event. Such Payment Amount shall be paid to the Grantee within 30 days of the Termination Date, the Initial Waterfall Distribution Event, or any Qualifying Subsequent Waterfall Distribution Event, as applicable. In the event that a Subsequent Waterfall Distribution Event is not a Qualifying Subsequent Waterfall Distribution Event, the Payment Amount with respect to such Subsequent Waterfall Distribution Event shall be paid within 30 days of the Termination Date. No further Payment Amount shall be paid to the Grantee with respect to Waterfall Distribution Events following the Grantee's Termination Date.

(ii) Subject to (iii) below, if the Payment Event is a Waterfall Payment Event and a Waterfall Distribution Event occurs before the Grantee's Termination Date, the Payment Amount shall be equal to, for each vested Phantom Profits Interest Unit, an amount that would be payable with respect to the equivalent number of Profits Interest Units with an equivalent Benchmark Amount pursuant to the LLC Agreement. Such Payment Amount shall be paid to the Grantee within 30 days of an Initial Waterfall Distribution Event, and for any Subsequent Waterfall Distribution Event, shall be paid to the Grantee within 30 days of the earlier of a Qualifying Subsequent Waterfall Distribution Event or the fifth anniversary of the date of grant. No Payment Amount shall be paid to the Grantee with respect to any Subsequent Waterfall Distribution Event that is not a Qualifying Subsequent Waterfall Distribution Event and that occurs after the fifth anniversary of the Grant Date.

(iii) If the Payment Event is a Waterfall Payment Event and a Waterfall Distribution Event occurs after the Grantee's Termination Date, the Payment Amount with respect to such event shall in no event be greater than the lesser of, for each vested Phantom Profits Interest Unit, (A) an amount that would be allocated to an equivalent number of Profits Interest Units with an equivalent Benchmark Amount if the Company were liquidated on the valuation date next following the Termination Date at fair market value (as determined in good faith by the Administrator) and (B) the amount specified in Section 5(b)(ii) above; provided that if a Waterfall Distribution Event occurs prior to the valuation date next following the Termination Date, the Payment Amount shall be the amount specified in Section 5(b)(ii). Such Payment Amount shall be paid to the Grantee within 30 days of the Initial Waterfall Distribution Event, and for any Subsequent Waterfall Distribution Event, shall be paid to the Grantee within 30 days of the earlier of a Qualifying Subsequent Waterfall Distribution Event or the fifth anniversary of the date of grant. No Payment Amount shall be paid to the Grantee with respect to any Subsequent Waterfall Distribution Event that is not a Qualifying Subsequent Waterfall Distribution Event and that occurs after the fifth anniversary of the Grant Date.

Acknowledgement by Grantee. All Awards shall be made conditional upon the Grantee's acknowledgement, in writing or by acceptance of the Award, that all decisions and determinations of the Administrator shall be final and binding on the Grantee, his or her beneficiaries, and any other person having or claiming an interest under such award. Awards need not be uniform as among the Grantees.

Forfeiture

Termination of Employment. Any and all of an Employee Grantee's unvested Phantom Profits Interest Units shall be forfeited upon the termination of the Grantee's employment for any reason.

Termination of Membership on the Board of Managers. Any and all of a Board Member Grantee's unvested Phantom Profits Interest Units shall be forfeited upon resignation or removal from the Board of Managers of the Company.

Termination of Employment for Cause. Any and all of an Employee Grantee's vested and unvested Phantom Profits Interest Units shall be forfeited upon the termination of the Grantee's employment for Cause. For purposes of this Plan, "Cause" shall have the meaning set forth in the written employment agreement between the Grantee and the Company in effect on the date of the Grantee's termination of employment, or if no such agreement exists, shall mean (i) conviction (including guilty plea or plea of nolo contendere) of any felony or any other crime involving fraud, violence or dishonesty; (ii) commission of or participation in a fraud or act of dishonesty or misrepresentation against the Company; (iii) violation of any written and fully executed contract or agreement between the Grantee and the Company, including without limitation, breach of Grantee's Proprietary Information, Inventions, Non-Competition and Non-Solicitation Agreement; (iv) gross negligence or willful misconduct, (v) continued and substantial failure to perform the Grantee's duties to the Company; or (vi) violation of any material policies, practices, or procedures of the Company.

Removal from the Board of Managers. Any and all of a Board Member Grantee's vested and unvested Phantom Profits Interest Units shall be forfeited upon the removal of the Grantee from the Board of Managers for Cause. For purposes of this Plan, "Cause" shall mean (i) conviction (including guilty plea or plea of nolo contendere) of any felony or any other crime involving fraud, violence or dishonesty; (ii) commission of or participation in a fraud or act of dishonesty or misrepresentation against the Company; (iii) violation of any agreement between the Grantee and the Company; (iv) gross negligence or willful misconduct; (v) continued and substantial failure to perform the Grantee's duties to the Company as a Member of the Board of Managers of the Company; or (vi) violation of any material policies, practices, or procedures of the Company including without limitation, the Company's Code of Conduct and Confidential Information policies.

Waterfall Distribution Event. As soon as practicable following an Initial Waterfall Distribution Event or any Subsequent Waterfall Distribution Event that results in an aggregate sale of Units representing a Percentage Interest of 100%, or upon a sale of all or substantially all of the assets of the Company, all vested and unvested Phantom Profits Interest Units shall be cancelled (after the Grantee has been paid any amounts due with respect to such Units, if applicable).

Confidentiality, Non-Compete, Non-Solicitation. Notwithstanding anything herein to the contrary, a Grantee shall forfeit any and all rights to all vested and unvested Phantom Profits Interest Units if the Grantee violates the terms of any confidentiality, non-solicitation and non-competition provisions of any agreement between the Grantee and the Company, if applicable.

Withholding of Taxes

All Awards under the Plan shall be subject to applicable federal (including FICA), state, and local tax withholding requirements. The Company may require that the Grantee pay to the Company the amount of any federal, state, or local taxes that the Company is required to withhold with respect to such Awards, or the Company may deduct from other wages paid by the Company the amount of any withholding taxes due with respect to such Awards.

Nontransferability of Awards

Only the Grantee has any rights under an Award. A Grantee may not transfer those rights, directly or indirectly, except by will or the laws of descent and distribution.

Limitations on Issuance or Transfer of Phantom Profits Interest Units

No Phantom Profits Interest Units shall be issued or transferred in connection with any Award until all legal requirements applicable to the issuance or transfer of such Phantom Profits Interest Units have been complied with to the satisfaction of the Administrator. The Administrator shall have the right to condition any Award made to any Grantee hereunder on such Grantee's undertaking in writing to comply with any restrictions on his or her subsequent disposition of such Phantom Profits Interest Units as the Administrator shall deem necessary or advisable.

Amendment and Termination of the Plan

Amendment and Termination. The Administrator may, in accordance with the LLC Agreement, amend the Plan or any Award under the Plan, or terminate the Plan, at any time; provided that no amendment or termination of the Plan or any Award shall, without the consent of a Grantee, adversely impact the rights of any Grantee under any Award granted to such Grantee under the Plan, unless necessary to meet the requirements of any applicable law or regulation. Before amending or terminating the Plan or any Award to meet the requirements of an applicable law or regulation, the Administrator will attempt to bring the Plan or Award into compliance with the applicable law or regulation without reducing the benefits or payments to a Grantee to the greatest extent possible. If amendment or termination is still necessary and adversely impacts the rights of a Grantee, the Administrator will reasonably cooperate with such Grantee to adopt replacement benefits or payments that to the greatest extent possible places the Grantee in the same or a comparable economic position as if the Plan or Award had not been amended or terminated.

Governing Document. In the event of any conflict between any Award in the form attached hereto as Exhibit A or B and the LLC Agreement, such Award shall control. In the event of any conflict between any subsequent Award not in the form attached hereto and the LLC Agreement, the LLC agreement shall control unless such subsequent Award has been approved by the Board and Smith & Nephew, Inc., in which case such Award shall control. No other statements, representations, explanatory materials or examples, oral or written, may amend the Plan in any manner. The Plan shall be binding upon and enforceable against the Company and its successors and assigns.

Funding of the Plan

This Plan shall be unfunded. The Company shall not be required to establish any special or separate fund or to make any other segregation of assets to assure the payment of any Awards under this Plan. In no event shall interest be paid or accrued on any Award.

Rights of Grantees

No Award shall entitle any Grantee to any (i) voting rights with respect to any action or decision taken or made (or to be taken or made) by the Company or the Board of Managers, (ii) right to appoint Managers to the Board of Managers, or (iii) appraisal or preemption rights. Nothing in this Plan shall entitle any Employee, Board Member or any other person to any claim or right to receive an Award under this Plan. Neither this Plan nor any action taken hereunder shall be construed as giving any individual any rights to be retained by or in the employ of the Company or any other employment rights.

Headings

Section headings are for reference only. In the event of a conflict between a title and the content of a Section, the content of the Section shall control.

Effective Date of the Plan

The initial effective date of the Plan was May 4, 2012. The amended and restated version of the Plan shall be effective on December 8, 2017.

Miscellaneous

Compliance with Law. The Plan and the obligations of the Company to issue or transfer Phantom Profits Interest Units in connection with Awards shall be subject to all applicable laws and to approvals by any governmental or regulatory agency as may be required. The Administrator may revoke any Award if it is contrary to law or modify an Award to bring it into compliance with any valid and mandatory government regulation. The Administrator may also adopt rules regarding the withholding of taxes on payments to Grantees. The Administrator may, in its sole discretion, agree to limit its authority under this Section.

Governing Law. The validity, construction, interpretation, and effect of the Plan and Award Agreements issued under the Plan shall be governed and construed by and determined in accordance with the laws of the State of Delaware, without giving effect to the conflict of laws provisions thereof.

BIOVENTUS LLC

PHANTOM PROFITS INTERESTS PLAN

AWARD AGREEMENT

The Administrator, as defined in the Bioventus LLC Phantom Profits Interests Plan (the "**Plan**"), of the Plan has decided to grant to you Phantom Profits Interest Units in the Company under the Plan. The terms of the grant (the "**Grant**") are set forth in this Bioventus LLC Phantom Profits Interests Plan Award Agreement (the "**Award Agreement**") provided to you. The following provides a summary of the key terms of the Grant; however, you should read the entire Award Agreement, along with the terms of the Plan and the Company's Amended and Restated Limited Liability Company Agreement (as might be amended), to fully understand the Grant.

SUMMARY OF PHANTOM PROFITS INTERESTS PLAN AWARD AGREEMENT

Grantee:	**Gregory Anglum**
Date of Award:	**April 4, 2016**
Vesting Schedule:	**20% vests on the first anniversary of the Effective Date and the remaining 80% vests in equal installments on a quarterly basis over the next four years**
Phantom Profits Interest Units Awarded:	**20,000**
Payment Event:	**Termination Payment Event**
Grant Date Benchmark Amount:	**$472,003,000**

BIOVENTUS LLC

PHANTOM PROFITS INTERESTS PLAN

AWARD AGREEMENT

This Bioventus LLC Phantom Profits Interests Plan Award Agreement (this "**Award Agreement**"), dated as of April 4, 2016 (the "**Effective Date**"), is delivered by Bioventus LLC (the "**Company**") to Gregory Anglum (the "**Grantee**").

RECITALS

A. The Bioventus LLC Phantom Profits Interests Plan (the "**Plan**") provides for the grant of Phantom Profits Interest Units in the Company in accordance with the terms of the Plan and the Amended and Restated Limited Liability Company Agreement of the Company, as amended (the "**LLC Agreement**"). The Administrator (as defined in the Plan) has granted the Award (as defined below) to encourage the Grantee to contribute materially to the growth of the Company's owners, thereby benefitting the Company, and to align the economic interests of the Grantee with those of the owners. A copy of the Plan is attached. All capitalized terms not defined herein shall have the meaning given to such terms in the Plan or, if not defined in the Plan, in the LLC Agreement.

B. The Administrator shall administer the Plan.

NOW, **THEREFORE**, the parties to this Award Agreement, intending to be legally bound, hereby agree as follows:

1. Grant of Phantom Profits Interests Units. Subject to the terms and conditions set forth in this Award Agreement, the Plan, and the LLC Agreement, the Company hereby grants to the Grantee 20,000 Phantom Profits Interest Units (the "**Award**"). This Award Agreement (which is effective as of the Effective Date upon the parties' exchange of signed counterpart signature pages hereto), the Plan, and the LLC Agreement govern the terms of the grant of the Award.

2. Vesting of Awarded Units.

(a) Unless otherwise determined by the Administrator, the Award shall vest in accordance with the following schedule (each date described below, a "**Vesting Date**"), if the Grantee is employed by the Company on the applicable Vesting Date.

Applicable Date	Vesting Percentage
1st anniversary of the Effective Date	20%
Each quarter after the 1st anniversary of the Effective Date	5%

(b) On a Payment Event, the Grantee shall receive the Payment Amount, if any, with respect to the portion of the Award that is vested, as set forth in Section 5(b)(i) of the Plan. Any portion of the Award that is unvested as of the Termination Date shall be forfeited at the time of the Grantee's termination.

(c) Upon an Initial Waterfall Distribution Event that occurs prior to the Grantee's Termination Date, the unvested portion of the Award shall vest at the time of such Initial Waterfall Distribution Event.

(d) Upon the termination of the Grantee's employment for Cause, both the vested and the unvested portion of the Award shall be forfeited.

3. Withholding. All obligations of the Company under this Agreement shall be subject to the rights of the Company to withhold amounts required to be withheld for any taxes, if applicable.

4. Restrictions on Transfer. Only the Grantee has any rights under this Award. The Grantee may not transfer those rights, directly or indirectly, except by will or the laws of descent and distribution.

5. Award Subject to Plan and LLC Agreement Provisions. This Award is made pursuant to the Plan and the LLC Agreement, the terms of which are incorporated herein by reference, and in all respects shall be interpreted in accordance with the Plan and the LLC Agreement. The Administrator shall have the full power and authority to administer and interpret the Plan and this Award Agreement, to make factual determinations, and to adopt or amend such rules, regulations, agreements, and instruments for implementing the Plan and this Award Agreement and for the conduct of its business as it deems necessary or advisable. All powers of the Administrator shall be executed without the approval or consent of the Grantee,

6. No Employment or Other Rights. This Award Agreement is not an agreement of employment and the grant of this Award shall not confer upon the Grantee any right to be retained by or in the employ of the Company and shall not interfere in any way with the right of the Company to terminate the Grantee's employment at any time. The right of the Company, as applicable, to terminate at will the Grantee's employment at any time for any reason is specifically reserved. The grant of this Award shall not entitle the Grantee to any (i) voting rights with respect to any action or decision taken or made (or to be taken or made) by the Company or the Board, (ii) right to appoint Managers to the Board, or (iii) appraisal or preemption rights.

7. Notice. Any notice to the Company provided for in this Award Agreement must be in writing and will be deemed given: (a) on the date established by the sender as having been delivered personally; (b) on the date delivered by a private, nationally recognized, overnight courier as established by the sender by evidence obtained from the courier; (c) on the date sent by facsimile, with confirmation of transmission, if sent during normal business hours of the recipient (and, if not sent during normal business hours of the recipient, then on the next business day); or (d) on the fifth business day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications, to be valid, must be addressed as follows:

If to the Company, to:

Bioventus LLC
4721 Emperor Blvd. Suite 100
Durham, NC 27703
Attention: General Counsel
Facsimile: 866-467-1531

If to the Grantee, to the address on file with the Company.

If more than one method for sending notice as set forth above is used, the earliest notice date established as set forth above will control for purposes of determining when such notice is deemed to have been given.

8. Amendment and Termination; Section 409A. The Administrator may amend the Plan or this Award, or terminate the Plan, at any time; provided that no amendment or termination of the Plan or this Award shall, without the consent of a Grantee, adversely impact the rights of the Grantee under this Award, unless necessary to meet the requirements of any applicable law or regulation. Before amending or terminating the Plan or this Award to meet the requirements of an applicable law or regulation, the Administrator will attempt to bring the Plan or Award into compliance with the applicable law or regulation without reducing the benefits or payments to the Grantee to the greatest extent possible. If amendment or termination is still necessary and adversely impacts the rights of the Grantee, the Administrator will reasonably cooperate with the Grantee to adopt replacement benefits or payments that to the greatest extent possible places the Grantee in the same or a comparable economic position as if the Plan or Award had not been amended or terminated.

Subject to the first paragraph of this Section 8, while the Company does not guarantee any particular tax treatment with respect to the Award, payment of the Payment Amount is intended to comply with Section 409A, to the extent subject thereto, and shall be interpreted and construed consistent with that intent. The Company may reform this Award or any provision hereof to maintain to the maximum extent practicable the original intent of the provision without violating the provisions of Section 409A, provided, that any deferral of payments shall be only for such time period as may be required to comply with Section 409A.

9. Headings. Section headings are for reference only. In the event of a conflict between a heading and the content of a Section, the content of the Section shall control.

10. Applicable Law. The validity, construction, interpretation and effect of this Award Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to the conflicts of laws provisions thereof.

IN WITNESS WHEREOF, the Company has caused its duly authorized officer to execute this Award Agreement, and the Grantee has executed this Award Agreement, effective as of the Effective Date.

Bioventus LLC

By: /s/ Leigh Ann Stradford

Name: Leigh Ann Stradford

Title: VP of Human Resources

I hereby accept the Award described in this Award Agreement, and I agree to be bound by the terms of this Award Agreement, the Plan and the LLC Agreement. I hereby further agree that all of the decisions and determinations of the Administrator shall be final and binding.

Grantee: /s/ Gregory Anglum

Gregory Anglum

Date: April 2016

Bioventus LLC
4721 Emperor Blvd., Suite 100
Durham, NC 27703
USA

1-919-474-6700
1-800-396-4325
www.BioventusGlobal.com

October 27, 2017

Gregory Anglum

RE: Bioventus Phantom Profit Interests Award

Dear Greg:

As Bioventus develops its global leadership position in Orthobiologics, you will play a key role in developing a great company that makes a difference in peoples' lives every day. In recognition of your expected contribution as the SVP and Chief Financial Officer, the Bioventus Leadership Team, Board of Managers and I have granted you 95,000 Phantom Profits Interests Units.

The Award is granted to you under and is subject to the terms of the Phantom Profits Interests Plan ("Plan") and your Bioventus LLC Phantom Profits Interests Plan Award Agreement ("Award Agreement"). A copy of the Plan and your Award Agreement are included with this letter and I encourage you to review both documents carefully.

To assist in your review of the Award, below is a brief summary of some of the key terms of this Award:

- **Phantom Profits Interests**: The Plan is designed to provide grantees the opportunity to share in the appreciation in value of the Company. Phantom Profits Interests Units awarded under the Plan, however, have no immediate value and do not reflect a true equity interest in the Company. In recognition of your anticipated contributions to the Company's growth, upon a Waterfall Distribution Event (defined in the Plan and summarized below) and subject to the waterfall, you, as the holder of Phantom Profits Interest Units, will be eligible to receive a cash payment equal to a share of the appreciation in the value of the Company from the Effective Date of your Award Agreement.
- **Grant Date Benchmark Amount**: The Grant Date Benchmark Amount represents the cumulative distributions that must be made by the Company under the Plan prior to grantees receiving payment. Note that since Units do not represent an equity interest in the Company, your award is not subject to a "strike" or "exercise" price or require you to fund any purchase of the interest.
- **Vesting Schedule**: For so long as you remain an employee of the Company, 20% of the Award will vest at the first anniversary of the Effective Date and 5% of the Award will vest each quarter thereafter**.**

- **Termination**: Upon termination of your employment for any reason other than for Cause (as defined in the Plan) the Company will repurchase any vested Profits Interest Units granted with this Award. All vested and unvested units are forfeited in the event of termination for Cause.
- **Waterfall Distribution Event**: In the event that the Company is sold or sells all or substantially all of its assets or a similar event occurs (a "Waterfall Distribution Event") prior to the termination of your employment with the Company, your Award will vest at the time of such Initial Waterfall Distribution Event. Listed below is an example of potential value per PPI Unit at a Waterfall, and how the Waterfall Distribution is calculated. The payout amounts shown below are provided for illustrative purposes only. Actual payouts under the Plan may vary from those shown and are subject to all of the terms of the Plan documents and applicable withholding requirements.

Illustrative Waterfall Scenarios
(as of 10.31.16)

Enterprise value	$800M	$ 1BILLLION
Approximate $ payout/unit	$ 5.07	$ 19.97

***Assumes $510M benchmark

- **Waterfall Distribution Formula**: Enterprise Value - Debt (net of cash) - Benchmark of PPI units = Remaining Equity Value available for Distribution / Units Outstanding = PPI Payout per unit

I am delighted to be notifying you of this Award and I look forward to a productive and enjoyable working relationship.

Sincerely,

/s/ Anthony P. Bihl

Anthony P. Bihl
Chief Executive Officer

Enclosures

This letter has been provided to you by the Company solely for your information and may be deemed to contain forward-looking statements, which involve known and unknown risks and uncertainties. Given these risks and uncertainties, you are advised not to place any undue reliance on such forward-looking statements. Specifically, the Company does not make any representations or warranties, express or implied, as to the ultimate value of your Award or whether a Waterfall Distribution Event will occur. In the event of any inconsistency between this letter and the Plan, the provisions of the Plan shall govern.

BIOVENTUS LLC
PHANTOM PROFITS INTERESTS PLAN

AWARD AGREEMENT

The Administrator, as defined in the Bioventus LLC Phantom Profits Interests Plan (the "**Plan**"), of the Plan has decided to grant to you Phantom Profits Interest Units in the Company under the Plan. The terms of the grant (the "**Grant**") are set forth in this Bioventus LLC Phantom Profits Interests Plan Award Agreement (the "**Award Agreement**") provided to you. The following provides a summary of the key terms of the Grant; however, you should read the entire Award Agreement, along with the terms of the Plan and the Company's Amended and Restated Limited Liability Company Agreement (as might be amended), to fully understand the Grant.

SUMMARY OF PHANTOM PROFITS INTERESTS PLAN AWARD AGREEMENT

Grantee:	**Gregory Anglum**
Date of Award:	**May 1, 2017**
Vesting Schedule:	**20% vests on the first anniversary of the Effective Date and the remaining 80% vests in equal installments on a quarterly basis over the next four years**
Phantom Profits Interest Units Awarded:	**95,000**
Payment Event:	**Termination Payment Event**
Grant Date Benchmark Amount:	**$510,000,000**

BIOVENTUS LLC

PHANTOM PROFITS INTERESTS PLAN

AWARD AGREEMENT

This Bioventus LLC Phantom Profits Interests Plan Award Agreement (this "**Award Agreement**"), dated as of May 1, 2017 (the "**Effective Date**"), is delivered by Bioventus LLC (the "**Company**") to Gregory Anglum (the "**Grantee**").

RECITALS

A. The Bioventus LLC Phantom Profits Interests Plan (the "**Plan**") provides for the grant of Phantom Profits Interest Units in the Company in accordance with the terms of the Plan and the Amended and Restated Limited Liability Company Agreement of the Company, as amended (the "**LLC Agreement**"). The Administrator (as defined in the Plan) has granted the Award (as defined below) to encourage the Grantee to contribute materially to the growth of the Company's owners, thereby benefitting the Company, and to align the economic interests of the Grantee with those of the owners. A copy of the Plan is attached. All capitalized terms not defined herein shall have the meaning given to such terms in the Plan or, if not defined in the Plan, in the LLC Agreement.

B. The Administrator shall administer the Plan.

NOW, THEREFORE, the parties to this Award Agreement, intending to be legally bound, hereby agree as follows:

Grant of Phantom Profits Interests Units. Subject to the terms and conditions set forth in this Award Agreement, the Plan, and the LLC Agreement, the Company hereby grants to the Grantee 95,000 Phantom Profits Interest Units (the "Award"). This Award Agreement (which is effective as of the Effective Date upon the parties' exchange of signed counterpart signature pages hereto), the Plan, and the LLC Agreement govern the terms of the grant of the Award.

Vesting of Awarded Units.

Unless otherwise determined by the Administrator, the Award shall vest in accordance with the following schedule (each date described below, a "**Vesting Date**"), if the Grantee is employed by the Company on the applicable Vesting Date.

Applicable Date	Vesting Percentage
1st anniversary of the Effective Date	20%
Each quarter after the 1st anniversary of the Effective Date	5%

On a Payment Event, the Grantee shall receive the Payment Amount, if any, with respect to the portion of the Award that is vested, as set forth in Section 5(b)(i) of the Plan. Any portion of the Award that is unvested as of the Termination Date shall be forfeited at the time of the Grantee's termination.

Upon an Initial Waterfall Distribution Event that occurs prior to the Grantee's Termination Date, the unvested portion of the Award shall vest at the time of such Initial Waterfall Distribution Event.

Upon the termination of the Grantee's employment for Cause, both the vested and the unvested portion of the Award shall be forfeited.

Withholding. All obligations of the Company under this Agreement shall be subject to the rights of the Company to withhold amounts required to be withheld for any taxes, if applicable.

Restrictions on Transfer. Only the Grantee has any rights under this Award. The Grantee may not transfer those rights, directly or indirectly, except by will or the laws of descent and distribution.

Award Subject to Plan and LLC Agreement Provisions. This Award is made pursuant to the Plan and the LLC Agreement, the terms of which are incorporated herein by reference, and in all respects shall be interpreted in accordance with the Plan and the LLC Agreement. The Administrator shall have the full power and authority to administer and interpret the Plan and this Award Agreement, to make factual determinations, and to adopt or amend such rules, regulations, agreements, and instruments for implementing the Plan and this Award Agreement and for the conduct of its business as it deems necessary or advisable. All powers of the Administrator shall be executed without the approval or consent of the Grantee.

No Employment or Other Rights. This Award Agreement is not an agreement of employment and the grant of this Award shall not confer upon the Grantee any right to be retained by or in the employ of the Company and shall not interfere in any way with the right of the Company to terminate the Grantee's employment at any time. The right of the Company, as applicable, to terminate at will the Grantee's employment at any time for any reason is specifically reserved. The grant of this Award shall not entitle the Grantee to any (i) voting rights with respect to any action or decision taken or made (or to be taken or made) by the Company or the Board, (ii) right to appoint Managers to the Board, or (iii) appraisal or preemption rights.

Notice. Any notice to the Company provided for in this Award Agreement must be in writing and will be deemed given: (a) on the date established by the sender as having been delivered personally; (b) on the date delivered by a private, nationally recognized, overnight courier as established by the sender by evidence obtained from the courier; (c) on the date sent by facsimile, with confirmation of transmission, if sent during normal business hours of the recipient (and, if not sent during normal business hours of the recipient, then on the next business day); or (d) on the fifth business day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications, to be valid, must be addressed as follows:

If to the Company, to:

Bioventus LLC
4721 Emperor Blvd. Suite 100
Durham, NC 27703
Attention: General Counsel
Facsimile: 866-467-1531

If to the Grantee, to the address on file with the Company.

If more than one method for sending notice as set forth above is used, the earliest notice date established as set forth above will control for purposes of determining when such notice is deemed to have been given.

Amendment and Termination; Section 409A. The Administrator may amend the Plan or this Award, or terminate the Plan, at any time; provided that no amendment or termination of the Plan or this Award shall, without the consent of a Grantee, adversely impact the rights of the Grantee under this Award, unless necessary to meet the requirements of any applicable law or regulation. Before amending or terminating the Plan or this Award to meet the requirements of an applicable law or regulation, the Administrator will attempt to bring the Plan or Award into compliance with the applicable law or regulation without reducing the benefits or payments to the Grantee to the greatest extent possible. If amendment or termination is still necessary and adversely impacts the rights of the Grantee, the Administrator will reasonably cooperate with the Grantee to adopt replacement benefits or payments that to the greatest extent possible places the Grantee in the same or a comparable economic position as if the Plan or Award had not been amended or terminated.

Subject to the first paragraph of this Section 8, while the Company does not guarantee any particular tax treatment with respect to the Award, payment of the Payment Amount is intended to comply with Section 409A, to the extent subject thereto, and shall be interpreted and construed consistent with that intent. The Company may reform this Award or any provision hereof to maintain to the maximum extent practicable the original intent of the provision without violating the provisions of Section 409A, provided, that any deferral of payments shall be only for such time period as may be required to comply with Section 409A.

Headings. Section headings are for reference only. In the event of a conflict between a heading and the content of a Section, the content of the Section shall control.

Applicable Law. The validity, construction, interpretation and effect of this Award Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to the conflicts of laws provisions thereof.

IN WITNESS WHEREOF, the Company has caused its duly authorized officer to execute this Award Agreement, and the Grantee has executed this Award Agreement, effective as of the Effective Date.

Bioventus LLC

By: /s/ Leigh Ann Stradford

Name: Leigh Ann Stradford

Title: SVP of Human Resources

I hereby accept the Award described in this Award Agreement, and I agree to be bound by the terms of this Award Agreement, the Plan and the LLC Agreement. I hereby further agree that all of the decisions and determinations of the Administrator shall be final and binding.

Grantee: /s/ Gregory Anglum

Gregory Anglum

Date: 10/28/2017

BIOVENTUS LLC

PHANTOM PROFITS INTERESTS PLAN

AS AMENDED AND RESTATED DECEMBER 30, 2015

The purpose of the Bioventus LLC Phantom Profits Interests Plan (the "**Plan**") is to provide eligible employees and independent members of the Board of Managers of Bioventus LLC (the "**Company**") who are important to the success and growth of the business of the Company an opportunity to share in the future appreciation in value of the Company by receiving grants of Phantom Profits Interest Units in the Company. The Company believes that the Plan will encourage participants to contribute materially to the growth of the Company's owners, thereby benefiting the Company, and will align the economic interests of the participants with those of the owners. Awards under the Plan shall consist of grants of Phantom Profits Interest Units as described in Section 5 ("**Awards**"). Capitalized terms that are used but not defined herein shall have the respective meanings accorded to such terms in the Amended and Restated Limited Liability Company Agreement of the Company, as amended (the "**LLC Agreement**").

Definitions.

"**Benchmark Amount**" means the cumulative distributions that must be made by the Company pursuant to the LLC Agreement before a Grantee is entitled to receive any distributions in respect of such Grantee's Phantom Profits Interest Units. The Benchmark Amount shall equal $231,372,549.02 or such other greater amount as set forth in the applicable Award Agreement.

"**Board Member**" means an independent member of the Board of Managers of the Company appointed or elected to the Board of Managers on or after January 1, 2016.

"Code" means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

"Employee" means an employee of the Company.

"Grantee" means an Employee or Board Member who receives an Award.

"**Initial Waterfall Distribution Event**" means the closing of (i) a sale of Units representing a Percentage Interest of more than 66.66%, or (ii) a sale of all or substantially all of the assets of the Company; provided that such event constitutes a change in ownership or a change in effective control of the Company within the meaning of Section 409A of the Code.

"**Management Distribution Cap**" means 14.4% of the aggregate amount, if any, available for distribution pursuant to Section 10.05(a)(v) of the LLC Agreement.

"Management Incentive Plan" means the Bioventus LLC Management Incentive Plan.

"**Payment Amount**" means the amount payable with respect to each vested Phantom Profits Interest Unit upon the applicable Payment Event.

"**Phantom Profits Interest Unit**" means a right to receive cash in an amount equal to the Payment Amount upon the Payment Event as set forth in the applicable Award Agreement.

"**Profits Interest Unit**" means a non-managing, non-voting ownership interest in the Company issued pursuant to Section 3.01(b) of the LLC Agreement and the Management Incentive Plan.

"**Qualifying Subsequent Waterfall Distribution Event**" means a Subsequent Waterfall Distribution Event that constitutes a change in ownership or a change in effective control of the Company within the meaning of Section 409A of the Code.

"**Subsequent Waterfall Distribution Event**" means, following an Initial Waterfall Distribution Event under Section 1(a) above with respect to Units representing a Percentage Interest of less than 100%, the closing of (i) a subsequent sale of Units, or (ii) a sale of all or substantially all of the assets of the Company

"**Termination Date**" means in the case of an Employee, the date of the Grantee's separation of service, as defined in Section 409A of the Code, and in the case of a Board Member, resignation or removal from the Board of Managers of the Company.

"**Waterfall Distribution Event**" means an Initial Waterfall Distribution Event or a Subsequent Waterfall Distribution Event.

Administration

Administration. The Plan shall be administered and interpreted by the Board of Managers (the "**Administrator**") or by a committee or subcommittee, which shall be appointed by the Administrator. To the extent that a committee or subcommittee administers the Plan, references in the Plan to the "Administrator" shall be deemed to refer to the committee or the subcommittee.

Administrator Authority. The Administrator shall determine (i) the Employees and Board Members to receive Awards, (ii) the size and terms of the Awards, (iii) the time when the Awards will be made, (iv) the applicable Payment Event, (v) the duration of any applicable vesting period, provided that such vesting period shall not be less than four years and that the Award shall vest ratably over the vesting period, and (vi) the Benchmark Amount with respect to any Award.

Administrator Determinations. The Administrator shall have full power and authority to administer and interpret the Plan, to make factual determinations, and to adopt or amend such rules, regulations, agreements, and instruments for implementing the Plan and for the conduct of its business as it deems necessary or advisable. All powers of the Administrator shall be executed without the approval or consent of the Grantees.

Interests Subject to the Plan

Awards Authorized by the LLC Agreement. The total amount of Phantom Profits Interest Units available for grants under the Plan, when combined with the total amount of Profits Interest Units (as defined in the Management Incentive Plan) granted under the Management Incentive Plan and any other form of employee, management or other service provider equity or equity-related awards of the Company, shall not result in aggregate distributions to the holders thereof in excess of the Management Distribution Cap (such amount determined, solely for this purpose, as if there were no Phantom Profits Interest Units or Other Management Equity Awards (as defined in the LLC Agreement)) ("Excess Distributions"), unless and to the extent that S&N and the Essex Members consent in their capacity as Members to such Excess Distributions. If, and to the extent that, Phantom Profits Interest Units granted under the Plan terminate or are canceled, forfeited, exchanged, or surrendered without payment, such Phantom Profits Interest Units shall be available again for purposes of the Plan.

Adjustments. If there is any change in the total amount or kind of Phantom Profits Interest Units outstanding (i) by reason of a spinoff, split of the Phantom Profits Interest Units, reclassification, combination, or exchange of such Phantom Profits Interest Units or similar event; (ii) by reason of a merger, reorganization, or consolidation; (iii) by reason of any other extraordinary or unusual event affecting the outstanding Phantom Profits Interest Units as a class without the Company's receipt of consideration; or (iv) by reason of a change in the structure of the Company, or if the value of the outstanding Phantom Profits Interest Units are substantially reduced as a result of a spinoff, the amount or percentage of such Phantom Profits Interest Units covered by outstanding Awards, and the kind of Phantom Profits Interest Units issued under the Plan shall be appropriately adjusted by the Administrator to reflect any increase or decrease in the amount of, or change in the kind or value of, issued Phantom Profits Interest Units to preclude, to the extent practicable, the enlargement or dilution of rights and benefits under such Awards. Any adjustments determined by the Administrator shall be final, binding, and conclusive.

Eligibility for Participation

All Employees and Board Members who are designated by the Administrator shall be eligible to participate in the Plan.

Grants of Awards

Award Agreement. All Awards shall be subject to the terms and conditions of this Plan, the terms of the LLC Agreement, and the Grantee's award instrument (the "**Award Agreement**"). Each Award Agreement shall contain the number of Phantom Profits Interest Units underlying the Grantee's Award and the applicable grant date Benchmark Amount (subject to adjustment as provided in the LLC Agreement), and each Award shall vest in accordance with the terms of the Grantee's Award Agreement. The Award Agreement shall also designate whether the Payment Amount shall be paid (i) upon the earlier of the Grantee's Termination Date or an Initial Waterfall Distribution Event (with any subsequent amounts paid upon the earlier of a Qualifying Subsequent Waterfall Distribution Event or the Grantee's Termination Date) (a "**Termination Payment Event**") or (ii) upon an Initial Waterfall Distribution Event, with any subsequent amounts paid upon the earlier of (A) a Qualifying Subsequent Waterfall Distribution Event or (B) provided that a Subsequent Waterfall event has occurred, the fifth anniversary of the grant date (a "**Waterfall Payment Event**") (a Termination Payment Event or a Waterfall Payment Event, also referred to as the "**Payment Event**").

Payment Amount.

(i) If the Payment Event is a Termination Payment Event, the Payment Amount shall be, for each vested Phantom Profits Interest Unit, an amount that would be allocated to an equivalent number of Profits Interest Units with an equivalent Benchmark Amount, (A) if the Grantee's Termination Date is prior to a Waterfall Distribution Event, as if the Company were liquidated on the Termination Date at fair market value (as determined in good faith by the Administrator), or (B) where there is an Initial Waterfall Distribution Event and one or more Subsequent Waterfall Distribution Events prior to the Termination Date, pursuant to the LLC Agreement with respect to each such Waterfall Distribution Event. Such Payment Amount shall be paid to the Grantee within 30 days of the Termination Date, the Initial Waterfall Distribution Event, or any Qualifying Subsequent Waterfall Distribution Event, as applicable. In the event that a Subsequent Waterfall Distribution Event is not a Qualifying Subsequent Waterfall Distribution Event, the Payment Amount with respect to such Subsequent Waterfall Distribution Event shall be paid within 30 days of the Termination Date. No further Payment Amount shall be paid to the Grantee with respect to Waterfall Distribution Events following the Grantee's Termination Date.

(ii) Subject to (iii) below, if the Payment Event is a Waterfall Payment Event and a Waterfall Distribution Event occurs before the Grantee's Termination Date, the Payment Amount shall be equal to, for each vested Phantom Profits Interest Unit, an amount that would be payable with respect to the equivalent number of Profits Interest Units with an equivalent Benchmark Amount pursuant to the LLC Agreement. Such Payment Amount shall be paid to the Grantee within 30 days of an Initial Waterfall Distribution Event, and for any Subsequent Waterfall Distribution Event, shall be paid to the Grantee within 30 days of the earlier of a Qualifying Subsequent Waterfall Distribution Event or the fifth anniversary of the date of grant. No Payment Amount shall be paid to the Grantee with respect to any Subsequent Waterfall Distribution Event that is not a Qualifying Subsequent Waterfall Distribution Event and that occurs after the fifth anniversary of the Grant Date.

(iii) If the Payment Event is a Waterfall Payment Event and a Waterfall Distribution Event occurs after the Grantee's Termination Date, the Payment Amount with respect to such event shall in no event be greater than the lesser of, for each vested Phantom Profits Interest Unit, (A) an amount that would be allocated to an equivalent number of Profits Interest Units with an equivalent Benchmark Amount if the Company were liquidated on the valuation date next following the Termination Date at fair market value (as determined in good faith by the Administrator) and (B) the amount specified in Section 5(b)(ii) above; provided that if a Waterfall Distribution Event occurs prior to the valuation date next following the Termination Date, the Payment Amount shall be the amount specified in Section 5(b)(ii). Such Payment Amount shall be paid to the Grantee within 30 days of the Initial Waterfall Distribution Event, and for any Subsequent Waterfall Distribution Event, shall be paid to the Grantee within 30 days of the earlier of a Qualifying Subsequent Waterfall Distribution Event or the fifth anniversary of the date of grant. No Payment Amount shall be paid to the Grantee with respect to any Subsequent Waterfall Distribution Event that is not a Qualifying Subsequent Waterfall Distribution Event and that occurs after the fifth anniversary of the Grant Date.

Acknowledgement by Grantee. All Awards shall be made conditional upon the Grantee's acknowledgement, in writing or by acceptance of the Award, that all decisions and determinations of the Administrator shall be final and binding on the Grantee, his or her beneficiaries, and any other person having or claiming an interest under such award. Awards need not be uniform as among the Grantees.

Forfeiture

Termination of Employment. Any and all of an Employee Grantee's unvested Phantom Profits Interest Units shall be forfeited upon the termination of the Grantee's employment for any reason.

Termination of Membership on the Board of Managers. Any and all of a Board Member Grantee's unvested Phantom Profits Interest Units shall be forfeited upon resignation or removal from the Board of Managers of the Company.

Termination of Employment for Cause. Any and all of an Employee Grantee's vested and unvested Phantom Profits Interest Units shall be forfeited upon the termination of the Grantee's employment for Cause. For purposes of this Plan, "Cause" shall have the meaning set forth in the written employment agreement between the Grantee and the Company in effect on the date of the Grantee's termination of employment, or if no such agreement exists, shall mean (i) conviction (including guilty plea or plea of nolo contendere) of any felony or any other crime involving fraud, violence or dishonesty; (ii) commission of or participation in a fraud or act of dishonesty or misrepresentation against the Company; (iii) violation of any written and fully executed contract or agreement between the Grantee and the Company, including without limitation, breach of Grantee's Proprietary Information, Inventions, Non-Competition and Non-Solicitation Agreement; (iv) gross negligence or willful misconduct, (v) continued and substantial failure to perform the Grantee's duties to the Company; or (vi) violation of any material policies, practices, or procedures of the Company.

Removal from the Board of Managers. Any and all of a Board Member Grantee's vested and unvested Phantom Profits Interest Units shall be forfeited upon the removal of the Grantee from the Board of Managers for Cause. For purposes of this Plan, "Cause" shall mean (i) conviction (including guilty plea or plea of nolo contendere) of any felony or any other crime involving fraud, violence or dishonesty; (ii) commission of or participation in a fraud or act of dishonesty or misrepresentation against the Company; (iii) violation of any agreement between the Grantee and the Company; (iv) gross negligence or willful misconduct; (v) continued and substantial failure to perform the Grantee's duties to the Company as a Member of the Board of Managers of the Company; or (vi) violation of any material policies, practices, or procedures of the Company including without limitation, the Company's Code of Conduct and Confidential Information policies.

Waterfall Distribution Event. As soon as practicable following an Initial Waterfall Distribution Event or any Subsequent Waterfall Distribution Event that results in an aggregate sale of Units representing a Percentage Interest of 100%, or upon a sale of all or substantially all of the assets of the Company, all vested and unvested Phantom Profits Interest Units shall be cancelled (after the Grantee has been paid any amounts due with respect to such Units, if applicable).

Confidentiality, Non-Compete, Non-Solicitation. Notwithstanding anything herein to the contrary, a Grantee shall forfeit any and all rights to all vested and unvested Phantom Profits Interest Units if the Grantee violates the terms of any confidentiality, non-solicitation and non-competition provisions of any agreement between the Grantee and the Company, if applicable.

Withholding of Taxes

All Awards under the Plan shall be subject to applicable federal (including FICA), state, and local tax withholding requirements. The Company may require that the Grantee pay to the Company the amount of any federal, state, or local taxes that the Company is required to withhold with respect to such Awards, or the Company may deduct from other wages paid by the Company the amount of any withholding taxes due with respect to such Awards.

Nontransferability of Awards

Only the Grantee has any rights under an Award. A Grantee may not transfer those rights, directly or indirectly, except by will or the laws of descent and distribution.

Limitations on Issuance or Transfer of Phantom Profits Interest Units

No Phantom Profits Interest Units shall be issued or transferred in connection with any Award until all legal requirements applicable to the issuance or transfer of such Phantom Profits Interest Units have been complied with to the satisfaction of the Administrator. The Administrator shall have the right to condition any Award made to any Grantee hereunder on such Grantee's undertaking in writing to comply with any restrictions on his or her subsequent disposition of such Phantom Profits Interest Units as the Administrator shall deem necessary or advisable.

Amendment and Termination of the Plan

Amendment and Termination. The Administrator may, in accordance with the LLC Agreement, amend the Plan or any Award under the Plan, or terminate the Plan, at any time; provided that no amendment or termination of the Plan or any Award shall, without the consent of a Grantee, adversely impact the rights of any Grantee under any Award granted to such Grantee under the Plan, unless necessary to meet the requirements of any applicable law or regulation. Before amending or terminating the Plan or any Award to meet the requirements of an applicable law or regulation, the Administrator will attempt to bring the Plan or Award into compliance with the applicable law or regulation without reducing the benefits or payments to a Grantee to the greatest extent possible. If amendment or termination is still necessary and adversely impacts the rights of a Grantee, the Administrator will reasonably cooperate with such Grantee to adopt replacement benefits or payments that to the greatest extent possible places the Grantee in the same or a comparable economic position as if the Plan or Award had not been amended or terminated.

Governing Document. In the event of any conflict between any Award in the form attached hereto as Exhibit A or B and the LLC Agreement, such Award shall control. In the event of any conflict between any subsequent Award not in the form attached hereto and the LLC Agreement, the LLC agreement shall control unless such subsequent Award has been approved by the Board and Smith & Nephew, Inc., in which case such Award shall control. No other statements, representations, explanatory materials or examples, oral or written, may amend the Plan in any manner. The Plan shall be binding upon and enforceable against the Company and its successors and assigns.

Funding of the Plan

This Plan shall be unfunded. The Company shall not be required to establish any special or separate fund or to make any other segregation of assets to assure the payment of any Awards under this Plan. In no event shall interest be paid or accrued on any Award.

Rights of Grantees

No Award shall entitle any Grantee to any (i) voting rights with respect to any action or decision taken or made (or to be taken or made) by the Company or the Board of Managers, (ii) right to appoint Managers to the Board of Managers, or (iii) appraisal or preemption rights. Nothing in this Plan shall entitle any Employee, Board Member or any other person to any claim or right to receive an Award under this Plan. Neither this Plan nor any action taken hereunder shall be construed as giving any individual any rights to be retained by or in the employ of the Company or any other employment rights.

Headings

Section headings are for reference only. In the event of a conflict between a title and the content of a Section, the content of the Section shall control.

Effective Date of the Plan

The initial effective date of the Plan was May 4, 2012. The amended and restated version of the Plan shall be effective on December 30, 2015.

Miscellaneous

Compliance with Law. The Plan and the obligations of the Company to issue or transfer Phantom Profits Interest Units in connection with Awards shall be subject to all applicable laws and to approvals by any governmental or regulatory agency as may be required. The Administrator may revoke any Award if it is contrary to law or modify an Award to bring it into compliance with any valid and mandatory government regulation. The Administrator may also adopt rules regarding the withholding of taxes on payments to Grantees. The Administrator may, in its sole discretion, agree to limit its authority under this Section.

Governing Law. The validity, construction, interpretation, and effect of the Plan and Award Agreements issued under the Plan shall be governed and construed by and determined in accordance with the laws of the State of Delaware, without giving effect to the conflict of laws provisions thereof.

Exhibit 10.22

Bioventus LLC
4721 Emperor Blvd., Suite 100
Durham, NC 27703
USA

1-919-474-6700
1-800-396-4325
www.BioventusGlobal.com

September 17, 2018

Gregory Anglum

RE: Bioventus Phantom Profit Interests Award

Dear Greg:

As Bioventus drives forward to become a global leader in Orthobiologics, we will rely on the continued strong contribution of key leaders like yourself. In recognition, and as incentive for this contribution, our Board of Managers has approved an additional pool of Phantom Profits Interests Units to be awarded to a select group of leaders who we believe will have the greatest impact in achieving our mission. You have been designated as one of these key leaders and, as a result, you are being granted 20,000 Phantom Profits Interests Units.

This Performance Units Award is granted to you under, and is subject to, all of the terms of the Phantom Profits Interests Plan ("Plan") and the applicable Bioventus LLC Phantom Profits Interests Plan Award Agreement ("Award Agreement"). A copy of the Plan and your corresponding Award Agreement are included with this letter and I encourage you to review both documents carefully.

We recognize that consistent and predictable revenue growth will be an important measure of our future success, and this growth is therefore a key component for vesting of the 2018 Performance Units. The plan provides for cliff-vesting of the units on June 1, 2021, based on 2020 revenue attainment consistent with the projections specified below. The Vesting Schedule for 2018 Performance Units is as follows:

Vesting Schedule:

Cliff vesting if, and only if, 2020 revenue growth is attained as outlined below:

1. Revenue is equal to or greater than $391.8M, 100% of the units vest.
2. Revenue is equal to or greater than $370.8M, 75% of the units vest and the remaining units expire.
3. Revenue is equal to or greater than $350.6M, 50% of the units vest and the remaining units expire.
4. Revenue is less than $350.6M, none of the units vest and all of the units expire.

Shown below is an example of potential value of a PPI Unit at a Waterfall, and how the Waterfall Distribution is calculated. The payout amounts shown below are provided for illustrative purposes and shall apply only to units vested pursuant to the above-referenced schedule. Actual payouts under the Plan may vary from those shown and are subject to all of the terms of the Plan documents and applicable withholding requirements[1].

Illustrative Waterfall Scenarios[2]
(as of 10.31.17)

Enterprise value	**$1 BILLION**	**$1.2 BILLION**
Approximate $ payout/unit	$ 4.87	$ 19.23

Assumes $703,691,178 benchmark[2]

I am delighted to notify you of this Award and I look forward to celebrating with you as we achieve our mission and continue to impact the lives of thousands of people around the world each year!

Sincerely,

/s/ Anthony P. Bihl
Anthony P. Bihl
Chief Executive Officer

Enclosures

1 **The revenue targets and any other financial projections contained in this letter have been provided to you by the Company solely for your information and may be deemed to be forward-looking statements, which involve known and unknown risks and uncertainties. Given these risks and uncertainties, you are advised not to place any undue reliance on such forward-looking statements. Further, the Company does not make any representations or warranties, express or implied, as to the ultimate value of your Award or whether a Waterfall Distribution Event will occur. In the event of any inconsistency between this letter and the Plan, the provisions of the Plan shall govern.**

2 **Waterfall Distribution Formula**:
Enterprise Value - Debt (net of cash) - Benchmark of PPI units = Remaining Equity Value available for Distribution/Units Outstanding = PPI Payout per unit

BIOVENTUS LLC
PHANTOM PROFITS INTERESTS PLAN

AWARD AGREEMENT

The Administrator, as defined in the Bioventus LLC Phantom Profits Interests Plan (the "**Plan**"), of the Plan has decided to grant to you Phantom Profits Interest Units in the Company under the Plan. The terms of the grant (the "Grant") are set forth in this Bioventus LLC Phantom Profits Interests Plan Award Agreement (the "**Award Agreement**") provided to you. The following provides a summary of the key terms of the Grant; however, you should read the entire Award Agreement, along with the terms of the Plan and the Company's Amended and Restated Limited Liability Company Agreement (as might be amended), to fully understand the Grant.

SUMMARY OF PHANTOM PROFITS INTERESTS PLAN AWARD AGREEMENT

Grantee:	**Gregory Anglum**
Date of Award:	**September 17, 2018**
Vesting Schedule:	**On June 1, 2021, the plan provides for cliff- vesting, if and only if, the 2020 revenue attainment is consistent with the projections outlined below:** **1. Revenue is equal to or greater than $391.8M, 100% of the units vest.** **2. Revenue is equal to or greater than $370.8M, 75% of the units vest and the remaining units expire.** **3. Revenue is equal to or greater than $350.6M, 50% of the units vest and the remaining units expire.** **4. Revenue is less than $350.6M, none of the units vest and all of the units expire.**
Phantom Profits Interest Units Awarded:	**20,000**
Payment Event:	**Termination Payment Event**
Grant Date Benchmark Amount:	**$703,691,178**

BIOVENTUS LLC

PHANTOM PROFITS INTERESTS PLAN

AWARD AGREEMENT

This Bioventus LLC Phantom Profits Interests Plan Award Agreement (this "**Award Agreement**"), dated as of September 17, 2018 (the "**Effective Date**"), is delivered by Bioventus LLC (the "**Company**") to Gregory Anglum (the "**Grantee**").

RECITALS

A. The Bioventus LLC Phantom Profits Interests Plan (the "**Plan**") provides for the grant of Phantom Profits Interest Units in the Company in accordance with the terms of the Plan and the Amended and Restated Limited Liability Company Agreement of the Company, as amended (the "**LLC Agreement**"). The Administrator (as defined in the Plan) has granted the Award (as defined below) to encourage the Grantee to contribute materially to the growth of the Company's owners, thereby benefitting the Company, and to align the economic interests of the Grantee with those of the owners. A copy of the Plan is attached. All capitalized terms not defined herein shall have the meaning given to such terms in the Plan or, if not defined in the Plan, in the LLC Agreement.

B. The Administrator shall administer the Plan.

NOW, THEREFORE, the parties to this Award Agreement, intending to be legally bound, hereby agree as follows:

Grant of Phantom Profits Interests Units. Subject to the terms and conditions set forth in this Award Agreement, the Plan, and the LLC Agreement, the Company hereby grants to the Grantee 20,000 Phantom Profits Interest Units (the "**Award**"). This Award Agreement (which is effective as of the Effective Date upon the parties' exchange of signed counterpart signature pages hereto), the Plan, and the LLC Agreement govern the terms of the grant of the Award.

Vesting of Awarded Units.

Unless otherwise determined by the Administrator, the Award shall vest in accordance with the following schedule on June 1, 2021 (the "**Vesting Date**"), if the Grantee is employed by the Company on such Vesting Date.

The Award is subject to cliff-vesting in amounts as determined by the schedule below if, and only if, the Company's annual revenue for calendar year 2020 equals or exceeds $350.6M:

1. $391.8M, then 100% of the Award shall vest on the Vesting Date
2. $370.8M, then 75% of the Award shall vest on the Vesting Date and the remaining units expire.
3. $350.6M, then 50% of the Award shall vest on the Vesting Date and the remaining units expire.

4. Less than $350.6M, none of the Awarded units shall vest and all of the units shall expire.

Revenue numbers will be determined by Bioventus in accordance with accounting principles generally accepted in the United States and consistent with Bioventus' accounting policies.

On a Payment Event, the Grantee shall receive the Payment Amount, if any, with respect to the portion of the Award that is vested, as set forth in Section 5(b)(i) of the Plan. Any portion of the Award that is unvested as of the Vesting Date shall be forfeited.

Any and all of a Grantee's unvested Phantom Profits Interest Units shall be forfeited upon the termination of the Grantee's employment for any reason.

Upon the termination of the Grantee's employment for Cause, both the vested and the unvested portion of the Award shall be forfeited.

Withholding. All obligations of the Company under this Agreement shall be subject to the rights of the Company to withhold amounts required to be withheld for any taxes, if applicable.

Restrictions on Transfer. Only the Grantee has any rights under this Award. The Grantee may not transfer those rights, directly or indirectly, except by will or the laws of descent and distribution.

Award Subject to Plan and LLC Agreement Provisions. This Award is made pursuant to the Plan and the LLC Agreement, the terms of which are incorporated herein by reference, and in all respects shall be interpreted in accordance with the Plan and the LLC Agreement. The Administrator shall have the full power and authority to administer and interpret the Plan and this Award Agreement, to make factual determinations, and to adopt or amend such rules, regulations, agreements, and instruments for implementing the Plan and this Award Agreement and for the conduct of its business as it deems necessary or advisable. All powers of the Administrator shall be executed without the approval or consent of the Grantee.

No Employment or Other Rights. This Award Agreement is not an agreement of employment and the grant of this Award shall not confer upon the Grantee any right to be retained by or in the employ of the Company and shall not interfere in any way with the right of the Company to terminate the Grantee's employment at any time. The right of the Company, as applicable, to terminate at will the Grantee's employment at any time for any reason is specifically reserved. The grant of this Award shall not entitle the Grantee to any (i) voting rights with respect to any action or decision taken or made (or to be taken or made) by the Company or the Board, (ii) right to appoint Managers to the Board, or (iii) appraisal or preemption rights.

Notice. Any notice to the Company provided for in this Award Agreement must be in writing and will be deemed given: (a) on the date established by the sender as having been delivered personally; (b) on the date delivered by a private, nationally recognized, overnight courier as established by the sender by evidence obtained from the courier; (c) on the date sent by facsimile, with confirmation of transmission, if sent during normal business hours of the recipient (and, if not sent during normal business hours of the recipient, then on the next business day); or (d) on the fifth business day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications, to be valid, must be addressed as follows:

If to the Company, to:

Bioventus LLC
4721 Emperor Blvd. Suite 100
Durham, NC 27703
Attention: General Counsel
Facsimile: 866-467-1531

If to the Grantee, to the address on file with the Company.

If more than one method for sending notice as set forth above is used, the earliest notice date established as set forth above will control for purposes of determining when such notice is deemed to have been given.

Amendment and Termination; Section 409A. The Administrator may amend the Plan or this Award, or terminate the Plan, at any time; provided that no amendment or termination of the Plan or this Award shall, without the consent of a Grantee, adversely impact the rights of the Grantee under this Award, unless necessary to meet the requirements of any applicable law or regulation. Before amending or terminating the Plan or this Award to meet the requirements of an applicable law or regulation, the Administrator will attempt to bring the Plan or Award into compliance with the applicable law or regulation without reducing the benefits or payments to the Grantee to the greatest extent possible. If amendment or termination is still necessary and adversely impacts the rights of the Grantee, the Administrator will reasonably cooperate with the Grantee to adopt replacement benefits or payments that to the greatest extent possible places the Grantee in the same or a comparable economic position as if the Plan or Award had not been amended or terminated.

Subject to the first paragraph of this Section 8, while the Company does not guarantee any particular tax treatment with respect to the Award, payment of the Payment Amount is intended to comply with Section 409A, to the extent subject thereto, and shall be interpreted and construed consistent with that intent. The Company may reform this Award or any provision hereof to maintain to the maximum extent practicable the original intent of the provision without violating the provisions of Section 409A, provided, that any deferral of payments shall be only for such time period as may be required to comply with Section 409A.

Headings. Section headings are for reference only. In the event of a conflict between a heading and the content of a Section, the content of the Section shall control.

Applicable Law. The validity, construction, interpretation and effect of this Award Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to the conflicts of laws provisions thereof.

IN WITNESS WHEREOF, the Company has caused its duly authorized officer to execute this Award Agreement, and the Grantee has executed this Award Agreement, effective as of the Effective Date.

Bioventus LLC

By: /s/ Leigh Ann Stradford

Name: Leigh Ann Stradford

Title: SVP and Chief HR Officer

I hereby accept the Award described in this Award Agreement, and I agree to be bound by the terms of this Award Agreement, the Plan and the LLC Agreement. I hereby further agree that all of the decisions and determinations of the Administrator shall be final and binding.

Grantee: /s/ Gregory Anglum
Gregory Anglum

Date: 9/26/2018

BIOVENTUS LLC

PHANTOM PROFITS INTERESTS PLAN

AS AMENDED AND RESTATED DECEMBER 8, 2017

The purpose of the Bioventus LLC Phantom Profits Interests Plan (the "**Plan**") is to provide eligible employees and independent members of the Board of Managers of Bioventus LLC (the "**Company**") who are important to the success and growth of the business of the Company an opportunity to share in the future appreciation in value of the Company by receiving grants of Phantom Profits Interest Units in the Company. The Company believes that the Plan will encourage participants to contribute materially to the growth of the Company's owners, thereby benefiting the Company, and will align the economic interests of the participants with those of the owners. Awards under the Plan shall consist of grants of Phantom Profits Interest Units as described in Section 5 ("**Awards**"). Capitalized terms that are used but not defined herein shall have the respective meanings accorded to such terms in the Amended and Restated Limited Liability Company Agreement of the Company, as amended (the "**LLC Agreement**").

Definitions.

"**Benchmark Amount**" means the cumulative distributions that must be made by the Company pursuant to the LLC Agreement before a Grantee is entitled to receive any distributions in respect of such Grantee's Phantom Profits Interest Units. The Benchmark Amount shall equal $703,691,178 or such other greater amount as set forth in the applicable Award Agreement.

"**Board Member**" means an independent member of the Board of Managers of the Company appointed or elected to the Board of Managers on or after January 1, 2016.

"**Code**" means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

"**Employee**" means an employee of the Company.

"**Grantee**" means an Employee or Board Member who receives an Award.

"**Initial Waterfall Distribution Event**" means the closing of (i) a sale of Units representing a Percentage Interest of more than 66.66%, or (ii) a sale of all or substantially all of the assets of the Company; provided that such event constitutes a change in ownership or a change in effective control of the Company within the meaning of Section 409A of the Code.

"**Management Distribution Cap**" means 17.5% of the aggregate amount, if any, available for distribution pursuant to Section 10.05(a)(v) of the LLC Agreement.

"**Management Incentive Plan**" means the Bioventus LLC Management Incentive Plan.

"**Payment Amount**" means the amount payable with respect to each vested Phantom Profits Interest Unit upon the applicable Payment Event.

"**Phantom Profits Interest Unit**" means a right to receive cash in an amount equal to the Payment Amount upon the Payment Event as set forth in the applicable Award Agreement.

"**Profits Interest Unit**" means a non-managing, non-voting ownership interest in the Company issued pursuant to Section 3.01(b) of the LLC Agreement and the Management Incentive Plan.

"**Qualifying Subsequent Waterfall Distribution Event**" means a Subsequent Waterfall Distribution Event that constitutes a change in ownership or a change in effective control of the Company within the meaning of Section 409A of the Code.

"**Subsequent Waterfall Distribution Event**" means, following an Initial Waterfall Distribution Event under Section 1(a) above with respect to Units representing a Percentage Interest of less than 100%, the closing of (i) a subsequent sale of Units, or (ii) a sale of all or substantially all of the assets of the Company

"**Termination Date**" means in the case of an Employee, the date of the Grantee's separation of service, as defined in Section 409A of the Code, and in the case of a Board Member, resignation or removal from the Board of Managers of the Company.

"**Waterfall Distribution Event**" means an Initial Waterfall Distribution Event or a Subsequent Waterfall Distribution Event.

Administration

Administration. The Plan shall be administered and interpreted by the Board of Managers (the "**Administrator**") or by a committee or subcommittee, which shall be appointed by the Administrator. To the extent that a committee or subcommittee administers the Plan, references in the Plan to the "Administrator" shall be deemed to refer to the committee or the subcommittee.

Administrator Authority. The Administrator shall determine (i) the Employees and Board Members to receive Awards, (ii) the size and terms of the Awards, (iii) the time when the Awards will be made, (iv) the applicable Payment Event, (v) the duration of any applicable vesting period, provided that such vesting period shall not be less than four years and that the Award shall vest ratably over the vesting period, and (vi) the Benchmark Amount with respect to any Award.

Administrator Determinations. The Administrator shall have full power and authority to administer and interpret the Plan, to make factual determinations, and to adopt or amend such rules, regulations, agreements, and instruments for implementing the Plan and for the conduct of its business as it deems necessary or advisable. All powers of the Administrator shall be executed without the approval or consent of the Grantees.

Interests Subject to the Plan

Awards Authorized by the LLC Agreement. The total amount of Phantom Profits Interest Units available for grants under the Plan, when combined with the total amount of Profits Interest Units (as defined in the Management Incentive Plan) granted under the Management Incentive Plan and any other form of employee, management or other service provider equity or equity-related awards of the Company, shall not result in aggregate distributions to the holders thereof in excess of the Management Distribution Cap (such amount determined, solely for this purpose, as if there were no Phantom Profits Interest Units or Other Management Equity Awards (as defined in the LLC Agreement)) ("**Excess Distributions**"), unless and to the extent that S&N and the Essex Members consent in their capacity as Members to such Excess Distributions. If, and to the extent that, Phantom Profits Interest Units granted under the Plan terminate or are canceled, forfeited, exchanged, or surrendered without payment, such Phantom Profits Interest Units shall be available again for purposes of the Plan.

Adjustments. If there is any change in the total amount or kind of Phantom Profits Interest Units outstanding (i) by reason of a spinoff, split of the Phantom Profits Interest Units, reclassification, combination, or exchange of such Phantom Profits Interest Units or similar event; (ii) by reason of a merger, reorganization, or consolidation; (iii) by reason of any other extraordinary or unusual event affecting the outstanding Phantom Profits Interest Units as a class without the Company's receipt of consideration; or (iv) by reason of a change in the structure of the Company, or if the value of the outstanding Phantom Profits Interest Units are substantially reduced as a result of a spinoff, the amount or percentage of such Phantom Profits Interest Units covered by outstanding Awards, and the kind of Phantom Profits Interest Units issued under the Plan shall be appropriately adjusted by the Administrator to reflect any increase or decrease in the amount of, or change in the kind or value of, issued Phantom Profits Interest Units to preclude, to the extent practicable, the enlargement or dilution of rights and benefits under such Awards. Any adjustments determined by the Administrator shall be final, binding, and conclusive.

Eligibility for Participation

All Employees and Board Members who are designated by the Administrator shall be eligible to participate in the Plan.

Grants of Awards

Award Agreement. All Awards shall be subject to the terms and conditions of this Plan, the terms of the LLC Agreement, and the Grantee's award instrument (the "**Award Agreement**"). Each Award Agreement shall contain the number of Phantom Profits Interest Units underlying the Grantee's Award and the applicable grant date Benchmark Amount (subject to adjustment as provided in the LLC Agreement), and each Award shall vest in accordance with the terms of the Grantee's Award Agreement. The Award Agreement shall also designate whether the Payment Amount shall be paid (i) upon the earlier of the Grantee's Termination Date or an Initial Waterfall Distribution Event (with any subsequent amounts paid upon the earlier of a Qualifying Subsequent Waterfall Distribution Event or the Grantee's Termination Date) (a "**Termination Payment Event**") or (ii) upon an Initial Waterfall Distribution Event, with any subsequent amounts paid upon the earlier of (A) a Qualifying Subsequent Waterfall Distribution Event or (B) provided that a Subsequent Waterfall event has occurred, the fifth anniversary of the grant date (a "**Waterfall Payment Event**") (a Termination Payment Event or a Waterfall Payment Event, also referred to as the "**Payment Event**").

Payment Amount.

(i) If the Payment Event is a Termination Payment Event, the Payment Amount shall be, for each vested Phantom Profits Interest Unit, an amount that would be allocated to an equivalent number of Profits Interest Units with an equivalent Benchmark Amount, (A) if the Grantee's Termination Date is prior to a Waterfall Distribution Event, as if the Company were liquidated on the Termination Date at fair market value (as determined in good faith by the Administrator), or (B) where there is an Initial Waterfall Distribution Event and one or more Subsequent Waterfall Distribution Events prior to the Termination Date, pursuant to the LLC Agreement with respect to each such Waterfall Distribution Event. Such Payment Amount shall be paid to the Grantee within 30 days of the Termination Date, the Initial Waterfall Distribution Event, or any Qualifying Subsequent Waterfall Distribution Event, as applicable. In the event that a Subsequent Waterfall Distribution Event is not a Qualifying Subsequent Waterfall Distribution Event, the Payment Amount with respect to such Subsequent Waterfall Distribution Event shall be paid within 30 days of the Termination Date. No further Payment Amount shall be paid to the Grantee with respect to Waterfall Distribution Events following the Grantee's Termination Date.

(ii) Subject to (iii) below, if the Payment Event is a Waterfall Payment Event and a Waterfall Distribution Event occurs before the Grantee's Termination Date, the Payment Amount shall be equal to, for each vested Phantom Profits Interest Unit, an amount that would be payable with respect to the equivalent number of Profits Interest Units with an equivalent Benchmark Amount pursuant to the LLC Agreement. Such Payment Amount shall be paid to the Grantee within 30 days of an Initial Waterfall Distribution Event, and for any Subsequent Waterfall Distribution Event, shall be paid to the Grantee within 30 days of the earlier of a Qualifying Subsequent Waterfall Distribution Event or the fifth anniversary of the date of grant. No Payment Amount shall be paid to the Grantee with respect to any Subsequent Waterfall Distribution Event that is not a Qualifying Subsequent Waterfall Distribution Event and that occurs after the fifth anniversary of the Grant Date.

(iii) If the Payment Event is a Waterfall Payment Event and a Waterfall Distribution Event occurs after the Grantee's Termination Date, the Payment Amount with respect to such event shall in no event be greater than the lesser of, for each vested Phantom Profits Interest Unit, (A) an amount that would be allocated to an equivalent number of Profits Interest Units with an equivalent Benchmark Amount if the Company were liquidated on the valuation date next following the Termination Date at fair market value (as determined in good faith by the Administrator) and (B) the amount specified in Section 5(b)(ii) above; provided that if a Waterfall Distribution Event occurs prior to the valuation date next following the Termination Date, the Payment Amount shall be the amount specified in Section 5(b)(ii). Such Payment Amount shall be paid to the Grantee within 30 days of the Initial Waterfall Distribution Event, and for any Subsequent Waterfall Distribution Event, shall be paid to the Grantee within 30 days of the earlier of a Qualifying Subsequent Waterfall Distribution Event or the fifth anniversary of the date of grant. No Payment Amount shall be paid to the Grantee with respect to any Subsequent Waterfall Distribution Event that is not a Qualifying Subsequent Waterfall Distribution Event and that occurs after the fifth anniversary of the Grant Date.

Acknowledgement by Grantee. All Awards shall be made conditional upon the Grantee's acknowledgement, in writing or by acceptance of the Award, that all decisions and determinations of the Administrator shall be final and binding on the Grantee, his or her beneficiaries, and any other person having or claiming an interest under such award. Awards need not be uniform as among the Grantees.

Forfeiture

Termination of Employment. Any and all of an Employee Grantee's unvested Phantom Profits Interest Units shall be forfeited upon the termination of the Grantee's employment for any reason.

Termination of Membership on the Board of Managers. Any and all of a Board Member Grantee's unvested Phantom Profits Interest Units shall be forfeited upon resignation or removal from the Board of Managers of the Company.

Termination of Employment for Cause. Any and all of an Employee Grantee's vested and unvested Phantom Profits Interest Units shall be forfeited upon the termination of the Grantee's employment for Cause. For purposes of this Plan, "Cause" shall have the meaning set forth in the written employment agreement between the Grantee and the Company in effect on the date of the Grantee's termination of employment, or if no such agreement exists, shall mean (i) conviction (including guilty plea or plea of nolo contendere) of any felony or any other crime involving fraud, violence or dishonesty; (ii) commission of or participation in a fraud or act of dishonesty or misrepresentation against the Company; (iii) violation of any written and fully executed contract or agreement between the Grantee and the Company, including without limitation, breach of Grantee's Proprietary Information, Inventions, Non-Competition and Non-Solicitation Agreement; (iv) gross negligence or willful misconduct, (v) continued and substantial failure to perform the Grantee's duties to the Company; or (vi) violation of any material policies, practices, or procedures of the Company.

Removal from the Board of Managers. Any and all of a Board Member Grantee's vested and unvested Phantom Profits Interest Units shall be forfeited upon the removal of the Grantee from the Board of Managers for Cause. For purposes of this Plan, "Cause" shall mean (i) conviction (including guilty plea or plea of nolo contendere) of any felony or any other crime involving fraud, violence or dishonesty; (ii) commission of or participation in a fraud or act of dishonesty or misrepresentation against the Company; (iii) violation of any agreement between the Grantee and the Company; (iv) gross negligence or willful misconduct; (v) continued and substantial failure to perform the Grantee's duties to the Company as a Member of the Board of Managers of the Company; or (vi) violation of any material policies, practices, or procedures of the Company including without limitation, the Company's Code of Conduct and Confidential Information policies.

Waterfall Distribution Event. As soon as practicable following an Initial Waterfall Distribution Event or any Subsequent Waterfall Distribution Event that results in an aggregate sale of Units representing a Percentage Interest of 100%, or upon a sale of all or substantially all of the assets of the Company, all vested and unvested Phantom Profits Interest Units shall be cancelled (after the Grantee has been paid any amounts due with respect to such Units, if applicable).

Confidentiality, Non-Compete, Non-Solicitation. Notwithstanding anything herein to the contrary, a Grantee shall forfeit any and all rights to all vested and unvested Phantom Profits Interest Units if the Grantee violates the terms of any confidentiality, non-solicitation and non-competition provisions of any agreement between the Grantee and the Company, if applicable.

Withholding of Taxes

All Awards under the Plan shall be subject to applicable federal (including FICA), state, and local tax withholding requirements. The Company may require that the Grantee pay to the Company the amount of any federal, state, or local taxes that the Company is required to withhold with respect to such Awards, or the Company may deduct from other wages paid by the Company the amount of any withholding taxes due with respect to such Awards.

Nontransferability of Awards

Only the Grantee has any rights under an Award. A Grantee may not transfer those rights, directly or indirectly, except by will or the laws of descent and distribution.

Limitations on Issuance or Transfer of Phantom Profits Interest Units

No Phantom Profits Interest Units shall be issued or transferred in connection with any Award until all legal requirements applicable to the issuance or transfer of such Phantom Profits Interest Units have been complied with to the satisfaction of the Administrator. The Administrator shall have the right to condition any Award made to any Grantee hereunder on such Grantee's undertaking in writing to comply with any restrictions on his or her subsequent disposition of such Phantom Profits Interest Units as the Administrator shall deem necessary or advisable.

Amendment and Termination of the Plan

Amendment and Termination. The Administrator may, in accordance with the LLC Agreement, amend the Plan or any Award under the Plan, or terminate the Plan, at any time; provided that no amendment or termination of the Plan or any Award shall, without the consent of a Grantee, adversely impact the rights of any Grantee under any Award granted to such Grantee under the Plan, unless necessary to meet the requirements of any applicable law or regulation. Before amending or terminating the Plan or any Award to meet the requirements of an applicable law or regulation, the Administrator will attempt to bring the Plan or Award into compliance with the applicable law or regulation without reducing the benefits or payments to a Grantee to the greatest extent possible. If amendment or termination is still necessary and adversely impacts the rights of a Grantee, the Administrator will reasonably cooperate with such Grantee to adopt replacement benefits or payments that to the greatest extent possible places the Grantee in the same or a comparable economic position as if the Plan or Award had not been amended or terminated.

Governing Document. In the event of any conflict between any Award in the form attached hereto as Exhibit A or B and the LLC Agreement, such Award shall control. In the event of any conflict between any subsequent Award not in the form attached hereto and the LLC Agreement, the LLC agreement shall control unless such subsequent Award has been approved by the Board and Smith & Nephew, Inc., in which case such Award shall control. No other statements, representations, explanatory materials or examples, oral or written, may amend the Plan in any manner. The Plan shall be binding upon and enforceable against the Company and its successors and assigns.

Funding of the Plan

This Plan shall be unfunded. The Company shall not be required to establish any special or separate fund or to make any other segregation of assets to assure the payment of any Awards under this Plan. In no event shall interest be paid or accrued on any Award.

Rights of Grantees

No Award shall entitle any Grantee to any (i) voting rights with respect to any action or decision taken or made (or to be taken or made) by the Company or the Board of Managers, (ii) right to appoint Managers to the Board of Managers, or (iii) appraisal or preemption rights. Nothing in this Plan shall entitle any Employee, Board Member or any other person to any claim or right to receive an Award under this Plan. Neither this Plan nor any action taken hereunder shall be construed as giving any individual any rights to be retained by or in the employ of the Company or any other employment rights.

Headings

Section headings are for reference only. In the event of a conflict between a title and the content of a Section, the content of the Section shall control.

Effective Date of the Plan

The initial effective date of the Plan was May 4, 2012. The amended and restated version of the Plan shall be effective on December 8, 2017.

Miscellaneous

Compliance with Law. The Plan and the obligations of the Company to issue or transfer Phantom Profits Interest Units in connection with Awards shall be subject to all applicable laws and to approvals by any governmental or regulatory agency as may be required. The Administrator may revoke any Award if it is contrary to law or modify an Award to bring it into compliance with any valid and mandatory government regulation. The Administrator may also adopt rules regarding the withholding of taxes on payments to Grantees. The Administrator may, in its sole discretion, agree to limit its authority under this Section.

Governing Law. The validity, construction, interpretation, and effect of the Plan and Award Agreements issued under the Plan shall be governed and construed by and determined in accordance with the laws of the State of Delaware, without giving effect to the conflict of laws provisions thereof.

BIOVENTUS LLC

PHANTOM PROFITS INTERESTS PLAN

AWARD AGREEMENT

The Administrator, as defined in the Bioventus LLC Phantom Profits Interests Plan (the "**Plan**"), of the Plan has decided to grant to you Phantom Profits Interest Units in the Company under the Plan. The terms of the grant (the "**Grant**") are set forth in this Bioventus LLC Phantom Profits Interests Plan Award Agreement (the "**Award Agreement**") provided to you. The following provides a summary of the key terms of the Grant; however, you should read the entire Award Agreement, along with the terms of the Plan and the Company's Amended and Restated Limited Liability Company Agreement (as might be amended), to fully understand the Grant.

SUMMARY OF PHANTOM PROFITS INTERESTS PLAN AWARD AGREEMENT

Grantee:	**John Nosenzo**
Date of Award:	**February 6, 2017**
Vesting Schedule:	**20% vests on the first anniversary of the Effective Date and the remaining 80% vests in equal installments on a quarterly basis over the next four years**
Phantom Profits Interest Units Awarded:	**125,000**
Payment Event:	**Termination Payment Event**
Grant Date Benchmark Amount:	**$510,000,000**

BIOVENTUS LLC

PHANTOM PROFITS INTERESTS PLAN

AWARD AGREEMENT

This Bioventus LLC Phantom Profits Interests Plan Award Agreement (this "**Award Agreement**"), dated as of February 6, 2017 (the "**Effective Date**"), is delivered by Bioventus LLC (the "**Company**") to John Nosenzo (the "**Grantee**").

RECITALS

A. The Bioventus LLC Phantom Profits Interests Plan (the "**Plan**") provides for the grant of Phantom Profits Interest Units in the Company in accordance with the terms of the Plan and the Amended and Restated Limited Liability Company Agreement of the Company, as amended (the "**LLC Agreement**"). The Administrator (as defined in the Plan) has granted the Award (as defined below) to encourage the Grantee to contribute materially to the growth of the Company's owners, thereby benefitting the Company, and to align the economic interests of the Grantee with those of the owners. A copy of the Plan is attached. All capitalized terms not defined herein shall have the meaning given to such terms in the Plan or, if not defined in the Plan, in the LLC Agreement.

B. The Administrator shall administer the Plan.

NOW, THEREFORE, the parties to this Award Agreement, intending to be legally bound, hereby agree as follows:

1. **Grant of Phantom Profits Interests Units**. Subject to the terms and conditions set forth in this Award Agreement, the Plan, and the LLC Agreement, the Company hereby grants to the Grantee 125,000 Phantom Profits Interest Units (the "**Award**"). This Award Agreement (which is effective as of the Effective Date upon the parties' exchange of signed counterpart signature pages hereto), the Plan, and the LLC Agreement govern the terms of the grant of the Award.

2. **Vesting of Awarded Units**.

(a) Unless otherwise determined by the Administrator, the Award shall vest in accordance with the following schedule (each date described below, a "**Vesting Date**"), if the Grantee is employed by the Company on the applicable Vesting Date.

Applicable Date	Vesting Percentage
1st anniversary of the Effective Date	20%
Each quarter after the 1st anniversary of the Effective Date	5%

(b) On a Payment Event, the Grantee shall receive the Payment Amount, if any, with respect to the portion of the Award that is vested, as set forth in Section 5(b)(i) of the Plan. Any portion of the Award that is unvested as of the Termination Date shall be forfeited at the time of the Grantee's termination.

(c) Upon an Initial Waterfall Distribution Event that occurs prior to the Grantee's Termination Date, the unvested portion of the Award shall vest at the time of such Initial Waterfall Distribution Event.

(d) Upon the termination of the Grantee's employment for Cause, both the vested and the unvested portion of the Award shall be forfeited.

3. **Withholding**. All obligations of the Company under this Agreement shall be subject to the rights of the Company to withhold amounts required to be withheld for any taxes, if applicable.

4. **Restrictions on Transfer**. Only the Grantee has any rights under this Award. The Grantee may not transfer those rights, directly or indirectly, except by will or the laws of descent and distribution.

5. **Award Subject to Plan and LLC Agreement Provisions**. This Award is made pursuant to the Plan and the LLC Agreement, the terms of which are incorporated herein by reference, and in all respects shall be interpreted in accordance with the Plan and the LLC Agreement. The Administrator shall have the full power and authority to administer and interpret the Plan and this Award Agreement, to make factual determinations, and to adopt or amend such rules, regulations, agreements, and instruments for implementing the Plan and this Award Agreement and for the conduct of its business as it deems necessary or advisable. All powers of the Administrator shall be executed without the approval or consent of the Grantee.

6. **No Employment or Other Rights**. This Award Agreement is not an agreement of employment and the grant of this Award shall not confer upon the Grantee any right to be retained by or in the employ of the Company and shall not interfere in any way with the right of the Company to terminate the Grantee's employment at any time. The right of the Company, as applicable, to terminate at will the Grantee's employment at any time for any reason is specifically reserved. The grant of this Award shall not entitle the Grantee to any (i) voting rights with respect to any action or decision taken or made (or to be taken or made) by the Company or the Board, (ii) right to appoint Managers to the Board, or (iii) appraisal or preemption rights.

7. **Notice**. Any notice to the Company provided for in this Award Agreement must be in writing and will be deemed given: (a) on the date established by the sender as having been delivered personally; (b) on the date delivered by a private, nationally recognized, overnight courier as established by the sender by evidence obtained from the courier; (c) on the date sent by facsimile, with confirmation of transmission, if sent during normal business hours of the recipient (and, if not sent during normal business hours of the recipient, then on the next business day); or (d) on the fifth business day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications, to be valid, must be addressed as follows:

If to the Company, to:

Bioventus LLC
4721 Emperor Blvd. Suite 100
Durham, NC 27703
Attention: General Counsel
Facsimile: 866-467-1531

If to the Grantee, to the address on file with the Company.

If more than one method for sending notice as set forth above is used, the earliest notice date established as set forth above will control for purposes of determining when such notice is deemed to have been given.

8. **Amendment and Termination; Section 409A**. The Administrator may amend the Plan or this Award, or terminate the Plan, at any time; provided that no amendment or termination of the Plan or this Award shall, without the consent of a Grantee, adversely impact the rights of the Grantee under this Award, unless necessary to meet the requirements of any applicable law or regulation. Before amending or terminating the Plan or this Award to meet the requirements of an applicable law or regulation, the Administrator will attempt to bring the Plan or Award into compliance with the applicable law or regulation without reducing the benefits or payments to the Grantee to the greatest extent possible. If amendment or termination is still necessary and adversely impacts the rights of the Grantee, the Administrator will reasonably cooperate with the Grantee to adopt replacement benefits or payments that to the greatest extent possible places the Grantee in the same or a comparable economic position as if the Plan or Award had not been amended or terminated.

Subject to the first paragraph of this Section 8, while the Company does not guarantee any particular tax treatment with respect to the Award, payment of the Payment Amount is intended to comply with Section 409A, to the extent subject thereto, and shall be interpreted and construed consistent with that intent. The Company may reform this Award or any provision hereof to maintain to the maximum extent practicable the original intent of the provision without violating the provisions of Section 409A, provided, that any deferral of payments shall be only for such time period as may be required to comply with Section 409A.

9. **Headings**. Section headings are for reference only. In the event of a conflict between a heading and the content of a Section, the content of the Section shall control.

10. **Applicable Law**. The validity, construction, interpretation and effect of this Award Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to the conflicts of laws provisions thereof.

IN WITNESS WHEREOF, the Company has caused its duly authorized officer to execute this Award Agreement, and the Grantee has executed this Award Agreement, effective as of the Effective Date.

Bioventus LLC

By /s/ Leigh Ann Stradford
Name: Leigh Ann Stradford
Title: VP of Human Resources

I hereby accept the Award described in this Award Agreement, and I agree to be bound by the terms of this Award Agreement, the Plan and the LLC Agreement. I hereby further agree that all of the decisions and determinations of the Administrator shall be final and binding.

Grantee: /s/John Nosenzo
John Nosenzo

Date: 3-29-17

Exhibit 10.24

Bioventus LLC
4721 Emperor Blvd., Suite 100
Durham, NC 27703
USA

1-919-474-6700
1-800-396-4325
www.BioventusGlobal.com

September 17, 2018

John Nosenzo

RE: Bioventus Phantom Profit Interests Award

Dear John:

As Bioventus drives forward to become a global leader in Orthobiologics, we will rely on the continued strong contribution of key leaders like yourself. In recognition, and as incentive for this contribution, our Board of Managers has approved an additional pool of Phantom Profits Interests Units to be awarded to a select group of leaders who we believe will have the greatest impact in achieving our mission. You have been designated as one of these key leaders and, as a result, you are being granted 25,000 Phantom Profits Interests Units.

This Performance Units Award is granted to you under, and is subject to, all of the terms of the Phantom Profits Interests Plan ("Plan") and the applicable Bioventus LLC Phantom Profits Interests Plan Award Agreement ("Award Agreement"). A copy of the Plan and your corresponding Award Agreement are included with this letter and I encourage you to review both documents carefully.

We recognize that consistent and predictable revenue growth will be an important measure of our future success, and this growth is therefore a key component for vesting of the 2018 Performance Units. The plan provides for cliff-vesting of the units on June 1, 2021, based on 2020 revenue attainment consistent with the projections specified below. The Vesting Schedule for 2018 Performance Units is as follows:

Vesting Schedule:

Cliff vesting if, and only if, 2020 revenue growth is attained as outlined below:

1. Revenue is equal to or greater than $391.8M, 100% of the units vest.
2. Revenue is equal to or greater than $370.8M, 75% of the units vest and the remaining units expire.
3. Revenue is equal to or greater than $350.6M, 50% of the units vest and the remaining units expire.
4. Revenue is less than $350.6M, none of the units vest and all of the units expire.

Shown below is an example of potential value of a PPI Unit at a Waterfall, and how the Waterfall Distribution is calculated. The payout amounts shown below are provided for illustrative purposes and shall apply only to units vested pursuant to the above-referenced schedule. Actual payouts under the Plan may vary from those shown and are subject to all of the terms of the Plan documents and applicable withholding requirements[1].

Illustrative Waterfall Scenarios[2]
(as of 10.31.17)

Enterprise value	$1 BILLION	$1.2 BILLION
Approximate $ payout/unit	$ 4.87	$ 19.23

Assumes $703,691,178 benchmark[2]

I am delighted to notify you of this Award and I look forward to celebrating with you as we achieve our mission and continue to impact the lives of thousands of people around the world each year!

Sincerely,

/s/ Anthony P. Bihl
Anthony P. Bihl
Chief Executive Officer

Enclosures

1 **The revenue targets and any other financial projections contained in this letter have been provided to you by the Company solely for your information and may be deemed to be forward-looking statements, which involve known and unknown risks and uncertainties. Given these risks and uncertainties, you are advised not to place any undue reliance on such forward-looking statements. Further, the Company does not make any representations or warranties, express or implied, as to the ultimate value of your Award or whether a Waterfall Distribution Event will occur. In the event of any inconsistency between this letter and the Plan, the provisions of the Plan shall govern.**

2 **Waterfall Distribution Formula**:

Enterprise Value - Debt (net of cash) - Benchmark of PPI units = Remaining Equity Value available for Distribution / Units Outstanding = PPI Payout per unit

BIOVENTUS LLC
PHANTOM PROFITS INTERESTS PLAN

AWARD AGREEMENT

The Administrator, as defined in the Bioventus LLC Phantom Profits Interests Plan (the "**Plan**"), of the Plan has decided to grant to you Phantom Profits Interest Units in the Company under the Plan. The terms of the grant (the "**Grant**") are set forth in this Bioventus LLC Phantom Profits Interests Plan Award Agreement (the "**Award Agreement**") provided to you. The following provides a summary of the key terms of the Grant; however, you should read the entire Award Agreement, along with the terms of the Plan and the Company's Amended and Restated Limited Liability Company Agreement (as might be amended), to fully understand the Grant.

SUMMARY OF PHANTOM PROFITS INTERESTS PLAN AWARD AGREEMENT

Grantee:	**John Nosenzo**
Date of Award:	**September 17, 2018**
Vesting Schedule:	**On June 1, 2021, the plan provides for cliff- vesting, if and only if, the 2020 revenue attainment is consistent with the projections outlined below:** **1. Revenue is equal to or greater than $391.8M, 100% of the units vest.** **2. Revenue is equal to or greater than $370.8M, 75% of the units vest and the remaining units expire.** **3. Revenue is equal to or greater than $350.6M, 50% of the units vest and the remaining units expire.** **4. Revenue is less than $350.6M, none of the units vest and all of the units expire.**
Phantom Profits Interest Units Awarded:	**25,000**
Payment Event:	**Termination Payment Event**
Grant Date Benchmark Amount:	**$703,691,178**

BIOVENTUS LLC

PHANTOM PROFITS INTERESTS PLAN

AWARD AGREEMENT

This Bioventus LLC Phantom Profits Interests Plan Award Agreement (this "**Award Agreement**"), dated as of September 17, 2018 (the "**Effective Date**"), is delivered by Bioventus LLC (the "**Company**") to John Nosenzo (the "**Grantee**").

RECITALS

A. The Bioventus LLC Phantom Profits Interests Plan (the "**Plan**") provides for the grant of Phantom Profits Interest Units in the Company in accordance with the terms of the Plan and the Amended and Restated Limited Liability Company Agreement of the Company, as amended (the "**LLC Agreement**"). The Administrator (as defined in the Plan) has granted the Award (as defined below) to encourage the Grantee to contribute materially to the growth of the Company's owners, thereby benefitting the Company, and to align the economic interests of the Grantee with those of the owners. A copy of the Plan is attached. All capitalized terms not defined herein shall have the meaning given to such terms in the Plan or, if not defined in the Plan, in the LLC Agreement.

B. The Administrator shall administer the Plan.

NOW, THEREFORE, the parties to this Award Agreement, intending to be legally bound, hereby agree as follows:

Grant of Phantom Profits Interests Units. Subject to the terms and conditions set forth in this Award Agreement, the Plan, and the LLC Agreement, the Company hereby grants to the Grantee 25,000 Phantom Profits Interest Units (the "Award"). This Award Agreement (which is effective as of the Effective Date upon the parties' exchange of signed counterpart signature pages hereto), the Plan, and the LLC Agreement govern the terms of the grant of the Award.

Vesting of Awarded Units.

Unless otherwise determined by the Administrator, the Award shall vest in accordance with the following schedule on June 1, 2021 (the "**Vesting Date**"), if the Grantee is employed by the Company on such Vesting Date.

The Award is subject to cliff-vesting in amounts as determined by the schedule below if, and only if, the Company's annual revenue for calendar year 2020 equals or exceed $350.6M:

1. $391.8M, then 100% of the Award shall vest on the Vesting Date
2. $370.8M, then 75% of the Award shall vest on the Vesting Date and the remaining units expire.
3. $350.6M, then 50% of the Award shall vest on the Vesting Date and the remaining units expire.

4. Less than $350.6M, none of the Awarded units shall vest and all of the units shall expire.

Revenue numbers will be determined by Bioventus in accordance with accounting principles generally accepted in the United States and consistent with Bioventus' accounting policies.

On a Payment Event, the Grantee shall receive the Payment Amount, if any, with respect to the portion of the Award that is vested, as set forth in Section 5(b)(i) of the Plan. Any portion of the Award that is unvested as of the Vesting Date shall be forfeited.

Any and all of a Grantee's unvested Phantom Profits Interest Units shall be forfeited upon the termination of the Grantee's employment for any reason.

Upon the termination of the Grantee's employment for Cause, both the vested and the unvested portion of the Award shall be forfeited.

Withholding. All obligations of the Company under this Agreement shall be subject to the rights of the Company to withhold amounts required to be withheld for any taxes, if applicable.

Restrictions on Transfer. Only the Grantee has any rights under this Award. The Grantee may not transfer those rights, directly or indirectly, except by will or the laws of descent and distribution.

Award Subject to Plan and LLC Agreement Provisions. This Award is made pursuant to the Plan and the LLC Agreement, the terms of which are incorporated herein by reference, and in all respects shall be interpreted in accordance with the Plan and the LLC Agreement. The Administrator shall have the full power and authority to administer and interpret the Plan and this Award Agreement, to make factual determinations, and to adopt or amend such rules, regulations, agreements, and instruments for implementing the Plan and this Award Agreement and for the conduct of its business as it deems necessary or advisable. All powers of the Administrator shall be executed without the approval or consent of the Grantee.

No Employment or Other Rights. This Award Agreement is not an agreement of employment and the grant of this Award shall not confer upon the Grantee any right to be retained by or in the employ of the Company and shall not interfere in any way with the right of the Company to terminate the Grantee's employment at any time. The right of the Company, as applicable, to terminate at will the Grantee's employment at any time for any reason is specifically reserved. The grant of this Award shall not entitle the Grantee to any (i) voting rights with respect to any action or decision taken or made (or to be taken or made) by the Company or the Board, (ii) right to appoint Managers to the Board, or (iii) appraisal or preemption rights.

Notice. Any notice to the Company provided for in this Award Agreement must be in writing and will be deemed given: (a) on the date established by the sender as having been delivered personally; (b) on the date delivered by a private, nationally recognized, overnight courier as established by the sender by evidence obtained from the courier; (c) on the date sent by facsimile, with confirmation of transmission, if sent during normal business hours of the recipient (and, if not sent during normal business hours of the recipient, then on the next business day); or (d) on the fifth business day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications, to be valid, must be addressed as follows:

If to the Company, to:

Bioventus LLC
4721 Emperor Blvd. Suite 100
Durham, NC 27703
Attention: General Counsel
Facsimile: 866-467-1531

If to the Grantee, to the address on file with the Company.

If more than one method for sending notice as set forth above is used, the earliest notice date established as set forth above will control for purposes of determining when such notice is deemed to have been given.

Amendment and Termination; Section 409A. The Administrator may amend the Plan or this Award, or terminate the Plan, at any time; provided that no amendment or termination of the Plan or this Award shall, without the consent of a Grantee, adversely impact the rights of the Grantee under this Award, unless necessary to meet the requirements of any applicable law or regulation. Before amending or terminating the Plan or this Award to meet the requirements of an applicable law or regulation, the Administrator will attempt to bring the Plan or Award into compliance with the applicable law or regulation without reducing the benefits or payments to the Grantee to the greatest extent possible. If amendment or termination is still necessary and adversely impacts the rights of the Grantee, the Administrator will reasonably cooperate with the Grantee to adopt replacement benefits or payments that to the greatest extent possible places the Grantee in the same or a comparable economic position as if the Plan or Award had not been amended or terminated.

Subject to the first paragraph of this Section 8, while the Company does not guarantee any particular tax treatment with respect to the Award, payment of the Payment Amount is intended to comply with Section 409A, to the extent subject thereto, and shall be interpreted and construed consistent with that intent. The Company may reform this Award or any provision hereof to maintain to the maximum extent practicable the original intent of the provision without violating the provisions of Section 409A, provided, that any deferral of payments shall be only for such time period as may be required to comply with Section 409A.

Headings. Section headings are for reference only. In the event of a conflict between a heading and the content of a Section, the content of the Section shall control.

Applicable Law. The validity, construction, interpretation and effect of this Award Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to the conflicts of laws provisions thereof.

IN WITNESS WHEREOF, the Company has caused its duly authorized officer to execute this Award Agreement, and the Grantee has executed this Award Agreement, effective as of the Effective Date.

Bioventus LLC

By: /s/ Leigh Ann Stradford

Name: Leigh Ann Stradford

Title: SVP and Chief HR Officer

I hereby accept the Award described in this Award Agreement, and I agree to be bound by the terms of this Award Agreement, the Plan and the LLC Agreement. I hereby further agree that all of the decisions and determinations of the Administrator shall be final and binding.

Grantee: /s/ John Nosenzo
John Nosenzo

Date: 9/26/2018

BIOVENTUS LLC

PHANTOM PROFITS INTERESTS PLAN

AS AMENDED AND RESTATED DECEMBER 8, 2017

The purpose of the Bioventus LLC Phantom Profits Interests Plan (the "**Plan**") is to provide eligible employees and independent members of the Board of Managers of Bioventus LLC (the "**Company**") who are important to the success and growth of the business of the Company an opportunity to share in the future appreciation in value of the Company by receiving grants of Phantom Profits Interest Units in the Company. The Company believes that the Plan will encourage participants to contribute materially to the growth of the Company's owners, thereby benefiting the Company, and will align the economic interests of the participants with those of the owners. Awards under the Plan shall consist of grants of Phantom Profits Interest Units as described in Section 5 ("**Awards**"). Capitalized terms that are used but not defined herein shall have the respective meanings accorded to such terms in the Amended and Restated Limited Liability Company Agreement of the Company, as amended (the "**LLC Agreement**").

Definitions.

"**Benchmark Amount**" means the cumulative distributions that must be made by the Company pursuant to the LLC Agreement before a Grantee is entitled to receive any distributions in respect of such Grantee's Phantom Profits Interest Units. The Benchmark Amount shall equal $703,691,178 or such other greater amount as set forth in the applicable Award Agreement.

"**Board Member**" means an independent member of the Board of Managers of the Company appointed or elected to the Board of Managers on or after January 1, 2016.

"**Code**" means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

"**Employee**" means an employee of the Company.

"**Grantee**" means an Employee or Board Member who receives an Award.

"**Initial Waterfall Distribution Event**" means the closing of (i) a sale of Units representing a Percentage Interest of more than 66.66%, or (ii) a sale of all or substantially all of the assets of the Company; provided that such event constitutes a change in ownership or a change in effective control of the Company within the meaning of Section 409A of the Code.

"**Management Distribution Cap**" means 17.5% of the aggregate amount, if any, available for distribution pursuant to Section 10.05(a)(v) of the LLC Agreement.

"**Management Incentive Plan**" means the Bioventus LLC Management Incentive Plan.

"**Payment Amount**" means the amount payable with respect to each vested Phantom Profits Interest Unit upon the applicable Payment Event.

"**Phantom Profits Interest Unit**" means a right to receive cash in an amount equal to the Payment Amount upon the Payment Event as set forth in the applicable Award Agreement.

"**Profits Interest Unit**" means a non-managing, non-voting ownership interest in the Company issued pursuant to Section 3.01(b) of the LLC Agreement and the Management Incentive Plan.

"**Qualifying Subsequent Waterfall Distribution Event**" means a Subsequent Waterfall Distribution Event that constitutes a change in ownership or a change in effective control of the Company within the meaning of Section 409A of the Code.

"**Subsequent Waterfall Distribution Event**" means, following an Initial Waterfall Distribution Event under Section 1(a) above with respect to Units representing a Percentage Interest of less than 100%, the closing of (i) a subsequent sale of Units, or (ii) a sale of all or substantially all of the assets of the Company

"**Termination Date**" means in the case of an Employee, the date of the Grantee's separation of service, as defined in Section 409A of the Code, and in the case of a Board Member, resignation or removal from the Board of Managers of the Company.

"**Waterfall Distribution Event**" means an Initial Waterfall Distribution Event or a Subsequent Waterfall Distribution Event.

Administration

Administration. The Plan shall be administered and interpreted by the Board of Managers (the "**Administrator**") or by a committee or subcommittee, which shall be appointed by the Administrator. To the extent that a committee or subcommittee administers the Plan, references in the Plan to the "Administrator" shall be deemed to refer to the committee or the subcommittee.

Administrator Authority. The Administrator shall determine (i) the Employees and Board Members to receive Awards, (ii) the size and terms of the Awards, (iii) the time when the Awards will be made, (iv) the applicable Payment Event, (v) the duration of any applicable vesting period, provided that such vesting period shall not be less than four years and that the Award shall vest ratably over the vesting period, and (vi) the Benchmark Amount with respect to any Award.

Administrator Determinations. The Administrator shall have full power and authority to administer and interpret the Plan, to make factual determinations, and to adopt or amend such rules, regulations, agreements, and instruments for implementing the Plan and for the conduct of its business as it deems necessary or advisable. All powers of the Administrator shall be executed without the approval or consent of the Grantees.

Interests Subject to the Plan

Awards Authorized by the LLC Agreement. The total amount of Phantom Profits Interest Units available for grants under the Plan, when combined with the total amount of Profits Interest Units (as defined in the Management Incentive Plan) granted under the Management Incentive Plan and any other form of employee, management or other service provider equity or equity-related awards of the Company, shall not result in aggregate distributions to the holders thereof in excess of the Management Distribution Cap (such amount determined, solely for this purpose, as if there were no Phantom Profits Interest Units or Other Management Equity Awards (as defined in the LLC Agreement)) ("**Excess Distributions**"), unless and to the extent that S&N and the Essex Members consent in their capacity as Members to such Excess Distributions. If, and to the extent that, Phantom Profits Interest Units granted under the Plan terminate or are canceled, forfeited, exchanged, or surrendered without payment, such Phantom Profits Interest Units shall be available again for purposes of the Plan.

Adjustments. If there is any change in the total amount or kind of Phantom Profits Interest Units outstanding (i) by reason of a spinoff, split of the Phantom Profits Interest Units, reclassification, combination, or exchange of such Phantom Profits Interest Units or similar event; (ii) by reason of a merger, reorganization, or consolidation; (iii) by reason of any other extraordinary or unusual event affecting the outstanding Phantom Profits Interest Units as a class without the Company's receipt of consideration; or (iv) by reason of a change in the structure of the Company, or if the value of the outstanding Phantom Profits Interest Units are substantially reduced as a result of a spinoff, the amount or percentage of such Phantom Profits Interest Units covered by outstanding Awards, and the kind of Phantom Profits Interest Units issued under the Plan shall be appropriately adjusted by the Administrator to reflect any increase or decrease in the amount of, or change in the kind or value of, issued Phantom Profits Interest Units to preclude, to the extent practicable, the enlargement or dilution of rights and benefits under such Awards. Any adjustments determined by the Administrator shall be final, binding, and conclusive.

Eligibility for Participation

All Employees and Board Members who are designated by the Administrator shall be eligible to participate in the Plan.

Grants of Awards

Award Agreement. All Awards shall be subject to the terms and conditions of this Plan, the terms of the LLC Agreement, and the Grantee's award instrument (the "**Award Agreement**"). Each Award Agreement shall contain the number of Phantom Profits Interest Units underlying the Grantee's Award and the applicable grant date Benchmark Amount (subject to adjustment as provided in the LLC Agreement), and each Award shall vest in accordance with the terms of the Grantee's Award Agreement. The Award Agreement shall also designate whether the Payment Amount shall be paid (i) upon the earlier of the Grantee's Termination Date or an Initial Waterfall Distribution Event (with any subsequent amounts paid upon the earlier of a Qualifying Subsequent Waterfall Distribution Event or the Grantee's Termination Date) (a "**Termination Payment Event**") or (ii) upon an Initial Waterfall Distribution Event, with any subsequent amounts paid upon the earlier of (A) a Qualifying Subsequent Waterfall Distribution Event or (B) provided that a Subsequent Waterfall event has occurred, the fifth anniversary of the grant date (a "**Waterfall Payment Event**") (a Termination Payment Event or a Waterfall Payment Event, also referred to as the "**Payment Event**").

Payment Amount.

(i) If the Payment Event is a Termination Payment Event, the Payment Amount shall be, for each vested Phantom Profits Interest Unit, an amount that would be allocated to an equivalent number of Profits Interest Units with an equivalent Benchmark Amount, (A) if the Grantee's Termination Date is prior to a Waterfall Distribution Event, as if the Company were liquidated on the Termination Date at fair market value (as determined in good faith by the Administrator), or (B) where there is an Initial Waterfall Distribution Event and one or more Subsequent Waterfall Distribution Events prior to the Termination Date, pursuant to the LLC Agreement with respect to each such Waterfall Distribution Event. Such Payment Amount shall be paid to the Grantee within 30 days of the Termination Date, the Initial Waterfall Distribution Event, or any Qualifying Subsequent Waterfall Distribution Event, as applicable. In the event that a Subsequent Waterfall Distribution Event is not a Qualifying Subsequent Waterfall Distribution Event, the Payment Amount with respect to such Subsequent Waterfall Distribution Event shall be paid within 30 days of the Termination Date. No further Payment Amount shall be paid to the Grantee with respect to Waterfall Distribution Events following the Grantee's Termination Date.

(ii) Subject to (iii) below, if the Payment Event is a Waterfall Payment Event and a Waterfall Distribution Event occurs before the Grantee's Termination Date, the Payment Amount shall be equal to, for each vested Phantom Profits Interest Unit, an amount that would be payable with respect to the equivalent number of Profits Interest Units with an equivalent Benchmark Amount pursuant to the LLC Agreement. Such Payment Amount shall be paid to the Grantee within 30 days of an Initial Waterfall Distribution Event, and for any Subsequent Waterfall Distribution Event, shall be paid to the Grantee within 30 days of the earlier of a Qualifying Subsequent Waterfall Distribution Event or the fifth anniversary of the date of grant. No Payment Amount shall be paid to the Grantee with respect to any Subsequent Waterfall Distribution Event that is not a Qualifying Subsequent Waterfall Distribution Event and that occurs after the fifth anniversary of the Grant Date.

(iii) If the Payment Event is a Waterfall Payment Event and a Waterfall Distribution Event occurs after the Grantee's Termination Date, the Payment Amount with respect to such event shall in no event be greater than the lesser of, for each vested Phantom Profits Interest Unit, (A) an amount that would be allocated to an equivalent number of Profits Interest Units with an equivalent Benchmark Amount if the Company were liquidated on the valuation date next following the Termination Date at fair market value (as determined in good faith by the Administrator) and (B) the amount specified in Section 5(b)(ii) above; provided that if a Waterfall Distribution Event occurs prior to the valuation date next following the Termination Date, the Payment Amount shall be the amount specified in Section 5(b)(ii). Such Payment Amount shall be paid to the Grantee within 30 days of the Initial Waterfall Distribution Event, and for any Subsequent Waterfall Distribution Event, shall be paid to the Grantee within 30 days of the earlier of a Qualifying Subsequent Waterfall Distribution Event or the fifth anniversary of the date of grant. No Payment Amount shall be paid to the Grantee with respect to any Subsequent Waterfall Distribution Event that is not a Qualifying Subsequent Waterfall Distribution Event and that occurs after the fifth anniversary of the Grant Date.

Acknowledgement by Grantee. All Awards shall be made conditional upon the Grantee's acknowledgement, in writing or by acceptance of the Award, that all decisions and determinations of the Administrator shall be final and binding on the Grantee, his or her beneficiaries, and any other person having or claiming an interest under such award. Awards need not be uniform as among the Grantees.

Forfeiture

Termination of Employment. Any and all of an Employee Grantee's unvested Phantom Profits Interest Units shall be forfeited upon the termination of the Grantee's employment for any reason.

Termination of Membership on the Board of Managers. Any and all of a Board Member Grantee's unvested Phantom Profits Interest Units shall be forfeited upon resignation or removal from the Board of Managers of the Company.

Termination of Employment for Cause. Any and all of an Employee Grantee's vested and unvested Phantom Profits Interest Units shall be forfeited upon the termination of the Grantee's employment for Cause. For purposes of this Plan, "Cause" shall have the meaning set forth in the written employment agreement between the Grantee and the Company in effect on the date of the Grantee's termination of employment, or if no such agreement exists, shall mean (i) conviction (including guilty plea or plea of nolo contendere) of any felony or any other crime involving fraud, violence or dishonesty; (ii) commission of or participation in a fraud or act of dishonesty or misrepresentation against the Company; (iii) violation of any written and fully executed contract or agreement between the Grantee and the Company, including without limitation, breach of Grantee's Proprietary Information, Inventions, Non-Competition and Non-Solicitation Agreement; (iv) gross negligence or willful misconduct, (v) continued and substantial failure to perform the Grantee's duties to the Company; or (vi) violation of any material policies, practices, or procedures of the Company.

Removal from the Board of Managers. Any and all of a Board Member Grantee's vested and unvested Phantom Profits Interest Units shall be forfeited upon the removal of the Grantee from the Board of Managers for Cause. For purposes of this Plan, "Cause" shall mean (i) conviction (including guilty plea or plea of nolo contendere) of any felony or any other crime involving fraud, violence or dishonesty; (ii) commission of or participation in a fraud or act of dishonesty or misrepresentation against the Company; (iii) violation of any agreement between the Grantee and the Company; (iv) gross negligence or willful misconduct; (v) continued and substantial failure to perform the Grantee's duties to the Company as a Member of the Board of Managers of the Company; or (vi) violation of any material policies, practices, or procedures of the Company including without limitation, the Company's Code of Conduct and Confidential Information policies.

Waterfall Distribution Event. As soon as practicable following an Initial Waterfall Distribution Event or any Subsequent Waterfall Distribution Event that results in an aggregate sale of Units representing a Percentage Interest of 100%, or upon a sale of all or substantially all of the assets of the Company, all vested and unvested Phantom Profits Interest Units shall be cancelled (after the Grantee has been paid any amounts due with respect to such Units, if applicable).

Confidentiality, Non-Compete, Non-Solicitation. Notwithstanding anything herein to the contrary, a Grantee shall forfeit any and all rights to all vested and unvested Phantom Profits Interest Units if the Grantee violates the terms of any confidentiality, non-solicitation and non-competition provisions of any agreement between the Grantee and the Company, if applicable.

Withholding of Taxes

All Awards under the Plan shall be subject to applicable federal (including FICA), state, and local tax withholding requirements. The Company may require that the Grantee pay to the Company the amount of any federal, state, or local taxes that the Company is required to withhold with respect to such Awards, or the Company may deduct from other wages paid by the Company the amount of any withholding taxes due with respect to such Awards.

Nontransferability of Awards

Only the Grantee has any rights under an Award. A Grantee may not transfer those rights, directly or indirectly, except by will or the laws of descent and distribution.

Limitations on Issuance or Transfer of Phantom Profits Interest Units

No Phantom Profits Interest Units shall be issued or transferred in connection with any Award until all legal requirements applicable to the issuance or transfer of such Phantom Profits Interest Units have been complied with to the satisfaction of the Administrator. The Administrator shall have the right to condition any Award made to any Grantee hereunder on such Grantee's undertaking in writing to comply with any restrictions on his or her subsequent disposition of such Phantom Profits Interest Units as the Administrator shall deem necessary or advisable.

Amendment and Termination of the Plan

Amendment and Termination. The Administrator may, in accordance with the LLC Agreement, amend the Plan or any Award under the Plan, or terminate the Plan, at any time; provided that no amendment or termination of the Plan or any Award shall, without the consent of a Grantee, adversely impact the rights of any Grantee under any Award granted to such Grantee under the Plan, unless necessary to meet the requirements of any applicable law or regulation. Before amending or terminating the Plan or any Award to meet the requirements of an applicable law or regulation, the Administrator will attempt to bring the Plan or Award into compliance with the applicable law or regulation without reducing the benefits or payments to a Grantee to the greatest extent possible. If amendment or termination is still necessary and adversely impacts the rights of a Grantee, the Administrator will reasonably cooperate with such Grantee to adopt replacement benefits or payments that to the greatest extent possible places the Grantee in the same or a comparable economic position as if the Plan or Award had not been amended or terminated.

Governing Document. In the event of any conflict between any Award in the form attached hereto as Exhibit A or B and the LLC Agreement, such Award shall control. In the event of any conflict between any subsequent Award not in the form attached hereto and the LLC Agreement, the LLC agreement shall control unless such subsequent Award has been approved by the Board and Smith & Nephew, Inc., in which case such Award shall control. No other statements, representations, explanatory materials or examples, oral or written, may amend the Plan in any manner. The Plan shall be binding upon and enforceable against the Company and its successors and assigns.

Funding of the Plan

This Plan shall be unfunded. The Company shall not be required to establish any special or separate fund or to make any other segregation of assets to assure the payment of any Awards under this Plan. In no event shall interest be paid or accrued on any Award.

Rights of Grantees

No Award shall entitle any Grantee to any (i) voting rights with respect to any action or decision taken or made (or to be taken or made) by the Company or the Board of Managers, (ii) right to appoint Managers to the Board of Managers, or (iii) appraisal or preemption rights. Nothing in this Plan shall entitle any Employee, Board Member or any other person to any claim or right to receive an Award under this Plan. Neither this Plan nor any action taken hereunder shall be construed as giving any individual any rights to be retained by or in the employ of the Company or any other employment rights.

Headings

Section headings are for reference only. In the event of a conflict between a title and the content of a Section, the content of the Section shall control.

Effective Date of the Plan

The initial effective date of the Plan was May 4, 2012. The amended and restated version of the Plan shall be effective on December 8, 2017.

Miscellaneous

Compliance with Law. The Plan and the obligations of the Company to issue or transfer Phantom Profits Interest Units in connection with Awards shall be subject to all applicable laws and to approvals by any governmental or regulatory agency as may be required. The Administrator may revoke any Award if it is contrary to law or modify an Award to bring it into compliance with any valid and mandatory government regulation. The Administrator may also adopt rules regarding the withholding of taxes on payments to Grantees. The Administrator may, in its sole discretion, agree to limit its authority under this Section.

Governing Law. The validity, construction, interpretation, and effect of the Plan and Award Agreements issued under the Plan shall be governed and construed by and determined in accordance with the laws of the State of Delaware, without giving effect to the conflict of laws provisions thereof.

Exhibit 10.25

BIOVENTUS LLC

PHANTOM PROFITS INTERESTS PLAN

AWARD AGREEMENT

This Bioventus LLC Phantom Profits Interests Plan Award Agreement (this "Award Agreement"), dated as of July 22, 2013 (the "Effective Date"), is delivered by Bioventus LLC (the "Company") to Alessandra Pavesio (the "Grantee").

RECITALS

A. The Bioventus LLC Phantom Profits Interests Plan (the "Plan") provides for the grant of Phantom Profits Interest Units in the Company in accordance with the terms of the Plan and the Amended and Restated Limited Liability Company Agreement of the Company, as amended (the "LLC Agreement"). The Administrator (as defined in the Plan) has granted the Award (as defined below) to encourage the Grantee to contribute materially to the growth of the Company's owners, thereby benefitting the Company, and to align the economic interests of the Grantee with those of the owners. A copy of the Plan is attached. All capitalized terms not defined herein shall have the meaning given to such terms in the Plan or, if not defined in the Plan, in the LLC Agreement.

B. The Administrator shall administer the Plan.

NOW, THEREFORE, the parties to this Award Agreement, intending to be legally bound, hereby agree as follows:

1. **Grant of Phantom Profits Interests Units.** Subject to the terms and conditions set forth in this Award Agreement, the Plan, and the LLC Agreement, the Company hereby grants to the Grantee 83,333 Phantom Profits Interest Units (the "Award"). This Award Agreement (which is effective as of the Effective Date upon the parties' exchange of signed counterpart signature pages hereto), the Plan, and the LLC Agreement govern the terms of the grant of the Award.

2. **Vesting of Awarded Units.**

(a) Unless otherwise determined by the Administrator, the Award shall vest in accordance with the following schedule (each date described below, a **"**Vesting Date"), if the Grantee is employed by the Company on the applicable Vesting Date.

Applicable Date	**Vesting Percentage**
1st anniversary of the Effective Date	20%
Each quarter after the 1st anniversary of the Effective Date	5%

(b) In the event that an Initial Waterfall Distribution Event occurs prior to the Grantee's Termination Date, the unvested portion of the Award shall vest at the time of such Initial Waterfall Distribution Event.

(c) Upon the Grantee's Termination Date, any portion of the Award that is unvested shall be forfeited. Notwithstanding anything in the Plan to the contrary, only the unvested portion of the Award shall be forfeited upon the termination of the Grantee's employment for Cause.

(d) In the event of a Waterfall Distribution Event, the Grantee shall receive the Payment Amount, if any, pursuant to Section 5(b)(ii) or (iii) of the Plan, as applicable, with respect to the portion of the Award that is vested.

3. **Withholding.** All obligations of the Company under this Agreement shall be subject to the rights of the Company to withhold amounts required to be withheld for any taxes, if applicable.

4. **Restrictions on Transfer**. Only the Grantee has any rights under this Award. The Grantee may not transfer those rights, directly or indirectly, except by will or the laws of descent and distribution.

5. **Award Subject to Plan and LLC Agreement Provisions.** This Award is made pursuant to the Plan and the LLC Agreement, the terms of which are incorporated herein by reference, and in all respects shall be interpreted in accordance with the Plan and the LLC Agreement; provided that in the event of a conflict between the Plan or LLC Agreement and this Award Agreement, this Award Agreement shall control.[1] The Administrator shall have the full power and authority to administer and interpret the Plan and this Award Agreement, to make factual determinations, and to adopt or amend such rules, regulations, agreements, and instruments for implementing the Plan and this Award Agreement and for the conduct of its business as it deems necessary or advisable. All powers of the Administrator shall be executed without the approval or consent of the Grantee.

6. **No Employment or Other Rights.** This Award Agreement is not an agreement of employment and the grant of this Award shall not confer upon the Grantee any right to be retained by or in the employ of the Company and shall not interfere in any way with the right of the Company to terminate the Grantee's employment at any time. The right of the Company, as applicable, to terminate at will the Grantee's employment at any time for any reason is specifically reserved. The grant of this Award shall not entitle the Grantee to any (i) voting rights with respect to any action or decision taken or made (or to be taken or made) by the Company or the Board, (ii) right to appoint Managers to the Board, or (iii) appraisal or preemption rights.

7. **Notice.** Any notice to the Company provided for in this Award Agreement must be in writing and will be deemed given: (a) on the date established by the sender as having been delivered personally; (b) on the date delivered by a private, nationally recognized, overnight courier as established by the sender by evidence obtained from the courier; (c) on the date sent by facsimile, with confirmation of transmission, if sent during normal business hours of the recipient (and, if not sent during normal business hours of the recipient, then on the next business day); or (d) on the fifth business day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications, to be valid, must be addressed as follows:

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1 Note: The proviso in this sentence will apply only to Awards, if any, in the form attached to the Plan as of May 4, 2012 or attached to that certain side letter entered into on May 4, 2012 or any subsequent award agreement that is approved by the Board and Smith & Nephew, Inc. in accordance with Section 10(b) of the Plan.

If to the Company, to:

Bioventus, LLC
4721 Emperor Blvd., Suite 100
Durham, NC 27703
Attention: VP, Human Resources
Fax: 919.474.6802

If to the Grantee, to the address on file with the Company.

If more than one method for sending notice as set forth above is used, the earliest notice date established as set forth above will control for purposes of determining when such notice is deemed to have been given.

8. **Amendment and Termination: Section 409A**. The Administrator may amend the Plan or this Award, or terminate the Plan, at any time; provided that no amendment or termination of the Plan or this Award shall, without the consent of a Grantee, adversely impact the rights of the Grantee under this Award, unless necessary to meet the requirements of any applicable law or regulation. Before amending or terminating the Plan or this Award to meet the requirements of an applicable law or regulation, the Administrator will attempt to bring the Plan or Award into compliance with the applicable law or regulation without reducing the benefits or payments to the Grantee to the greatest extent possible. If amendment or termination is still necessary and adversely impacts the rights of the Grantee, the Administrator will reasonably cooperate with the Grantee to adopt replacement benefits or payments that to the greatest extent possible places the Grantee in the same or a comparable economic position as if the Plan or Award had not been amended or terminated.

Subject to the first paragraph of this Section 8, while the Company does not guarantee any particular tax treatment with respect to the Award, payment of the Payment Amount is intended to comply with Section 409A, to the extent subject thereto, and shall be interpreted and construed consistent with that intent. The Company may reform this Award or any provision hereof to maintain to the maximum extent practicable the original intent of the provision without violating the provisions of Section 409A, provided, that any deferral of payments shall be only for such time period as may be required to comply with Section 409A.

9. **Headings.** Section headings are for reference only. In the event of a conflict between a heading and the content of a Section, the content of the Section shall control.

10. **Applicable Law.** The validity, construction, interpretation and effect of this Award Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to the conflicts of laws provisions thereof.

[*Signature page follows*]

IN WITNESS WHEREOF, the Company has caused its duly authorized officer to execute this Award Agreement, and the Grantee has executed this Award Agreement, effective as of the Effective Date.

Bioventus LLC

By: /s/ Leigh Ann Stradford

Name: Leigh Ann Stradford

Title: Vice President of Human Resources

I hereby accept the Award described in this Award Agreement, and I agree to be bound by the terms of this Award Agreement, the Plan and the LLC Agreement. I hereby further agree that all of the decisions and determinations of the Administrator shall be final and binding.

Grantee: /s/ Alessandra Pavesio
Alessandra Pavesio

Date:

BIOVENTUS LLC

PHANTOM PROFITS INTERESTS PLAN

AWARD AGREEMENT

The Administrator, as defined in the Bioventus LLC Phantom Profits Interests Plan (the "**Plan**"), of the Plan has decided to grant to you Phantom Profits Interest Units in the Company under the Plan. The terms of the grant (the "**Grant**") are set forth in this Bioventus LLC Phantom Profits Interests Plan Award Agreement (the "**Award Agreement**") provided to you. The following provides a summary of the key terms of the Grant; however, you should read the entire Award Agreement, along with the terms of the Plan and the Company's Amended and Restated Limited Liability Company Agreement (as might be amended), to fully understand the Grant.

SUMMARY OF PHANTOM PROFITS INTERESTS PLAN AWARD AGREEMENT

Grantee:	**Alessandra Pavesio**
Date of Award:	**June l, 2015**
Vesting Schedule:	**Three year cliff vesting if, and only if, the 2017 409A enterprise valuation (as reflected in the report issued in QI 2018) is:** **1. equal to or greater than $740 million, 100% of the units vest. 2. equal to or greater than $690 million but less than $740 million, 50% of the units vest. The remaining 50% expire. 3. less than $690 million, none of the units vest and all of the units expire.**
Phantom Profits Interest Units Awarded:	**15,000**
Payment Event:.	**Termination Payment Event***
Grant Date Benchmark Amount:	**$367,264,090**

* Payable upon the earlier of the Grantee's Termination Date or an Initial Waterfall Distribution Event, as more fully set forth in the Plan.

BIOVENTUS LLC

PHANTOM PROFITS INTERESTS PLAN

AWARD AGREEMENT

This Bioventus LLC Phantom Profits Interests Plan Award Agreement (this "Award Agreement"), dated as of June 1, 2015 (the "Effective Date"), is delivered by Bioventus LLC (the "Company") to Alessandra Pavesio (the "Grantee").

RECITALS

A. The Bioventus LLC Phantom Profits Interests Plan (the "Plan") provides for the grant of Phantom Profits Interest Units in the Company in accordance with the terms of the Plan and the Amended and Restated Limited Liability Company Agreement of the Company, as amended (the "LLC Agreement"). The Administrator (as defined in the Plan) has granted the Award (as defined below) to encourage the Grantee to contribute materially to the growth of the Company's owners, thereby benefitting the Company, and to align the economic interests of the Grantee with those of the owners. A copy of the Plan is attached. All capitalized terms not defined herein shall have the meaning given to such terms in the Plan or, if not defined in the Plan, in the LLC Agreement.

B. The Administrator shall administer the Plan.

NOW, THEREFORE, the parties to this Award Agreement, intending to be legally bound, hereby agree as follows:

Grant of Phantom Profits Interests Units. Subject to the terms and conditions set forth in this Award Agreement, the Plan, and the LLC Agreement, the Company hereby grants to the Grantee 15,000 Phantom Profits Interest Units (the **"Award"). This Award Agreement (which is effective as of the Effective Date upon the parties' exchange of signed counterpart signature pages hereto), the Plan, and the LLC Agreement govern the terms of the grant of the Award.**

Vesting of Awarded Units.

The Award shall vest in accordance with the following schedule (each date described below, a "Vesting Date"), if the Grantee is employed by the Company on the applicable Vesting Date.

Three year cliff vesting as follows if, and only if, the 2017 409A enterprise valuation (as reflected in the report issued in Ql 2018) is:

1. equal to or greater than $740 million, 100% of the units vest.
2. equal to or greater than $690 million but less than $740 million, 50% of the units vest.

The remaining 50% expire.

3. less than $690 million, none of the units vest and all of the units expire.

On a Payment Event, the Grantee shall receive the Payment Amount, if any, with respect to the portion of the Award that is vested, as set forth in Section 5(b)(i) of the Plan. Any portion of the Award that is unvested as of the Termination Date shall be forfeited at the time of the Grantee's termination.

Upon an Initial Waterfall Distribution Event that occurs prior to the Grantee's Termination Date, the unvested portion of the Award shall vest at the time of such Initial Waterfall Distribution Event.

Upon the termination of the Grantee's employment for Cause, both the vested and the unvested portion of the Award shall be forfeited.

Withholding. All obligations of the Company under this Agreement shall be subject to the rights of the Company to withhold amounts required to be withheld for any taxes, if applicable.

Restrictions on Transfer. Only the Grantee has any rights under this Award. The Grantee may not transfer those rights, directly or indirectly, except by will or the laws of descent and distribution.

Award Subject to Plan and LLC Agreement Provisions. This Award is made pursuant to the Plan and the LLC Agreement, the terms of which are incorporated herein by reference, and in all respects shall be interpreted in accordance with the Plan and the LLC Agreement. The Administrator shall have the full power and authority to administer and interpret the Plan and this Award Agreement, to make factual determinations, and to adopt or amend such rules, regulations, agreements, and instruments for implementing the Plan and this Award Agreement and for the conduct of its business as it deems necessary or advisable. All powers of the Administrator shall be executed without the approval or consent of the Grantee.

No Employment or Other Rights. This Award Agreement is not an agreement of employment and the grant of this Award shall not confer upon the Grantee any right to be retained by or in the employ of the Company and shall not interfere in any way with the right of the Company to terminate the Grantee's employment at any time. The right of the Company; as applicable, to terminate at will the Grantee's employment at any time for any reason is specifically reserved. The grant of this Award shall not entitle the Grantee to any (i) voting rights with respect to any action or decision taken or made (or to be taken or made) by the Company or the Board, (ii) right to appoint Managers to the Board, or (iii) appraisal or preemption rights.

Notice. Any notice to the Company provided for in this Award Agreement must be in writing and will be deemed given: (a) on the date established by the sender as having been delivered personally; (b) on the date delivered by a private, nationally recognized, overnight courier as established by the sender by evidence obtained from the courier; (c) on the date sent by facsimile, with confirmation of transmission, if sent during normal business hours of the recipient (and, if not sent during normal business hours of the recipient, then on the next business day); or (d) on the fifth business day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications, to be valid, must be addressed as follows:

If to the Company, to:

Bioventus LLC
4721 Emperor Blvd. Suite 100
Attention: General Counsel
Facsimile: 866-467-1531

If to the Grantee, to the address on file with the Company.

If more than one method for sending notice as set forth above is used, the earliest notice date established as set forth above will control for purposes of determining when such notice is deemed to have been given.

Amendment and Termination; Section 409A. The Administrator may amend the Plan or this Award, or terminate the Plan, at any time; provided that no amendment or termination of the Plan or this Award shall, without the consent of a Grantee, adversely impact the rights of the Grantee under this Award, unless necessary to meet the requirements of any applicable law or regulation. Before amending or terminating the Plan or this Award to meet the requirements of an applicable law or regulation, the Administrator will attempt to bring the Plan or Award into compliance with the applicable law or regulation without reducing the benefits or payments to the Grantee to the greatest extent possible. If amendment or termination is still necessary and adversely impacts the rights of the Grantee, the Administrator will reasonably cooperate with the Grantee to adopt replacement benefits or payments that to the greatest extent possible places the Grantee in the same or a comparable economic position as if the Plan or Award had not been amended or terminated.

Subject to the first paragraph of this Section 8, while the Company does not guarantee any particular tax treatment with respect to the Award, payment of the Payment Amount is intended to comply with Section 409A, to the extent subject thereto, and shall be interpreted and construed consistent with that intent. The Company may reform this Award or any provision hereof to maintain to the maximum extent practicable the original intent of the provision without violating the provisions of Section 409A, provided, that any deferral of payments shall be only for such time period as may be required to comply with Section 409A.

Headings. Section headings are for reference only. In the event of a conflict between a heading and the content of a Section, the content of the Section shall control.

Applicable Law. The validity, construction, interpretation and effect of this Award Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to the conflicts of laws provisions thereof.

IN WITNESS WHEREOF, the Company has caused its duly authorized officer to execute this Award Agreement, and the Grantee has executed this Award Agreement, effective as of the Effective Date.

Bioventus LLC

By: /s/ Leigh Ann Stradford

Name: Leigh Ann Stradford

Title: VP of Human Resources

I hereby accept the Award described in this Award Agreement, and I agree to be bound by the terms of this Award Agreement, the Plan and the LLC Agreement. I hereby further agree that all of the decisions and determinations of the Administrator shall be final and binding.

Grantee: /s/ Alessandra Pavesio
Alessandra Pavesio

Date: 8-25-2015

BIOVENTUS LLC

PHANTOM PROFITS INTERESTS PLAN

AWARD AGREEMENT

The Administrator, as defined in the Bioventus LLC Phantom Profits Interests Plan (the "**Plan**"), of the Plan has decided to grant to you Phantom Profits Interest Units in the Company under the Plan. The terms of the grant (the "**Grant**") are set forth in this Bioventus LLC Phantom Profits Interests Plan Award Agreement (the "**Award Agreement**") provided to you. The following provides a summary of the key terms of the Grant; however, you should read the entire Award Agreement, along with the terms of the Plan and the Company's Amended and Restated Limited Liability Company Agreement (as might be amended), to fully understand the Grant.

SUMMARY OF PHANTOM PROFITS INTERESTS PLAN AWARD AGREEMENT

Grantee:	**Alessandra Pavesio**
Date of Award:	**April 21, 2016**
Vesting Schedule:	**20% vests on December 31, 2016 and the remaining 80% vests in equal installments on a quarterly basis over the next four years**
Phantom Profits Interest Units Awarded:	**11,392**
Payment Event:	**Termination Payment Event**
Grant Date Benchmark Amount:	**$472,003,000**

BIOVENTUS LLC

PHANTOM PROFITS INTERESTS PLAN

AWARD AGREEMENT

This Bioventus LLC Phantom Profits Interests Plan Award Agreement (this "**Award Agreement**"), dated as of April 21, 2016 (the "**Effective Date**"), is delivered by Bioventus LLC (the "**Company**") to Alessandra Pavesio (the "**Grantee**").

RECITALS

A. The Bioventus LLC Phantom Profits Interests Plan (the "**Plan**") provides for the grant of Phantom Profits Interest Units in the Company in accordance with the terms of the Plan and the Amended and Restated Limited Liability Company Agreement of the Company, as amended (the "**LLC Agreement**"). The Administrator (as defined in the Plan) has granted the Award (as defined below) to encourage the Grantee to contribute materially to the growth of the Company's owners, thereby benefitting the Company, and to align the economic interests of the Grantee with those of the owners. A copy of the Plan is attached. All capitalized terms not defined herein shall have the meaning given to such terms in the Plan or, if not defined in the Plan, in the LLC Agreement.

B. The Administrator shall administer the Plan.

NOW, THEREFORE, the parties to this Award Agreement, intending to be legally bound, hereby agree as follows:

1. **Grant of Phantom Profits Interests Units.** Subject to the terms and conditions set forth in this Award Agreement, the Plan, and the LLC Agreement, the Company hereby grants to the Grantee 11,392 Phantom Profits Interest Units (the "Award"). This Award Agreement (which is effective as of the Effective Date upon the parties' exchange of signed counterpart signature pages hereto), the Plan, and the LLC Agreement govern the terms of the grant of the Award.

2. **Vesting of Awarded Units.**

(a) Unless otherwise determined by the Administrator, the Award shall vest in accordance with the following schedule (each date described below, a "**Vesting Date**"), if the Grantee is employed by the Company on the applicable Vesting Date.

Applicable Date	Vesting Percentage
December 31, 2016	20%
Each quarter after December 31, 2016	5%

(b) On a Payment Event, the Grantee shall receive the Payment Amount, if any, with respect to the portion of the Award that is vested, as set forth in Section 5(b)(i) of the Plan. Any portion of the Award that is unvested as of the Termination Date shall be forfeited at the time of the Grantee's termination.

(c) Upon an Initial Waterfall Distribution Event that occurs prior to the Grantee's Termination Date, the unvested portion of the Award shall vest at the time of such Initial Waterfall Distribution Event.

(d) Upon the termination of the Grantee's employment for Cause, both the vested and the unvested portion of the Award shall be forfeited.

3. **Withholding**. All obligations of the Company under this Agreement shall be subject to the rights of the Company to withhold amounts required to be withheld for any taxes, if applicable.

4. **Restrictions on Transfer**. Only the Grantee has any rights under this Award. The Grantee may not transfer those rights, directly or indirectly, except by will or the laws of descent and distribution.

5. **Award Subject to Plan and LLC Agreement Provisions**. This Award is made pursuant to the Plan and the LLC Agreement, the terms of which are incorporated herein by reference, and in all respects shall be interpreted in accordance with the Plan and the LLC Agreement. The Administrator shall have the full power and authority to administer and interpret the Plan and this Award Agreement, to make factual determinations, and to adopt or amend such rules, regulations, agreements, and instruments for implementing the Plan and this Award Agreement and for the conduct of its business as it deems necessary or advisable. All powers of the Administrator shall be executed without the approval or consent of the Grantee.

6. **No Employment or Other Rights**. This Award Agreement is not an agreement of employment and the grant of this Award shall not confer upon the Grantee any right to be retained by or in the employ of the Company and shall not interfere in any way with the right of the Company to terminate the Grantee's employment at any time. The right of the Company, as applicable, to terminate at will the Grantee's employment at any time for any reason is specifically reserved. The grant of this Award shall not entitle the Grantee to any (i) voting rights with respect to any action or decision taken or made (or to be taken or made) by the Company or the Board, (ii) right to appoint Managers to the Board, or (iii) appraisal or preemption rights.

7. **Notice**. Any notice to the Company provided for in this Award Agreement must be in writing and will be deemed given: (a) on the date established by the sender as having been delivered personally; (b) on the date delivered by a private, nationally recognized, overnight courier as established by the sender by evidence obtained from the courier; (c) on the date sent by facsimile, with confirmation of transmission, if sent during normal business hours of the recipient (and, if not sent during normal business hours of the recipient, then on the next business day); or (d) on the fifth business day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications, to be valid, must be addressed as follows:

If to the Company, to:

Bioventus LLC
4721 Emperor Blvd. Suite 100
Durham, NC 27703
Attention: General Counsel
Facsimile: 866-467-1531

If to the Grantee, to the address on file with the Company.

If more than one method for sending notice as set forth above is used, the earliest notice date established as set forth above will control for purposes of determining when such notice is deemed to have been given.

8. **Amendment and Termination; Section 409A.** The Administrator may amend the Plan or this Award, or terminate the Plan, at any time; provided that no amendment or termination of the Plan or this Award shall, without the consent of a Grantee, adversely impact the rights of the Grantee under this Award, unless necessary to meet the requirements of any applicable law or regulation. Before amending or terminating the Plan or this Award to meet the requirements of an applicable law or regulation, the Administrator will attempt to bring the Plan or Award into compliance with the applicable law or regulation without reducing the benefits or payments to the Grantee to the greatest extent possible. If amendment or termination is still necessary and adversely impacts the rights of the Grantee, the Administrator will reasonably cooperate with the Grantee to adopt replacement benefits or payments that to the greatest extent possible places the Grantee in the same or a comparable economic position as if the Plan or Award had not been amended or terminated.

Subject to the first paragraph of this Section 8, while the Company does not guarantee any particular tax treatment with respect to the Award, payment of the Payment Amount is intended to comply with Section 409A, to the extent subject thereto, and shall be interpreted and construed consistent with that intent. The Company may reform this Award or any provision hereof to maintain to the maximum extent practicable the original intent of the provision without violating the provisions of Section 409A, provided, that any deferral of payments shall be only for such time period as may be required to comply with Section 409A.

9. **Headings**. Section headings are for reference only. In the event of a conflict between a heading and the content of a Section, the content of the Section shall control.

10. **Applicable Law**. The validity, construction, interpretation and effect of this Award Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to the conflicts of laws provisions thereof.

IN WITNESS WHEREOF, the Company has caused its duly authorized officer to execute this Award Agreement, and the Grantee has executed this Award Agreement, effective as of the Effective Date.

Bioventus LLC

By: /s/ Leigh Ann Stradford

Name: Leigh Ann Stradford

Title: Sr. VP Human Resources

I hereby accept the Award described in this Award Agreement, and I agree to be bound by the terms of this Award Agreement, the Plan and the LLC Agreement. I hereby further agree that all of the decisions and determinations of the Administrator shall be final and binding.

Grantee: /s/ Alessandra Pavesio
Alessandra Pavesio

Date: 4/25/2016

Bioventus LLC
4721 Emperor Blvd., Suite 100
Durham, NC 27703
USA

1-919-474-6700
1-800-396-4325
www.BioventusGlobal.com

September 17, 2018

Alessandra Pavesio

RE: Bioventus Phantom Profit Interests Award

Dear Alessandra:

As Bioventus drives forward to become a global leader in Orthobiologics, we will rely on the continued strong contribution of key leaders like yourself. In recognition, and as incentive for this contribution, our Board of Managers has approved an additional pool of Phantom Profits Interests Units to be awarded to a select group of leaders who we believe will have the greatest impact in achieving our mission. You have been designated as one of these key leaders and, as a result, you are being granted 20,000 Phantom Profits Interests Units.

This Performance Units Award is granted to you under, and is subject to, all of the terms of the Phantom Profits Interests Plan ("**Plan**") and the applicable Bioventus LLC Phantom Profits Interests Plan Award Agreement ("**Award Agreement**"). A copy of the Plan and your corresponding Award Agreement are included with this letter and I encourage you to review both documents carefully.

We recognize that consistent and predictable revenue growth will be an important measure of our future success, and this growth is therefore a key component for vesting of the 2018 Performance Units. The plan provides for cliff-vesting of the units on June 1, 2021, based on 2020 revenue attainment consistent with the projections specified below. The Vesting Schedule for 2018 Performance Units is as follows:

Vesting Schedule: **Cliff vesting if, and only if, 2020 revenue growth is attained as outlined below:**

1. Revenue is equal to or greater than $391.8M, 100% of the units vest.
2. Revenue is equal to or greater than $370.8M, 75% of the units vest and the remaining units expire.
3. Revenue is equal to or greater than $350.6M, 50% of the units vest and the remaining units expire.
4. Revenue is less than $350.6M, none of the units vest and all of the units expire.

Shown below is an example of potential value of a PPI Unit at a Waterfall, and how the Waterfall Distribution is calculated. The payout amounts shown below are provided for illustrative purposes and shall apply only to units vested pursuant to the above-referenced schedule. Actual payouts under the Plan may vary from those shown and are subject to all of the terms of the Plan documents and applicable withholding requirements[1].

Illustrative Waterfall Scenarios[2]

(as of 10.31.17)		
Enterprise value	$1 BILLION	$1.2 BILLION
Approximate $ payout/unit	$ 4.87	$ 19.23
Assumes $703,691,178 benchmark[2]		

I am delighted to notify you of this Award and I look forward to celebrating with you as we achieve our mission and continue to impact the lives of thousands of people around the world each year!

Sincerely,

/s/ Anthony P. Bihl
Chief Executive Officer

Enclosures

1 The revenue targets and any other financial projections contained in this letter have been provided to you by the Company solely for your information and may be deemed to be forward-looking statements, which involve known and unknown risks and uncertainties. Given these risks and uncertainties, you are advised not to place any undue reliance on such forward-looking statements. Further, the Company does not make any representations or warranties, express or implied, as to the ultimate value of your Award or whether a Waterfall Distribution Event will occur. In the event of any inconsistency between this letter and the Plan, the provisions of the Plan shall govern.

2 Waterfall Distribution Formula: Enterprise Value - Debt (net of cash) - Benchmark of PPI units = Remaining Equity Value available for Distribution / Units Outstanding = PPI Payout per unit

BIOVENTUS LLC PHANTOM PROFITS INTERESTS PLAN

AWARD AGREEMENT

The Administrator, as defined in the Bioventus LLC Phantom Profits Interests Plan (the "**Plan**"), of the Plan has decided to grant to you Phantom Profits Interest Units in the Company under the Plan. The terms of the grant (the "**Grant**") are set forth in this Bioventus LLC Phantom Profits Interests Plan Award Agreement (the "**Award Agreement**") provided to you. The following provides a summary of the key terms of the Grant; however, you should read the entire Award Agreement, along with the terms of the Plan and the Company's Amended and Restated Limited Liability Company Agreement (as might be amended), to fully understand the Grant.

SUMMARY OF PHANTOM PROFITS INTERESTS PLAN AWARD AGREEMENT

Grantee:	**Alessandra Pavesio**
Date of Award:	**September 17, 2018**
Vesting Schedule:	**On June 1, 2021, the plan provides for cliff-vesting, if and only if, the 2020 revenue attainment is consistent with the projections outlined below:** **1. Revenue is equal to or greater than $391.8M, 100% of the units vest.** **2. Revenue is equal to or greater than $370.8M, 75% of the units vest and the remaining units expire.** **3. Revenue is equal to or greater than $350.6M, 50% of the units vest and the remaining units expire.** **4. Revenue is less than $350.6M, none of the units vest and all of the units expire.**
Phantom Profits Interest Units Awarded:	**20,000**
Payment Event:	**Termination Payment Event**
Grant Date Benchmark Amount:	**$703,691,178**

BIOVENTUS LLC

PHANTOM PROFITS INTERESTS PLAN

AWARD AGREEMENT

This Bioventus LLC Phantom Profits Interests Plan Award Agreement (this "**Award Agreement**"), dated as of September 17, 2018 (the "**Effective Date**"), is delivered by Bioventus LLC (the "**Company**") to Alessandra Pavesio (the "**Grantee**").

RECITALS

A. The Bioventus LLC Phantom Profits Interests Plan (the "**Plan**") provides for the grant of Phantom Profits Interest Units in the Company in accordance with the terms of the Plan and the Amended and Restated Limited Liability Company Agreement of the Company, as amended (the "**LLC Agreement**"). The Administrator (as defined in the Plan) has granted the Award (as defined below) to encourage the Grantee to contribute materially to the growth of the Company's owners, thereby benefitting the Company, and to align the economic interests of the Grantee with those of the owners. A copy of the Plan is attached. All capitalized terms not defined herein shall have the meaning given to such terms in the Plan or, if not defined in the Plan, in the LLC Agreement.

B. The Administrator shall administer the Plan.

NOW, THEREFORE, the parties to this Award Agreement, intending to be legally bound, hereby agree as follows:

Grant of Phantom Profits Interests Units. Subject to the terms and conditions set forth in this Award Agreement, the Plan, and the LLC Agreement, the Company hereby grants to the Grantee 20,000 Phantom Profits Interest Units (the "Award"). This Award Agreement (which is effective as of the Effective Date upon the parties' exchange of signed counterpart signature pages hereto), the Plan, and the LLC Agreement govern the terms of the grant of the Award.

Vesting of Awarded Units.

Unless otherwise determined by the Administrator, the Award shall vest in accordance with the following schedule on June 1, 2021 (the "**Vesting Date**"), if the Grantee is employed by the Company on such Vesting Date.

The Award is subject to cliff-vesting in amounts as determined by the schedule below if, and only if, the Company's annual revenue for calendar year 2020 equals or exceeds $350.6M:

1. $391.8M, then 100% of the Award shall vest on the Vesting Date.
2. $370.8M, then 75% of the Award shall vest on the Vesting Date and the remaining units expire.

3. $350.6M, then 50% of the Award shall vest on the Vesting Date and the remaining units expire.

4. Less than $350.6M, none of the Awarded units shall vest and all of the units shall expire.

Revenue numbers will be determined by Bioventus in accordance with accounting principles generally accepted in the United States and consistent with Bioventus' accounting policies.

On a Payment Event, the Grantee shall receive the Payment Amount, if any, with respect to the portion of the Award that is vested, as set forth in Section 5(b)(i) of the Plan. Any portion of the Award that is unvested as of the Vesting Date shall be forfeited.

Any and all of a Grantee's unvested Phantom Profits Interest Units shall be forfeited upon the termination of the Grantee's employment for any reason.

Upon the termination of the Grantee's employment for Cause, both the vested and the unvested portion of the Award shall be forfeited.

Withholding. All obligations of the Company under this Agreement shall be subject to the rights of the Company to withhold amounts required to be withheld for any taxes, if applicable.

Restrictions on Transfer. Only the Grantee has any rights under this Award. The Grantee may not transfer those rights, directly or indirectly, except by will or the laws of descent and distribution.

Award Subject to Plan and LLC Agreement Provisions. This Award is made pursuant to the Plan and the LLC Agreement, the terms of which are incorporated herein by reference, and in all respects shall be interpreted in accordance with the Plan and the LLC Agreement. The Administrator shall have the full power and authority to administer and interpret the Plan and this Award Agreement, to make factual determinations, and to adopt or amend such rules, regulations, agreements, and instruments for implementing the Plan and this Award Agreement and for the conduct of its business as it deems necessary or advisable. All powers of the Administrator shall be executed without the approval or consent of the Grantee.

No Employment or Other Rights. This Award Agreement is not an agreement of employment and the grant of this Award shall not confer upon the Grantee any right to be retained by or in the employ of the Company and shall not interfere in any way with the right of the Company to terminate the Grantee's employment at any time. The right of the Company, as applicable, to terminate at will the Grantee's employment at any time for any reason is specifically reserved. The grant of this Award shall not entitle the Grantee to any (i) voting rights with respect to any action or decision taken or made (or to be taken or made) by the Company or the Board, (ii) right to appoint Managers to the Board, or (iii) appraisal or preemption rights.

Notice. Any notice to the Company provided for in this Award Agreement must be in writing and will be deemed given: (a) on the date established by the sender as having been delivered personally; (b) on the date delivered by a private, nationally recognized, overnight courier as established by the sender by evidence obtained from the courier; (c) on the date sent by facsimile, with confirmation of transmission, if sent during normal business hours of the recipient (and, if not sent during normal business hours of the recipient, then on the next business day); or (d) on the fifth business day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications, to be valid, must be addressed as follows:

If to the Company, to:

Bioventus LLC
4721 Emperor Blvd. Suite 100
Durham, NC 27703
Attention: General Counsel
Facsimile: 866-467-1531

If to the Grantee, to the address on file with the Company.

If more than one method for sending notice as set forth above is used, the earliest notice date established as set forth above will control for purposes of determining when such notice is deemed to have been given.

Amendment and Termination; Section 409A. The Administrator may amend the Plan or this Award, or terminate the Plan, at any time; provided that no amendment or termination of the Plan or this Award shall, without the consent of a Grantee, adversely impact the rights of the Grantee under this Award, unless necessary to meet the requirements of any applicable law or regulation. Before amending or terminating the Plan or this Award to meet the requirements of an applicable law or regulation, the Administrator will attempt to bring the Plan or Award into compliance with the applicable law or regulation without reducing the benefits or payments to the Grantee to the greatest extent possible. If amendment or termination is still necessary and adversely impacts the rights of the Grantee, the Administrator will reasonably cooperate with the Grantee to adopt replacement benefits or payments that to the greatest extent possible places the Grantee in the same or a comparable economic position as if the Plan or Award had not been amended or terminated.

Subject to the first paragraph of this Section 8, while the Company does not guarantee any particular tax treatment with respect to the Award, payment of the Payment Amount is intended to comply with Section 409A, to the extent subject thereto, and shall be interpreted and construed consistent with that intent. The Company may reform this Award or any provision hereof to maintain to the maximum extent practicable the original intent of the provision without violating the provisions of Section 409A, provided, that any deferral of payments shall be only for such time period as may be required to comply with Section 409A.

Headings. Section headings are for reference only. In the event of a conflict between a heading and the content of a Section, the content of the Section shall control.

Applicable Law. The validity, construction, interpretation and effect of this Award Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to the conflicts of laws provisions thereof.

IN WITNESS WHEREOF, the Company has caused its duly authorized officer to execute this Award Agreement, and the Grantee has executed this Award Agreement, effective as of the Effective Date.

Bioventus LLC

By: /s/ Leigh Ann Stradford
Name: Leigh Ann Stradford
Title: SVP and Chief HR Officer

I hereby accept the Award described in this Award Agreement, and I agree to be bound by the terms of this Award Agreement, the Plan and the LLC Agreement. I hereby further agree that all of the decisions and determinations of the Administrator shall be final and binding.

Grantee: /s/ Alessandra Pavesio
Date: 9/26/2018

BIOVENTUS LLC

PHANTOM PROFITS INTERESTS PLAN

AS AMENDED AND RESTATED DECEMBER 8, 2017

The purpose of the Bioventus LLC Phantom Profits Interests Plan (the "**Plan**") is to provide eligible employees and independent members of the Board of Managers of Bioventus LLC (the "**Company**") who are important to the success and growth of the business of the Company an opportunity to share in the future appreciation in value of the Company by receiving grants of Phantom Profits Interest Units in the Company. The Company believes that the Plan will encourage participants to contribute materially to the growth of the Company's owners, thereby benefiting the Company, and will align the economic interests of the participants with those of the owners. Awards under the Plan shall consist of grants of Phantom Profits Interest Units as described in Section 5 ("**Awards**"). Capitalized terms that are used but not defined herein shall have the respective meanings accorded to such terms in the Amended and Restated Limited Liability Company Agreement of the Company, as amended (the "**LLC Agreement**").

Definitions

"**Benchmark Amount**" means the cumulative distributions that must be made by the Company pursuant to the LLC Agreement before a Grantee is entitled to receive any distributions in respect of such Grantee's Phantom Profits Interest Units. The Benchmark Amount shall equal $703,691,178 or such other greater amount as set forth in the applicable Award Agreement.

"**Board Member**" means an independent member of the Board of Managers of the Company appointed or elected to the Board of Managers on or after January 1, 2016.

"Code" means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

"Employee" means an employee of the Company.

"Grantee" means an Employee or Board Member who receives an Award.

"**Initial Waterfall Distribution Event**" means the closing of (i) a sale of Units representing a Percentage Interest of more than 66.66%, or (ii) a sale of all or substantially all of the assets of the Company; provided that such event constitutes a change in ownership or a change in effective control of the Company within the meaning of Section 409A of the Code.

"**Management Distribution Cap**" means 17.5% of the aggregate amount, if any, available for distribution pursuant to Section 10.05(a)(v) of the LLC Agreement.

"Management Incentive Plan" means the Bioventus LLC Management Incentive Plan.

"**Payment Amount**" means the amount payable with respect to each vested Phantom Profits Interest Unit upon the applicable Payment Event.

"**Phantom Profits Interest Unit**" means a right to receive cash in an amount equal to the Payment Amount upon the Payment Event as set forth in the applicable Award Agreement.

"**Profits Interest Unit**" means a non-managing, non-voting ownership interest in the Company issued pursuant to Section 3.01(b) of the LLC Agreement and the Management Incentive Plan.

"**Qualifying Subsequent Waterfall Distribution Event**" means a Subsequent Waterfall Distribution Event that constitutes a change in ownership or a change in effective control of the Company within the meaning of Section 409A of the Code.

"**Subsequent Waterfall Distribution Event**" means, following an Initial Waterfall Distribution Event under Section 1(a) above with respect to Units representing a Percentage Interest of less than 100%, the closing of (i) a subsequent sale of Units, or (ii) a sale of all or substantially all of the assets of the Company

"**Termination Date**" means in the case of an Employee, the date of the Grantee's separation of service, as defined in Section 409A of the Code, and in the case of a Board Member, resignation or removal from the Board of Managers of the Company.

"**Waterfall Distribution Event**" means an Initial Waterfall Distribution Event or a Subsequent Waterfall Distribution Event.

Administration

Administration. The Plan shall be administered and interpreted by the Board of Managers (the "**Administrator**") or by a committee or subcommittee, which shall be appointed by the Administrator. To the extent that a committee or subcommittee administers the Plan, references in the Plan to the "Administrator" shall be deemed to refer to the committee or the subcommittee.

Administrator Authority. The Administrator shall determine (i) the Employees and Board Members to receive Awards, (ii) the size and terms of the Awards, (iii) the time when the Awards will be made, (iv) the applicable Payment Event, (v) the duration of any applicable vesting period, provided that such vesting period shall not be less than four years and that the Award shall vest ratably over the vesting period, and (vi) the Benchmark Amount with respect to any Award.

Administrator Determinations. The Administrator shall have full power and authority to administer and interpret the Plan, to make factual determinations, and to adopt or amend such rules, regulations, agreements, and instruments for implementing the Plan and for the conduct of its business as it deems necessary or advisable. All powers of the Administrator shall be executed without the approval or consent of the Grantees.

Interests Subject to the Plan

Awards Authorized by the LLC Agreement. The total amount of Phantom Profits Interest Units available for grants under the Plan, when combined with the total amount of Profits Interest Units (as defined in the Management Incentive Plan) granted under the Management Incentive Plan and any other form of employee, management or other service provider equity or equity-related awards of the Company, shall not result in aggregate distributions to the holders thereof in excess of the Management Distribution Cap (such amount determined, solely for this purpose, as if there were no Phantom Profits Interest Units or Other Management Equity Awards (as defined in the LLC Agreement)) ("**Excess Distributions**"), unless and to the extent that S&N and the Essex Members consent in their capacity as Members to such Excess Distributions. If, and to the extent that, Phantom Profits Interest Units granted under the Plan terminate or are canceled, forfeited, exchanged, or surrendered without payment, such Phantom Profits Interest Units shall be available again for purposes of the Plan.

Adjustments. If there is any change in the total amount or kind of Phantom Profits Interest Units outstanding (i) by reason of a spinoff, split of the Phantom Profits Interest Units, reclassification, combination, or exchange of such Phantom Profits Interest Units or similar event; (ii) by reason of a merger, reorganization, or consolidation; (iii) by reason of any other extraordinary or unusual event affecting the outstanding Phantom Profits Interest Units as a class without the Company's receipt of consideration; or (iv) by reason of a change in the structure of the Company, or if the value of the outstanding Phantom Profits Interest Units are substantially reduced as a result of a spinoff, the amount or percentage of such Phantom Profits Interest Units covered by outstanding Awards, and the kind of Phantom Profits Interest Units issued under the Plan shall be appropriately adjusted by the Administrator to reflect any increase or decrease in the amount of, or change in the kind or value of, issued Phantom Profits Interest Units to preclude, to the extent practicable, the enlargement or dilution of rights and benefits under such Awards. Any adjustments determined by the Administrator shall be final, binding, and conclusive.

Eligibility for Participation

All Employees and Board Members who are designated by the Administrator shall be eligible to participate in the Plan.

Grants of Awards

Award Agreement. All Awards shall be subject to the terms and conditions of this Plan, the terms of the LLC Agreement, and the Grantee's award instrument (the "**Award Agreement**"). Each Award Agreement shall contain the number of Phantom Profits Interest Units underlying the Grantee's Award and the applicable grant date Benchmark Amount (subject to adjustment as provided in the LLC Agreement), and each Award shall vest in accordance with the terms of the Grantee's Award Agreement. The Award Agreement shall also designate whether the Payment Amount shall be paid (i) upon the earlier of the Grantee's Termination Date or an Initial Waterfall Distribution Event (with any subsequent amounts 10 paid upon the earlier of a Qualifying Subsequent Waterfall Distribution Event or the Grantee's Termination Date) (a "**Termination Payment Event**") or (ii) upon an Initial Waterfall Distribution Event, with any subsequent amounts paid upon the earlier of (A) a Qualifying Subsequent Waterfall Distribution Event or (B) provided that a Subsequent Waterfall event has occurred, the fifth anniversary of the grant date (a "**Waterfall Payment Event**") (a Termination Payment Event or a Waterfall Payment Event, also referred to as the "**Payment Event**").

Payment Amount.

(i) If the Payment Event is a Termination Payment Event, the Payment Amount shall be, for each vested Phantom Profits Interest Unit, an amount that would be allocated to an equivalent number of Profits Interest Units with an equivalent Benchmark Amount, (A) if the Grantee's Termination Date is prior to a Waterfall Distribution Event, as if the Company were liquidated on the Termination Date at fair market value (as determined in good faith by the Administrator), or (B) where there is an Initial Waterfall Distribution Event and one or more Subsequent Waterfall Distribution Events prior to the Termination Date, pursuant to the LLC Agreement with respect to each such Waterfall Distribution Event. Such Payment Amount shall be paid to the Grantee within 30 days of the Termination Date, the Initial Waterfall Distribution Event, or any Qualifying Subsequent Waterfall Distribution Event, as applicable. In the event that a Subsequent Waterfall Distribution Event is not a Qualifying Subsequent Waterfall Distribution Event, the Payment Amount with respect to such Subsequent Waterfall Distribution Event shall be paid within 30 days of the Termination Date. No further Payment Amount shall be paid to the Grantee with respect to Waterfall Distribution Events following the Grantee's Termination Date.

(ii) Subject to (iii) below, if the Payment Event is a Waterfall Payment Event and a Waterfall Distribution Event occurs before the Grantee's Termination Date, the Payment Amount shall be equal to, for each vested Phantom Profits Interest Unit, an amount that would be payable with respect to the equivalent number of Profits Interest Units with an equivalent Benchmark Amount pursuant to the LLC Agreement. Such Payment Amount shall be paid to the Grantee within 30 days of an Initial Waterfall Distribution Event, and for any Subsequent Waterfall Distribution Event, shall be paid to the Grantee within 30 days of the earlier of a Qualifying Subsequent Waterfall Distribution Event or the fifth anniversary of the date of grant. No Payment Amount shall be paid to the Grantee with respect to any Subsequent Waterfall Distribution Event that is not a Qualifying Subsequent Waterfall Distribution Event and that occurs after the fifth anniversary of the Grant Date.

(iii) If the Payment Event is a Waterfall Payment Event and a Waterfall Distribution Event occurs after the Grantee's Termination Date, the Payment Amount with respect to such event shall in no event be greater than the lesser of, for each vested Phantom Profits Interest Unit, (A) an amount that would be allocated to an equivalent number of Profits Interest Units with an equivalent Benchmark Amount if the Company were liquidated on the valuation date next following the Termination Date at fair market value (as determined in good faith by the Administrator) and (B) the amount specified in Section 5(b)(ii) above; provided that if a Waterfall Distribution Event occurs prior to the valuation date next following the Termination Date, the Payment Amount shall be the amount specified in Section 5(b)(ii). Such Payment Amount shall be paid to the Grantee within 30 days of the Initial Waterfall Distribution Event, and for any Subsequent Waterfall Distribution Event, shall be paid to the Grantee within 30 days of the earlier of a Qualifying Subsequent Waterfall Distribution Event or the fifth anniversary of the date of grant. No Payment Amount shall be paid to the Grantee with respect to any Subsequent Waterfall Distribution Event that is not a Qualifying Subsequent Waterfall Distribution Event and that occurs after the fifth anniversary of the Grant Date.

Acknowledgement by Grantee. All Awards shall be made conditional upon the Grantee's acknowledgement, in writing or by acceptance of the Award, that all decisions and determinations of the Administrator shall be final and binding on the Grantee, his or her beneficiaries, and any other person having or claiming an interest under such award. Awards need not be uniform as among the Grantees.

Forfeiture

Termination of Employment. Any and all of an Employee Grantee's unvested Phantom Profits Interest Units shall be forfeited upon the termination of the Grantee's employment for any reason.

Termination of Membership on the Board of Managers. Any and all of a Board Member Grantee's unvested Phantom Profits Interest Units shall be forfeited upon resignation or removal from the Board of Managers of the Company.

Termination of Employment for Cause. Any and all of an Employee Grantee's vested and unvested Phantom Profits Interest Units shall be forfeited upon the termination of the Grantee's employment for Cause. For purposes of this Plan, "**Cause**" shall have the meaning set forth in the written employment agreement between the Grantee and the Company in effect on the date of the Grantee's termination of employment, or if no such agreement exists, shall mean (i) conviction (including guilty plea or plea of nolo contendere) of any felony or any other crime involving fraud, violence or dishonesty; (ii) commission of or participation in a fraud or act of dishonesty or misrepresentation against the Company; (iii) violation of any written and fully executed contract or agreement between the Grantee and the Company, including without limitation, breach of Grantee's Proprietary Information, Inventions, Non-Competition and Non-Solicitation Agreement; (iv) gross negligence or willful misconduct, (v) continued and substantial failure to perform the Grantee's duties to the Company; or (vi) violation of any material policies, practices, or procedures of the Company.

Removal from the Board of Managers. Any and all of a Board Member Grantee's vested and unvested Phantom Profits Interest Units shall be forfeited upon the removal of the Grantee from the Board of Managers for Cause. For purposes of this Plan, "**Cause**" shall mean (i) conviction (including guilty plea or plea of nolo contendere) of any felony or any other crime involving fraud, violence or dishonesty; (ii) commission of or participation in a fraud or act of dishonesty or misrepresentation against the Company; (iii) violation of any agreement between the Grantee and the Company; (iv) gross negligence or willful misconduct; (v) continued and substantial failure to perform the Grantee's duties to the Company as a Member of the Board of Managers of the Company; or (vi) violation of any material policies, practices, or procedures of the Company including without limitation, the Company's Code of Conduct and Confidential Information policies.

Waterfall Distribution Event. As soon as practicable following an Initial Waterfall Distribution Event or any Subsequent Waterfall Distribution Event that results in an aggregate sale of Units representing a Percentage Interest of 100%, or upon a sale of all or substantially all of the assets of the Company, all vested and unvested Phantom Profits Interest Units shall be cancelled (after the Grantee has been paid any amounts due with respect to such Units, if applicable).

Confidentiality, Non-Compete, Non-Solicitation. Notwithstanding anything herein to the contrary, a Grantee shall forfeit any and all rights to all vested and unvested Phantom Profits Interest Units if the Grantee violates the terms of any confidentiality, non-solicitation and non-competition provisions of any agreement between the Grantee and the Company, if applicable.

Withholding of Taxes

All Awards under the Plan shall be subject to applicable federal (including FICA), state, and local tax withholding requirements. The Company may require that the Grantee pay to the Company the amount of any federal, state, or local taxes that the Company is required to withhold with respect to such Awards, or the Company may deduct from other wages paid by the Company the amount of any withholding taxes due with respect to such Awards.

Nontransferability of Awards

Only the Grantee has any rights under an Award. A Grantee may not transfer those rights, directly or indirectly, except by will or the laws of descent and distribution.

Limitations on Issuance or Transfer of Phantom Profits Interest Units

No Phantom Profits Interest Units shall be issued or transferred in connection with any Award until all legal requirements applicable to the issuance or transfer of such Phantom Profits Interest Units have been complied with to the satisfaction of the Administrator. The Administrator shall have the right to condition any Award made to any Grantee hereunder on such Grantee’s undertaking in writing to comply with any restrictions on his or her subsequent disposition of such Phantom Profits Interest Units as the Administrator shall deem necessary or advisable.

Amendment and Termination of the Plan

Amendment and Termination. The Administrator may, in accordance with the LLC Agreement, amend the Plan or any Award under the Plan, or terminate the Plan, at any time; provided that no amendment or termination of the Plan or any Award shall, without the consent of a Grantee, adversely impact the rights of any Grantee under any Award granted to such Grantee under the Plan, unless necessary to meet the requirements of any applicable law or regulation. Before amending or terminating the Plan or any Award to meet the requirements of an applicable law or regulation, the Administrator will attempt to bring the Plan or Award into compliance with the applicable law or regulation without reducing the benefits or payments to a Grantee to the greatest extent possible. If amendment or termination is still necessary and adversely impacts the rights of a Grantee, the Administrator will reasonably cooperate with such Grantee to adopt replacement benefits or payments that to the greatest extent possible places the Grantee in the same or a comparable economic position as if the Plan or Award had not been amended or terminated.

Governing Document. In the event of any conflict between any Award in the form attached hereto as Exhibit A or B and the LLC Agreement, such Award shall control. In the event of any conflict between any subsequent Award not in the form attached hereto and the LLC Agreement, the LLC agreement shall control unless such subsequent Award has been approved by the Board and Smith & Nephew, Inc., in which case such Award shall control. No other statements, representations, explanatory materials or examples, oral or written, may amend the Plan in any manner. The Plan shall be binding upon and enforceable against the Company and its successors and assigns.

Funding of the Plan

This Plan shall be unfunded. The Company shall not be required to establish any special or separate fund or to make any other segregation of assets to assure the payment of any Awards under this Plan. In no event shall interest be paid or accrued on any Award.

Rights of Grantees

No Award shall entitle any Grantee to any (i) voting rights with respect to any action or decision taken or made (or to be taken or made) by the Company or the Board of Managers, (ii) right to appoint Managers to the Board of Managers, or (iii) appraisal or preemption rights. Nothing in this Plan shall entitle any Employee, Board Member or any other person to any claim or right to receive an Award under this Plan. Neither this Plan nor any action taken hereunder shall be construed as giving any individual any rights to be retained by or in the employ of the Company or any other employment rights.

Headings

Section headings are for reference only. In the event of a conflict between a title and the content of a Section, the content of the Section shall control.

Effective Date of the Plan

The initial effective date of the Plan was May 4, 2012. The amended and restated version of the Plan shall be effective on December 8, 2017.

Miscellaneous

Compliance with Law. The Plan and the obligations of the Company to issue or transfer Phantom Profits Interest Units in connection with Awards shall be subject to all applicable laws and to approvals by any governmental or regulatory agency as may be required. The Administrator may revoke any Award if it is contrary to law or modify an Award to bring it into compliance with any valid and mandatory government regulation. The Administrator may also adopt rules regarding the withholding of taxes on payments to Grantees. The Administrator may, in its sole discretion, agree to limit its authority under this Section.

Governing Law. The validity, construction, interpretation, and effect of the Plan and Award Agreements issued under the Plan shall be governed and construed by and determined in accordance with the laws of the State of Delaware, without giving effect to the conflict of laws provisions thereof.

Exhibit: 10.29

Bioventus LLC
4721 Emperor Blvd., Suite 100
Durham, NC 27703
USA

1-919-474-6700
1-800-396-4325
www.BioventusGlobal.com

October 27, 2017

Anthony D'Adamio

RE: Bioventus Phantom Profit Interests Award

Dear Tony:

As Bioventus develops its global leadership position in Orthobiologics, you will play a key role in developing a great company that makes a difference in peoples' lives every day. In recognition of your expected contribution as the SVP and General Counsel, the Bioventus Leadership Team, Board of Managers and I have granted you 40,000 Phantom Profits Interests Units.

The Award is granted to you under and is subject to the terms of the Phantom Profits Interests Plan ("Plan") and your Bioventus LLC Phantom Profits Interests Plan Award Agreement ("Award Agreement"). A copy of the Plan and your Award Agreement are included with this letter and I encourage you to review both documents carefully.

To assist in your review of the Award, below is a brief summary of some of the key terms of this Award:

- **Phantom Profits Interests**: The Plan is designed to provide grantees the opportunity to share in the appreciation in value of the Company. Phantom Profits Interests Units awarded under the Plan, however, have no immediate value and do not reflect a true equity interest in the Company. In recognition of your anticipated contributions to the Company's growth, upon a Waterfall Distribution Event (defined in the Plan and summarized below) and subject to the waterfall, you, as the holder of Phantom Profits Interest Units, will be eligible to receive a cash payment equal to a share of the appreciation in the value of the Company from the Effective Date of your Award Agreement.
- **Grant Date Benchmark Amount**: The Grant Date Benchmark Amount represents the cumulative distributions that must be made by the Company under the Plan prior to grantees receiving payment. Note that since Units do not represent an equity interest in the Company, your award is not subject to a "strike" or "exercise" price or require you to fund any purchase of the interest.
- **Vesting Schedule:** For so long as you remain an employee of the Company, 20% of the Award will vest at the first anniversary of the Effective Date and 5% of the Award will vest each quarter thereafter.

- **Termination:** Upon termination of your employment for any reason other than for Cause (as defined in the Plan) the Company will repurchase any vested Profits Interest Units granted with this Award. All vested and unvested units are forfeited in the event of termination for Cause.
- **Waterfall Distribution Event**: In the event that the Company is sold or sells all or substantially all of its assets or a similar event occurs (a "Waterfall Distribution Event") prior to the termination of your employment with the Company, your Award will vest at the time of such Initial Waterfall Distribution Event. Listed below is an example of potential value per PPI Unit at a Waterfall, and how the Waterfall Distribution is calculated. The payout amounts shown below are provided for illustrative purposes only. Actual payouts under the Plan may vary from those shown and are subject to all of the terms of the Plan documents and applicable withholding requirements.

Illustrative Waterfall Scenarios
(as of 10.31.16)

Enterprise value	$800M	$1BILLLION
Approximate $ payout/unit	$5.07	$19.97

***Assumes $510M benchmark

- Waterfall Distribution Formula:

  Enterprise Value—Debt (net of cash)—Benchmark of PPI units = Remaining Equity Value available for Distribution / Units Outstanding = PPI Payout per unit

I am delighted to be notifying you of this Award and I look forward to a productive and enjoyable working relationship.

Sincerely,

/s/ Anthony P. Bihl
Anthony P. Bihl
Chief Executive Officer
Enclosures

This letter has been provided to you by the Company solely for your information and may be deemed to contain forward-looking statements, which involve known and unknown risks and uncertainties. Given these risks and uncertainties, you are advised not to place any undue reliance on such forward-looking statements. Specifically, the Company does not make any representations or warranties, express or implied, as to the ultimate value of your Award or whether a Waterfall Distribution Event will occur. In the event of any inconsistency between this letter and the Plan, the provisions of the Plan shall govern.

BIOVENTUS LLC
PHANTOM PROFITS INTERESTS PLAN

AWARD AGREEMENT

The Administrator, as defined in the Bioventus LLC Phantom Profits Interests Plan (the "**Plan**"), of the Plan has decided to grant to you Phantom Profits Interest Units in the Company under the Plan. The terms of the grant (the "**Grant**") are set forth in this Bioventus LLC Phantom Profits Interests Plan Award Agreement (the "**Award Agreement**") provided to you. The following provides a summary of the key terms of the Grant; however, you should read the entire Award Agreement, along with the terms of the Plan and the Company's Amended and Restated Limited Liability Company Agreement (as might be amended), to fully understand the Grant.

SUMMARY OF PHANTOM PROFITS INTERESTS PLAN AWARD AGREEMENT

Grantee:	**Anthony D'Adamio**
Date of Award:	**August 14, 2017**
Vesting Schedule:	**20% vests on the first anniversary of the Effective Date and the remaining 80% vests in equal installments on a quarterly basis over the next four years**
Phantom Profits Interest Units Awarded:	**40,000**
Payment Event:	**Termination Payment Event**
Grant Date Benchmark Amount:	**$510,000,000**

BIOVENTUS LLC

PHANTOM PROFITS INTERESTS PLAN

AWARD AGREEMENT

This Bioventus LLC Phantom Profits Interests Plan Award Agreement (this "**Award Agreement**"), dated as of August 14, 2017 (the "**Effective Date**"), is delivered by Bioventus LLC (the "**Company**") to Anthony D'Adamio (the "**Grantee**").

RECITALS

A. The Bioventus LLC Phantom Profits Interests Plan (the "**Plan**") provides for the grant of Phantom Profits Interest Units in the Company in accordance with the terms of the Plan and the Amended and Restated Limited Liability Company Agreement of the Company, as amended (the "**LLC Agreement**"). The Administrator (as defined in the Plan) has granted the Award (as defined below) to encourage the Grantee to contribute materially to the growth of the Company's owners, thereby benefitting the Company, and to align the economic interests of the Grantee with those of the owners. A copy of the Plan is attached. All capitalized terms not defined herein shall have the meaning given to such terms in the Plan or, if not defined in the Plan, in the LLC Agreement.

B. The Administrator shall administer the Plan.

NOW, THEREFORE, the parties to this Award Agreement, intending to be legally bound, hereby agree as follows:

Grant of Phantom Profits Interests Units. Subject to the terms and conditions set forth in this Award Agreement, the Plan, and the LLC Agreement, the Company hereby grants to the Grantee 40,000 Phantom Profits Interest Units (the "**Award**"). This Award Agreement (which is effective as of the Effective Date upon the parties' exchange of signed counterpart signature pages hereto), the Plan, and the LLC Agreement govern the terms of the grant of the Award.

Vesting of Awarded Units.

Unless otherwise determined by the Administrator, the Award shall vest in accordance with the following schedule (each date described below, a "**Vesting Date**"), if the Grantee is employed by the Company on the applicable Vesting Date.

Applicable Date	Vesting Percentage
1st anniversary of the Effective Date	20%
Each quarter after the 1st anniversary of the Effective Date	5%

On a Payment Event, the Grantee shall receive the Payment Amount, if any, with respect to the portion of the Award that is vested, as set forth in Section 5(b)(i) of the Plan. Any portion of the Award that is unvested as of the Termination Date shall be forfeited at the time of the Grantee's termination.

Upon an Initial Waterfall Distribution Event that occurs prior to the Grantee's Termination Date, the unvested portion of the Award shall vest at the time of such Initial Waterfall Distribution Event.

Upon the termination of the Grantee's employment for Cause, both the vested and the unvested portion of the Award shall be forfeited.

Withholding. All obligations of the Company under this Agreement shall be subject to the rights of the Company to withhold amounts required to be withheld for any taxes, if applicable.

Restrictions on Transfer. Only the Grantee has any rights under this Award. The Grantee may not transfer those rights, directly or indirectly, except by will or the laws of descent and distribution.

Award Subject to Plan and LLC Agreement Provisions. This Award is made pursuant to the Plan and the LLC Agreement, the terms of which are incorporated herein by reference, and in all respects shall be interpreted in accordance with the Plan and the LLC Agreement. The Administrator shall have the full power and authority to administer and interpret the Plan and this Award Agreement, to make factual determinations, and to adopt or amend such rules, regulations, agreements, and instruments for implementing the Plan and this Award Agreement and for the conduct of its business as it deems necessary or advisable. All powers of the Administrator shall be executed without the approval or consent of the Grantee.

No Employment or Other Rights. This Award Agreement is not an agreement of employment and the grant of this Award shall not confer upon the Grantee any right to be retained by or in the employ of the Company and shall not interfere in any way with the right of the Company to terminate the Grantee's employment at any time. The right of the Company, as applicable, to terminate at will the Grantee's employment at any time for any reason is specifically reserved. The grant of this Award shall not entitle the Grantee to any (i) voting rights with respect to any action or decision taken or made (or to be taken or made) by the Company or the Board, (ii) right to appoint Managers to the Board, or (iii) appraisal or preemption rights.

Notice. Any notice to the Company provided for in this Award Agreement must be in writing and will be deemed given: (a) on the date established by the sender as having been delivered personally; (b) on the date delivered by a private, nationally recognized, overnight courier as established by the sender by evidence obtained from the courier; (c) on the date sent by facsimile, with confirmation of transmission, if sent during normal business hours of the recipient (and, if not sent during normal business hours of the recipient, then on the next business day); or (d) on the fifth business day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications, to be valid, must be addressed as follows:

If to the Company, to:

Bioventus LLC
4721 Emperor Blvd. Suite 100
Durham, NC 27703
Attention: General Counsel
Facsimile: 866-467-1531

If to the Grantee, to the address on file with the Company.

If more than one method for sending notice as set forth above is used, the earliest notice date established as set forth above will control for purposes of determining when such notice is deemed to have been given.

Amendment and Termination; Section 409A. The Administrator may amend the Plan or this Award, or terminate the Plan, at any time; provided that no amendment or termination of the Plan or this Award shall, without the consent of a Grantee, adversely impact the rights of the Grantee under this Award, unless necessary to meet the requirements of any applicable law or regulation. Before amending or terminating the Plan or this Award to meet the requirements of an applicable law or regulation, the Administrator will attempt to bring the Plan or Award into compliance with the applicable law or regulation without reducing the benefits or payments to the Grantee to the greatest extent possible. If amendment or termination is still necessary and adversely impacts the rights of the Grantee, the Administrator will reasonably cooperate with the Grantee to adopt replacement benefits or payments that to the greatest extent possible places the Grantee in the same or a comparable economic position as if the Plan or Award had not been amended or terminated.

Subject to the first paragraph of this Section 8, while the Company does not guarantee any particular tax treatment with respect to the Award, payment of the Payment Amount is intended to comply with Section 409A, to the extent subject thereto, and shall be interpreted and construed consistent with that intent. The Company may reform this Award or any provision hereof to maintain to the maximum extent practicable the original intent of the provision without violating the provisions of Section 409A, provided, that any deferral of payments shall be only for such time period as may be required to comply with Section 409A.

Headings. Section headings are for reference only. In the event of a conflict between a heading and the content of a Section, the content of the Section shall control.

Applicable Law. The validity, construction, interpretation and effect of this Award Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to the conflicts of laws provisions thereof.

IN WITNESS WHEREOF, the Company has caused its duly authorized officer to execute this Award Agreement, and the Grantee has executed this Award Agreement, effective as of the Effective Date.

Bioventus LLC

By: _____
Name: Leigh Ann Stradford
Title: SVP of Human Resources

I hereby accept the Award described in this Award Agreement, and I agree to be bound by the terms of this Award Agreement, the Plan and the LLC Agreement. I hereby further agree that all of the decisions and determinations of the Administrator shall be final and binding.

Grantee: _____
Anthony D'Adamio

Date: _____

BIOVENTUS LLC

PHANTOM PROFITS INTERESTS PLAN

AS AMENDED AND RESTATED DECEMBER 30, 2015

The purpose of the Bioventus LLC Phantom Profits Interests Plan (the "**Plan**") is to provide eligible employees and independent members of the Board of Managers of Bioventus LLC (the "**Company**") who are important to the success and growth of the business of the Company an opportunity to share in the future appreciation in value of the Company by receiving grants of Phantom Profits Interest Units in the Company. The Company believes that the Plan will encourage participants to contribute materially to the growth of the Company's owners, thereby benefiting the Company, and will align the economic interests of the participants with those of the owners. Awards under the Plan shall consist of grants of Phantom Profits Interest Units as described in Section 5 ("**Awards**"). Capitalized terms that are used but not defined herein shall have the respective meanings accorded to such terms in the Amended and Restated Limited Liability Company Agreement of the Company, as amended (the "**LLC Agreement**").

Definitions.

"**Benchmark Amount**" means the cumulative distributions that must be made by the Company pursuant to the LLC Agreement before a Grantee is entitled to receive any distributions in respect of such Grantee's Phantom Profits Interest Units. The Benchmark Amount shall equal $231,372,549.02 or such other greater amount as set forth in the applicable Award Agreement.

"**Board Member**" means an independent member of the Board of Managers of the Company appointed or elected to the Board of Managers on or after January 1, 2016.

"**Code**" means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

"**Employee**" means an employee of the Company.

"**Grantee**" means an Employee or Board Member who receives an Award.

"**Initial Waterfall Distribution Event**" means the closing of (i) a sale of Units representing a Percentage Interest of more than 66.66%, or (ii) a sale of all or substantially all of the assets of the Company; provided that such event constitutes a change in ownership or a change in effective control of the Company within the meaning of Section 409A of the Code.

"**Management Distribution Cap**" means 14.4% of the aggregate amount, if any, available for distribution pursuant to Section 10.05(a)(v) of the LLC Agreement.

"**Management Incentive Plan**" means the Bioventus LLC Management Incentive Plan.

"**Payment Amount**" means the amount payable with respect to each vested Phantom Profits Interest Unit upon the applicable Payment Event.

"**Phantom Profits Interest Unit**" means a right to receive cash in an amount equal to the Payment Amount upon the Payment Event as set forth in the applicable Award Agreement.

"**Profits Interest Unit**" means a non-managing, non-voting ownership interest in the Company issued pursuant to Section 3.01(b) of the LLC Agreement and the Management Incentive Plan.

"**Qualifying Subsequent Waterfall Distribution Event**" means a Subsequent Waterfall Distribution Event that constitutes a change in ownership or a change in effective control of the Company within the meaning of Section 409A of the Code.

"**Subsequent Waterfall Distribution Event**" means, following an Initial Waterfall Distribution Event under Section 1(a) above with respect to Units representing a Percentage Interest of less than 100%, the closing of (i) a subsequent sale of Units, or (ii) a sale of all or substantially all of the assets of the Company

"**Termination Date**" means in the case of an Employee, the date of the Grantee's separation of service, as defined in Section 409A of the Code, and in the case of a Board Member, resignation or removal from the Board of Managers of the Company.

"**Waterfall Distribution Event**" means an Initial Waterfall Distribution Event or a Subsequent Waterfall Distribution Event.

Administration

Administration. The Plan shall be administered and interpreted by the Board of Managers (the "**Administrator**") or by a committee or subcommittee, which shall be appointed by the Administrator. To the extent that a committee or subcommittee administers the Plan, references in the Plan to the "Administrator" shall be deemed to refer to the committee or the subcommittee.

Administrator Authority. The Administrator shall determine (i) the Employees and Board Members to receive Awards, (ii) the size and terms of the Awards, (iii) the time when the Awards will be made, (iv) the applicable Payment Event, (v) the duration of any applicable vesting period, provided that such vesting period shall not be less than four years and that the Award shall vest ratably over the vesting period, and (vi) the Benchmark Amount with respect to any Award.

Administrator Determinations. The Administrator shall have full power and authority to administer and interpret the Plan, to make factual determinations, and to adopt or amend such rules, regulations, agreements, and instruments for implementing the Plan and for the conduct of its business as it deems necessary or advisable. All powers of the Administrator shall be executed without the approval or consent of the Grantees.

Interests Subject to the Plan

Awards Authorized by the LLC Agreement. The total amount of Phantom Profits Interest Units available for grants under the Plan, when combined with the total amount of Profits Interest Units (as defined in the Management Incentive Plan) granted under the Management Incentive Plan and any other form of employee, management or other service provider equity or equity-related awards of the Company, shall not result in aggregate distributions to the holders thereof in excess of the Management Distribution Cap (such amount determined, solely for this purpose, as if there were no Phantom Profits Interest Units or Other Management Equity Awards (as defined in the LLC Agreement)) ("**Excess Distributions**"), unless and to the extent that S&N and the Essex Members consent in their capacity as Members to such Excess Distributions. If, and to the extent that, Phantom Profits Interest Units granted under the Plan terminate or are canceled, forfeited, exchanged, or surrendered without payment, such Phantom Profits Interest Units shall be available again for purposes of the Plan.

Adjustments. If there is any change in the total amount or kind of Phantom Profits Interest Units outstanding (i) by reason of a spinoff, split of the Phantom Profits Interest Units, reclassification, combination, or exchange of such Phantom Profits Interest Units or similar event; (ii) by reason of a merger, reorganization, or consolidation; (iii) by reason of any other extraordinary or unusual event affecting the outstanding Phantom Profits Interest Units as a class without the Company's receipt of consideration; or (iv) by reason of a change in the structure of the Company, or if the value of the outstanding Phantom Profits Interest Units are substantially reduced as a result of a spinoff, the amount or percentage of such Phantom Profits Interest Units covered by outstanding Awards, and the kind of Phantom Profits Interest Units issued under the Plan shall be appropriately adjusted by the Administrator to reflect any increase or decrease in the amount of, or change in the kind or value of, issued Phantom Profits Interest Units to preclude, to the extent practicable, the enlargement or dilution of rights and benefits under such Awards. Any adjustments determined by the Administrator shall be final, binding, and conclusive.

Eligibility for Participation

All Employees and Board Members who are designated by the Administrator shall be eligible to participate in the Plan.

Grants of Awards

Award Agreement. All Awards shall be subject to the terms and conditions of this Plan, the terms of the LLC Agreement, and the Grantee's award instrument (the "**Award Agreement**"). Each Award Agreement shall contain the number of Phantom Profits Interest Units underlying the Grantee's Award and the applicable grant date Benchmark Amount (subject to adjustment as provided in the LLC Agreement), and each Award shall vest in accordance with the terms of the Grantee's Award Agreement. The Award Agreement shall also designate whether the Payment Amount shall be paid (i) upon the earlier of the Grantee's Termination Date or an Initial Waterfall Distribution Event (with any subsequent amounts paid upon the earlier of a Qualifying Subsequent Waterfall Distribution Event or the Grantee's Termination Date) (a "**Termination Payment Event**") or (ii) upon an Initial Waterfall Distribution Event, with any subsequent amounts paid upon the earlier of (A) a Qualifying Subsequent Waterfall Distribution Event or (B) provided that a Subsequent Waterfall event has occurred, the fifth anniversary of the grant date (a "**Waterfall Payment Event**") (a Termination Payment Event or a Waterfall Payment Event, also referred to as the "**Payment Event**").

Payment Amount.

(i) If the Payment Event is a Termination Payment Event, the Payment Amount shall be, for each vested Phantom Profits Interest Unit, an amount that would be allocated to an equivalent number of Profits Interest Units with an equivalent Benchmark Amount, (A) if the Grantee's Termination Date is prior to a Waterfall Distribution Event, as if the Company were liquidated on the Termination Date at fair market value (as determined in good faith by the Administrator), or (B) where there is an Initial Waterfall Distribution Event and one or more Subsequent Waterfall Distribution Events prior to the Termination Date, pursuant to the LLC Agreement with respect to each such Waterfall Distribution Event. Such Payment Amount shall be paid to the Grantee within 30 days of the Termination Date, the Initial Waterfall Distribution Event, or any Qualifying Subsequent Waterfall Distribution Event, as applicable. In the event that a Subsequent Waterfall Distribution Event is not a Qualifying Subsequent Waterfall Distribution Event, the Payment Amount with respect to such Subsequent Waterfall Distribution Event shall be paid within 30 days of the Termination Date. No further Payment Amount shall be paid to the Grantee with respect to Waterfall Distribution Events following the Grantee's Termination Date.

(ii) Subject to (iii) below, if the Payment Event is a Waterfall Payment Event and a Waterfall Distribution Event occurs before the Grantee's Termination Date, the Payment Amount shall be equal to, for each vested Phantom Profits Interest Unit, an amount that would be payable with respect to the equivalent number of Profits Interest Units with an equivalent Benchmark Amount pursuant to the LLC Agreement. Such Payment Amount shall be paid to the Grantee within 30 days of an Initial Waterfall Distribution Event, and for any Subsequent Waterfall Distribution Event, shall be paid to the Grantee within 30 days of the earlier of a Qualifying Subsequent Waterfall Distribution Event or the fifth anniversary of the date of grant. No Payment Amount shall be paid to the Grantee with respect to any Subsequent Waterfall Distribution Event that is not a Qualifying Subsequent Waterfall Distribution Event and that occurs after the fifth anniversary of the Grant Date.

(iii) If the Payment Event is a Waterfall Payment Event and a Waterfall Distribution Event occurs after the Grantee's Termination Date, the Payment Amount with respect to such event shall in no event be greater than the lesser of, for each vested Phantom Profits Interest Unit, (A) an amount that would be allocated to an equivalent number of Profits Interest Units with an equivalent Benchmark Amount if the Company were liquidated on the valuation date next following the Termination Date at fair market value (as determined in good faith by the Administrator) and (B) the amount specified in Section 5(b)(ii) above; provided that if a Waterfall Distribution Event occurs prior to the valuation date next following the Termination Date, the Payment Amount shall be the amount specified in Section 5(b)(ii). Such Payment Amount shall be paid to the Grantee within 30 days of the Initial Waterfall Distribution Event, and for any Subsequent Waterfall Distribution Event, shall be paid to the Grantee within 30 days of the earlier of a Qualifying Subsequent Waterfall Distribution Event or the fifth anniversary of the date of grant. No Payment Amount shall be paid to the Grantee with respect to any Subsequent Waterfall Distribution Event that is not a Qualifying Subsequent Waterfall Distribution Event and that occurs after the fifth anniversary of the Grant Date.

Acknowledgement by Grantee. All Awards shall be made conditional upon the Grantee's acknowledgement, in writing or by acceptance of the Award, that all decisions and determinations of the Administrator shall be final and binding on the Grantee, his or her beneficiaries, and any other person having or claiming an interest under such award. Awards need not be uniform as among the Grantees.

Forfeiture

Termination of Employment. Any and all of an Employee Grantee's unvested Phantom Profits Interest Units shall be forfeited upon the termination of the Grantee's employment for any reason.

Termination of Membership on the Board of Managers. Any and all of a Board Member Grantee's unvested Phantom Profits Interest Units shall be forfeited upon resignation or removal from the Board of Managers of the Company.

Termination of Employment for Cause. Any and all of an Employee Grantee's vested and unvested Phantom Profits Interest Units shall be forfeited upon the termination of the Grantee's employment for Cause. For purposes of this Plan, "Cause" shall have the meaning set forth in the written employment agreement between the Grantee and the Company in effect on the date of the Grantee's termination of employment, or if no such agreement exists, shall mean (i) conviction (including guilty plea or plea of nolo contendere) of any felony or any other crime involving fraud, violence or dishonesty; (ii) commission of or participation in a fraud or act of dishonesty or misrepresentation against the Company; (iii) violation of any written and fully executed contract or agreement between the Grantee and the Company, including without limitation, breach of Grantee's Proprietary Information, Inventions, Non-Competition and Non-Solicitation Agreement; (iv) gross negligence or willful misconduct, (v) continued and substantial failure to perform the Grantee's duties to the Company; or (vi) violation of any material policies, practices, or procedures of the Company.

Removal from the Board of Managers. Any and all of a Board Member Grantee's vested and unvested Phantom Profits Interest Units shall be forfeited upon the removal of the Grantee from the Board of Managers for Cause. For purposes of this Plan, "Cause" shall mean (i) conviction (including guilty plea or plea of nolo contendere) of any felony or any other crime involving fraud, violence or dishonesty; (ii) commission of or participation in a fraud or act of dishonesty or misrepresentation against the Company; (iii) violation of any agreement between the Grantee and the Company; (iv) gross negligence or willful misconduct; (v) continued and substantial failure to perform the Grantee's duties to the Company as a Member of the Board of Managers of the Company; or (vi) violation of any material policies, practices, or procedures of the Company including without limitation, the Company's Code of Conduct and Confidential Information policies.

Waterfall Distribution Event. As soon as practicable following an Initial Waterfall Distribution Event or any Subsequent Waterfall Distribution Event that results in an aggregate sale of Units representing a Percentage Interest of 100%, or upon a sale of all or substantially all of the assets of the Company, all vested and unvested Phantom Profits Interest Units shall be cancelled (after the Grantee has been paid any amounts due with respect to such Units, if applicable).

Confidentiality, Non-Compete, Non-Solicitation. Notwithstanding anything herein to the contrary, a Grantee shall forfeit any and all rights to all vested and unvested Phantom Profits Interest Units if the Grantee violates the terms of any confidentiality, non-solicitation and non-competition provisions of any agreement between the Grantee and the Company, if applicable.

Withholding of Taxes

All Awards under the Plan shall be subject to applicable federal (including FICA), state, and local tax withholding requirements. The Company may require that the Grantee pay to the Company the amount of any federal, state, or local taxes that the Company is required to withhold with respect to such Awards, or the Company may deduct from other wages paid by the Company the amount of any withholding taxes due with respect to such Awards.

Nontransferability of Awards

Only the Grantee has any rights under an Award. A Grantee may not transfer those rights, directly or indirectly, except by will or the laws of descent and distribution.

Limitations on Issuance or Transfer of Phantom Profits Interest Units

No Phantom Profits Interest Units shall be issued or transferred in connection with any Award until all legal requirements applicable to the issuance or transfer of such Phantom Profits Interest Units have been complied with to the satisfaction of the Administrator. The Administrator shall have the right to condition any Award made to any Grantee hereunder on such Grantee's undertaking in writing to comply with any restrictions on his or her subsequent disposition of such Phantom Profits Interest Units as the Administrator shall deem necessary or advisable.

Amendment and Termination of the Plan

Amendment and Termination. The Administrator may, in accordance with the LLC Agreement, amend the Plan or any Award under the Plan, or terminate the Plan, at any time; provided that no amendment or termination of the Plan or any Award shall, without the consent of a Grantee, adversely impact the rights of any Grantee under any Award granted to such Grantee under the Plan, unless necessary to meet the requirements of any applicable law or regulation. Before amending or terminating the Plan or any Award to meet the requirements of an applicable law or regulation, the Administrator will attempt to bring the Plan or Award into compliance with the applicable law or regulation without reducing the benefits or payments to a Grantee to the greatest extent possible. If amendment or termination is still necessary and adversely impacts the rights of a Grantee, the Administrator will reasonably cooperate with such Grantee to adopt replacement benefits or payments that to the greatest extent possible places the Grantee in the same or a comparable economic position as if the Plan or Award had not been amended or terminated.

Governing Document. In the event of any conflict between any Award in the form attached hereto as Exhibit A or B and the LLC Agreement, such Award shall control. In the event of any conflict between any subsequent Award not in the form attached hereto and the LLC Agreement, the LLC agreement shall control unless such subsequent Award has been approved by the Board and Smith & Nephew, Inc., in which case such Award shall control. No other statements, representations, explanatory materials or examples, oral or written, may amend the Plan in any manner. The Plan shall be binding upon and enforceable against the Company and its successors and assigns.

Funding of the Plan

This Plan shall be unfunded. The Company shall not be required to establish any special or separate fund or to make any other segregation of assets to assure the payment of any Awards under this Plan. In no event shall interest be paid or accrued on any Award.

Rights of Grantees

No Award shall entitle any Grantee to any (i) voting rights with respect to any action or decision taken or made (or to be taken or made) by the Company or the Board of Managers, (ii) right to appoint Managers to the Board of Managers, or (iii) appraisal or preemption rights. Nothing in this Plan shall entitle any Employee, Board Member or any other person to any claim or right to receive an Award under this Plan. Neither this Plan nor any action taken hereunder shall be construed as giving any individual any rights to be retained by or in the employ of the Company or any other employment rights.

Headings

Section headings are for reference only. In the event of a conflict between a title and the content of a Section, the content of the Section shall control.

Effective Date of the Plan

The initial effective date of the Plan was May 4, 2012. The amended and restated version of the Plan shall be effective on December 30, 2015.

Miscellaneous

Compliance with Law. The Plan and the obligations of the Company to issue or transfer Phantom Profits Interest Units in connection with Awards shall be subject to all applicable laws and to approvals by any governmental or regulatory agency as may be required. The Administrator may revoke any Award if it is contrary to law or modify an Award to bring it into compliance with any valid and mandatory government regulation. The Administrator may also adopt rules regarding the withholding of taxes on payments to Grantees. The Administrator may, in its sole discretion, agree to limit its authority under this Section.

Governing Law. The validity, construction, interpretation, and effect of the Plan and Award Agreements issued under the Plan shall be governed and construed by and determined in accordance with the laws of the State of Delaware, without giving effect to the conflict of laws provisions thereof.

Exhibit 10.30

Bioventus LLC
4721 Emperor Blvd., Suite 100
Durham, NC 27703
USA

1-919-474-6700
1-800-396-4325
www.BioventusGlobal.com

September 17, 2018

Anthony D'Adamio

RE: Bioventus Phantom Profit Interests Award

Dear Tony:

As Bioventus drives forward to become a global leader in Orthobiologics, we will rely on the continued strong contribution of key leaders like yourself. In recognition, and as incentive for this contribution, our Board of Managers has approved an additional pool of Phantom Profits Interests Units to be awarded to a select group of leaders who we believe will have the greatest impact in achieving our mission. You have been designated as one of these key leaders and, as a result, you are being granted 15,000 Phantom Profits Interests Units.

This Performance Units Award is granted to you under, and is subject to, all of the terms of the Phantom Profits Interests Plan ("**Plan**") and the applicable Bioventus LLC Phantom Profits Interests Plan Award Agreement ("**Award Agreement**"). A copy of the Plan and your corresponding Award Agreement are included with this letter and I encourage you to review both documents carefully.

We recognize that consistent and predictable revenue growth will be an important measure of our future success, and this growth is therefore a key component for vesting of the 2018 Performance Units. The plan provides for cliff-vesting of the units on June 1, 2021, based on 2020 revenue attainment consistent with the projections specified below. The Vesting Schedule for 2018 Performance Units is as follows:

Vesting Schedule: **Cliff vesting if, and only if, 2020 revenue growth is attained as outlined below:**

1. Revenue is equal to or greater than $391.8M, 100% of the units vest.
2. Revenue is equal to or greater than $370.8M, 75% of the units vest and the remaining units expire.
3. Revenue is equal to or greater than $350.6M, 50% of the units vest and the remaining units expire.
4. Revenue is less than $350.6M, none of the units vest and all of the units expire.

Shown below is an example of potential value of a PPI Unit at a Waterfall, and how the Waterfall Distribution is calculated. The payout amounts shown below are provided for illustrative purposes and shall apply only to units vested pursuant to the above-referenced schedule. Actual payouts under the Plan may vary from those shown and are subject to all of the terms of the Plan documents and applicable withholding requirements[1].

Illustrative Waterfall Scenarios[2]
(as of 10.31.17)

Enterprise value	$1BILLION	$1.2BILLLION
Approximate $ payout/unit	$ 4.87	$ 19.23

Assumes $703,691,178 benchmark[2]

I am delighted to notify you of this Award and I look forward to celebrating with you as we achieve our mission and continue to impact the lives of thousands of people around the world each year!

Sincerely,

/s/ Anthony P. Bihl
Anthony P. Bihl
Chief Executive Officer

Enclosures

1 The revenue targets and any other financial projections contained in this letter have been provided to you by the Company solely for your information and may be deemed to be forward-looking statements, which involve known and unknown risks and uncertainties. Given these risks and uncertainties, you are advised not to place any undue reliance on such forward-looking statements. Further, the Company does not make any representations or warranties, express or implied, as to the ultimate value of your Award or whether a Waterfall Distribution Event will occur. In the event of any inconsistency between this letter and the Plan, the provisions of the Plan shall govern.

2 **Waterfall Distribution Formula:**
Enterprise Value - Debt (net of cash) - Benchmark of PPI units = Remaining Equity Value available for Distribution / Units Outstanding = PPI Payout per unit

BIOVENTUS LLC PHANTOM PROFITS INTERESTS PLAN

AWARD AGREEMENT

The Administrator, as defined in the Bioventus LLC Phantom Profits Interests Plan (the "**Plan**"), of the Plan has decided to grant to you Phantom Profits Interest Units in the Company under the Plan. The terms of the grant (the "**Grant**") are set forth in this Bioventus LLC Phantom Profits Interests Plan Award Agreement (the "**Award Agreement**") provided to you. The following provides a summary of the key terms of the Grant; however, you should read the entire Award Agreement, along with the terms of the Plan and the Company's Amended and Restated Limited Liability Company Agreement (as might be amended), to fully understand the Grant.

SUMMARY OF PHANTOM PROFITS INTERESTS PLAN AWARD AGREEMENT

Grantee:	**Anthony D'Adamio**
Date of Award:	**September 17, 2018**
Vesting Schedule:	**On June 1, 2021, the plan provides for cliff-vesting, if and only if, the 2020 revenue attainment is consistent with the projections outlined below:** **1. Revenue is equal to or greater than $391.8M, 100% of the units vest.** **2. Revenue is equal to or greater than $370.8M, 75% of the units vest and the remaining units expire.** **3. Revenue is equal to or greater than $350.6M, 50% of the units vest and the remaining units expire.** **4. Revenue is less than $350.6M, none of the units vest and all of the units expire.**
Phantom Profits Interest Units Awarded:	**15,000**
Payment Event:	**Termination Payment Event**
Grant Date Benchmark Amount:	**$703,691,178**

BIOVENTUS LLC

PHANTOM PROFITS INTERESTS PLAN

AWARD AGREEMENT

This Bioventus LLC Phantom Profits Interests Plan Award Agreement (this "**Award Agreement**"), dated as of September 17, 2018 (the "**Effective Date**"), is delivered by Bioventus LLC (the "**Company**") to Anthony D'Adamio (the "**Grantee**").

RECITALS

A. The Bioventus LLC Phantom Profits Interests Plan (the "**Plan**") provides for the grant of Phantom Profits Interest Units in the Company in accordance with the terms of the Plan and the Amended and Restated Limited Liability Company Agreement of the Company, as amended (the "**LLC Agreement**"). The Administrator (as defined in the Plan) has granted the Award (as defined below) to encourage the Grantee to contribute materially to the growth of the Company's owners, thereby benefitting the Company, and to align the economic interests of the Grantee with those of the owners. A copy of the Plan is attached. All capitalized terms not defined herein shall have the meaning given to such terms in the Plan or, if not defined in the Plan, in the LLC Agreement.

B. The Administrator shall administer the Plan.

NOW, THEREFORE, the parties to this Award Agreement, intending to be legally bound, hereby agree as follows:

Grant of Phantom Profits Interests Units. Subject to the terms and conditions set forth in this Award Agreement, the Plan, and the LLC Agreement, the Company hereby grants to the Grantee 15,000 Phantom Profits Interest Units (the "Award"). This Award Agreement (which is effective as of the Effective Date upon the parties' exchange of signed counterpart signature pages hereto), the Plan, and the LLC Agreement govern the terms of the grant of the Award.

Vesting of Awarded Units.

Unless otherwise determined by the Administrator, the Award shall vest in accordance with the following schedule on June 1, 2021 (the "**Vesting Date**"), if the Grantee is employed by the Company on such Vesting Date.

The Award is subject to cliff-vesting in amounts as determined by the schedule below if, and only if, the Company's annual revenue for calendar year 2020 equals or exceeds $350.6M:

1. $391.8M, then 100% of the Award shall vest on the Vesting Date
2. $370.8M, then 75% of the Award shall vest on the Vesting Date and the remaining units expire.

3. $350.6M, then 50% of the Award shall vest on the Vesting Date and the remaining units expire.

4. Less than $350.6M, none of the Awarded units shall vest and all of the units shall expire.

Revenue numbers will be determined by Bioventus in accordance with accounting principles generally accepted in the United States and consistent with Bioventus' accounting policies.

On a Payment Event, the Grantee shall receive the Payment Amount, if any, with respect to the portion of the Award that is vested, as set forth in Section 5(b)(i) of the Plan. Any portion of the Award that is unvested as of the Vesting Date shall be forfeited.

Any and all of a Grantee's unvested Phantom Profits Interest Units shall be forfeited upon the termination of the Grantee's employment for any reason.

Upon the termination of the Grantee's employment for Cause, both the vested and the unvested portion of the Award shall be forfeited.

Withholding. All obligations of the Company under this Agreement shall be subject to the rights of the Company to withhold amounts required to be withheld for any taxes, if applicable.

Restrictions on Transfer. Only the Grantee has any rights under this Award. The Grantee may not transfer those rights, directly or indirectly, except by will or the laws of descent and distribution.

Award Subject to Plan and LLC Agreement Provisions. This Award is made pursuant to the Plan and the LLC Agreement, the terms of which are incorporated herein by reference, and in all respects shall be interpreted in accordance with the Plan and the LLC Agreement. The Administrator shall have the full power and authority to administer and interpret the Plan and this Award Agreement, to make factual determinations, and to adopt or amend such rules, regulations, agreements, and instruments for implementing the Plan and this Award Agreement and for the conduct of its business as it deems necessary or advisable. All powers of the Administrator shall be executed without the approval or consent of the Grantee.

No Employment or Other Rights. This Award Agreement is not an agreement of employment and the grant of this Award shall not confer upon the Grantee any right to be retained by or in the employ of the Company and shall not interfere in any way with the right of the Company to terminate the Grantee's employment at any time. The right of the Company, as applicable, to terminate at will the Grantee's employment at any time for any reason is specifically reserved. The grant of this Award shall not entitle the Grantee to any (i) voting rights with respect to any action or decision taken or made (or to be taken or made) by the Company or the Board, (ii) right to appoint Managers to the Board, or (iii) appraisal or preemption rights.

Notice. Any notice to the Company provided for in this Award Agreement must be in writing and will be deemed given: (a) on the date established by the sender as having been delivered personally; (b) on the date delivered by a private, nationally recognized, overnight courier as established by the sender by evidence obtained from the courier; (c) on the date sent by facsimile, with confirmation of transmission, if sent during normal business hours of the recipient (and, if not sent during normal business hours of the recipient, then on the next business day); or (d) on the fifth business day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications, to be valid, must be addressed as follows:

If to the Company, to:

Bioventus LLC
4721 Emperor Blvd. Suite 100
Durham, NC 27703
Attention: General Counsel
Facsimile: 866-467-1531

If to the Grantee, to the address on file with the Company.

If more than one method for sending notice as set forth above is used, the earliest notice date established as set forth above will control for purposes of determining when such notice is deemed to have been given.

Amendment and Termination; Section 409A. The Administrator may amend the Plan or this Award, or terminate the Plan, at any time; provided that no amendment or termination of the Plan or this Award shall, without the consent of a Grantee, adversely impact the rights of the Grantee under this Award, unless necessary to meet the requirements of any applicable law or regulation. Before amending or terminating the Plan or this Award to meet the requirements of an applicable law or regulation, the Administrator will attempt to bring the Plan or Award into compliance with the applicable law or regulation without reducing the benefits or payments to the Grantee to the greatest extent possible. If amendment or termination is still necessary and adversely impacts the rights of the Grantee, the Administrator will reasonably cooperate with the Grantee to adopt replacement benefits or payments that to the greatest extent possible places the Grantee in the same or a comparable economic position as if the Plan or Award had not been amended or terminated.

Subject to the first paragraph of this Section 8, while the Company does not guarantee any particular tax treatment with respect to the Award, payment of the Payment Amount is intended to comply with Section 409A, to the extent subject thereto, and shall be interpreted and construed consistent with that intent. The Company may reform this Award or any provision hereof to maintain to the maximum extent practicable the original intent of the provision without violating the provisions of Section 409A, provided, that any deferral of payments shall be only for such time period as may be required to comply with Section 409A.

Headings. Section headings are for reference only. In the event of a conflict between a heading and the content of a Section, the content of the Section shall control.

Applicable Law. The validity, construction, interpretation and effect of this Award Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to the conflicts of laws provisions thereof.

IN WITNESS WHEREOF, the Company has caused its duly authorized officer to execute this Award Agreement, and the Grantee has executed this Award Agreement, effective as of the Effective Date.

Bioventus LLC

By: /s/ Leigh Ann Stradford
Name: Leigh Ann Stradford
Title: SVP and Chief HR Officer

I hereby accept the Award described in this Award Agreement, and I agree to be bound by the terms of this Award Agreement, the Plan and the LLC Agreement. I hereby further agree that all of the decisions and determinations of the Administrator shall be final and binding.

Grantee: /s/ Anthony D'Adamio
Date: 9/27/2018

BIOVENTUS LLC

PHANTOM PROFITS INTERESTS PLAN

AS AMENDED AND RESTATED DECEMBER 8, 2017

The purpose of the Bioventus LLC Phantom Profits Interests Plan (the "**Plan**") is to provide eligible employees and independent members of the Board of Managers of Bioventus LLC (the "**Company**") who are important to the success and growth of the business of the Company an opportunity to share in the future appreciation in value of the Company by receiving grants of Phantom Profits Interest Units in the Company. The Company believes that the Plan will encourage participants to contribute materially to the growth of the Company's owners, thereby benefiting the Company, and will align the economic interests of the participants with those of the owners. Awards under the Plan shall consist of grants of Phantom Profits Interest Units as described in Section 5 ("**Awards**"). Capitalized terms that are used but not defined herein shall have the respective meanings accorded to such terms in the Amended and Restated Limited Liability Company Agreement of the Company, as amended (the "**LLC Agreement**").

Definitions

"**Benchmark Amount**" means the cumulative distributions that must be made by the Company pursuant to the LLC Agreement before a Grantee is entitled to receive any distributions in respect of such Grantee's Phantom Profits Interest Units. The Benchmark Amount shall equal $703,691,178 or such other greater amount as set forth in the applicable Award Agreement.

"**Board Member**" means an independent member of the Board of Managers of the Company appointed or elected to the Board of Managers on or after January 1, 2016.

"Code" means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

"Employee" means an employee of the Company.

"Grantee" means an Employee or Board Member who receives an Award.

"Initial Waterfall Distribution Event" means the closing of (i) a sale of Units representing a Percentage Interest of more than 66.66%, or (ii) a sale of all or substantially all of the assets of the Company; provided that such event constitutes a change in ownership or a change in effective control of the Company within the meaning of Section 409A of the Code.

"Management Distribution Cap" means 17.5% of the aggregate amount, if any, available for distribution pursuant to Section 10.05(a)(v) of the LLC Agreement.

"Management Incentive Plan" means the Bioventus LLC Management Incentive Plan.

"**Payment Amount**" means the amount payable with respect to each vested Phantom Profits Interest Unit upon the applicable Payment Event.

"**Phantom Profits Interest Unit**" means a right to receive cash in an amount equal to the Payment Amount upon the Payment Event as set forth in the applicable Award Agreement.

"**Profits Interest Unit**" means a non-managing, non-voting ownership interest in the Company issued pursuant to Section 3.01(b) of the LLC Agreement and the Management Incentive Plan.

"**Qualifying Subsequent Waterfall Distribution Event**" means a Subsequent Waterfall Distribution Event that constitutes a change in ownership or a change in effective control of the Company within the meaning of Section 409A of the Code.

"**Subsequent Waterfall Distribution Event**" means, following an Initial Waterfall Distribution Event under Section 1(a) above with respect to Units representing a Percentage Interest of less than 100%, the closing of (i) a subsequent sale of Units, or (ii) a sale of all or substantially all of the assets of the Company

"**Termination Date**" means in the case of an Employee, the date of the Grantee's separation of service, as defined in Section 409A of the Code, and in the case of a Board Member, resignation or removal from the Board of Managers of the Company.

"**Waterfall Distribution Event**" means an Initial Waterfall Distribution Event or a Subsequent Waterfall Distribution Event.

Administration

Administration. The Plan shall be administered and interpreted by the Board of Managers (the "**Administrator**") or by a committee or subcommittee, which shall be appointed by the Administrator. To the extent that a committee or subcommittee administers the Plan, references in the Plan to the "Administrator" shall be deemed to refer to the committee or the subcommittee.

Administrator Authority. The Administrator shall determine (i) the Employees and Board Members to receive Awards, (ii) the size and terms of the Awards, (iii) the time when the Awards will be made, (iv) the applicable Payment Event, (v) the duration of any applicable vesting period, provided that such vesting period shall not be less than four years and that the Award shall vest ratably over the vesting period, and (vi) the Benchmark Amount with respect to any Award.

Administrator Determinations. The Administrator shall have full power and authority to administer and interpret the Plan, to make factual determinations, and to adopt or amend such rules, regulations, agreements, and instruments for implementing the Plan and for the conduct of its business as it deems necessary or advisable. All powers of the Administrator shall be executed without the approval or consent of the Grantees.

Interests Subject to the Plan

Awards Authorized by the LLC Agreement. The total amount of Phantom Profits Interest Units available for grants under the Plan, when combined with the total amount of Profits Interest Units (as defined in the Management Incentive Plan) granted under the Management Incentive Plan and any other form of employee, management or other service provider equity or equity-related awards of the Company, shall not result in aggregate distributions to the holders thereof in excess of the Management Distribution Cap (such amount determined, solely for this purpose, as if there were no Phantom Profits Interest Units or Other Management Equity Awards (as defined in the LLC Agreement)) ("**Excess Distributions**"), unless and to the extent that S&N and the Essex Members consent in their capacity as Members to such Excess Distributions. If, and to the extent that, Phantom Profits Interest Units granted under the Plan terminate or are canceled, forfeited, exchanged, or surrendered without payment, such Phantom Profits Interest Units shall be available again for purposes of the Plan.

Adjustments. If there is any change in the total amount or kind of Phantom Profits Interest Units outstanding (i) by reason of a spinoff, split of the Phantom Profits Interest Units, reclassification, combination, or exchange of such Phantom Profits Interest Units or similar event; (ii) by reason of a merger, reorganization, or consolidation; (iii) by reason of any other extraordinary or unusual event affecting the outstanding Phantom Profits Interest Units as a class without the Company's receipt of consideration; or (iv) by reason of a change in the structure of the Company, or if the value of the outstanding Phantom Profits Interest Units are substantially reduced as a result of a spinoff, the amount or percentage of such Phantom Profits Interest Units covered by outstanding Awards, and the kind of Phantom Profits Interest Units issued under the Plan shall be appropriately adjusted by the Administrator to reflect any increase or decrease in the amount of, or change in the kind or value of, issued Phantom Profits Interest Units to preclude, to the extent practicable, the enlargement or dilution of rights and benefits under such Awards. Any adjustments determined by the Administrator shall be final, binding, and conclusive.

Eligibility for Participation

All Employees and Board Members who are designated by the Administrator shall be eligible to participate in the Plan.

Grants of Awards

Award Agreement. All Awards shall be subject to the terms and conditions of this Plan, the terms of the LLC Agreement, and the Grantee's award instrument (the "**Award Agreement**"). Each Award Agreement shall contain the number of Phantom Profits Interest Units underlying the Grantee's Award and the applicable grant date Benchmark Amount (subject to adjustment as provided in the LLC Agreement), and each Award shall vest in accordance with the terms of the Grantee's Award Agreement. The Award Agreement shall also designate whether the Payment Amount shall be paid (i) upon the earlier of the Grantee's Termination Date or an Initial Waterfall Distribution Event (with any subsequent amounts 10 paid upon the earlier of a Qualifying Subsequent Waterfall Distribution Event or the Grantee's Termination Date) (a "**Termination Payment Event**") or (ii) upon an Initial Waterfall Distribution Event, with any subsequent amounts paid upon the earlier of (A) a Qualifying Subsequent Waterfall Distribution Event or (B) provided that a Subsequent Waterfall event has occurred, the fifth anniversary of the grant date (a "**Waterfall Payment Event**") (a Termination Payment Event or a Waterfall Payment Event, also referred to as the "**Payment Event**").

Payment Amount.

(i) If the Payment Event is a Termination Payment Event, the Payment Amount shall be, for each vested Phantom Profits Interest Unit, an amount that would be allocated to an equivalent number of Profits Interest Units with an equivalent Benchmark Amount, (A) if the Grantee's Termination Date is prior to a Waterfall Distribution Event, as if the Company were liquidated on the Termination Date at fair market value (as determined in good faith by the Administrator), or (B) where there is an Initial Waterfall Distribution Event and one or more Subsequent Waterfall Distribution Events prior to the Termination Date, pursuant to the LLC Agreement with respect to each such Waterfall Distribution Event. Such Payment Amount shall be paid to the Grantee within 30 days of the Termination Date, the Initial Waterfall Distribution Event, or any Qualifying Subsequent Waterfall Distribution Event, as applicable. In the event that a Subsequent Waterfall Distribution Event is not a Qualifying Subsequent Waterfall Distribution Event, the Payment Amount with respect to such Subsequent Waterfall Distribution Event shall be paid within 30 days of the Termination Date. No further Payment Amount shall be paid to the Grantee with respect to Waterfall Distribution Events following the Grantee's Termination Date.

(ii) Subject to (iii) below, if the Payment Event is a Waterfall Payment Event and a Waterfall Distribution Event occurs before the Grantee's Termination Date, the Payment Amount shall be equal to, for each vested Phantom Profits Interest Unit, an amount that would be payable with respect to the equivalent number of Profits Interest Units with an equivalent Benchmark Amount pursuant to the LLC Agreement. Such Payment Amount shall be paid to the Grantee within 30 days of an Initial Waterfall Distribution Event, and for any Subsequent Waterfall Distribution Event, shall be paid to the Grantee within 30 days of the earlier of a Qualifying Subsequent Waterfall Distribution Event or the fifth anniversary of the date of grant. No Payment Amount shall be paid to the Grantee with respect to any Subsequent Waterfall Distribution Event that is not a Qualifying Subsequent Waterfall Distribution Event and that occurs after the fifth anniversary of the Grant Date.

(iii) If the Payment Event is a Waterfall Payment Event and a Waterfall Distribution Event occurs after the Grantee's Termination Date, the Payment Amount with respect to such event shall in no event be greater than the lesser of, for each vested Phantom Profits Interest Unit, (A) an amount that would be allocated to an equivalent number of Profits Interest Units with an equivalent Benchmark Amount if the Company were liquidated on the valuation date next following the Termination Date at fair market value (as determined in good faith by the Administrator) and (B) the amount specified in Section 5(b)(ii) above; provided that if a Waterfall Distribution Event occurs prior to the valuation date next following the Termination Date, the Payment Amount shall be the amount specified in Section 5(b)(ii). Such Payment Amount shall be paid to the Grantee within 30 days of the Initial Waterfall Distribution Event, and for any Subsequent Waterfall Distribution Event, shall be paid to the Grantee within 30 days of the earlier of a Qualifying Subsequent Waterfall Distribution Event or the fifth anniversary of the date of grant. No Payment Amount shall be paid to the Grantee with respect to any Subsequent Waterfall Distribution Event that is not a Qualifying Subsequent Waterfall Distribution Event and that occurs after the fifth anniversary of the Grant Date.

Acknowledgement by Grantee. All Awards shall be made conditional upon the Grantee's acknowledgement, in writing or by acceptance of the Award, that all decisions and determinations of the Administrator shall be final and binding on the Grantee, his or her beneficiaries, and any other person having or claiming an interest under such award. Awards need not be uniform as among the Grantees.

Forfeiture

Termination of Employment. Any and all of an Employee Grantee's unvested Phantom Profits Interest Units shall be forfeited upon the termination of the Grantee's employment for any reason.

Termination of Membership on the Board of Managers. Any and all of a Board Member Grantee's unvested Phantom Profits Interest Units shall be forfeited upon resignation or removal from the Board of Managers of the Company.

Termination of Employment for Cause. Any and all of an Employee Grantee's vested and unvested Phantom Profits Interest Units shall be forfeited upon the termination of the Grantee's employment for Cause. For purposes of this Plan, "Cause" shall have the meaning set forth in the written employment agreement between the Grantee and the Company in effect on the date of the Grantee's termination of employment, or if no such agreement exists, shall mean (i) conviction (including guilty plea or plea of nolo contendere) of any felony or any other crime involving fraud, violence or dishonesty; (ii) commission of or participation in a fraud or act of dishonesty or misrepresentation against the Company; (iii) violation of any written and fully executed contract or agreement between the Grantee and the Company, including without limitation, breach of Grantee's Proprietary Information, Inventions, Non-Competition and Non-Solicitation Agreement; (iv) gross negligence or willful misconduct, (v) continued and substantial failure to perform the Grantee's duties to the Company; or (vi) violation of any material policies, practices, or procedures of the Company.

Removal from the Board of Managers. Any and all of a Board Member Grantee's vested and unvested Phantom Profits Interest Units shall be forfeited upon the removal of the Grantee from the Board of Managers for Cause. For purposes of this Plan, "Cause" shall mean (i) conviction (including guilty plea or plea of nolo contendere) of any felony or any other crime involving fraud, violence or dishonesty; (ii) commission of or participation in a fraud or act of dishonesty or misrepresentation against the Company; (iii) violation of any agreement between the Grantee and the Company; (iv) gross negligence or willful misconduct; (v) continued and substantial failure to perform the Grantee's duties to the Company as a Member of the Board of Managers of the Company; or (vi) violation of any material policies, practices, or procedures of the Company including without limitation, the Company's Code of Conduct and Confidential Information policies.

Waterfall Distribution Event. As soon as practicable following an Initial Waterfall Distribution Event or any Subsequent Waterfall Distribution Event that results in an aggregate sale of Units representing a Percentage Interest of 100%, or upon a sale of all or substantially all of the assets of the Company, all vested and unvested Phantom Profits Interest Units shall be cancelled (after the Grantee has been paid any amounts due with respect to such Units, if applicable).

Confidentiality, Non-Compete, Non-Solicitation. Notwithstanding anything herein to the contrary, a Grantee shall forfeit any and all rights to all vested and unvested Phantom Profits Interest Units if the Grantee violates the terms of any confidentiality, non-solicitation and non-competition provisions of any agreement between the Grantee and the Company, if applicable.

Withholding of Taxes

All Awards under the Plan shall be subject to applicable federal (including FICA), state, and local tax withholding requirements. The Company may require that the Grantee pay to the Company the amount of any federal, state, or local taxes that the Company is required to withhold with respect to such Awards, or the Company may deduct from other wages paid by the Company the amount of any withholding taxes due with respect to such Awards.

Nontransferability of Awards

Only the Grantee has any rights under an Award. A Grantee may not transfer those rights, directly or indirectly, except by will or the laws of descent and distribution.

Limitations on Issuance or Transfer of Phantom Profits Interest Units

No Phantom Profits Interest Units shall be issued or transferred in connection with any Award until all legal requirements applicable to the issuance or transfer of such Phantom Profits Interest Units have been complied with to the satisfaction of the Administrator. The Administrator shall have the right to condition any Award made to any Grantee hereunder on such Grantee's undertaking in writing to comply with any restrictions on his or her subsequent disposition of such Phantom Profits Interest Units as the Administrator shall deem necessary or advisable.

Amendment and Termination of the Plan

Amendment and Termination. The Administrator may, in accordance with the LLC Agreement, amend the Plan or any Award under the Plan, or terminate the Plan, at any time; provided that no amendment or termination of the Plan or any Award shall, without the consent of a Grantee, adversely impact the rights of any Grantee under any Award granted to such Grantee under the Plan, unless necessary to meet the requirements of any applicable law or regulation. Before amending or terminating the Plan or any Award to meet the requirements of an applicable law or regulation, the Administrator will attempt to bring the Plan or Award into compliance with the applicable law or regulation without reducing the benefits or payments to a Grantee to the greatest extent possible. If amendment or termination is still necessary and adversely impacts the rights of a Grantee, the Administrator will reasonably cooperate with such Grantee to adopt replacement benefits or payments that to the greatest extent possible places the Grantee in the same or a comparable economic position as if the Plan or Award had not been amended or terminated.

Governing Document. In the event of any conflict between any Award in the form attached hereto as Exhibit A or B and the LLC Agreement, such Award shall control. In the event of any conflict between any subsequent Award not in the form attached hereto and the LLC Agreement, the LLC agreement shall control unless such subsequent Award has been approved by the Board and Smith & Nephew, Inc., in which case such Award shall control. No other statements, representations, explanatory materials or examples, oral or written, may amend the Plan in any manner. The Plan shall be binding upon and enforceable against the Company and its successors and assigns.

Funding of the Plan

This Plan shall be unfunded. The Company shall not be required to establish any special or separate fund or to make any other segregation of assets to assure the payment of any Awards under this Plan. In no event shall interest be paid or accrued on any Award.

Rights of Grantees

No Award shall entitle any Grantee to any (i) voting rights with respect to any action or decision taken or made (or to be taken or made) by the Company or the Board of Managers, (ii) right to appoint Managers to the Board of Managers, or (iii) appraisal or preemption rights. Nothing in this Plan shall entitle any Employee, Board Member or any other person to any claim or right to receive an Award under this Plan. Neither this Plan nor any action taken hereunder shall be construed as giving any individual any rights to be retained by or in the employ of the Company or any other employment rights.

Headings

Section headings are for reference only. In the event of a conflict between a title and the content of a Section, the content of the Section shall control.

Effective Date of the Plan

The initial effective date of the Plan was May 4, 2012. The amended and restated version of the Plan shall be effective on December 8, 2017.

Miscellaneous

Compliance with Law. The Plan and the obligations of the Company to issue or transfer Phantom Profits Interest Units in connection with Awards shall be subject to all applicable laws and to approvals by any governmental or regulatory agency as may be required. The Administrator may revoke any Award if it is contrary to law or modify an Award to bring it into compliance with any valid and mandatory government regulation. The Administrator may also adopt rules regarding the withholding of taxes on payments to Grantees. The Administrator may, in its sole discretion, agree to limit its authority under this Section.

Governing Law. The validity, construction, interpretation, and effect of the Plan and Award Agreements issued under the Plan shall be governed and construed by and determined in accordance with the laws of the State of Delaware, without giving effect to the conflict of laws provisions thereof.

Exhibit 10.31

Bioventus LLC
4721 Emperor Blvd., Suite 100
Durham, NC 27703
USA

1-919-474-6700
1-800-396-4325
www.BioventusGlobal.com

June 13, 2013

Alessandra Pavesio

Re: Employment Offer

Dear Alessandra:

I am pleased to offer you employment at Bioventus LLC ("**Bioventus**" or the "**Company**") on the terms set forth in this offer letter agreement (the "**Agreement**"). This Agreement will be effective on August 5, 2013 and is contingent upon approval of the Bioventus Board of Managers, favorable reference checks, background checks, and drug screen results, and the execution of the enclosed Proprietary Information, Inventions, Non-Solicitation and Non-Compete Agreement and satisfactory review of any non-compete clauses in contracts from past employment.

Employment and Duties

You will be employed in the role of **Chief Science Officer** and you shall perform the duties of this role as are customary and as may be required by Bioventus. You will report to the **Chief Executive Officer**, Mark Augusti, and you will be based at the headquarters of Bioventus currently located in Durham, NC.

During your employment with Bioventus, you will devote your full-time best efforts and business time and attention to the business of Bioventus.

At-Will Employment Relationship

You may terminate your employment with Bioventus at any time and for any reason whatsoever simply by notifying Bioventus. Likewise, Bioventus may terminate your employment at any time, with or without Cause, and with or without advance notice. Your employment at-will status can only be modified in a written agreement approved by Bioventus and signed by you and a duly authorized member of Bioventus.

Base Salary and Employee Benefits

Your base salary will be paid at the initial annual rate of **$300,000**, less payroll deductions and withholdings. You will be paid your base salary on a bi-weekly basis, on Bioventus' normal payroll schedule. In addition, you will receive a **$132.00** monthly international phone stipend, which will be paid on the first check of each month. As an exempt salaried employee, you will be required to work Bioventus' normal business hours, and such additional time as appropriate for your work assignments and positions. You will not be eligible for overtime premiums.

You will also be eligible to receive a grant of Phantom Profits Interest Units in the Company which will equal **.75% (83,333 units)** of the interests available under the Management Incentive Plan (the "**Award**"). A copy of the plan will be made available for your review.

You will be eligible to receive automotive, club and financial planning perquisites in the aggregate amount of **$17,500** annually.

You will be eligible to participate in Bioventus' health and welfare, group insurance, retirement and other employee benefit plans, programs and arrangements (pursuant to the terms and conditions of the benefit plans and applicable policies) as are made generally available from time to time to executives of the Company.

You will be eligible for **20** days of vacation per year. For 2013, your vacation will be pro-rated to **10** days. Going forward, you will earn any additional vacation according to the Bioventus vacation policy.

Relocation

This offer will require that you relocate to our headquarters Durham, North Carolina area. Bioventus will provide professional assistance and the Bioventus Homeowners Relocation package to assist with the expenses associated with your move. Bioventus has engaged the services of Brookfield Relocation Global Solutions, who will assign a Relocation Consultant to work with you during the entire relocation process. You will hear from your consultant by telephone shortly after your move is approved by Bioventus. You will have a limit of **$100,000** for your total relocation costs excluding rental expenses. *In the event that you are required to rent a home in North Carolina and your current home in is not sold or rented, we will allow additional expenses of $3,000 gross per month toward rental expenses for a maximum of either; 10 months, or your when your home in is sold or rented – whichever occurs first, toward rental expenses.* Please refer to Bioventus Domestic Relocation Policy Summary that outlines coverage specifics. If for any reason you voluntarily resign or are terminated for cause from your position at Bioventus within 24 months after signing this offer, it is understood that you will reimburse the company for the cost of relocation earned. For purpose of this provision "cause" is noted on page three (3) under **Certain Definitions**.

> **Please note:** In order to manage relocation costs some services and reimbursements are contingent on the use of vendors or brokers specified by Brookfield Relocation Global Solutions. **Therefore, you should not contact a real-estate agent or make commitments to any vendor prior to your initial contact by** Brookfield Relocation Global Solutions. In addition, you may not utilize or ask to have qualified as a broker any family members.

Annual Performance Bonus and Merit Planning

In this position, you will be eligible to participate in the Bioventus Executive Annual Incentive Plan (AIP) at a target of fifty (**50%**) percent of your annual base salary ("**Annual Bonus**") which will be prorated for 2013 based on your length of employment with Bioventus in 2013. The Annual Incentive Plan will include components of your personal performance as well as Bioventus' Business Objectives. The terms and conditions of this plan will be set forth in the plan document.

Your performance will be reviewed on or before April 1, 2014 and on a yearly basis thereafter. At that time, your salary will be reviewed along with your performance to determine any adjustment to your base salary.

Certain Definitions

For purposes of this Agreement, the following definitions will apply:

(1) Definition of Change in Control. A **"Change in Control"** shall mean the first to occur of any of the following: (A) any "person" (as such term is used in sections 13(d) and 14(d) of the Securities Exchange Act of 1934 (the **"Exchange Act"**)) (other than persons who are owners of the Company on the Effective Date or its affiliates or permitted transferees) becomes a "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of interests in the Company representing more than 50% of the voting power of the then outstanding interests in the Company; provided that a Change in Control shall not be deemed to occur as a result of a change of ownership resulting from the death of an owner, and a Change in Control shall not be deemed to occur as a result of a transaction in which the Company becomes a subsidiary of another company and in which the owners of the Company, immediately prior to the transaction, will beneficially own, immediately after the transaction, interests entitling such owners to more than 50% of all votes to which all owners of the parent company would be entitled in the election of members (without consideration of the rights of any class of membership interests to elect members by a separate class vote); or (B) the consummation of (i) a merger or consolidation of the Company with another company where the owners of the Company, immediately prior to the merger or consolidation, will not beneficially own, immediately after the merger or consolidation, membership interests (or other equity instruments) entitling such persons to more than 50% of all votes to which all owners of the surviving company would be entitled in the election of members (without consideration of the rights of any class of membership interests to elect members by a separate class vote); (ii) a sale or other disposition of all or substantially all of the assets of the Company; or (iii) a liquidation or dissolution of the Company.

(2) Definition of Cause. "Cause" for the Company to terminate your employment shall exist if you are given written notice detailing the specific Cause and you fail to cure such event to the satisfaction of the Chief Executive Officer within 30 days if any of the following occurs: (A) your being convicted (including a guilty plea or plea of nolo contendere) of any felony or any other crime involving fraud, violence or dishonesty; (B) your commission of or participation in a fraud or act of dishonesty or misrepresentation against the Company; (C) your violation of any written and fully executed contract or agreement between you and the Company, including without limitation, breach of your Proprietary Information, Inventions, Non-Competition and Non-Solicitation Agreement (the **"Proprietary Information Agreement");** (D) your gross negligence or willful misconduct, (E) your continued and substantial failure to perform your duties to the Company; or (F) your violation of any material policies, practices, or procedures of Bioventus. The determination that a termination is for Cause shall be made by Bioventus at its sole discretion.

(**3) Definition of Good Reason. "Good Reason"** for you to terminate your employment shall mean the occurrence of any one of the following events occurring during the two-year period following the date of a Change in Control without either (x) your express prior written consent or (y) full cure within 30 days after you give written notice to the Company: (i) material diminution in duties or responsibilities; (ii) a material reduction in your salary, except for across-the-board salary reductions similarly affecting all senior executive officers of the Company; (iii) the relocation of your principal office, or principal place of employment, to a location more than fifty (50) miles from the location of your principal office or principal place of business as of the Effective Date; or (iv) a failure to pay you earned compensation; provided however, that no event shall constitute grounds for a Good Reason termination unless you terminate your employment within sixty days after such event occurs.

Severance Benefits

1. If, at any time, (i) the Company terminates your employment without Cause, other than as a result of your death or disability or (ii) you terminate your employment for Good Reason during the two-year period following a Change in Control, then you shall receive the following severance benefits (the **"Severance Benefits"**): (i) twelve (12) months of your base salary in effect on the effective date of termination (the **"Termination Date"**), less applicable taxes and withholdings This payment shall be made in a lump sum payment and shall be directly deposited into Employee's account on record with the Company's payroll department, or if there is no account on record, shall be made via a check made out to "Alessandra Pavesio" and mailed to Employee at Employee's last known address in the Company's records. This payment shall be paid on or about 60 days following the Termination Date; (ii) one hundred (100%) of your target Annual Bonus, paid on or about 60 days following the Termination Date (iii) If you timely elect continued coverage under federal COBRA laws or comparable state insurance laws (**"COBRA"**), then the Company shall pay the COBRA premiums necessary to continue your medical and dental insurance coverage in effect for yourself and your eligible dependents on the termination date for the first twelve (12) months of such coverage (provided that such COBRA reimbursement shall terminate on such earlier date as you are no longer eligible for COBRA coverage or you become eligible for group health insurance benefits through a new employer).

Your receipt of the Severance Benefits is conditional upon (a) your continuing to comply with your obligations under your Proprietary Information Agreement; and (b) your delivering to Bioventus within 45 days following the Termination Date (and not revoking) an effective, general release of all known and unknown claims in favor of Bioventus in the form attached as Exhibit B.

Notwithstanding anything herein to the contrary, this Agreement is intended to be interpreted and applied so that the payment of the benefits set forth herein shall either be exempt from the requirements of Section 409A of the Code (**"Section 409A"**) or shall comply with the requirements of such provision. After the Termination Date, you shall have no duties or responsibilities that are inconsistent with having a "separation from service" (within the meaning of Section 409A) as of the Termination Date and, notwithstanding anything in the Agreement to the contrary, distributions upon termination of employment of nonqualified deferred compensation may only be made upon a "separation from service" (as determined under Section 409A) and such date shall be the Termination Date for purposes of this Agreement. Each payment under this Agreement or otherwise shall be treated as a separate payment for purposes of Section 409A. In no event may you, directly or indirectly, designate the calendar year of any payment to be made under this Agreement which constitutes a "nonqualified deferral of compensation" (within the meaning of Section 409A) and to the extent an amount is payable within a time period, the time during which such amount is paid shall be in the discretion of Bioventus. To the extent that any reimbursements are taxable to you, any such reimbursement payment due to you shall be paid to you on or before the last day of the calendar year following the taxable year in which the related expense was incurred. The reimbursements are not subject to liquidation or exchange for another benefit and the amount of such reimbursements that you receive in one taxable year shall not affect the amount of such reimbursements that you receive in any other taxable year.

Compliance with Proprietary Information Agreement and Bioventus Policies

As a condition of employment, you must sign and comply with Bioventus' standard Proprietary Information Agreement which prohibits unauthorized use or disclosure of Bioventus' proprietary information and contains certain post-employment non-competition and non-solicitation obligations, among other obligations. In addition, you will be expected to abide by Bioventus' Code of Conduct and Bioventus' policies, as may be changed from time to time at Bioventus' sole discretion.

Non-Disparagement

During and after your employment, you and Bioventus agree not to make any statement that criticizes, ridicules, disparages, or is otherwise derogatory of the other or is reasonably likely to be harmful to you or Bioventus, or to your or Bioventus' respective businesses, business reputations or personal reputations; provided, however, that nothing in this Agreement shall restrict either party from making truthful statements (a) when required by law, subpoena, court order or the like; (b) when requested by a governmental, regulatory, or similar body or entity; (c) in confidence to a professional advisor for the purpose of securing professional advice; (d) in the ordinary course of performing your or its duties during your employment; (e) from rebutting any statement made or written about you or it; or (f) from making normal competitive statements about Bioventus' business or products.

Outside Activities

Throughout your employment with Bioventus, you may engage in civic and not-for-profit activities so long as such activities do not interfere with the performance of your duties hereunder or violate the Bioventus Conflict of Interest Policy.

Assignment

This Agreement may be assigned by Bioventus to a person or entity which is an affiliate or a successor in interest to substantially all of the business operations of Bioventus. Upon such assignment, the rights and obligations of Bioventus hereunder shall become the rights and obligations of such affiliate or successor person. You may not assign your rights or obligations to another entity or person.

Indemnification

Executive shall be entitled to indemnification to the maximum extent permitted by applicable law and the Company's Operating Agreement, Articles of Incorporation or Bylaws as applicable. At all times during Executive's employment, the Company shall maintain in effect a directors and officers liability insurance policy with Executive as a covered officer. The Company shall further provide and pay for the defense of any action, arbitration or mediation (collectively, an "Action") relative to the lawful performance of Executive's duties or in connection with Executive's employment at the Company and the existence of such Action or defense shall not provide grounds for termination of Executive's employment.

Miscellaneous

As required by federal law, this offer is contingent upon satisfactory proof of your identity and right to work in the United States. This Agreement, together with your Proprietary Information Agreement [and Phantom Profit Interest Units Grant], forms the complete and exclusive statement of your employment agreement with Bioventus. It supersedes any other agreements or promises made to you by anyone, whether oral or written. Changes in your employment terms, other than those changes expressly reserved to Bioventus' discretion in this Agreement, require a written modification approved by Bioventus. This Agreement will bind the heirs, personal representatives, successors and assigns of both you and Bioventus, and inure to the benefit of both you and Bioventus, their heirs, successors and assigns. If any provision of this Agreement is determined to be invalid or unenforceable, in whole or in part, this determination shall not affect any other provision of this Agreement and the provision in question shall be modified so as to be rendered enforceable in a manner consistent with the intent of the parties insofar as possible under applicable law. This Agreement shall be construed and enforced in accordance with the laws of the State of North Carolina without regard to conflicts of law principles. The parties hereby irrevocably submit to the jurisdiction of the state and federal courts of North Carolina located in or about Raleigh and waive any claim or defense of inconvenient or improper forum or lack of personal jurisdiction under any applicable law or decision. Any ambiguity in this Agreement shall not be construed against either party as the drafter. Any waiver of a breach of this Agreement, or rights hereunder, shall be in writing and shall not be deemed to be a waiver of any successive breach or rights hereunder. This Agreement may be executed in counterparts which shall be deemed to be part of one original, and facsimile or pdf signatures shall be equivalent to original signatures.

I am very pleased to offer you this position at Bioventus and look forward to your acceptance within the next ten days if you accept employment at Bioventus under the terms described above. I would be happy to discuss any questions that you may have about the terms of the offer. It will be a pleasure to work with you and create the future of Bioventus.

Sincerely,

/s/ Mark Augusti
Mark Augusti
Chief Executive Officer

Understood and Accepted:

/s/ Alessandra Pavesio	June 18, 2013
Alessandra Pavesio	Date

PROPRIETARY INFORMATION, INVENTIONS,
NON-SOLICITATION, AND NON-COMPETITION AGREEMENT

In consideration of my employment or continued employment by Bioventus LLC, its subsidiaries, parents, affiliates, successors and assigns (together, the **"Company"**) and the compensation paid to me, I hereby enter into this Proprietary Information, Inventions, Non-Competition and Non-Solicitation Agreement (the **"Agreement"**) and agree as follows:

1. NONDISCLOSURE.

1.1 Recognition of Company's Rights. At all times during my employment and thereafter, I will hold in strictest confidence and will not disclose or use any of the Company's Proprietary Information (defined below), except as such disclosure or use may be required in connection with my work for the Company, or unless an officer of the Company expressly authorizes such in writing. I hereby assign to the Company any rights I may have or acquire in such Proprietary Information and recognize that all Proprietary Information shall be the sole property of the Company. I will take all reasonable precautions to prevent the inadvertent or accidental disclosure of Proprietary Information.

1.2 Proprietary Information. The term **"Proprietary Information"** shall mean any and all confidential and/or proprietary knowledge, data or information of the Company, its affiliates, parents and subsidiaries, whether having existed, now existing, or to be developed during my employment. By way of illustration but not limitation, **"Proprietary Information"** includes (a) trade secrets, inventions, ideas, processes, formulas, discoveries, developments, designs and techniques and any other proprietary technology and all Proprietary Rights therein (hereinafter collectively referred to as **"Inventions"**); (b) information regarding research, development, new products, marketing and selling, business plans, budgets and financial statements, licenses, prices and costs, discounts, credit terms, pricing and billing policies, quoting procedures, methods of obtaining or conducting business, forecasts, future plans and potential strategies, financial projections and business strategies, operational plans, financing and capital-raising plans, activities and agreements, internal services and operational manuals, suppliers and supplier information, and purchasing; (c) information regarding customers and potential customers of the Company, including customer lists, names, representatives, their needs or desires with respect to the types of products or services offered by the Company, proposals, bids, contracts and their contents and parties, the type and quantity of products and services provided or sought to be provided to customers and potential customers of the Company and other related non-public information; (d) information regarding any of the Company's business partners and their services, including names; representatives, proposals, bids, contracts and their contents and parties, the type and quantity of products and services received by the Company, and other related non-public information; (e) information regarding personnel, employee lists, compensation, and employee skills; and (f) any other nonpublic information which a competitor of the Company could use to the competitive disadvantage of the Company. Notwithstanding the foregoing, I am free to use information which is generally known in the trade or industry through no breach of this Agreement or other act or omission by me and I am free to discuss the terms and conditions of my employment with others to the extent permitted by law.

1.3 Third Party Information. I understand that the Company has received and in the future will receive from third parties confidential and/or proprietary knowledge or information (**"Third Party Information"**). During my employment and thereafter, I will hold Third Party Information in the strictest confidence and will not disclose to anyone (other than Company personnel who need to know such information in connection with their work for the Company) or use, except in connection with my work for the Company, Third Party Information unless expressly authorized by an officer of the Company in writing.

2. ASSIGNMENT OF INVENTIONS.

2.1 Prior Inventions. Inventions, if any, patented or unpatented, which I made prior to the commencement of my employment with the Company are excluded from the scope of this Agreement. To preclude any possible uncertainty, I have set forth on Exhibit A a complete list of all Inventions that I have, alone or jointly with others, conceived or developed prior to the commencement of my employment with the Company, that I consider to be my property or the property of third parties, and that I wish to have excluded from the scope of this Agreement (collectively referred to as **"Prior Inventions"**). If no such disclosure is attached, I represent that there are no Prior Inventions. I agree that I will not incorporate, or permit to be incorporated, Prior Inventions in any Company Inventions without the Company's prior written consent.

2.2 Assignment of Inventions. Subject to Subsection 2.3, I hereby assign and agree to assign in the future to the Company all my right, title and interest in and to all Inventions (and all Proprietary Rights with respect thereto) made or conceived or learned by me, either alone or jointly with others, during the period of my employment with the Company. Inventions assigned to the Company, or to a third party as directed by the Company pursuant to this Section 2, are hereinafter referred to as **"Company Inventions."** The term **"Proprietary Rights"** shall mean all trade secrets, patents, copyrights, trademarks and other intellectual property rights throughout the world.

2.3 Unassigned or Nonassignable Inventions. This Agreement does not apply to an Invention which qualifies fully as a nonassignable Invention under North Carolina Statute §§ 66.57.1 and 66.57.2 (hereinafter **"Statute 66.57.1-66.57.2"**). I have reviewed the notification in paragraph 3 of Exhibit A and agree that my signature acknowledges receipt of the notification.

3. NON-SOLICITATION. During my employment and for a period of twelve (12) months following the termination of my employment with the Company for any reason, I shall not, directly or indirectly:

3.1 solicit or attempt to solicit any Contractor (defined below) or strategic partner of the Company (i) as to which I was informed of any confidential terms in the contract, business arrangement, or negotiation between the Company and such Contractor or strategic partner, or (ii)that is then providing, or is under contract to provide within one (1) year, services to the Company, which would be interrupted or impeded as a result of such solicitation;

3.2 solicit or attempt to solicit, any Customer (defined below) to terminate, diminish, or materially alter in a manner harmful to the Company its relationship with the Company for any purpose, including, but not limited to, the purpose of associating with or becoming a Customer of mine or any entity of which I am or become a partner, stockholder, principal, member, officer, director, employee, agent, trustee or consultant; or

3.3 solicit or attempt to solicit, any Contractor to terminate, diminish, or materially alter in a manner harmful to the Company its relationship with the Company for any purpose, including, but not limited to, the purpose of associating with or becoming a Contractor of mine or any entity of which I am or become a partner, stockholder, principal, member, officer, director, employee, agent, trustee or consultant.

3.4 For purposes of this Agreement, a **"Customer"** is any person or entity who or which, at any time during the one (1) year prior to the date my employment with the Company ends, (i) was in direct or indirect contact with me or whose identity I learned as a result of my employment with the Company or about which I acquired Proprietary Information and that contracted for or received from the Company any product, service or process; or (ii) was in contact with me or in contact with any other employee, owner, or agent of the Company of which contact I was or should have been aware, concerning any product, service or process with which I worked directly or indirectly during my employment with the Company or about which I acquired Proprietary Information; or (iii) was solicited by the Company or in consideration or planning to be solicited by the Company in an effort in which I was involved or of which I was or should have been aware.

3.5 For purposes of this Agreement, **"Contractor"** shall mean consultants or independent contractors with whom the Company does business related to my work for the Company.

3.6 For purposes of this Agreement, **"Conflicting Services"** means any product, service, or process of any person or organization other than the Company that directly competes with a product, service, or process or the like with which I worked directly or indirectly during my employment by the Company or about which I acquired Proprietary Information during my employment by the Company.

4. NON-INTERFERENCE. During the period of my employment with the Company and for twelve (12) months thereafter, I shall not, directly or indirectly, solicit or attempt to solicit, any person known to me to be an employee of the Company to terminate his or her employment or other relationship with the Company for any purpose whatsoever.

5. NON-COMPETE PROVISION. I agree that for the one (1) year period after the date my employment ends for any reason, I will not, directly or indirectly, as an officer, director, employee, consultant, owner, partner, or in any other capacity solicit, perform, or provide, or attempt to perform or provide, Conflicting Services anywhere in any county in North Carolina, or in any other county in any other state in which the Company transacted its business or the Company marketed its products or services during my employment with the Company and for which I have Proprietary Information that would be pertinent to such Conflicting Services, nor will I assist another person to solicit, perform or provide or attempt to solicit, perform or provide Conflicting Services anywhere in such counties.

6. GENERAL PROVISIONS.

6.1 Governing Law; Consent to Personal Jurisdiction. This Agreement will be governed by and construed according to the laws of the State of North Carolina as such laws are applied to agreements entered into and to be performed entirely within North Carolina between North Carolina residents. I hereby expressly consent to the personal jurisdiction and venue of the state and federal courts located in North Carolina for any lawsuit filed there against me by Company arising from or related to this Agreement.

6.2 Severability. In case any one or more of the provisions, subsections, or sentences contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. If moreover, any one or more of the provisions contained in this Agreement shall for any reason be held to be excessively broad as to duration, geographical scope, activity or subject, it shall be construed by limiting and reducing it, so as to be enforceable to the extent compatible with the applicable law as it shall then appear.

6.3 Employment At-Will. I agree and understand that nothing in this Agreement shall change my at-will employment status or confer any right with respect to continuation of employment by the Company, nor shall it interfere in any way with my right or the Company's right to terminate my employment at any time, with or without cause or advance notice.

6.4 Advice of Counsel. I ACKNOWLEDGE THAT, IN EXECUTING THIS AGREEMENT, I HAVE HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT LEGAL COUNSEL, AND I HAVE READ AND UNDERSTOOD ALL OF THE TERMS AND PROVISIONS OF THIS AGREEMENT. THIS AGREEMENT SHALL NOT BE CONSTRUED AGAINST ANY PARTY BY REASON OF THE DRAFTING OR PREPARATION HEREOF.

6.5 Entire Agreement. This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior discussions between us. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing and signed by the party to be charged. Any subsequent change or changes in my duties, salary or compensation will not affect the validity or scope of this Agreement.

This Agreement shall be effective as of DATE.

I HAVE READ THIS AGREEMENT CAREFULLY AND UNDERSTAND ITS TERMS. I HAVE COMPLETELY FILLED OUT EXHIBIT A TO THIS AGREEMENT.

/s/ Alessandra Pavesio
Alessandra Pavesio

ACCEPTED AND AGREED TO:

Bioventus LLC

By: /s/ Beth Ryan
Title: HR Manager

EXHIBIT A

PREVIOUS INVENTIONS

TO: **BIOVENTUS LLC**

FROM: **ALESSANDRA PAVESIO**

DATE: **July 22, 2013**

SUBJECT: **Previous Inventions**

1. Except as listed in Section 2 below, the following is a complete list of all inventions or improvements relevant to the subject matter of my employment by Bioventus, LLC (the **"**Company") that have been made or conceived or first reduced to practice by me alone or jointly with others prior to my engagement by the Company:

☒ No inventions or improvements.

☐ See below:

_____

_____

_____

☐ Additional sheets attached.

2. Due to a prior confidentiality agreement, I cannot complete the disclosure under Section 1 above with respect to inventions or improvements generally listed below, the proprietary rights and duty of confidentiality with respect to which I owe to the following party(ies):

	Invention or Improvement	**Party(ies)**	**Relationship**
1.			
2.			
3.			

☐ Additional sheets attached.

3. **Limited Exclusion Notification.**

THIS IS TO NOTIFY you in accordance with North Carolina General Statute §§ 66.57.1 and 66.57.2 that the foregoing Agreement between you and the Company does not require you to assign or offer to assign to the Company any invention that you developed entirely on your own time without using the Company's equipment, supplies, facilities or trade secret information except for those inventions that either:

a. Relate at the time of conception or reduction to practice of the invention to the Company's business, or actual or demonstrably anticipated research or development of the Company; or

b. Result from any work performed by you for the Company.

To the extent a provision in the foregoing Agreement purports to require you to assign an invention otherwise excluded from the preceding paragraph, the provision is against the public policy of this state and is unenforceable. You shall have the burden of establishing that any invention is excluded from assignment to the Company by the preceding paragraph.

This limited exclusion does not apply to any patent or invention covered by a contract between the Company and the United States or any of its agencies requiring full title to such patent or invention to be in the United States.

EXHIBIT B

FORM OF GENERAL RELEASE OF ALL CLAIMS

THIS GENERAL RELEASE OF ALL CLAIMS (this "**General Release**"), dated as of DATE, is made by and between Alessandra Pavesio (the "**Executive**") and Bioventus, LLC (the "**Company**").

WHEREAS, the Company and Executive are parties to that certain letter agreement, dated as of July 22, 2013 (the "**Agreement**");

WHEREAS, Executive's employment with the Company has been terminated and Executive is entitled to receive severance and other benefits pursuant to the Agreement subject to the execution of this General Release;

WHEREAS, in consideration for Executive's signing of this General Release, the Company will provide Executive with such severance and benefits pursuant to the Agreement; and

WHEREAS, except as otherwise expressly set forth herein, the parties hereto intend that this General Release shall effect a full satisfaction and release of the obligations described herein owed to Executive by the Company and to the Company by Executive.

NOW, THEREFORE, in consideration of the premises, the mutual covenants of the parties hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby covenant and agree as follows;

1. Executive, for himself, Executive's spouse, heirs, administrators, children, representatives, executors, successors, assigns, and all other individuals and entities claiming through Executive, if any (collectively, the **"Executive Releasers"**), does hereby release, waive, and forever discharge the Company and each of its respective agents, subsidiaries, parents, affiliates, related organizations, employees, officers, directors, attorneys, successors, and assigns in their capacities as such (collectively, the **"Employer Releasees"**) from, and does fully waive any obligations of Employer Releasees to Executive Releasers for, any and all liability, actions, charges, causes of action, demands, damages, or claims for relief, remuneration, sums of money, accounts or expenses (including attorneys' fees and costs) of any kind whatsoever, whether known or unknown or contingent or absolute, which heretofore has been or which hereafter may be suffered or sustained, directly or indirectly, by Executive Releasers in consequence of, arising out of, or in any way relating to: (a) Executive's employment with the Company; (b) the termination of Executive's employment with the Company; (c) the Agreement; or (d) any events occurring on or prior to the date of this General Release. The foregoing release and discharge, waiver and covenant not to sue includes, but is not limited to, all waivable claims and any obligations or causes of action arising from such claims, under common law including wrongful or retaliatory discharge, breach of contract (including but not limited to any claims under the Agreement other than claims for unpaid severance benefits, bonus or base salary earned thereunder) and any action arising in tort including libel, slander, defamation or intentional infliction of emotional distress, and claims under any federal, state or local statute including the Age Discrimination in Employment Act (**"ADEA"**), Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1866 and 1871 (42 U.S.C. § 1981), the National Labor Relations Act, the Fair Labor Standards Act, the Employee Retirement Income Security Act, the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, or the discrimination or employment laws of any state or municipality, and/or any claims under any express or implied contract which Executive Releasers may claim existed with Employer Releasees. This also includes a release of any claims for wrongful discharge and all claims for alleged physical or personal injury, emotional distress relating to or arising out of Executive's employment with the Company or any of its subsidiaries or affiliates or the termination of that employment; and any claims under the WARN Act or any similar law, which requires, among other things, that advance notice be given of certain work force reductions. Notwithstanding anything contained in this Section 1 above to the contrary, nothing contained herein shall constitute a release by any Executive Releaser of any of his, her or its rights or remedies available to him, her or it, at law or in equity, related to, on account of, in connection with or in any way pertaining to the enforcement of: (i) any rights to the receipt of employee benefits which vested on or prior to the date of this General Release; (ii) the right to receive severance and other benefits under the Agreement; (iii) the right to continuation coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act; (iv) any rights of Executive under the Agreement, the [Management Incentive Plan] or otherwise with respect to any phantom equity rights; or (v) this General Release or any of its terms or conditions.

2. Excluded from this General Release and waiver are any claims which cannot be waived by applicable law, including but not limited to the right to participate in an investigation conducted by certain government agencies. Executive does, however, waive Executive's right to any monetary recovery should any government agency (such as the Equal Employment Opportunity Commission) pursue any claims on Executive's behalf. Executive represents and warrants that Executive has not filed any complaint, charge, or lawsuit against the Employer Releasees with any government agency or any court.

3. Executive agrees never to seek personal recovery from any Employer Releasee in any forum for any claim covered by the above waiver and release language, except that Executive may bring a claim under the ADEA to challenge this General Release. If Executive violates this General Release by suing an Employer Releasee (excluding any claim by Executive under the ADEA or as otherwise set forth in Section 1 hereof), then Executive shall be liable to the party so sued for such party's reasonable attorneys' fees and other litigation costs incurred in defending against such a suit. Nothing in this General Release is intended to reflect any party's belief that Executive's waiver of claims under ADEA is invalid or unenforceable, it being the intent of the parties that such claims are waived.

4. Executive agrees that neither this General Release, nor the furnishing of the consideration for this General Release, shall be deemed or construed at any time to be an admission by any party of any improper or unlawful conduct.

5. Executive acknowledges and recites that he has:

(a) executed this General Release knowingly and voluntarily;

(b) had a reasonable opportunity to consider this General Release;

(c) read and understands this General Release in its entirety;

(d) been advised and directed orally and in writing (and this subparagraph (d) constitutes such written direction) to seek legal counsel and any other advice such party wishes with respect to the terms of this General Release before executing it; and

(e) relied solely on his own judgment, belief and knowledge, and such advice as he may have received from his legal counsel.

6. Executive acknowledges and agrees that (a) his execution of this General Release has not been forced by any employee or agent of the Company, and Executive has had an opportunity to negotiate the terms of this General Release and (b) he has been offered twenty-one (21) calendar days after receipt of this General Release to consider its terms before executing it.[1] Executive shall have seven (7) calendar days from the date he executes this General Release to revoke his waiver of any ADEA claims by providing written notice of the revocation to the Company.

7. Capitalized terms used but not defined in this General Release have the meanings ascribed to such terms in the Agreement.

8. This General Release will be deemed to have been entered into and will be construed and enforced in accordance with the laws of the State of North Carolina as applied to contracts made and to be performed entirely within North Carolina.

9. This General Release may be executed by the parties in one or more counterparts, each of which shall be an original and all of which shall together constitute one and the same instrument. Each counterpart may be delivered by facsimile transmission or e-mail (as a .pdf, .tif or similar un-editable attachment), which transmission shall be deemed delivery of an originally executed counterpart hereof.

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1 In the event the Company determines that Employee's termination constitutes "an exit incentive or other employment termination program offered to a group or class of employees" under the ADEA, the Company will provide Employee with: (1) forty-five (45) days to consider the General Release; and (2) the disclosure schedules required for an effective release under the ADEA.

IN WITNESS WHEREOF, the parties hereto have executed this General Release as of the day and year first above written.

BIOVENTUS, LLC:

By: /s/ Mark Augusti
Mark Augusti
Chief Executive Officer

EXECUTIVE:

/s/ Alessandra Pavesio
Alessandra Pavesio

Bioventus LLC
4721 Emperor Blvd., Suite 100
Durham, NC 27703
USA

1-919-474-6700
1-800-396-4325
www.BioventusGlobal.com

November 4, 2013

Anthony P. Bihl III

Re: Employment Offer

Dear Tony:

I am pleased to offer you employment at Bioventus LLC ("**Bioventus**" or the "**Company**") on the terms set forth in this offer letter agreement (the "**Agreement**"). This Agreement will be effective on or before January 2, 2014 and is contingent upon favorable background checks and drug screen results, the execution of the enclosed Proprietary Information, Inventions, Non-Solicitation and Non-Compete Agreement and satisfactory review of any non-compete clauses in contracts from past employment.

Employment and Duties

You will be employed in the role of **Chief Executive Officer** and you shall perform the duties of this role as are customary and as may be required by Bioventus. You will report to the Board of Managers of the company, and you will be based at the headquarters of Bioventus currently located in Durham, NC.

In addition, and without further compensation, you shall serve as a member of the Board. The Chief Executive Officer shall have such duties and responsibilities, commensurate with the Executive's position, as may be reasonably assigned to the Executive from time to time by the Board, or which are in accordance with the delegations of authority set out by the Board.

During your employment with Bioventus, you will devote your full-time best efforts and business time and attention to the business of Bioventus. The Board of Managers will allow you to continue your current participation on the Board of Directors of two companies other than Bioventus. Any additional or other participation requires the approval of the Board of Managers.

At-Will Employment Relationship

You may terminate your employment with Bioventus at any time and for any reason whatsoever simply by notifying Bioventus. Likewise, Bioventus may terminate your employment at any time, with or without Cause, and with or without advance notice. Your employment at-will status can only be modified in a written agreement approved by Bioventus and signed by you and a duly authorized member of Bioventus.

Base Salary and Employee Benefits

Your base salary will be paid at the initial annual rate of **$600,000,** less payroll deductions and withholdings. You will be paid your base salary on a bi-weekly basis, on Bioventus' normal payroll schedule. You will be reimbursed for expenses that are normal and customary for your role and follow Bioventus Policies. As an exempt salaried employee, you will be required to work Bioventus' normal business hours, and such additional time as appropriate for your work assignments and position. You will not be eligible for overtime premiums.

You will also be eligible to receive a grant of equity which will equal 3% (333,330) of the interests available under the Profits Interest Plan (the "Award"). The Profits Interest will follow the following **Vesting Schedule**: At the first anniversary of the Effective Date, 25% of the Award will vest. Each quarter after the 1st anniversary date of the Effective Date, 6.25% of the Award will vest.

In the event you chose to retire five or more years after the Effective Date of the Award and prior to a Waterfall Event, you will be entitled to "put" your vested Profits Interest to the Company within 120 days of your retirement at a valuation to be determined in accordance with the process set forth in Section 2(b) of the Profits Interest Award Agreement. A copy of the plan will be made available for your review.

You will be eligible to participate in Bioventus' health and welfare, group insurance, retirement and other employee benefit plans, programs and arrangements (pursuant to the terms and conditions of the benefit plans and applicable policies) as are made generally available from time to time to executives of the Company.

You will be eligible for **20** days of vacation per year. Going forward, you will earn any additional vacation according to the Bioventus vacation policy.

Relocation

This offer will require that you either rent or purchase a residence in the North Carolina area. Bioventus will provide professional assistance and the Bioventus Homeowners Relocation package to assist with the expenses associated with your move. If you purchase a home in the area, Bioventus will provide limit of up to **$50,000** in relocation/purchase expenses. Bioventus has engaged the services of Brookfield Relocation Global Solutions, who will assign a Relocation Consultant to work with you during the entire relocation process. You will hear from your consultant by telephone shortly after your move is approved by Bioventus. Please refer to Bioventus Domestic Relocation Policy Summary that outlines coverage specifics. If for any reason you voluntarily resign or are terminated for cause from your position at Bioventus within 24 months after signing this offer, it is understood that you will reimburse the company for the cost of relocation earned. For purpose of this provision "cause" is noted on page three (3) under **Certain Definitions**.

> **Please note**: In order to manage relocation costs some services and reimbursements are contingent on the use of vendors or brokers specified by Brookfield Relocation Global Solutions. **Therefore, you should not contact a real-estate agent or make commitments to any vendor prior to your initial contact by** Brookfield Relocation Global Solutions. In addition, you may not utilize or ask to have qualified as a broker any family members.

Annual Performance Bonus and Merit Planning

In this position, you will be eligible to participate in the Bioventus Executive Annual Incentive Plan (AIP) at a target of **one hundred (100%)** percent of your annual base salary ("Annual Bonus").

The Executive Incentive Plan will include components of your personal performance as well as Bioventus' Business Objectives. The terms and conditions of this plan will be set forth in the plan document. Your performance will be reviewed on a yearly basis by the Board of Managers. At that time, your salary will be reviewed along with your performance to determine any adjustment to your base salary.

Certain Definitions

For purposes of this Agreement, the following definitions will apply:

(1) Definition of Change in Control. **A "Change in Control**" shall mean the first to occur of any of the following: (A) any "person" (as such term is used in sections 13(d) and 14(d) of the Securities Exchange Act of 1934 (the "**Exchange Act**")) (other than persons who are owners of the Company on the Effective Date or its affiliates or permitted transferees) becomes a "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of interests in the Company representing more than 50% of the voting power of the then outstanding interests in the Company; provided that a Change in Control shall not be deemed to occur as a result of a change of ownership resulting from the death of an owner, and a Change in Control shall not be deemed to occur as a result of a transaction in which the Company becomes a subsidiary of another company and in which the owners of the Company, immediately prior to the transaction, will beneficially own, immediately after the transaction, interests entitling such owners to more than 50% of all votes to which all owners of the parent company would be entitled in the election of members (without consideration of the rights of any class of membership interests to elect members by a separate class vote); or (B) the consummation of (i) a merger or consolidation of the Company with another company where the owners of the Company, immediately prior to the merger or consolidation, will not beneficially own, immediately after the merger or consolidation, membership interests (or other equity instruments) entitling such persons to more than 50% of all votes to which all owners of the surviving company would be entitled in the election of members (without consideration of the rights of any class of membership interests to elect members by a separate class vote); (ii) a sale or other disposition of all or substantially all of the assets of the Company; or (iii) a liquidation or dissolution of the Company.

(2) Definition of Cause. "**Cause**" for the Company to terminate your employment shall exist if you are given written notice detailing the specific Cause and you fail to cure such event to the satisfaction of the Board within 30 days if any of the following occurs: (A) your being convicted (including a guilty plea or plea of nolo contendere) of any felony or any other crime involving fraud, violence or dishonesty; (B) your commission of or participation in a fraud or act of dishonesty or misrepresentation against the Company; (C) your violation of any written and fully executed contract or agreement between you and the Company, including without limitation, breach of your Proprietary Information, Inventions, Non-Competition and Non-Solicitation Agreement (the "Proprietary Information Agreement"); (D) your gross negligence or willful misconduct, (E) your continued and substantial failure to perform your duties to the Company; or (F) your violation of any material policies, practices, or procedures of Bioventus. The determination that a termination is for Cause shall be made by Bioventus at its sole discretion.

(3) Definition of Good Reason. "**Good Reason"** for you to terminate your employment shall mean the occurrence of any one of the following events occurring during the two-year period following the date of a Change in Control without either (x) your express prior written consent or (y) full cure within 30 days after you give written notice to the Company: (i) material diminution in duties or responsibilities; (ii) a material reduction in your salary, except for across-the-board salary reductions similarly affecting all senior executive officers of the Company; (iii) the relocation of your principal office, or principal place of employment, to a location more than fifty (50) miles from the location of your principal office or principal place of business as of the Effective Date; or (iv) a failure to pay you earned compensation; provided however, that no event shall constitute grounds for a Good Reason termination unless you terminate your employment within sixty days after such event occurs.

Severance Benefits

1. If, at any time, the Company terminates your employment without Cause, other than as a result of your death or disability then you shall receive the following severance benefits (the "Severance Benefits"): (i) twelve (12) months of your base salary in effect on the effective date of termination (the "Termination Date"), less applicable taxes and withholdings. This payment shall be made in a lump sum payment and shall be directly deposited into your account on record with the Company's payroll department, or if there is no account on record, shall be made via a check made out to "Anthony Bihl" and mailed to your last known address in the Company's records. This payment shall be paid on or about 60 days following the Termination Date; (ii) one hundred (100%) of your target Annual Bonus, paid on or about 60 days following the Termination Date (iii) If you timely elect continued coverage under federal COBRA laws or comparable state insurance laws ("COBRA"), then the Company shall pay the COBRA premiums necessary to continue your medical and dental insurance coverage in effect for yourself and your eligible dependents on the termination date for the first twelve (12) months of such coverage (provided that such COBRA reimbursement shall terminate on such earlier date as you are no longer eligible for COBRA coverage or you become eligible for group health insurance benefits through a new employer).

2. If, at any time, you terminate your employment for Good Reason during the two-year period following a Change in Control, then you shall receive the following severance benefits (the "Severance Benefits"): (i) twenty-four (24) months of your base salary in effect on the effective date of termination (the "Termination Date"), less applicable taxes and withholdings. This payment shall be made in a lump sum payment and shall be directly deposited into your account on record with the Company's payroll department, or if there is no account on record, shall be made via a check made out to "Anthony Bihl" and mailed to your last known address in the Company's records. This payment shall be paid on or about 60 days following the Termination Date; (ii) twenty four months of your target Annual Bonus, paid on or about 60 days following the Termination Date (iii) If you timely elect continued coverage under federal COBRA laws or comparable state insurance laws ("COBRA"), then the Company shall pay the COBRA premiums necessary to continue your medical and dental insurance coverage in effect for yourself and your eligible dependents on the termination date for the first twelve (12) months of such coverage (provided that such COBRA reimbursement shall terminate on such earlier date as you are no longer eligible for COBRA coverage or you become eligible for group health insurance benefits through a new employer).

Your receipt of the Severance Benefits is conditional upon (a) your continuing to comply with your obligations under your Proprietary Information Agreement; and (b) your delivering to Bioventus within 45 days following the Termination Date (and not revoking) an effective, general release of all known and unknown claims in favor of Bioventus in the form attached as Exhibit B.

Notwithstanding anything herein to the contrary, this Agreement is intended to be interpreted and applied so that the payment of the benefits set forth herein shall either be exempt from the requirements of Section 409A of the Code ("**Section 409A**") or shall comply with the requirements of such provision. After the Termination Date, you shall have no duties or responsibilities that are inconsistent with having a "separation from service" (within the meaning of Section 409A) as of the Termination Date and, notwithstanding anything in the Agreement to the contrary, distributions upon termination of employment of nonqualified deferred compensation may only be made upon a "separation from service" (as determined under Section 409A) and such date shall be the Termination Date for purposes of this Agreement. Each payment under this Agreement or otherwise shall be treated as a separate payment for purposes of Section 409A. In no event may you, directly or indirectly, designate the calendar year of any payment to be made under this Agreement which constitutes a "nonqualified deferral of compensation" (within the meaning of Section 409A) and to the extent an amount is payable within a time period, the time during which such amount is paid shall be in the discretion of Bioventus. To the extent that any reimbursements are taxable to you, any such reimbursement payment due to you shall be paid to you on or before the last day of the calendar year following the taxable year in which the related expense was incurred. The reimbursements are not subject to liquidation or exchange for another benefit and the amount of such reimbursements that you receive in one taxable year shall not affect the amount of such reimbursements that you receive in any other taxable year.

Compliance with Proprietary Information Agreement and Bioventus Policies

As a condition of employment, you must sign and comply with Bioventus' standard Proprietary Information Agreement which prohibits unauthorized use or disclosure of Bioventus' proprietary information and contains certain post-employment non-competition and non-solicitation obligations, among other obligations. In addition, you will be expected to abide by Bioventus' Code of Conduct and Bioventus' policies, as may be changed from time to time at Bioventus' sole discretion.

Non-Disparagement

During and after your employment, you and Bioventus agree not to make any statement that criticizes, ridicules, disparages, or is otherwise derogatory of the other or is reasonably likely to be harmful to you or Bioventus, or to your or Bioventus' respective businesses, business reputations or personal reputations; provided, however, that nothing in this Agreement shall restrict either party from making truthful statements (a) when required by law, subpoena, court order or the like; (b) when requested by a governmental, regulatory, or similar body or entity; (c) in confidence to a professional advisor for the purpose of securing professional advice; (d) in the ordinary course of performing your or its duties during your employment; (e) from rebutting any statement made or written about you or it; or (f) from making normal competitive statements about Bioventus' business or products.

Outside Activities

Throughout your employment with Bioventus, you may engage in civic and not-for-profit activities so long as such activities do not interfere with the performance of your duties hereunder or violate the Bioventus Conflict of Interest Policy.

Assignment

This Agreement may be assigned by Bioventus to a person or entity which is an affiliate or a successor in interest to substantially all of the business operations of Bioventus. Upon such assignment, the rights and obligations of Bioventus hereunder shall become the rights and obligations of such affiliate or successor person. You may not assign your rights or obligations to another entity or person.

Indemnification

Executive shall be entitled to indemnification to the maximum extent permitted by applicable law and the Company's Operating Agreement, Articles of Incorporation or Bylaws as applicable. At all times during Executive's employment, the Company shall maintain in effect a directors and officers liability insurance policy with Executive as a covered officer. The Company shall further provide and pay for the defense of any action, arbitration or mediation (collectively, an "Action") relative to the lawful performance of Executive's duties or in connection with Executive's employment at the Company and the existence of such Action or defense shall not provide grounds for termination of Executive's employment.

Miscellaneous

As required by federal law, this offer is contingent upon satisfactory proof of your identity and right to work in the United States. This Agreement, together with your Proprietary Information Agreement and Award Grant], form the complete and exclusive statement of your employment agreement with Bioventus. It supersedes any other agreements or promises made to you by anyone, whether oral or written. Changes in your employment terms, other than those changes expressly reserved to Bioventus' discretion in this Agreement, require a written modification approved by Bioventus. This Agreement will bind the heirs, personal representatives, successors and assigns of both you and Bioventus, and inure to the benefit of both you and Bioventus, their heirs, successors and assigns. If any provision of this Agreement is determined to be invalid or unenforceable, in whole or in part, this determination shall not affect any other provision of this Agreement and the provision in question shall be modified so as to be rendered enforceable in a manner consistent with the intent of the parties insofar as possible under applicable law. This Agreement shall be construed and enforced in accordance with the laws of the State of North Carolina without regard to conflicts of law principles. The parties hereby irrevocably submit to the jurisdiction of the state and federal courts of North Carolina located in or about Raleigh and waive any claim or defense of inconvenient or improper forum or lack of personal jurisdiction under any applicable law or decision. Any ambiguity in this Agreement shall not be construed against either party as the drafter. Any waiver of a breach of this Agreement, or rights hereunder, shall be in writing and shall not be deemed to be a waiver of any successive breach or rights hereunder. This Agreement may be executed in counterparts which shall be deemed to be part of one original, and facsimile or pdf signatures shall be equivalent to original signatures.

I am very pleased to offer you this position at Bioventus on behalf of the Board of Managers and look forward to your acceptance within the next two days if you accept employment at Bioventus under the terms described above. I would be happy to discuss any questions that you may have about the terms of the offer. It will be a pleasure to work with you and create the future of Bioventus.

Sincerely,

/s/ Guido Neels
Guido Neels
Member, Board of Managers

Understood and Accepted:

/s/ Anthony P. Bihl III — 11/5/13
Anthony P. Bihl III — Date

PROPRIETARY INFORMATION, INVENTIONS, NON-SOLICITATION AND NON-COMPETITION AGREEMENT

In consideration of my employment or continued employment by Bioventus LLC, its subsidiaries, parents, affiliates, successors and assigns (together, the "**Company**") and the compensation paid to me, I hereby enter into this Proprietary Information, Inventions, Non-Competition and Non-Solicitation Agreement (the "**Agreement**") and agree as follows:

1. NONDISCLOSURE.

1.1 Recognition of Company's Rights. At all times during my employment and thereafter, I will hold in strictest confidence and will not disclose or use any of the Company's Proprietary Information (defined below), except as such disclosure or use may be required in connection with my work for the Company, or unless an officer of the Company expressly authorizes such in writing. I hereby assign to the Company any rights I may have or acquire in such Proprietary Information and recognize that all Proprietary Information shall be the sole property of the Company. I will take all reasonable precautions to prevent the inadvertent or accidental disclosure of Proprietary Information.

1.2 Proprietary Information. The term "**Proprietary Information**" shall mean any and all confidential and/or proprietary knowledge, data or information of the Company, its affiliates, parents and subsidiaries, whether having existed, now existing, or to be developed during my employment. By way of illustration but not limitation, "**Proprietary Information**" includes (a) trade secrets, inventions, ideas, processes, formulas, discoveries, developments, designs and techniques and any other proprietary technology and all Proprietary Rights therein (hereinafter collectively referred to as "**Inventions**"); (b) information regarding research, development, new products, marketing and selling, business plans, budgets and financial statements, licenses, prices and costs, discounts, credit terms, pricing and billing policies, quoting procedures, methods of obtaining or conducting business, forecasts, future plans and potential strategies, financial projections and business strategies, operational plans, financing and capital-raising plans, activities and agreements, internal services and operational manuals, suppliers and supplier information, and purchasing; (c) information regarding customers and potential customers of the Company, including customer lists, names, representatives, their needs or desires with respect to the types of products or services offered by the Company, proposals, bids, contracts and their contents and parties, the type and quantity of products and services provided or sought to be provided to customers and potential customers of the Company and other related non-public information; (d) information regarding any of the Company's business partners and their services, including names; representatives, proposals, bids, contracts and their contents and parties, the type and quantity of products and services received by the Company, and other related non-public information; (e) information regarding personnel, employee lists, compensation, and employee skills; and (f) any other non-public information which a competitor of the Company could use to the competitive disadvantage of the Company. Notwithstanding the foregoing, I am free to use information which is generally known in the trade or industry through no breach of this Agreement or other act or omission by me and I am free to discuss the terms and conditions of my employment with others to the extent permitted by law.

1.3 Third Party Information. I understand that the Company has received and in the future will receive from third parties confidential and/or proprietary knowledge or information ("Third Party Information"). During my employment and thereafter, I will hold Third Party Information in the strictest confidence and will not disclose to anyone (other than Company personnel who need to know such information in connection with their work for the Company) or use, except in connection with my work for the Company, Third Party Information unless expressly authorized by an officer of the Company in writing.

2. Assignment of Inventions.

2.1 Prior Inventions. Inventions, if any, patented or unpatented, which I made prior to the commencement of my employment with the Company are excluded from the scope of this Agreement. To preclude any possible uncertainty, I have set forth on Exhibit A a complete list of all Inventions that I have, alone or jointly with others, conceived or developed prior to the commencement of my employment with the Company, that I consider to be my property or the property of third parties, and that I wish to have excluded from the scope of this Agreement (collectively referred to as "Prior Inventions"). If no such disclosure is attached, I represent that there are no Prior Inventions. I agree that I will not incorporate, or permit to be incorporated, Prior Inventions in any Company Inventions without the Company's prior written consent.

2.2 Assignment of Inventions. Subject to Subsection 2.3, I hereby assign and agree to assign in the future to the Company all my right, title and interest in and to all Inventions (and all Proprietary Rights with respect thereto) made or conceived or learned by me, either alone or jointly with others, during the period of my employment with the Company. Inventions assigned to the Company, or to a third party as directed by the Company pursuant to this Section 2, are hereinafter referred to as "Company Inventions." The term "Proprietary Rights" shall mean all trade secrets, patents, copyrights, trademarks and other intellectual property rights throughout the world.

2.3 Unassigned or Nonassignable Inventions. This Agreement does not apply to an Invention which qualifies fully as a nonassignable Invention under North Carolina Statute §§ 66.57.1 and 66.57.2 (hereinafter "Statute 66.57.1-66.57.2"). I have reviewed the notification in paragraph 3 of Exhibit A and agree that my signature acknowledges receipt of the notification.

3. Non-Solicitation. During my employment and for a period of twelve (12) months following the termination of my employment with the Company for any reason, I shall not, directly or indirectly:

3.1 solicit or attempt to solicit any Contractor (defined below) or strategic partner of the Company (i) as to which I was informed of any confidential terms in the contract, business arrangement, or negotiation between the Company and such Contractor or strategic partner, or (ii) that is then providing, or is under contract to provide within one (1) year, services to the Company, which would be interrupted or impeded as a result of such solicitation;

3.2 solicit or attempt to solicit, any Customer (defined below) to terminate, diminish, or materially alter in a manner harmful to the Company its relationship with the Company for any purpose, including, but not limited to, the purpose of associating with or becoming a Customer of mine or any entity of which I am or become a partner, stockholder, principal, member, officer, director, employee, agent, trustee or consultant; or

3.3 solicit or attempt to solicit, any Contractor to terminate, diminish, or materially alter in a manner harmful to the Company its relationship with the Company for any purpose, including, but not limited to, the purpose of associating with or becoming a Contractor of mine or any entity of which I am or become a partner, stockholder, principal, member, officer, director, employee, agent, trustee or consultant.

3.4 For purposes of this Agreement, a "**Customer**" is any person or entity who or which, at any time during the one (1) year prior to the date my employment with the Company ends, (i) was in direct or indirect contact with me or whose identity I learned as a result of my employment with the Company or about which I acquired Proprietary Information and that contracted for or received from the Company any product, service or process; or (ii) was in contact with me or in contact with any other employee, owner, or agent of the Company of which contact I was or should have been aware, concerning any product, service or process with which I worked directly or indirectly during my employment with the Company or about which I acquired Proprietary Information; or (iii) was solicited by the Company or in consideration or planning to be solicited by the Company in an effort in which I was involved or of which I was or should have been aware.

3.5 For purposes of this Agreement, "**Contractor**" shall mean consultants or independent contractors with whom the Company does business related to my work for the Company.

3.6 For purposes of this Agreement, "Conflicting Services" means any product, service, or process of any person or organization other than the Company that directly competes with a product, service, or process or the like with which I worked directly or indirectly during my employment by the Company or about which I acquired Proprietary Information during my employment by the Company.

4. Non-Interference. During the period of my employment with the Company and for twelve (12) months thereafter, I shall not, directly or indirectly, solicit or attempt to solicit, any person known to me to be an employee of the Company to terminate his or her employment or other relationship with the Company for any purpose whatsoever.

5. NON-COMPETE PROVISION. I agree that for the one (1) year period after the date my employment ends for any reason, I will not, directly or indirectly, as an officer, director, employee, consultant, owner, partner, or in any other capacity solicit, perform, or provide, or attempt to perform or provide, Conflicting Services anywhere in any county in North Carolina, or in any other county in any other state in which the Company transacted its business or the Company marketed its products or services during my employment with the Company and for which I have Proprietary Information that would be pertinent to such Conflicting Services, nor will I assist another person to solicit, perform or provide or attempt to solicit, perform or provide Conflicting Services anywhere in such counties.

6. General Provisions.

6.1 Governing Law; Consent to Personal Jurisdiction. This Agreement will be governed by and construed according to the laws of the State of North Carolina as such laws are applied to agreements entered into and to be performed entirely within North Carolina between North Carolina residents. I hereby expressly consent to the personal jurisdiction and venue of the state and federal courts located in North Carolina for any lawsuit filed there against me by Company arising from or related to this Agreement.

6.2 Severability. In case any one or more of the provisions, subsections, or sentences contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. If moreover, any one or more of the provisions contained in this Agreement shall for any reason be held to be excessively broad as to duration, geographical scope, activity or subject, it shall be construed by limiting and reducing it, so as to be enforceable to the extent compatible with the applicable law as it shall then appear.

6.3 Employment At-Will. I agree and understand that nothing in this Agreement shall change my at-will employment status or confer any right with respect to continuation of employment by the Company, nor shall it interfere in any way with my right or the Company's right to terminate my employment at any time, with or without cause or advance notice.

6.4 Advice of Counsel. I ACKNOWLEDGE THAT, IN EXECUTING THIS AGREEMENT, I HAVE HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT LEGAL COUNSEL, AND I HAVE READ AND UNDERSTOOD ALL OF THE TERMS AND PROVISIONS OF THIS AGREEMENT. THIS AGREEMENT SHALL NOT BE CONSTRUED AGAINST ANY PARTY BY REASON OF THE DRAFTING OR PREPARATION HEREOF.

6.5 Entire Agreement. This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior discussions between us. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing and signed by the party to be charged. Any subsequent change or changes in my duties, salary or compensation will not affect the validity or scope of this Agreement.

This Agreement shall be effective as of DATE.

I HAVE READ THIS AGREEMENT CAREFULLY AND UNDERSTAND ITS TERMS. I HAVE COMPLETELY FILLED OUT EXHIBIT A TO THIS AGREEMENT.

/s/Anthony P. Bihl III
Anthony P. Bihl III

ACCEPTED AND AGREED TO:

Bioventus LLC

By: /s/ Ld A. Shafil

Title: VP of Human Resources 11/18/13

EXHIBIT A

PREVIOUS INVENTIONS

TO: **BIOVENTUS LLC**

FROM: **ANTHONY P. BIHL II**

DATE: **November 4, 2013**

SUBJECT: **Previous Inventions**

1. Except as listed in Section 2 below, the following is a complete list of all inventions or improvements relevant to the subject matter of my employment by Bioventus, LLC (the "**Company**") that have been made or conceived or first reduced to practice by me alone or jointly with others prior to my engagement by the Company:

☒ No inventions or improvements.

☐ See below:

_____

_____

_____

☐ Additional sheets attached.

2. Due to a prior confidentiality agreement, I cannot complete the disclosure under Section 1 above with respect to inventions or improvements generally listed below, the proprietary rights and duty of confidentiality with respect to which I owe to the following party(ies):

	Invention or Improvement	**Party(ies)**	**Relationship**
1.			
2.			
3.			

☐ Additional sheets attached.

3. **Limited Exclusion Notification**.

THIS IS TO NOTIFY you in accordance with North Carolina General Statute §§ 66.57.1 and 66.57.2 that the foregoing Agreement between you and the Company does not require you to assign or offer to assign to the Company any invention that you developed entirely on your own time without using the Company's equipment, supplies, facilities or trade secret information except for those inventions that either:

a. Relate at the time of conception or reduction to practice of the invention to the Company's business, or actual or demonstrably anticipated research or development of the Company; or

b. Result from any work performed by you for the Company.

To the extent a provision in the foregoing Agreement purports to require you to assign an invention otherwise excluded from the preceding paragraph, the provision is against the public policy of this state and is unenforceable. You shall have the burden of establishing that any invention is excluded from assignment to the Company by the preceding paragraph.

This limited exclusion does not apply to any patent or invention covered by a contract between the Company and the United States or any of its agencies requiring full title to such patent or invention to be in the United States.

Bioventus LLC
4721 Emperor Blvd., Suite 100
Durham, NC 27703
USA

1-919-474-6700
1-800-396-4325
www.BioventusGlobal.com

October 17, 2019

Anthony P. Bihl III

Dear Tony:

Based on a review of federal tax law, it has recently been determined that due to your receipt of certain Profits Interest Unit grants from Bioventus LLC (the "Company"), your employment status with the Company is as a partner of the Company and not as an employee of the Company. As such, the purpose of this letter is to (a) notify you that your relationship with the Company has been officially reclassified from "employee" status to "partner" status effective October 20, 2019 and (b) provide you with a summary of how this change in classification affects your compensation and benefits, as well as the tax and tax withholding implications of this change. The following is a summary of the impact of your change in status on these items:

1. Your compensation, including base pay and bonus target (AIP), remains unchanged; however, you will no longer receive such compensation as a W-2 employee, but instead will receive a "guaranteed payment" as a partner in the Company partnership. Your guaranteed payments will continue to be made to you on the date that the Company makes its regular payroll payments to its employees (bi-weekly). In addition to the guaranteed payments, you will also receive a "benefits stipend" and "tax stipend", each of which are described below. Due to your partner status, the Company will no longer withhold any taxes from your guaranteed or other payments made to you. On an annual basis, the Company will provide you with a Schedule K-1 for federal and state income tax purposes.

2. Except for the Company's cafeteria plan for which partners are not eligible to participate, all other employee benefits with the Company will remain unchanged with respect to your ability to participate in such benefit programs and arrangements, *e.g.*, health and welfare plan benefits, life insurance, retirement (401(k) and 401(k) plus); provided, however, that all benefits (except for 401(k) and 401(k) plus) for which the Company previously paid certain amounts on your behalf which were exempt from income taxation will now be taxable income to you. As such, the Company will provide you with an annual "benefits stipend" (which will be taxable income to you) that is equal to the aggregate value of the amount the Company would have paid on your behalf (and which would have been tax-preferred if you were an employee of the Company and not a partner), which you may, but are not required to, use to defray the cost of non-retirement related health and welfare benefit coverages you elect to secure for yourself and your eligible dependents (whether as a participant in Company sponsored plans or otherwise). The benefits stipend will be paid bi-weekly on the same date that the Company pays the guaranteed payments to you. The benefits stipend will be "grossed up" to offset any tax implications and the formula for calculation is noted in Addendum A.

3. Should you elect to participate in the Company's health and welfare plans, you must notify the Company's Benefits Manager during the Company's annual open enrollment period, indicating which plans you wish to enroll. If you chose not to participate in any of the Company's plans, you will continue to receive that portion of the benefits stipend that is equal to the aggregate value of the amount the Company would have paid on your behalf for such benefit, which sum may, but is not required to, be used to purchase such benefit from a provider of your choice.

4. Please also note that (a) your current Change in Control agreement and Severance Benefits agreement with the Company remain unchanged and (b) your participation in the 401(k) plan and 401(k) plus plan remain unchanged, with the only exception that you will now be deferring "earned income" as a partner instead of "W-2 compensation" as an employee. You will continue to manage your elections via the provider's web-site and the Company will continue to make its contributions according the Plan Document via the third party provider.

5. You will receive an annual "tax stipend", which sum shall be calculated by the Company based on the difference of a partner versus employee status and will include the portion of FICA taxes equal to a company payment on behalf of an employee, retirement plan tax costs, health and welfare and ancillary benefits tax costs, less tax deductions and/or credits for health and welfare and ancillary benefits. The actual calculation for this payment is outlined in Addendum A and will be made by the Company each calendar year by March 15th of the calendar year following the calendar year for which the payment is attributable.

6. In addition, you will be eligible to receive tax and other distributions and allocations as provided for in Section 3(c) of your Management Incentive Plan Award Agreement, subject to the terms of the Management Incentive Plan and Article 4 of the Bioventus LLC Amended and Restated Limited Liability Company Agreement dated as of May 4, 2012.

7. All other terms and conditions of your employment relationship with the Company will remain unchanged. You will continue to be responsible for all of your current duties and responsibilities as Chief Executive Officer of the Company and will be required to adhere and abide by all of the Company's policies and procedures. You will, however, be required to sign a new copy of your job description, which will reflect your status as a partner of the Company.

We truly appreciate your patience as we have worked through these changes and we regret the personal inconvenience that this has caused. Please let me know if you have any questions regarding any of the above. If not, please sign where indicated below and return a copy to me.

Sincerely,

/s/ William A. Hawkins III
William A. Hawkins III
Chairman, Bioventus Board of Managers

Accepted & Agreed:

/s/ Anthony P. Bihl III
Anthony P. Bihl 10/18/2019

Date

Addendum A

Benefits Stipend Calculation:

Aggregate Value of benefits stipend on a bi-weekly basis = Employer Contribution for all eligible benefits elected/covered under

Biweekly Aggregate Value of benefits = Biweekly Net Payment

Tax Stipend Calculation:

Bioventus Payroll will calculate the following:

Employer Medicare portion + Taxes on 401K contributions (company and individual contributions) + cost of H & W and ancillary benefits plan x a mutually agreed tax rate of 42% less tax deductions and/or credits for health and welfare and ancillary benefits = Tax Stipend

Tax rate of 42*% includes:

- Federal Tax
- State Withholding Rate
- Employer Medicare portion

*Tax rate will be reviewed annually and adjusted if Federal or State tax rates change. The Tax Stipend will be made by the Company each calendar year by March 15th of the calendar year following the calendar year for which the payment is attributable.

Exhibit 10.33

Bioventus LLC
4721 Emperor Blvd., Suite 100
Durham, NC 27703
USA

1-919-474-6700
1-800-396-4325
www.BioventusGlobal.com

December 11, 2015

Mr. William A. Hawkins

Dear Bill:

On behalf of the Board of Managers of Bioventus, I am pleased to offer you the role of member and Chairman of our Board of Managers, effective January 1, 2016. I personally look forward to working closely with you to continue building a world leading company in orthobiologics. This letter outlines the terms and conditions of your appointment to serve as a member and chairman of the board of managers (the "**Board**") of Bioventus LLC (the "**Company**").

As a member and the chairman of the Board, you will be expected to attend Board meetings and will have such other duties and responsibilities as are customarily associated with these positions and described in the Amended and Restated Limited Liability Company Agreement of Bioventus LLC, as it may be further amended from time to time (the "**LLC Agreement**"). You shall continue to serve on the Board and as chairman until such time as either you or the Company terminates your service in accordance with the terms and conditions of the LLC Agreement or until such date that Bioventus Inc. consummates an initial public offering.

In consideration of your services as a member of the Board, the Company will (a) pay you an annual retainer fee of $40,000 for your service as a member of the Board and $50,000 for your service as chairman of the Board, both payable in quarterly installments in arrears and pro-rated for any partial period of service and (b) grant you 50,000 phantom profits interest units under the Company's phantom profits interests plan (the terms and conditions of which shall be set forth in a separate award agreement). In addition, the Company will reimburse you in accordance with the applicable Company policy for reasonable travel and other out-of-pocket expenses incurred in connection with your service on the Board.

As a member of the Board, you will be entitled to coverage under a directors' and officers' liability insurance policy maintained by the Company and you will be subject to and comply with all Board policies as may be adopted from time to time, including without limitation, any Code of Conduct or Confidentiality Policy.

During your tenure as a member of the Board, you shall at all times and for all purposes be acting as an independent contractor and not as an employee of the Company. Accordingly, you will not be eligible to participate in employee benefit plans provided by the Company to its employees and the Company will not, on your account, (i) pay any unemployment tax or other taxes required under the law to be paid with respect to employees or (ii) withhold any monies from any compensation paid to you for income or employment tax purposes. Board-member compensation is established by the Board and so, notwithstanding this letter, it may be revised at any time and from time to time.

Upon the completion of the initial public offering of Bioventus Inc. common stock, you will become a director of Bioventus Inc. (and will receive compensation in such capacity) and at such time as you become a director of Bioventus Inc. you will cease to receive separate compensation for your services as a member of the Company's Board.

Please confirm that the foregoing reflects your understanding by signing and returning to us the enclosed duplicate of this letter at your earliest convenience.

Again Bill, I am very excited about our future with you as a member and Chairman of our Board. Please feel free to contact me should you wish to discuss any aspect this opportunity or of your service on the Company's Board.

Sincerely,

/s/ Anthony P. Bihl III
Anthony P. Bihl III
Chief Executive Officer

Accepted & Agreed:

/s/ William A. Hawkins
William A. Hawkins

12/21/15
Date

Bioventus LLC
4721 Emperor Blvd., Suite 100
Durham, NC 27703
USA

1-919-474-6700
1-800-396-4325
www.BioventusGlobal.com

November 18, 2016

Re: **Employment Offer**

Dear John:

I am pleased to offer you employment at Bioventus LLC ("**Bioventus**" or the "**Company**") on the terms set forth in this offer letter agreement (the "**Agreement**"). This Agreement will be effective on December 5, 2016 or a mutually agreed upon date and is contingent upon approval of the Bioventus Board of Managers, favorable reference checks, background checks, and drug screen results, the execution of the enclosed Proprietary Information, Inventions, Non-Solicitation and Non-Compete Agreement and satisfactory review of any non-compete clauses in contracts from past employment.

Employment and Duties

You will be employed in the role of **Chief Commercial Officer** and you shall perform the duties of this role as are customary and as may be required by Bioventus. You will report to the **Chief Executive Officer**, **Tony Bihl** and you will be based at the headquarters of Bioventus currently located in Durham, NC.

During your employment with Bioventus, you will devote your full-time best efforts and business time and attention to the business of Bioventus.

At-Will Employment Relationship

You may terminate your employment with Bioventus at any time and for any reason whatsoever simply by notifying Bioventus. Likewise, Bioventus may terminate your employment at any time, with or without Cause (defined below), and with or without advance notice. Your employment at-will status can only be modified in a written agreement approved by Bioventus and signed by you and a duly authorized officer of Bioventus.

Base Salary and Employee Benefits

Your base salary will be paid at the initial annual rate of **$450,000**, less payroll deductions and withholdings. You will be paid your base salary on a bi-weekly basis, on Bioventus' normal payroll schedule. In addition, you will receive a **$132** monthly international phone stipend, which will be paid on the first check of each month. As an exempt salaried employee, you will be required to work Bioventus' normal business hours, and such additional time as appropriate for your work assignments and positions. You will not be eligible for overtime premiums.

The Company agrees to pay a signing bonus of $100,000 on March 31, 2017 and $50,000 on March 31, 2018 provided you are actively employed by the company on the payment date. If for any reason you voluntarily resign or are terminated for cause from your position at Bioventus within 24 months of receiving the signing bonuses, you will be required to reimburse the Company the prorated portion of the signing bonus.

You will also be eligible to receive a grant of Phantom Profits Interest Units in the Company which will equal **125,000 units** of the interests available under the Management Incentive Plan (the "**Award**") and will have an issue price to be confirmed upon hire. The Award will be subject to the terms and conditions of the Bioventus LLC Phantom Profits Incentive Plan. A copy of the plan will be made available upon your hire date.

You will be eligible to participate in Bioventus' health and welfare, group insurance, retirement and other employee benefit plans, programs and arrangements (pursuant to the terms and conditions of the benefit plans and applicable policies) as are made generally available from time to time to executives of the Company.

You will be eligible for 25 days of vacation per year. Going forward, you will earn any additional vacation according to the Bioventus vacation policy.

Annual Performance Bonus and Merit Planning

In this position, you will be eligible to participate in the Bioventus Executive Commercial Annual Incentive Plan (AIP) at a target of **seventy-five (75%)** percent of your annual base salary. The Annual Incentive Plan includes Bioventus' Business Objectives as well as your personal performance. The terms and conditions of this plan will be set forth in the plan document and will be provided upon hire. Your performance will be reviewed on or before April 1, 2018 and on a yearly basis thereafter. At that time, your salary will be reviewed along with your performance to determine any adjustment to your base salary.

Certain Definitions

For purposes of this Agreement, the following definitions will apply:

(1) Definition of Change in Control. A **"Change in Control**" shall mean the first to occur of any of the following: (A) any "person" (as such term is used in sections 13(d) and 14(d) of the Securities **Exchange Act** of 1934 (the "Exchange Act")) (other than persons who are owners of the Company on the Effective Date or its affiliates or permitted transferees) becomes a "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of interests in the Company representing more than 50% of the voting power of the then outstanding interests in the Company; provided that a Change in Control shall not be deemed to occur as a result of a change of ownership resulting from the death of an owner, and a Change in Control shall not be deemed to occur as a result of a transaction in which the Company becomes a subsidiary of another company and in which the owners of the Company, immediately prior to the transaction, will beneficially own, immediately after the transaction, interests entitling such owners to more than 50% of all votes to which all owners of the parent company would be entitled in the election of members (without consideration of the rights of any class of membership interests to elect members by a separate class vote); or (B) the consummation of (i) a merger or consolidation of the Company with another company where the owners of the Company, immediately prior to the merger or consolidation, will not beneficially own, immediately after the merger or consolidation, membership interests (or other equity instruments) entitling such persons to more than 50% of all votes to which all owners of the surviving company would be entitled in the election of members (without consideration of the rights of any class of membership interests to elect members by a separate class vote); (ii) a sale or other disposition of all or substantially all of the assets of the Company; or (iii) a liquidation or dissolution of the Company.

(2) Definition of Cause. **"Cause**" for the Company to terminate your employment shall exist if any of the following occurs: (A) your being convicted (including a guilty plea or plea of nolo contendere) of any felony or any other crime involving fraud, violence or dishonesty; (B) your commission of or participation in a fraud or act of dishonesty or misrepresentation against the Company; (C) your violation of any written and fully executed contract or agreement between you and the Company, including without limitation, breach of your Proprietary Information, Inventions, Non-Competition and Non-Solicitation Agreement (the "**Proprietary Information Agreement**"); (D) your gross negligence or willful misconduct, (E) your continued and substantial failure to perform your duties to the Company; or (F) your violation of any material policies, practices, or procedures of Bioventus. The determination that a termination is for Cause shall be made by Bioventus at its sole discretion.

(3) Definition of Good Reason. **"Good Reason**" for you to terminate your employment shall mean the occurrence of any one of the following events occurring during the two-year period following the date of a Change in Control without either (x) your express prior written consent or (y) full cure within 30 days after you give written notice to the Company: (i) material diminution in duties or responsibilities; (ii) a material reduction in your salary, except for across-the-board salary reductions similarly affecting all senior executive officers of the Company; (iii) the relocation of your principal office, or principal place of employment, to a location more than fifty (50) miles from the location of your principal office or principal place of business as of the Effective Date; or (iv) a failure to pay you earned compensation; provided however, that no event shall constitute grounds for a Good Reason termination unless you terminate your employment within sixty days after such event occurs.

Severance Benefits

1. If, at any time, (i) the Company terminates your employment without Cause, other than as a result of your death or disability or (ii) you terminate your employment for Good Reason during the two-year period following a Change in Control, then you shall receive the following severance benefits (the "**Severance Benefits**"): (i) twelve (12) months of your base salary in effect on the effective date of termination (the "**Termination Date**"), less applicable taxes and withholdings This payment shall be made in a lump sum payment and shall be directly deposited into Employee's account on record with the Company's payroll department, or if there is no account on record, shall be made via a check made out to "**John Nosenzo**" and mailed to Employee at Employee's last known address in the Company's records. This payment shall be paid on or about 60 days following the Termination Date; (ii) one hundred (100%) of your target Annual Bonus, paid on or about 60 days following the Termination Date; and (iii) if you timely elect continued coverage under federal COBRA laws or comparable state insurance laws ("**COBRA**"), then the Company shall pay the COBRA premiums necessary to continue your medical and dental insurance coverage in effect for yourself and your eligible dependents on the termination date for the first twelve (12) months of such coverage (provided that such COBRA reimbursement shall terminate on such earlier date as you are no longer eligible for COBRA coverage or you become eligible for group health insurance benefits through a new employer).

Your receipt of the Severance Benefits is conditional upon (a) your continuing to comply with your obligations under your Proprietary Information Agreement; and (b) your delivering to Bioventus within 45 days following the Termination Date (and not revoking) an effective, general release of all known and unknown claims in favor of Bioventus.

Notwithstanding anything herein to the contrary, this Agreement is intended to be interpreted and applied so that the payment of the benefits set forth herein shall either be exempt from the requirements of Section 409A of the Code ("**Section 409A**") or shall comply with the requirements of such provision. After the Termination Date, you shall have no duties or responsibilities that are inconsistent with having a "separation from service" (within the meaning of Section 409A) as of the Termination Date and, notwithstanding anything in the Agreement to the contrary, distributions upon termination of employment of nonqualified deferred compensation may only be made upon a "separation from service" (as determined under Section 409A) and such date shall be the Termination Date for purposes of this Agreement. Each payment under this Agreement or otherwise shall be treated as a separate payment for purposes of Section 409A. In no event may you, directly or indirectly, designate the calendar year of any payment to be made under this Agreement which constitutes a "nonqualified deferral of compensation" (within the meaning of Section 409A) and to the extent an amount is payable within a time period, the time during which such amount is paid shall be in the discretion of Bioventus. To the extent that any reimbursements are taxable to you, any such reimbursement payment due to you shall be paid to you on or before the last day of the calendar year following the taxable year in which the related expense was incurred. The reimbursements are not subject to liquidation or exchange for another benefit and the amount of such reimbursements that you receive in one taxable year shall not affect the amount of such reimbursements that you receive in any other taxable year.

Compliance with Proprietary Information Agreement and Bioventus Policies

As a condition of employment, you must sign and comply with Bioventus' standard Proprietary Information Agreement which prohibits unauthorized use or disclosure of Bioventus' proprietary information and contains certain post-employment non-competition and non-solicitation obligations, among other obligations. In addition, you will be expected to abide by Bioventus' Code of Conduct and Bioventus' policies, as may be changed from time to time at Bioventus' sole discretion.

Non-Disparagement

During and after your employment, you and Bioventus agree not to make any statement that criticizes, ridicules, disparages, or is otherwise derogatory of the other or is reasonably likely to be harmful to you or Bioventus, or to your or Bioventus' respective businesses, business reputations or personal reputations; provided, however, that nothing in this Agreement shall restrict either party from making truthful statements (a) when required by law, subpoena, court order or the like; (b) when requested by a governmental, regulatory, or similar body or entity; (c) in confidence to a professional advisor for the purpose of securing professional advice; (d) in the ordinary course of performing your or its duties during your employment; (e) from rebutting any statement made or written about you or it; or (f) from making normal competitive statements about Bioventus' business or products.

Outside Activities

Throughout your employment with Bioventus, you may engage in civic and not-for-profit activities so long as such activities do not interfere with the performance of your duties hereunder or violate the Bioventus Conflict of Interest Policy.

Assignment

This Agreement may be assigned by Bioventus to a person or entity which is an affiliate or a successor in interest to substantially all of the business operations of Bioventus. Upon such assignment, the rights and obligations of Bioventus hereunder shall become the rights and obligations of such affiliate or successor person. You may not assign your rights or obligations to another entity or person.

Indemnification

Executive shall be entitled to indemnification to the maximum extent permitted by applicable law and the Company's Operating Agreement, Articles of Incorporation or Bylaws as applicable. At all times during Executive's employment, the Company shall maintain in effect a directors and officers liability insurance policy with Executive as a covered officer. The Company shall further provide and pay for the defense of any action, arbitration or mediation (collectively, an "**Action**") relative to the lawful performance of Executive's duties or in connection with Executive's employment at the Company and the existence of such Action or defense shall not provide grounds for termination of Executive's employment.

Miscellaneous

As required by federal law, this offer is contingent upon satisfactory proof of your identity and right to work in the United States. This Agreement, together with your Proprietary Information Agreement [and Phantom Profit Interest Units Grant], forms the complete and exclusive statement of your employment agreement with Bioventus. It supersedes any other agreements or promises made to you by anyone, whether oral or written. Changes in your employment terms, other than those changes expressly reserved to Bioventus' discretion in this Agreement, require a written modification approved by Bioventus. This Agreement will bind the heirs, personal representatives, successors and assigns of both you and Bioventus, and inure to the benefit of both you and Bioventus, their heirs, successors and assigns. If any provision of this Agreement is determined to be invalid or unenforceable, in whole or in part, this determination shall not affect any other provision of this Agreement and the provision in question shall be modified so as to be rendered enforceable in a manner consistent with the intent of the parties insofar as possible under applicable law. This Agreement shall be construed and enforced in accordance with the laws of the State of North Carolina without regard to conflicts of law principles. The parties hereby irrevocably submit to the jurisdiction of the state and federal courts of North Carolina located in or about Raleigh and waive any claim or defense of inconvenient or improper forum or lack of personal jurisdiction under any applicable law or decision. Any ambiguity in this Agreement shall not be construed against either party as the drafter. Any waiver of a breach of this Agreement, or rights hereunder, shall be in writing and shall not be deemed to be a waiver of any successive breach or rights hereunder. This Agreement may be executed in counterparts which shall be deemed to be part of one original, and facsimile or pdf signatures shall be equivalent to original signatures.

I am very pleased to offer you this position at Bioventus and look forward to your acceptance within the next ten days if you accept employment at Bioventus under the terms described above. I would be happy to discuss any questions that you may have about the terms of the offer. It will be a pleasure to work with you and create the future of Bioventus.

Sincerely,

/s/ Anthony P. Bihl

Anthony P. Bihl
Chief Executive Officer

Understood and Accepted:

/s/ John E. Nosenzo	11/22/16
John E. Nosenzo	Date

PROPRIETARY INFORMATION, INVENTIONS,
NON-SOLICITATION, AND NON-COMPETITION AGREEMENT

In consideration of my initial offer of employment, by Bioventus LLC, its subsidiaries, parents, affiliates, successors and assigns (together, the "**Company**") and the compensation paid to me, I hereby enter into this Proprietary Information, Inventions, Non-Competition and Non-Solicitation Agreement (the "**Agreement**") and agree as follows:

1. NONDISCLOSURE.

1.1 Recognition of Company's Rights. At all times during my employment and thereafter, I will hold in strictest confidence and will not disclose or use any of the Company's Proprietary Information (defined below), except as such disclosure or use may be required in connection with my work for the Company, or unless an officer of the Company expressly authorizes such in writing. I hereby assign to the Company any rights I may have or acquire in such Proprietary Information and recognize that all Proprietary Information shall be the sole property of the Company. I will take all reasonable precautions to prevent the inadvertent or accidental disclosure of Proprietary Information.

1.2 Proprietary Information. The term "**Proprietary Information**" shall mean any and all confidential and/or proprietary knowledge, data or information of the Company, its affiliates, parents and subsidiaries, whether having existed, now existing, or to be developed during my employment. By way of illustration but not limitation, "**Proprietary Information**" includes (a) trade secrets, inventions, ideas, processes, formulas, discoveries, developments, designs and techniques and any other proprietary technology and all Proprietary Rights (defined below) therein (hereinafter collectively referred to as "**Inventions**"); (b) information regarding research, development, new products, marketing and selling, business plans, budgets and financial statements, licenses, prices and costs, discounts, credit terms, pricing and billing policies, quoting procedures, methods of obtaining or conducting business, forecasts, future plans and potential strategies, financial projections and business strategies, operational plans, financing and capital-raising plans, activities and agreements, internal services and operational manuals, suppliers and supplier information, and purchasing; (c) information regarding customers and potential customers of the Company, including customer lists, names, representatives, their needs or desires with respect to the types of products or services offered by the Company, proposals, bids, contracts and their contents and parties, the type and quantity of products and services provided or sought to be provided to customers and potential customers of the Company and other related non-public information; (d) information regarding any of the Company's business partners and their services, including names; representatives, proposals, bids, contracts and their contents and parties, the type and quantity of products and services received by the Company, and other related non-public information; (e) information regarding personnel, employee lists, and employee skills; and (f) any other non-public information which a competitor of the Company could use to the competitive disadvantage of the Company. Notwithstanding the foregoing, I am free to use information which is generally known in the trade or industry through no breach of this Agreement or other act or omission by me. If an additional time limitation on this restriction is required in order for it to be enforceable then this restriction shall be limited to a period of two years following the termination of my employment for any information that does not qualify as a trade secret. Trade secret information will remain protected at all times and nothing herein shall be construed to reduce or diminish the applicability of trade secret protections, statutory or common law, that apply to the Company's trade secrets independent from this Agreement.

1.3 Third Party Information. I understand that the Company has received and in the future will receive from third parties confidential and/or proprietary knowledge or information ("**Third Party Information**"). During my employment and thereafter, I will hold Third Party Information in the strictest confidence and will not disclose to anyone (other than Company personnel who need to know such information in connection with their work for the Company) or use, except in connection with my work for the Company, Third Party Information unless expressly authorized by an officer of the Company in writing.

1.4 Protected Conduct. Nothing in this Agreement, including the foregoing, prevents me from communicating with the EEOC, the SEC, the DOL, or any other governmental authority, making a report in good faith and with a reasonable belief of any violations of law or regulation to a governmental authority, or cooperating with or participating in a legal proceeding relating to such violations.

1.5 Notice Under the 2016 Defend Trade Secrets Act. I acknowledge that I am hereby provided notice that under the 2016 Defend Trade Secrets Act (DTSA): (1) no individual (consultant, contractor or employee) will be held criminally or civilly liable under Federal or State trade secret law for the disclosure of a trade secret (as defined in the Economic Espionage Act) that: (A) is made in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and made solely for the purpose of reporting or investigating a suspected violation of law; or, (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal so that it is not made public; and, (2) an individual (consultant, contractor or employee) who pursues a lawsuit for retaliation for reporting a suspected violation of the law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual files any document contain the trade secret under seal, and does not disclose the trade secret, except as permitted by court order.

2. ASSIGNMENT OF INVENTIONS.

2.1 Prior Inventions. Inventions, if any, patented or unpatented, which I made prior to the commencement of my employment with the Company are excluded from the scope of this Agreement. To preclude any possible uncertainty, I have set forth on *Exhibit A* a complete list of all Inventions that I have, alone or jointly with others, conceived or developed prior to the commencement of my employment with the Company, that I consider to be my property or the property of third parties, and that I wish to have excluded from the scope of this Agreement (collectively referred to as "**Prior Inventions**"). If no such disclosure is attached, I represent that there are no Prior Inventions. I agree that I will not incorporate, or permit to be incorporated, Prior Inventions in any Company Inventions without the Company's prior written consent.

2.2 Assignment of Inventions. Subject to Subsection 2.3, I do hereby assign to the Company all my right, title and interest in and to all Inventions (and all Proprietary Rights with respect thereto) made or conceived or learned by me, either alone or jointly with others, during the period of my employment with the Company. Inventions assigned to the Company, or to a third party as directed by the Company pursuant to this Section 2, are hereinafter referred to as "**Company Inventions**." The term "**Proprietary Rights**" shall mean all trade secrets, patents, copyrights, trademarks and other intellectual property rights throughout the world.

2.3 Unassigned or Nonassignable Inventions. This Agreement does not apply to an Invention which qualifies fully as a nonassignable invention under: North Carolina Statute §§ 66.57.1 and 66.57.2; California Labor Code §2870; Delaware Code Title 19 Section 805; Illinois 765ILCS1060/1-3, "**Employees Patent Act**"; Kansas Statutes Section 44-130; Minnesota Statutes 13A Section 181.78; Utah Code Sections 34-39-1 through 34-39-3, "**Employee Inventions Act**"; Washington Rev. Code, Title 49 RCW: Labor Regulations Chapter 49.44.140. I have reviewed the notification in paragraph 3 of *Exhibit A* and agree that my signature acknowledges receipt of the notification.

3. NON-SOLICITATION. During my employment and for a period of twelve (12) months following the termination of my employment with the Company for any reason, I shall not, directly or indirectly:

3.1 solicit or attempt to solicit any Contractor (defined below) of the Company where such solicitation would interrupt or impede the Company's relationship with such Contractor;

3.2 solicit or attempt to solicit any Customer (defined below) to terminate, diminish, or materially alter in a manner harmful to the Company its relationship with the Company for any purpose, including, but not limited to, the purpose of associating with or becoming a Customer of a Competing Business (defined below); or

3.3 solicit or attempt to solicit, any Contractor to terminate, diminish, or materially alter in a manner harmful to the Company its relationship with the Company for any purpose, including, but not limited to, the purpose of associating with or becoming a contractor of a Competing Business.

3.4 If the choice of law provision in Section 6.1 is deemed not to apply: the provisions in Sections 3.1, 3.2, and 3.3 shall only apply to employees residing in California to the extent such employee's conduct is aided by the use or disclosure of the Company's trade secrets (as defined by California law); the provisions in Sections 3.1, 3.2, and 3.3. shall only apply within the Restricted Area (as defined below) for employees residing in Arizona; and for employees residing in Louisiana, the provisions in Sections 3.1, 3.2, and 3.3 shall only apply within the Restricted Area (defined below).

3.5 For purposes of this Agreement, a "**Customer**" is any person or entity who or which, at any time during the Look Back Period (as defined below): (i) (a) was in direct contact with me; (b) was an entity as to which I supervised the Company's business dealings; or (c) was an entity about which I acquired Proprietary Information, and that contracted for or received from the Company any product, service or process; or (ii) was solicited by the Company or in consideration or planning to be solicited by the Company in an effort in which I was involved or as to which I acquired Proprietary Information. If the choice of law provision in Section 6.1 is deemed not to apply: for employees in Nebraska, the definition of "**Customer**" is limited to Section 3.5(i)(a); and for employees in Oklahoma, "**Customer**" shall be further limited to the Company's established customers (a customer will be presumed to be "established" where actual sales and/or services have occurred or been performed in the preceding year and/or where there is an active proposal for sales or services pending as of the date employee's employment with Company ends).

3.6 For purposes of this Agreement, "**Contractor**" shall mean consultants or independent contractors with whom the Company had a contractual relationship during the Look Back Period and as to which I (a) had material contact or (b) received Proprietary Information during the Look Back Period. If the choice of law provision in Section 6.1 is deemed not to apply, for employees in Nebraska, the definition of "**Contractor**" is limited to Section 3.6(a).

3.7 For purposes of this Agreement, "**Conflicting Services**" means any product, service, or process of any person or organization other than the Company that directly competes with a product, service, or process offered by the Company as to which I had material involvement or about which I acquired Proprietary Information during the Look Back Period.

3.8 For purposes of this Agreement, "**Competing Business**" means a person or entity in the business of providing Conflicting Services.

3.9 For purposes of this Agreement: (a) for sales employees, "**Restricted Area**," means such employee's assigned sales territory during the Look Back Period and/or the geographic area as to which such employee supervised sales activities during the Look Back Period; and (b) for all other employees, "**Restricted Area**" means the United States, including the State of North Carolina. If the choice of law provision in Section 6.1 is deemed not to apply, for employees in Louisiana, Restricted Area refers to the parishes within Louisiana and the counties outside of Louisiana that are identified in Exhibit C.

3.10 For purposes of this Agreement, "**Look Back Period**" means the one (1) year period immediately prior to the date my employment with the Company ends (whatever the cause) or such shorter period as I have been employed.

4. NON-INTERFERENCE. During the period of my employment with the Company and for twelve (12) months thereafter, I shall not, directly or indirectly, solicit or attempt to solicit, any person known to me to be an employee of the Company to terminate his or her employment or other relationship with the Company for any purpose whatsoever.

5. NON-COMPETE PROVISION. I agree that for the one (1) year period after the date my employment ends for any reason, I will not, directly or indirectly, as an officer, director, employee, consultant, owner, partner, or in any other capacity, solicit, perform, or provide, or attempt to perform or provide, services that are the same or similar in function or purpose to the services I provided the Company during the Look Back Period to a Competing Business in the Restricted Area. If the choice of law provision in Section 6.1 is deemed not to apply, the foregoing provision shall not apply to employees residing in California, Oklahoma, and North Dakota. Further, the foregoing provision shall not apply, regardless of where said employee resides, to individuals who are hourly, non-exempt employees of the Company.

6. GENERAL PROVISIONS.

6.1 Governing Law; Consent to Personal Jurisdiction. This Agreement will be governed by and construed according to the laws of the State of North Carolina as such laws are applied to agreements entered into and to be performed entirely within North Carolina between North Carolina residents. I hereby expressly consent to the personal jurisdiction and exclusive and mandatory venue of the state and federal courts located in North Carolina for any lawsuit arising from or related to this Agreement.

6.2 Severability. In case any one or more of the provisions, subsections, or sentences contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. If moreover, any one or more of the provisions contained in this Agreement shall for any reason be held to be excessively broad as to duration, geographical scope, activity or subject, it shall be construed by limiting and reducing it (where allowed by applicable law), so as to be enforceable to the extent compatible with the applicable law as it shall then appear.

6.3 Employment At-Will. I agree and understand that nothing in this Agreement shall change my at-will employment status or confer any right with respect to continuation of employment by the Company, nor shall it interfere in any way with my right or the Company's right to terminate my employment at any time, with or without cause or advance notice.

6.4 Advice of Counsel. I ACKNOWLEDGE THAT, IN EXECUTING THIS AGREEMENT, I HAVE HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT LEGAL COUNSEL, AND I HAVE READ AND UNDERSTOOD ALL OF THE TERMS AND PROVISIONS OF THIS AGREEMENT. THIS AGREEMENT SHALL NOT BE CONSTRUED AGAINST ANY PARTY BY REASON OF THE DRAFTING OR PREPARATION HEREOF.

6.5 Entire Agreement. This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior discussions between us. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing and signed by the party to be charged. Any subsequent change or changes in my employment status, duties, salary or compensation will not affect the validity or scope of this Agreement.

6.6 Notice to New Employer. I will provide a copy of this Agreement to any person, firm, association, or corporation that I intend to be employed by, associated with, or provide consulting services for in order to insure compliance with this Agreement. I understand that both the Company and I have the right to provide another party an opinion about interpretation and/or application of this Agreement; I consent to such communications, and agree not to assert a claim of wrongdoing by the Company as a result of such a communication.

6.7 Tolling. If I fail to comply with a timed restriction in this Agreement, the time period for that will be extended by one day for each day I am found to have violated the restriction, up to a maximum of one (1) year. This provision shall not apply to employees residing in Georgia or Wisconsin if the choice of law provision in Section 6.1 is deemed not to apply.

I HAVE READ THIS AGREEMENT CAREFULLY AND UNDERSTAND ITS TERMS. I HAVE COMPLETELY FILLED OUT EXHIBIT A TO THIS AGREEMENT.

/s/ John E. Nosenzo
John E. Nosenzo

ACCEPTED AND AGREED TO:

Bioventus LLC

By: /s/ Leigh Ann Stradford

Title: Leigh Ann Stradford
Senior Vice President Human Resources

EXHIBIT A

PREVIOUS INVENTIONS

TO: **BIOVENTUS LLC**

FROM: **John E. Nosenzo**

DATE: **January 16, 2017**

SUBJECT: **Previous Inventions**

1. Except as listed in Section 2 below, the following is a complete list of all inventions or improvements relevant to the subject matter of my employment by Bioventus, LLC (the "**Company**") that have been made or conceived or first reduced to practice by me alone or jointly with others prior to my engagement by the Company:

☒ No inventions or improvements.

☐ See below:

_____

_____

_____

☐ Additional sheets attached.

2. Due to a prior confidentiality agreement, I cannot complete the disclosure under Section 1 above with respect to inventions or improvements generally listed below, the proprietary rights and duty of confidentiality with respect to which I owe to the following party(ies):

	Invention or Improvement	Party(ies)	Relationship
1.			
2.			
3.			

☐ Additional sheets attached.

3. Limited Exclusion Notification.

NOTICE TO NORTH CAROLINA, DELAWARE, ILLINOIS, AND KANSAS RESIDENTS: THIS IS TO NOTIFY you in accordance with North Carolina General Statute Sections 66.57.1 and 66.57.2; Delaware Code Title 19 Section 805; Illinois 765ILCS1060/1-3, "Employees Patent Act"; and Kansas Statutes Section 44-130, that the foregoing Agreement between you and the Company does not require you to assign or offer to assign to the Company any invention that you developed entirely on your own time without using the Company's equipment, supplies, facilities or trade secret information except for those inventions that either:

a. Relate at the time of conception or reduction to practice of the invention to the Company's business, or actual or demonstrably anticipated research or development of the Company; or

b. Result from any work performed by you for the Company.

To the extent a provision in the foregoing Agreement purports to require you to assign an invention otherwise excluded from the preceding paragraph, the provision is against the public policy of this state and is unenforceable. You shall have the burden of establishing that any invention is excluded from assignment to the Company by the preceding paragraph.

This limited exclusion does not apply to any patent or invention covered by a contract between the Company and the United States or any of its agencies requiring full title to such patent or invention to be in the United States.

NOTICE TO MINNESOTA RESIDENTS: Notification is hereby given pursuant to Minnesota Statutes 13A Section 181.87 that no provision in this Agreement requires you to assign any of your rights to an invention for which no equipment, supplies, facility, or trade secret information of the Company was used and which was developed entirely on your own time, and (a) which does not relate (i) directly to the business of the Company, or (ii) to the Company's actual or demonstrably anticipated research or development, or (b) which does not result from any work performed by you for the Company.

NOTICE TO WASHINGTON RESIDENTS: Notification is hereby given pursuant to Washington Revised Code, Title 49 RCW: Labor Regulations Chapter 49.44.140, that no provision in this Agreement applies to an Invention for which no equipment, supplies, facility, or trade secret information of Company was used and which was developed entirely on your own time, unless (a) the invention relates (i) directly to the business of Company, or (ii) to Company's actual or demonstratively anticipated research or development, or (b) the invention results from any work performed by you for Company.

NOTICE TO CALIFORNIA RESIDENTS: Notification is hereby given pursuant to California Labor Code Section 2870, that the assignment of invention provisions in this Agreement do not apply to an invention that was developed entirely on an employee's own time without using the Company's equipment, supplies, facilities, or trade secret information except for those inventions that either: (1) relate at the time of conception or reduction to practice of invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or (2) result from any work performed by the employee for the employer.

NOTICE TO UTAH RESIDENTS: Notification is hereby given pursuant to Utah Code Sections 34-39-1 through 34-39-3, that no provision in this Agreement requires you to assign any of your rights to an invention which was created entirely on your own time, and which is not (a) conceived, developed, reduced to practice, or created by you (i) within the scope of your employment with the Company, (ii) on the Company's time, or (iii) with the aid, assistance, or use of any of the Company's property, equipment, facilities, supplies, resources, or patents, trade secrets, know-how, technology, confidential information, ideas, copyrights, trademarks and service marks and any and all rights, applications and registrations relating to them, (b) the results of any work, services, or duties performed by you for the Company, (c) related to the industry or trade of the Company, or (d) related to the current or demonstrably anticipated business, research, or development of the Company.

EXHIBIT B

Vacation Policy

Policy

Bioventus recognizes the value of rest and relaxation away from work and, therefore, offer employees paid time off for vacation each year. Vacation is available to full-time and part-time employees to provide time away from their duties at work.

Scope

This policy applies to full-time and part-time employees.

Procedure/ Guidelines

Vacation Accrual

Employees accrue vacation days beginning in the month of hire. Employees may begin using vacation time when accrual begins. Vacation time is accrued on the last day of each calendar month. Full-time employees accrue vacation time based on continuous employment as follows: (Part-time employees accrue vacation time pro-rated to 50% of full-time employee accrual rates.)

Years of Service	**Vacation Accrual**
Less than five (5) years	1.25 days (10) hours per month, up to fifteen (15) days (120 hours) per calendar year. Accrual beginning the month of hire.
Five (5) years or greater, but less than twelve (12) years	1.41 days (11.33) hours per month, up to seventeen (17) days (136 hours) per calendar year. If hired in the months of January through August, accrual begins on January 1st of the 5th year anniversary. If hired in the months of September through December, accrual begins on January 1st of the year following the 5th year anniversary.
Twelve (12) years or greater, but less than twenty (20) years	1.67 days (13.34) hours per month, up to twenty (20) days (160 hours) per calendar year. If hired in the months of January through August, accrual begins on January 1st of the 5th year anniversary. If hired in the months of September through December, accrual begins on January 1st of the year following the 12th year anniversary.
Twenty (20) years and greater	2.08 days (16.67) hours per month, up to twenty five (25) days (200 hours) per calendar year. If hired in the months of January through August, accrual begins on January 1st of the 5th year anniversary. If hired in the months of September through December, accrual begins on January 1st of the year following the 20th year anniversary.

Vacation Year

The twelve (12) month vacation accrual period will begin January 1 and end December 31. Vacation time must be taken during the calendar year in which time is accrued. Vacation time may not be carried forward into a new calendar year except as required by state law. If carryover is permitted, the number of accrued vacation hours is limited to no more than one and one-half (1.5) times the amount of time available to be accrued by the employee in the calendar year.

Vacation Scheduling

Employees must take vacation time in increments of one (1) hour except when used in conjunction with family medical leave. Use of vacation time must be approved by the appropriate manager.

To take vacation, employees should request approval from their managers through Workday as far in advance as possible to ensure adequate coverage of job and staff requirements. Single vacation day requests may be considered, provided the manager receives a minimum twenty-four (24) hours' notice.

Vacation time is granted when convenient during the vacation year, considering both the wishes of the employee and the business needs of the Company. As stated previously, employees are encouraged to use accrued vacation days for rest, relaxation, and personal pursuits as time away from their employment duties.

Employees are permitted to use accrued vacation time, but not to exceed the maximum number of days/hours for which they are eligible in the vacation year.

If a paid holiday occurs during an employee's vacation, the employee will be paid for the holiday and will not be charged for vacation time.

Vacation time will be counted as hours worked for the purpose of calculating overtime.

Vacation Tracking

All employees must record vacation time in Workday, the Company approved Human Resources Information System (HRIS). Managers are responsible for ensuring that employees record their vacation time accurately in Workday as it serves as the official record for the Company. Failure to do so may result in disciplinary action.

Vacation Pay

Vacation pay is calculated on the employee's current rate of base pay including commissions and shift differential (if applicable) in effect when the vacation is taken. It does not include overtime or special forms of compensation such as incentives and bonuses.

Vacation Year-end Payout

Vacation time may not be carried forward into a new calendar year except as required by state law. Hourly non-exempt employees will receive cash compensation for unused accrued vacation time at year end. Salaried non-exempt and salaried exempt employees will not receive cash compensation unless approved by the Head of Human Resources or unless they work in California, Montana, Nebraska or Colorado.

Leave of Absence

Employees continue to accrue vacation time while on approved FMLA leave. However, employees on other leaves of absence will not accrue vacation time.

Payment for Vacation upon Termination

If an individual uses anticipated accrued vacation prior to actually accruing the amount for the same twelve (12) month period and separation occurs, unaccrued vacation days will be deducted from total termination pay per appropriate state law. If an employee works in a state where this practice is prohibited, the Company will request that the employee make a payment to the Company for all vacation time taken prior to the time it was accrued. Upon termination of employment, employees will be paid for unused accrued vacation days that have been accrued through the last day of work.

Revision History

Current Version	Major Change	Reason for Change
1.0	Roll out of vacation policy	New policy
2.0	Corrected data under vacation accruals	Corrected administrative error.
3.0	Change in the vacation accrual cap for employees in states that require carry-over	Update to policy

EXHIBIT C

FOR LOUISIANA EMPLOYEES ONLY

For employees residing in Louisiana, to the extent that the choice of law provision in Section 6.1 is not deemed to apply, the Restricted Area means the following parishes within Louisiana and counties in states outside of Louisiana.

Exhibit 10.35

Bioventus LLC
4721 Emperor Blvd., Suite 100
Durham, NC 27703
USA

1-919-474-6700
1-800-396-4325
www.BioventusGlobal.com

April 13, 2020

John Nosenzo

Dear John,

In recognition of your current and future contributions to Bioventus, I would like to provide you with the retention plan ("Plan") outlined below. I recognize the next twenty-four months will have challenges and your continued focus on building and retaining a successful commercial organization is critical to Bioventus.

Retention Plan:

- Two payments equal, in the aggregate, to $520,000, less applicable taxes, such amount to be paid as follows:
  - $260,000, paid in a single, lump sum payment, less applicable taxes, on May 4, 2021
    - You must be actively employed on the payment date in order to receive payment; otherwise, the amount is forfeited.
    - Notwithstanding the prior sentence, if your position with Bioventus is terminated prior to the May 4, 2021 payment date for a reason that would qualify you for Severance Benefits under your offer letter signed on November 22, 2016 (the "Offer Letter"), you will receive the $260,000, paid in a single, lump sum payment, less applicable taxes, within sixty (60) days following your termination of employment with Bioventus. This payment shall be in addition to your Severance Benefits as defined in your Offer Letter.
  - $260,000, paid in a single, lump sum payment, less applicable taxes, on May 4, 2022
    - You must be actively employed on the payment date in order to receive payment; otherwise, the amount is forfeited.
    - Notwithstanding the prior sentence, if your position with Bioventus is terminated after the May 4, 2021 payment date, but before the May 4, 2022 payment date for a reason that would qualify you for Severance Benefits under the Offer Letter, you will receive the $260,000, paid in a single, lump sum payment, less applicable taxes, within sixty (60) days following your termination of employment with Bioventus. This payment shall be in addition to your Severance Benefits under your Offer Letter.

Your ongoing support of our business is critical and I hope this retention plan demonstrates your value to the Bioventus Board of Managers. We look forward to working with you as you help to drive the success of Bioventus. If you have any questions about the plan, please let me know.

Best regards,

/s/ William Hawkins
William Hawkins
Chair of the Bioventus Board

/s/ John Nosenzo 4/18/2020
John Nosenzo
Accepted and Understood

Bioventus LLC
4721 Emperor Blvd., Suite 100
Durham, NC 27703
USA

1-919-474-6700
1-800-396-4325
www.BioventusGlobal.com

July 11, 2017

Anthony D'Adamio

Re: Employment Offer

Dear Tony:

I am pleased to offer you employment at Bioventus LLC ("**Bioventus**" or the "**Company**") on the terms set forth in this offer letter agreement (the "**Agreement**"). This Agreement will be effective on **August 14, 201**7 or a mutually agreed upon date and is contingent upon approval of the Bioventus Board of Managers, favorable reference checks, background checks, and drug screen results, and the execution of the enclosed Proprietary Information, Inventions, Non-Solicitation and Non-Compete Agreement and satisfactory review of any non-compete clauses in contracts from past employment.

Employment and Duties

You will be employed in the role of Senior Vice President and General Counsel Role and you shall perform the duties of this role as are customary and as may be required by Bioventus, LLC. You will report to the Chief Executive Officer, and you will be based at the headquarters of Bioventus currently located in Durham, NC.

You shall have such duties and responsibilities, commensurate with your position, as may be reasonably assigned to you from time to time by the Chief Executive Officer or the Board of Directors of Bioventus. (the "**Board**"), or which are in accordance with the delegations of authority set out by the Board.

During your employment with Bioventus, you will devote your full-time best efforts and business time and attention to the business of Bioventus.

At-Will Employment Relationship

You may terminate your employment with Bioventus at any time and for any reason whatsoever simply by notifying Bioventus. Likewise, Bioventus may terminate your employment at any time, with or without Cause, and with or without advance notice. Your employment at-will status can only be modified in a written agreement approved by Bioventus and signed by you and a duly authorized member of Bioventus.

Base Salary, Signing Bonus, and Employee Benefits

Your base salary will be paid at the annual rate of **$375,000** less payroll deductions and withholdings. You will be paid your base salary on a bi-weekly basis, on Bioventus' normal payroll schedule. You will be reimbursed for expenses that are normal and customary for your role and follow applicable Bioventus policies. As an exempt salaried employee, you will be required to work Bioventus' normal business hours, and such additional time as appropriate for your work assignments and position. You will not be eligible for overtime premiums.

The Company agrees to pay a special one-time signing bonus of **$31,000** less applicable taxes on the first payroll period after your start date and an additional one-time on bonus of **$165,000** less applicable taxes to be paid on December 15, 2017. If for any reason you voluntarily resign or are terminated for cause within 24 months of receiving the one-time signing bonuses, you will be required to reimburse Bioventus the prorated portion of these signing bonuses.

You will also be eligible to receive a grant of **40,000** Phantom Profits Interest Units and a copy of the plan will be made available for your review.

You will be eligible to participate in Bioventus' health and welfare, group insurance, retirement and other employee benefit plans, programs and arrangements (pursuant to the terms and conditions of the benefit plans and applicable policies) as are made generally available from time to time to executives of the Company.

You will be eligible for **20** days of vacation per year. For 2017, your vacation will be prorated to 10 days. Going forward, you will earn any additional vacation according to the Bioventus vacation policy.

Annual Performance Bonus and Merit Planning

In this position, you will be eligible to participate in the Bioventus Inc. Non-Commercial Executive Annual Incentive Bonus Plan (or any sub-plan thereof or any other bonus program as determined by the Company and/or Bioventus Inc. from time to time) (the "**Executive Incentive Plan**") at an annual target of fifty percent **(50%)** of your annual base salary (the "**Annual Bonus**"). The Executive Incentive Plan may include components of your personal performance as well as Bioventus' business objectives. The terms and conditions of your Annual Bonus will be set forth in the Executive Incentive Plan documents.

Your performance will be reviewed on a yearly basis by the CEO and Board. At that time, your salary will be reviewed along with your performance to determine any adjustment to your base salary.

Relocation

This offer will require that you relocate to RTP area. Bioventus will provide professional assistance and the Bioventus Homeowners Relocation package to assist with the expenses associated with your move. Bioventus has engaged the services of Cornerstone Relocation Group, who will assign a Relocation Consultant to work with you during the entire relocation process. You will hear from your consultant by telephone shortly after your move is approved by Bioventus. You will have a limit of up to $184,000 for your total relocation costs to cover the sale of your home in and transportation of household goods.

Within 24 months after signing this offer, if for any reason you voluntarily resign or your employment at Bioventus is terminated for cause, it is understood that you will reimburse the company for the cost of relocation that was paid to you. For purpose of this provision, "cause" is noted on under **Certain Definitions**.

Please note: In order to manage relocation costs some services and reimbursements are contingent on the use of vendors or brokers specified by Cornerstone Relocation Group. **Therefore, you should not contact a real-estate agent or make commitments to any vendor prior to your initial contact by** Cornerstone Relocation Group**.** In addition, you may not utilize or ask to have qualified as a broker any family members.

Certain Definitions

For purposes of this Agreement, the following definitions will apply:

(1) Definition of Change in Control. A "**Change in Control**" shall mean the first to occur of any of the following: (A) any "person" (as such term is used in sections 13(d) and 14(d) of the Securities Exchange Act of 1934 (the "**Exchange Act**")) (other than persons who are owners of the Company on the Effective Date or its affiliates or permitted transferees) becomes a "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of interests in the Company representing more than 50% of the voting power of the then outstanding interests in the Company; provided that a Change in Control shall not be deemed to occur as a result of a change of ownership resulting from the death of an owner, and a Change in Control shall not be deemed to occur as a result of a transaction in which the Company becomes a subsidiary of another company and in which the owners of the Company, immediately prior to the transaction, will beneficially own, immediately after the transaction, interests entitling such owners to more than 50% of all votes to which all owners of the parent company would be entitled in the election of members (without consideration of the rights of any class of membership interests to elect members by a separate class vote); or (B) the consummation of (i) a merger or consolidation of the Company with another company where the owners of the Company, immediately prior to the merger or consolidation, will not beneficially own, immediately after the merger or consolidation, membership interests (or other equity instruments) entitling such persons to more than 50% of all votes to which all owners of the surviving company would be entitled in the election of members (without consideration of the rights of any class of membership interests to elect members by a separate class vote); (ii) a sale or other disposition of all or substantially all of the assets of the Company; or (iii) a liquidation or dissolution of the Company; or (C) during any 12-month period, a majority of the members of the Company's Board is replaced by individuals whose appointment or election is not endorsed by a majority of the members of the Company's Board immediately prior to the date of appointment or election.

(2) Definition of Cause. "**Cause**" for the Company to terminate your employment shall exist if any of the following occurs: (A) your being convicted (including a guilty plea or plea of nolo contendere) of any felony or any other crime involving fraud, violence or dishonesty; (B) your commission of or participation in a fraud or act of dishonesty or misrepresentation against the Company; (C) your material violation of any written and fully executed contract or agreement between you and the Company, including without limitation, breach of your Proprietary Information, Inventions, Non-Competition and Non-Solicitation Agreement (the "**Proprietary Information Agreement**"); (D) your gross negligence or willful misconduct; (E) your continued and substantial failure to perform your duties to the Company set forth herein at a level commensurate with your position; or (F) your violation of any material policies, practices, or procedures of Bioventus.

(3) Definition of Good Reason. "**Good Reason**" for you to terminate your employment shall mean the occurrence of any one of the following events without either (x) your express prior written consent or (y) full cure within 30 days after you give written notice to the Company: (i) material diminution in duties or responsibilities; (ii) a material reduction in your salary, except for across-the-board salary reductions similarly affecting all senior executive officers of the Company; (iii) the relocation of your principal office, or principal place of employment, to a location more than fifty (50) miles from the location of your principal office or principal place of business as of the Effective Date; or (iv) a failure to pay you earned compensation; provided however, that no event shall constitute grounds for a Good Reason termination unless you provide written notice to the Company of the event or condition purported to constitute Good Reason within 90 days of the initial existence of such event or condition and you terminate your employment within sixty days after such notice is provided.

Severance Benefits

(1) If, at any time, (i) the Company terminates your employment without Cause, other than as a result of your death or disability or (ii) you terminate your employment for Good Reason during the two-year period following a Change in Control, then you shall receive the following severance benefits (the "**Severance Benefits**"): (i) twelve (12) months of your base salary in effect on the effective date of termination (the "**Termination Date**"), less applicable taxes and withholdings and shall be made in a lump sum payment within 60 days of the Termination Date; (ii) one hundred percent (100%) of your target Annual Bonus, paid within 60 days following the Termination Date; (iii) if you timely elect continued coverage under federal COBRA laws or comparable state insurance laws ("**COBRA**"), then the Company shall pay the COBRA premiums necessary to continue your medical and dental insurance coverage in effect for yourself and your eligible dependents beginning the first month following your termination date for **twelve (12)** months of such coverage (provided that such COBRA reimbursement shall terminate on such earlier date as you are no longer eligible for COBRA coverage or you become eligible for group health insurance benefits through a new employer).

(2) Your receipt of the Severance Benefits or CIC Severance Benefits, as applicable, is conditional upon (a) your continuing to comply with your obligations under your Proprietary Information Agreement; and (b) your executing and delivering an effective, general release of all known and unknown claims in favor of Bioventus, in the Company's customary form within 45 days following the Termination Date (and not revoking the release).

Section 409A

Notwithstanding anything herein to the contrary, this Agreement is intended to be interpreted and applied so that the payment of the benefits set forth herein shall either be exempt from the requirements of Section 409A of the Internal Revenue Code of 1986, as amended (the "**Code**") (together with the Department of Treasury Regulations and other guidance thereunder, "**Section 409A**") or shall comply with the requirements of such provision. After the Termination Date, you shall have no duties or responsibilities that are inconsistent with having a "separation from service" (within the meaning of Section 409A) as of the Termination Date and, notwithstanding anything in the Agreement to the contrary, distributions upon termination of employment of nonqualified deferred compensation may only be made upon a "separation from service" (as determined under Section 409A) and such date shall be the Termination Date for purposes of this Agreement. Each payment under this Agreement or otherwise shall be treated as a separate payment for purposes of Section 409A. In no event may you, directly or indirectly, designate the calendar year of any payment to be made under this Agreement which constitutes a "nonqualified deferral of compensation" (within the meaning of Section 409A) and to the extent an amount is payable within a time period, the time during which such amount is paid shall be in the discretion of Bioventus. To the extent that any reimbursements are taxable to you, any such reimbursement payment due to you shall be paid to you on or before the last day of the calendar year following the taxable year in which the related expense was incurred. The reimbursements are not subject to liquidation or exchange for another benefit and the amount of such reimbursements that you receive in one taxable year shall not affect the amount of such reimbursements that you receive in any other taxable year. Notwithstanding any provision to the contrary in this Agreement, if you are deemed at the time of your separation from service to be a "specified employee" for purposes of Section 409A(a)(2)(B)(i) of the Code, to the extent delayed commencement of any portion of the termination benefits to which you are entitled under this Agreement is required in order to avoid a prohibited distribution under Section 409A(a)(2)(B)(i) of the Code, such portion of your termination benefits shall not be provided to you prior to the earlier of (A) the expiration of the six-month period measured from the date of your "separation from service" with the Company or (B) the date of your death; upon the earlier of such dates, all payments deferred pursuant to this sentence shall be paid in a lump sum to you, and any remaining payments due under the Agreement shall be paid as otherwise provided herein.

Compliance with Proprietary Information Agreement and Bioventus Policies

You and the Company acknowledge and agree that you are a party to that certain Proprietary Information, Inventions, Non-Solicitation, and Non-Competition Agreement with Bioventus (the "**Proprietary Information Agreement**") which prohibits unauthorized use or disclosure of Bioventus' proprietary information and contains certain post-employment non-competition and non-solicitation obligations, among other obligations, and that the Proprietary Information Agreement remains in full force and effect; provided that for purposes of the Proprietary Information Agreement on and following the IPO the terms "Company" and "Bioventus" will mean, collectively, Bioventus LLC and Bioventus Inc. In addition, you are expected to comply with the Proprietary Information Agreement and that you will abide by Bioventus' Code of Conduct and Bioventus' policies, as may be changed from time to time at Bioventus' sole discretion.

Non-Disparagement

During and after your employment, you and Bioventus agree not to make any statement that criticizes, ridicules, disparages, or is otherwise derogatory of the other or is reasonably likely to be harmful to you or Bioventus, or to your or Bioventus' respective businesses, business reputations or personal reputations; provided, however, that nothing in this Agreement shall restrict either party from making truthful statements (a) when required by law, subpoena, court order or the like; (b) when requested by a governmental, regulatory, or similar body or entity; (c) in confidence to a professional advisor for the purpose of securing professional advice; (d) in the ordinary course of performing your or its duties during your employment; (e) from rebutting any statement made or written about you or it; or (f) from making normal competitive statements about Bioventus' business or products.

Outside Activities

Throughout your employment with Bioventus, you may engage in civic and not-for-profit activities so long as such activities do not interfere with the performance of your duties hereunder or violate the Bioventus Conflict of Interest Policy.

Assignment

This Agreement may be assigned by Bioventus to a person or entity which is an affiliate or a successor in interest to substantially all of the business operations of Bioventus. Upon such assignment, the rights and obligations of Bioventus hereunder shall become the rights and obligations of such affiliate or successor person. You may not assign your rights or obligations to another entity or person.

Indemnification

You shall be entitled to indemnification to the maximum extent permitted by applicable law and the Bioventus LLC Operating Agreement or Bioventus Inc. Articles of Incorporation or Bylaws, as applicable. At all times during your employment, the Company shall maintain in effect a directors and officers liability insurance policy with you as a covered officer. The Company shall further provide and pay for the defense of any action, arbitration or mediation (collectively, an "**Action**") relative to the lawful performance of your duties or in connection with your employment at the Company and the existence of such Action or defense shall not provide grounds for termination of your employment.

Notice of Immunity

Notwithstanding any provision of this Agreement or the Proprietary Information Agreement to the contrary, (i) you shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that is made in confidence to a Federal, State, or local government official or to an attorney solely for the purpose of reporting or investigating a suspected violation of law; (ii) you shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal; and (iii) if you file a lawsuit for retaliation by an employer for reporting a suspected violation of law, you may disclose the trade secret to your attorney and use the trade secret information in the court proceeding, if you file any document containing the trade secret under seal; and do not disclose the trade secret, except pursuant to court order.

Section 280G Parachute Payments

Notwithstanding any other provision in this Agreement to the contrary, in the event that any payment or benefit received or to be received by you in connection with a Change in Control or otherwise would be considered an "excess parachute payment" within the meaning of Section 280G of the Code, then such payments and benefits will either be (i) delivered in full or (ii) reduced by the minimum amount necessary so that all of the remaining payments and benefits will not be subject to the excise tax imposed by Section 4999 of the Code, whichever of the foregoing (i) or (ii) results in the greater net after-tax value of payment and benefits to you. All determinations regarding the application of this paragraph shall be made by an accounting firm or consulting group with experience in performing calculations regarding the applicability of Sections 280G and 4999 of the Code selected by the Company, and all associated costs will be borne by the Company.

Compensation Recovery Policy

You acknowledges and agree that, to the extent the Company adopts any clawback or similar policy pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act or otherwise, and any rules and regulations promulgated thereunder, you will take all action necessary or appropriate to comply with such a clawback policy (including, without limitation, entering into any further agreements, amendments or policies necessary or appropriate to implement and/or enforce such policy).

Miscellaneous

This Agreement, together with your Proprietary Information Agreement and all applicable equity award agreements, forms the complete and exclusive statement of your employment agreement with Bioventus. Changes in your employment terms, other than those changes expressly reserved to Bioventus' discretion in this Agreement, require a written modification approved by Bioventus. This Agreement will bind the heirs, personal representatives, successors and assigns of both you and Bioventus, and inure to the benefit of both you and Bioventus, their heirs, successors and assigns. If any provision of this Agreement is determined to be invalid or unenforceable, in whole or in part, this determination shall not affect any other provision of this Agreement and the provision in question shall be modified so as to be rendered enforceable in a manner consistent with the intent of the parties insofar as possible under applicable law. This Agreement shall be construed and enforced in accordance with the laws of the State of North Carolina without regard to conflicts of law principles. The parties hereby irrevocably submit to the jurisdiction of the state and federal courts of North Carolina located in or about Raleigh and waive any claim or defense of inconvenient or improper forum or lack of personal jurisdiction under any applicable law or decision. Any ambiguity in this Agreement shall not be construed against either party as the drafter. Any waiver of a breach of this Agreement, or rights hereunder, shall be in writing and shall not be deemed to be a waiver of any successive breach or rights hereunder. This Agreement may be executed in counterparts which shall be deemed to be part of one original, and facsimile or pdf signatures shall be equivalent to original signatures.

I am very pleased to offer you this position at Bioventus and look forward to your acceptance within the next **5 days** if you accept employment at Bioventus under the terms described above. I would be happy to discuss any questions that you may have about the terms of the offer. It will be a pleasure to work with you and create the future of Bioventus.

Sincerely,

/s/ Anthony P. Bihl III
Anthony P. Bihl III
Chief Executive Officer

Understood and Accepted:

/s/ Anthony D'Adamio	7/17/2017
Anthony D'Adamio	**Date**

**PROPRIETARY INFORMATION, INVENTIONS,
NON-SOLICITATION, AND NON-COMPETITION AGREEMENT**

In consideration of my initial offer of employment, by Bioventus LLC, its subsidiaries, parents, affiliates, successors and assigns (together, the "Company") and the compensation paid to me, I hereby enter into this Proprietary Information, Inventions, Non-Competition and Non- Solicitation Agreement (the "Agreement") and agree as follows:

1. NONDISCLOSURE.

1.1 Recognition of Company's Rights. At all times during my employment and thereafter, I will hold in strictest confidence and will not disclose or use any of the Company's Proprietary Information (defined below), except as such disclosure or use may be required in connection with my work for the Company, or unless an officer of the Company expressly authorizes such in writing. I hereby assign to the Company any rights I may have or acquire in such Proprietary Information and recognize that all Proprietary Information shall be the sole property of the Company. I will take all reasonable precautions to prevent the inadvertent or accidental disclosure of Proprietary Information.

1.2 Proprietary Information. The term "**Proprietary Information**" shall mean any and all confidential and/or proprietary knowledge, data or information of the Company, its affiliates, parents and subsidiaries, whether having existed, now existing, or to be developed during my employment. By way of illustration but not limitation, "**Proprietary Information**" includes (a) trade secrets, inventions, ideas, processes, formulas, discoveries, developments, designs and techniques and any other proprietary technology and all Proprietary Rights (defined below) therein (hereinafter collectively referred to as "**Inventions**"); (b) information regarding research, development, new products, marketing and selling, business plans, budgets and financial statements, licenses, prices and costs, discounts, credit terms, pricing and billing policies, quoting procedures, methods of obtaining or conducting business, forecasts, future plans and potential strategies, financial projections and business strategies, operational plans, financing and capital-raising plans, activities and agreements, internal services and operational manuals, suppliers and supplier information, and purchasing; (c) information regarding customers and potential customers of the Company, including customer lists, names, representatives, their needs or desires with respect to the types of products or services offered by the Company, proposals, bids, contracts and their contents and parties, the type and quantity of products and services provided or sought to be provided to customers and potential customers of the Company and other related non-public information; (d) information regarding any of the Company's business partners and their services, including names; representatives, proposals, bids, contracts and their contents and parties, the type and quantity of products and services received by the Company, and other related non-public information; (e) information regarding personnel, employee lists, and employee skills; and (f) any other non-public information which a competitor of the Company could use to the competitive disadvantage of the Company. Notwithstanding the foregoing, I am free to use information which is generally known in the trade or industry through no breach of this Agreement or other act or omission by me. If an additional time limitation on this restriction is required in order for it to be enforceable then this restriction shall be limited to a period of two years following the termination of my employment for any information that does not qualify as a trade secret. Trade secret information will remain protected at all times and nothing herein shall be construed to reduce or diminish the applicability of trade secret protections, statutory or common law, that apply to the Company's trade secrets independent from this Agreement.

1.3 Third Party Information. I understand that the Company has received and in the future will receive from third parties confidential and/or proprietary knowledge or information ("**Third Party Information**"). During my employment and thereafter, I will hold Third Party Information in the strictest confidence and will not disclose to anyone (other than Company personnel who need to know such information in connection with their work for the Company) or use, except in connection with my work for the Company, Third Party Information unless expressly authorized by an officer of the Company in writing.

1.4 Protected Conduct. I acknowledge and agree that if I am compelled to disclose information via court order, subpoena, or other legal mandate, I will give the Company as much written notice as possible under the circumstances, will refrain from use or disclosure for as long as the law allows, and will cooperate with the Company to protect such information, including taking every reasonable step to protect against unnecessary disclosure. However, nothing in this Agreement, including the foregoing, prevents me from communicating with the EEOC, the SEC, the DOL, or any other governmental authority, making a report in good faith and with a reasonable belief of any violations of law or regulation to a governmental authority, or cooperating with or participating in a legal proceeding relating to such violations.

1.5 Notice Under the 2016 Defend Trade Secrets Act. I acknowledge that I am hereby provided notice that under the 2016 Defend Trade Secrets Act (DTSA): (1) no individual (consultant, contractor or employee) will be held criminally or civilly liable under Federal or State trade secret law for the disclosure of a trade secret (as defined in the Economic Espionage Act) that: (A) is made **in confidence to** a Federal, State, or local government official, either directly or indirectly, or to an attorney; and made **solely for the purpose of** reporting or investigating a suspected violation of law; or, (B) is made in a complaint or other document filed in a lawsuit or other proceeding, **if such filing is made under seal** so that it is not made public; and, (2) an individual (consultant, contractor or employee) who pursues a lawsuit for retaliation for reporting a suspected violation of the law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual files any document contain the trade secret under seal, and does not disclose the trade secret, except as permitted by court order.

2. ASSIGNMENT OF INVENTIONS.

2.1 Prior Inventions. Inventions, if any, patented or unpatented, which I made prior to the commencement of my employment with the Company are excluded from the scope of this Agreement. To preclude any possible uncertainty, I have set forth on *Exhibit A* complete list of all Inventions that I have, alone or jointly with others, conceived or developed prior to the commencement of my employment with the Company, that I consider to be my property or the property of third parties, and that I wish to have excluded from the scope of this Agreement (collectively referred to as "**Prior Inventions**"). If no such disclosure is attached, I represent that there are no Prior Inventions. I agree that I will not incorporate, or permit to be incorporated, Prior Inventions in any Company Inventions without the Company's prior written consent.

2.2 Assignment of Inventions. Subject to Subsection 2.3, I do hereby assign to the Company all my right, title and interest in and to all Inventions (and all Proprietary Rights with respect thereto) made or conceived or learned by me, either alone or jointly with others, during the period of my employment with the Company. Inventions assigned to the Company, or to a third party as directed by the Company pursuant to this Section 2, are hereinafter referred to as "Company Inventions." The term "Proprietary Rights" shall mean all trade secrets, patents, copyrights, trademarks and other intellectual property rights throughout the world.

2.3 Unassigned or Nonassignable Inventions. This Agreement does not apply to an Invention which qualifies fully as a nonassignable invention under: North Carolina Statute §§ 66.57.1 and 66.57.2; California Labor Code §2870; Delaware Code Title 19 Section 805; Illinois 765ILCS1060/1-3, "Employees Patent Act"; Kansas Statutes Section 44-130; Minnesota Statutes 13A Section 181.78; Utah Code Sections 34-39-1 through 34-39-3, "Employee Inventions Act"; Washington Rev. Code, Title 49 RCW: Labor Regulations Chapter 49.44.140. I have reviewed the notification in paragraph 3 of *Exhibit A* and agree that my signature acknowledges receipt of the notification.

3. NON-SOLICITATION. During my employment and for a period of twelve (12) months following the termination of my employment with the Company for any reason, I shall not, directly or indirectly:

3.1 solicit or attempt to solicit any Contractor (defined below) of the Company where such solicitation would interrupt or impede the Company's relationship with such Contractor;

3.2 solicit or attempt to solicit any Customer (defined below) to terminate, diminish, or materially alter in a manner harmful to the Company its relationship with the Company for any purpose, including, but not limited to, the purpose of associating with or becoming a Customer of a Competing Business (defined below); or

3.3 solicit or attempt to solicit, any Contractor to terminate, diminish, or materially alter in a manner harmful to the Company its relationship with the Company for any purpose, including, but not limited to, the purpose of associating with or becoming a contractor of a Competing Business.

3.4 If the choice of law provision in Section 6.1 is deemed not to apply: the provisions in Sections 3.1, 3.2, and 3.3 shall only apply to employees residing in California to the extent such employee's conduct is aided by the use or disclosure of the Company's trade secrets (as defined by California law); the provisions in Sections 3.1, 3.2, and 3.3. shall only apply within the Restricted Area (as defined below) for employees residing in Arizona; and for employees residing in Louisiana, the provisions in Sections 3.1, 3.2, and 3.3 shall only apply within the Restricted Area (defined below).

3.5 For purposes of this Agreement, a "***Customer***" is any person or entity who or which, at any time during the Look Back Period (as defined below): (i) (a) was in direct contact with me; (b) was an entity as to which I supervised the Company's business dealings; or (c) was an entity about which I acquired Proprietary Information, and that contracted for or received from the Company any product, service or process; or (ii) was solicited by the Company or in consideration or planning to be solicited by the Company in an effort in which I was involved or as to which I acquired Proprietary Information. If the choice of law provision in Section 6.1 is deemed not to apply: for employees in Nebraska, the definition of "Customer" is limited to Section 3.5(i)(a); and for employees in Oklahoma, "Customer" shall be further limited to the Company's established customers (a customer will be presumed to be "established" where actual sales and/or services have occurred or been performed in the preceding year and/or where there is an active proposal for sales or services pending as of the date employee's employment with Company ends).

3.6 For purposes of this Agreement, "***Contractor***" shall mean consultants or independent contractors with whom the Company had a contractual relationship during the Look Back Period and as to which I (a) had material contact or (b) received Proprietary Information during the Look Back Period. If the choice of law provision in Section 6.1 is deemed not to apply, for employees in Nebraska, the definition of "Contractor" is limited to Section 3.6(a).

3.7 For purposes of this Agreement, "***Conflicting Services***" means any product, service, or process of any person or organization other than the Company that directly competes with a product, service, or process offered by the Company as to which I had material involvement or about which I acquired Proprietary Information during the Look Back Period.

3.8 For purposes of this Agreement, "***Competing Business***" means a person or entity in the business of providing Conflicting Services.

3.9 For purposes of this Agreement: (a) for sales employees, "***Restricted Area***," means such employee's assigned sales territory during the Look Back Period and/or the geographic area as to which such employee supervised sales activities during the Look Back Period; and (b) for all other employees, "***Restricted Area***" means the United States, including the State of North Carolina. If the choice of law provision in Section 6.1 is deemed not to apply, for employees in Louisiana, Restricted Area refers to the parishes within Louisiana and the counties outside of Louisiana that are identified in Exhibit D.

3.10 For purposes of this Agreement, "***Look Back Period***" means the one (1) year period immediately prior to the date my employment with the Company ends (whatever the cause) or such shorter period as I have been employed.

4. NON-INTERFERENCE. During the period of my employment with the Company and for twelve (12) months thereafter, I shall not, directly or indirectly, solicit or attempt to solicit, any person known to me to be an employee of the Company to terminate his or her employment or other relationship with the Company for any purpose whatsoever.

5. NON-COMPETE PROVISION. I agree that for the one (1) year period after the date my employment ends for any reason, I will not, directly or indirectly, as an officer, director, employee, consultant, owner, partner, or in any other capacity, solicit, perform, or provide, or attempt to perform or provide, services that are the same or similar in function or purpose to the services I provided the Company during the Look Back Period to a Competing Business in the Restricted Area. If the choice of law provision in Section 6.1 is deemed not to apply, the foregoing provision shall not apply to employees residing in California, Oklahoma, and North Dakota. Further, the foregoing provision shall not apply, regardless of where said employee resides, to individuals who are hourly, non-exempt employees of the Company.

6. GENERAL PROVISIONS.

6.1 Governing Law; Consent to Personal Jurisdiction. This Agreement will be governed by and construed according to the laws of the State of North Carolina as such laws are applied to agreements entered into and to be performed entirely within North Carolina between North Carolina residents. I hereby expressly consent to the personal jurisdiction and exclusive and mandatory venue of the state and federal courts located in North Carolina for any lawsuit arising from or related to this Agreement.

6.2 Severability. In case any one or more of the provisions, subsections, or sentences contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. If moreover, any one or more of the provisions contained in this Agreement shall for any reason be held to be excessively broad as to duration, geographical scope, activity or subject, it shall be construed by limiting and reducing it (where allowed by applicable law), so as to be enforceable to the extent compatible with the applicable law as it shall then appear.

6.3 Employment At-Will. I agree and understand that nothing in this Agreement shall change my at-will employment status or confer any right with respect to continuation of employment by the Company, nor shall it interfere in any way with my right or the Company's right to terminate my employment at any time, with or without cause or advance notice.

6.4 Advice of Counsel. I ACKNOWLEDGE THAT, IN EXECUTING THIS AGREEMENT, I HAVE HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT LEGAL COUNSEL, AND I HAVE READ AND UNDERSTOOD ALL OF THE TERMS AND PROVISIONS OF THIS AGREEMENT. THIS AGREEMENT SHALL NOT BE CONSTRUED AGAINST ANY PARTY BY REASON OF THE DRAFTING OR PREPARATION HEREOF.

6.5 Entire Agreement. This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior discussions between us. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing and signed by the party to be charged. Any subsequent change or changes in my employment status, duties, salary or compensation will not affect the validity or scope of this Agreement.

6.6 Notice to New Employer. I will provide a copy of this Agreement to any person, firm, association, or corporation that I intend to be employed by, associated with, or provide consulting services for in order to insure compliance with this Agreement. I understand that both the Company and I have the right to provide another party an opinion about interpretation and/or application of this Agreement; I consent to such communications, and agree not to assert a claim of wrongdoing by the Company as a result of such a communication.

6.7 Tolling. If I fail to comply with a timed restriction in this Agreement, the time period for that will be extended by one day for each day I am found to have violated the restriction, up to a maximum of one (1) year. This provision shall not apply to employees residing in Georgia or Wisconsin if the choice of law provision in Section 6.1 is deemed not to apply.

I HAVE READ THIS AGREEMENT CAREFULLY AND UNDERSTAND ITS TERMS. I HAVE COMPLETELY FILLED OUT EXHIBIT A TO THIS AGREEMENT.

/s/ Anthony D'Adamio
Anthony D'Adamio

ACCEPTED AND AGREED TO:

Bioventus LLC

By: /s/ Leigh Ann Stradford

Title: Sr VP Human Resources

EXHIBIT A
PREVIOUS INVENTIONS

TO: **BIOVENTUS LLC**

FROM: **Anthony D'Adamio**

DATE: **August 14, 2017**

SUBJECT: **Previous Inventions**

1. Except as listed in Section 2 below, the following is a complete list of all inventions or improvements relevant to the subject matter of my employment by Bioventus, LLC (the "Company") that have been made or conceived or first reduced to practice by me alone or jointly with others prior to my engagement by the Company:

☒ No inventions or improvements.

See below:

_____

_____

_____

☐ Additional sheets attached.

2. Due to a prior confidentiality agreement, I cannot complete the disclosure under Section 1 above with respect to inventions or improvements generally listed below, the proprietary rights and duty of confidentiality with respect to which I owe to the following party(ies):

	Invention or Improvement	Party(ies)	Relationship
1.			
2.			
3.			

☐ Additional sheets attached.

3. Limited Exclusion Notification.

NOTICE TO NORTH CAROLINA, DELAWARE, ILLINOIS, AND KANSAS RESIDENTS: THIS IS TO NOTIFY you in accordance with North Carolina General Statute Sections 66.57.1 and 66.57.2; Delaware Code Title 19 Section 805; Illinois 765ILCS1060/1-3, "Employees Patent Act"; and Kansas Statutes Section 44-130, that the foregoing Agreement between you and the Company does not require you to assign or offer to assign to the Company any invention that you developed entirely on your own time without using the Company's equipment, supplies, facilities or trade secret information except for those inventions that either:

a. Relate at the time of conception or reduction to practice of the invention to the Company's business, or actual or demonstrably anticipated research or development of the Company; or

b. Result from any work performed by you for the Company.

To the extent a provision in the foregoing Agreement purports to require you to assign an invention otherwise excluded from the preceding paragraph, the provision is against the public policy of this state and is unenforceable. You shall have the burden of establishing that any invention is excluded from assignment to the Company by the preceding paragraph.

This limited exclusion does not apply to any patent or invention covered by a contract between the Company and the United States or any of its agencies requiring full title to such patent or invention to be in the United States.

NOTICE TO MINNESOTA RESIDENTS: Notification is hereby given pursuant to Minnesota Statutes 13A Section 181.87 that no provision in this Agreement requires you to assign any of your rights to an invention for which no equipment, supplies, facility, or trade secret information of the Company was used and which was developed entirely on your own time, and (a) which does not relate (i) directly to the business of the Company, or (ii) to the Company's actual or demonstrably anticipated research or development, or (b) which does not result from any work performed by you for the Company.

NOTICE TO WASHINGTON RESIDENTS: Notification is hereby given pursuant to Washington Revised Code, Title 49 RCW: Labor Regulations Chapter 49.44.140, that no provision in this Agreement applies to an Invention for which no equipment, supplies, facility, or trade secret information of Company was used and which was developed entirely on your own time, unless (a) the invention relates (i) directly to the business of Company or (ii) to Company's actual or demonstratively anticipated research or development, or (b) the invention results from any work performed by you for Company.

NOTICE TO CALIFORNIA RESIDENTS: Notification is hereby given pursuant to California Labor Code Section 2870, that the assignment of invention provisions in this Agreement do not apply to an invention that was developed entirely on an employee's own time without using the Company's equipment, supplies, facilities, or trade secret information except for those inventions that either: (1) relate at the time of conception or reduction to practice of invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or (2) result from any work performed by the employee for the employer.

NOTICE TO UTAH RESIDENTS: Notification is hereby given pursuant to Utah Code Sections 34-39-1 through 34-39-3, that no provision in this Agreement requires you to assign any of your rights to an invention which was created entirely on your own time, and which is not (a) conceived, developed, reduced to practice, or created by you (i) within the scope of your employment with the Company, (ii) on the Company's time, or (iii) with the aid, assistance, or use of any of the Company's property, equipment, facilities, supplies, resources, or patents, trade secrets, know-how, technology, confidential information, ideas, copyrights, trademarks and service marks and any and all rights, applications and registrations relating to them, (b) the results of any work, services, or duties performed by you for the Company, (c) related to the industry or trade of the Company, or (d) related to the current or demonstrably anticipated business, research, or development of the Company.

EXHIBIT B
2017 BIWEEKLY PAYROLL SCHEDULE

Payroll Payment Date	OT Eligible Employees (Begin/End)		Non-OT Eligible Employees (Begin/End)		Monthly Commission Distribution for Sales Representatives
1/13/2017	12/25/2016	1/7/2017	1/1/2017	1/14/2017	n/a
1/27/2017	1/8/2017	1/21/2017	1/15/2017	1/28/2017	Paid for P12 2016
2/10/2017	1/22/2017	2/4/2017	1/29/2017	2/11/2017	n/a
2/24/2017	2/5/2017	2/18/2017	2/12/2017	2/25/2017	Paid for P1 2017
3/10/2017	2/19/2017	3/4/2017	2/26/2017	3/11/2017	n/a
3/24/2017	3/5/2017	3/18/2017	3/12/2017	3/25/2017	Paid for P2 2017
4/7/2017	3/19/2017	4/1/2017	3/26/2017	4/8/2017	n/a
4/21/2017	4/2/2017	4/15/2017	4/9/2017	4/22/2017	Paid for P3 2017
5/5/2017	4/16/2017	4/29/2017	4/23/2017	5/6/2017	n/a
5/19/2017	4/30/2017	5/13/2017	5/7/2017	5/20/2017	Paid for P4 2017
6/2/2017	5/14/2017	5/27/2017	5/21/2017	6/3/2017	n/a
6/16/2017	5/28/2017	6/10/2017	6/4/2017	6/17/2017	Paid for P5 2017
6/30/2017	6/11/2017	6/24/2017	6/18/2017	7/1/2017	n/a
7/14/2017	6/25/2017	7/8/2017	7/2/2017	7/15/2017	Paid for P6 2017
7/28/2017	7/9/2017	7/22/2017	7/16/2017	7/29/2017	n/a
8/11/2017	7/23/2017	8/5/2017	7/30/2017	8/12/2017	n/a
8/25/2017	8/6/2017	8/19/2017	8/13/2017	8/26/2017	Paid for P7 2017
9/8/2017	8/20/2017	9/2/2017	8/27/2017	9/9/2017	n/a
9/22/2017	9/3/2017	9/16/2017	9/10/2017	9/23/2017	Paid for P8 2017
10/6/2017	9/17/2017	9/30/2017	9/24/2017	10/7/2017	n/a
10/20/2017	10/1/2017	10/14/2017	10/8/2017	10/21/2017	Paid for P9 2017
11/3/2017	10/15/2017	10/28/2017	10/22/2017	11/4/2017	n/a
11/17/2017	10/29/2017	11/11/2017	11/5/2017	11/18/2017	Paid for P10 2017
12/1/2017	11/12/2017	11/25/2017	11/19/2017	12/2/2017	n/a
12/15/2017	11/26/2017	12/9/2017	12/3/2017	12/16/2017	Paid for P11 2017
12/29/2017	12/10/2017	12/23/2017	12/17/2017	12/30/2017	n/a

EXHIBIT C
VACATION POLICY

Policy

Bioventus recognizes the value of rest and relaxation away from work and, therefore, offer employees paid time off for vacation each year. Vacation is available to full-time and part-time employees to provide time away from their duties at work.

Scope

This policy applies to full-time and part-time employees.

Procedure/Guidelines

Vacation Accrual

Employees accrue vacation days beginning in the month of hire. Employees may begin using vacation time when accrual begins. Vacation time is accrued on the last day of each calendar month.

Full-time employees accrue vacation time based on continuous employment as follows: (Part-time employees accrue vacation time pro-rated to 50% of full-time employee accrual rates.)

Years of Service	Vacation Accrual
Less than five (5) years	1.25 days (10) hours per month, up to fifteen (15) days (120 hours) per calendar year. Accrual beginning the month of hire.
Five (5) years or greater, but less than twelve (12) years	1.41 days (11.33) hours per month, up to seventeen (17) days (136 hours) per calendar year. If hired in the months of January through August, accrual begins on January 1st of the 5th year anniversary. If hired in the months of September through December, accrual begins on January 1st of the year following the 5th year anniversary.
Twelve (12) years or greater, but less than twenty (20) years	1.67 days (13.34) hours per month, up to twenty (20) days (160 hours) per calendar year. If hired in the months of January through August, accrual begins on January 1st of the 5th year anniversary. If hired in the months of September through December, accrual begins on January 1st of the year following the 12th year anniversary.
Twenty (20) years and greater	2.08 days (16.67) hours per month, up to twenty five (25) days (200 hours) per calendar year. If hired in the months of January through August, accrual begins on January 1st of the 5th year anniversary. If hired in the months of September through December, accrual begins on January 1st of the year following the 20th year anniversary.

Vacation Year

The twelve (12) month vacation accrual period will begin January 1 and end December 31. Vacation time must be taken during the calendar year in which time is accrued. Vacation time may not be carried forward into a new calendar year except as required by state law. If carryover is permitted, the number of accrued vacation hours is limited to no more than one and one-half (1.5) times the amount of time available to be accrued by the employee in the calendar year.

Vacation Scheduling

Employees must take vacation time in increments of one (1) hour except when used in conjunction with family medical leave. Use of vacation time must be approved by the appropriate manager. To take vacation, employees should request approval from their managers through Workday as far in advance as possible to ensure adequate coverage of job and staff requirements. Single vacation day requests may be considered, provided the manager receives a minimum twenty-four (24) hours’ notice.

Vacation time is granted when convenient during the vacation year, considering both the wishes of the employee and the business needs of the Company. As stated previously, employees are encouraged to use accrued vacation days for rest, relaxation, and personal pursuits as time away from their employment duties.

Employees are permitted to use accrued vacation time, but not to exceed the maximum number of days/hours for which they are eligible in the vacation year.

If a paid holiday occurs during an employee’s vacation, the employee will be paid for the holiday and will not be charged for vacation time.

Vacation time will be counted as hours worked for the purpose of calculating overtime.

Vacation Tracking

All employees must record vacation time in Workday, the Company approved Human Resources Information System (HRIS). Managers are responsible for ensuring employees record their vacation time accurately in Workday as it serves as the official record for the Company. Failure to do so may result in disciplinary action.

Vacation Pay

Vacation pay is calculated on the employee's current rate of base pay including commissions and shift differential (if applicable) in effect when the vacation is taken. It does not include overtime or special forms of compensation such as incentives and bonuses.

Vacation Year-end Payout

Vacation time may not be carried forward into a new calendar year except as required by state law. Hourly non-exempt employees will receive cash compensation for unused accrued vacation time at year end. Salaried non-exempt and salaried exempt employees will not receive cash compensation unless approved by the Head of Human Resources or unless they work in California, Montana, Nebraska or Colorado.

Leave of Absence

Employees continue to accrue vacation time while on approved FMLA leave. However, employees on other leaves of absence will not accrue vacation time.

Payment for Vacation upon Termination

If an individual uses anticipated accrued vacation prior to actually accruing the amount for the same twelve (12) month period and separation occurs, unaccrued vacation days will be deducted from total termination pay per appropriate state law. If an employee works in a state where this practice is prohibited, the Company will request that the employee make a payment to the Company for all vacation time taken prior to the time it was accrued. Upon termination of employment, employees will be paid for unused accrued vacation days that have been accrued through the last day of work.

Revision History

Current Version	Major Change	Reason for Change
1.0	Roll out of vacation policy	New policy
2.0	Corrected data under vacation accruals	Corrected administrative error.
3.0	Change in the vacation accrual cap for employees in states that require carry-over	Update to policy

Bioventus LLC
4721 Emperor Blvd., Suite 100
Durham, NC 27703
USA

1-919-474-6700
1-800-396-4325
www.BioventusGlobal.com

August 2, 2017

Mr. Gregory Anglum

Re: Employment Offer

Dear Greg:

I am pleased to offer you a promotion at Bioventus LLC ("**Bioventus**" or the "**Company**") on the terms set forth in this offer letter agreement (the "**Agreement**"). This Agreement will be effective on **August 7, 2017** and is contingent upon approval of the Bioventus Board of Managers, and the execution of the enclosed Proprietary Information, Inventions, Non-Solicitation and Non-Compete Agreement and satisfactory review of any non-compete clauses in contracts from past employment.

Employment and Duties

You will be employed in the role of Chief Financial Officer and you shall perform the duties of this role as are customary and as may be required by Bioventus, LLC. You will report to the Chief Executive Officer, and you will be based at the headquarters of Bioventus currently located in Durham, NC.

You shall have such duties and responsibilities, commensurate with your position, as may be reasonably assigned to you from time to time by the Chief Executive Officer or the Board of Directors of Bioventus. (the "**Board**"), or which are in accordance with the delegations of authority set out by the Board.

During your employment with Bioventus, you will devote your full-time best efforts and business time and attention to the business of Bioventus.

At-Will Employment Relationship

You may terminate your employment with Bioventus at any time and for any reason whatsoever simply by notifying Bioventus. Likewise, Bioventus may terminate your employment at any time, with or without Cause, and with or without advance notice. Your employment at-will status can only be modified in a written agreement approved by Bioventus and signed by you and a duly authorized member of Bioventus.

Base Salary, One-Time Bonus, and Employee Benefits

Your base salary will be paid at the annual rate of **$350,000** less payroll deductions and withholdings. You will be paid your base salary on a bi-weekly basis, on Bioventus' normal payroll schedule. You will be reimbursed for expenses that are normal and customary for your role and follow applicable Bioventus policies. As an exempt salaried employee, you will be required to work Bioventus' normal business hours, and such additional time as appropriate for your work assignments and position. You will not be eligible for overtime premiums.

The Company agrees to pay a special one-time bonus of **$15,000** less applicable taxes on the next payroll period.

You will also be eligible to receive a grant of **95,000** Phantom Profits Interest Units after September 1, 2017 and a copy of the plan will be made available for your review.

You will be continue to eligible to participate in Bioventus' health and welfare, group insurance, retirement and other employee benefit plans, programs and arrangements (pursuant to the terms and conditions of the benefit plans and applicable policies) as are made generally available from time to time to executives of the Company.

You will be continue to eligible for **20** days of vacation per year. You will earn any additional vacation according to the Bioventus vacation policy.

Annual Performance Bonus and Merit Planning

In this position, you will be eligible to participate in the Bioventus Inc. Executive Non-Commercial Annual Incentive Bonus Plan (or any sub-plan thereof or any other bonus program as determined by the Company and/or Bioventus Inc. from time to time) (the "**Executive Incentive Plan**") at an annual target of fifty percent **(50%)** of your annual base salary (the "**Annual Bonus**"). The Executive Incentive Plan may include components of your personal performance as well as Bioventus' business objectives. The terms and conditions of your Annual Bonus will be set forth in the Executive Incentive Plan documents.

Your performance will be reviewed on a yearly basis by the CEO and Board. At that time, your salary will be reviewed along with your performance to determine any adjustment to your base salary.

Certain Definitions

For purposes of this Agreement, the following definitions will apply:

(1) Definition of Change in Control. A "**Change in Control**" shall mean the first to occur of any of the following: (A) any "person" (as such term is used in sections 13(d) and 14(d) of the Securities Exchange Act of 1934 (the "**Exchange Act**")) (other than persons who are owners of the Company on the Effective Date or its affiliates or permitted transferees) becomes a "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of interests in the Company representing more than 50% of the voting power of the then outstanding interests in the Company; provided that a Change in Control shall not be deemed to occur as a result of a change of ownership resulting from the death of an owner, and a Change in Control shall not be deemed to occur as a result of a transaction in which the Company becomes a subsidiary of another company and in which the owners of the Company, immediately prior to the transaction, will beneficially own, immediately after the transaction, interests entitling such owners to more than 50% of all votes to which all owners of the parent company would be entitled in the election of members (without consideration of the rights of any class of membership interests to elect members by a separate class vote); or (B) the consummation of (i) a merger or consolidation of the Company with another company where the owners of the Company, immediately prior to the merger or consolidation, will not beneficially own, immediately after the merger or consolidation, membership interests (or other equity instruments) entitling such persons to more than 50% of all votes to which all owners of the surviving company would be entitled in the election of members (without consideration of the rights of any class of membership interests to elect members by a separate class vote); (ii) a sale or other disposition of all or substantially all of the assets of the Company; or (iii) a liquidation or dissolution of the Company; or (C) during any 12-month period, a majority of the members of the Company's Board is replaced by individuals whose appointment or election is not endorsed by a majority of the members of the Company's Board immediately prior to the date of appointment or election.

(2) Definition of Cause. "**Cause**" for the Company to terminate your employment shall exist if any of the following occurs: (A) your being convicted (including a guilty plea or plea of nolo contendere) of any felony or any other crime involving fraud, violence or dishonesty; (B) your commission of or participation in a fraud or act of dishonesty or misrepresentation against the Company; (C) your material violation of any written and fully executed contract or agreement between you and the Company, including without limitation, breach of your Proprietary Information, Inventions, Non-Competition and Non-Solicitation Agreement (the "**Proprietary Information Agreement**"); (D) your gross negligence or willful misconduct; (E) your continued and substantial failure to perform your duties to the Company set forth herein at a level commensurate with your position; or (F) your violation of any material policies, practices, or procedures of Bioventus.

(3) Definition of Good Reason. "**Good Reason**" for you to terminate your employment shall mean the occurrence of any one of the following events without either (x) your express prior written consent or (y) full cure within 30 days after you give written notice to the Company: (i) material diminution in duties or responsibilities; (ii) a material reduction in your salary, except for across-the-board salary reductions similarly affecting all senior executive officers of the Company; (iii) the relocation of your principal office, or principal place of employment, to a location more than fifty (50) miles from the location of your principal office or principal place of business as of the Effective Date; or (iv) a failure to pay you earned compensation; provided however, that no event shall constitute grounds for a Good Reason termination unless you provide written notice to the Company of the event or condition purported to constitute Good Reason within 90 days of the initial existence of such event or condition and you terminate your employment within sixty days after such notice is provided.

Severance Benefits

(1) If, at any time, (i) the Company terminates your employment without Cause, other than as a result of your death or disability or (ii) you terminate your employment for Good Reason during the two-year period following a Change in Control, then you shall receive the following severance benefits (the "**Severance Benefits**"): (i) twelve (12) months of your base salary in effect on the effective date of termination (the "**Termination Date**"), less applicable taxes and withholdings and shall be made in a lump sum payment within 60 days of the Termination Date (ii) one hundred percent (100%) of your target Annual Bonus, paid within 60 days following the Termination Date; (iii) if you timely elect continued coverage under federal COBRA laws or comparable state insurance laws ("**COBRA**"), then the Company shall pay the COBRA premiums necessary to continue your medical and dental insurance coverage in effect for yourself and your eligible dependents beginning the first month following your termination date for **twelve (12)** months of such coverage (provided that such COBRA reimbursement shall terminate on such earlier date as you are no longer eligible for COBRA coverage or you become eligible for group health insurance benefits through a new employer).

(2) Your receipt of the Severance Benefits or CIC Severance Benefits, as applicable, is conditional upon (a) your continuing to comply with your obligations under your Proprietary Information Agreement; and (b) your executing and delivering an effective, general release of all known and unknown claims in favor of Bioventus, in the Company's customary form within 45 days following the Termination Date (and not revoking the release).

Section 409A

Notwithstanding anything herein to the contrary, this Agreement is intended to be interpreted and applied so that the payment of the benefits set forth herein shall either be exempt from the requirements of Section 409A of the Internal Revenue Code of 1986, as amended (the "**Code**") (together with the Department of Treasury Regulations and other guidance thereunder, "**Section 409A**") or shall comply with the requirements of such provision. After the Termination Date, you shall have no duties or responsibilities that are inconsistent with having a "separation from service" (within the meaning of Section 409A) as of the Termination Date and, notwithstanding anything in the Agreement to the contrary, distributions upon termination of employment of nonqualified deferred compensation may only be made upon a "separation from service" (as determined under Section 409A) and such date shall be the Termination Date for purposes of this Agreement. Each payment under this Agreement or otherwise shall be treated as a separate payment for purposes of Section 409A. In no event may you, directly or indirectly, designate the calendar year of any payment to be made under this Agreement which constitutes a "nonqualified deferral of compensation" (within the meaning of Section 409A) and to the extent an amount is payable within a time period, the time during which such amount is paid shall be in the discretion of Bioventus. To the extent that any reimbursements are taxable to you, any such reimbursement payment due to you shall be paid to you on or before the last day of the calendar year following the taxable year in which the related expense was incurred. The reimbursements are not subject to liquidation or exchange for another benefit and the amount of such reimbursements that you receive in one taxable year shall not affect the amount of such reimbursements that you receive in any other taxable year. Notwithstanding any provision to the contrary in this Agreement, if you are deemed at the time of your separation from service to be a "specified employee" for purposes of Section 409A(a)(2)(B)(i) of the Code, to the extent delayed commencement of any portion of the termination benefits to which you are entitled under this Agreement is required in order to avoid a prohibited distribution under Section 409A(a)(2)(B)(i) of the Code, such portion of your termination benefits shall not be provided to you prior to the earlier of (A) the expiration of the six-month period measured from the date of your "separation from service" with the Company or (B) the date of your death; upon the earlier of such dates, all payments deferred pursuant to this sentence shall be paid in a lump sum to you, and any remaining payments due under the Agreement shall be paid as otherwise provided herein.

Compliance with Proprietary Information Agreement and Bioventus Policies

You and the Company acknowledge and agree that you are a party to that certain Proprietary Information, Inventions, Non-Solicitation, and Non-Competition Agreement with Bioventus (the "**Proprietary Information Agreement**") which prohibits unauthorized use or disclosure of Bioventus' proprietary information and contains certain post-employment non-competition and non-solicitation obligations, among other obligations, and that the Proprietary Information Agreement remains in full force and effect; provided that for purposes of the Proprietary Information Agreement on and following the IPO the terms "Company" and "Bioventus" will mean, collectively, Bioventus LLC and Bioventus Inc. In addition, you are expected to comply with the Proprietary Information Agreement and that you will abide by Bioventus' Code of Conduct and Bioventus' policies, as may be changed from time to time at Bioventus' sole discretion.

Non-Disparagement

During and after your employment, you and Bioventus agree not to make any statement that criticizes, ridicules, disparages, or is otherwise derogatory of the other or is reasonably likely to be harmful to you or Bioventus, or to your or Bioventus' respective businesses, business reputations or personal reputations; provided, however, that nothing in this Agreement shall restrict either party from making truthful statements (a) when required by law, subpoena, court order or the like; (b) when requested by a governmental, regulatory, or similar body or entity; (c) in confidence to a professional advisor for the purpose of securing professional advice; (d) in the ordinary course of performing your or its duties during your employment; (e) from rebutting any statement made or written about you or it; or (f) from making normal competitive statements about Bioventus' business or products.

Outside Activities

Throughout your employment with Bioventus, you may engage in civic and not-for-profit activities so long as such activities do not interfere with the performance of your duties hereunder or violate the Bioventus Conflict of Interest Policy.

Assignment

This Agreement may be assigned by Bioventus to a person or entity which is an affiliate or a successor in interest to substantially all of the business operations of Bioventus. Upon such assignment, the rights and obligations of Bioventus hereunder shall become the rights and obligations of such affiliate or successor person. You may not assign your rights or obligations to another entity or person.

Indemnification

You shall be entitled to indemnification to the maximum extent permitted by applicable law and the Bioventus LLC Operating Agreement or Bioventus Inc. Articles of Incorporation or Bylaws, as applicable. At all times during your employment, the Company shall maintain in effect a directors and officers liability insurance policy with you as a covered officer. The Company shall further provide and pay for the defense of any action, arbitration or mediation (collectively, an "**Action**") relative to the lawful performance of your duties or in connection with your employment at the Company and the existence of such Action or defense shall not provide grounds for termination of your employment.

Notice of Immunity

Notwithstanding any provision of this Agreement or the Proprietary Information Agreement to the contrary, (i) you shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that is made in confidence to a Federal, State, or local government official or to an attorney solely for the purpose of reporting or investigating a suspected violation of law; (ii) you shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal; and (iii) if you file a lawsuit for retaliation by an employer for reporting a suspected violation of law, you may disclose the trade secret to your attorney and use the trade secret information in the court proceeding, if you file any document containing the trade secret under seal; and do not disclose the trade secret, except pursuant to court order.

Section 280G Parachute Payments

Notwithstanding any other provision in this Agreement to the contrary, in the event that any payment or benefit received or to be received by you in connection with a Change in Control or otherwise would be considered an "excess parachute payment" within the meaning of Section 280G of the Code, then such payments and benefits will either be (i) delivered in full or (ii) reduced by the minimum amount necessary so that all of the remaining payments and benefits will not be subject to the excise tax imposed by Section 4999 of the Code, whichever of the foregoing (i) or (ii) results in the greater net after-tax value of payment and benefits to you. All determinations regarding the application of this paragraph shall be made by an accounting firm or consulting group with experience in performing calculations regarding the applicability of Sections 280G and 4999 of the Code selected by the Company, and all associated costs will be borne by the Company.

Compensation Recovery Policy

You acknowledges and agree that, to the extent the Company adopts any clawback or similar policy pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act or otherwise, and any rules and regulations promulgated thereunder, you will take all action necessary or appropriate to comply with such a clawback policy (including, without limitation, entering into any further agreements, amendments or policies necessary or appropriate to implement and/or enforce such policy).

Miscellaneous

This Agreement, together with your Proprietary Information Agreement and all applicable equity award agreements, forms the complete and exclusive statement of your employment agreement with Bioventus. Changes in your employment terms, other than those changes expressly reserved to Bioventus' discretion in this Agreement, require a written modification approved by Bioventus. This Agreement will bind the heirs, personal representatives, successors and assigns of both you and Bioventus, and inure to the benefit of both you and Bioventus, their heirs, successors and assigns. If any provision of this Agreement is determined to be invalid or unenforceable, in whole or in part, this determination shall not affect any other provision of this Agreement and the provision in question shall be modified so as to be rendered enforceable in a manner consistent with the intent of the parties insofar as possible under applicable law. This Agreement shall be construed and enforced in accordance with the laws of the State of North Carolina without regard to conflicts of law principles. The parties hereby irrevocably submit to the jurisdiction of the state and federal courts of North Carolina located in or about Raleigh and waive any claim or defense of inconvenient or improper forum or lack of personal jurisdiction under any applicable law or decision. Any ambiguity in this Agreement shall not be construed against either party as the drafter. Any waiver of a breach of this Agreement, or rights hereunder, shall be in writing and shall not be deemed to be a waiver of any successive breach or rights hereunder. This Agreement may be executed in counterparts which shall be deemed to be part of one original, and facsimile or pdf signatures shall be equivalent to original signatures.

I am very pleased to offer you this new position at Bioventus and look forward to your acceptance within the next **5 days** if you accept under the terms described above. I would be happy to discuss any questions that you may have about the terms of the offer. It will be a pleasure to work with you in your new role and create the future of Bioventus.

Sincerely,

/s/ Anthony P. Bihl III

Anthony P. Bihl III
Chief Executive Officer

Understood and Accepted:

/s/ Gregory Anglum	8/3/2017
Gregory Anglum	**Date**

**PROPRIETARY INFORMATION, INVENTIONS,
NON-SOLICITATION, AND NON-COMPETITION AGREEMENT**

In consideration of my initial offer of employment, by Bioventus LLC, its subsidiaries, parents, affiliates, successors and assigns (together, the "**Company**") and the compensation paid to me, I hereby enter into this Proprietary Information, Inventions, Non-Competition and Non-Solicitation Agreement (the "**Agreement**") and agree as follows:

1. NONDISCLOSURE.

1.1 Recognition of Company's Rights. At all times during my employment and thereafter, I will hold in strictest confidence and will not disclose or use any of the Company's Proprietary Information (defined below), except as such disclosure or use may be required in connection with my work for the Company, or unless an officer of the Company expressly authorizes such in writing. I hereby assign to the Company any rights I may have or acquire in such Proprietary Information and recognize that all Proprietary Information shall be the sole property of the Company. I will take all reasonable precautions to prevent the inadvertent or accidental disclosure of Proprietary Information.

1.2 Proprietary Information. The term "**Proprietary Information**" shall mean any and all confidential and/or proprietary knowledge, data or information of the Company, its affiliates, parents and subsidiaries, whether having existed, now existing, or to be developed during my employment. By way of illustration but not limitation, "**Proprietary Information**" includes (a) trade secrets, inventions, ideas, processes, formulas, discoveries, developments, designs and techniques and any other proprietary technology and all Proprietary Rights (defined below) therein (hereinafter collectively referred to as "**Inventions**"); (b) information regarding research, development, new products, marketing and selling, business plans, budgets and financial statements, licenses, prices and costs, discounts, credit terms, pricing and billing policies, quoting procedures, methods of obtaining or conducting business, forecasts, future plans and potential strategies, financial projections and business strategies, operational plans, financing and capital-raising plans, activities and agreements, internal services and operational manuals, suppliers and supplier information, and purchasing; (c) information regarding customers and potential customers of the Company, including customer lists, names, representatives, their needs or desires with respect to the types of products or services offered by the Company, proposals, bids, contracts and their contents and parties, the type and quantity of products and services provided or sought to be provided to customers and potential customers of the Company and other related non-public information; (d) information regarding any of the Company's business partners and their services, including names, representatives, proposals, bids, contracts and their contents and parties, the type and quantity of products and services received by the Company, and other related non-public information; (e) information regarding personnel, employee lists, and employee skills; and (f) any other non-public information which a competitor of the Company could use to the competitive disadvantage of the Company. Notwithstanding the foregoing, I am free to use information which is generally known in the trade or industry through no breach of this Agreement or other act or omission by me. If an additional time limitation on this restriction is required in order for it to be enforceable then this restriction shall be limited to a period of two years following the termination of my employment for any information that does not qualify as a trade secret. Trade secret information will remain protected at all times and nothing herein shall be construed to reduce or diminish the applicability of trade secret protections, statutory or common law, that apply to the Company's trade secrets independent from this Agreement.

1.3 Third Party Information. I understand that the Company has received and in the future will receive from third parties confidential and/or proprietary knowledge or information ("**Third Party Information**"). During my employment and thereafter, I will hold Third Party Information in the strictest confidence and will not disclose to anyone (other than Company personnel who need to know such information in connection with their work for the Company) or use, except in connection with my work for the Company, Third Party Information unless expressly authorized by an officer of the Company in writing.

1.4 Protected Conduct. I acknowledge and agree that if I am compelled to disclose information via court order, subpoena, or other legal mandate, I will give the Company as much written notice as possible under the circumstances, will refrain from use or disclosure for as long as the law allows, and will cooperate with the Company to protect such information, including taking every reasonable step to protect against unnecessary disclosure. However, nothing in this Agreement, including the foregoing, prevents me from communicating with the EEOC, the SEC, the DOL, or any other governmental authority, making a report in good faith and with a reasonable belief of any violations of law or regulation to a governmental authority, or cooperating with or participating in a legal proceeding relating to such violations.

1.5 Notice Under the 2016 Defend Trade Secrets Act. I acknowledge that I am hereby provided notice that under the 2016 Defend Trade Secrets Act (DTSA): (1) no individual (consultant, contractor or employee) will be held criminally or civilly liable under Federal or State trade secret law for the disclosure of a trade secret (as defined in the Economic Espionage Act) that: (A) is made **in confidence to** a Federal, State, or local government official, either directly or indirectly, or to an attorney; and made **solely for the purpose of** reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, **if such filing is made under seal** so that it is not made public; and (2) an individual (consultant, contractor or employee) who pursues a lawsuit for retaliation for reporting a suspected violation of the law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual files any document contain the trade secret under seal, and does not disclose the trade secret, except as permitted by court order.

2. ASSIGNMENT OF INVENTIONS.

2.1 Prior Inventions. Inventions, if any, patented or unpatented, which I made prior to the commencement of my employment with the Company are excluded from the scope of this Agreement. To preclude any possible uncertainty, I have set forth on *Exhibit A* complete list of all Inventions that I have, alone or jointly with others, conceived or developed prior to the commencement of my employment with the Company, that I consider to be my property or the property of third parties, and that I wish to have excluded from the scope of this Agreement (collectively referred to as "**Prior Inventions**"). If no such disclosure is attached, I represent that there are no Prior Inventions. I agree that I will not incorporate, or permit to be incorporated, Prior Inventions in any Company Inventions without the Company's prior written consent.

2.2 Assignment of Inventions. Subject to Subsection 2.3, I do hereby assign to the Company all my right, title and interest in and to all Inventions (and all Proprietary Rights with respect thereto) made or conceived or learned by me, either alone or jointly with others, during the period of my employment with the Company. Inventions assigned to the Company, or to a third party as directed by the Company pursuant to this Section 2, are hereinafter referred to as "**Company Inventions**." The term "**Proprietary Rights**" shall mean all trade secrets, patents, copyrights, trademarks and other intellectual property rights throughout the world.

2.3 Unassigned or Nonassignable Inventions. This Agreement does not apply to an Invention which qualifies fully as a nonassignable invention under: North Carolina Statute §§ 66.57.1 and 66.57.2; California Labor Code §2870; Delaware Code Title 19 Section 805; Illinois 765ILCS1060/1-3, "Employees Patent Act"; Kansas Statutes Section 44-130; Minnesota Statutes 13A Section 181.78; Utah Code Sections 34-39-1 through 34-39-3, "Employee Inventions Act"; Washington Rev. Code, Title 49 RCW: Labor Regulations Chapter 49.44.140. I have reviewed the notification in paragraph 3 of *Exhibit A* and agree that my signature acknowledges receipt of the notification.

3. NON-SOLICITATION. During my employment and for a period of twelve (12) months following the termination of my employment with the Company for any reason, I shall not, directly or indirectly:

3.1 solicit or attempt to solicit any Contractor (defined below) of the Company where such solicitation would interrupt or impede the Company's relationship with such Contractor;

3.2 solicit or attempt to solicit any Customer (defined below) to terminate, diminish, or materially alter in a manner harmful to the Company its relationship with the Company for any purpose, including, but not limited to, the purpose of associating with or becoming a Customer of a Competing Business (defined below); or

3.3 solicit or attempt to solicit, any Contractor to terminate, diminish, or materially alter in a manner harmful to the Company its relationship with the Company for any purpose, including, but not limited to, the purpose of associating with or becoming a contractor of a Competing Business.

3.4 If the choice of law provision in Section 6.1 is deemed not to apply: the provisions in Sections 3.1, 3.2, and 3.3 shall only apply to employees residing in California to the extent such employee's conduct is aided by the use or disclosure of the Company's trade secrets (as defined by California law); the provisions in Sections 3.1, 3.2, and 3.3. shall only apply within the Restricted Area (as defined below) for employees residing in Arizona; and for employees residing in Louisiana, the provisions in Sections 3.1, 3.2, and 3.3 shall only apply within the Restricted Area (defined below).

3.5 For purposes of this Agreement, a "***Customer***" is any person or entity who or which, at any time during the Look Back Period (as defined below): (i) (a) was in direct contact with me; (b) was an entity as to which I supervised the Company's business dealings; or (c) was an entity about which I acquired Proprietary Information, and that contracted for or received from the Company any product, service or process; or (ii) was solicited by the Company or in consideration or planning to be solicited by the Company in an effort in which I was involved or as to which I acquired Proprietary Information. If the choice of law provision in Section 6.1 is deemed not to apply: for employees in Nebraska, the definition of "Customer" is limited to Section 3.5(i)(a); and for employees in Oklahoma, "Customer" shall be further limited to the Company's established customers (a customer will be presumed to be "established" where actual sales and/or services have occurred or been performed in the preceding year and/or where there is an active proposal for sales or services pending as of the date employee's employment with Company ends).

3.6 For purposes of this Agreement, "***Contractor***" shall mean consultants or independent contractors with whom the Company had a contractual relationship during the Look Back Period and as to which I (a) had material contact or (b) received Proprietary Information during the Look Back Period. If the choice of law provision in Section 6.1 is deemed not to apply, for employees in Nebraska, the definition of "Contractor" is limited to Section 3.6(a).

3.7 For purposes of this Agreement, "***Conflicting Services***" means any product, service, or process of any person or organization other than the Company that directly competes with a product, service, or process offered by the Company as to which I had material involvement or about which I acquired Proprietary Information during the Look Back Period.

3.8 For purposes of this Agreement, "***Competing Business***" means a person or entity in the business of providing Conflicting Services.

3.9 For purposes of this Agreement: (a) for sales employees, "***Restricted Area***," means such employee's assigned sales territory during the Look Back Period and/or the geographic area as to which such employee supervised sales activities during the Look Back Period; and (b) for all other employees, "***Restricted Area***" means the United States, including the State of North Carolina. If the choice of law provision in Section 6.1 is deemed not to apply, for employees in Louisiana, Restricted Area refers to the parishes within Louisiana and the counties outside of Louisiana that are identified in Exhibit D.

3.10 For purposes of this Agreement, "***Look Back Period***" means the one (1) year period immediately prior to the date my employment with the Company ends (whatever the cause) or such shorter period as I have been employed.

4. NON-INTERFERENCE. During the period of my employment with the Company and for twelve (12) months thereafter, I shall not, directly or indirectly, solicit or attempt to solicit, any person known to me to be an employee of the Company to terminate his or her employment or other relationship with the Company for any purpose whatsoever.

5. NON-COMPETE PROVISION. I agree that for the one (1) year period after the date my employment ends for any reason, I will not, directly or indirectly, as an officer, director, employee, consultant, owner, partner, or in any other capacity, solicit, perform, or provide, or attempt to perform or provide, services that are the same or similar in function or purpose to the services I provided the Company during the Look Back Period to a Competing Business in the Restricted Area. If the choice of law provision in Section 6.1 is deemed not to apply, the foregoing provision shall not apply to employees residing in California, Oklahoma, and North Dakota. Further, the foregoing provision shall not apply, regardless of where said employee resides, to individuals who are hourly, non-exempt employees of the Company.

6. General Provisions.

6.1 Governing Law; Consent to Personal Jurisdiction. This Agreement will be governed by and construed according to the laws of the State of North Carolina as such laws are applied to agreements entered into and to be performed entirely within North Carolina between North Carolina residents. I hereby expressly consent to the personal jurisdiction and exclusive and mandatory venue of the state and federal courts located in North Carolina for any lawsuit arising from or related to this Agreement.

6.2 Severability. In case any one or more of the provisions, subsections, or sentences contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. If moreover, any one or more of the provisions contained in this Agreement shall for any reason be held to be excessively broad as to duration, geographical scope, activity or subject, it shall be construed by limiting and reducing it (where allowed by applicable law), so as to be enforceable to the extent compatible with the applicable law as it shall then appear.

6.3 Employment At-Will. I agree and understand that nothing in this Agreement shall change my at-will employment status or confer any right with respect to continuation of employment by the Company, nor shall it interfere in any way with my right or the Company's right to terminate my employment at any time, with or without cause or advance notice.

6.4 Advice of Counsel. I ACKNOWLEDGE THAT, IN EXECUTING THIS AGREEMENT, I HAVE HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT LEGAL COUNSEL, AND I HAVE READ AND UNDERSTOOD ALL OF THE TERMS AND PROVISIONS OF THIS AGREEMENT. THIS AGREEMENT SHALL NOT BE CONSTRUED AGAINST ANY PARTY BY REASON OF THE DRAFTING OR PREPARATION HEREOF.

6.5 Entire Agreement. This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior discussions between us. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing and signed by the party to be charged. Any subsequent change or changes in my employment status, duties, salary or compensation will not affect the validity or scope of this Agreement.

6.6 Notice to New Employer. I will provide a copy of this Agreement to any person, firm, association, or corporation that I intend to be employed by, associated with, or provide consulting services for in order to insure compliance with this Agreement. I understand that both the Company and I have the right to provide another party an opinion about interpretation and/or application of this Agreement; I consent to such communications, and agree not to assert a claim of wrongdoing by the Company as a result of such a communication.

6.7 Tolling. If I fail to comply with a timed restriction in this Agreement, the time period for that will be extended by one day for each day I am found to have violated the restriction, up to a maximum of one (1) year. This provision shall not apply to employees residing in Georgia or Wisconsin if the choice of law provision in Section 6.1 is deemed not to apply.

I HAVE READ THIS AGREEMENT CAREFULLY AND UNDERSTAND ITS TERMS. I HAVE COMPLETELY FILLED OUT EXHIBIT A TO THIS AGREEMENT.

/s/ Gregory Anglum
Gregory Anglum

ACCEPTED AND AGREED TO:

Bioventus LLC

By: /s/ Sharon Dearing

Title:

EXHIBIT A
PREVIOUS INVENTIONS

TO: **BIOVENTUS LLC**

FROM: **Gregory Anglum**

DATE: **August 7, 2017**

SUBJECT: **Previous Inventions**

1. Except as listed in Section 2 below, the following is a complete list of all inventions or improvements relevant to the subject matter of my employment by Bioventus, LLC (the "**Company**") that have been made or conceived or first reduced to practice by me alone or jointly with others prior to my engagement by the Company:

☐ No inventions or improvements.

☐ See below:

_____

_____

_____

☐ Additional sheets attached.

2. Due to a prior confidentiality agreement, I cannot complete the disclosure under Section 1 above with respect to inventions or improvements generally listed below, the proprietary rights and duty of confidentiality with respect to which I owe to the following party(ies):

	Invention or Improvement	Party(ies)	Relationship
1.			
2.			
3.			

☐ Additional sheets attached.

3. Limited Exclusion Notification.

NOTICE TO NORTH CAROLINA, DELAWARE, ILLINOIS, AND KANSAS RESIDENTS: THIS IS TO NOTIFY you in accordance with North Carolina General Statute Sections 66.57.1 and 66.57.2; Delaware Code Title 19 Section 805; Illinois 765ILCS1060/1-3, "Employees Patent Act"; and Kansas Statutes Section 44-130, that the foregoing Agreement between you and the Company does not require you to assign or offer to assign to the Company any invention that you developed entirely on your own time without using the Company's equipment, supplies, facilities or trade secret information except for those inventions that either:

a. Relate at the time of conception or reduction to practice of the invention to the Company's business, or actual or demonstrably anticipated research or development of the Company; or

b. Result from any work performed by you for the Company.

To the extent a provision in the foregoing Agreement purports to require you to assign an invention otherwise excluded from the preceding paragraph, the provision is against the public policy of this state and is unenforceable. You shall have the burden of establishing that any invention is excluded from assignment to the Company by the preceding paragraph.

This limited exclusion does not apply to any patent or invention covered by a contract between the Company and the United States or any of its agencies requiring full title to such patent or invention to be in the United States.

NOTICE TO MINNESOTA RESIDENTS: Notification is hereby given pursuant to Minnesota Statutes 13A Section 181.87 that no provision in this Agreement requires you to assign any of your rights to an invention for which no equipment, supplies, facility, or trade secret information of the Company was used and which was developed entirely on your own time, and (a) which does not relate (i) directly to the business of the Company, or (ii) to the Company's actual or demonstrably anticipated research or development, or (b) which does not result from any work performed by you for the Company.

NOTICE TO WASHINGTON RESIDENTS: Notification is hereby given pursuant to Washington Revised Code, Title 49 RCW: Labor Regulations Chapter 49.44.140, that no provision in this Agreement applies to an Invention for which no equipment, supplies, facility, or trade secret information of Company was used and which was developed entirely on your own time, unless (a) the invention relates (i) directly to the business of Company or (ii) to Company's actual or demonstratively anticipated research or development, or (b) the invention results from any work performed by you for Company.

NOTICE TO CALIFORNIA RESIDENTS: Notification is hereby given pursuant to California Labor Code Section 2870, that the assignment of invention provisions in this Agreement do not apply to an invention that was developed entirely on an employee's own time without using the Company's equipment, supplies, facilities, or trade secret information except for those inventions that either: (1) relate at the time of conception or reduction to practice of invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or (2) result from any work performed by the employee for the employer.

NOTICE TO UTAH RESIDENTS: Notification is hereby given pursuant to Utah Code Sections 34-39-1 through 34-39-3, that no provision in this Agreement requires you to assign any of your rights to an invention which was created entirely on your own time, and which is not (a) conceived, developed, reduced to practice, or created by you (i) within the scope of your employment with the Company, (ii) on the Company's time, or (iii) with the aid, assistance, or use of any of the Company's property, equipment, facilities, supplies, resources, or patents, trade secrets, know-how, technology, confidential information, ideas, copyrights, trademarks and service marks and any and all rights, applications and registrations relating to them, (b) the results of any work, services, or duties performed by you for the Company, (c) related to the industry or trade of the Company, or (d) related to the current or demonstrably anticipated business, research, or development of the Company.

EXHIBIT B
2017 BIWEEKLY PAYROLL SCHEDULE

Payroll Payment Date	OT Eligible Employees (Begin/End)		Non-OT Eligible Employees (Begin/End)		Monthly Commission Distribution for Sales Representatives
1/13/2017	12/25/2016	1/7/2017	1/1/2017	1/14/2017	n/a
1/27/2017	1/8/2017	1/21/2017	1/15/2017	1/28/2017	Paid for P12 2016
2/10/2017	1/22/2017	2/4/2017	1/29/2017	2/11/2017	n/a
2/24/2017	2/5/2017	2/18/2017	2/12/2017	2/25/2017	Paid for P1 2017
3/10/2017	2/19/2017	3/4/2017	2/26/2017	3/11/2017	n/a
3/24/2017	3/5/2017	3/18/2017	3/12/2017	3/25/2017	Paid for P2 2017
4/7/2017	3/19/2017	4/1/2017	3/26/2017	4/8/2017	n/a
4/21/2017	4/2/2017	4/15/2017	4/9/2017	4/22/2017	Paid for P3 2017
5/5/2017	4/16/2017	4/29/2017	4/23/2017	5/6/2017	n/a
5/19/2017	4/30/2017	5/13/2017	5/7/2017	5/20/2017	Paid for P4 2017
6/2/2017	5/14/2017	5/27/2017	5/21/2017	6/3/2017	n/a
6/16/2017	5/28/2017	6/10/2017	6/4/2017	6/17/2017	Paid for P5 2017
6/30/2017	6/11/2017	6/24/2017	6/18/2017	7/1/2017	n/a
7/14/2017	6/25/2017	7/8/2017	7/2/2017	7/15/2017	Paid for P6 2017
7/28/2017	7/9/2017	7/22/2017	7/16/2017	7/29/2017	n/a
8/11/2017	7/23/2017	8/5/2017	7/30/2017	8/12/2017	n/a
8/25/2017	8/6/2017	8/19/2017	8/13/2017	8/26/2017	Paid for P7 2017
9/8/2017	8/20/2017	9/2/2017	8/27/2017	9/9/2017	n/a
9/22/2017	9/3/2017	9/16/2017	9/10/2017	9/23/2017	Paid for P8 2017
10/6/2017	9/17/2017	9/30/2017	9/24/2017	10/7/2017	n/a
10/20/2017	10/1/2017	10/14/2017	10/8/2017	10/21/2017	Paid for P9 2017
11/3/2017	10/15/2017	10/28/2017	10/22/2017	11/4/2017	n/a
11/17/2017	10/29/2017	11/11/2017	11/5/2017	11/18/2017	Paid for P10 2017
12/1/2017	11/12/2017	11/25/2017	11/19/2017	12/2/2017	n/a
12/15/2017	11/26/2017	12/9/2017	12/3/2017	12/16/2017	Paid for P11 2017
12/29/2017	12/10/2017	12/23/2017	12/17/2017	12/30/2017	n/a

EXHIBIT C
VACATION POLICY

Policy

Bioventus recognizes the value of rest and relaxation away from work and, therefore, offer employees paid time off for vacation each year. Vacation is available to full-time and part-time employees to provide time away from their duties at work.

Scope

This policy applies to full-time and part-time employees.

Procedure/Guidelines

Vacation Accrual

Employees accrue vacation days beginning in the month of hire. Employees may begin using vacation time when accrual begins. Vacation time is accrued on the last day of each calendar month.

Full-time employees accrue vacation time based on continuous employment as follows: (Part-time employees accrue vacation time pro-rated to 50% of full-time employee accrual rates.)

Years of Service	Vacation Accrual
Less than five (5) years	1.25 days (10) hours per month, up to fifteen (15) days (120 hours) per calendar year. Accrual beginning the month of hire.
Five (5) years or greater, but less than twelve (12) years	1.41 days (11.33) hours per month, up to seventeen (17) days (136 hours) per calendar year. If hired in the months of January through August, accrual begins on January 1st of the 5th year anniversary. If hired in the months of September through December, accrual begins on January 1st of the year following the 5th year anniversary.
Twelve (12) years or greater, but less than twenty (20) years	1.67 days (13.34) hours per month, up to twenty (20) days (160 hours) per calendar year. If hired in the months of January through August, accrual begins on January 1st of the 5th year anniversary. If hired in the months of September through December, accrual begins on January 1st of the year following the 12th year anniversary.

Years of Service	Vacation Accrual
Twenty (20) years and greater	2.08 days (16.67) hours per month, up to twenty five (25) days (200 hours) per calendar year. If hired in the months of January through August, accrual begins on January 1st of the 5th year anniversary. If hired in the months of September through December, accrual begins on January 1st of the year following the 20th year anniversary.

Vacation Year

The twelve (12) month vacation accrual period will begin January 1 and end December 31. Vacation time must be taken during the calendar year in which time is accrued. Vacation time may not be carried forward into a new calendar year except as required by state law. If carryover is permitted, the number of accrued vacation hours is limited to no more than one and one-half (1.5) times the amount of time available to be accrued by the employee in the calendar year.

Vacation Scheduling

Employees must take vacation time in increments of one (1) hour except when used in conjunction with family medical leave. Use of vacation time must be approved by the appropriate manager. To take vacation, employees should request approval from their managers through Workday as far in advance as possible to ensure adequate coverage of job and staff requirements. Single vacation day requests may be considered, provided the manager receives a minimum twenty-four (24) hours' notice.

Vacation time is granted when convenient during the vacation year, considering both the wishes of the employee and the business needs of the Company. As stated previously, employees are encouraged to use accrued vacation days for rest, relaxation, and personal pursuits as time away from their employment duties.

Employees are permitted to use accrued vacation time, but not to exceed the maximum number of days/hours for which they are eligible in the vacation year.

If a paid holiday occurs during an employee's vacation, the employee will be paid for the holiday and will not be charged for vacation time.

Vacation time will be counted as hours worked for the purpose of calculating overtime.

Vacation Tracking

All employees must record vacation time in Workday, the Company approved Human Resources Information System (HRIS). Managers are responsible for ensuring employees record their vacation time accurately in Workday as it serves as the official record for the Company. Failure to do so may result in disciplinary action.

Vacation Pay

Vacation pay is calculated on the employee's current rate of base pay including commissions and shift differential (if applicable) in effect when the vacation is taken. It does not include overtime or special forms of compensation such as incentives and bonuses.

Vacation Year-end Payout

Vacation time may not be carried forward into a new calendar year except as required by state law. Hourly non-exempt employees will receive cash compensation for unused accrued vacation time at year end. Salaried non-exempt and salaried exempt employees will not receive cash compensation unless approved by the Head of Human Resources or unless they work in California, Montana, Nebraska or Colorado.

Leave of Absence

Employees continue to accrue vacation time while on approved FMLA leave. However, employees on other leaves of absence will not accrue vacation time.

Payment for Vacation upon Termination

If an individual uses anticipated accrued vacation prior to actually accruing the amount for the same twelve (12) month period and separation occurs, unaccrued vacation days will be deducted from total termination pay per appropriate state law. If an employee works in a state where this practice is prohibited, the Company will request that the employee make a payment to the Company for all vacation time taken prior to the time it was accrued. Upon termination of employment, employees will be paid for unused accrued vacation days that have been accrued through the last day of work.

Revision History

Current Version	Major Change	Reason for Change
1.0	Roll out of vacation policy	New policy
2.0	Corrected data under vacation accruals	Corrected administrative error.
3.0	Change in the vacation accrual cap for employees in states that require carry-over	Update to policy

Exhibit 10.38

Bioventus LLC
4721 Emperor Blvd., Suite 100
Durham, NC 27703
USA

1-919-474-6700
1-800-396-4325
www.BioventusGlobal.com

October 3, 2018

Susan Stalnecker

Dear Susan:

On behalf of the Board of Managers of Bioventus LLC ("Bioventus"), I am pleased to confirm our offer for you to join our Board, effective with our next meeting, November 28-29, 2018 in New York City. I look forward to working closely with you to continue building a market leading company in orthobiologics. This letter outlines the terms and conditions of your appointment.

As a Member of the Board of Managers, you will be expected to attend Board meetings and will have such other duties and responsibilities as are customarily imposed on directors and as described in the Amended and Restated Limited Liability Company Agreement of Bioventus, as it may be further amended from time to time (the "LLC Agreement"). You will continue to serve on the Board until such time that your appointment is terminated either by you by the delivery of a signed notice of resignation to Bioventus or by the Board of Managers in accordance with the terms and conditions of the LLC Agreement.

In consideration of your services as a Member of the Board, Bioventus will (a) pay you an annual retainer fee of $50,000 as a Member, as well as an additional sum of $10,000 for your participation on the Audit Committee, all payable in quarterly installments in arrears and pro-rated for any partial period of service, and (b) grant you 50,000 phantom profits interest units under the Bioventus Phantom Profits Interests Plan (the terms and conditions of which shall be set forth in a separate award agreement). In addition, Bioventus will reimburse you in accordance with the applicable company policy for reasonable travel and other out-of-pocket expenses incurred in connection with your service on the Board.

As a Member of the Board, you will be entitled to coverage under the directors' and officers' liability insurance policy maintained by Bioventus and you will be subject to and comply with all Board policies as may be adopted from time to time, including without limitation, our Code of Conduct. You agree that all information acquired during your appointment is confidential to Bioventus and should not be used for your own benefit or disclosed to third parties either during your appointment or following its termination without the prior written consent of Bioventus except as required by law to discharge your duties.

During your tenure as a Member of the Board, you will at all times and for all purposes be acting as an independent contractor and not as an employee of Bioventus. Accordingly, you will not be eligible to participate in employee benefit plans provided by Bioventus to its employees and Bioventus will not, on your account, (i) pay any unemployment tax or other taxes required under the law to be paid with respect to employees or (ii) withhold any monies from any compensation paid to you for income or employment tax purposes. Board-member compensation is established by the Board and, notwithstanding this letter, it may be revised at any time and from time to time.

Please confirm that the foregoing reflects your understanding by signing and returning to us the enclosed duplicate of this letter at your earliest convenience.

Susan, I am very excited about our future with you as a Member of our Board of Managers. Please feel free to contact me should you wish to discuss any aspect of this opportunity or of your service on the Board.

Sincerely,

/s/ Williams A. Hawkins, III
William A. Hawkins, III
Chairman, Bioventus Board of Managers

Accepted and Agreed

/s/ Susan Stalnecker
Susan Stalnecker

10/14/2018
Date

Exhibit 10.39

Bioventus LLC
4721 Emperor Blvd., Suite 100
Durham, NC 27703
USA

1-919-474-6700
1-800-396-4325
www.BioventusGlobal.com

March 12, 2020

Ken Reali

Re: **Employment Offer**

Dear Ken,

I am pleased to offer you employment at Bioventus LLC ("**Bioventus**"or the "**Company**") on the terms set forth in this offer letter agreement (the "**Agreement**"). This Agreement will be effective on **April 20, 2020** or a mutually agreed upon date and is contingent upon approval of the Board of Managers of Bioventus (the "**Board**"), favorable background checks and drug screen results, and the execution of the enclosed Proprietary Information, Inventions, Non-Solicitation and Non-Compete Agreement and satisfactory review of any non-compete clauses in contracts from past employment.

Employment and Duties

You will be employed in the role of **Chief Executive Officer** and you shall perform the duties of this role as are customary and as may be required by Bioventus. You will report to the Board and you will be based at the headquarters of Bioventus currently located in Durham, NC.

You shall have such duties and responsibilities, commensurate with your position, as may be reasonably assigned to you from time to time by the Board, or which are in accordance with the delegations of authority set out by the Board.

During your employment with Bioventus, you will devote your full-time best efforts and business time and attention to the business of Bioventus.

At-Will Employment Relationship

You may terminate your employment with Bioventus at any time and for any reason whatsoever simply by notifying Bioventus. Likewise, Bioventus may terminate your employment at any time, with or without Cause, and with or without advance notice. Your employment at-will status can only be modified in a written agreement approved by Bioventus and signed by you and a duly authorized member of Bioventus.

Base Salary, Signing Bonus, and Employee Benefits

Your base salary will be paid at the annual rate of **$615,000** less payroll deductions and withholdings. You will be paid your base salary on a bi-weekly basis, on Bioventus' normal payroll schedule. You will be reimbursed for expenses that are normal and customary for your role and follow applicable Bioventus policies. As an exempt salaried employee, you will be required to work Bioventus' normal business hours, and such additional time as appropriate for your work assignments and position. You will not be eligible for overtime premiums.

You will also be eligible to receive a grant of **417,804** Phantom Profits Interest Units within 30 days of your start date and a copy of the plan will be made available for your review.

You will be eligible to participate in Bioventus' health and welfare, group insurance, retirement and other employee benefit plans, programs and arrangements (pursuant to the terms and conditions of the benefit plans and applicable policies) as are made generally available from time to time to executives of the Company.

You will be eligible for **twenty-five** days of vacation per year. For 2020, your vacation will be prorated to 18 days.

Annual Performance Bonus and Merit Planning

In this position, you will be eligible to participate in the Bioventus Executive Non-Commercial Annual Incentive Plan or any sub-plan thereof or any other bonus program as determined by the Company and/or Bioventus from time to time (the "**Executive Non-Commercial Annual Incentive Plan**") at an annual target of one hundred percent **(100%)** of your annual base salary (the "**Annual Incentive Plan**"). For the 2020 plan year your payment will be prorated based on your length of employment with Bioventus. The Plan may include components of your personal performance as well as Bioventus' business objectives. The terms and conditions of your Annual Incentive Plan will be set forth in the Plan documents.

Your performance will be reviewed on a yearly basis by the Board. At that time, your salary will be reviewed along with your performance to determine any adjustment to your base salary.

Relocation

This offer will require that you relocate to Raleigh/Durham area. Bioventus will pay a one-time lump sum payment of **$225,000** (gross) within thirty (30) days of hire to cover the sale of your home in , transportation and storage of household goods, and purchase a home in the Raleigh/Durham area. You will also be allowed additional support for up to 6 months for temporary living of no more than **$25,000**.

Within 24 months after signing this offer, if for any reason you voluntarily resign or your employment at Bioventus is terminated for cause, it is understood that you will reimburse the company for the cost of relocation that was paid to you on a prorated basis. For purpose of this provision, "**Cause**" is defined below under **Certain Definitions**.

Certain Definitions

For purposes of this Agreement, the following definitions will apply:

(1) Definition of Change in Control. A "**Change in Control**" shall mean the first to occur of any of the following: (A) any "person"(as such term is used in sections 13(d) and 14(d) of the Securities Exchange Act of 1934 (the "**Exchange Act**")) (other than persons who are owners of the Company on the Effective Date or its affiliates or permitted transferees) becomes a "beneficial owner"(as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of interests in the Company representing more than 50% of the voting power of the then outstanding interests in the Company; provided that a Change in Control shall not be deemed to occur as a result of a change of ownership resulting from the death of an owner, and a Change in Control shall not be deemed to occur as a result of a transaction in which the Company becomes a subsidiary of another company and in which the owners of the Company, immediately prior to the transaction, will beneficially own, immediately after the transaction, interests entitling such owners to more than 50% of all votes to which all owners of the parent company would be entitled in the election of members (without consideration of the rights of any class of membership interests to elect members by a separate class vote); or (B) the consummation of (i) a merger or consolidation of the Company with another company where the owners of the Company, immediately prior to the merger or consolidation, will not beneficially own, immediately after the merger or consolidation, membership interests (or other equity instruments) entitling such persons to more than 50% of all votes to which all owners of the surviving company would be entitled in the election of members (without consideration of the rights of any class of membership interests to elect members by a separate class vote); (ii) a sale or other disposition of all or substantially all of the assets of the Company; or (iii) a liquidation or dissolution of the Company; or (C) during any 12-month period, a majority of the members of the Company's Board is replaced by individuals whose appointment or election is not endorsed by a majority of the members of the Company's Board immediately prior to the date of appointment or election.

(2) Definition of Cause. "**Cause**"for the Company to terminate your employment shall exist if any of the following occurs: (A) your being convicted (including a guilty plea or plea of nolo contendere) of any felony or any other crime involving fraud, violence or dishonesty; (B) your commission of or participation in a fraud or act of dishonesty or misrepresentation against the Company; (C) your material violation of any written and fully executed contract or agreement between you and the Company, including without limitation, breach of your Proprietary Information, Inventions, Non-Competition and Non-Solicitation Agreement (the "**Proprietary Information Agreement**"); (D) your gross negligence or willful misconduct; (E) your continued and substantial failure to perform your duties to the Company set forth herein at a level commensurate with your position; or (F) your violation of any material policies, practices, or procedures of Bioventus.

(3) Definition of Good Reason. "**Good Reason**" for you to terminate your employment shall mean the occurrence of any one of the following events without either (x) your express prior written consent or (y) full cure within 30 days after you give written notice to the Company: (i) material diminution in duties or responsibilities; (ii) a material reduction in your salary, except for across-the-board salary reductions similarly affecting all senior executive officers of the Company; (iii) the relocation of your principal office, or principal place of employment, to a location more than fifty (50) miles from the location of your principal office or principal place of business as of the Effective Date; or (iv) a failure to pay you earned compensation; provided however, that no event shall constitute grounds for a Good Reason termination unless you provide written notice to the Company of the event or condition purported to constitute Good Reason within 90 days of the initial existence of such event or condition and you terminate your employment within sixty days after such notice is provided.

Severance Benefits

(1) If, at any time, the Company terminates your employment without Cause, other than as a result of your death or disability, then you shall receive the following severance benefits (the "**Severance Benefits**"): (i) **twelve (12) months** of your base salary in effect on the effective date of termination (the "**Termination Date**"), less applicable taxes and withholdings and shall be made in a lump sum payment within 60 days of the Termination Date; (ii) **one hundred percent (100%**) of your target Annual Bonus, paid within 60 days following the Termination Date; (iii) if you timely elect continued coverage under federal COBRA laws or comparable state insurance laws ("**COBRA**"), then the Company shall pay the COBRA premiums necessary to continue your medical and dental insurance coverage in effect for yourself and your eligible dependents beginning the first month following your termination date for **twelve** (**12**) months of such coverage (provided that such COBRA reimbursement shall terminate on such earlier date as you are no longer eligible for COBRA coverage or you become eligible for group health insurance benefits through a new employer).

(2) If, at any time, you terminate your employment for Good Reason during the two-year period following a Change in Control, then you shall receive the following severance benefits (the "**CIC Severance Benefits**"): (i**) eighteen (18) months** of your base salary in effect on the effective date of termination (the "**Termination Date**"), less applicable taxes and withholdings and shall be made in a lump sum payment within 60 days of the Termination Date; (ii) **eighteen (18) months** of your target Annual Bonus **paid at target** and paid within 60 days following the Termination Date; (iii) if you timely elect continued coverage under federal COBRA laws or comparable state insurance laws ("**COBRA**"), then the Company shall pay the COBRA premiums necessary to continue your medical and dental insurance coverage in effect for yourself and your eligible dependents beginning the first month following your termination date for **eighteen** (**18**) **months** of such coverage (provided that such COBRA reimbursement shall terminate on such earlier date as you are no longer eligible for COBRA coverage or you become eligible for group health insurance benefits through a new employer).

(3) Your receipt of the Severance Benefits or CIC Severance Benefits, as applicable, is conditional upon (a) your continuing to comply with your obligations under your Proprietary Information Agreement; and (b) your executing and delivering an effective, general release of all known and unknown claims in favor of Bioventus, in the Company's customary form within 45 days following the Termination Date (and not revoking the release).

Section 409A

Notwithstanding anything herein to the contrary, this Agreement is intended to be interpreted and applied so that the payment of the benefits set forth herein shall either be exempt from the requirements of Section 409A of the Internal Revenue Code of 1986, as amended (the "**Code**") (together with the Department of Treasury Regulations and other guidance thereunder, "**Section 409A**") or shall comply with the requirements of such provision. After the Termination Date, you shall have no duties or responsibilities that are inconsistent with having a "separation from service"(within the meaning of Section 409A) as of the Termination Date and, notwithstanding anything in the Agreement to the contrary, distributions upon termination of employment of nonqualified deferred compensation may only be made upon a "separation from service"(as determined under Section 409A) and such date shall be the Termination Date for purposes of this Agreement. Each payment under this Agreement or otherwise shall be treated as a separate payment for purposes of Section 409A. In no event may you, directly or indirectly, designate the calendar year of any payment to be made under this Agreement which constitutes a "nonqualified deferral of compensation"(within the meaning of Section 409A) and to the extent an amount is payable within a time period, the time during which such amount is paid shall be in the discretion of Bioventus. To the extent that any reimbursements are taxable to you, any such reimbursement payment due to you shall be paid to you on or before the last day of the calendar year following the taxable year in which the related expense was incurred. The reimbursements are not subject to liquidation or exchange for another benefit and the amount of such reimbursements that you receive in one taxable year shall not affect the amount of such reimbursements that you receive in any other taxable year. Notwithstanding any provision to the contrary in this Agreement, if you are deemed at the time of your separation from service to be a "specified employee" for purposes of Section 409A(a)(2)(B)(i) of the Code, to the extent delayed commencement of any portion of the termination benefits to which you are entitled under this Agreement is required in order to avoid a prohibited distribution under Section 409A(a)(2)(B)(i) of the Code, such portion of your termination benefits shall not be provided to you prior to the earlier of (A) the expiration of the six-month period measured from the date of your "separation from service" with the Company or (B) the date of your death; upon the earlier of such dates, all payments deferred pursuant to this sentence shall be paid in a lump sum to you, and any remaining payments due under the Agreement shall be paid as otherwise provided herein.

Compliance with Proprietary Information Agreement and Bioventus Policies

You and the Company acknowledge and agree that you are a party to that certain Proprietary Information, Inventions, Non-Solicitation, and Non-Competition Agreement with Bioventus (the "**Proprietary Information Agreement**") which prohibits unauthorized use or disclosure of Bioventus' proprietary information and contains certain post-employment non-competition and non-solicitation obligations, among other obligations, and that the Proprietary Information Agreement remains in full force and effect; provided that for purposes of the Proprietary Information Agreement on and following the IPO the terms "**Company**" and "**Bioventus**" will mean, collectively, Bioventus LLC and Bioventus Inc. In addition, you are expected to comply with the Proprietary Information Agreement and that you will abide by Bioventus' Code of Conduct and Bioventus' policies, as may be changed from time to time at Bioventus' sole discretion.

Non-Disparagement

During and after your employment, you and Bioventus agree not to make any statement that criticizes, ridicules, disparages, or is otherwise derogatory of the other or is reasonably likely to be harmful to you or Bioventus, or to your or Bioventus' respective businesses, business reputations or personal reputations; provided, however, that nothing in this Agreement shall restrict either party from making truthful statements (a) when required by law, subpoena, court order or the like; (b) when requested by a governmental, regulatory, or similar body or entity; (c) in confidence to a professional advisor for the purpose of securing professional advice; (d) in the ordinary course of performing your or its duties during your employment; (e) from rebutting any statement made or written about you or it; or (f) from making normal competitive statements about Bioventus' business or products.

Outside Activities

Throughout your employment with Bioventus, you may engage in civic and not-for-profit activities so long as such activities do not interfere with the performance of your duties hereunder or violate the Bioventus Conflict of Interest Policy. You may also continue to serve on your current Boards and any changes or additions must be reviewed and approved by the Bioventus Board.

Assignment

This Agreement may be assigned by Bioventus to a person or entity which is an affiliate or a successor in interest to substantially all of the business operations of Bioventus. Upon such assignment, the rights and obligations of Bioventus hereunder shall become the rights and obligations of such affiliate or successor person. You may not assign your rights or obligations to another entity or person.

Indemnification

You shall be entitled to indemnification to the maximum extent permitted by applicable law and the Bioventus LLC Operating Agreement or Bioventus Inc. Articles of Incorporation or Bylaws, as applicable. At all times during your employment, the Company shall maintain in effect a directors and officers liability insurance policy with you as a covered officer. The Company shall further provide and pay for the defense of any action, arbitration or mediation (collectively, an "**Action**") relative to the lawful performance of your duties or in connection with your employment at the Company and the existence of such Action or defense shall not provide grounds for termination of your employment.

Notice of Immunity

Notwithstanding any provision of this Agreement or the Proprietary Information Agreement to the contrary, (i) you shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that is made in confidence to a Federal, State, or local government official or to an attorney solely for the purpose of reporting or investigating a suspected violation of law; (ii) you shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal; and (iii) if you file a lawsuit for retaliation by an employer for reporting a suspected violation of law, you may disclose the trade secret to your attorney and use the trade secret information in the court proceeding, if you file any document containing the trade secret under seal; and do not disclose the trade secret, except pursuant to court order.

Section 280G Parachute Payments

Notwithstanding any other provision in this Agreement to the contrary, in the event that any payment or benefit received or to be received by you in connection with a Change in Control or otherwise would be considered an "excess parachute payment" within the meaning of Section 280G of the Code, then such payments and benefits will either be (i) delivered in full or (ii) reduced by the minimum amount necessary so that all of the remaining payments and benefits will not be subject to the excise tax imposed by Section 4999 of the Code, whichever of the foregoing (i) or (ii) results in the greater net after-tax value of payment and benefits to you. All determinations regarding the application of this paragraph shall be made by an accounting firm or consulting group with experience in performing calculations regarding the applicability of Sections 280G and 4999 of the Code selected by the Company, and all associated costs will be borne by the Company.

Compensation Recovery Policy

You acknowledges and agree that, to the extent the Company adopts any clawback or similar policy pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act or otherwise, and any rules and regulations promulgated thereunder, you will take all action necessary or appropriate to comply with such a clawback policy (including, without limitation, entering into any further agreements, amendments or policies necessary or appropriate to implement and/or enforce such policy).

Miscellaneous

This Agreement, together with your Proprietary Information Agreement and all applicable equity award agreements, forms the complete and exclusive statement of your employment agreement with Bioventus Changes in your employment terms, other than those changes expressly reserved to Bioventus' discretion in this Agreement, require a written modification approved by Bioventus. This Agreement will bind the heirs, personal representatives, successors and assigns of both you and Bioventus, and inure to the benefit of both you and Bioventus, their heirs, successors and assigns. If any provision of this Agreement is determined to be invalid or unenforceable, in whole or in part, this determination shall not affect any other provision of this Agreement and the provision in question shall be modified so as to be rendered enforceable in a manner consistent with the intent of the parties insofar as possible under applicable law. This Agreement shall be construed and enforced in accordance with the laws of the State of North Carolina without regard to conflicts of law principles. The parties hereby irrevocably submit to the jurisdiction of the state and federal courts of North Carolina located in or about Raleigh and waive any claim or defense of inconvenient or improper forum or lack of personal jurisdiction under any applicable law or decision. Any ambiguity in this Agreement shall not be construed against either party as the drafter. Any waiver of a breach of this Agreement, or rights hereunder, shall be in writing and shall not be deemed to be a waiver of any successive breach or rights hereunder. This Agreement may be executed in counterparts which shall be deemed to be part of one original, and facsimile or pdf signatures shall be equivalent to original signatures.

I am very pleased to offer you this position at Bioventus. If you accept employment at Bioventus under the terms describe above please forward your acceptance within the next 5 days. I would be happy to discuss any questions that you may have about the terms of the offer. It will be a pleasure to work with you and create the future of Bioventus.

Sincerely,

/s/ William A. Hawkins
William A. Hawkins
Chairman of the Bioventus Board of Managers

Understood and Accepted:

/s/ Ken Reali	3/14/2020
Ken Reali	**Date**

PROPRIETARY INFORMATION, INVENTIONS,

NON-SOLICITATION, AND NON-COMPETITION AGREEMENT

In consideration of my initial offer of employment, by Bioventus LLC, its subsidiaries, parents, affiliates, successors and assigns (together, the "**Company**") and the compensation paid to me, I hereby enter into this Proprietary Information, Inventions, Non-Competition and Non-Solicitation Agreement (the "**Agreement**") and agree as follows:

1. NONDISCLOSURE.

1.1 Recognition of Company's Rights. At all times during my employment and thereafter, I will hold in strictest confidence and will not disclose or use any of the Company's Proprietary Information (defined below), except as such disclosure or use may be required in connection with my work for the Company, or unless an officer of the Company expressly authorizes such in writing. I hereby assign to the Company any rights I may have or acquire in such Proprietary Information and recognize that all Proprietary Information shall be the sole property of the Company. I will take all reasonable precautions to prevent the inadvertent or accidental disclosure of Proprietary Information.

1.2 Proprietary Information. The term "**Proprietary Information**" shall mean any and all confidential and/or proprietary knowledge, data or information of the Company, its affiliates, parents and subsidiaries, whether having existed, now existing, or to be developed during my employment. By way of illustration but not limitation, "**Proprietary Information**" includes (a) trade secrets, inventions, ideas, processes, formulas, discoveries, developments, designs and techniques and any other proprietary technology and all Proprietary Rights (defined below) therein (hereinafter collectively referred to as "**Inventions**"); (b) information regarding research, development, new products, marketing and selling, business plans, budgets and financial statements, licenses, prices and costs, discounts, credit terms, pricing and billing policies, quoting procedures, methods of obtaining or conducting business, forecasts, future plans and potential strategies, financial projections and business strategies, operational plans, financing and capital-raising plans, activities and agreements, internal services and operational manuals, suppliers and supplier information, and purchasing; (c) information regarding customers and potential customers of the Company, including customer lists, names, representatives, their needs or desires with respect to the types of products or services offered by the Company, proposals, bids, contracts and their contents and parties, the type and quantity of products and services provided or sought to be provided to customers and potential customers of the Company and other related non-public information; (d) information regarding any of the Company's business partners and their services, including names; representatives, proposals, bids, contracts and their contents and parties, the type and quantity of products and services received by the Company, and other related non-public information; (e) information regarding personnel, employee lists, and employee skills; and (f) any other non-public information which a competitor of the Company could use to the competitive disadvantage of the Company. Notwithstanding the foregoing, I am free to use information which is generally known in the trade or industry through no breach of this Agreement or other act or omission by me. If an additional time limitation on this restriction is required in order for it to be enforceable then this restriction shall be limited to a period of two years following the termination of my employment for any information that does not qualify as a trade secret. Trade secret information will remain protected at all times and nothing herein shall be construed to reduce or diminish the applicability of trade secret protections, statutory or common law, that apply to the Company's trade secrets independent from this Agreement.

1.3 Third Party Information. I understand that the Company has received and in the future will receive from third parties confidential and/or proprietary knowledge or information ("**Third Party Information**"). During my employment and thereafter, I will hold Third Party Information in the strictest confidence and will not disclose to anyone (other than Company personnel who need to know such information in connection with their work for the Company) or use, except in connection with my work for the Company, Third Party Information unless expressly authorized by an officer of the Company in writing.

1.4 Protected Conduct. I acknowledge and agree that if I am compelled to disclose information via court order, subpoena, or other legal mandate, I will give the Company as much written notice as possible under the circumstances, will refrain from use or disclosure for as long as the law allows, and will cooperate with the Company to protect such information, including taking every reasonable step to protect against unnecessary disclosure. However, nothing in this Agreement, including the foregoing, prevents me from communicating with the EEOC, the SEC, the DOL, or any other governmental authority, making a report in good faith and with a reasonable belief of any violations of law or regulation to a governmental authority, or cooperating with or participating in a legal proceeding relating to such violations.

1.5 Notice Under the 2016 Defend Trade Secrets Act. I acknowledge that I am hereby provided notice that under the 2016 Defend Trade Secrets Act (DTSA): (1) no individual (consultant, contractor or employee) will be held criminally or civilly liable under Federal or State trade secret law for the disclosure of a trade secret (as defined in the Economic Espionage Act) that: (A) is made **in confidence to** a Federal, State, or local government official, either directly or indirectly, or to an attorney; and made **solely for the purpose of** reporting or investigating a suspected violation of law; or, (B) is made in a complaint or other document filed in a lawsuit or other proceeding, **if such filing is made under seal** so that it is not made public; and, (2) an individual (consultant, contractor or employee) who pursues a lawsuit for retaliation for reporting a suspected violation of the law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual files any document contain the trade secret under seal, and does not disclose the trade secret, except as permitted by court order.

2. ASSIGNMENT OF INVENTIONS.

2.1 Prior Inventions. Inventions, if any, patented or unpatented, which I made prior to the commencement of my employment with the Company are excluded from the scope of this Agreement. To preclude any possible uncertainty, I have set forth on *Exhibit A* a complete list of all Inventions that I have, alone or jointly with others, conceived or developed prior to the commencement of my employment with the Company, that I consider to be my property or the property of third parties, and that I wish to have excluded from the scope of this Agreement (collectively referred to as "**Prior Inventions**"). If no such disclosure is attached, I represent that there are no Prior Inventions. I agree that I will not incorporate, or permit to be incorporated, Prior Inventions in any Company Inventions without the Company's prior written consent.

2.2 Assignment of Inventions. Subject to Subsection 2.3, I do hereby assign to the Company all my right, title and interest in and to all Inventions (and all Proprietary Rights with respect thereto) made or conceived or learned by me, either alone or jointly with others, during the period of my employment with the Company. Inventions assigned to the Company, or to a third party as directed by the Company pursuant to this Section 2, are hereinafter referred to as "**Company Inventions**." The term "**Proprietary Rights**" shall mean all trade secrets, patents, copyrights, trademarks and other intellectual property rights throughout the world.

2.3 Unassigned or Nonassignable Inventions. This Agreement does not apply to an Invention which qualifies fully as a nonassignable invention under: North Carolina Statute §§ 66.57.1 and 66.57.2; California Labor Code §2870; Delaware Code Title 19 Section 805; Illinois 765ILCS1060/1-3, "**Employees Patent Act**"; Kansas Statutes Section 44-130; Minnesota Statutes 13A Section 181.78; Utah Code Sections 3439-1 through 34-39-3, "**Employee Inventions Act**"; Washington Rev. Code, Title 49 RCW: Labor Regulations Chapter 49.44.140. I have reviewed the notification in paragraph 3 of *Exhibit A* and agree that my signature acknowledges receipt of the notification.

3. **NON-SOLICITATION**. During my employment and for a period of twelve (12) months following the termination of my employment with the Company for any reason, I shall not, directly or indirectly:

3.1 solicit or attempt to solicit any Contractor (defined below) of the Company where such solicitation would interrupt or impede the Company's relationship with such Contractor;

3.2 solicit or attempt to solicit any Customer (defined below) to terminate, diminish, or materially alter in a manner harmful to the Company its relationship with the Company for any purpose, including, but not limited to, the purpose of associating with or becoming a Customer of a Competing Business (defined below); or

3.3 solicit or attempt to solicit, any Contractor to terminate, diminish, or materially alter in a manner harmful to the Company its relationship with the Company for any purpose, including, but not limited to, the purpose of associating with or becoming a contractor of a Competing Business.

3.4 If the choice of law provision in Section 6.1 is deemed not to apply: the provisions in Sections 3.1, 3.2, and 3.3 shall only apply to employees residing in California to the extent such employee's conduct is aided by the use or disclosure of the Company's trade secrets (as defined by California law); the provisions in Sections 3.1, 3.2, and 3.3. shall only apply within the Restricted Area (as defined below) for employees residing in Arizona; and for employees residing in Louisiana, the provisions in Sections 3.1, 3.2, and 3.3 shall only apply within the Restricted Area (defined below).

3.5 For purposes of this Agreement, a "**Customer**" is any person or entity who or which, at any time during the Look Back Period (as defined below): (i) (a) was in direct contact with me; (b) was an entity as to which I supervised the Company's business dealings; or (c) was an entity about which I acquired Proprietary Information, and that contracted for or received from the Company any product, service or process; or (ii) was solicited by the Company or in consideration or planning to be solicited by the Company in an effort in which I was involved or as to which I acquired Proprietary Information. If the choice of law provision in Section 6.1 is deemed not to apply: for employees in Nebraska, the definition of "**Customer**" is limited to Section 3.5(i)(a); and for employees in Oklahoma, "**Customer**" shall be further limited to the Company's established customers (a customer will be presumed to be "established" where actual sales and/or services have occurred or been performed in the preceding year and/or where there is an active proposal for sales or services pending as of the date employee's employment with Company ends).

3.6 For purposes of this Agreement, "**Contractor**" shall mean consultants or independent contractors with whom the Company had a contractual relationship during the Look Back Period and as to which I (a) had material contact or (b) received Proprietary Information during the Look Back Period. If the choice of law provision in Section 6.1 is deemed not to apply, for employees in Nebraska, the definition of "**Contractor**" is limited to Section 3.6(a).

3.7 For purposes of this Agreement, "**Conflicting Services**" means any product, service, or process of any person or organization other than the Company that directly competes with a product, service, or process offered by the Company as to which I had material involvement or about which I acquired Proprietary Information during the Look Back Period.

3.8 For purposes of this Agreement, "**Competing Business**" means a person or entity in the business of providing Conflicting Services.

3.9 For purposes of this Agreement: (a) for sales employees, "**Restricted Area**," means such employee's assigned sales territory during the Look Back Period and/or the geographic area as to which such employee supervised sales activities during the Look Back Period; and (b) for all other employees, "**Restricted Area**" means the United States, including the State of North Carolina. If the choice of law provision in Section 6.1 is deemed not to apply, for employees in Louisiana, Restricted Area refers to the parishes within Louisiana and the counties outside of Louisiana that are identified in Exhibit D.

3.10 For purposes of this Agreement, "**Look Back Period**" means the one (1) year period immediately prior to the date my employment with the Company ends (whatever the cause) or such shorter period as I have been employed.

4. **NON-INTERFERENCE**. During the period of my employment with the Company and for twelve (12) months thereafter, I shall not, directly or indirectly, solicit or attempt to solicit, any person known to me to be an employee of the Company to terminate his or her employment or other relationship with the Company for any purpose whatsoever.

5. **NON-COMPETE PROVISION**. I agree that for the one (1) year period after the date my employment ends for any reason, I will not, directly or indirectly, as an officer, director, employee, consultant, owner, partner, or in any other capacity, solicit, perform, or provide, or attempt to perform or provide, services that are the same or similar in function or purpose to the services I provided the Company during the Look Back Period to a Competing Business in the Restricted Area. If the choice of law provision in Section 6.1 is deemed not to apply, the foregoing provision shall not apply to employees residing in California, Oklahoma, and North Dakota. Further, the foregoing provision shall not apply, regardless of where said employee resides, to individuals who are hourly, non-exempt employees of the Company.

6. **GENERAL PROVISIONS**.

6.1 Governing Law; Consent to Personal Jurisdiction. This Agreement will be governed by and construed according to the laws of the State of North Carolina as such laws are applied to agreements entered into and to be performed entirely within North Carolina between North Carolina residents. I hereby expressly consent to the personal jurisdiction and exclusive and mandatory venue of the state and federal courts located in North Carolina for any lawsuit arising from or related to this Agreement.

6.2 Severability. In case any one or more of the provisions, subsections, or sentences contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. If moreover, any one or more of the provisions contained in this Agreement shall for any reason be held to be excessively broad as to duration, geographical scope, activity or subject, it shall be construed by limiting and reducing it (where allowed by applicable law), so as to be enforceable to the extent compatible with the applicable law as it shall then appear.

6.3 Employment At-Will. I agree and understand that nothing in this Agreement shall change my at-will employment status or confer any right with respect to continuation of employment by the Company, nor shall it interfere in any way with my right or the Company's right to terminate my employment at any time, with or without cause or advance notice.

6.4 Advice of Counsel. **I ACKNOWLEDGE THAT, IN EXECUTING THIS AGREEMENT, I HAVE HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT LEGAL COUNSEL, AND I HAVE READ AND UNDERSTOOD ALL OF THE TERMS AND PROVISIONS OF THIS AGREEMENT**. **THIS AGREEMENT SHALL NOT BE CONSTRUED AGAINST ANY PARTY BY REASON OF THE DRAFTING OR PREPARATION HEREOF**.

6.5 Entire Agreement. This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior discussions between us. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing and signed by the party to be charged. Any subsequent change or changes in my employment status, duties, salary or compensation will not affect the validity or scope of this Agreement.

6.6 Notice to New Employer. I will provide a copy of this Agreement to any person, firm, association, or corporation that I intend to be employed by, associated with, or provide consulting services for in order to insure compliance with this Agreement. I understand that both the Company and I have the right to provide another party an opinion about interpretation and/or application of this Agreement; I consent to such communications, and agree not to assert a claim of wrongdoing by the Company as a result of such a communication.

6.7 Tolling. If I fail to comply with a timed restriction in this Agreement, the time period for that will be extended by one day for each day I am found to have violated the restriction, up to a maximum of one (1) year. This provision shall not apply to employees residing in Georgia or Wisconsin if the choice of law provision in Section 6.1 is deemed not to apply.

I HAVE READ THIS AGREEMENT CAREFULLY AND UNDERSTAND ITS TERMS. **I HAVE COMPLETELY FILLED OUT EXHIBIT A TO THIS AGREEMENT**.

/s/ Ken Reali
Ken Reali

ACCEPTED AND AGREED TO:

Bioventus LLC

/s/ Leigh Ann Stradford
By: Leigh Ann Stradford
Title: SVP and Chief Human Resources Officer

EXHIBIT A

PREVIOUS INVENTIONS

TO: **BIOVENTUS LLC**

FROM: **Ken Reali**

DATE: **March 12, 2020**

SUBJECT: **Previous Inventions**

1. Except as listed in Section 2 below, the following is a complete list of all inventions or improvements relevant to the subject matter of my employment by Bioventus, LLC (the "**Company**") that have been made or conceived or first reduced to practice by me alone or jointly with others prior to my engagement by the Company:

☐ No inventions or improvements.

☐ See below:

_____

_____

_____

☐ Additional sheets attached.

2. Due to a prior confidentiality agreement, I cannot complete the disclosure under Section 1 above with respect to inventions or improvements generally listed below, the proprietary rights and duty of confidentiality with respect to which I owe to the following party(ies):

	Invention or Improvement	**Party(ies)**	**Relationship**
1.			
2.			
3.			

☐ Additional sheets attached.

3. **Limited Exclusion Notification**.

NOTICE TO NORTH CAROLINA, DELAWARE, ILLINOIS, AND KANSAS RESIDENTS: **THIS IS TO NOTIFY** you in accordance with North Carolina General Statute Sections 66.57.1 and 66.57.2; Delaware Code Title 19 Section 805; Illinois 765ILCS1060/1-3, "Employees Patent Act"; and Kansas Statutes Section 44-130, that the foregoing Agreement between you and the Company does not require you to assign or offer to assign to the Company any invention that you developed entirely on your own time without using the Company's equipment, supplies, facilities or trade secret information except for those inventions that either:

a. Relate at the time of conception or reduction to practice of the invention to the Company's business, or actual or demonstrably anticipated research or development of the Company; or

b. Result from any work performed by you for the Company.

To the extent a provision in the foregoing Agreement purports to require you to assign an invention otherwise excluded from the preceding paragraph, the provision is against the public policy of this state and is unenforceable. You shall have the burden of establishing that any invention is excluded from assignment to the Company by the preceding paragraph.

This limited exclusion does not apply to any patent or invention covered by a contract between the Company and the United States or any of its agencies requiring full title to such patent or invention to be in the United States.

NOTICE TO MINNESOTA RESIDENTS: Notification is hereby given pursuant to Minnesota Statutes 13A Section 181.87 that no provision in this Agreement requires you to assign any of your rights to an invention for which no equipment, supplies, facility, or trade secret information of the Company was used and which was developed entirely on your own time, and (a) which does not relate (i) directly to the business of the Company, or (ii) to the Company's actual or demonstrably anticipated research or development, or (b) which does not result from any work performed by you for the Company.

NOTICE TO WASHINGTON RESIDENTS: Notification is hereby given pursuant to Washington Revised Code, Title 49 RCW: Labor Regulations Chapter 49.44.140, that no provision in this Agreement applies to an Invention for which no equipment, supplies, facility, or trade secret information of Company was used and which was developed entirely on your own time, unless (a) the invention relates (i) directly to the business of Company or (ii) to Company's actual or demonstratively anticipated research or development, or (b) the invention results from any work performed by you for Company.

NOTICE TO CALIFORNIA RESIDENTS: Notification is hereby given pursuant to California Labor Code Section 2870, that the assignment of invention provisions in this Agreement do not apply to an invention that was developed entirely on an employee's own time without using the Company's equipment, supplies, facilities, or trade secret information except for those inventions that either: (1) relate at the time of conception or reduction to practice of invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or (2) result from any work performed by the employee for the employer.

NOTICE TO UTAH RESIDENTS: Notification is hereby given pursuant to Utah Code Sections 3439-1 through 34-39-3, that no provision in this Agreement requires you to assign any of your rights to an invention which was created entirely on your own time, and which is not (a) conceived, developed, reduced to practice, or created by you (i) within the scope of your employment with the Company, (ii) on the Company's time, or (iii) with the aid, assistance, or use of any of the Company's property, equipment, facilities, supplies, resources, or patents, trade secrets, know-how, technology, confidential information, ideas, copyrights, trademarks and service marks and any and all rights, applications and registrations relating to them, (b) the results of any work, services, or duties performed by you for the Company, (c) related to the industry or trade of the Company, or (d) related to the current or demonstrably anticipated business, research, or development of the Company.

2020
BIWEEKLY PAYROLL
SCHEDULE

Payroll Payment Date	OT Eligible Employees (Begin/End)		Non-OT Eligible Employees (Begin/End)		Monthly Commission Distribution for Sales Representatives
1/10/2020	12/22/2019	1/4/2020	12/29/2019	1/11/2020	
1/24/2020	1/5/2020	1/18/2020	1/12/2020	1/25/2020	P12 Commissions
2/7/2020	1/19/2020	2/1/2020	1/26/2020	2/8/2020	
2/21/2020	2/2/2020	2/15/2020	2/9/2020	2/22/2020	P1 Commissions
3/6/2020	2/16/2020	2/29/2020	2/23/2020	3/7/2020	
3/20/2020	3/1/2020	3/14/2020	3/8/2020	3/21/2020	P2 Commissions
4/3/2020	3/15/2020	3/28/2020	3/22/2020	4/4/2020	
4/17/2020	3/29/2020	4/11/2020	4/5/2020	4/18/2020	P3 Commissions
5/1/2020	4/12/2020	4/25/2020	4/19/2020	5/2/2020	
5/15/2020	4/26/2020	5/9/2020	5/3/2020	5/16/2020	P4 Commissions
5/29/2020	5/10/2020	5/23/2020	5/17/2020	5/30/2020	
6/12/2020	5/24/2020	6/6/2020	5/31/2020	6/13/2020	
6/26/2020	6/7/2020	6/20/2020	6/14/2020	6/27/2020	P5 Commissions
7/10/2020	6/21/2020	7/4/2020	6/28/2020	7/11/2020	
7/24/2020	7/5/2020	7/18/2020	7/12/2020	7/25/2020	P6 Commissions
8/7/2020	7/19/2020	8/1/2020	7/26/2020	8/8/2020	
8/21/2020	8/2/2020	8/15/2020	8/9/2020	8/22/2020	P7 Commissions
9/4/2020	8/16/2020	8/29/2020	8/23/2020	9/5/2020	
9/18/2020	8/30/2020	9/12/2020	9/6/2020	9/19/2020	P8 Commissions
10/2/2020	9/13/2020	9/26/2020	9/20/2020	10/3/2020	
10/16/2020	9/27/2020	10/10/2020	10/4/2020	10/17/2020	P9 Commissions
10/30/2020	10/11/2020	10/24/2020	10/18/2020	10/31/2020	
11/13/2020	10/25/2020	11/7/2020	11/1/2020	11/14/2020	
11/25/2020	11/8/2020	11/21/2020	11/15/2020	11/28/2020	P10 Commissions
12/11/2020	11/22/2020	12/5/2020	11/29/2020	12/12/2020	
12/23/2020	12/6/2020	12/19/2020	12/13/2020	12/26/2020	P11 Commissions

Exhibit 10.40

Bioventus LLC
4721 Emperor Blvd.,Suite 100
Durham, NC 27703
USA

1-919-474-6700
1-800-396-4325
www.BioventusGlobal.com

April 24, 2020

Ken Reali

Re: Amendment to Employment Agreement

Dear Ken:

This letter will serve to amend your employment agreement with Bioventus LLC dated as of March 14, 2020 (the "Agreement") as follows:

1. The effective date of the Agreement is hereby amended to be April 13, 2020 to coincide with the commencement date of your employment.
2. The grant of 417,804 Phantom Profits Interest Units shall be awarded to you on or before July 1, 2020, and will be subject to all of the terms of the plan, a copy of which will be made available for your review upon request. The vesting period for this award will commence on April 13, 2020 and the value of the Units will be determined based on the most recent valuation completed on April 30, 2020.
3. All other terms of the Agreement remain in full force and effect and are hereby ratified and confirmed in all respects.

If the foregoing is acceptable to you, please so indicate by signing and dating a copy of this letter where indicated below.

Sincerely,

/s/ Williams A. Hawkins, III
William A. Hawkins, III
Chairman, Bioventus Board of Managers

Understood and Agreed:

/s/ Ken Reali	5/13/2020
Ken Reali	Date

Exhibit 10.41

Bioventus LLC
4721 Emperor Blvd., Suite 100
Durham, NC 27703
USA

1-919-474-6700
1-800-396-4325
www.BioventusGlobal.com

June 12, 2020

Anthony P. Bihl, III

Dear Tony:

This will letter will set forth the understanding between you and Bioventus LLC (the "Company") in connection with your exercise of the put rights and the Company's repurchase of the 333,330 Profit Interest Units granted to you under the Management Incentive Plan (the "MIP") as set forth in that certain Management Incentive Plan Award Agreement dated as of December 2, 2013 (the "MIP Agreement') and the payment due to you under the Bioventus Phantom Profits Interest Plan (the "Phantom Plan") for the Phantom Profits Interest Units granted to you under that certain Phantom Profit Interest Plan Award Agreement dated April 21, 2016 (the "PPI Agreement"), as a result of your retirement from the Company.

In consideration of the foregoing, you and the Company hereby agree as follows:

1. The Company will pay you the sum of $918,953.00, less applicable tax withholdings, on or before June 16, 2020, in full settlement of the Phantom Profits Interest Units granted to you under the Phantom Plan.

2. The Company will pay you the sum of $6,328,629.00, less applicable tax withholdings, on or before June 16, 2020, in exchange for the redemption of 150,252 of the Profit Interest Units held by you under the MIP. You hereby agree to sell and transfer to the Company your entire rights and interest to such units on such date.

3. In exchange for the redemption of remaining 183,078 of the Profit Interest Units held by you, the Company agrees to pay you, on or before June 16, 2021, the greater of (x) $7,711,231.00 and (y) the fair market value of such 183,078 Profit Interest Units, less applicable tax withholdings, as determined utilizing the 409A valuation of the Company then in effect on the date of payment for purposes of the Phantom Plan; provided that the Company may, at its option and upon notice to you, accelerate the repurchase of units under this Section 3 by paying the amount due for such units at any time. You hereby agree to sell and transfer to the Company your entire rights and interest to such units on such date. Until such time as they are repurchased by the Company, your status as a partner of the Company shall continue and the units described in this Section 3 shall remain subject to the terms and conditions of the MIP and the MIP Agreement, except as expressly modified by this letter.

4. In addition to the foregoing sums, the Company agrees to pay you, less applicable tax withholdings, the following sums: (i) $2,006,796.00 on or before June 16, 2020; and (ii) $1,543,147.00 on or before June 16, 2021 or such other date that payment is made to you under Section 3 above.

5. The parties agree that the payments described in this letter shall satisfy the Company's obligations to you with respect to the amounts due to you under the MIP for the repurchase of the Profits Interest Units held by you under the MIP Agreement and the amounts due to you under the Phantom Plan.

6. The rights and obligations of the parties hereunder, and the interpretation of this Agreement, will be governed by the laws of the State of Delaware, without giving effect to the conflicts of laws provisions thereof.

If this continues to be acceptable to you, please so indicate by signing and dating where indicated below.

Very truly yours,

William A. Hawkins
Chairman of the Bioventus Board of Managers

ACKNOWLEDGED AND AGREED:

/s/ Anthony P. Bihl, III	6/12/20
Anthony P. Bihl, III	Date

Exhibit 10.42

Bioventus LLC
4721 Emperor Blvd., Suite 100
Durham, NC 27703
USA

1-919-474-6700
1-800-396-4325
www.BioventusGlobal.com

June 25, 2020

Kenneth Reali

RE: Bioventus Phantom Profit Interests Award

Dear Ken:

As Bioventus develops its global leadership position in Orthobiologics, you will play a key role in developing a great company that makes a difference in peoples' lives every day. In recognition of your expected contribution as the Chief Executive Officer, the Bioventus Leadership Team, Board of Managers and I have granted you 417,804 Phantom Profits Interests Units.

The Award is granted to you under and is subject to the terms of the Phantom Profits Interests Plan ("Plan") and your Bioventus LLC Phantom Profits Interests Plan Award Agreement ("Award Agreement"). A copy of the Plan and your Award Agreement are included with this letter and I encourage you to review both documents carefully.

To assist in your review of the Award, below is a brief summary of some of the key terms of this Award:

- **Phantom Profits Interests**: The Plan is designed to provide grantees the opportunity to share in the appreciation in value of the Company. Phantom Profits Interests Units awarded under the Plan, however, have no immediate value and do not reflect a true equity interest in the Company. In recognition of your anticipated contributions to the Company's growth, upon a Waterfall Distribution Event (defined in the Plan and summarized below) and subject to the waterfall, you, as the holder of Phantom Profits Interest Units, will be eligible to receive a cash payment equal to a share of the appreciation in the value of the Company from the Effective Date of your Award Agreement.

- **Grant Date Benchmark Amount**: The Grant Date Benchmark Amount represents the cumulative distributions that must be made by the Company under the Plan prior to grantees receiving payment. Note that since Units do not represent an equity interest in the Company, your award is not subject to a "strike" or "exercise" price or require you to fund any purchase of the interest.

- Vesting Schedule: For so long as you remain an employee of the Company, 20% of the Award will vest on April 13, 2021 and 5% of the Award will vest each quarter thereafter.

- **Termination:** Upon termination of your employment for any reason other than for Cause (as defined in the Plan) the Company will repurchase any vested Profits Interest Units granted with this Award. All vested and unvested units are forfeited in the event of termination for Cause.

- **Waterfall Distribution Event**: In the event that the Company is sold or sells all or substantially all of its assets or a similar event occurs (a "Waterfall Distribution Event") prior to the termination of your employment with the Company, your Award will vest at the time of such Initial Waterfall Distribution Event. Listed below is an example of potential value per PPI Unit at a Waterfall, and how the Waterfall Distribution is calculated. The payout amounts shown below are provided for illustrative purposes only. Actual payouts under the Plan may vary from those shown and are subject to all of the terms of the Plan documents and applicable withholding requirements.

Illustrative Waterfall Scenarios
(as of 4.30.20)

Enterprise value	$1.25 BILLION	$1.5 BILLION
Approximate $ payout/unit	$ 17.09	$ 35.04

***Assumes $840,849,878 benchmark

- **Waterfall Distribution Formula:** Enterprise Value—Debt (net of cash)—Benchmark of PPI units = Remaining Equity Value available for Distribution / Units Outstanding = PPI Payout per unit

I am delighted to be notifying you of this Award and I look forward to a productive and enjoyable working relationship.

Sincerely,

/s/ Leigh Ann Stradford
Leigh Ann Stradford
SVP & Chief Human Resources Officer

Enclosures

This letter has been provided to you by the Company solely for your information and may be deemed to contain forward-looking statements, which involve known and unknown risks and uncertainties. Given these risks and uncertainties, you are advised not to place any undue reliance on such forward-looking statements. Specifically, the Company does not make any representations or warranties, express or implied, as to the ultimate value of your Award or whether a Waterfall Distribution Event will occur. In the event of any inconsistency between this letter and the Plan, the provisions of the Plan shall govern.

BIOVENTUS LLC
PHANTOM PROFITS INTERESTS PLAN

AWARD AGREEMENT

The Administrator, as defined in the Bioventus LLC Phantom Profits Interests Plan (the "**Plan**"), of the Plan has decided to grant to you Phantom Profits Interest Units in the Company under the Plan. The terms of the grant (the "**Grant**") are set forth in this Bioventus LLC Phantom Profits Interests Plan Award Agreement (the "**Award Agreement**") provided to you. The following provides a summary of the key terms of the Grant; however, you should read the entire Award Agreement, along with the terms of the Plan and the Company's Amended and Restated Limited Liability Company Agreement (as might be amended), to fully understand the Grant.

SUMMARY OF PHANTOM PROFITS INTERESTS PLAN AWARD AGREEMENT

Grantee:	**Kenneth Reali**
Date of Award:	**June 25, 2020**
Vesting Schedule:	**20% vests on April 13, 2021 and the remaining 80% vests in equal installments on a quarterly basis over the next four years**
Phantom Profits Interest Units Awarded:	**417,804**
Payment Event:	**Termination Payment Event**
Grant Date Benchmark Amount:	**$840,849,878**

BIOVENTUS LLC

PHANTOM PROFITS INTERESTS PLAN

AWARD AGREEMENT

This Bioventus LLC Phantom Profits Interests Plan Award Agreement (this "**Award Agreement**"), dated as of June 25, 2020 (the "**Effective Date**"), is delivered by Bioventus LLC (the "**Company**") to Kenneth Reali (the "**Grantee**").

RECITALS

A. The Bioventus LLC Phantom Profits Interests Plan (the "**Plan**") provides for the grant of Phantom Profits Interest Units in the Company in accordance with the terms of the Plan and the Amended and Restated Limited Liability Company Agreement of the Company, as amended (the "**LLC Agreement**"). The Administrator (as defined in the Plan) has granted the Award (as defined below) to encourage the Grantee to contribute materially to the growth of the Company's owners, thereby benefitting the Company, and to align the economic interests of the Grantee with those of the owners. A copy of the Plan is attached. All capitalized terms not defined herein shall have the meaning given to such terms in the Plan or, if not defined in the Plan, in the LLC Agreement.

B. The Administrator shall administer the Plan.

NOW, THEREFORE, the parties to this Award Agreement, intending to be legally bound, hereby agree as follows:

Grant of Phantom Profits Interests Units. Subject to the terms and conditions set forth in this Award Agreement, the Plan, and the LLC Agreement, the Company hereby grants to the Grantee 417,804 Phantom Profits Interest Units (the "**Award**"). This Award Agreement (which is effective as of the Effective Date upon the parties' exchange of signed counterpart signature pages hereto), the Plan, and the LLC Agreement govern the terms of the grant of the Award.

Vesting of Awarded Units.

Unless otherwise determined by the Administrator, the Award shall vest in accordance with the following schedule (each date described below, a "**Vesting Date**"), if the Grantee is employed by the Company on the applicable Vesting Date.

Applicable Date	Vesting Percentage
April 13, 2021	20%
Each quarter after April 13, 2021	5%

On a Payment Event, the Grantee shall receive the Payment Amount, if any, with respect to the portion of the Award that is vested, as set forth in Section 5(b)(i) of the Plan. Any portion of the Award that is unvested as of the Termination Date shall be forfeited at the time of the Grantee's termination.

Upon an Initial Waterfall Distribution Event that occurs prior to the Grantee's Termination Date, the unvested portion of the Award shall vest at the time of such Initial Waterfall Distribution Event.

Upon the termination of the Grantee's employment for Cause, both the vested and the unvested portion of the Award shall be forfeited.

Withholding. All obligations of the Company under this Agreement shall be subject to the rights of the Company to withhold amounts required to be withheld for any taxes, if applicable.

Restrictions on Transfer. Only the Grantee has any rights under this Award. The Grantee may not transfer those rights, directly or indirectly, except by will or the laws of descent and distribution.

Award Subject to Plan and LLC Agreement Provisions. This Award is made pursuant to the Plan and the LLC Agreement, the terms of which are incorporated herein by reference, and in all respects shall be interpreted in accordance with the Plan and the LLC Agreement. The Administrator shall have the full power and authority to administer and interpret the Plan and this Award Agreement, to make factual determinations, and to adopt or amend such rules, regulations, agreements, and instruments for implementing the Plan and this Award Agreement and for the conduct of its business as it deems necessary or advisable. All powers of the Administrator shall be executed without the approval or consent of the Grantee.

No Employment or Other Rights. This Award Agreement is not an agreement of employment and the grant of this Award shall not confer upon the Grantee any right to be retained by or in the employ of the Company and shall not interfere in any way with the right of the Company to terminate the Grantee's employment at any time. The right of the Company, as applicable, to terminate at will the Grantee's employment at any time for any reason is specifically reserved. The grant of this Award shall not entitle the Grantee to any (i) voting rights with respect to any action or decision taken or made (or to be taken or made) by the Company or the Board, (ii) right to appoint Managers to the Board, or (iii) appraisal or preemption rights.

Notice. Any notice to the Company provided for in this Award Agreement must be in writing and will be deemed given: (a) on the date established by the sender as having been delivered personally; (b) on the date delivered by a private, nationally recognized, overnight courier as established by the sender by evidence obtained from the courier; (c) on the date sent by facsimile, with confirmation of transmission, if sent during normal business hours of the recipient (and, if not sent during normal business hours of the recipient, then on the next business day); or (d) on the fifth business day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications, to be valid, must be addressed as follows:

If to the Company, to:

Bioventus LLC
4721 Emperor Blvd. Suite 100
Durham, NC 27703
Attention: General Counsel
Facsimile:

If to the Grantee, to the address on file with the Company.

If more than one method for sending notice as set forth above is used, the earliest notice date established as set forth above will control for purposes of determining when such notice is deemed to have been given.

Amendment and Termination; Section 409A. The Administrator may amend the Plan or this Award, or terminate the Plan, at any time; provided that no amendment or termination of the Plan or this Award shall, without the consent of a Grantee, adversely impact the rights of the Grantee under this Award, unless necessary to meet the requirements of any applicable law or regulation. Before amending or terminating the Plan or this Award to meet the requirements of an applicable law or regulation, the Administrator will attempt to bring the Plan or Award into compliance with the applicable law or regulation without reducing the benefits or payments to the Grantee to the greatest extent possible. If amendment or termination is still necessary and adversely impacts the rights of the Grantee, the Administrator will reasonably cooperate with the Grantee to adopt replacement benefits or payments that to the greatest extent possible places the Grantee in the same or a comparable economic position as if the Plan or Award had not been amended or terminated.

Subject to the first paragraph of this Section 8, while the Company does not guarantee any particular tax treatment with respect to the Award, payment of the Payment Amount is intended to comply with Section 409A, to the extent subject thereto, and shall be interpreted and construed consistent with that intent. The Company may reform this Award or any provision hereof to maintain to the maximum extent practicable the original intent of the provision without violating the provisions of Section 409A, provided, that any deferral of payments shall be only for such time period as may be required to comply with Section 409A.

Headings. Section headings are for reference only. In the event of a conflict between a heading and the content of a Section, the content of the Section shall control.

Applicable Law. The validity, construction, interpretation and effect of this Award Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to the conflicts of laws provisions thereof.

IN WITNESS WHEREOF, the Company has caused its duly authorized officer to execute this Award Agreement, and the Grantee has executed this Award Agreement, effective as of the Effective Date.

Bioventus LLC

By: /s/ Leigh Ann Stradford
Name: Leigh Ann Stradford
Title: SVP & Chief Human Resources Officer

I hereby accept the Award described in this Award Agreement, and I agree to be bound by the terms of this Award Agreement, the Plan and the LLC Agreement. I hereby further agree that all of the decisions and determinations of the Administrator shall be final and binding.

Grantee /s/ Kenneth Reali
Kenneth Reali

Date: 6/26/2020

BIOVENTUS LLC

PHANTOM PROFITS INTERESTS PLAN

AS AMENDED AND RESTATED DECEMBER 8, 2017

The purpose of the Bioventus LLC Phantom Profits Interests Plan (the "**Plan**") is to provide eligible employees and independent members of the Board of Managers of Bioventus LLC (the "**Company**") who are important to the success and growth of the business of the Company an opportunity to share in the future appreciation in value of the Company by receiving grants of Phantom Profits Interest Units in the Company. The Company believes that the Plan will encourage participants to contribute materially to the growth of the Company's owners, thereby benefiting the Company, and will align the economic interests of the participants with those of the owners. Awards under the Plan shall consist of grants of Phantom Profits Interest Units as described in Section 5 ("**Awards**"). Capitalized terms that are used but not defined herein shall have the respective meanings accorded to such terms in the Amended and Restated Limited Liability Company Agreement of the Company, as amended (the "**LLC Agreement**").

Definitions.

"**Benchmark Amount**" means the cumulative distributions that must be made by the Company pursuant to the LLC Agreement before a Grantee is entitled to receive any distributions in respect of such Grantee's Phantom Profits Interest Units. The Benchmark Amount shall equal $840,849,878 or such other greater amount as set forth in the applicable Award Agreement.

"**Board Member**" means an independent member of the Board of Managers of the Company appointed or elected to the Board of Managers on or after January 1, 2016.

"**Code**" means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

"**Employee**" means an employee of the Company.

"**Grantee**" means an Employee or Board Member who receives an Award.

"**Initial Waterfall Distribution Event**" means the closing of (i) a sale of Units representing a Percentage Interest of more than 66.66%, or (ii) a sale of all or substantially all of the assets of the Company; provided that such event constitutes a change in ownership or a change in effective control of the Company within the meaning of Section 409A of the Code.

"**Management Distribution Cap**" means 17.5% of the aggregate amount, if any, available for distribution pursuant to Section 10.05(a)(v) of the LLC Agreement.

"**Management Incentive Plan**" means the Bioventus LLC Management Incentive Plan.

"**Payment Amount**" means the amount payable with respect to each vested Phantom Profits Interest Unit upon the applicable Payment Event.

"**Phantom Profits Interest Unit**" means a right to receive cash in an amount equal to the Payment Amount upon the Payment Event as set forth in the applicable Award Agreement.

"**Profits Interest Unit**" means a non-managing, non-voting ownership interest in the Company issued pursuant to Section 3.01(b) of the LLC Agreement and the Management Incentive Plan.

"**Qualifying Subsequent Waterfall Distribution Event**" means a Subsequent Waterfall Distribution Event that constitutes a change in ownership or a change in effective control of the Company within the meaning of Section 409A of the Code.

"**Subsequent Waterfall Distribution Event**" means, following an Initial Waterfall Distribution Event under Section 1(a) above with respect to Units representing a Percentage Interest of less than 100%, the closing of (i) a subsequent sale of Units, or (ii) a sale of all or substantially all of the assets of the Company

"**Termination Date**" means in the case of an Employee, the date of the Grantee's separation of service, as defined in Section 409A of the Code, and in the case of a Board Member, resignation or removal from the Board of Managers of the Company.

"**Waterfall Distribution Event**" means an Initial Waterfall Distribution Event or a Subsequent Waterfall Distribution Event.

Administration

Administration. The Plan shall be administered and interpreted by the Board of Managers (the "**Administrator**") or by a committee or subcommittee, which shall be appointed by the Administrator. To the extent that a committee or subcommittee administers the Plan, references in the Plan to the "Administrator" shall be deemed to refer to the committee or the subcommittee.

Administrator Authority. The Administrator shall determine (i) the Employees and Board Members to receive Awards, (ii) the size and terms of the Awards, (iii) the time when the Awards will be made, (iv) the applicable Payment Event, (v) the duration of any applicable vesting period, provided that such vesting period shall not be less than four years and that the Award shall vest ratably over the vesting period, and (vi) the Benchmark Amount with respect to any Award.

Administrator Determinations. The Administrator shall have full power and authority to administer and interpret the Plan, to make factual determinations, and to adopt or amend such rules, regulations, agreements, and instruments for implementing the Plan and for the conduct of its business as it deems necessary or advisable. All powers of the Administrator shall be executed without the approval or consent of the Grantees.

Interests Subject to the Plan

Awards Authorized by the LLC Agreement. The total amount of Phantom Profits Interest Units available for grants under the Plan, when combined with the total amount of Profits Interest Units (as defined in the Management Incentive Plan) granted under the Management Incentive Plan and any other form of employee, management or other service provider equity or

equity-related awards of the Company, shall not result in aggregate distributions to the holders thereof in excess of the Management Distribution Cap (such amount determined, solely for this purpose, as if there were no Phantom Profits Interest Units or Other Management Equity Awards (as defined in the LLC Agreement)) ("**Excess Distributions**"), unless and to the extent that S&N and the Essex Members consent in their capacity as Members to such Excess Distributions. If, and to the extent that, Phantom Profits Interest Units granted under the Plan terminate or are canceled, forfeited, exchanged, or surrendered without payment, such Phantom Profits Interest Units shall be available again for purposes of the Plan.

Adjustments. If there is any change in the total amount or kind of Phantom Profits Interest Units outstanding (i) by reason of a spinoff, split of the Phantom Profits Interest Units, reclassification, combination, or exchange of such Phantom Profits Interest Units or similar event; (ii) by reason of a merger, reorganization, or consolidation; (iii) by reason of any other extraordinary or unusual event affecting the outstanding Phantom Profits Interest Units as a class without the Company's receipt of consideration; or (iv) by reason of a change in the structure of the Company, or if the value of the outstanding Phantom Profits Interest Units are substantially reduced as a result of a spinoff, the amount or percentage of such Phantom Profits Interest Units covered by outstanding Awards, and the kind of Phantom Profits Interest Units issued under the Plan shall be appropriately adjusted by the Administrator to reflect any increase or decrease in the amount of, or change in the kind or value of, issued Phantom Profits Interest Units to preclude, to the extent practicable, the enlargement or dilution of rights and benefits under such Awards. Any adjustments determined by the Administrator shall be final, binding, and conclusive.

Eligibility for Participation

All Employees and Board Members who are designated by the Administrator shall be eligible to participate in the Plan.

Grants of Awards

Award Agreement. All Awards shall be subject to the terms and conditions of this Plan, the terms of the LLC Agreement, and the Grantee's award instrument (the "**Award Agreement**"). Each Award Agreement shall contain the number of Phantom Profits Interest Units underlying the Grantee's Award and the applicable grant date Benchmark Amount (subject to adjustment as provided in the LLC Agreement), and each Award shall vest in accordance with the terms of the Grantee's Award Agreement. The Award Agreement shall also designate whether the Payment Amount shall be paid (i) upon the earlier of the Grantee's Termination Date or an Initial Waterfall Distribution Event (with any subsequent amounts paid upon the earlier of a Qualifying Subsequent Waterfall Distribution Event or the Grantee's Termination Date) (a "**Termination Payment Event**") or (ii) upon an Initial Waterfall Distribution Event, with any subsequent amounts paid upon the earlier of (A) a Qualifying Subsequent Waterfall Distribution Event or (B) provided that a Subsequent Waterfall event has occurred, the fifth anniversary of the grant date (a "**Waterfall Payment Event**") (a Termination Payment Event or a Waterfall Payment Event, also referred to as the "**Payment Event**").

Payment Amount.

(i) If the Payment Event is a Termination Payment Event, the Payment Amount shall be, for each vested Phantom Profits Interest Unit, an amount that would be allocated to an equivalent number of Profits Interest Units with an equivalent Benchmark Amount, (A) if the Grantee's Termination Date is prior to a Waterfall Distribution Event, as if the Company were liquidated on the Termination Date at fair market value (as determined in good faith by the Administrator), or (B) where there is an Initial Waterfall Distribution Event and one or more Subsequent Waterfall Distribution Events prior to the Termination Date, pursuant to the LLC Agreement with respect to each such Waterfall Distribution Event. Such Payment Amount shall be paid to the Grantee within 30 days of the Termination Date, the Initial Waterfall Distribution Event, or any Qualifying Subsequent Waterfall Distribution Event, as applicable. In the event that a Subsequent Waterfall Distribution Event is not a Qualifying Subsequent Waterfall Distribution Event, the Payment Amount with respect to such Subsequent Waterfall Distribution Event shall be paid within 30 days of the Termination Date. No further Payment Amount shall be paid to the Grantee with respect to Waterfall Distribution Events following the Grantee's Termination Date.

(ii) Subject to (iii) below, if the Payment Event is a Waterfall Payment Event and a Waterfall Distribution Event occurs before the Grantee's Termination Date, the Payment Amount shall be equal to, for each vested Phantom Profits Interest Unit, an amount that would be payable with respect to the equivalent number of Profits Interest Units with an equivalent Benchmark Amount pursuant to the LLC Agreement. Such Payment Amount shall be paid to the Grantee within 30 days of an Initial Waterfall Distribution Event, and for any Subsequent Waterfall Distribution Event, shall be paid to the Grantee within 30 days of the earlier of a Qualifying Subsequent Waterfall Distribution Event or the fifth anniversary of the date of grant. No Payment Amount shall be paid to the Grantee with respect to any Subsequent Waterfall Distribution Event that is not a Qualifying Subsequent Waterfall Distribution Event and that occurs after the fifth anniversary of the Grant Date.

(iii) If the Payment Event is a Waterfall Payment Event and a Waterfall Distribution Event occurs after the Grantee's Termination Date, the Payment Amount with respect to such event shall in no event be greater than the lesser of, for each vested Phantom Profits Interest Unit, (A) an amount that would be allocated to an equivalent number of Profits Interest Units with an equivalent Benchmark Amount if the Company were liquidated on the valuation date next following the Termination Date at fair market value (as determined in good faith by the Administrator) and (B) the amount specified in Section 5(b)(ii) above; provided that if a Waterfall Distribution Event occurs prior to the valuation date next following the Termination Date, the Payment Amount shall be the amount specified in Section 5(b)(ii). Such Payment Amount shall be paid to the Grantee within 30 days of the Initial Waterfall Distribution Event, and for any Subsequent Waterfall Distribution Event, shall be paid to the Grantee within 30 days of the

earlier of a Qualifying Subsequent Waterfall Distribution Event or the fifth anniversary of the date of grant. No Payment Amount shall be paid to the Grantee with respect to any Subsequent Waterfall Distribution Event that is not a Qualifying Subsequent Waterfall Distribution Event and that occurs after the fifth anniversary of the Grant Date.

Acknowledgement by Grantee. All Awards shall be made conditional upon the Grantee's acknowledgement, in writing or by acceptance of the Award, that all decisions and determinations of the Administrator shall be final and binding on the Grantee, his or her beneficiaries, and any other person having or claiming an interest under such award. Awards need not be uniform as among the Grantees.

Forfeiture

Termination of Employment. Any and all of an Employee Grantee's unvested Phantom Profits Interest Units shall be forfeited upon the termination of the Grantee's employment for any reason.

Termination of Membership on the Board of Managers. Any and all of a Board Member Grantee's unvested Phantom Profits Interest Units shall be forfeited upon resignation or removal from the Board of Managers of the Company.

Termination of Employment for Cause. Any and all of an Employee Grantee's vested and unvested Phantom Profits Interest Units shall be forfeited upon the termination of the Grantee's employment for Cause. For purposes of this Plan, "Cause" shall have the meaning set forth in the written employment agreement between the Grantee and the Company in effect on the date of the Grantee's termination of employment, or if no such agreement exists, shall mean (i) conviction (including guilty plea or plea of nolo contendere) of any felony or any other crime involving fraud, violence or dishonesty; (ii) commission of or participation in a fraud or act of dishonesty or misrepresentation against the Company; (iii) violation of any written and fully executed contract or agreement between the Grantee and the Company, including without limitation, breach of Grantee's Proprietary Information, Inventions, Non-Competition and Non-Solicitation Agreement; (iv) gross negligence or willful misconduct, (v) continued and substantial failure to perform the Grantee's duties to the Company; or (vi) violation of any material policies, practices, or procedures of the Company.

Removal from the Board of Managers. Any and all of a Board Member Grantee's vested and unvested Phantom Profits Interest Units shall be forfeited upon the removal of the Grantee from the Board of Managers for Cause. For purposes of this Plan, "Cause" shall mean (i) conviction (including guilty plea or plea of nolo contendere) of any felony or any other crime involving fraud, violence or dishonesty; (ii) commission of or participation in a fraud or act of dishonesty or misrepresentation against the Company; (iii) violation of any agreement between the Grantee and the Company; (iv) gross negligence or willful misconduct; (v) continued and substantial failure to perform the Grantee's duties to the Company as a Member of the Board of Managers of the Company; or (vi) violation of any material policies, practices, or procedures of the Company including without limitation, the Company's Code of Conduct and Confidential Information policies.

Waterfall Distribution Event. As soon as practicable following an Initial Waterfall Distribution Event or any Subsequent Waterfall Distribution Event that results in an aggregate sale of Units representing a Percentage Interest of 100%, or upon a sale of all or substantially all of the assets of the Company, all vested and unvested Phantom Profits Interest Units shall be cancelled (after the Grantee has been paid any amounts due with respect to such Units, if applicable).

Confidentiality, Non-Compete, Non-Solicitation. Notwithstanding anything herein to the contrary, a Grantee shall forfeit any and all rights to all vested and unvested Phantom Profits Interest Units if the Grantee violates the terms of any confidentiality, non-solicitation and non-competition provisions of any agreement between the Grantee and the Company, if applicable.

Withholding of Taxes

All Awards under the Plan shall be subject to applicable federal (including FICA), state, and local tax withholding requirements. The Company may require that the Grantee pay to the Company the amount of any federal, state, or local taxes that the Company is required to withhold with respect to such Awards, or the Company may deduct from other wages paid by the Company the amount of any withholding taxes due with respect to such Awards.

Nontransferability of Awards

Only the Grantee has any rights under an Award. A Grantee may not transfer those rights, directly or indirectly, except by will or the laws of descent and distribution.

Limitations on Issuance or Transfer of Phantom Profits Interest Units

No Phantom Profits Interest Units shall be issued or transferred in connection with any Award until all legal requirements applicable to the issuance or transfer of such Phantom Profits Interest Units have been complied with to the satisfaction of the Administrator. The Administrator shall have the right to condition any Award made to any Grantee hereunder on such Grantee's undertaking in writing to comply with any restrictions on his or her subsequent disposition of such Phantom Profits Interest Units as the Administrator shall deem necessary or advisable.

Amendment and Termination of the Plan

Amendment and Termination. The Administrator may, in accordance with the LLC Agreement, amend the Plan or any Award under the Plan, or terminate the Plan, at any time; provided that no amendment or termination of the Plan or any Award shall, without the consent of a Grantee, adversely impact the rights of any Grantee under any Award granted to such Grantee under the Plan, unless necessary to meet the requirements of any applicable law or regulation. Before amending or terminating the Plan or any Award to meet the requirements of an applicable law or regulation, the Administrator will attempt to bring the Plan or Award into compliance with the applicable law or regulation without reducing the benefits or payments to a Grantee to the greatest extent possible. If amendment or termination is still necessary and adversely impacts the rights of a Grantee, the Administrator will reasonably cooperate with such Grantee to adopt replacement benefits or payments that to the greatest extent possible places the Grantee in the same or a comparable economic position as if the Plan or Award had not been amended or terminated.

Governing Document. In the event of any conflict between any Award in the form attached hereto as Exhibit A or B and the LLC Agreement, such Award shall control. In the event of any conflict between any subsequent Award not in the form attached hereto and the LLC Agreement, the LLC agreement shall control unless such subsequent Award has been approved by the Board and Smith & Nephew, Inc., in which case such Award shall control. No other statements, representations, explanatory materials or examples, oral or written, may amend the Plan in any manner. The Plan shall be binding upon and enforceable against the Company and its successors and assigns.

Funding of the Plan

This Plan shall be unfunded. The Company shall not be required to establish any special or separate fund or to make any other segregation of assets to assure the payment of any Awards under this Plan. In no event shall interest be paid or accrued on any Award.

Rights of Grantees

No Award shall entitle any Grantee to any (i) voting rights with respect to any action or decision taken or made (or to be taken or made) by the Company or the Board of Managers, (ii) right to appoint Managers to the Board of Managers, or (iii) appraisal or preemption rights. Nothing in this Plan shall entitle any Employee, Board Member or any other person to any claim or right to receive an Award under this Plan. Neither this Plan nor any action taken hereunder shall be construed as giving any individual any rights to be retained by or in the employ of the Company or any other employment rights.

Headings

Section headings are for reference only. In the event of a conflict between a title and the content of a Section, the content of the Section shall control.

Effective Date of the Plan

The initial effective date of the Plan was May 4, 2012. The amended and restated version of the Plan shall be effective on December 8, 2017.

Miscellaneous

Compliance with Law. The Plan and the obligations of the Company to issue or transfer Phantom Profits Interest Units in connection with Awards shall be subject to all applicable laws and to approvals by any governmental or regulatory agency as may be required. The Administrator may revoke any Award if it is contrary to law or modify an Award to bring it into compliance with any valid and mandatory government regulation. The Administrator may also adopt rules regarding the withholding of taxes on payments to Grantees. The Administrator may, in its sole discretion, agree to limit its authority under this Section.

Governing Law. The validity, construction, interpretation, and effect of the Plan and Award Agreements issued under the Plan shall be governed and construed by and determined in accordance with the laws of the State of Delaware, without giving effect to the conflict of laws provisions thereof.

Exhibit 10.43

Bioventus LLC
4721 Emperor Blvd., Suite 100
Durham, NC 27703
USA

1-919-474-6700
1-800-396-4325
www.BioventusGlobal.com

July 30, 2020

Ken Reali
c/o Bioventus LLC
4721 Emperor Blvd., Suite 100
Durham, NC 27703

Dear Ken:

This will letter will set forth the agreement (this "Agreement") between you and Bioventus LLC (the "Company") in connection with the option to purchase Common/Profit Interest Units in the Company or an equivalent number of any newly issued equity interests of any successor entity having the same rights, preferences and limitations as such units (the "Units"). In consideration of the foregoing, you and the Company hereby agree as follows:

1. Grant. Effective as of the date hereof, you are hereby granted the option and right to purchase up to 5935 Units at the purchase price of $42.12 per Unit, as was determined utilizing the 409A valuation of the Company as of April 30, 2020 (the "***Exercise Price***"), which rights shall be subject to the terms and conditions set forth in this Agreement and all of the applicable provisions of the Amended and Restated Limited Liability Company Agreement of the Company, dated May 4, 2012 (as amended, the "LLC Agreement") (the "***Option***").

2. Exercisability; Notice of Exercise. Provided that you remain continuously employed by the Company, the Option shall exercisable by you on or after the date hereof, in whole or in part, by notifying the Company of such exercise in writing, which notice shall specify the number of Units for which the Option is to be exercised.

3. Expiration of Option. If not exercised by you in accordance with the terms of this Agreement prior to such date, the Option granted herein shall expire on the earlier of (i) the date of the termination of your employment with the Company or any successor entity, or (ii) July 30, 2021, unless extend by mutual written agreement of the parties.

4. Method of Payment. You must pay the full amount of the Exercise Price for the Units you wish to exercise. You may pay the Exercise Price by check or bank draft payable to the Company.

5. Non-Transferability of Option. The Option is not transferable. You may not assign, sell, transfer, encumber, gift, donate, or pledge the Option or any interest therein to any third-party. Any attempted transfer of the Option or any of the rights or obligations granted in this Agreement shall be void.

6. Your Status. You shall not be deemed an equity holder of the Company with respect to any of the shares of Units subject to the Option, except to the extent that such Units shall have been purchased and transferred to you. You acknowledge that ownership of the Units may result in changing your status as an employee of the Company to that of a partner. The Option shall not limit or affect in any way the right of the Company or any successor entity to reclassify, recapitalize or otherwise change its capital or debt structure or to merge, consolidate, convey any or all of its assets, dissolve, liquidate, windup, or otherwise reorganize.

7. Committee Authority. Any questions concerning the interpretation of this Agreement, and any dispute or other controversy that may arise hereunder, shall be determined by the Compensation Committee of the Board of Managers of the Company in its sole and absolute discretion. Any such decision by the Committee on such matters shall be final and binding on the parties.

8. Limitation on Rights; No Right to Future Grants. By entering into this Agreement and accepting the Option, you acknowledge and agree that: (i) you are entering into this Agreement voluntary; (ii) the value of the Option is an extraordinary item which is outside the scope of any employment contract with the Company; (iii) the Option is not part of your normal or expected compensation for any purpose, including without limitation for calculating any benefits, severance, resignation, termination, redundancy, end of service payments, bonuses, long-service awards, pension or retirement benefits or similar payments, and you will not be entitled to compensation or damages as a consequence of your forfeiture or expiration of any unvested portion of the Option as a result of your separation from service with the Company for any reason; and (iv) in the event that you employment with the Company ceases, the grant of the Option will not be interpreted to form an employment relationship with the Company and the grant of the Option will not be interpreted to form an employment contract with the Company.

9. No Waiver. No waiver of any provision of this Agreement will be valid unless in writing and signed by the person against whom such waiver is sought to be enforced, nor will failure to enforce any right hereunder constitute a continuing waiver of the same or a waiver of any other right hereunder.

10. Undertaking. You agree to take whatever additional action and execute whatever additional documents the Company may deem necessary or advisable in order to carry out or effect one or more of the rights, obligations or limitations imposed on the Option or with respect to your ownership of any Units purchased hereunder pursuant to the express provisions of this Agreement or the LLC Agreement.

11. Entire Contract. This Agreement constitute the entire agreement between the parties hereto with regard to the subject matter hereof.

12. Successors and Assigns. The provisions of this Agreement will inure to the benefit of, and be binding on, the parties and their permitted successors and assigns.

13. Governing Law. The rights and obligations of the parties hereunder, and the interpretation of this Agreement, will be governed by the laws of the State of Delaware, without giving effect to the conflicts of laws provisions thereof.

If this continues to be acceptable to you, please so indicate by signing and dating where indicated below.

Very truly yours,

/s/ William A Hawkins
William A. Hawkins
Chairman of the Bioventus Board of Managers

ACKNOWLEDGED AND AGREED:

/s/ Ken Reali	9/9/2020
Ken Reali	Date

Exhibit 16.1

[PwC Letterhead]

January 19, 2021

Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Commissioners:

We have read the statements made by Bioventus LLC pursuant to Item 304(a)(1) of Regulation S-K (copy attached), which we understand will be filed with the Securities and Exchange Commission as part of the Registration Statement on Form S-1 of Bioventus LLC dated January 19, 2021. We agree with the statements concerning our Firm contained therein.

Very truly yours,

/s/ PricewaterhouseCoopers LLP
Raleigh, North Carolina

Attachment

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We have issued our report dated October 6, 2020, with respect to the consolidated financial statements of Bioventus LLC contained in the Registration Statement and Prospectus of Bioventus Inc. We consent to the use of the aforementioned report in the Registration Statement and Prospectus of Bioventus Inc., and to the use of our name as it appears under the caption “Experts.”

/s/ GRANT THORNTON LLP
Raleigh, North Carolina
January 19, 2021

Exhibit 23.2

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the use in this Registration Statement on Form S-1 of Bioventus LLC of our report dated August 15, 2019, except for the effects of disclosing net loss per unit information discussed in Note 14 and the effects of discontinued operations discussed in Note 17 to the consolidated financial statements, as to which the date is October 6, 2020, relating to the financial statements of Bioventus LLC, which appears in this Registration Statement. We also consent to the reference to us under the heading “Experts” in such Registration Statement.

/s/ PricewaterhouseCoopers LLP
Raleigh, North Carolina
January 19, 2021